

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1417 of 2019

In
Miscellaneous Jurisdiction Case No.3132 of 2017

Deodhira Sanskrit Uchcha Vidyalaya Deep, Madhubani through its Present Headmaster Govind Nath Jha, aged about 57 years Son of Late Dev Nath Jha, resident of Village and Post-Deep, Via Jhanjharpur, P.S. Madhepur, Block Lakhsaur, District-Madhubani (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through the Collector of the District (D.M.) Madhubani.
2. The Collector of District (D.M.), Madhubani through Sri Shirsharth Kapil Ashok, S/o Not Known to appellant.
3. The Sub-Divisional Officer (S.D.O.), Jhanjharpur, Madhubani, through Sri Vimal Kumar Mandal, S/o Not Known to appellant.
4. The Anchala Adhikari (C.O.), Lakhsaur, District-Madhubani, through Sri Chandra Shekhar Kumar, S/o Not Known to appellant.
5. Aamira Devi, Wife of Rameshwar Rai, Resident of Village and P.O. Deep (Paschami Deep), Purvi Tola, P.S.-Madhepur (R.S. Jhanjharpur), District-Madhubani (Bihar).
6. Rameshwar Rai, Son of Late Surendra Rai, Resident of Village and P.O. Deep (Paschami Deep), Purvi Tola, P.S.-Madhepur (R.S. Jhanjharpur), District-Madhubani (Bihar).
7. Kailash Rai, Son of Late Surendra Rai, Resident of Village and P.O. Deep (Paschami Deep), Purvi Tola, P.S.-Madhepur (R.S. Jhanjharpur), District-Madhubani (Bihar).
8. Ram Bilash Rai, Son of Late Surendra Rai, Resident of Village and P.O. Deep (Paschami Deep), Purvi Tola, P.S.-Madhepur (R.S. Jhanjharpur), District-Madhubani (Bihar).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Nath Jha, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-12-2023

The appeal is filed from an order in a contempt



case. The entire case arose from a writ petition filed by the school, the appellant herein claiming right over certain lands. The writ petition numbered as C.W.J.C. No. 20820 of 2012, projected the claim raised by the appellant herein and also the grievance that the documents furnished are not being looked into and the lands in question are being assigned to weaker sections of the society for constructing houses under the Indira Housing Scheme. The learned Single Judge directed the Circle Officer, Lakhnaur to consider the documents submitted by the petitioner and others, in light of the notice dated 02.02.2012 and pass a reasoned order within a period of two months. It was also directed that the Circle Officer, Lakhnaur, if finding the land in question to be belonging to the school, then he shall ensure that the lands of the school are not used by any other authority or agency for any other purpose and the same shall stand restored to the school.

2. Subsequently a contempt case was filed as M.J.C. No. 2502 of 2013 by the appellant. Obviously, an order was passed by Circle Officer, Lakhnaur on 06.08.2013, in favour of the petitioner's school which the Sub-Divisional Officer, Jhanjharpur asserted was wrongly passed and hence could not be complied with. There was a further C.W.J.C. No.



5049 of 2014 filed by persons who were occupying the land claimed by the petitioner's and it was submitted that no soon as C.W.J.C. No. 5049 of 2014 is dismissed the school will be put in possession of the lands. The M.J.C was disposed of by order dated 12.03.2014 (Annexure-2 in the present MJC) granting liberty to the petitioner to approach the Court by filing a contempt petition, after dismissal of the said writ petition. One another writ petition was filed as C.W.J.C. No. 6667 of 2013, wherein the Head Master of the appellant school was the 6th respondent, was disposed of by Annexure-3 produced in the instant M.J.C. by order dated 15.05.2013. Therein it was noticed that the Circle Officer was required to pass a reasoned order and as per the judgment of 07.11.2012, there was a direction given to the Circle Officer to keep the notice issued in abeyance and not dispossess the petitioner therein and hear the parties and pass a reasoned order. It was after this that the order dated 06.08.2013, was passed by the Circle Officer, Lakhnaur.

3. The instant contempt was filed purportedly against the order dated 07.11.2012 passed in C.W.J.C. No. 20820 of 2012 dated 07.11.2012 and the order passed in M.J.C. No. 2502 of 2013 on 12.03.2014. When the matter came up before a learned Single Judge the District Magistrate,



Madhubani tendered unconditional and unqualified apology for passing an order closing the proceedings. The Court had also seen a short video recording which indicated that the encroachments in question were removed. The show-cause filed by the District Magistrate, Madhubani was looked into from which it was found that there is an allegation of the school having managed to get the *jamabandi* created and registered by playing a fraud was also evident from the insertion of a separate page in Register-2 without there being any basis for the same. The statement of the District Magistrate, Madhubani that departmental proceedings would be initiated against the officers who had committed such fraud; being Anchal Adhikari, Lakhnaur, who is presently posted as Block Development Officer, Khutauna was also recorded. The assertion made by the District Magistrate before the Court was that the land belonged to the State.

4. The learned Single Judge found that the encroachments in any case have been removed and what remains is the claim set up by the school. Since, the District Magistrate, Madhubani had specifically taken the stand that the settlement created in favour of the school would have to be exercised, the same was directed to be done in accordance with



law. The Court also observed the trite principle that fraud vitiates any action. It is against this order that the appeal has been filed.

5. In fact, in the appeal filed, in paragraph no. 17, the contention taken up by the petitioner is that the Court should have simply dropped up, the contempt proceedings and not granted the official contemnor liberty to take appropriate action against the petitioner's settlement in the revenue records.

6. When a contempt case is filed it is for the court to decide as to how it has to be proceeded with and the petitioner's duty is only to bring the fact of violation of any judgment to the notice of the Court. In the present case, we find absolutely no violation because this Court had directed, in the original order, consideration of the claims raised by the petitioner. The claims were considered and the Circle Officer has passed an order in favour of the appellant school.

7. Later on a contempt petition being filed, the claim of the encroachers were also directed to be considered, before any action is taken on the order of the Circle Officer, Lakhnaur. Subsequently, it was found that the order of the Circle Officer, Lakhnaur was itself based on the *jamabandi* created in Register-2, which the district administration asserted was



created by a fraud. It is in such circumstances, that the contempt case was closed against which no appeal is maintainable as is seen from Section 19 of the Contempt of Courts Act.

8. The learned counsel has relied on a Division Bench decision in **Union of India V. Mukesh Kumar Sah; (2019) 3 PLJR 558**. Therein the question was with respect to the maintainability of an appeal, when in a proceeding under the Contempt of Courts Act the Court issues fresh directions which were not part of the directions issued in the earlier writ petition; which was treated as a direction issued under Article 226 of the Constitution of India; which would be appealable.

9. In the present case, we do not find any such directions having been issued by the Court in the M.J.C. The Court noted the proceedings initiated by the District Magistrate, Madhubani against the *jamabandi* created and directed it to be carried forward in accordance with law. In any event, the Court could not have interfered with the proceedings taken by the District Magistrate in a contempt case filed before it. The Court also reiterated the trite principle that fraud vitiates every action, which cannot be deemed to be a direction or even a declaration of law for the first time made, which would be amenable to appellate jurisdiction.



10. *D.N. Taneja v. Bhajan Lal*, (1988) 3 SCC 26

held that, right of appeal under the Contempt of Courts Act, 1971 (Act of 1971), specifically Section 19(1) is available only when High Court in exercise of the jurisdiction under Article 215 imposes punishment on the contemnor. While reiterating the proposition that, any court vested with the authority to decide a matter has the power to decide it either in favour or against, a person, it was held that the power conferred under Article 215 of the Constitution of India is only to impose punishment in contempt. Though in considering the question whether a contempt is made out or not, the High Court could acquit or punish the respondent/contemnor; only the latter would be in exercise of the power under Article 215. The right of appeal is one conferred under the statute and Section 19(1) can be invoked only when the contemnor is punished, especially since in a proceeding for contempt there are only two parties, the court and the contemnor and the petitioners role ends with the matter being brought to the notice of the Court. However it was also held that, when there is an erroneous acquittal by the High Court, then the party is not left without a remedy and there could always be invocation of Article 136 of the Constitution. The same view was reiterated in *State of Maharashtra v.*



Mahboob S. Allibhoy, (1996) 4 SCC 411, wherein, it was held that words "in order must be read with "decision" so as to exclude any interlocutory order of the High Court from the scope of appeal.

11. In fact, more elucidation as to the power under the Contempt of Courts Act and the maintainability of an appeal from the orders passed in a proceeding under that Act is available in ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda, (2006) 5 SCC 399***. A catena of decisions including the ones above referred were considered by the Hon'ble Supreme Court, and in paragraph No. 11, the position emerging with regard to orders in contempt proceedings were stated as follows:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceeding for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the



High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The instant appeal does not fall under any of the categories noticed above.



12. If the appellant-school is aggrieved with the proceedings taken by the District Magistrate, appropriate proceedings have to be taken against it.

13. The proceedings taken by the District Magistrate, Madhubani according to us is not in pursuance of the impugned order in the above appeal. The proceedings were relied on to explain as to why the order passed by the Circle Officer, Lakhnaur could not be acted upon. The proceedings can be continued in accordance with law and the appellant would have every right to challenge it or any prejudicial order passed pursuant to the said proceedings. But the present appeal is not maintainable and the orders impugned only declined initiation of contempt proceedings.

14. We hence, reject the appeal on the question of maintainability and as also on finding it to be without any merit.

15. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

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CAV DATE	
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