

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE NO.1482 OF 2018

ORDER:

1. This Contempt Case is filed by the petitioners to punish the respondent under Sections 10 to 12 of the Contempt of Courts Act, 1971 for willful and intentional disobedience of the order dt.24.04.2018 in W.P.No.12712 of 2018.

2. In the said Writ Petition, this Court had directed:

“Within two (2) weeks from today, Respondent No.2 shall initiate proceedings, under Section 228 of the Telangana Municipalities Act, 1965, against the illegal construction made by Respondent No.3, in view of the finding in the order dated 01-03-2018, in CMA No.48 of 2017 of the III Additional District Judge, Asifabad that Respondent No.3 had made construction even without obtaining any sanction from Respondent No.2.”

3. The petitioners had alleged that the 3rd respondent in the Writ Petition had made illegal construction of a house by occupying the municipal lane of 6 feet without any permission and also that the said construction was contrary to the order dt.01.03.2018 passed in CMA No.48 of 2017 by the III Additional District Judge, Asifabad wherein the said Court had held that he had made the construction even without obtaining any sanction from the respondent herein.

4. In the Contempt Case, it is contended by the petitioners that the order dt.24.04.2018 passed by this Court was brought to the notice of the respondent, but he did not implement the same and he is colluding with

the 3rd respondent in the Writ Petition and intentionally and willfully disobeyed the order passed by this Court.

5. Initially, a counter affidavit was filed by the respondent admitting that petitioner No.2 had filed a complaint against the 3rd respondent in the Writ Petition alleging illegal construction of the house by the said party by occupying the public road on 23.08.2017. It is stated that the Town Planning staff proceeded to the spot and stopped the illegal construction. It is contended that thereafter, the 3rd respondent in the Writ Petition submitted an application for building permission to the respondent on 04.09.2017 alleging that an old house in the property had collapsed due to natural calamity and permission to rebuild it is to be granted. It is stated that the respondent's office directed the 3rd respondent in the Writ Petition to submit all the connected documents on 01.12.2017. According to the respondent, the 3rd respondent in the Writ Petition then filed O.S.No.50 of 2017 before the Judicial First Class Magistrate (JFCM) at Bellampally on 13.10.2017 against the respondent and the respondent also filed a counter affidavit in the said suit. He contended that the Magistrate then granted an *ex parte* ad interim injunction on 24.10.2017 against the Bellampally Municipality and it is alleged that on the basis of the *status quo* order, the 3rd respondent in the Writ Petition proceeded to make further construction. It is contended that the land in question was in possession of the 3rd respondent in the Writ Petition since long back with AC sheets and the dismantled house therein was being reconstructed, and the petitioners did not have any documentary evidence in respect of the existing land. It is admitted that

petitioner No.1 filed CMA No.48 of 2017 before the III Additional District Judge at Asifabad against the said order dt.24.10.2017 passed by the Judicial First Class Magistrate, Bellampally and the said appeal was allowed.

6. According to the respondent, his office issued only a notice to the 3rd respondent in the Writ Petition under Section 340 of the Telangana Municipalities Act, 1965 (for brevity, 'the Act') on 12.05.2018 and enclosed a copy of the same. It is stated that the 3rd respondent in the Writ Petition gave another application on 17.05.2018 for fresh building permission, but the said application was also not in accordance with law as no registered documents were enclosed to it and therefore, notice confirmation order under Section 340 of the Act was issued on 18.05.2018. It is stated that the respondent had made several efforts to stop the illegal construction by the 3rd respondent in the Writ Petition and he did not disobey the orders of this Court. It is also stated that Crl.Petition No.329 of 2018 dt.05.09.2018 was filed by the Municipal Standing Counsel of Bellampally before the JFCM, Bellampally under Section 340 of the Act and the case is under trial.

7. Later, an additional counter affidavit was filed stating that the Bellampally Municipality issued a provisional order under Sections 217 (1) and (2) and 228 (1) and (2) of the Act dt.10.08.2017 and also confirmation order notice under Sections 217(3) and 228(3) of the Act dt.10.08.2017 to the 3rd respondent in the Writ Petition to remove the unauthorized G+1 floor construction, but he did not do so. It is stated

that the Criminal Case filed by the Bellampally Municipality is numbered as C.C.No.329 of 2018 and is pending. It is stated that the respondent had initiated proceedings under Section 340 of the Act as the Municipality had already issued notice and concluded under Section 228 of the Act. It is stated that only on the 'advice of senior colleagues', a case under Section 340 of the Act was filed without removing the unauthorized structure by thinking that the structure could be removed after C.C.No.329 of 2018 was decided by the JFCM, Bellampally. The respondent tendered unconditional apology for not demolishing the structure and stated that *he is ready to demolish the structure if three weeks' time is granted.*

8. From the facts narrated above, it is clear that the 3rd respondent in the Writ Petition had made an illegal construction which was held by the Civil Court in CMA No.48 of 2017 on 01.03.2018 to be a construction made without obtaining any sanction from the Bellampally Municipality. To this order, the 1st petitioner and the respondent in the Contempt Case were parties. This order had not been set aside and is subsisting as on date. Once the Civil Court has given a finding that the 3rd respondent in the Writ Petition had made the construction without obtaining permission, the respondent had a duty to remove the same by invoking Section 228 of the Act.

9. Section 228 of the Act states:

“228. Demolition or alternation of building work unlawfully commenced, carried on or completed :--(1) If the Commissioner is satisfied—

(i) that the construction or reconstruction of any building or well—

(a) has been commenced without obtaining the permission of the Commissioner or the Chairperson as the case may be, or where an appeal has been made to the council, in contravention of any order passed by the council; or

(b) is being carried on, or has completed, otherwise than in accordance with the plans or particulars on which such permission or order was based; or

(c) is being carried on, or has been completed, in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-law; or

(ii) that any alterations required by any notice issued under Section 217 have not been duly made; or

(iii) that any alteration of or addition to any building or any other work made or done for any purpose into or upon, any building, has been commenced or is being carried on or has been completed in breach of Section 227,

he may make a provisional order requiring the owner or the builder to demolish the work done or so much of it as in the opinion of the said officer, has been unlawfully executed or to make such alterations as may, in his opinion, be necessary to bring the work into conformity with the Act, bye-laws, rules, direction or requisition as aforesaid or with the plans and particulars on which such permission or order was based; and may also direct that until the said order is complied with, the owner or builder shall refrain from proceeding with the building or well.

(2) The said officer shall serve a copy of the provisional order made under sub-section (1) on the owner of the building or well, together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the said officer, he may confirm the order with such modification as he thinks fit to make, and such order shall then be binding on the owner.”

10. Admittedly, in the instant case, provisional order and confirmation order were passed under Section 228(3) of the Act by the respondent on 21.08.2017 itself. When there is no order passed by the Civil Court prohibiting the respondent from removing the illegal construction made by the 3rd respondent in the Writ Petition, the only option available to the respondent in the CC is to have the illegal construction made by the 3rd respondent in the Writ Petition demolished.

11. Obviously, the respondent is colluding with the 3rd respondent in the Writ Petition by not doing anything other than filing of a Criminal Complaint under Section 340 of the Act against the 3rd respondent in the Writ Petition before the Court of JFCM, Bellampally. The said Section 340 of the Act contemplates prosecution of the person making an illegal construction but does not deal with removal of illegal construction. Though it may result in punishment of the 3rd respondent in the Writ Petition, the illegal construction made by him would stand.

12. Since the respondent had stated that he was ready to demolish the structure if he is granted three further weeks of time and that he would file an action taken report by removing the subject illegal construction within three weeks, the Contempt Case is allowed and the respondent is directed to remove the illegal construction made by the 3rd respondent in W.P.No.12712 of 2018 within three (3) weeks from today without fail and file an action taken report before this Court. If not, the respondent shall suffer simple imprisonment for a period of four (4) weeks along with a fine of Rs.2,000/- (Rupees two thousand only). The respondent

shall also pay costs of Rs.5,000/- (Rupees five thousand only) to the petitioners.

M.S.RAMACHANDRA RAO, J

Date:13-12-2019

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