

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CONT. PETITION NO.812 OF 2019

VILAS BHIKAJI SALAVE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE MINISTRY OF
REVENUE AND FOREST MANTRALAYA, MUMBAI AND ORS.

...
Advocate for Petitioner : Mr. Bhandari Anand P.
AGP for Respondent No.1 – State : Mr. S. B. Narwade
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 2nd February, 2021

ORDER :-

- . Heard learned Advocate for the petitioner.
2. Petitioner is the original plaintiff, who had filed Regular Civil Suit No.457 of 1991 before the Civil Judge Junior Division, Newasa, District Ahmednagar for partition and separate possession, which was decided on 13-09-2000. Objection was taken by the defendant that land Gut No.3156/1-2-3 was a government land, but the point has been decided in the said suit. The said suit was decreed. Plaintiff was held to be entitled for 4/15th share in the suit scheduled properties. So also, the share of the defendants was carved out and the precept was directed to be sent to the Collector. The said decree was

further challenged by original defendant No.1 in Regular Civil Appeal No.167 of 2000 before the learned Additional District Judge, Shrirampur. The said appeal was dismissed on 15-01-2005. Thereafter, there appears to be another round of litigation in respect of execution i.e. Regular Civil Suit No.190 of 2016, however, it appears that the appeal arising out of the order below Exhibit-58 i.e. Miscellaneous Civil Appeal No.05 of 2018 has been decided by the learned District Judge-1, Newasa on 21-07-2018. In the said judgment, there is reference of dismissal of the Second Appeal No.1104 of 2005 by this Court on 08-01-2015, which was challenging the judgment and decree passed in Regular Civil Appeal No.167 of 2000 referred earlier. In the meantime, it appears that the Final Decree Application No.01 of 2014 has been filed and the learned Executing Court allowed the application and directed that the decree be sent to the Collector for partition and separate possession. The documents which are filed here would show that the learned Tahsildar, Newasa has carried out the measurement and allotted the shares and put the respective parties in possession. Mutation Entry No.648 appears to have been taken and thereafter, as per the procedure, it has been sanctioned. 7/12 extract to that extent appears to be prepared. Thereafter, the matter carried to the Sub Divisional Officer, Ahmednagar by the present respondents and it appears that the said

appeal has been allowed.

3. Learned Advocate appearing for the petitioner submits that though it was already decided in the suit i.e. Regular Civil Suit No.457 of 1991 as to the nature of the property in which the partition was to be effected, yet, the Sub Divisional Officer intentionally went back and took note of the order passed by the District Collector on 08-07-1988, wherein it was mentioned that the land was forest land. When the matter is already decided by the Civil Court, then the revenue authority cannot have a contrary finding and, therefore, this is contempt of Court.

4. It is to be noted that the Civil Court has taken note of the 7/12 extract of the said land and still suit came to be decreed. The shares of the respective parties have been carved out and the said decision has been confirmed up to this Court. Now, as regards the observations and then decision by the Sub Divisional Officer is concerned, definitely, the present petitioner has every remedy to challenge the said order as per the procedure of law. Whatever order was passed by the Sub Divisional Officer appears to be the judicial order or a *quasi judicial* order. Under such circumstance, it cannot be said that it was an intentional order and further, when there is scope for correcting it by way of challenge and the said remedy is available to the

petitioner, it does not amount to contempt. Reference can be made to the recent decision of the Hon'ble Supreme Court in ***Rama Narang Vs. Ramesh Narang and others, [Contempt Petition (Civil) No.92 of 2008 in Contempt Petition (Civil) No.148 of 2003 in Civil Appeal No.366 of 1998] dated 19-01-2021***, wherein it is held that unless there is *mens rea*, it will not constitute contempt of Court. Further, it has been observed :-

“47. It would be apposite to refer to Section 2(b) of the Contempt of Courts Act, 1971, which reads thus :-

“2. Definitions. -

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”

48. It is thus clear that for bringing an action under the ambit of civil contempt, there has to be a wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to the court...”

5. Further, reference can be made to the decision of the Hon'ble Supreme Court in ***Hukum Chand Deswal Vs. Satish Raj Deswal, [AIR 2020 SC 2100 : AIROnline 2020 SC 492]***, wherein it has been observed :-

“16. At the outset, we must advert to the contours delineated by this court for initiating civil contempt action in *Ram Kishan vs. Tarun Bajaj & Ors.*, (2014) 16 SCC 204. In paragraphs 11, 12 and

15 of the reported decision, this Court noted thus:-

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697, Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530, Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21, Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360, Sahdeo v. State of U.P., (2010) 3 SCC 705 and National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600.

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful”

means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591, *Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao*, (1989) 4 SCC 255, *Niaz Mohammad v. State of Haryana*, (1994) 6 SCC 332, *Chordia Automobiles v. S. Moosa*, (2000) 3 SCC 282, *Ashok Paper Kamgar Union v. Dharam Godha*, (2003) 11 SCC 1, *State of Orissa v. Mohd. Illiyas*, (2006) 1 SCC 275 and *Uniworth Textiles Ltd. v. CCE*, (2013) 9 SCC 753.

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15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport

of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See *Sushila Raje Holkar v. Anil Kak*, (2008) 14 SCC 392 and *Three Cheers Entertainment (P) Ltd. v. CESC Ltd.*, (2008) 16 SCC 592.” Similarly, in *R.N. Dey & Ors. vs. Bhagyabati Pramanik & Ors.*, (2000) 4 SCC 400, this Court expounded in paragraph 7 as follows: -

“7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.”

Keeping the settled legal principle expounded in the aforesaid decisions, in mind, we may now proceed to consider the three stated violations of the order dated 22.2.2019 by the respondent to ascertain whether the same is intentional and wilful disobedience of the order/direction

passed by this Court.”

6. Therefore, no case is made out to issue any notice. So also, the petition itself is liable to be dismissed at the threshold. Hence, the petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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