

COCN No.1234 of 2018 (O&M)
Date of Decision: 02.05.2019

Mahesh Kumar Sharma

.....Petitioner

Versus

Dr. Saket Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Surinder Kumar Gandhi, Advocate with
Mr. R.P.S. Ahluwalia, Advocate and
Mr. Mayank Bansal, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. Advocate General, Haryana with
Dr. Saket Kumar, Director Ayush Department.

Mr. Deepak Manchanda, Advocate
for respondent Nos.1, 4 and 6.

Mr. V.M. Handa, Advocate
for respondent No.5.

NIRMALJIT KAUR, J. (ORAL)

The present contempt petition is filed for violation of order dated 04.05.2007, vide which, the operation of impugned judgment and decree was stayed till further orders. Meaning thereby that the injunction order granted in favour of the petitioner continued to operate.

The petitioner however was forced to file the present contempt petition after it came to light that the respondents have started the construction in the disputed plot. The application for vacation of stay also stood dismissed. Thus, finding that the violation of the order was evident on the face of it, respondent No.1 was directed to come present before this Court to show cause as to why an order of punishment should not be passed.

Dr. Saket Kumar, IAS, Director Ayush Department, the then
Deputy Commissioner-cum-Commissioner Municipal Corporation, Ambala

therein that the legal notice dated 08.05.2014 sent by the petitioner was never received in the office of Deputy Commissioner, Ambala and since no legal notice was received, the respondents went ahead with the construction especially because an amount of Rs.2.39 crores stood already issued in this regard by the predecessor of the officer and he too, accordingly released another additional amount of Rs.20.59 lacs for development of 34 parks in Ambala Urban Zone.

Learned counsel for the petitioner however has stated that the the proof of the fact that the legal notice was sent on 08.05.2014 is evident from the postal receipt, placed on record and as per settled proposition of law, the same is deemed to have been received.

This Court is dealing with the contempt. For making out the contempt, the petitioner has to show that there was wilful disobedience. The respondents have placed on record the documents Annexures A-8, A-9 and A-10 to show that the said legal notice was not in their record as the same was not received in the office of Municipal Council, Ambala. Similarly, the Postal Department has also reported that according to P&T Department rules the preservation period of speed post Dak is 6 months only. Hence, the record of speed posts articles relating to the said notice has been weeded out.

Taking into account that the order was passed way back on 04.05.2007, there is every possibility that the legal notice was not brought to the notice of Dr. Saket Kumar now in 2014 and while performing his duty bonafidely proceeded to sanction another amount of Rs.20.59 lacs for the development of the park as an amount of Rs.2.39 crores had already been sanctioned qua the same.

Thus, in view of the lack of communication or knowledge of the said order, which the petitioner has not been able to prove that the same was actually received by the respondents, this Court is of the view that the said steps to develop the park in violation of the order cannot be said to be in defiance of the order or willful disobedience. In any case, this Court cannot hold that the action of the respondents was malafide or intentional especially taking into account that the respondents have now taken every possible steps to rectify the error by restoring the possession to the petitioner. The respondents have placed on record copy of order dated 29.03.2019 passed by the present incumbent on the post of Commissioner, Municipal Corporation, Ambala surrendering the plot with dimensions 84' X 74'-2" to the petitioner.

In view of the unconditional apology rendered by respondent No.1 as well as taking into account that the possession has been restored to the petitioner, this Court deems it appropriate not to proceed with the present contempt petition any further. The same is accordingly dismissed.

Rule issued against the respondents stands discharged.

In case the possession is not handed over to the petitioner, he is at liberty to revive the present contempt petition.

In view of the above, the pending miscellaneous application too is rendered infructuous and the same is disposed of as such.

02.05.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No