

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Cont.P.No.2615/2018

S.A.Abdul Razack,
S/o.Shaik Ansar Basha,
No.462, Trunk Road,
Kumananchavadi,
Poonamallee,
Chennai-56.

...Petitioner

Versus

Mrs.Punithavathi
The Tahsildar
Office of the Tahsildar
Poonamallee, Chennai.

... Respondent

Prayer:- Contempt petition filed under section 11 of the Contempt of Courts Act, to punish the respondent for willful and deliberate disobedience of the order of this Court dated 29.11.2017 in WP.No.29071/2017.

For Petitioner : Mr.Mohamed Fayaz Ali

For Respondent : Mrs.P.Rajalakshmi, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner, alleging non-compliance and willful disobedience of the order of this Court dated 29.11.2017 made in WP.No.29071/2017 on the part of the respondent, came forward to file the present petition.

<https://hcservices.ecourts.gov.in/hcservices/>

2 Heard the submissions of the learned counsel for

the petitioner and according to him, in the order dated 29.11.2017, made in WP.No.29071/2017, which is the subject matter of contempt, the petitioner was granted liberty to file an appeal before the Appellate Authority and despite pendency of the appeal which came to be filed on 30.01.2018, under the pretext of removing the encroachment, the superstructure put up by the petitioner in Survey No.400, at Senneerkuppam Village, Poonamallee Taluk, has been removed and hence, prays for appropriate orders.

3 In response to the Statutory Notice issued on 20.03.2019, Mrs.Punithavathy, Tahsildar, Poonamallee Taluk, personally remains present before this Court today.

4 Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for the respondent/Contemnor has drawn the attention of this Court to the counter affidavit dated 22.02.2019, sworn to by the respondent/contemnor and would submit that this Court, vide order passed in WP.No.3980/2017 filed by one Mr.Sivakumar, had disposed of the said writ petition as to the removal of encroachments in the lands situate at S.Nos.401, 468 and 379 of Senneerkuppam village, Poonamallee Talu, which are classified as ''Road Poramboke'' and alleging willful disobedience and violence of the order, Cont.P.No.1034/2017 came to be filed against the Commissioner, Poonamallee Municipality and accordingly, steps have been taken to remove the encroachment in S.No.401 as per the above said direction and the encroachment in S.No.400, has not been

removed and also drawn the attention of this Court to paragraphs Nos.9, 11 and 14 in the said counter.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 A perusal of the materials would disclose that though an appeal before the Appellate Authority is said to have been filed on 30.01.2018, the proceedings number of the appeal has not been disclosed by the petitioner and when this Court has put a specific question to the learned counsel for the petitioner, as to whether any interim order is in operation, the learned counsel replied in negative. It is a settled position of law that mere pendency of the appeal would not operated as stay of all further proceedings and in the absence of any such order, it cannot be said that the respondent/contemnor has committed contempt. It is also to be noted at this juncture that as per the averments of the counter affidavit of the respondent/contemnor, the encroachment in S.No.401 alone has been removed and not in S.No.400, wherein the petitioner is said to have been issued with a patta and put up a superstructure.

7 However, if the petitioner is so advised and if it is available to him under law, he is always at liberty to work out his remedy depending upon the outcome of the

appeal said to have been filed before the Appellate Authority under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The Appellate Authority shall make every endeavour to dispose of the appeal said to have been filed by the petitioner pending on its file, as expeditiously as possible.

8 The contempt petition stands closed subject to above observations.

SD/-
Assistant Registrar (Comm. Cases)
AP

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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SS/20/05/2019

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To

The Tahsildar
Office of the Tahsildar
Poonamallee, Chennai.