

420/1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-2618-2013(O&M)
Date of decision: 15.11.2019

KAMLESH

.. PETITIONER

VERSUS

BHAL SINGH BISHNOI, SDO(C) CUM ASISTANT COLLECTOR IST
GRADE NARWANA, JIND

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Baldev Singh Dhillon, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. AG, Haryana.

AVNEESH JHINGAN, J. (Oral)

Hukum Chand filed a writ petition seeking direction to the official respondent to complete execution proceedings by removing illegal encroachment from the common street, as per order dated 17.12.2010 passed by the Assistant Collector 1st Grade, Narwana. In writ proceedings, State counsel submitted that the construction made by Mahinder Singh in Khasra No. 740 was such that it could not be demolished without demolishing the construction in Khasra No. 727 and there was an injunction with regard to construction raised in Khasra No. 727. The writ petition was disposed of on 25.01.2013, taking note of the fact that injunction was only with regard to Khasra No. 727 and the order of eviction pertained to Khasra No. 740. Assistant Collector 1st Grade was directed to carry out the demarcation of two Khasra numbers and remove illegal possession of

From the pleadings, it is apparent that in compliance with the directions of this Court, the demarcation was done on 12.04.2013. It is not disputed by the parties that thereafter, the illegal construction of Mahinder Singh was demolished.

The grievance raised by the petitioner (respondent No. 7 in the writ petition) is that while demolishing the illegal construction of Mahinder Singh in Khasra No. 740, the construction of the petitioner in Khasra No. 727 has also been demolished.

Learned counsel for the petitioner states that the respondent be punished for violating the order dated 25.01.2013 as the directions of this Court were only to remove the illegal construction of Khasra No. 740.

Learned State counsel submits that the directions of this Court were complied with as illegal construction of Khasra No. 740 was demolished. He disputes the fact that the construction in Khasra No. 727 was also demolished.

The contention raised by the learned counsel for the petitioner cannot be gone into the contempt proceedings as question of fact is being raised for which there is no positive evidence on record.

The petitioner has placed on record certain photographs in which some demolished structure is shown but it cannot be concluded that the said photographs concerned to Khasra No. 727. The proceedings under the Contempt of Courts are summary and quasi criminal in nature. A person cannot be sentenced on probabilities. It is well settled law that the onus to prove violation of the order is on the person who alleges violation. Reliance in this regard is placed on judgment of Apex Court in ***Chhotu Ram Versus Urvashi Gulati; (2001) 7 SCC 530***. On the mere photographs, it cannot be concluded that there is wilful disobedience of the directions of this Court.

Unless and until the Court is satisfied that there has been a deliberate violation of any positive direction given by Court, the question of initiating any contempt proceedings does not arise. Reliance in this regard is place on judgment of Apex Court in **M/s. Diamond Plastic Industries v. Govt of A.P 2002(2) JT 640**, wherein it was held as under :

“3.....

Unless and until the Court is satisfied that there has been a deliberate violation of any positive direction, the question of initiating any contempt proceedings or taking any action against any party under the provisions of Contempt of Courts Act does not arise. Having regard to the facts including the orders passed by this Court, already referred to, we do not see any justification for initiating or taking any action against the respondents under the provisions of Contempt of Courts Act.”

The matter can be viewed from another angle also. The issue raised by the petitioner is not of wilful disobedience of the directions of this Court i.e. to do the demarcation and to remove illegal possession from Khasra No. 740. Rather the case pleaded and argued is that while removing the illegal possession from Khasra No. 740, the construction in Khasra No. 727 has been demolished without following the due procedure of law.

The case was being pressed for damages of the alleged unauthorised demolition. The said aspect is clear from the prayer made in CWP No. 20773 of 2013 filed by the petitioner against the act of the respondent of demolition of her house. The direction was sought to the respondents to pay compensation of ₹5,00,000/- for demolishing the house of the petitioner without ejectment order.

The positive directions of this Court have been obeyed, allegation is that while carrying on the directions of this Court, certain damage has been caused to the property of the petitioner. The issue raised does not fall within the

ambit of the contempt proceedings. There is no quibble with the proposition that in the contempt proceedings, the Court has to restrict itself within the four corners of the directions given in the order alleged to be violated and the violation of positive directions is to be considered for initiating contempt proceedings. In present case, there is no dispute that directions have been complied with.

It is pertinent to note that the petitioner being aggrieved of the demolition of the construction of Khasra No. 727 filed CWP No. 20773 of 2013. The petition was disposed of on 19.09.2013 giving liberty to the petitioner to avail other remedies. It was further noted that the application of the petitioner for the clarification of order date 25.01.2013 was pending. It would be worthy to note here that the application moved for clarification of order of 25.01.2013 was dismissed on 20.09.2013, the same is reproduced below:-

“Applicant's grievance precisely put is that despite order dated 25.01.2013, the petitioner's house has been demolished on 14.09.2013.

We have heard counsel for the applicant and perused the pleadings. The appellant may, if so advised, seek an alternative remedy for violation of order dated 25.01.2013 and for demolition of his house.

Dismissed.”

Learned counsel for the petitioner relies on the observation of this Court that the petitioner, if so advised, may seek alternative remedy for violation of the order and for demolition of his house. The reliance is not well founded, as the observation in itself will not be basis to discharge the onus casted upon petitioner in contempt proceedings.

In view of the above, no interference is called for. The contempt petition is dismissed.

the writ Court to avail remedies for claiming damages etc. for the demolition of the construction.

15th November, 2019
shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : *Yes*

Whether reportable : *Yes*

The grievance is that while demolishing the illegal the construction of Khasra No. 740, construction of Khasra No. 727 has also been demolished. The said fact needs to be proved by a positive evidence. The scope of the contempt proceedings cannot be enlarged. The contempt Court has to restrict itself to the four corners of the orders alleged to be violated.

The Supreme Court in ***Er. K. Arumugam Vs. V. Balakrishnan & Ors. 2019 AIR(SC) 818*** held as under:-

*"17. In the contempt jurisdiction, the court has to confine itself to the four corners of the order alleged to have been disobeyed. Observing that in the contempt jurisdiction, the court cannot travel beyond the four corners of the order which is alleged to have been floated, in **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others 2014(2) S.C.T. 163 : (2014) 3 SCC 373**, speaking for the Bench, Justice Ranjan Gogoi held as under:-*

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for

*the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trench upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, **Jhareswar Prasad Paul v. Tarak Nath Ganguly 2002(2) R.C.R.(Criminal) 835 : (2002) 5 SCC 352, V.M. Manohar Prasad v. N. Ratnam Raju (2004) 13 SCC 610, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami 2008(3) R.C.R.(Civil) 177 : (2008) 5 SCC 339 and Union of India v. Subedar Devassy PV 2006(1) R.C.R. (Criminal) 702 : (2006) 1 SCC 613.**"*

.....(emphasis supplied)