

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

CONTEMPT PETITION NO. 56 OF 2017 IN
WRIT PETITION NO. 1161 OF 2017

Deepak alias Dilip S/o Sitaramji Dable,
aged about 45 years, Occ. Business,
Manager, New Laxmi Touring Talkies,
Deoli Weekly Market, Ward No.2,
Deoli, Tah. Deoli, Dist. Wardha.

...PETITIONER

Versus

Vijay Dhananjay Deshmukh,
Chief Officer, Municipal Council, Deoli,
Tahsil Deoli, Dist. Wardha.

...RESPONDENT

Shri N.A. Dharmadhikari, Advocate h/f Shri A.C. Dharmadhikari,
Advocate for the petitioner.
Shri M.I. Dhatrak, Advocate for the respondent.

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CORAM : A.S. CHANDURKAR AND

PUSHPA V. GANEDIWALA, JJ.

ARGUMENTS WERE HEARD ON : MARCH 08, 2021.

JUDGMENT IS PRONOUNCED ON : MARCH 11, 2021.

JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

The grievance of the petitioner in the instant Contempt Petition is the willful disobedience of the order of 'status quo' granted by this Court vide order dated 27/02/2017 passed in Writ Petition No. 1161/2017.

2. Briefly stated, the petitioner is a Manager of Touring Talkies, viz., New Laxmi Touring Talkies, situated at the Deoli weekly market compound, Deoli. The Chief Officer, Nagar Parishad, Deoli, issued a notice dated 25/01/2017 under Sections 180 and 181 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereafter “the said Act”, for short) with regard to demolition of the said Touring Talkies. In the said notice, three days time was given to the petitioner for removal of encroachment so that the respondent could smoothly carry its developmental and beautification work of market area.

3. The petitioner challenged the aforesaid notice in a Writ Petition bearing No.1161/2017 filed on 23/02/2017 submitting that the said notice was issued in violation of the procedure prescribed under Sections 180 and 181 of the said Act. On 27/02/2017, when the said Writ Petition got listed for the first time, this Court issued notice to the respondent, making it returnable after two weeks, and in the meantime, directed the parties to maintain ‘status quo’.

It is the contention of the petitioner that as the copy of the aforesaid order was not made available to him on the same day, he informed about the said order to the respondent officer by sending email on its official email address, i.e., municipalcouncildeoli@gmail.com. That on the very next day, i.e., on 28/02/2017, the petitioner submitted a copy of the said communication to the office of the respondent at about 9:00 am personally along with one Vijay Gomase. It is submitted that the respondent officer read the said order in the presence of the petitioner, and asked him to handover the same to the inward section of the Municipal Council.

It is further submitted that on 28/02/2017, when the petitioner got the copy of the aforesaid order from the official website of this High Court, he submitted the same to the respondent office at about 12:00 noon, and he had also forwarded a copy of the same to the Collector as well as the Superintendent of Police, Wardha, and therefore, it is the contention of the petitioner that despite the respondent officer had full knowledge about the aforesaid status quo order, he intentionally and deliberately violated the same.

4. Both the parties filed affidavits and counter affidavits against each other. They have also filed affidavits of their witnesses, and also brought on record the relevant documents.

5. The respondent filed his written submission on 17/03/2017 stating therein that the email address, i.e., municipalcouncildeoli@gmail.com, through which the petitioner claims to have sent email to him, is different than the email address appearing in the print copy, i.e., MCDeoli@gmail.com. That the correct email address of the respondent office is mcdeoli@gmail.com, and therefore, it cannot be said that the petitioner sent email on the correct email address.

With regard to the allegation that on 28/02/2017, the petitioner has submitted the copy of the communication to the respondent officer personally, he states that the process of removal of encroachment in Deoli town was to be undertaken from 28/02/2017, and the communication, pointing out that from 28/02/2017 at 9:00 am to 02/03/2017, the encroachment removal drive will be undertaken, was already

issued to the Superintendent of Police, Wardha. It is further submitted that on 28/02/2017, at about 8:40 to 8:45 am, the entire staff of the respondent left the office and had been to the spot for removal of encroachment. There was police protection and other staff available and JCB machines were also available. That as per fixed schedule, the process of removal of encroachment was started at 9:00 am on 28/02/2017, and that the encroachment of the petitioner was removed first, as it was just adjacent to the Wardha-Yavatmal Road. That the said encroachment of the petitioner was removed within 20-25 minutes. That when the drive was near the Municipal High School, one Mr. Gomase, shown the copy of the order of this Court and that thereafter, the respondent officer did not take any further action.

6. As against this, on 29/03/2017, the petitioner filed counter affidavit denying the facts as claimed by the respondent. In support of his contention, the petitioner placed on record affidavits of Mr. Gomase and Mr. Karwatkar. The petitioner also placed on record an affidavit of one Abdul Kayyum, a News Reporter, stating therein that in his presence,

the petitioner along with Mr. Gomase, had handed over the aforesaid communication to the respondent officer.

7. One Prashant Dinkarrao Chahare, R/o Deoli, filed an affidavit stating therein that he knows the petitioner. That on 28/02/2017, at about 10:30 am, he had been to the Deoli weekly market area, wherein he started videography of demolition work in his cell phone from about 10:44 – 10:50 am.

8. The petitioner has also placed on record a declaration by 137 people in the vicinity of the market area, thereby supporting the case of the petitioner about demolition of his premises during late morning hours on 28/02/2017.

9. Against the counter affidavit of the petitioner dated 29/03/2017, the respondent filed an additional affidavit on 24/04/2017, thereby denying all the adverse allegations made by the petitioner in the said counter affidavit. The respondent officer supports his contention by placing on record the affidavits of one Mr. Abhishek Gotarkar, an Engineer and one

Gajanan Khond, a Clerk in the Construction Department of Municipal Council, Deoli.

10. Against the additional affidavit of the respondent dated 24/04/2017, the petitioner filed counter affidavit on 02/05/2017, thereby denying the statements made by the respondent officer in his additional affidavit.

11. We have considered the submissions advanced across the bar and perused the record. The following point arose for determination of this Court :

“Whether the alleged act of demolition of petitioner’s Touring Talkies is an act of willful disobedience ?”

12. At the outset, before proceeding to examine whether the alleged act would amount to contempt of Court or not, it would be advantageous to refer to the settled law on “willful disobedience”. The Hon’ble Supreme Court in the case of **Kapildeo Prasad Sah And Others Vs. State of Bihar And Other**, reported in (1999) 7 SCC 569, in para 9 has held that

the power to punish for the civil contempt is to be resorted to when there is a clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. It is further held that whether a disobedience is willful in a particular case, depends on the facts and circumstances of that case.

13. In the case of **Suresh And Others Vs. Imran Khan And Others**, reported in **1995 Supp (3) SCC 306**, the Hon'ble Supreme Court has held that the proceedings in contempt are in the nature of quasi-criminal proceedings and it must be shown that the litigant in defiance or disobedience of the court's order proceeded to do any act which was in violation thereof. It is further observed that unless the litigant is aware of a prohibitory order made against him by the court there can be no desire or intention on his part to flout the court's order. In the said case, the prohibitory order was communicated to the lawyer, and as the petitioner could not show any evidence that the lawyer, to whom the prohibitory order was given, had

communicated the same in any manner whatsoever to the litigant. Their Lordships have held that unless it is shown that the litigant was made aware of the order served on his lawyer it may not be possible to hold that despite the knowledge of the order he wilfully decided to commit a breach of the order by acting contrary thereto.

14. Recently, the Hon'ble Supreme Court in the case of **Rama Narang Vs. Ramesh Narang And Others (Contempt Petition (Civil) No. 92/2008 In Contempt Petition (Civil) No. 148/2003 In Civil Appeal No. 366/1998 decided on 19/01/2021)** in para 74 has relied on its judgment given in the case of **Kanwar Singh Saini Vs. High Court of Delhi**, reported in **(2012) 4 SCC 307** wherein, on law of 'Civil Contempt' and 'willful disobedience', the Hon'ble Supreme Court, in para 25 of the said judgment, has observed as under :

“25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are

provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. XXXX”

The Hon’ble Supreme Court further referred to the observations made by it in the case of **Debabrata Bandopadhyay & Ors. Vs. The State of West Bengal & Anr.**, reported in **AIR 1969 SC 189**, wherein it was observed that punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one’s duty and in defiance of authority.

15. In the case of **R.S. Sehrawat Vs. Rajeev Malhotra And Others**, reported in **(2018) 10 SCC 574**, the Hon’ble Supreme Court has considered the “standard of proof” required for fixing the liability of contempt against the contemnor. The Supreme Court, in para 17, has relied on the case of **Mrityunjay Das Vs. Sayed Hasibur Rahaman**, reported in **(2001) 3 SCC 739**, wherein with regard to “standard of proof”,

it is noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.

16. Keeping in mind the aforesaid settled legal position, we proceed to appreciate the material on record. On perusal of the affidavits, counter affidavits and the documents on record, in our considered view, the petitioner could not make out a clear-cut case of contempt and willful disobedience on part of the respondent officer for more than one reasons. Firstly, the case of the respondent that on 28/02/2017, at about 9:00 am, the petitioner served the notice to the inward section of the office of the Municipal Council, Deoli, however, by that time, the respondent officer with the encroachment drive squad had already left the office as per their pre-determined plan and therefore, the question of petitioner having informed him about the prohibitory order of this Court doesn't arise, appears probable. In support of his defence, various communications to

various departments, viz., PWD Department, Police Department, Tahsildar etc. for requisitioning support for encroachment drive also indicates that removal of encroachment was scheduled on 28/02/2017 at 9:00 am. It is quite possible that the respondent might have left the office premises before 9:00 am to execute the encroachment removal drive.

17. On the contrary, the case put up by the petitioner appears doubtful. Had it been so, he would have mentioned the same in his complaint letters served on the same day evening to the office of the Collector and the Superintendent of Police, Wardha. In these letters, the petitioner does not say that he accompanied by Mr. Gomase served the notice personally to the respondent officer and as per his directions to the inward section of the Municipal Council. The name of Mr. Gomase is conspicuously missing therein.

18. In addition to above, the learned Counsel appearing for the respondent, brought to our notice the inconsistent statements made by the petitioner in his petition and the

subsequent affidavits. The learned Counsel pointed out that in the petition, the petitioner has said that Mr. Gomase accompanied him to serve notice of order to the respondent officer, and in his subsequent affidavit, it is his case that Mr. Gomase and Mr. Karwatkar had accompanied him to serve the notice.

19. Shri Dharmadhikari, learned Counsel for the petitioner, drew our attention to one communication received to the petitioner under the Right to Information Act, 2005, from the Public Information Officer and SDPO, Pulgaon, informing that on 28/02/2017, the police squad, for the protection during demolition drive, left at 10:19 am. However, this would not be of any assistance to the petitioner, unless it is proved that before the actual demolition of the premises of the petitioner, the respondent officer had notice of the order of 'status quo' by this Court, and in utter disregard of this order, the respondent officer deliberately carried out the demolition drive.

20. Furthermore, there appears a point in the submission of the learned Counsel on behalf of the respondent that the communication about passing of order, which was allegedly sent through email address, was not sent on the correct email address of the respondent officer. The respondent officer placed on record a letterhead of the Municipal Council at page No. 52 of the petitioner, wherein the email address of the respondent office appears to be mcdeoli@gmail.com. In addition to this, we noticed discrepancy in the email addresses inasmuch as the email address on which the notice was allegedly sent is municipalcouncildeoli@gmail.com, and the email address appearing on the print copy at page No. 12 of the petition is MCDeoli@gmail.com. The learned Counsel for the petitioner could not point out from the record the fact of receipt of the alleged communication through email to the respondent officer personally at any time before the demolition of the premises.

21. Shri Dharmadhikari, learned counsel for the petitioner, in support of the case of the petitioner placed on record the affidavits of Mr. Gomase, Mr. Karwatkar, News

Reporter, Videographer, Declaration etc. We have carefully perused the same. We do not find the same being of any assistance to the petitioner. After all, for the purpose of appreciation of evidence, what matters most is the quality of evidence and not the quantity. Unless and until it is proved beyond reasonable doubt that the respondent officer has been communicated in advance about the order of prohibition, and in spite of having knowledge about the same, he deliberately and willfully disobeyed the order, no action much less the action of contempt would be attracted against the officer.

22. The fact remains that the petitioner could not prove beyond reasonable doubt that the respondent officer was having knowledge of the order of 'status quo' of this Court, and despite that he proceeded further with the demolition.

23. In this petition, the petitioner has also claimed damages of Rs.50 lakh for the alleged demolition. As we have already reached the conclusion that the petitioner has failed to demonstrate that the respondent has committed any willful disobedience of the order of this Court, we are not inclined to

enter into the question of damages, however, the petitioner is at liberty to claim the same in an independent proceedings before the appropriate forum.

24. Considering all the aforesaid infirmities in the case of the petitioner, we are of the firm view that the petitioner has failed to make out a clear-cut case of willful disobedience on part of the respondent officer. In such circumstances, the respondent cannot be held liable for contempt of Court. We answer the point for consideration accordingly.

25. The Contempt Petition thus being devoid of merits deserves to be dismissed, and the same is accordingly dismissed. No costs.

JUDGE

JUDGE
