

IN THE HIGH COURT AT CALCUTTA

SPECIAL CIVIL JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.C.R.C 89 of 2018

With

CAN 1 of 2023

In

WPA 25296 of 2014

Reserved on : 28.08.2023

Pronounced on: 06.09.2023

Sri Paramananda Mukherjee

...Applicant

-Vs-

Kaberi Das & Anr.

...Contemnors

Present:-

Mr. Sankha Subhra Ray

... for the Applicant

Mr. Tapash Kr. Dey,
Ms. Saswati Ghosh Sinha

....for the Contemnors

Rajarshi Bharadwaj, J:

1. The instant contempt application has been preferred against the alleged contemnor for violation of order dated 06.07.2015 passed by the Learned Single Judge in W.P No. 25296 (W) of 2014 (Paramananda Mukherjee versus The State of West Bengal & Ors).

2. The applicant is one Paramananda Mukherjee and the alleged contemnor is the Pradhan, Garal Gacha Gram Panchayat, Hooghly. The two plots of land in question are Plot No. C-3 in Dag No. 783, Khatian No LR 810, JL No. 90 measuring about 1 cottah 8 chittacks under Mouza Garal Gacha Gram Panchayat, Hooghly belonging to the applicant and Plot No. C-2 , Dag No. 783, Khatian Nos 2118 and 2119 under Mouza Garal Gacha Gram Panchayat, Hooghly belonging to one Sri Krishnendu Banerjee and one Smt Putul Banerjee herein respondent Nos. 6 and 7 respectively where a residential house along with pakka boundary wall surrounding the building has been constructed.

3. The genesis of the case is that the applicant moved a writ petition bearing W.P No. 25296 (W) of 2014 which the Learned Single Judge was pleased to dispose of by solemn order dated 06.07.2015. The operative part of the order is extracted hereinbelow for convenience:

"The Pradhan of the concerned Gram Panchayet to take necessary follow-up action strictly in accordance with law and the procedure laid down therefor and shall conclude the same as per the statutory provision within a period of eight weeks from the date of communication of the order."

4. As there was no necessary follow up action by the alleged contemnor, the applicant proceeded to file contempt application being CPAN 1857 of 2015 alleging intentional and wilful violation of the order dated 06.07.2015.

5. The Learned Counsel for the applicant presents that the contemnor acted in wilful, deliberate and contumacious violation of the order dated 06.07.2015 by not taking appropriate steps for knocking down the unauthorised pakka boundary wall that encroaches his plot of land. Such boundary wall was constructed by respondent Nos. 6 and 7 after purchasing the land without taking legal permission from the Garal Gacha Gram Panchayat.

6. It is further submitted that the contemnor vide letter dated 05.06.2014 admitted to the applicant that *"As per verbal discussion we can know from him that Sri Krishnendu Banerjee purchased old residential building. So he has no sanction plan in his own custody. But he has constructed new boundary wall after purchase residential house without taken legal permission from this Gram Panchayat"*. Thus, the contemnor should have demolished the same as per the provision of Section 23 of the West Bengal Panchayat Act as well as Rule 19(3) of the West Bengal Gram Panchayat Administration Rule, 2004.

7. Instead of taking suitable measures to demolish the structure as expressed in the solemn order dated 06.07.2015, the contemnor made an endeavour to intentionally misinterpret the order by issuing notices for a hearing on 16.06.2023 to effect a compromise between the applicant and respondent Nos. 6 and 7. The contemnor acting as mediator in the present case has acted without jurisdiction.

8. The Learned Counsel for the alleged contemnor submits that there has been no error in understanding the true spirit behind the order/judgment dated 06.07.2015 passed by the Hon'ble Court and that no wilful or deliberate disobedience of the order/judgment was committed by him. Due to pending civil proceedings being Title Suit No. 522 of 2015 before the Learned 1st Civil Judge, Junior Division, Serampore, subsisting order of injunction being M.P No. 199 of 2013 remaining in force at the relevant point of time and another suit filed by the applicant subsequently dismissed for non-prosecution, no steps were taken to give effect to the order dated 06.07.2015.

9. It is respectfully stated that the said boundary wall had already been constructed before the plot was purchased by respondent Nos. 6 and 7 in 2007 by the erstwhile landowner on the basis of a proper sanction plan. The applicant who partly purchased the adjacent plot of land in 2009 failed to prove the illegality of the construction by producing relevant evidences and

admissions as he was absent on 16.06.2023 which was fixed for personal hearing despite service of notice on 12.06.2023.

10. The pakka boundary wall built for residential and safety purposes and the decision to treat it as legal and valid has been arrived at after careful on spot inspection by the alleged contemnor. As no old records of permission and sanction plan for construction of the wall in favour of respondent Nos. 6 and 7 have been found despite thorough search by officials, a personal hearing was preferred wherein documents and submissions provided by respondent Nos. 6 and 7 were scrutinised.

11. Heard learned counsel for the respective parties and on perusal of the records this court is of the view that in exercise of the contempt jurisdiction a different view on the merits of the case cannot be taken. The court is only concerned with the wilful or deliberate noncompliance of the directions issued in the original judgment and it would not be permissible for the court to issue any supplementary or incidental directions which are not to be found in the original judgment and order. In the instant case, the omission to appear on the date fixed for hearing to decide the validity of the structure indicate laches on part of the applicant.

12. It is a settled principle of law that while dealing with an application for contempt, the court is concerned with the question whether the earlier decision which has received its finality had been complied with or not. The order of the Court of which a breach is complained of, has to be read and interpreted as it is and not as it should be. If an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment.

13. The Hon'ble Supreme Court in **Ex. Chief Executive Officer & Ors. Vs. Assam Roller Flour Mills Association & Anr.** reported in **(2022) 1 SCC 101** held that: -

"8...The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order.... When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings."

14. In the case **of Director of Education, Uttaranchal and others vs. Ved Prakash Joshi and others** reported in **(2005) 6 SCC 98**, the Hon'ble Supreme Court made the following observation:

" 7.....The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable

for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible."

In the instant case, the applicant is not aggrieved by the direction issued in the judgment or order but instead is aggrieved by a separate cause of action. The order dated 06.07.2015 does not prescribe any definite measure to be taken, the choice of personal hearing adopted by the alleged contemnor to reach a settlement forming basis for the contempt constitutes to be a separate legal claim.

15. In such view, the contempt application being WPCRC No. 89 of 2018 would not be maintainable as no case of contempt has been made out. Hence, the contempt application lacks merit and the same is dismissed, all pending applications are accordingly disposed of.

16. There will be no order as to costs.

17. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
06 .09.2023
PA (BS)