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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 09th July, 2019

+ CONT.CAS(C) 480/2018, C.M.25898/2018

VIMLENDU JHA

..... Petitioner

Through: Ms.Sakshi Banga and Mr.Mrigank
Prabhakar, Advocates

versus

ANOOP KUMAR MITTAL, CMD, NBCC

..... Respondent

Through: Mr.Pinaki Misra, Sr.Adv. with
Mr.Manoj Kumar Das, Ms.Geeta Das
and Mr.Deepak Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The petitioner alleges willful violation and disobedience of an undertaking given to this Court on 25.06.2018.
2. As per the petition, in the morning of 26.06.2018, the workers of NBCC were cutting down the trees in Netaji Nagar, in utter disregard, deliberate and willful disrespect of the order dated 25.06.2018 passed by this Court. It is also averred in the contempt petition that the petitioner was constraint to intervene and he attempted to stop the officials and workers of NBCC from felling trees. However, he could not stop them from felling the trees. Resultantly, the petitioner was forced to call the police to stop workers of NBCC. In para 5 of the contempt petition, an averment has been made that by the time the

police arrived, three trees had been cut down. The petitioner filed a police complaint with the SHO, Sarojini Nagar Police Station on the same date. In para 6 of the contempt petition, it has been averred that on refusal of the police to register an FIR, the Minister of Food and Civil Supplies, Environment and Forest and Election, Government of NCT of Delhi, intervened and directed that necessary action, including registration of an FIR against the defaulters be taken.

3. Notice was issued in this matter. Reply has been filed. In the reply the respondent has categorically stated that the petition is malafide, motivated and contrary to the facts and record. A categorical assertion has been made that there is no violation and disobedience of the order dated 25.06.2018 and the allegations are false. An attempt has been made to harass the respondent, who is a CMD of a public sector undertaking. As per the reply, post passing of the order dated 25.06.2018, the senior officials of the NBCC, in-charge of the projects, who were present in Court, on the same date, issued written directions to all four contractors deployed at GPRA Colony Netaji Nagar site, assigned with different project activities. Directions of the Court were brought to their notice and instructions were issued to refrain from cutting/pruning any trees/branches till the next date of hearing i.e. 04.07.2018. Besides telephonic and verbal intimation was also given by Project Head/In-charge to all contractors and their authorized representatives to strictly comply with the undertaking and order dated 25.06.2018. Copies of the letters/instructions dated 25.06.2018 have been filed along with the reply. The allegation of three trees having been cut down is categorically denied. It is, in fact, pointed out that

after pruning of trees (although denied) was brought to the notice of the respondents through reports in the media, the SHO was immediately informed about the order passed by the Court and directions issued to all deployed contractors to comply with the same. The chief General Manager requested the SHO, PS Sarojini Nagar to investigate into the matter and book the culprits in the above activity, if found involved. Copy of the letter dated 27.06.2018 has also been annexed with the reply.

4. Mr.Pinaki Misra, learned senior counsel appearing for the respondent, has also brought the attention of the Court to the fact that the complaint of NBCC was forwarded by the SHO, P.S. Sarojini Nagar to the Deputy Conservator of Forests (DCF), South Forest Division, New Delhi for necessary action. Pursuant thereto, a notice was received by the Chief General Manager, NBCC at Netaji Nagar site on 28.06.2018 calling upon the NBCC to appear before the Deputy Conservator of Forests (South) on 29.06.2018. It is also brought to the notice of the Court by Mr.Misra that a hearing was held on 29.06.2018 which was attended by the senior officials of NBCC as well as Sub Inspector, PS Sarojini Nagar and the petitioner. Mr.Misra submits that the allegations made in the contempt petition are blatantly false, which is evident from the fact that after hearing the contentions of the parties and examining the relevant records and reports, the Deputy Conservator of Forests (South) vide order of 29.06.2018 concluded that it could not be established whether the activity of pruning of branches of one Tree no.819 (Neem Tree) at Netaji Nagar was done on 26.06.2018. Additionally, Mr.Misra has drawn the attention of the Court to the rejoinder filed by the

petitioner herein admitting cutting of branches of tree no.819. Further, it was admitted that the tree is still standing, on account of the timely intervention of the petitioner and the police.

5. We have heard learned counsels for the parties, examined the pleadings and the documents placed on record.
6. On 25.06.2018, the following undertaking was given by the counsels appearing on behalf of NBCC:

“.....At this stage, Mr.J.P.Sengh, learned senior counsel for the respondent no.3/NBCC states at the Bar that till the next date of hearing, no tree in the concerned area shall be brought down or cut. The respondent no.3 which is undertaking the process of removing trees, shall remain bound by the statement made today.”

7. We may note, at the outset, that CMD of the respondent has been arrayed as the contemnor. As per the contempt petition, the respondent has willfully flouted the undertaking given to the Court. Paragraph 5 of the contempt petition wherein, the specific allegation has been made is reproduced below:

“5. It was however observed by the present Contempt Petitioner, that on the morning of June 26, 2018, the workers of NBCC were cutting down trees in Netaji Nagar, in utter disregard and deliberate and willful disrespect of the order of this Hon'ble Court dated 25.06.2018. As such, he was constrained to intervene and attempted to stop the officials and workers of NBCC from felling trees. However, that did not stop them from felling the trees. Therefore, the Contempt Petitioner was forced to call the police which arrived and stopped the tree felling. However, by then 3 trees had been cut down. The Contempt Petitioner filed a police complaint with the SHO, Sarojini Nagar Police Station. A true typed copy of the police complaint dated 26.06.2018 is marked hereto and annexed as Annexure P-2.”

8. It would also be useful to reproduce para 8 of the rejoinder, which reads as under:

“ 8. Response to Parawise Reply

Re Para 1 to 8: The contents of the Parawise Reply to Para 1 to 8 of the Petition are denied except to the extent admitted herein specifically. It is respectfully submitted that the Respondent has admitted to cutting of branches of tree no. 819 in its Reply, though it is stated that the said tree is still standing. It is respectfully submitted that the said tree is still standing on account of the timely intervention of the Petitioner and the police. The Respondent has admitted to the cutting of trees on 26.06.2018 as per its own documents, apart from the material placed on record by the Petitioner, and has not been able to disprove the same. The Respondent has in fact willfully violated the order dated 25.06.2018.”

9. Reading of the allegations made in the contempt petition and the rejoinder would show that as per the contempt petition, a categorical averment was made that three trees had been cut, however, the rejoinder clarifies that branches of only one Tree no.819 had been cut, in fact, a false averment was made in the contempt petition by the petitioner. The documents filed along with the reply to the contempt petition show that post passing of the order and the undertaking so given, letters were issued to the contractors bringing to their notice the order passed by the Court. A sample letter is being reproduced below:

“No.: NBCC/CGM/Ne.N(Redev)/2018/191 Date: 25.06.18

Rahis Ahamad,
Proprietor
M/s R.S.Traders,
969, Near Dharmkante,
Maman road, Naya Satha, Bulandshahr,
Uttar Pradesh-203001

Sub: Tree cutting at Redevelopment of GPRA Colony at Netaji Nagar, New Delhi Package – I – Instruction to not cut trees till 4.7.18: reg

Sir,

During the hearing of the petition in the Hon'ble High Court of Delhi on 25.6.18, it was decided that no trees/branches, etc. shall be cut till 04.07.18.

In view of this you are directed not to cut any trees till 04.07.18.

This is for strict compliance please.

Thanking you.

Yours faithfully,

(D.Ganeshan)
Addl.General Manager”

10. We may also notice that after learning through the media that some branches had been cut, the NBCC had written a letter to the SHO on 27.06.2018, which is reproduced below:

“No.CGM/NBCC/Ne.N/2018/196 June 27, 2018

The SHO
Sarojini Nagar Police Station,
New Delhi.

Sub: Allegation of felling of trees at Netaji Nagar.

Dear Sir,

The Hon'ble High Court of Delhi vide Order dated 25.06.2018 had recorded statement made on behalf of NBCC that till next date of hearing i.e. 04.07.2018, no tree in the concerned area shall be brought down or cut by NBCC.

Immediately, thereafter, written communication/instruction were issued to the concerned contractors at site not to cut/prune any tree at site in compliance of above said order.

However, today, it has come to our knowledge through the media that there was an incident involving pruning of a branch of a standing tree somewhere at Netaji Nagar site.

You are requested to please investigate the matter and book the culprit in the above activity, if any.

Thanking you.

Yours faithfully,

(S.Menon)
Chief General Manager”

11. We have also examined the report dated 29.06.2018 of the Surveyor of Forests, which has been placed on record by the petitioner, more particularly, para 9, which we reproduce below:

“9. After careful examination of the facts and material available before me, the following directions are made:

- It is concluded that three branches has been pruned at Netaji Nagar Re-development area of NBCC near Gate No.4. However, it remains to be ascertained the date when the pruning was done. Since the permission for felling has been given for Re-Development of Netaji Nagar and the same has not been cancelled, the issue lies on whether this cutting takes place prior to or after the Hon’ble High Court ban on tree felling in the Netaji Nagar Construction site vide order dated 25.06.2018.

- It is decided that the matter be forwarded to SHO Sarojini Nagar Police Station for further investigation on whether the cutting was done prior to or after the Hon’ble High Court interim ban on tree cutting and to take necessary action as per law.”

12. Reading of the observation so made in the report of the Surveyor of Forest shows that it could not be ascertained as to when the pruning was done i.e. prior to passing of the order dated 25.06.2018 or thereafter.

13. After carefully examining the pleadings, documents placed on record, the report of the Surveyor, it does not stand established that the respondent has willfully disobeyed the order dated 25.06.2018 passed by this Court.
14. Invoking the provisions of the Contempt of Courts Act, 1971 is a very serious matter. The contempt proceedings cannot be initiated on mere presumption. The Apex Court in the case of ***Three Cheers Entertainment Private Limited and others Vs. CESC Limited***, reported at (2008) 16 SCC 592, more particularly in paragraphs 29 and 30, held as under:

“29. Contempt of court is a matter which deserves to be dealt with all seriousness. In ***Mrityunjoy Das v. Sayed Hasibur Rahaman*** [(2001) 3 SCC 739; (2006) 1 SCC (Cri) 296] this Court held: (SCC p. 746, para 13)

“13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide ***Murray & Co. v. Ashok Kr. Newatia*** [(2000) 2 SCC 367; 2000 SCC (Cri) 473]). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law.”

30. In ***Chhotu Ram v. Urvashi Gulati*** [(2001) 7 SCC 530 : 2001 SCC (L&S) 1196] this Court held that a contempt of court proceeding being quasi-criminal in nature, the burden to prove would be upon the person who made such an allegation. A person cannot be sentenced on mere probability. Wilful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at

on ipse dixit of the court. It must be arrived at on the materials brought on record by the parties.

Yet again in *Anil Ratan Sarkar v. Hirak Ghosh* [(2002) 4 SCC 21] it was opined: (SCC p. 30, para 15)

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a ‘civil contempt’ within the meaning of Section 2(b) of the Act of 1971 — the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation — the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

[Emphasis supplied]

15. There is no ground made out to initiate contempt proceedings against the respondent. We are little unhappy to note that in the contempt petition, allegation of cutting of three trees was made while in the rejoinder, it is clarified that branches of one tree were cut.
16. In view of the above, the contempt petition and C.M.25898/2018 are dismissed. Notice of contempt is discharged.

G.S. SISTANI, J

JYOTI SINGH, J

JULY 09, 2019

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