

IN THE HIGH COURT AT CALCUTTA

Special Civil Jurisdiction
(Appellate Side)

C.P.A.N. 346 of 2020

With

**I.A. No. CAN 1 of 2020
(Old No. CAN 3436 of 2020)**

In

W.P.A 10804 of 2013

Debarshi Chakraborty

Vs.

Dr. Manoj Panth, IAS.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Kausik Chanda

For the petitioner	: Mr. Milan Kumar Bhattacharyya, Sr. Adv. Mrs. Sulagna Bhattacharyya, Adv.
For the alleged contemnor nos. 1&2	: Mr. Amitesh Banerjee, Ld. Sr. Adv. Mr. Supratim Dhar, Adv. Mr. Dhananjay Nayak, Adv.
Heard On	: 21.01.2022, 28.01.2022, 02.03.2022, 07.03.2022 & 22.04.2022
CAV On	: 22.04.2022
Judgment On	: 13.05.2022

Arijit Banerjee, J.:

1. This contempt application has been filed alleging wilful violation of a judgment and order dated August 9, 2019, whereby, a public interest litigation numbered as W.P. 10804 (W) of 2013 was disposed of. The operative portion of the said order reads as follows:-

“In the aforesaid format of facts, we also notice that the so-called builders and real estate promoters, who have been impleaded, have not responded to the notices issued by this Court. Therefore, to conserve the property of the State, as may be found to be involved out of 1.36 acres, referred to in paragraph 5(b) of the aforequoted portion of the affidavit of the Special Secretary, it is directed that the Principal Secretary, Land & Land Reforms Department to the Government of West Bengal, who is also stated to be the Land Revenue Commissioner, will take due action in accordance with law to consider all aspects relating to the entire extent of 2.71 acres and ensure that there is clear demarcation between the vested land of 1.36 acres and *rayati* land of 1.35 acres. Thereupon, the extent, which has been granted under lawful authority of the Government to different persons out of 1.36 acres of vested land, shall also be ascertained. After demarcating the boundary between the vested portion and *rayati* portion, the vested portion will be subjected to such further enquiry as is deemed necessary including demarcation of the lands which have been given on lease by the Government.

On conclusion of such enquiry with requisite notice to all persons eligible to receive such notice, the Principal Secretary of the Land & Land Reforms Department, who is also the Land Revenue Commissioner, will ensure that due process of law is

invoked and requisite statutory proceedings are initiated to remove the persons who are in unlawful occupation, illegal possession or squatting over the land. Any unauthorized construction and the construction over land which are not those over which construction could be made, shall be ultimately ensured to be pulled down and the land cleared thereof. The land vested in the Government should remain in the Government under its complete control and physical possession to be dealt with by the Government, as may be enjoined by the laws.

Let such exercise be carried out by the Principal Secretary, Land & Land Reforms Department / Land Revenue commissioner within an outer limit of six months from the date of receipt of a copy of this order. We clarify that all issues raised intra-parties as also those which may arise between other persons, who may be eligible to participate in proceedings before the Land Revenue Commissioner, will be left open and the matter shall be decided by the Land Revenue Commissioner untrammelled by anything stated herein”.

2. Appearing for the petitioner, Mr. Bhattacharyya, learned Senior Counsel, submitted that with full knowledge of the said order, the Principal Secretary of the Land and Land Reforms Department to the Government of West Bengal, being the alleged contemnor no. 1, did not take steps for complying with the order. He said that no demarcation between the vested land of 1.36 acres and *raiya* land of 1.35 acres has been made. Secondly,

whatever purported implementation of the said order has been undertaken, the same has been at the instance of subordinate officers in the land and land reforms department whereas the direction was on the Principal Secretary to implement the order. The Principal Secretary had no business to delegate his duties under the said order to his subordinate officers. It was further submitted that there are substantial discrepancies between the contents of the affidavit affirmed on March 21, 2017, by the Additional Secretary of the Land and Land Reforms Department, referred to in the order of which violation is alleged, and the affidavits filed on behalf of the administration in the present contempt proceedings. Mr. Bhattacharyya submitted that the order in question has not been complied with by the alleged contemnors in its true spirit and intent or at all.

3. Learned Senior Standing Counsel appearing on behalf of the alleged contemnors drew our attention to an affidavit affirmed by the alleged Contemnor no. 1 on February 21, 2022. In the said affidavit the alleged Contemnor no. 1 has stated in details the steps taken by him and at his instance for complying with the order in question. The demarcation of the plot has taken place. Steps are being taken for demolition of unauthorised construction and for eviction of unauthorised occupants. Explanation has also been furnished as to why the compliance has taken longer than it should have. The primary reason was the outbreak of the Covid pandemic.

4. Our attention has also been drawn to an affidavit affirmed by the alleged Contemnor no. 2 on April 12, 2022. In paragraphs 12, 15 and 16 of the said affidavit which was affirmed in response to the affidavit in

opposition filed by the petitioner in respect of the affidavit of compliance, it is stated as follows:-

“12. With reference to paragraphs 9 and 10 of the said affidavit, save what are matters of record and save what appears there from, I deny all allegations contrary thereto and/or inconsistent therewith. I say that the steps taken towards the demarcation of land in question has been stated elaborately in paragraph nos. 7-10 of the affidavit filed earlier and without reiterating the facts stated therein, I say that in compliance with the solemn order of the Hon'ble Court, demarcation of the land in question has been already done by February 2020. I say that the exercise of demarcation was done on 22nd January, 2020 and 4th February, 2020, in the field after duly serving notices to the concerned parties from the end of ADM & DL&L.R.O, South 24 Parganas. I say that Officers of B.L. & L.R.O Kolkata were present on those days along with the Amins. I say that this process was completed on 12th February, 2020 and the report for the same was sent to the District Office accordingly. I say that another re-assessment and enquiry was additionally done on 3rd November, 2020 with technical assistance from the DLR&S Office, Survey Section through Electronic Total Station (ETC). I say that the A.D.M & D.L. & L.R.O., South 24 Parganas was present on the subject plot along with the B.L. & L.R.O., SRO-II, R.O. & T.A., and three field staff. I say that fourteen (14) members of local public were present at that

time, which is on record and sketch map prepared on that basis is enclosed hereto. A copy of the sketch map prepared to this effect is enclosed hereto and **marked "N"**.

15. With reference to paragraph nos. 15-17 of the said affidavit, save what are matters of record and save what appears there from, I deny all allegations contrary thereto and/or inconsistent therewith. I say that during physical inspection on 25th March, 2022, it has been found that a boundary wall was under construction on the vested portion of the land in question and some portion of the boundary wall were already been made. I say that however at the time of inspection, nobody related to the construction work was found there. I say that the officer concerned was under impression that the boundary wall has been constructed over the vested portion of the land in question. To protect the vested land immediately an FIR was lodged with the concerned police station and a letter was also issued addressed to the Kolkata Municipal Corporation seeking information, whether any permission has been granted to any person to make any construction on the plot in question. A copy of the FIR lodged and the letter addressed to the Kolkata Municipal Corporation are collectively annexed hereto and **marked "P"**. I say that thereafter i) Sudip Kr. Das S/o Lt Sudhanna Chandra das ii) Chandana Das w/o Sudhanna Chandar Das iii) Mallicka Sarkar w/o Nilay Sarkar appeared before the BL&LRO Kolkata and submitted that they are

the owner of the land over which the boundary wall have been constructed. Accordingly, the Officer concerned decided to revisit the issue for addressing the claim of the above named persons. After considering all, a fresh sketch map was prepared. The total area of the playground was reduced by 12 decimals and the total area of the road was increased by that amount of land. The revised break-up of the vested area of the said plot of land are stated below:

a) Leased out portion: 0.33 acre

Break up – Bithika Guha Sazrkar 0.0811 acre

Satyajit guha Sarkar 0.0811 acre

Satyajit Biswas (Pal) 0.0495 acre

Shyamasree Biswas (Basu) 0.095 acre

Subrata Biswas 0.0660 acre

Total 0.3272 acre approximated to .33 acre

b) Leased out portion (Tapan Dutta & Ors.): 0.12 acre

c) Housing Board Portion: 0.14 acre

d) Vacant Portion Play: ground & others 0.27+0.03 acre

e) Road area: 0.47 acre

Total 1.36 acre

The Sketch map and report of BL&LRO Kolkata are annexed herewith and marked as **annexure ‘Q’**.

16. That the figures stated in para 15 above may kindly be taken as correct and final. It is humbly submitted that the facts and figures stated in para 15 are slightly different from the facts and figures stated in the earlier contempt affidavits so far the area of road and playground are concerned. Such changes have been incorporated in view of the circumstances stated at para 15. The revised sketch map has been prepared on the basis of physical possession and survey done by the officials. There is no intention of the alleged contemnors to suppress or mislead the Hon'ble Court".

5. In view of the aforesaid we are satisfied that the plot in question has been demarcated in compliance with the order in question.

6. As regards discrepancies in the affidavits filed on behalf of the alleged contemnors, we are of the view that the same in no manner amount to violation of the order in question. The facts and figures stated in the earlier affidavit may have been in-accurate. In the subsequent affidavit, the correct position has been stated as noted above. In Paragraph 16 of the affidavit of the alleged Contemnor no. 2 affirmed on April 12, 2022, it has been stated that the facts and figures stated in Paragraph 15 of the said affidavit are slightly different from the facts and figures stated in the earlier affidavit filed in the contempt proceedings so far as the area of the road and play ground are concerned. However, a revised sketch map has been prepared on the basis of physical possession and survey done by the officials which revealed

the correct position accurately. We find such explanation to be quite acceptable.

7. As regards the grievance of the petitioner that the alleged Contemnor no. 1 being the Principal Secretary of the concerned department, instead of himself undertaking the exercise directed in the order in question, deputed subordinate officers to carry out the order, we find such grievance to be quite unreasonable. It was never the intention of the Court that the Principal Secretary of the concerned department would go to the locale with a measuring tape and demarcate the land himself. The obvious intention of the Court was that the Principal Secretary would be responsible for ensuring that the directions in the order in question are carried out. We find from the documents annexed to the affidavits filed by the alleged contemnors that the Principal Secretary being the alleged Contemnor no. 1, convened meetings wherein other concerned officers participated and a plan was chalked out for implementing the order in question. We are unable to accept the petitioner's contention that the alleged Contemnor no. 1 was himself required to carry out the exercise detailed in the order in question or that by getting the order implemented through his subordinate officers, he has violated the order in question. We also find that steps have been taken to remove illegal constructions on Government land and to recover such land from unauthorised occupants thereof. Needless to say, the Government Officers including the alleged contemnors shall do everything necessary for protecting and preserving Government land.

8. The jurisdiction of the High Court to punish a person for committing contempt of Court is a special jurisdiction and quasi-criminal in nature. It has to be sparingly exercised. Only in cases where it is absolutely clear that with full knowledge of an order of the Court, a person has acted in wilful violation thereof, will the Court exercise its jurisdiction to punish that person for contempt of Court. It is a jurisdiction to be exercised to uphold the Majesty of the Court and also to punish a person wilfully defying an order of Court.

9. In the case of ***Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai, (2008) 14 SCC 561*** the Hon'ble Apex Court held that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and Majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take a strict view under the Contempt of Courts Act, it should not hesitate in wielding the potent weapon of contempt.

10. In the present case, we do not find any wilful disobedience to or violation of the order dated August 9, 2019 passed by the Division Bench. From the facts brought on record, we are satisfied that the order has been substantially complied with. We also accept the explanation for the delay in complying with the order. We are taking judicial notice of the fact that the outbreak of the Covid Pandemic disrupted normal functioning of life in not

only our country but all over the world. In our considered opinion this is not a case where the alleged contemnors should be punished for having committed contempt of Court.

11. The contempt proceedings are dropped. CPAN 346 of 2020 with IA No. CAN 1 of 2020 (Old No. CAN 3436 of 2020) in WPA 10804 of 2013 are accordingly disposed of.

12. There will be no order as to costs.

13. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)