

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CONTEMPT PETITION NO.247/2021 IN SUO MOTU P.L.L. NO. 1/2021

(JYOTI SHERSINGH RATHOR **VERSUS** AMITESH KUMAR, COMMISSIONER OF POLICE, NAGPUR &
ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.P. Dharmadhikari, Senior Advocate with Shri Nihalsingh Rathor, counsel for the petitioner.
Mrs. K.S. Joshi, G.P. for the R-1.
Shri S.P. Bhandarkar, counsel for the R-2.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : MARCH 04, 2022.

The grievance of the petitioner in this contempt petition is that the respondents by dispossessing the petitioner from room no.1 on the ground floor of House No.11 in violation of the order passed in *Suo Motu* Public Interest Litigation No.1 of 2021 and the order dated 16.04.2021 have committed contempt under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971. The petitioner has also urged that her dispossession from the room occupied by her is in violation of the undertaking given on behalf of the respondents in Writ Petition No.1185/2015 and without following the due process of law.

2. According to the petitioner, Writ Petition No.1185 of 2015 came to be filed by various persons including the petitioner seeking a direction against the Commissioner of Police, Nagpur and the Police Station Officer, Police Station Lakadganj, Nagpur not to enter their premises and remove them from the same. Other ancillary directions were also sought in that writ petition. It was the case of the petitioners therein that out of 177 petitioners about 47 of them were the owners of various properties in the locality while the other petitioners were tenants. According to them under the garb of implementation of the provisions of the Immoral Traffic (Prevention) Act, 1956 (for short, 'the Act of 1956') they

were sought to be evicted from the properties occupied by them in a manner contrary to law. In that writ petition the Police Station Officer, Police Station, Lakadganj filed an affidavit dated 27.08.2015 in which an undertaking was given that the Police Authorities would not evict the petitioners without following the due procedure prescribed by law. This Court accepted the said undertaking and by the order dated 10.09.2015 declared that the undertaking in paragraph 7 of the affidavit-in-reply given by the Police Station Officer dated 27.08.2015 would be binding on the Authorities.

On 11.12.2020 a report came to be lodged at Police Station Lakadganj on the basis of a raid conducted by the Police Authorities since information had been received that activities of immoral trafficking were being conducted in the area. On 03.09.2021 in proceedings under Section 18(1)(a)(b) of the Act of 1956, the respondent no.1-Commissioner of Police, Nagpur acting as the District Magistrate passed an order calling upon Smt. Lata Moundekar to vacate House No.11, Sheet No.175 at Ward No.37 within a period of seven days. A further direction was issued that if the premises were not vacated the same would be sealed for a period of one year. It is the case of the petitioner that on the basis of this order dated 03.09.2021 the petitioner was forcibly evicted from the room occupied by her. This was without following the due process of law and without granting her any opportunity of hearing. The action was thus contrary to the provisions of Section 18(1) of the Act of 1956 and the action as taken resulted in breach of the undertaking that was accepted by this Court in Writ Petition No.1185 of 2015. This has given rise to the present contempt petition.

3. Shri S.P. Dharmadhikari, learned Senior Advocate for the petitioner principally contended that the respondents herein having undertaken on 27.08.2015 that no action would be taken to evict the petitioners in Writ Petition No.1185 of 2015 without following the due process of law have by illegally and forcibly evicting the petitioner breached the said undertaking. This Court had accepted the undertaking submitted on behalf of the Police Station Officer, Police Station Lakadganj, Nagpur and the same continued to operate even today. Inviting attention to the provisions of Section 2(a), 2(f) and Section 18 (1) of

the Act of 1956 it was submitted that what was permissible under Section 18(1) of the Act of 1956 was action against any house, room, place that was being run or used as a brothel by any person. The action of attachment of the property under improper use could be taken against the tenant or an occupier subject to giving a notice of seven days as to why such house, room or place in question may not be attached. No such notice was issued to the petitioner despite the fact that she was in occupation of a portion thereof. The petitioner was one of the petitioners in Writ Petition No.1185 of 2015 and hence the undertaking as given was binding on the respondents. It was further submitted that the order passed on 03.09.2021 under Section 18(1) of the Act of 1956 was without any reason and there was no material on record for the respondent no.1 to have passed that order. Since there was no material with the respondents to indicate that the premises in question was used as a “brothel” as defined by Section 2(a) of the Act of 1956 the eviction of the petitioner was without any foundation. Reference was also made to the proceedings that were conducted on the basis of the report of one Smt. Hemlata Lohwe. Referring to the statements recorded under Section 164 of the Code of Criminal Procedure, 1973 in Crime No.755 of 2020 it was submitted that the entire basis for the Authorities to act against the petitioner was falsified by the material collected by them. It was submitted that the respondents had made a dishonest attempt to show that the due process of law had been followed while taking action against the petitioner. It was thus submitted that the respondents ought to be proceeded against in exercise of contempt jurisdiction.

4. Smt. K.S. Joshi, learned Government Pleader for the respondent no.1 at the outset submitted that the order dated 03.09.2021 passed under Section 18(1) of the Act of 1956 was the subject matter of challenge in Criminal Writ Petition No.635 of 2021. That writ petition was withdrawn by the petitioners which included the present petitioner on 09.09.2021 with liberty to adopt appropriate proceedings. Since the criminal writ petition challenging the order dated 03.09.2021 was withdrawn, it would not be permissible for the petitioner to assail the legality of the order dated 03.09.2021 in these proceedings seeking

action for contempt. It was submitted by referring to various documents on record that due process of law was indeed followed before the order dated 03.09.2021 was passed. The petitioner was not a tenant of the premises that were sealed as was sought to be portrayed by the petitioner. The petitioner failed to produce any document whatsoever on record in that regard. The petitioner was residing at House No.755 but was using the room on the first floor of House No.11 as a 'brothel'. Action under Section 18(1) of the Act of 1956 was taken on finding that part of the premises was being used as a brothel and hence six rooms therein were sealed. It was open for the party against whom the order dated 03.09.2021 was passed to challenge the same in accordance with law. It however could not be said that by passing that order the respondents had violated the undertaking furnished by them. Reference was made to the affidavit filed on behalf of the respondent no.1 and it was submitted that the contempt proceedings were liable to be dropped.

5. Shri S.P. Bhandarkar, learned counsel for the respondent no.2 besides adopting the submissions made on behalf of the respondent no.1 submitted that the grounds of challenge that were available to the petitioner for challenging the order dated 03.09.2021 were not pursued since Criminal Writ Petition No.635 of 2021 was withdrawn. Referring to the averments in the contempt petition it was submitted that there were no specific allegations of any breach being committed by the respondent no.2 and he referred to the affidavit filed on record by the respondent no.2 in that regard. There was a serious dispute as to whether the petitioner was an occupier of the premises that were sealed and in absence of any substantial material on record it would not be permissible to conclude that the petitioner was infact an occupier for the purposes of Section 18(1) of the Act of 1956. The learned counsel referred to the judgment in *Parents Association of Students Versus M.A. Khan & Another* [(2009) 2 SCC 641] and sought to urge that since the respondent no.2 was not a party impleaded in Writ Petition No.1185 of 2015, the undertaking furnished by the then Police Station Officer would not bind the respondent no.2. It was thus submitted that there was no

case made out to proceed against the respondent no.2 in exercise of contempt jurisdiction.

6. Heard the learned counsel for the parties and perused the material on record. We find that according to the petitioner by violating the undertaking given on behalf of Police Station Officer, Lakadganj on 27.08.2015 and by not complying with the statements made in that undertaking, the respondents have committed contempt of this Hon'ble Court. From the order passed in Writ Petition No.1185/2015, it is clear that the Court accepted the undertaking to the effect that the petitioners in writ petition would not be evicted without following the due procedure prescribed by law. According to the petitioner under the garb of the order dated 03.09.2021 passed under Section 18(1)(a) and (b) of the Act of 1956, the petitioner has been dispossessed from a portion of the premises of which she was a lawful occupier. The attempt on the part of the petitioner is to indicate that the conclusion recorded in the order dated 03.09.2021 is without support of any material on record as well as there are no reasons in that order to support the conclusion recorded therein. On this premise, it is urged that the eviction of the petitioner is not by following due process of law and the respondents have made a dishonest attempt to show that the due process of law was followed.

7. While considering this contention, we find that examination of the order passed on 03.09.2021 would be necessary. Such examination however would have to be limited to the parameters set out by the Act of 1971 and especially Section 2(b) of the same. This is for the reason that the petitioner alongwith others had challenged the order dated 03.09.2021 by filing Criminal Writ Petition No.635/2021 but those proceedings were withdrawn on 09.09.2021 with liberty to adopt appropriate proceedings. The legality of the order dated 03.09.2021 cannot be examined on merits while considering the prayer to exercise contempt jurisdiction and the scope of examination permissible in the present proceedings is to determine whether passing such order results in wilful and deliberate breach of the undertaking dated

27.08.2015. It may be likely that there may be some legal flaw or lacunae in the order dated 03.09.2021 passed under Section 18(1) of the Act of 1956 but unless it is found that such adjudication is patently in violation of the undertaking as given, there would be no scope to invoke contempt jurisdiction. The petitioner could urge in her challenge to the order dated 03.09.2021 that it suffered from the vice of perversity or illegality. The order dated 03.09.2021 therefore would only have to be viewed from the context permissible under Article 215 of the Constitution of India and the provisions of the Act of 1971.

8. One material aspect which according to us goes to the root of the matter is the existence of a serious dispute with regard to the nature of the petitioner's occupation of the room in question. In paragraph 4 of the contempt petition it has been pleaded that the petitioner resides in a rented room being Room No.1 on the ground floor of House No.11 owned by one Smt. Lata Moundekar. It is pleaded that the petitioner pays monthly rent of Rs.1,500/- towards occupation of the same and she has been occupying that room for years with her two children. In paragraph 21 of the affidavit filed by the respondent no.1 it has been specifically stated that the petitioner is not a resident of the room as claimed by her and that she alongwith her children resides at House 755, Itwari, Balaji Mandir Road, Nagpur. Reference is made to the statements recorded of five impartial witnesses in that regard. It is further asserted that the petitioner is using the room on the first floor of House No.11 as a brothel. In paragraph 24 it has been stated that the petitioner could not produce any rent receipt to substantiate her claim of tenancy. While sealing the said room, no articles essential for livelihood were noticed. Photographs in that regard have been placed on record.

From the aforesaid it is clear that the assertions made on behalf of both sides are supported by affidavits. There is oath against oath. For recording a finding that the petitioner was actually residing in the room in question as claimed by her and for holding that she was an occupier for the same, the process of adjudication would be required to be undertaken. Such process however is beyond the scope of the present proceedings. For exercising contempt

jurisdiction a clear case of wilful and deliberate breach of the undertaking would be required to be made out. A finding as to whether the petitioner was an occupier of the room or not can only be determined in appropriate proceedings when the order dated 03.09.2021 is challenged.

9. It is well settled that for constituting “civil contempt” as defined by Section 2(b) of the Act of 1971, there should be wilful breach of an undertaking given to the Court. Mere breach of an undertaking without the same being shown to be wilful or deliberate cannot result in commission of “civil contempt” so as to result in a finding that such person is guilty of having committed “civil contempt”. Reference in this regard can be made to the observations made by the Hon’ble Supreme Court in paragraph 15 in *Anil Ratan Sarkar & Others Versus Hirak Ghosh & Others* [(2002) 4 SCC 21] as under:

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a “civil contempt” within the meaning of Section 2(b) of the Act of 1971 --- the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation --- the act of acts cannot be ascribed to the otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

Similarly in *Niyaz Mohammad & Others Versus State of Haryana & Others* [(1994) 6 SCC 322] it has been observed that before a contemnor is punished for non-compliance of the direction of a Court, the Court must be satisfied that such disobedience was wilful and intentional.

Equally well settled is the position that a charge of contempt being quasi-criminal in nature, the proof in that regard must be one beyond reasonable doubt. A clear case of deliberate wilful breach of an undertaking ought to be brought home. Absence of any material to show such wilful disobedience or deliberate breach would result in granting of benefit to the alleged contemnor.

10. In view of aforesaid we find that the material on record is insufficient to hold that the respondents have wilfully and deliberately violated the undertaking dated 27.08.2015 while evicting the petitioner from the premises. Though it was urged by the learned counsel for the respondent no.2 that the undertaking dated 27.08.2015 was not furnished by the respondent no.2 and therefore he could not be liable for any alleged breach, the said contention is recorded only to be rejected. The undertaking dated 27.08.2015 was furnished by Police Station Officer, Police Station, Lakadganj. The same would thus operate as an undertaking given to the Court on behalf of Police Station Officer, Lakadganj and would bind the said Police Station. The subsequent incumbent cannot shirk the responsibility to abide by that undertaking on the ground that he had not signed the same.

11. For aforesaid reasons, we are not inclined to exercise contempt jurisdiction in the present proceedings. The contempt petition is therefore dismissed with no order as to costs.

It is clarified that if any challenge is made to the order dated 03.09.2021, the same is liable to be considered on its own merits since the observations made hereinabove are restricted to consideration of the question as to whether contempt jurisdiction should be invoked or not.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

APTE/Andurkar