

COCOP No. 950 of 2012 (O&M)
DECIDED ON: NOVEMBER 22, 2019

....PETITIONER

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CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. S.S. Dalal, Advocate
for the petitioner.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate
for the respondents.

AVNEESH JHINGAN, J (ORAL)

The afore-mentioned petitions are being disposed of by common order, as similar issue is involved. For convenience, the facts are being taken from COCP No. 950 of 2012.

Petitioner was the primary member of the Saraswati Kunj Cooperative House Building Society Ltd., Wazirabad (Gurgaon) (hereinafter referred to as the 'Society'). A dispute arose between the petitioner and the Society with regard to allotment of plot. Arbitration proceedings were invoked, as per Haryana Cooperative Societies Act, 1984. An award dated 28.09.2005 was passed directing the Society to offer a plot to the petitioner. Thereafter, a statutory appeal was preferred, the same was dismissed in default on 20.08.2007. Petitioner served a legal notice dated 21.03.2011 to the Society. CWP No. 18889 of 2011 was filed, the same was disposed of on 05.10.2011 with direction to the respondent-Society to decide the representation within a period of two months from receipt of certified copy of the order. The order is reproduced below:-

“After hearing the learned counsel for the petitioner and going through the record with his valuable assistance, the instant writ petition is disposed of with a direction to the Saraswati Kunj

Cooperative House Building Society Ltd., (respondent No.4), to decide the representation (Annexure P2) filed by the petitioner, within a period of two months positively, from the date of receipt of certified copy of this order.”

The present petition is filed pleading that needful was not done by the respondents for the compliance of order dated 05.10.2011.

At this stage it would be appropriate to reproduce the prayer made in the contempt petition.

“It is, therefore, respectfully prayed that the petition may be accepted and the respondents may be punished in accordance with law for their intentional, willful disobedience of the orders dated 05.10.2011; annexure P-2 passed by this Hon'ble Court in the interest of justice.”

Pursuant to notice of motion, respondents filed reply dated 27.08.2012 annexing the order dated 07.05.2012. The claim of the petitioner was rejected stating that Plot No. 266 had already been allotted and registered to someone else. It was stated that there was no other plot available with the Society, and hence, the amount deposited by the petitioner can be refunded, if an application is made.

Learned counsel for the petitioner argues that by refusing to allot plot the Society has willfully disobeyed the orders of this Court. It is submitted that award of arbitrator has attained finality and hence the order passed by Society over reaches the order passed by the Arbitrator.

Learned counsel for the respondents contends that the contempt petition has been filed alleging non-compliance of the directions of this Court dated 05.10.2011. He submits that the directions of this Court were complied

with, representation has been decided considering the ground realities and the facts of the case.

The contention raised by the petitioner cannot be gone into in this contempt proceedings.

In contempt proceedings, this Court cannot travel beyond four corners of order alleged to have been flouted. The Supreme Court in ***Er. K. Arumugam v. Vs. 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 Ravishekar 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 trenched 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.**"*

It would be pertinent to mention that from the prayer in the contempt petition, it is clear that the grievance raised was that decision has not been taken on the representation dated 21.03.2011 filed by the petitioner.

The direction of this Court has been complied with by passing the order dated 07.05.2012.

The plot was not offered as it was not available but an alternative relief was given of refund of the deposited amount. Now at this stage, learned

counsel for the petitioner has raised arguments with regard to the non-compliance of the award passed by the Arbitrator. It may be noted here that the award is not the part of the pleadings in the contempt proceedings. Learned counsel for the petitioner is not able to show that the order dated 07.05.2012 was challenged. Petitioner has neither filed any execution nor taken any other remedy for the compliance of the award passed by the Arbitrator. The order dated 07.05.2012 can not be ignored. More so when under compelling circumstances the plot has not been allotted to the petitioner.

The Supreme Court in Niaz Mohammad and others, etc. Vs. State of Haryana and others; 1995 AIR (SC) 308, has held as under:-

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "Civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order writ or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of a Court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The Party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court, Before a

contemner is punished for non compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the Court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner.

(Emphasis supplied.)

No case is made out for wilful disobedience of the directions of this Court, petition is dismissed.

Rule issued against the respondents stands discharged.

The petitioner would be at liberty to avail remedy in accordance with law for the redressal of surviving grievance.

NOVEMBER 22, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned **Yes**
Whether reportable **Yes**