



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cont.P.(MD)No.1017 of 2021

in

W.P.(MD)No.3423 of 2019

WEB COPY

N.Balakrishnan

... Petitioner/
3rd Respondent

Vs.

1. R.Sithalakshmi, IAS.,
District Collector,
Chennai District.
Chennai - 600 001.

... Contemnor/
Respondent

2.Norah V.Subramani

... Contemnor/
Petitioner

PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the Contemnors/Respondents for their wanton and wilful disobedience of the order dated 19.03.2019 passed by this Court in W.P.(MD)No.3423 of 2019.

Prayer in WP(MD) . 3423/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the impugned order in proceedings no Na.Ka.No.A4 / 6657 / 2018 dated 30/01/2019 , quash the same as illegal, arbitrary and devoid of merit and consequentially direct the 2nd respondent to collect property taxes in respect of residential flats bearing T7 & T8 , St.Thomas Road, Srinivasa Nagar, V.M.Chatram, Palayamkottai only from owner being the petitioner herein without any hindrance

For Petitioner : Mr.G.Rajagopalan
Senior Counsel for Mr.T.Sakthikumaran.

For Respondents : Mr.R.Ragavendran
Government Advocate for R.1

Mr.V.Raghavachari for Mr.Rajarajan for R.2

ORDER

Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate appearing for the contemnor and the learned counsel appearing for the impleaded respondent.



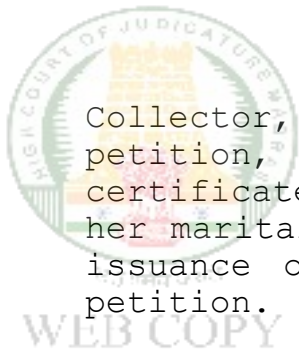
2. One N.V.Subramaniam passed away on 01.09.2017 at the age of 78 years at Chennai. He was born with siblings. Balakrishnan, the petitioner herein is his brother. The second respondent herein asserts that the deceased Subramaniam was her legally wedded husband. This claim is contested by the petitioner herein. In other words, the dispute is between the brother of the deceased and the person claiming to be the wife of the deceased. Obviously, the dispute is raised as the deceased left behind valuable properties. If he had died a pauper, there would have been no cause of action.

3. The Tahsildar, Mylapore Taluk, certified that the second respondent herein was the legal heir of the deceased N.V.Subramaniam. Challenging the same, the petitioner herein moved the Revenue Divisional Officer, South Chennai Division. The legal heir certificate issued in favour of the second respondent herein was set aside on 06.12.2018. Aggrieved by the same, the second respondent herein filed revision petition before the District Collector, Chennai District. In the meanwhile, Tirunelveli City Municipal Corporation changed the tax assessment in respect of the properties of the deceased N.V.Subramaniam lying within their limits at Palayamkottai. Questioning the mutation, the second respondent herein filed W.P.(MD)No.3423 of 2019. The said Writ Petition was disposed of by me vide order dated 19.03.2019 in the following terms :

" 3. I am of the view that the order passed by the respondent corporation can be sustained with one modification. It is seen that the issue raised in this writ petition will have to be ultimately adjudicated only by the jurisdictional civil Court. Even the District Collector, Chennai, cannot decide as to whether the writ petitioner is the wife of Late. N.V.Subramaniam.

4. Therefore, this Court even while sustaining the impugned order restoring the name of N.V.Subramaniam in the property tax assessment register in respect of the petition mentioned properties, permits the petitioner to remit the property tax for the properties in question. This course of action suggested by this Court is accepted by the third respondent also. It is made clear that the petitioner cannot claim any right in respect of the said property, merely because, this Court has permitted the petitioner to remit the property tax. It is once again reiterated that this Court has not pronounced anything on the merits of the matter. The parties have to move the jurisdictional civil Court."

4. When the writ petition was disposed of, the revision petition filed by the second respondent herein before the District



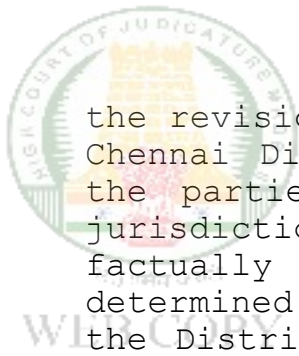
Collector, Chennai District was pending. Instead of closing the said petition, the aforesaid District Collector issued legal heir certificate in favour of the second respondent herein by accepting her marital status as the wife of the deceased N.V.Subramaniam. The issuance of such certificate led to the filing of this contempt petition.

5. I was *prima facie* satisfied that the order passed by me was contravened. Statutory notice was issued. The contemnor appeared through video conferencing and also filed an affidavit. The stand of the contemnor is that she took legal advice from the Government Pleader and only thereafter passed order dated 25.10.2019 in favour of the second respondent. By then, the contemnor had been transferred to some other department.

6. Dr.J.Vijaya Rani, I.A.S., had assumed office as District Collector, Chennai District. She issued proceedings No.P6/17245/2018 dated 27.09.2021 recalling the earlier order bearing proceedings Rc.No.P6/17245/2018 dated 25.10.2019. The stand of the Government Counsel is that the error committed by the contemnor was inadvertent and since the earlier proceedings have been recalled by the incumbent, the present proceedings can be closed.

7. The second respondent herein aggrieved by the aforesaid order of recall filed W.P.No.22326 of 2021 and obtained an order of interim stay on 12.10.2021. The contention of the learned counsel appearing for the second respondent is that inasmuch as the principal seat is effectively seized of the issue between the parties, the contempt petition can be closed and the parties can be asked to put forth their contentions before the learned Judge who is hearing the said writ petition. He emphasized that the second respondent herein is the wife of the deceased N.V.Subramaniam. He drew my attention to the certificate of marriage dated 08.06.1967 enclosed in the typed set of papers. The learned counsel also relied on other materials to contend that the second respondent is residing in the very same place where the deceased N.V.Subramaniam was always residing. He also placed reliance on the contents of the legal notice issued by one of the siblings of the deceased. In the said legal notice, the status of the second respondent as the wife of the deceased Subramaniam was admitted. According to the learned counsel, there is absolutely no merit in these contempt proceedings.

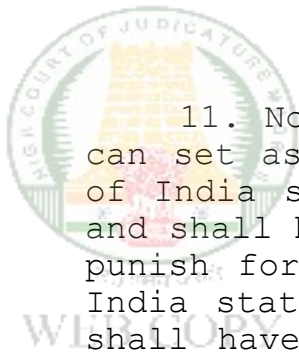
8. I carefully considered the rival contentions and went through the materials on record. Though the subject matter of W.P. (MD)No.3423 of 2019 pertained to the assessment of property tax pertaining to properties lying within Tirunelveli Corporation limits, the assessment proceedings were predicated on the order passed by the revenue authority at Chennai. While the jurisdictional Tahsildar had held in favour of the second respondent herein, the jurisdictional Revenue Divisional Officer took an



the revision proceedings were pending before the District Collector, Chennai District. I had categorically held that the issue between the parties will have to be ultimately adjudicated only by the jurisdictional Civil Court. In the very nature of things, a factually contentious issue concerning marital status cannot be determined by the revenue authorities. I had specifically held that the District Collector, Chennai District cannot decide whether the second respondent herein is the wife of the Late N.V.Subramaniam. The District Collector concerned was very much aware of the contents of the order. Therefore, she could not have passed the order dated 25.10.2019 accepting the claim of the second respondent. I hold that the said order is in clear breach of the order passed by me in W.P. (MD)No.3423 of 2019.

9. Though the offending order had been recalled by the present incumbent, it had sprung back to life in view of the interim order granted in W.P.No.22326 of 2021. Thus as on date, an administrative order that is in direct breach of a judicial order is still holding the field. The judicial order passed in W.P.(MD)No.3423 of 2019 had attained finality. It needs to be reiterated that the second respondent herein filed W.P.(MD) No.3423 of 2019. Though it has not been stated in so many words, it was virtually a consent order. Though the outcome of W.P.(MD)No.3423 of 2019 was substantially in favour of the second respondent herein, the course of action suggested by me was acceptable to the present petitioner, namely Balakrishnan. In all fairness, the second respondent herein should have withdrawn the revision petition filed by her before the District Collector, Chennai District.

10. The Commissioner of Revenue Administration, Chepauk, Chennai had issued Circular No.11/2017 dated 09.08.2017 setting out the guidelines in the matter of issuance of legal heir certificates. Clause 7(2) of the said circular reads that the Tahsildar shall not issue the legal heir certificates, when there is a dispute for settlement / partition of properties of the deceased. In this case, the deceased N.V.Subramaniam had left behind valuable properties both at Tirunelveli and Chennai. The petitioner claims that the second respondent herein is not the wife of his deceased brother and that she cannot be recognised as legal heir. The second respondent - Nora V.Subramani categorically asserts that she is the wife of the deceased N.V.Subramaniam and that she alone is his Class-I legal heir. In support of her claim, she relies on the Marriage Certificate dated 08.06.1967. Thus, there is a clear dispute regarding the properties of the deceased. Whenever there is any contest on factual matters like this, it is only by jurisdictional civil Court that the issues can be adjudicated. That is why, I held that the District Collector, Chennai District cannot go into the matter. The order dated 25.10.2019 made in proceedings No.P6/17245/2018 is clearly in contravention of the order dated 19.03.2019 in W.P. (MD)No.3423 of 2019.

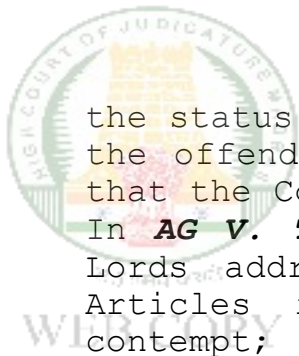


11. Now the question that arises for consideration is whether I can set aside the offending order. Article 129 of the Constitution of India states that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 215 of the Constitution of India states that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. These two Articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure except for the principles of natural justice. This jurisdiction is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of Contempt of Courts Act, 1971 are in addition to or not in derogation of the Articles 129 and 215 and they cannot be used for limiting or regulating the exercise of the jurisdiction contemplated by the said Articles. [**T.Sudhakar Prasad V. Government of Andhra Pradesh (2001) 1 SCC 516**] . When it is brought to the notice of the Court that its order has been willfully disobeyed, the accused may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2,000/- or with both. [Section 12 of the Contempt of Courts Act, 1971]. When the Constitutional Court is confronted with an act of Contempt, its powers are not limited to handing out sentences alone. In **Elliot V. Klinger (1967) 1 WLR 1165**, the following passage from Oswald's Contempt of Court was cited:

"The Court, however has, power to restrain by injunction threatened contempts. It is competent for the Court where a contempt is threatened or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not."

In **Howarth V. Howarth (L.R.) 11 P.D. 95**, it was held that when steps are taken for enforcing an order, the respondent has no right to say that he prefers going to prison; he is compellable to obey the order of the Court. It was not beyond the power of the Court to ensure obedience of its order by directing the act to be done by some person appointed for that purpose instead of enforcing its order by imprisonment.

12. On most occasions, when the contemnor expresses apology demonstrating his sense of remorse, the Court does accept the same and closes the proceedings. As observed elsewhere, 'slap - say sorry - and forget' approach cannot be the right ending in all situations. The contemnor must purge himself of the contempt. The majesty of the Court and the authority of law must be upheld. This can be achieved only if the offending act is effaced. Contempt jurisdiction is not only about punishment but also about restoring



the status quo that obtained following the judicial order and before the offending act was committed. Halsbury's Laws of England states that the Court may invoke other remedies in lieu of punitive action. In **AG V. Times Newspapers Ltd., (1973) 3 All ER 54**, the house of Lords addressing the question as to whether the publication of Articles in respect of a pending litigation would amount to contempt; granted injunction restraining publication that may pre-judge the issue. When injunction can be granted in exercise of Contempt jurisdiction, certainly the power to set aside the offending action is also equally available.

13. I therefore set aside the order dated dated 25.10.2019 made in proceedings No.P6/17245/2018 passed by the District Collector, Chennai District. Still I refrain from holding the first respondent guilty of contempt. This is because she went entirely by the legal opinion given by the Government Pleader. The Government Pleader ought not to have misled the District Collector with such opinion.

14. This contempt petition is disposed of with this direction.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.R.Sithalakshmi, IAS.,
District Collector,
Chennai District, Chennai - 600 001.

+4 CC to M/s.SAKTHI KUMARAN, Advocate (SR-2003[F] dated 21/01/2022)

+1 CC to M/s.SPL.GP (SR-2028[F] dated 21/01/2022)

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MGJ(02.03.2022) 6P 7C

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