

COCp-878-2021

Date of Decision :16.08.2022

OM DEVI AND ANR.

...Petitioners

Versus

RAVINDER YADAV

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Naveen Sharma, Advocate for the petitioners.
Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (Oral)

[1] Prayer in the petition is for initiating proceedings against the respondent for intentional and willful defiance of orders, Annexure P/5 dated 12.09.1986, Annexure P/10 dated 25.10.1994 and Annexure P/8 dated 26.02.2007.

[2] A perusal of Annexure P/5 dated 12.09.1986, reveals that CWP No.5380 of 1985 was filed by the land owner challenging order declaring land measuring 11 standard acres and 10 units surplus after leaving 30 standard acres of land with him under the Punjab Security of Land Tenures Act (Act 10 of 1953), of the Collector having passed an order on account of consolidation having taken place in the village in the year 1973, and of the State Government in the year 1977 having allotted surplus area, declared vide order dated 16.11.1959, to respondent Nos.4 to 6 in the writ petition, who then entered into possession thereof and continued to be so. In the year 1981, the petitioner in the writ petition i.e. Ram Sarup applied to the Collector that as consolidation had taken place, therefore, under Section 24-A of the Punjab Security of Land Tenures

Act (Act 10 of 1953) fresh orders were required to be passed separating the surplus area and the permissible area. The Collector vide order dated 15.12.1981 declared 8 standard acres and 7¼ units as surplus area, but the aforesaid order was set aside by the learned Financial Commissioner. The order passed by the learned Financial Commissioner setting aside the order passed by the Collector dated 15.12.1981 was held to have been rightly set aside by the learned Financial Commissioner and the writ petition was dismissed. Aforementioned decision i.e. Annexure P/5 was upheld by Hon'ble the Supreme Court vide order, Annexure P/10 dated 25.10.1994 by holding that there was no ground warranting interference with the order of the High Court whereas vide order, Annexure P/8 dated 26.02.2007 in CWP No.2871 of 2007, respondents had been directed to decide representation of the petitioners as per law within three months from the date of receipt of certified copy of the order while granting liberty to the petitioners to put a fresh claim, if need be, within 15 days from the date of order.

[3] Notice has not been issued in the instant petition filed on 31.03.2021 and the case was being adjourned on request of learned counsel for the petitioners but on November 01, 2021 time was taken by learned DAG, Haryana, to seek instructions whereafter reply was filed.

[4] Learned DAG refers to order, Annexure R/4 dated 27.06.2007 deciding and filing the representation filed by petitioner No.1 for providing possession of land allotted to her on 14.10.1976 as the land which was allotted to her was cancelled by the Allotment Authority, Rewari vide order dated 10.07.1980 and was thereafter allotted to one Mir Singh s/o Sampat Ram on 30.03.1995 and the same was continued

and copy of said order forwarded amongst others to petitioner

No.1.Forwarding of said order to petitioner No. 1 has been denied in the rejoinder filed. In response thereto, learned DAG, Haryana contends that petitioner No. 1 maintained a stoic silence till serving legal notice Annexure P/9 dated 10.07.2020 except for making a bald assertion that request was made for compliance in the first week of March 2007. Learned DAG, Haryana contends that in any case, cause of action if any qua alleged non compliance of order Annexure P / 8 dated 26.02.2007in CWP No. 2871 of 2007 to decide representation already moved by one of the petitioners, within 3 months of receipt of certified copy of the order while granting liberty to the other petitioners to put fresh claim if need be within 15 days from 26.02.2007 accrued at best on expiry of period of time stipulated in order Annexure P/8, therefore, in the circumstances, the contempt petition is hit by the bar of limitation under Section 20 of the Contempt of Courts Act, 1971, as representation filed by petitioner No.1 was rejected vide order Annexure R/4 dated 27.06.2007while no representation was filed by petitioner No.2 either earlier or within the period of time stipulated in order, Annexure P/8 i.e. 15 days from 26.02.2007.

[5] Learned counsel for the petitioners on the other hand contends that the allotment made to petitioner No.1 was cancelled and said order was not supplied to petitioner No.1 nor was the payment made by the petitioner No. 1 refunded to her and petitioner No.1 came to know about the cancellation of the allotment only from the reply and Annexures attached thereto.

[6] Learned DAG contends that order of cancellation of land allotted to petitioner No.1 on 10.07. 1980 was not challenged by the petitioners at any point of time nor even in CWP No.2871 of 2007.

[7] I have considered the submissions of learned counsel.

[8] Admittedly, as per order, Annexure P/8 dated 26.02.2007 representation dated 06.06.2006 filed by petitioner No.1 was directed to be decided in accordance with law within three months from the date of receipt of certified copy of the order while granting liberty to the petitioners to put fresh claim, if need be, within 15 days from the date of the order. Learned counsel for the petitioners has not been able to show any representation filed by the petitioners other than the representation dated 06.06.2006, which he says was filed by petitioner No.1 only. No doubt there is an averment that request for compliance of order Annexure P/8 was given in first week of March 2007 but apart from the averment, there is no documentary proof in respect thereto. Besides, legal notice served on behalf of the petitioners is dated 10.07.2020 i.e. 13 years and 4½ months beyond alleged date of request as well as time limit granted to the petitioners to file a fresh claim, if need be.

[9] Section 20, Contempt of Courts Act, 1971 reads as under:-

“20. Limitation for actions for contempt.—No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

[10] A perusal of Section 20 ibid reveals that no Court is authorized to initiate proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Orders, Annexure P/8 in CWP No.2871 of 2007 are dated 26.02.2007 and the aforesaid writ petition was disposed of by directing the respondent to

decide representation filed by the petitioner in accordance with law within three months from the date of receipt of certified copy of the order and liberty was also granted to the petitioners to file a fresh claim, if need be within 15 days from 26.02.2007.

[11] Admittedly, it was only petitioner No.1 who had filed representation dated 06.06.2006 which was directed to be decided and liberty was granted to the petitioners to file a fresh claim within 15 days from 26.02.2007. Petitioner No.2 was not a signatory to the representation dated 06.06.2006 whereas legal notice, Annexure P/9 is dated 10.07.2020 i.e. 13 years 4.5 months beyond the time granted to the petitioners to make a fresh claim vide order dated 26.02.2007 in CWP No.2871 of 2007.

[12] Learned DAGrelies upon the decision of this Court in **Harbans Singh and Ors. vs. R.K. Millu, Law Finder Doc ID # 127547** as per which, for willful disobedience of the order of the Court having taken place more than a year back, the contempt petition was dismissed in view of Section 20 of the Contempt of Courts Act, 1971.

[13] Faced with the aforementioned position, learned counsel for the petitioners contends that this Court is empowered under Article 215 of the Constitution of India to suo motu initiate proceedings for contempt of orders of this Court dated 26.02.2007 (Annexure P/8) in CWP No.2871 of 2007. The matter is no longer *res integra* and stands decided by Hon'ble the Supreme Court in **Maheshwar Peri and Ors. vs. High Court of Judicature at Allahabdd Through Registrar General, 2016 (3) RCR (Crl.) 910**. In Maheshwar Peri's case (Supra) Hon'ble the Supreme Court was dealing with the question as to what was the period

ground of the Outlook Magazine in Edition dated 10.11.2008 having published an Article authored by the third appellant therein naming the Judges who had dealt with the infamous Provident Fund Scam on the basis of which on 18.11.2008, one Mr. Manoj Kumar Srivastava and Mr. Veer Singh, Advocates, practicing in the High Court of Allahabad, filed Misc. Application No.21 of 2008 with the following prayer:-

4. xxx *"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to proceed for initiating Criminal Contempt proceedings on its own motion against aforesaid opposite parties and they be punished accordingly under Article 215 of the Constitution of India and or to pass any other order which this Hon'ble Court may deem fit and proper."*

5. *According to them, the article "has caused great insult to the Higher Judiciary. The remarks are derogatory and have lowered the authority of the Higher Judiciary." Learned Counsel appearing for the respondent/High Court of Allahabad submits that the petition was placed before a Single Judge of the High Court, and thereafter, before the Chief Justice. It appears, for about four years, nothing happened in the matter until it was listed before the Division Bench of the High Court leading to the impugned order dated 28.04.2015. It was held in the impugned order that:*

"... The publication dated 10.11.2008 at page 56, 57, 58, 59 as mentioned above has caused great insult to the higher Judiciary. The remarks are derogatory and lower the authority of the higher Judiciary. Hence, it is a fit case to

take 'suo motu' action by this Court. Accordingly, we take 'suo motu' action. Hence the name of the petitioner is not to be shown in the cause list."

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"Let a notice be issued to contemnor opposite party no. 2,3,4, namely, Mr. Maheshwer Peri, Mr. Bishwadeep Moitra, Sushri Chandrani Benerji through Chief Judicial Magistrate Ghaziabad to show cause why the charges be not framed against them for committing contempt of this Court and to punish them in accordance with law. They shall also appear in person on the next date."

[14] Aggrieved against the issuance of notice, the alleged contemnors invoked the jurisdiction of Hon'ble the Supreme Court. Before Hon'ble the Supreme Court, argument advanced by counsel for the appellants was that the High Court having initiated action only after four years of the alleged contempt, the whole proceedings were barred by Section 20 of the Contempt of Courts Act, 1971 which had prescribed period of limitation of one year for initiating any proceedings of contempt, be it suo motu or otherwise whereas on behalf of the High Court, submission was that being an action initiated by the High Court under Article 215 of the Constitution of India and the genesis of the initiation of the contempt being application dated 18.11.2008 filed by Mr. Manoj Kumar Srivastava and Mr. Veer Singh, Advocates and the High Court had considered the application within one year and had taken action by issuing notice though after six years, it was within time. Hon'ble the Supreme Court took into account paragraph No.44 of its decision in **Pallav Sheth**

vs. Custodian and others, 2001(3) RCR (Criminal) 781: (2001) 7 SCC

549 case. Relevant extract of the same is reproduced as under:-

"44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

[15] In the aforementioned background, Hon'ble the Supreme Court held that the impugned article having been published on 10.11.2008 and the High Court having initiated suomotu action only on 28.04.2015, the same was hit by limitation of one year prescribed under the Contempt of Court Act. Accordingly, the appeal was allowed and the impugned order was set aside.

[16] A perusal of the aforementioned decision of Hon'ble the Supreme Court reveals that action is to be initiated either by filing of an application or by the Court issuing suo motu notice within one year from the date on which the contempt is alleged to have been committed.

[17] In the instant case, the cause of action can at best be said to have accrued in May 2007 on account of non-compliance of judgment/orders, Annexure P/8 dated 26.02.2007 in CWP No.2871 of

2007, whereas the instant petition has been filed on 31.03.2021 i.e. after close to 14 years after accrual of cause of action.

[18] In the circumstances, the petition for initiating proceedings against the respondent under Section 12 of the Contempt of Courts Act, 1971/Article 215 of the Constitution of India, is not maintainable and is accordingly dismissed. No order as to costs.

[19] At this stage learned Counsel contends that in view of the order of cancellation of allotment of land of petitioner No.1 never having been intimated to her, liberty be granted to petitioner No.1 to challenge order of cancellation of the year 1980.

[20] Learned DAG vehemently disputes non supply of order but states that he has no objection to the prayer of learned counsel for the petitioners subject to petitioner No.1 explaining the reasons for delay in challenging said order in accordance with law. Needless to mention, it would be open to petitioner No.1 to take out appropriate proceedings in accordance with law for challenging order of cancellation of allotment of land stated to have been passed in the year 1980 by explaining the delay.

[21] Accordingly, in view of the position noted above while dismissing the instant petition, liberty as prayed for is granted to petitioner No.1 to take out proceedings for challenging order of cancellation of allotment of land stated to have been passed in the year 1980 by way of appropriate proceedings in accordance with law by explaining the delay in seeking redress in respect thereto.

(B.S. Walia)
Judge

16.08.2022
'Amit'

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No