

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Contempt Case No.814 of 2016 in Writ Petition No.14613 of 2001

and

Suo motu Contempt Case No.283 of 2019

In

Writ Petition No.14613 of 2001

COMMON ORDER :

Heard Sri D.V. Sitharam Murthy, learned Senior Counsel appearing for Sri Padala Praveen Kumar, counsel for petitioners, in both the Contempt Cases; and Sri L. Ravichander, learned Senior Counsel appearing for Sri K. Ramesh Chowdary, counsel for 1st respondent; and Sri Vedula Srinivas, counsel appearing for 2nd respondent, who was *suo motu* impleaded by this Court vide order dt.25.02.2019 in Contempt Case No.814 of 2016.

Contempt Case No.814 of 2016 :

2. Contempt Case No.814 of 2016 was filed by petitioners alleging willful and deliberate disobedience of the order dt.30.04.2013 passed in Writ Petition No.14613 of 2001, which was also confirmed by a Division Bench of this Court on 19.11.2015 in Writ Appeal No.1509 of 2013.

3. The subject-matter of the said Writ Petition was an Award dt.15.11.1995 passed in A.R.C.No.85 of 1993 of the Deputy Registrar of Co-operative Societies (Housing), Basheerbagh, Hyderabad, which was confirmed by order dt.27.03.2001 in Co-operative Tribunal

Appeal No.19 of 1996 of the Co-operative Tribunal constituted under the Andhra Pradesh Co-operative Societies Act, 1964 (**for short, ‘the Act’**) and relates to plot No.73, Block No.III, Survey No.403/1 and 120/1, admeasuring 700 Sq.Yds., within M.C.H. Ward No.8, Block No.II, situate at Road No.17, Jubilee Hills, Hyderabad originally belonging to the Jubilee Hills Co-operative Housing Society Limited (**for short, ‘the Society’**), whose Secretary is the 1st respondent in both the Contempt Cases.

4. In the said Writ Petition, seventeen persons were impleaded as respondents and this Court confirmed the order of the Arbitrator / Deputy Registrar of Co-operative Societies, Housing, Basheerbagh, Hyderabad wherein he had held that one Sri M. Laxma Reddy (father-in-law of the 1st petitioner in the CC and grandfather of petitioners 2-4 in the CC) who was the original member of the Society and who was allottee of the above plot and his legal heirs would be entitled to the said membership and also the plot and directed the said Society to re-register the said plot which was registered in favour of the 5th respondent in the Writ Petition by name Smt. Shailaja Reddy. The judgment in the said W.P was confirmed when appeals W.A.No.s 841, 1509 and 1547 of 2013 filed against it by the Society and others were dismissed.

5. It is the contention of the petitioners in the Contempt Case that the order dt.30-04-2013 in W.P.No.14631 of 2001 was intentionally and willfully disobeyed by the 1st respondent and that the

1st respondent is liable for punishment under Section 12 of Contempt of Courts Act, 1971.

6. The 1st respondent filed counter-affidavit on 19-02-2019 and additional counter-affidavit on 25-02-2019.

7. In the first counter-affidavit, the 1st respondent contended that the Society of which he is the Secretary had made all attempts to comply with the order in the Writ Petition but he was restrained from executing the deed of conveyance in favour of the 1st petitioner in the Contempt Case and her legal heirs as the subject property was encroached by a person claiming possession through Smt.Shailaja Reddy and the Society was not in a position to deliver possession of the property to them. It is also contended that representations were made on 10-02-2018 and 10-11-2018 to the Deputy Commissioner of Police, West Zone and the Assistant Commissioner of Police, Banjara Hills requesting them to take action against the encroacher but they did not do so. But the name of the said encroacher was not mentioned in the first counter-affidavit.

8. In the additional counter-affidavit filed by him, the 1st respondent disclosed that one Ch.Sudhakar Raju is the encroacher. It is contended that the Society apprehended a law and order problem if it tried to dispossess the encroacher unilaterally. It was also stated that letters were also addressed on 25-07-2015 and 22-12-2015 to the 1st petitioner in the Contempt Case and she gave a reply on

20-04-2015 requesting to transfer property in her name to the exclusion of her children and had enclosed consent letters of her children i.e. petitioner Nos.2 to 4 who gave up their claims for registration of the said property. It is stated that the Society did not want to take any chance by acting on the nominations and insisted on all the petitioners to be available for registration. It is contended that in view of the same there was no willful disobedience on the part of the 1st respondent to convey the property to the petitioners.

9. Before this Court, it was stated by the learned counsel for petitioners that the 1st petitioner having died, the petitioner Nos.2 to 4 would convey jointly as to who would be the person in whose name the conveyance is to be executed by the Society.

10. Since the details of the encroacher in the subject property were disclosed by the 1st respondent in the additional counter affidavit, this Court impleaded him *suo motu* on 25-02-2019 in the Contempt Case and also issued notice to him to show cause why proceedings for contempt of Court should not be initiated against him for willful disobedience of the order dt.30-04-2013 in W.P.No.14613 of 2001. This was numbered as *Suo Motu* C.C.No.283 of 2019 in C.C.No.814 of 2016.

11. The 2nd respondent herein claims to have obtained an Agreement of Sale on 09.08.1994 from the said Smt. Shailaja Reddy during the pendency of the A.R.C.No.85 of 1993 before the Deputy

Registrar of Co-operative Societies (Housing), Basheerbagh, Hyderabad, and contends that he obtained the property through an Award passed on 01.04.2009 in L.A.C.No.225 of 2009 in Original Suit No.283 of 2008 filed by him against the said Smt. Shailaja Reddy, and also claims to be in possession of the subject property. He contends that he was not a party before the Deputy Registrar of Co-operative Societies (Housing), Basheerbagh, Hyderabad in the above A.R.C.No.85 of 1993 or before the Co-operative Tribunal or in Writ Petition No.14613 of 2001 or in the Writ Appeal, and that he came to know about these proceedings only when he was impleaded in the Contempt Case on an affidavit filed by the 1st respondent on 19.02.2019 stating that he is in possession of the property.

12. It is important to note that the 2nd respondent had filed Original Suit No.3603 of 2004 before the IV Senior Civil Judge, City Civil Court, Hyderabad against the husband of the sole petitioner, viz., Sri M. Sudhakar Reddy and Smt. Shailaja Reddy, and the said suit was dismissed on 16.11.2007 by giving a finding that he was not in possession of the property on the date of filing of the suit.

13. However, thereafter, he appears to have secured possession clandestinely, and in the counter-affidavit seeks to contest this Contempt Case asserting that he was put in possession of the property on the date of the Agreement of Sale dt.09.08.1994 itself and that he is in continuous possession since then till date.

14. In view of the finding given in Original Suit No.3603 of 2004 filed by him for injunction against M.Sudhakar Reddy (2nd respondent and Shailaja Reddy that he was not in possession of the subject property on the date of filing of the suit or thereafter (which finding became final as there was no appeal against the judgment in O.S.No.3603 of 2004), this plea of the 2nd respondent that he was in possession of the property from 09.08.1994 cannot be accepted and is clearly a false plea.

15. It is important to note that in Original Suit No.3603 of 2004 itself the factum of filing of A.R.C.No.85 of 1993, C.T.A.No.19 of 1996 and W.P.No.14613 of 2001 were mentioned by M.Sudhakar Reddy, the 2nd defendant therein (2nd respondent in the WP.No.14613/2001 and father of the petitioners in the CC) and so the 2nd respondent cannot claim to be ignorant of that litigation.

16. Therefore, the plea of 2nd respondent that he became aware of the proceedings in the A.R.C.No.85 of 1993, the C.T.A.No.19 of 1996 and the Writ Petition No.14613 of 2001 only in 2019 after he was impleaded *suo moto* in the Writ Petition, is also a false plea and cannot be countenanced.

17. In any event, once Smt. Shailaja Reddy herself was a party to Writ Petition No.14613 of 2001 and also to A.R.C.No.85 of 1993 before the Deputy Registrar of Co-operative Societies (Housing), Basheerbagh, Hyderabad, and in the C.T.A.No.19 of 1996, and she

did not challenge the order in Writ Petition No.14613 of 2001, any alleged title she had in the subject land stood nullified, and the 2nd respondent, who is a mere agreement holder from her, and who obtained such agreement during the pendency of the A.R.C.No.85 of 1993 is equally bound by it, and cannot set up any independent title to the property.

18. Though the counsel for 2nd respondent sought to contend that no notice was served on Smt. Shailaja Reddy in Writ Petition No.14613 of 2001, the fact remains that there was no challenge by her on the said ground against the said order; and it has attained finality after dismissal of the said Writ Petition as well as Writ Appeal Nos.1509 of 2013, 841 of 2013 and 1547 of 2013. So the issue cannot now be re-opened.

19. Any decree which 2nd respondent claims to have obtained from a *Lok Adalat* in Original Suit No.283 of 2008 through a compromise dt.1.4.2009 against Smt.Shailaja Reddy does not also create any title in the 2nd respondent because firstly she did not have any title to the property and so cannot convey any title to him, and secondly because no title was conveyed in fact by execution of any registered sale deed in his favour by Smt. Shailaja Reddy till date.

20. Further the *status quo* order if any, obtained by the 2nd respondent in I.A.No.152 of 2016 on 14-03-2016 in O.S.No.281 of 2016 from the Court of IV Senior Civil Judge, City Civil Court,

Hyderabad cannot be of any assistance to the 2nd respondent because of the finding against him in O.S.No.3603 of 2004 that he was not in possession of the property and it cannot be used as a shield by him to squat over the subject property in the light of the decision of this Court in W.P.No.14613 of 2001, which is binding on him as well.

21. In fact it was the duty of the 2nd respondent to enquire into the fate of W.P.14613 of 2001 once he became aware of it, and had he done so, he would have known it's fate.

22. The Supreme Court of India had occasion to consider in **Sitaram Vs. Balbir**¹ the question whether a person, who is not bound by a direction issued by the Court could be held guilty for committing Contempt of Court for his conduct in either aiding and abetting violation on the part of the person who is bound by such direction and what is the extent of liability of such person.

The Supreme Court in the said case convicted two Doctors who extended medical asylum to an accused in a criminal case without there being any reason or medical condition justifying prolonged admission of the accused as an in-door patient as a cover to defeat orders passed by the Supreme Court and the trial Court canceling the bail of accused and thus prevented his arrest and committal to jail.

¹ (2017) 2 SCC 463

It followed the judgment of the Court of Appeal in **Seaward vs. Paterson**² wherein it was held that even if there was no injunction against a person, he can still be committed for contempt on the ground that he is conducting himself so as to obstruct the course of justice and this is because the Court will not allow its process to be set at nought and treated with contempt.

It noted that in **Seaward**, the landlord of the premises concerned had obtained an injunction against Paterson i.e. his tenant restraining him from doing or allowing to be done anything on the premises which would be a nuisance to the landlord and from using the premises otherwise than for the purposes of a private club. Alleging that the tenant had committed contempt of the court by allowing the premises to be used for boxing matches, the landlord applied for committal of two other persons, namely, Sheppard and Murray on the ground that they had aided and assisted the tenant in his disobedience to the injunction. The Supreme Court quoted with approval, the following passages from the judgment of Lindley, L.J.: (All ER pp. 1130 F-G & 1131 B-D)

“Now, Let us consider what jurisdiction the court has to make an order against Murray. There is no injunction against him—he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, not to interfere with, and not to obstruct, the course of justice; and the case, if any, made against him must be this, not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been

² (1897) 1 CH. 545 (CA)

aiding and abetting others in setting the court at defiance, and deliberately treating the order of the court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to commit him for contempt as distinguished from a breach of the injunction, which has a technical meaning.

* * *

A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of court, not because he is bound by the injunction by being party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the court for the benefit of the person who got it. In the other case, the court will not allow its process to be set at naught and treated with contempt.”

It also followed the judgment of the House of Lords in **Attorney General Vs. Times Newspapers Limited**³ that third parties can be punished for contempt for impeding or interfering with the administration of justice by the Court.

23. In Anita International vs. Tungabadra Sugar Works Mazdoor Sangh⁴, the Supreme Court also held that a third party has to obey the order passed by the Court if he does not take steps to have it set aside after coming to know of it. It held:

“ A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in

³ (1991) 2 All. E.R. 398

⁴ (2016) 9 SCC 44

*Official Liquidator⁵ and Jehal Tanti⁶ cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in **Jehal Tanti case**. In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted."*

24. In the instant case, the 2nd respondent cannot be permitted to obstruct the enforcement of the order dt.30-04-2013 in W.P.No.14613 of 2001 to which his predecessor in title Shailaja Reddy was a party and which order would also equally bind him since he is claiming through her, particularly when he chose not to (a) get himself added as a party and contest the said Writ Petition though he became aware of it because of the counter filed by the 2nd defendant in O.S.No.3603 of 2004 or (b) to challenge the said order independently and get it set aside.

25. I hold that it is the duty of 2nd respondent to co-operate for implementation of the order dt.30.04.2013 passed in Writ Petition No.14613 of 2001, and he cannot be allowed to take a stand that he is

⁵ (2013) 4 SCC 381

⁶ (2013) 14 SCC 689

entitled to squat on the property in spite of the said order. If he is permitted to squat on the property and come in the way of conveyance of title and possession of the subject property to petitioners, he would be abetting the 1st respondent and obstructing the course of justice. This Court cannot and will not allow its process to be set at naught and treated with contempt.

26. Therefore, Contempt Case No.814 of 2016 is allowed; the 2nd respondent is directed to deliver vacant possession of the subject property to petitioners within a period of four (04) weeks, failing which he shall suffer simple imprisonment for three (03) months and shall also be liable to pay fine of Rs.2,000/-; the petitioners are also entitled to police aid from the jurisdictional Police Station/ Deputy Commissioner of Police, West Zone and the Assistant Commissioner of Police, Banjara Hills to evict the 2nd respondent from the subject property, if he does not voluntarily vacate it within the time above specified; the 1st respondent shall execute a registered Sale Deed in favour of petitioners or their nominee or one among them as per their wish, if not already executed, conveying title to the subject property to them within four (04) weeks from the date of receipt of copy of this order without fail. If not, the 1st respondent shall suffer simple imprisonment for a period of two (02) months with fine of Rs.2,000/-.

27. No orders are required in this *Suo Motu* Contempt Case No.283 of 2019 in view of the orders passed in Contempt Case No.814 of 2016.

28. Accordingly, *Suo Motu* Contempt Case No.283 of 2019 is closed. No order as to costs.

29. As a sequel, miscellaneous petitions pending if any in these Contempt Cases, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.10.2019

Ndr/Vsv

