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Cont.P.No.1009 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cont. P.No.1009 of 2019

in WMP Nos.14266, 14267 & 14268 of 2019

in W.P.No.14210 of 2019

P.Krishnan,
No.19, First Floor,
Gandhi Street, Janakiraman Colony Extn,
Arumbakkam, Chennai 106

... Petitioner

-VS-

Dr.Rajesh Jaganathan,
Managing Director,
Billroth Hospitals Ltd.,
Door Nos.38-43, Lakshmi Talkies Road,
Shenoy Nagar,
Chennai – 600 030.

... Respondent

Prayer: Contempt Petition filed under Section 11 of the Contempt of Court Act, pleaded to punish the respondent for willful disobedience of the order dated 09.05.2019 passed by this Court in WMP Nos.14266, 14267 & 14268 of 2019 in W.P.No.14210 of 2019.

For Petitioner : Mr.P.Krishnan for
Mr.V.Balaji

For Respondent : Mr.S.Prabakaran,
Senior Counsel for
Mr.Krishnakumar



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ORDER

(Order of the Court was made by S.VAIDYANATHAN,J.)

This Contempt Petition has been filed for the alleged disobedience of the Order of this Court dated 09.05.2019 made in WMP Nos.14266, 14267 & 14268 of 2019 in W.P.No.14210 of 2019.

2. Mr.S.Prabakaran, learned Senior Counsel appearing for the petitioner submitted that this Court, by way of an interim order dated 09.05.2019 in WMP Nos.14266, 14267 & 14268 of 2019 in W.P.No.14210 of 2019, directed the Authorities to take steps to remove the unauthorized construction made by Billroth Hospital beyond 3rd Floor, namely, Floor Nos.4 to 8. He further submitted that when the matter was taken up before Supreme Court by way of Special Leave Petition, the Supreme Court, while directing the Hospital Management not to use the Floors beyond 3rd floor, restrained the demolition of Floors 4 to 8, on account of pandemic situation and not stayed the entire operation of the interim order. Subsequently, the Hospital Management made further request for usage of such floors for treating Corona Patients and the said request was accepted by the Apex Court.



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3. According to the learned Senior Counsel for the petitioner, though permission was granted by the Supreme Court for using Floor Nos.4 to 8 only to treat Corona Patients, the Hospital Management started admitting patients suffered with other diseases, thereby floating the order of the Supreme Court in the air and there is utter violation of the orders of both this Court and Supreme Court.

4. At this stage, the issues regarding violation, absence of set backs and construction of more floors without permission, cannot be looked into by this Court in the present Contempt Petition and can only be ascertained by the Advocate Commissioner appointed by this Court. It is open to the Petitioner to request the learned Single Judge or Judges, who are going to hear the matter to personally inspect the place in question, so as to bring the issue to a logical end. The Apex Court in the case of **Roshan Deen vs. Preeti Lal**, reported in **MANU/SC/0701/2001**, discussed the power conferred on High Courts to advance justice under Article 226/227 of the Constitution of India. The relevant portion of the judgment is extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices>“We are greatly disturbed by the insensitivity reflected in



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the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under [Article 227](#) of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under [Article 226](#) and [227](#) of the Constitution is to advance justice and not to thwart it. {vide [State of Uttar Pradesh vs. District Judge, Unnao and ors.](#) (AIR 1984 SC 1401)}. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.”

5. The submission of the Petitioner, that a spot inspection by the Sitting Judges, who are hearing the Writ Petition will throw light on the violation and easily the issues could be given quietus to, as, in this Country, violators know that “law will not take its course” in a rapid manner that is



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required, but only in snail-pace to destroy the confidence of the public in the judiciary, appears sound, but, no finding on this can be given in this Contempt Petition. It is open to him to plead this in the Writ Petition and it is for the Writ Court to consider his submission.

6. A Hon'ble Division Bench of this Court in W.P.10821 of 2017 already held that no Civil Court shall grant any interim order without invoking Order 18 Rule 18 of CPC (which provides for the legal leniency to the Court to personally inspect the property or thing in question and prepare a memorandum of such inspection, which can then be taken upon the records of the case matter). In yet another case, the Hon'ble Division Bench of this Court in **W.A.No.687 of 2018 dated 19.12.2018** upheld the views of the Single Judge passed in W.P.No.12383 of 2004, holding that Courts can inspect a property under Order XVIII Rule 18 of CPC. The Apex Court, in the Special Leave Petition filed by the Association in **Special Leave to Appeal C.No.2148/2019 [MANU/SCOR/49479/2019]** dismissed the petition on **01.02.2019**.

7. The Supreme Court, after going through the records, found that

there is an illegal construction beyond 3rd Floor and therefore, initially



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prevented the Hospital Management from using IV Floor upwards.

However, subsequently, the Supreme Court permitted the Hospital Management to treat patients affected with Covid. Even assuming for the sake of argument that the Hospital Authorities have been utilizing the illegally constructed floors for treating other patients, instead of Covid Patients, contrary to the permission granted by the Supreme Court, it is for the Supreme Court to decide for violating its order, as on earlier occasions, the Supreme Court ordered for demolition of buildings in the case of **The Kerala State Coastal Zone Management Authority vs. The State of Kerala, Maradu Municipality & Others**, reported in **(2019) 7 SCC 248** and **Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others**, reported in **2021 SCC Online SC 648**.

8. Admittedly, the order passed by this Court has got merged with the order of the Supreme Court and this Court cannot entertain the Contempt Petition at this moment. It is needless to mention that since the Apex Court has not stayed the hearing of the Writ Petition, there is no impediment for hearing and passing final orders in the Writ petition on merits.

With the above observation, this Contempt Petition is closed. It is reiterated that the observations made herein-above are in response to the



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submissions made by the Petitioner and this Court has not rendered any finding on that.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

vum

//Certified to be true copy//

Dated at Madras this the day of 2022.

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