

IN THE HIGH COURT AT CALCUTTA

SPECIAL CIVIL JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

C.P.A.N 715 of 2020

In

WPA 8638 of 2017

Reserved on : 29.09.2023

Pronounced on: 08.12.2023

Susanta Ghosh

...Applicant

-Vs-

Pralay Chakraborty & Ors.

...Contemnors

Present:-

Mr. Arijit Dey

... for the Applicant

Mr. Somnath Roy

....for the Contemnors

Rajarshi Bharadwaj, J:

1. The applicant/petitioner is seeking contempt proceedings against the alleged contemnor for violation of order dated 01.08.2019 passed by the Learned Single Judge in W.P No. 8638 (W) of 2017 (Susanta Ghosh-versus-Bhadreswar Municipality & ors)

2. The applicant in the present case is one Susanta Ghosh, carrying on business as the supplier of building materials under the name of M/s Ghosh Builders. The alleged contemnor is Chairperson, Board of Administrator,

Bhadreswar Municipality. The application is regarding the rejection of claim of the applicant for payment of balance amount towards the supply of building materials utilised for construction of roads and making provisions of sewerage facility and water supply in Sarada Bustee, Hooghly to implement the Scheme of Urban Development and Slum Clearance Programme under Swarna Jayanti Sahari Rojgar Yojna for the years 2004-2005/2005-2006.

3. Before considering the submissions made by the Learned Counsel appearing on behalf of respective parties, the facts of the case are that the applicant moved a writ petition bearing W.P No. 8638(W) of 2017 which the Learned Single Judge was pleased to dispose of by solemn order dated 01.08.2019. The operative part of the order is extracted hereinbelow for convenience:

“The respondents are directed to decide the matter afresh without being influenced by anything contained in any of the orders set aside by this Court including the impugned order and to ignore the observations made therein about the alleged disparities of the nature of challans and bills submitted and to specifically deal with the request of the petitioner to hold a fresh actual inspection on the basis of the materials supplied by the petitioner and utilised by the respondent No. 1 and after fully dealing with the contentions raised in the written notes of argument. This shall not prevent the writ petitioner from being paid the amount of Rs.19855.35 which is admitted to be payable to him by the respondent No. 1 under the impugned order which I have set aside; but the same shall be subject to the final result of the decision taken after completion of the exercise as I have directed above. I piously hope that the entire exercise shall be completed within a period of one month from the date of communication of this order after giving all reasonable opportunities of being heard to the petitioner. Needless to mention all consequential reliefs shall be granted to the writ petitioner in case his representation is allowed without any

further order of this Court within a further period of seven days from the date of decision...The respondent No. 1 shall consider its own records including the extracts from the inspection book including the measurement book and the exact cost of works."

4. In pursuance to the order dated 01.08.2019, a hearing was provided to the applicant on 16.10.2019 wherein an inspection of the constructed place was requested by him. The spot measurement of the constructed place was made on 18.01.2020 and on 29.02.2020. In pursuance of such inspection, and the order of the alleged contemnor dated 09.08.2023 entailed that:

"The Petitioner (Susanta Ghosh) have no dues from the Municipality till date in respect to the raw materials supplied by him in the entire KUPS project for the years 2004-2005/2005-2006 from the CDS - 1 as well as from The Bhadreswar Municipality."

5. Subsequently, contempt application being CPAN No. 715 of 2020 was filed alleging intentional and wilful violation of said order dated 01.08.2019 for no necessary follow up action by the alleged contemnor by rejecting the claim of the applicant for an amount of Rs.14,11,826.85/- (Fourteen Lakhs Eleven Thousand Eight Hundred Twenty Six Eighty Five Paisa).

6. The Learned Counsel for the applicant presents that the contemnor acted in wilful, deliberate and contumacious violation of the order dated 01.08.2019 by not taking appropriate steps for ascertaining the justified outstanding amount for supplying raw materials for the construction of 32 (thirty two) latrines, drains, brick pavements, one guard wall at Roypara and Block D Community Centre not reflected in the measurement book of the municipality without sufficient reason.

7. It is further stated that for ascertaining the actual quantity of building materials supplied and accurate computation of dues, the applicant had submitted a list of construction work required to be measured and checked

on the day of inspection which was not taken into consideration by the contemnor. The engineers had refused to examine drains constructed on B Block and D Block and did not take measurements of 54 (fifty-four) out of 144 (hundred and forty-four) latrines duly completed. Inspection was conducted in respect of certain construction works only on two dates i.e. 18.01.2020 and 29.02.2020 and the request for further examination was denied by the contemnor. The decision of the contemnor has been arrived on the basis of partial inspection of areas without tallying with the measurement book kept with the Municipality.

8. The Learned Counsel for the alleged contemnor submits that that there has been no error in understanding the true spirit behind the order/judgment dated 01.08.2019 passed by the Hon'ble Court and that no wilful or deliberate disobedience of the order/judgment was committed by him. Spot measurement of constructed places was given to the applicant as good gesture as the order dated 01.08.2019 did not entail such instruction.

9. It is further submitted that the decision against the applicant has been passed considering proper inspection of premises, inspection books and measurement books lying with the Municipality in regard to the actual and proper calculation of the measurement of the places for work undertaken by the applicant from March 2005 to October 2005. As stated in relevant records of the Community Development Society -I (CDS-I), all the dues of the applicant were cleared by paying amount of Rs.30,91,855.35/- (Thirty Lakhs Ninety-One Thousand Eight Hundred Fifty-Five Thirty-Five Paisa). The applicant by not supplying bills, challans and invoices has failed to satisfy the contemnor that he is entitled to Rs.14,11,826.85/- (Fourteen Lakhs Eleven Thousand Eight Hundred Twenty-Six Eighty-Five Paisa).

10. The claim of the applicant cannot be tallied with the final joint measurement of the spot of the constructed places as some other suppliers

had also supplied building materials for construction works as reflected in CDS-I and relevant measurement books. Though the applicant indicated during spot measurement that he had supplied materials to other constructed places, no documents were placed by him to substantiate his claim. Further measurement of the spot was delayed because of the lockdown due to COVID-19, which was purely beyond the control of the Municipality.

11. Heard learned counsel for the respective parties and on perusal of the records, there is no such material to the satisfaction of the judicial conscience of this court so as to hold that there had been any wilful disobedience or intentional laches on the part of the present contemnors. 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 01.08.2019 does not prescribe any definite measure to be taken, the decision of measurement and inspection of the construction works as well as the manner of search and examination adopted by the alleged contemnor to reach order dated 09.08.2023 forming basis for the contempt constitutes to be a separate legal claim.

12. It is a settled principle of law that while dealing with an application for contempt, in the court cannot enlarge its scope and examine matters which are not part of its remit, i.e. extent of the direction or orders contained in the judgement of which contempt being alleged. The court is not concerned with as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. If an order does not prescribe a clear-cut course of action and is open to a variety of interpretations, 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. In the case of **Prithawi Nath Ram v. State of Jharkhand and Others** reported in **(2004) 7 SCC 261** the Supreme Court held that:

“8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. 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 direction 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.”

14. In the case of **Sushila Raje Holkar V Anil Kak** reported in **2008 14 SCC 392** , Hon’ble Supreme Court made the following observations:

“23. A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has wilfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefore requires strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration. Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor. A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and

caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature.”

In the instant case, the Municipality has relied upon the quantity of building materials supplied by the applicant reflected in the measurement book and abstract cost of the work contained in the CDS-I records and has cleared the outstanding dues of the applicant. The lack of relevant documents showing that materials were utilised for the setting up of more structures indicate latches on part of the applicant.

15. In such view, the contempt application being CPAN 715 of 2020 would not be maintainable as no case of contempt has been made out. Hence, the contempt application lacks merit and the same is dismissed accordingly.

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

08.12.2023

PA (BS)