



Cont.P(MD).No.30 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :17.11.2022

PRONOUNCED ON : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

Cont.Petition (MD).No.30 of 2015

in

W.P(MD).No.2604 of 2014

N.Sheela Selvi

....Petitioner

Vs

1.V.P.Thandapani
The Commissioner
Tiruchirappalli City Corporation
Trichy – 1

2.Anbzhagan
Sub Divisional Magistrate Cum Revenue Divisional Officer
Tiruchirappalli

3.Nandhalala @ Nedunchezian

4.The Director of Town and Country Planning
Opposite to LIC
Chengalvarayan Building, 4th Floor 807,
Anna Salai, Chennai 600 002

...Contemnors/ Respondents

(Respondent Nos. 2 & 3 suo motu impleaded vide
Court order dated 21.10.2019)

(Respondent No.4 suo motu impleaded as per Court
order dated 04.02.2020)



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Prayer: This Contempt Petition filed under Section 11 of the Contempt of Courts Act, to summon the respondent and deal with him as per law for having willfully disobeyed the order dated 18th February 2014 in W.P(MD).No.2604/2014 passed by this Court.

Party-in-person	: Ms.N.Sheela Selvi
For R1	: Mr.R.Baskaran Standing Counsel
For R2 & R4	: Mr.A.Baskaran Additional Government Pleader
For R3	: Mr.I.Robert Chandrakumar

ORDER

The contempt petitioner had filed W.P(MD).No.2604 of 2014. The said writ petition was disposed of on 18.02.2014. Alleging violation of the order in the writ petition, the petitioner had filed the contempt petition No.30 of 2015. The said contempt petition was closed by this Court on 16.04.2015. The contempt petitioner herein had filed Sub Application No.138 of 2015 in order to revive the contempt petition. The said revival application was rejected by this Court by an order dated 01.08.2019. Challenging the same, the petitioner had filed contempt appeal No.11 of 2019.



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2.The Hon'ble Division Bench was pleased to allow the contempt appeal and restored the contempt petition and directed that the contempt petition to be heard and disposed of on merits and in accordance with law. Hence, the contempt petition is reheard on merits.

Factual Background:

3.The contempt petitioner is the owner of Plot Nos. 2 and 3 in Singarayar Nagar approved lay out. According to the petitioner, the said plot numbers fall within the T.S.Nos.56, 57 and 59/2 in Trichy Corporation limit. The contempt petitioner had further contended that these plots were originally forming part of Prattiur Village, Trichy District. While they were part of Prattiur Village, Trichy District, these two plots were falling under old Survey Nos.162/1A and New Survey No.29/1A. After the panchayat got merged with the corporation, the plot numbers fall within T.S.Nos.56, 57 and 59/2. These two plot numbers were part of an approved lay out under the name and style and Singarayar Nagar lay out in LP(TT).No.29 of 1985.

4.It is the further contention of the petitioner that immediately to the southern of her plot No.3, there is a 30 feet road. The said 30 feet road has been assigned with T.S.No.59/1 during the town survey proceedings. The said 30 feet road was not part of Singarayar Nagar lay out. On the other hand, the said 30 feet road was part of Vishwas Nagar lay out which is an approved lay out in LP(TT).No.22 of 1979. Immediately to the south of 30 feet road,



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T.S.No.60 is located which has been purchased by the private respondent herein. The said private respondent had encroached upon the 30 feet road and put up construction. In view of the said encroachment made by the private respondent, the corporation officials, without removing the encroachment pushed the 30 feet road further northwards into the private property of the contempt petitioner and had laid a road. Therefore, the private property of the contempt petitioner in plot No.3 has been encroached upon by the Corporation and a Thar road has been laid. Instead of removing the encroachment made by the private respondent, the corporation officials are threatening the contempt petitioner.

5.In October 2009, the contempt petitioner herein had laid a complaint to the District Collector about the encroachment made by the private respondent and also laying of Thar road in the private property of the petitioner. On 26.07.2010, a report was submitted by the Revenue Divisional Officer, Trichy to the District Collector. On 22.05.2012, the petitioner has lodged a complaint to the Inspector of Police, Cantonment Police Station, Trichy as against the private respondent and others alleging that they have demolished the compound wall put up by the writ petitioner and have also damaged the electric pole. Based upon the said complaint, an F.I.R was registered in Crime No.434 of 2012. The Vishwas Nagar Welfare Association has also lodged a complaint on 22.05.2012 making an allegation as against



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the writ petitioner that she is attempting to encroach upon the 30 feet pathway.

6.In view of the dispute regarding the 30 feet pathway, the Inspector of Police, Cantonment Police Station had referred the issue to the Trichy Sub Divisional Magistrate Cum Revenue Divisional Officer. The Revenue Divisional Officer had directed a survey to be conducted by the Town Surveyor. After survey, the RDO had arrived at a finding that the private respondent has encroached upon the 4 $\frac{3}{4}$ feet into 30 feet road and the corporation officials have laid a road in the private property of the writ petitioner. Based upon the said findings, he passed an order on 17.10.2013 directing the Corporation to shift the road into the Corporation land and for removal of the encroachment made by the private respondent.

7.The contempt petitioner had filed W.P(MD).No.2604 of 2014 to implement the order of Revenue Divisional Officer dated 17.10.2013. The writ petition was disposed on 18.02.2014 recording the fact that already the criminal investigation is in progress and no further direction need to be issued except to state that the police will initiate appropriate action in respect of Crime No.48 of 2014. The petitioner had filed the present contempt petition No.30 of 2015 alleging violation of the said order passed by this Court. This Court by an order dated 16.04.2015, closed the contempt petition on the



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ground that there is no positive direction as against the Trichy Corporation either for removal of encroachment or for shifting of the road. Thereafter, the petitioner had filed Sub Application No.138 of 2019 to revive the contempt petition. By way of a detailed order dated 01.08.2019, this Court rejected the said application again reiterating the fact that there is no positive direction as against the Corporation warranting interference in contempt proceedings.

8.The petitioner had challenged the order passed in Sub Application No.138 of 2019 dated 01.08.2019 by way of Contempt Appeal No.11 of 2019. The Hon'ble Division Bench was pleased to allow the Contempt Appeal by an order dated 21.10.2019. The Hon'ble Division Bench was pleased to observe that the full facts were not placed before the Court properly. The order of RDO dated 17.10.2013 remains intact and Crl.OP(MD).No.3751 of 2014 filed by the private respondent has been closed on 26.09.2018. The Hon'ble Division Bench further observed that when the order of RDO remains intact and it has to be ascertained as to what steps have been taken by the Revenue authorities and the Corporation to implement the same. Based upon the said finding, the Hon'ble Division Bench was pleased to set aside the order passed in the Contempt Petition and in the Revival Application and restored the contempt petition to be heard afresh on merits and in accordance with law.



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9.The order of Revenue Divisional Officer dated 17.10.2013 was challenged by the private respondent in CrI.O.P(MD).No.3751 of 2014. While the said application was pending, this Court was pleased to appoint Senior Advocate Smt.N.Krishnaveni as Advocate Commissioner to inspect the property and to file a report by an order dated 05.08.2015. The report was filed by the learned Advocate Commissioner on 05.10.2015. While the CrI.OP(MD).No.3751 of 2014 came up for hearing, the learned Additional Public Prosecutor submitted that the proceedings under Section 107 Cr.P.C have also been closed as against the private respondent. Based upon the said submission, the Criminal Original Petition was closed on 26.09.2018.

10.It is pertinent to point out that the Contempt Petition No.30 of 2015 was closed on 16.04.2015 and the CrI.OP(MD).No.3751 of 2014 was closed on 26.09.2018.

Contentions of the Contempt Petitioner:

11.The contempt petitioner had contended that she had lodged a complaint before the District Collector in October-2009 and the report was forwarded by the Revenue Divisional Officer to the District Collector on 26.07.2010. An F.I.R was registered at her instance in Crime No.434 of 2012 on 22.05.2012. The Inspector of Police, Cantonment Police Station, Trichy



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District has referred the issue to the Revenue Divisional Officer, Trichy.

Thereafter, at the instance of RDO, Trichy, a survey was conducted and it was found out that T.S.No.59 has been sub-divided into T.S.Nos.59/1 and 59/2. T.S.No.59/1 was classified as street and T.S.No.59/2 was recorded in the name of the contempt petitioner.

12.The Revenue Divisional Officer has specifically found that the private respondent has encroached upon 30 feet pathway up to the extent of $4\frac{3}{4}$ feet northwards and $1\frac{3}{4}$ feet on the western side. The Tahsildhar has also specifically found that the encroachment made by the private respondent is on the 30 feet road. In order to avoid removal of the said encroachment, the Corporation Officials have changed the alignment of the road, pushing it further northwards, into the private properties of the petitioner and in the result, a road has been laid in a portion of plot No.3 which is the private patta land of the contempt petitioner. The petitioner had further contended that the Revenue Divisional Officer had issued two directions, one to shift the road laid into T.S.No.59/1 and for removal of encroachment made by the fourth respondent herein. Both these orders have not been complied with.

13.The contempt petitioner had further submitted that 30 feet road is part of Vishwas Nagar which is an approved in LP(TT).No.22 of 1979. Therefore, the said road can never be in the property covered under Singarayar Nagar layout which was approved by LP(TT).No.29 of 1985. She



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had further contended that 30 feet road falls in old Survey No.162/1C relatable to new Survey No.29/1C. However, the Corporation has laid a road in the private properties of the petitioner bearing old Survey No.162/1A and new Survey No.29/1A. The petitioner had further contended that 30 feet road should end at A9, but it extends only to A11 and the alignment of the road is not in accordance with the approved layout plan. The petitioner had further contended that after panchayat got merged with the Trichy Corporation, her plot in Plot Nos.2 and 3 fall within T.S.Nos.56, 57 and 59/2. The road lies only T.S.No.59/1. However, the Corporation Officials are attempting to extent the road into T.S.No.59/2 also so as to avoid removal of encroachment made by the owner on the southern side of 30 feet road namely the private respondent herein. Therefore, according to the petitioner, the order of RDO dated 17.10.2013 has not been complied with by the Corporation Official. Shifting of the road into T.S.No.59/1 and removal of encroachment made by the private respondent into 30 feet road have to be carried out only by Trichy Corporation. Both these acts have not been done by the Corporation. The contempt petition as against the officials of the Corporation is maintainable. Hence, the contempt petitioner prayed for allowing the contempt petition and to punish the Corporation Officials for violation of the orders of this Court.



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Contentions of the learned Standing Counsel appearing for the Contemnor:

14.The learned Standing Counsel appearing for the Trichy Corporation had contended that the Corporation was not a party to the RDO proceedings dated 17.10.2013. That apart, as against the order of RDO, the Corporation as a third party has filed an appeal before the District Collector and the same is pending.

15.The learned Standing Counsel had further contended that after the order of RDO, the encroachment made by the private respondents into 30 feet has been demolished and removed. Hence, as on today, there is no encroachment on the side of the private respondents. Therefore, one of the orders passed by the RDO has already been complied with by the Corporation Officials. If the contempt petitioner has got any doubt about removal of encroachment made by the private respondents herein, they are ready for any further survey.

16.The learned Standing Counsel had further contended that according to the contempt petitioner, her plot Nos.2 and 3 fall within Old Suvey.No. 162/1A and new T.S.No.29/1A. The contempt petitioner had further contended that these old T.S. Numbers are equivalent to T.S.Nos.56, 57 and T.S.No.59/2. When the Panchayat got merged with Trichy Corporation, the entire T.S.No.59 was classified as a street. The Tahsildhar by an order dated



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09.03.2012, has sub-divided T.S.No.59 into T.S.No.59/1 and T.S.No.59/2.

After sub-division, T.S.No.59/2 has been declared to be the property of the contempt petitioner and T.S.No.59/1 has been declared to be a street. This order of the Tahsildhar, without putting on notice, the Trichy Corporation is not valid. Only based upon this sub-division, the petitioner is making a claim over T.S.No.59/2.

17.The learned Standing Counsel had further contended that pending CrI.OP(MD).No.3751 of 2014, this Court was pleased to appoint a Senior Advocate as Advocate Commissioner to note down the physical features of the property. The Advocate Commissioner has filed her report on 05.10.2015. As per the said report, one Subramani is the owner of the property which is located north of Plot No.2. The said Subramani has encroached upon the northern portion of Plot No.2. In view of the said encroachment, the contempt petitioner's property is having a deficit extent. The contempt petitioner is attempting to cover the said deficit extent by making a claim over T.S.No.59 which has been classified as a road. The Advocate Commissioner has specifically found that the northern portion of Plot No.2 of the contempt petitioner has been encroached upon by the said Subramani. The Commissioner has also found that the road has not been laid in the private property of the contempt petitioner. Hence, the contention of the contempt



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petitioner that the road has been laid in her private property is not factually correct.

18.The learned Standing Counsel had further contended that after remand, when the contempt petition was pending, this Court was pleased to call for a report from the Commissioner, Trichy Corporation by an order dated 01.04.2022. An Inspection was conducted in the presence of the contempt petitioner and others on 08.04.2022 and a report was filed on 19.04.2022. Even as per the said report, the road has not been laid in the private property but laid only within the Corporation land. The report further states that the petitioner has lost some extent of her property by way of an encroachment made by one Subramani whose property is located to the north of Plot No.2.

19.The learned Standing Counsel had further contended that this Court again passed an order on 20.09.2022 for conducting a fresh survey in order to find out whether road has been laid in T.S.No.162/1C(New No.29/1C) or in the private property of the petitioner in old Survey No.162/1A (New No. 29/1A). Though a notice was issued to the contempt petitioner to co-operate for the survey, she had refused to co-operate. All the previous surveys have been conducted only based upon Plot numbers and Town survey numbers.

However, when the layout was approved originally in the year 1979 and



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1985, the road portion was marked, not on the basis of the Town Survey Number, but on the basis of the old survey numbers. Hence, an attempt was made to resurvey the property based upon the old survey number. However, the petitioner has not co-operated for the same and hence, the Corporation is not in a position to arrive at a finding whether the road has been laid in the private property of the writ petitioner or in the place which has been earmarked for road in the layout plan.

20.The learned Standing Counsel had further contended that there is no specific direction as against the Corporation by this Court in the order dated 18.02.2014 in W.P(MD).No.2604 of 2014. Hence, this petition is not at all maintainable as against the Corporation. He had further contended that since there are serious factual disputes with regard to survey numbers and correlation of survey numbers, unless a proper survey is conducted, the allegation made by the writ petitioner cannot be ascertained. In such view of the matter, the contempt jurisdiction of this Court may not be invoked as against the Corporation. In case, if the petitioner co-operates for a re-survey based upon the old survey numbers and the Corporation finds that the road has been laid in the private property of the writ petitioner, certainly they would shift the road. Hence, he prayed for dismissal of the contempt petition.

21.I have heard the learned counsel appearing on either side and perused the materials available on record.



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22. Normally in contempt proceedings, this Court would consider only the issue whether there is any willful disobedience of the order passed by this Court. However, in the present case, originally the contempt petition was closed by this Court and the application to revive the contempt petition has also been rejected. However, the Hon'ble Division Bench was pleased to allow the contempt appeal and has directed the contempt Court to consider the matter afresh on merits and in accordance with law in the light of the certain observations made in the contempt appeal. Hence, this Court is constrained to venture into the factual dispute that lead to the filing of the contempt petition.

23. According to the contempt petitioner, she is the owner of Plot Nos.2 and 3 fall within old Survey No.162/1A and new Survey No.29/1A, Pirattiyur Village, Trichy District. According to the petitioner, the said plots were gifted to her by her mother in Document No.3812 of 2002. However, the said document has not been placed on record to find out, the survey numbers that have been gifted under the said document.

24. It is an admitted fact that Vishwas Nagar layout was created by way of an approved layout in LP(TT).No.22 of 1979. As per the said approved layout, 30 feet road was shown as the northern most boundary. Another layout was created in the name of Singarayar Nagar layout under approved layout No.LP(TT).No.28 of 1985. In the said Singarayar Nagar layout, the



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contempt petitioner's plot Nos.2 and 3 are located. The southern boundary of Plot No.3 of the contempt petitioner is 30 feet road which forms part of Vishwas Nagar layout. Therefore, it is clear that there is a 30 feet road in between Plot No.3 of the contempt petitioner and Plot No.60 of the private respondent. The main contention of the petitioner is that 30 feet road can be laid only within the area earmarked for Vishwas Nagar layout and it could never extent into Singarayar Nagar layout thereby encroaching upon the private properties of the writ petitioner.

25.According to the writ petitioner, Singarayar Nagar layout is in old survey No.162/1A relatable to new survey No.29/1A in Pirattiyur Village and no road can be laid in these survey numbers. On the other hand, 30 feet road lies only in old Survey No.162/1C relatable to new Survey No.29/1C in Vishwas Nagar layout. The private respondent has purchased Plot No.60 in the Vishwas Nagar layout and he has encroached upon the road portion on his northern side. In order to help the said encroacher, the Corporation Officials have moved the road further northwards into the private property falling under another layout (Singarayar Nagar layout) is the allegation of the contempt petitioner.

26.From the above said allegation and counter allegation, it is clear that 30 feet road should be formed only in old survey No.162/1C relatable to new survey No.29/1C which falls within Vishwas Nagar layout approved under



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LP(TT).No.22 of 1979. When the Pirattiyur Village got merged with the Corporation, town survey numbers were assigned to the village survey number. At the time of assigning town survey number, this 30 feet road was assigned T.S.No.59.

27.A perusal of the town survey number records produced by the corporation officials will clearly establish that the entire T.S.No.59 was shown as a road. The contempt petitioner has approached the Tahsildhar for grant of patta for Plot Nos. 2 and 3 in Singarayar Nagar layout. When the Tahsildhar found that the extent is less than what is found in the document, the Tahsildhar chose to sub-divide T.S.No.59 into T.S.Nos.59/1 and 59/2. Thereafter, the Tahsildhar has classified as T.S.No.59/2 as the private property of the contempt petitioner and T.S.No.59/1 as the road. By creating these subdivisions in T.S.No.59, the contempt petitioner was able to secure the entire extent as per her document. When the entire T.S.No.59 was classified as road in the town survey register by the corporation officials, it is not known how the revenue officials namely the Tahsildhar has subdivided T.S.No.59 and allotted a portion of the road to the contempt petitioner. It is also not placed on record whether the Trichy Corporation was issued with any notice before effecting the subdivision to T.S.No.59 which was classified as a road. This subdivision is the root cause for the entire problem. The RDO order dated 17.10.2013 is based upon this subdivision.



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28. When the RDO order was challenged by the private respondents in Crl.OP(MD).No.3751 of 2014, this Court was pleased to appoint a Senior Advocate to inspect the property and file a report. Accordingly, a report was filed on 05.10.2015. A perusal of the report clearly indicates that the contempt petitioner has lost some extent of land due to encroachment made by northern side owner. The 30 feet road has been laid by the Corporation only in the Corporation land and not in the private property of the writ petitioner. The Commissioner has further found that the encroachment has been made by the private respondent into 30 feet road up to an extent of 4 feet.

29. After remand, while the contempt petition was pending, this Court was passed an order on 01.09.2022 calling for a report from the Corporation Commissioner. The officials have inspected the plot, conducted a survey in the presence of the contempt petitioner and they have filed a report along with photographs. As per the said report, the contempt petitioner has lost some extent due to encroachment on the northern side of her plot No.2 and she is attempting to adjust some portion by making a claim over the road. based upon the subdivision order passed by the Tahsildhar on 09.03.2005. The contempt petitioner has filed her objection both to the Advocate Commissioner report as well as the report filed by the Corporation officials.



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30.The above narrated facts would clearly establish that the petitioner is having lesser extent than what is found in her document and the loss in the said extent, has to be located only after a survey based upon the old survey numbers and not based upon the town survey records. After remand, this Court heard the contempt petitioner and the learned Standing Counsel in length and thereafter, passed an order on 20.09.2022 directing the Additional Director of Survey of Land Records, Trichy to conduct the survey with the assistance of his subordinates to find out whether the road has been laid by the Corporation in old survey No.162/C or it has been laid in the private property of the petitioner in old Survey No.162/1A.

31.Though the Corporation Officials issued notice to the contempt petitioner to appear for survey, she has refused to attend the survey citing certain reasons. The matter was again listed for hearing on 11.10.2022. The contempt petitioner had submitted that conducting a survey is unknown to contempt proceedings and hence, she is not willing for the said survey. The said submissions were recorded and the parties were directed to place their oral and written submissions so that the orders could be passed on merits. Thereafter, based upon the oral and written submission filed on either side, the present contempt petition is being disposed of on merits.

32.The petitioner had laid a criminal complaint before the Cantonment Police Station as against the private respondent and an F.I.R was registered in



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Crime No.434 of 2012 on 22.05.2012. The Inspector of Police felt that it is a civil dispute between the parties and hence, he referred the issue to the Revenue Divisional Officer, Trichy District. The RDO, Trichy had conducted the proceedings as contemplated under Section 107 Cr.P.C and passed an order on 17.10.2013. The said order was sought to be implemented by the writ petitioner in W.P(MD).No.2604 of 2014. The writ petition was disposed of on 18.02.2014 alleging violation of the order in the writ petition, the present contempt petition has been filed. The private respondent who got grievance over the order of RDO, had challenged the same in CrI.OP(MD).No.3751 of 2014 before this Court.

33.The learned Additional Public Prosecutor has submitted that Section 107 Cr.P.C proceedings as against the private respondents has been closed and based upon the said submissions, the said Criminal Original Petition has been closed by this Court on 26.09.2018.

34.The Hon'ble Division Bench was pleased to allow the Contempt Appeal by an order dated 21.10.2019. The operative portion namely Paragraph Nos. 6 to 8 are extracted as follows:

“6. Therefore, in our considered view, the writ petition should have been either kept pending or disposed of awaiting the decision in R.C.No.84 of 2013, on the file of the Principal District and Sessions Judge, Tiruchirappalli. The said Criminal Revision Case was dismissed by the Court of Sessions, Trichy, by order dated 20.12.2013. Therefore,



on the date when the writ petition was filed by the petitioner to implement the said order, the order passed by the Revenue Divisional Officer was a valid order. The said Nandhalala filed Crl.O.P.(MD)No. 3751 of 2014 under Section 482 Cr.P.C., challenging the order dated 17.10.2013. In the said Crl.O.P., an Advocate Commissioner was appointed, who had submitted a report and when the matter was heard finally, the Court had observed that the proceedings under Section 107 Cr.P.C. has already been closed.

7. Prima facie it appears that full facts were not placed before the Court properly, because the petitioner before us who was the first respondent in Crl.O.P.(MD)No.3751 of 2014 did not appear when the case was disposed of on 26.09.2018. From the records placed before us, we find that the order passed by the Revenue Divisional Officer dated 17.10.2013 remains intact, more so, because Crl.O.P.(MD)No.3751 of 2014, filed by one Nandhalala was closed by order dated 26.09.2018. Thus, the validity of the order dated 17.10.2013 of the Revenue Divisional Officer was not tested. Alleging disobedience of the order, Contempt Petition was filed which was closed. Petition to revive the Contempt Petition was also closed.

8. In the light of the above, we are of the considered view that CONT.P.(MD)No.30 of 2015, needs to be adjudicated afresh and a decision to be taken on merits, more particularly, when the order dated 17.10.2013 passed by the Revenue Divisional Officer remains intact as on date and it has to be ascertained as to what steps had been taken by the Revenue authorities and the Corporation to implement the same. Thus, the present case is taken as one of the rarest of rare cases for this Court to exercise jurisdiction.”



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35.A perusal of the Hon'ble Division Bench Judgment clearly indicates that as long as the Revenue Divisional Officer order dated 17.10.2013 remains intact, it has to be implemented by the Corporation Officials. A perusal of the RDO order indicates that the following orders have been passed.

(i). The Corporation Officials are directed to shift the road into Survey No.59/1 which is classified as a road.

(ii).The Corporation Officials are directed to remove the encroachment made by the private respondent into the road portion.

36.As far as removal of encroachment made by the private respondent is concerned, the private respondent has contended that the RDO has found that there is an encroachment of 4 $\frac{3}{4}$ feet into the road. The same finding has also been rendered by the Advocate Commissioner appointed by this Court. Thereafter, the private respondent has removed the encroachment by demolishing the compound wall and restricting his enjoying with regard to T.S.No.60. According to the private respondent, as on today, there is no encroachment into T.S.No.59. The Corporation Officials in their report have also confirmed that the said encroachment has been removed.

37.The learned Standing Counsel while making his submissions during the final hearing has also contended that, in case, if the contempt petitioner is



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doubtful about the removal of encroachment, they are ready for further survey. Therefore, it is clear that the second portion of the order of the RDO has been complied with in entirety.

38.As far as the first portion of the order with regard to shifting of the road from T.S.No.59/2 to T.S.No.59/1 is concerned, a lot of factual disputes have to be clarified. According to the contempt petitioner, her private property in Plot No.3 is located in old survey No.162/1A (new village survey No.29/1A). After merger with the Corporation, her plots are located in T.S.Nos.56, 57 and 59/2. On the other hand, the Corporation Officials contend that the entire T.S.No.59 is a road and the Tahsildhar has erroneously subdivided T.S.No.59 on 09.03.2012 into T.S.Nos.59/1 and 59/2. The Corporation Officials have further contended that 30 feet has been laid only in old survey No.162/1C (New village survey No.29/1C). Therefore, the issue that arises for consideration is whether the old survey No.162/1C (new survey No.29/1C) falls within the entire T.S.No.59 or only in a portion of T.S.No.59. In order to ascertain this aspect, this Court has passed an order on 20.09.2022 for conducting a resurvey. However, the contempt petitioner was not willing for the said re-survey. Without ascertaining the said fact, the contempt petitioner cannot insist that the Corporation Officials have committed contempt and they should be punished without co-relating the old survey number with T.S.No.59.



39.It is also pertinent to point out that the Advocate Commissioner appointed by this Court has found that the petitioner has lost some extent of her property only due to the encroachment made by her northern side owner and not by laying of road by the Corporation. The Corporation Officials in their written submissions have also contended that they are ready for resurvey and in case, if any encroachment is found in the private property of the writ petitioner, they are ready to shift the road.

40.A combined reading of all these facts would clearly disclose that unless a resurvey is conducted, the petitioner's contention cannot be taken at its face value and the Corporation Officials can be punished straight away.

41.The Hon'ble Supreme Court in a judgment reported in **(2014) 16 SCC 204 (Ram Kishan .vs.Tarun Bajaj and others)** in paragraph No.12 has held as follows:

“12.Thus, in order to punish a contemnor, it has to be established that disobedience of the order is ‘wilful’. The word ‘wilful’ introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one’s state of mind. ‘Wilful’ means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”.



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Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished.....”

42.In view of the judgment of the Hon'ble Supreme Court, this Court is of the categorical view that the Corporation Official cannot be punished for contempt of Court since there is no proof with regard to the fact whether the Corporation has encroached upon the private property of the contempt petitioner and laid a road or not. In fact, they are willing to conduct a resurvey in the presence of the petitioner and to shift the road, in case, if it is found in the private property of the petitioner. However, the petitioner is not willing for a survey on the ground that the survey cannot be conducted in a contempt petition.

43.This Court is the view that the present contempt petition is not maintainable for the following reasons.

(i). No positive direction has been issued as against the Corporation Officials in the order dated 18.02.2014 made in W.P(MD).No.2604 of 2014.



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Hence, the question of willful disobedience of the said order does not arise.

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(ii). The contempt petitioner claims that the road has been laid in Survey No.162/1A (29/1A). However, the Corporation contends that the road has been laid only in Survey No.162/1C (29/1C). This factual disputes cannot be resolved in the contempt proceedings.

(iii).Originally the entire T.S.No.59 was classified as a road. However, the Tahsildhar by his order dated 09.03.2012 has subdivided T.S.No.59 into T.S.No.59/1 and T.S.No.59/2. In the said order, T.S.No.59/2 has been allotted in favour of the contempt petitioner. It is clear from the records that the said subdivision order has been passed by the Tahsildhar without issuing any notice to the Corporation. Only based upon this subdivision order, the petitioner is making a claim over T.S.No.59/2.

(iv).The order of Revenue Divisional Officer dated 17.10.2013 is also based upon the subdivision order passed by the Tahsildhar dated 09.03.2012. The petitioner has filed W.P(MD).No.2604 of 2014 only to implement the said order of the RDO. Therefore, it is clear that the petitioner is making a claim over a portion of T.S.No.59 which was originally classified as a road in the Town Survey Records.

(v).All the surveys at the instance of the petitioner have been conducted only based upon the Town Survey Records and not based upon the old survey numbers. To find out the actual location of the road and the



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encroachment, if any by the third respondent, a resurvey is essential.

However, the petitioner is not agreeable for conducting a resurvey based on old survey numbers.

44.In view of the above said factual disputes and the findings arrived at by this Court, the petitioner has not made out a case for punishing the respondents for contempt. The Contempt Petition stands closed.

10.01.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
msa

To

1.Anbazhagan
Sub Divisional Magistrate Cum Revenue Divisional Officer
Tiruchirappalli

2.The Director of Town and Country Planning
Opposite to LIC
Chengalvarayan Building, 4th Floor 807,
Anna Salai, Chennai 600 002



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