

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.03.2020

Order pronounced on : 04-06-2020

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

Contempt Petition No. 1432 of 2019
and
Sub Application No.149 of 2020

Maharaja

.. Petitioner in Contempt Petition /
1st Respondent in Sub Application

Versus

1. S. Gangadharan
The Assistant Divisional Engineer
Highways Department
Bhavani Taluk, Erode District

.. 1st Respondent in Contempt
Petition/2nd Respondent in Sub
Application

2. A. Gurusamy
Son of Appachi Mudaliar
No.196, Pazhani Andavar Street
representing Senguntha Mudaliar Weaving Community
Bhavani Taluk, Erode District

.. 2nd Respondent in Contempt
Petition /Petitioner in Sub Application

(2nd respondent impleaded as per the order dated 30.01.2020 passed in Sub
Application No.131/2020 in Cont.P. No.1432 of 2019)

Contempt Petition filed under Section 11 of The Contempt of Courts Act praying to punish the respondent for the wilful disobedience of the order of this Court passed in WP No. 29852 of 2017 dated 31.01.2019.

Sub Application No.149 of 2020:

To direct the 1st respondent herein to restore the land involved in the Writ Petition No.29852 of 2017 refixing the removed fencing pillar stones Contempt Petition No.1432 of 2019.

For Petitioner : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. N. Vijayakumar

For respondents : Mr. A. Kumar, Additional Advocate General
assisted by Mr. R. Balamurugan
Special Government Pleader for R1
Mr. A.V. Arumugam for R2

ORDER

The petitioner has come up with this contempt petition praying to initiate appropriate contempt proceedings against the first respondent herein for having wilfully disobeyed the order dated 31.01.2019 passed by this Court in WP No. 29582 of 2017.

2. The petitioner has filed WP No. 29582 of 2017 before this Court praying to issue a Writ of Mandamus directing the respondents 2 to 7 therein to remove all the fencing pillar stones laid down by the eighth respondent therein

by encroaching the land, restore the land to its original position and keep it open for the usage of Villagers and Weavers.

3. According to the petitioner, he is a resident of No.38, Pavadi Street, Bhavani Post and Taluk and in front of his house, the land classified as Natham Poromboke is used as " Pavadi" and commonly known as "Pavadi Rettukara Theru" and it exists from time immemorial. According to the petitioner, the land in front of his house is kept vacant for the purpose of being used by the Villagers and weavers for starching the yarn and preparing the yarn in the process of preparation of handloom. While so, the eighth respondent in the writ petition has filed a suit in O.S. No. 355 of 1999 before the I Additional District Munsif Court, Bhavani for a mandatory injunction and for declaring the easmentary rights for utilising the land for weavers usage and for a consequential permanent injunction restraining the defendants therein from interfering with such use. The said suit in O.S. No. 355 of 1999 was taken up for hearing along with other suits in O.S. No. 149 of 1999 and O.S. No. 224 of 2000 and ultimately, a decree for easmentary right and permanent injunction was granted in favour of the eighth respondent and in respect of the relief of mandatory injunction, the suit was dismissed. As against the same, A.S. No. 30 of 2004 was filed before the Sub Court, Bhavani, in which the decree granted in favour of the eighth respondent was set aside. Aggrieved by the same, Second

Appeal No. 340 of 2005 was filed before this Court and it was allowed on 10.12.2012 by restoring the decree and Judgment of the trial court. According to the petitioner, by taking advantage of the judgment and decree passed by this Court, the eighth respondent in the writ petition along with his henchmen laid pillar fencing stones on 13.11.2017 in the five feet gap surrounding the entire Natham Poromboke pavadi land to make it appear it as his own private land. The eighth respondent also closed the frontage and road approach of the petitioner house thereby preventing his ingress and egress. Even though the petitioner along with the residents and public resisted the act of the eighth respondent in encroaching upon the property and complained to the respondents 6 and 7, they did not take any action on the ground that the Civil Court has granted a decree in favour of the eighth respondent. According to the petitioner, inasmuch as the respondents 1 to 4 did not take any action against the eighth respondent, he has filed the writ petition for a Mandamus.

4. The writ petition was taken up for hearing by the Division Bench of this Court and it was disposed of on 31.01.2019 with an observation that the petitioner is bound by the Judgment passed by this Court on 10.12.2012 in S.A. No. 340 of 2005 and the findings rendered thereof has become final. While holding so, in para No.29 of the order dated 10.12.2012, it was observed as follows:-

"29. Insofar as the fencing of pillar stones in the Street by the eighth respondent being hindrance to the free flow of traffic, is concerned, as claimed by the first respondent in their counter affidavit at paragraph 5 of the present Writ Petition, as per Section 28 of the Tamil Nadu Highways Act, 2001, the first respondent shall inspect the subject property and take necessary steps in removing the fencing put up in the form of "barbed wire" in the pillar stones, after following due procedures enunciated under the Tamil Nadu Highways Act, 2001, by issuing prior notice to the concerned person/affected person and considering their written representations, if any, and pass reasoned speaking order, of course, after hearing the parties and also adhering to the principles of natural justice, within a period of four weeks from the date of receipt of a copy of this order."

5. According to the petitioner, the first respondent herein, who is arrayed as first respondent in the writ petition, is competent to take action to remove the barbed wire fencing but he has failed to comply with the directions of this Court. Therefore, the petitioner has come up with the present Contempt Petition.

6. Mr. Ar.L. Sundaresan, learned Senior counsel for the petitioner would contend that the inaction on the part of the first respondent in not complying with the directions issued by this Court in the order dated 31.01.2019 is deliberate and it warrants initiation of contempt proceedings against him. The learned Senior counsel invited the attention of this Court to the representation dated 06.02.2019 of the petitioner and the notice sent through the counsel for the petitioner on 14.02.2019 and contend that inspite of receipt of the same, the first respondent failed and neglected to comply with the order

dated 31.01.2019 passed by the Division Bench of this Court.

7. On the other hand, the learned Additional Advocate General appearing for the first respondent would submit that the order passed by this Court on 31.01.2019 has been duly complied with and therefore the question of initiating contempt proceedings against the first respondent will not arise. According to the learned Additional Advocate General, immediately upon receipt of the order dated 31.01.2019, the first respondent issued a notice dated 20.02.2019 to the petitioner and the second respondent herein to appear for an enquiry on 27.02.2019. In response to the notice dated 20.02.2019, both the petitioner and the second respondent herein appeared and made their submission. Thereafter, the first respondent also inspected the land in question on 04.03.2019. During such inspection, it was noticed that the second respondent himself had removed the barbed wire fencing around the pillars. Thereafter, on 23.12.2019, the first respondent, with the aid of the police, removed the pillar stones put up in one side of the street erected by the eighth respondent as it had hindered the free flow of traffic. Thus, according to the learned Additional Advocate General, as of now, there is no encroachment, as has been alleged by the petitioner. In effect, it is the submission of the learned Additional Advocate General that the directions issued by this Court in the order dated 31.01.2019 has been duly complied with by the first respondent and

therefore, he prayed for dismissal of the contempt petition.

8. In reply, the learned Senior counsel appearing for the petitioner would vehemently contend that the order passed by this Court has not been fully complied with, as stated by the first respondent. In fact, the weavers are still utilising the "pavadi lands" for their weaving activities and therefore, the mere removal of the fencing in and around the "pavadi lands" and the pillars in one side will not tantamount to complying with the order dated 31.01.2019 passed by this Court and therefore, he prayed for initiating contempt proceedings against the first respondent.

9. The learned counsel for the second respondent, who impleaded himself as a party to the contempt petition, submitted that the Judgment and Decree dated 10.11.2012 passed by this Court in Second Appeal No. 340 of 2005 in favour of the second respondent will bind the petitioner. As per the Judgment and Decree dated 10.11.2012, the second respondent is in occupation of the land measuring 230 X 45 feet within which the weaving activities are being carried on by erecting pillars to facilitate the weaving activities. The pillars so erected has not hindered the free flow of traffic as has been alleged by the petitioner. Further, what was directed to be removed by the Division Bench of this Court in the writ petition is only the fencing around the pillar stones and the fencing was removed by the second respondent himself. While so, the first

respondent has also removed the Pillar Stones in the front side of the road which are required to be used in the process of spinning to improve the quality of yarn weaved by the second respondent. In any event, the removal of the pillar stones is unwarranted. The Division Bench of this Court never directed the first respondent to remove the pillar stones, but only the barbed wire fencing around such pillar stones. The barbed wire fencing was removed by the second respondent himself, however, the first respondent highhandedly removed the pillar stones in one side of the street purportedly on the ground that it hinders the free flow of traffic. Therefore, the learned counsel for the second respondent prayed this Court to allow the Sub-Application No. 149 of 2020 filed by the second respondent and to restore the pillar stones to its original position.

10. We have heard the learned counsel on either side and perused the records. By the order dated 31.01.2019 the Division Bench of this Court directed the respondents in the writ petition to remove the fencing of pillar stones as per Section 28 of the Tamil Nadu Highways Act, 2001 after causing an inspection thereof. Accordingly, the first respondent herein issued a notice for enquiry on 20.02.2019 for appearance of the petitioner and the second respondent herein on 27.02.2019. On 27.02.2019, the petitioner as well as the second respondent appeared for an enquiry before the first respondent and

submitted their written statement. Thereafter, on 04.03.2019, the first respondent has caused an inspection of the land in question and noticed that the barbed wire fencing were removed by the second respondent himself. After such inspection, on 23.12.2019, the first respondent has removed the stone pillars on one side of the road as such stone pillars were a hindrance for flow of traffic. To this effect, the first respondent has also filed an affidavit dated Nil.January 2020. On going through the records, we are of the view that the steps taken by the first respondent are fully in compliance with the directions issued by this Court on 31.01.2019 in the above WP No. 29852 of 2017. The removal of the stone pillars by the first respondent is with a view to facilitate free flow of traffic and therefore the question of restoration of the pillar stones, as prayed for by the second respondent in the Sub-Application No. 149 of 2020 will not arise.

11. The learned Senior counsel for the petitioner would vehemently contend that the pillars erected in the land in question have not been removed by the first respondent fully and therefore, it would not tantamount to compliance of the order passed by this Court. We are not in agreement with such submission of the learned Senior counsel for the petitioner. In the order dated 31.01.2019, this Court has clearly and categorically indicated that the Judgment

and Decree dated 10.11.2012 passed by this Court in Second Appeal No. 340 of 2005 will bind the petitioner. After making such an observation, this Court has only directed the first respondent to remove the barbed wire fencing around the stone pillars to facilitate ingress and egress to the house of the petitioner. In fact, the barbed wire fencing was removed by the second respondent himself and thereafter, finding that the stone pillars erected in the land in question in the front row will be a hindrance to the free flow of traffic, the first respondent has also removed the stone pillars on one side. Such an action resorted to by the first respondent is fully in compliance with the directions of this Court. When the second respondent herein is in occupation of the land, which was also upheld by this Court in S.A. No. 340 of 2005, the petitioner cannot expect the first respondent to remove the entire stone pillars erected thereon. Therefore, we see no reason to proceed further with this contempt petition. We find that the action resorted by the first respondent is fully in compliance with the directions issued by the Division Bench of this Court in the order dated 31.01.2019 passed in WP No. 29852 of 2017 filed by the petitioner herein. The contempt petition therefore deserves only to be dismissed.

12. In the result, we hold that the first respondent has complied with the order dated 31.01.2019 passed in WP No. 29852 of 2017. Resultantly, the

Contempt Petition is closed. No costs. Consequently, Sub-Application No. 149 of 2020 filed by the second respondent herein is closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

rsh

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/31.07.2020

To

The Assistant Divisional Engineer
Highways Department
Bhavani Taluk, Erode District

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