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Cont.P.No.433 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Cont.P.No.433 of 2023

Kannagi Nagar Kudisal Pagudi Matru
Varia Cable T.V. Operators Welfare Society
Registered No.476/2009
Rep. by its Secretary Mr.S.Ramalingam
Thuraipakkam, Chennai – 600 097.

.. Petitioner

VS

1. M.Govinda Rao IAS
The Tamil Nadu Slum Clearance Board
Managing Director
No.5, Kamarajar Salai
Chepauk, Chennai – 5.

2. K.Sivasankaran
The Executive Engineer, Special Zone
Tamil Nadu Slum Clearance Board
T.Nagar, Chennai – 600 017.
Respondents

..

Prayer : Contempt Petition under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for the willful violation of the order this Hon'ble Court dated 02.03.2011 and made in W.P.No.2310 of 2010.

For Petitioner : Mr.G.Ravi Sankar

For Respondent : Mrs.G.Thilagavathy
Senior Counsel



Cont.P.No.433 of 2023

for Mr.B.Balagi

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ORDER

The contempt petition is filed to punish the respondents for their willful disobedience of the orders passed by this Court on 02.03.2011 in W.P.No.2310 of 2010. The operative portion of the order by this Court reads as under:

“8. The contention of the learned counsel for the petitioner, is that fee or tax cannot be collected by authority in the absence of any provisions in this regard.

9. There is force in the contention of the learned counsel for the petitioner. The Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 under which the Tamil Nadu Slum Clearance Board is constituted, does not authorise the Board to impose any tax or fee.

10. In the absence of authority of law, it is not open to the respondent Board to prescribe fee, to be collected from the persons. The Board can only recover rent and other charges from the occupants under the allotment letter or contract entered into between the parties. The impugned order on the fact of it, is without jurisdiction. The impugned order is



Cont.P.No.433 of 2023

quashed, by accepting the writ petition.”

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2. The learned counsel for the petitioner mainly contended that the respondents, even after the orders passed by this Court, demanded charges from the petitioner Society, who is the cable TV operators in Kannagi Nagar. When this Court subsequently held that in the absence of authority of law, it is not open to the respondent Board to prescribe fee to be collected from the persons, the respondents are demanding such fees from the petitioner.

3. The learned counsel for the petitioner drew the attention of this Court with reference to paragraph 9 of the order, wherein, this Court has held that, “there is force in the condition of the learned counsel for the petitioner. The Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 under which the Tamil Nadu Slum Clearance Board is constituted, does not authorize the Board to impose any tax or fees”. Relying on the above portion of the order, the learned counsel for the petitioner reiterated that the authorities, at no circumstances, is empowered to collect any such fees from the petitioner and therefore, they have committed contempt of Court willfully.



Cont.P.No.433 of 2023

WEB COPY

4. In support of the above contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of *Jhareswar Prasad Paul & anr vs Tarak nath Gaguly & ors* in *Appeal (crl.) No.170 of 1996*, wherein, the Apex Court held that the contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the Court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The Court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The Court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained.

5. Relying on the said judgment, the learned counsel for the petitioner states that when this Court quashed the impugned order demanding fee from the petitioner, there is no reason whatsoever, to demand fees thereafter and thus, the action of the respondents are contemptuous and they are liable to be punished.



Cont.P.No.433 of 2023

WEB COPY

6. The learned Senior Counsel appearing on behalf of the respondent Board opposed the said contention by stating that an amendment came into force and Section 4B was substituted by Act 21 of 2011 with effect from 25.10.2011. As per Section 4B, the authorities are empowered to recover any expenses in respect of the maintenance of the cables and their works undertaken. Sub-section (6) of Section 4B enumerates that “any permission granted by a public authority under this Section may be given up to such reasonable condition as that public authority deems fit to impose as to the payment of any expenses or time or mode of execution of any work, or as to any other matter connected with or related to any work undertaken by the cable operator in exercise of those rights”. Relying on the above mentioned provision, the learned Senior Counsel for the respondents reiterated that the amendment came into force subsequently after the judgment, which is the subject matter of the present contempt petition and therefore, there is no impediment for the authorities to charge and demand fee after the amendment which cannot be construed as contempt.

7. This Court is of the considered opinion that the proposition



Cont.P.No.433 of 2023

relied on by the petitioner is not in dispute. The Courts are expected to confine with reference to the directions and orders passed while exercising the contempt jurisdiction. Therefore, the respondents shall not recover any fee in respect of the impugned order. However, there is no bar for the respondent to demand charges after the amendment, which came into force with effect from 25.10.2011. When this Court has emphatically held at the time of passing of the order in the writ petition., the respondent has no authority from the provision of the Act. However, subsequently, Section 4B was necessarily substituted in the Cable Television Networks (Regulation) Act, 1995 and by virtue of the amended provisions, the authorities are empowered to demand charges / fees. Thus, the order, no doubt, is to be confined with reference to the impugned order and amendments made in enactment would not preclude the authorities from demanding or collecting fees or charges. Thus, the order passed by this Court is with reference to the impugned order and relating to the charges sought to be demanded prior to the passing of the order and after amendment, the Board is empowered to collect charges under Section 4B of the Act, which came into effect from 25.10.2011.

8. The learned counsel for the petitioner further contended that the



Cont.P.No.433 of 2023

amended Section 4B is only relating to the execution of any work and therefore, the fees or charges cannot be collected. Clause (6) of the provision indicates that “any permission granted by a public authority under this Section may be given subject to such reasonable conditions”. Thus, even while granting permission, the authorities are empowered to impose certain reasonable conditions. Clause (6) further contemplates “public authorities thinks fit to impose as to the payment of any expenses or time or mode of execution of any work”. Therefore, the provision provides scope for imposing charges, fees, etc., under the cover of “any expenses”. It is not necessary that such expenses must only relate to execution of work. It relates to any kind of expenses other than execution of any work and its meaning cannot be restored only with reference to the execution of work and the statute must be interpreted pragmatically so as to ensure that the purpose and the object is met out.

9. Thus, the scope of Sub-section (6) to the amended Section 4B cannot be restored only with reference to the execution of any work and it includes any expenses other than the execution of any work and therefore, the authorities are empowered and the authorities of law has been



Cont.P.No.433 of 2023

provided by virtue of the amendment made by Act 21 of 2011 dated 25.10.2011 which came into force after the judgment, which is the subject matter of the present contempt petition. Thus the respondents have not committed any contempt of Court and accordingly, the contempt petition stands dismissed.

21.03.2023

Index : Yes/No
Neutral Citation: Yes/No

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WEB COPY



Cont.P.No.433 of 2023

S.M.SUBRAMANIAM, J.

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Cont.P.No.433 of 2023

21.03.2023