

AD-29
Ct No.09
16.03.2023
TN

CPAN 108 of 2023
In
WPA No. 8517 of 2022 (not in file)

Swapan Kumar Maity
Vs.
Mr. Subhasis Pramanik and another

Mr. Arik Banerjee,
Mr. Pujon Chatterjee,
Mr. Altamash Alim
.... for the petitioner/applicant

Ms. Chama Mookherjee,
Ms. Debdooti Dutta
.... for the alleged contemnors

Learned counsel for the petitioner contends that the alleged contemnors, in gross violation of the order of this court, continue to demolish a portion of the petitioner's property.

It is submitted, by placing reliance on the document annexed at page-57 of the contempt application, that a complaint was lodged with the Officer-in-Charge, Sutahata Police Station, Sutahata, Purba Medinipur by the petitioner in that regard. Subsequently police cases have also been initiated in such connection.

It is thus argued that the alleged contemnors are guilty of contempt, having deliberately flouted the order of stay passed by this court on the operation of the notice initially granted by them.

Learned counsel appearing for the alleged contemnors hands over a server copy of an order dated January 24, 2023 of a coordinate Bench passed in the writ petition and connected applications. The same is kept on record. It is reflected from the said order that the present petitioner had sought to make out urgency which was belied, as per the learned Single Judge's order, by the statement and instructions produced on behalf of the State.

It was recorded in the said order dated January 24, 2023 that the matter had been mentioned by learned counsel for the petitioner with photographs alleging that the State was taking steps in violation of the interim order passed by this court on July 29, 2022 and the assurance given by counsel appearing for the State on December 23, 2022.

It was further recorded that the instructions of the State showed that the work in progress is in an area which is free from unauthorized encroachment and further that the petitioner's shop is at a considerable distance from the place where the work is presently continuing. It was also noted that the petitioner is creating hindrance to the continuing work undertaken by the State.

The order of the learned Single Judge dated January 24, 2023 went on to record that learned

counsel for the State had placed a notice issued under Section 10(1) of the West Bengal Highway Act, 1964 (for short “the 1964 Act”) as well as a request to the Executive Magistrate, Haldia Sub-Division in terms of the provisions of the 1964 Act.

On such premise, the learned Single Judge was pleased to observe that no urgency or requirement to give further orders over and above what the petitioner was already enjoying was required.

It is seen from the contempt application, as rightly pointed out by learned counsel for the alleged contemnors, that the said co-ordinate Bench order ought to have been brought to the notice of this court.

When the order dated March 02, 2023 was passed in connection with the present contempt, the order of the coordinate Bench was already in existence. As such, there was no reason why the said order was not placed before this court when moving the contempt application on March 02, 2023.

That apart, since *prima facie* a subsequent notice under Section 10(1) of the 1964 Act was placed before the coordinate Bench by the alleged contemnors and it is submitted that the demolition work-in-question is continuing on the basis of such notice, it cannot be said that the notice, on the premise of which the writ petition had been made and

the order was passed by this court, has been acted upon at all.

Despite the operation of the impugned notice in the writ petition having been stayed, even if the said stay order is still in force, it cannot preclude the respondents/alleged contemnors from initiating fresh action on the basis of a subsequent notice, where a specific provision of law was mentioned.

Moreover, it is seen from the contempt application that although the allegations in the complaint before the police, annexed at page-57 of the contempt application, were all against local Panchayat members and other political people, not a single line was dedicated in the complaint against the present alleged contemnors, who are the functionaries of the authorities and Executive Engineers.

As such, it does not transpire from the documents annexed to the contempt application, that there was any violation at any point of time by the present alleged contemnors.

It, thus, seems that the present contempt application has merely been filed to stall the demolition proceeding which is going on at the behest of the alleged contemnors. Such an attempt by the petitioner to mislead the court on the allegation of contempt cannot be sustained.

Accordingly, CPAN 108 of 2023 is dismissed without any order as to costs.

It is, however, made clear that nothing in this order shall preclude the petitioner from challenging the veracity and legality of the subsequent demolition action being taken by the alleged contemnors on the basis of a subsequent notice before the appropriate forum(s) and/or any criminal proceeding which may be continuing between the parties. In the event such cases are filed or taken up for hearing, it will be open to the respective forum(s) to decide the same in accordance with law independently without being influenced in any manner by any of the observations made herein.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)