



2023:DHC:8182



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 20th October, 2023**

+ **CONT.CAS(C) 1555/2023 & CM APPL. 54994/2023**

CHAMPA DEVI

..... Petitioner

Through: Mr. M Sufian Siddiqui, Mr. Rakesh Bhugra, Mr. Kumar Satish Shah and Ms. Alya Veronica, Advocates

versus

VICE CHAIRMAN, DDA

..... Respondent

Through: Ms. Shobhana Takiar and Ms. Kritika Gupta, Advocates for DDA

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971 ('the Act' hereinafter) has been filed on behalf of the petitioner seeking the following reliefs:

*“a. Initial apposite proceedings against the contemnor herein under section 12 of the Contempt of Courts Act, 1971 and punish him befittingly for his wilful disobedience of the orders dated 14.08.2023 and 26.09.2023 passed by this Hon'ble Court in Writ Petition (C) no. 10739 of 2023 titled 'Champa Devi and Ors. Versus Delhi Development Authority'. And
b. Pass any such further Order or Direction as deemed fit and proper in the facts and circumstances of the captioned matter in the interest of justice.”*

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2. The petitioner in the present case has preferred the instant petition against the respondent ('respondent Authority' hereinafter) for alleged non-compliance with the earlier orders dated 14th August, 2023 and 26th September, 2023 passed by the predecessor bench of this Court.

3. The petitioner in the present case is a resident of a jhuggi situated behind the INA market, New Delhi. In 1990, the respondent Authority gave eviction notice to the petitioner and the other residents as the land in question was allegedly encroached by the petitioner.

4. Thereafter, the petitioner filed a civil suit for declaration and consequential relief along with the damages. The said suit was opposed by the respondent Authority on the ground that the land in question was acquired by the respondent Authority from the Union of India *vide* notification dated 20th July, 1974.

5. At the time of admission of the said suit, the learned Trial Court had directed the parties to maintain *status quo* on the said land and the same was duly complied with by the parties till the date of final disposal of the said suit i.e., on 21st February, 2023.

6. Pursuant to the disposal of the suit in their favor, the respondent Authority carried out the demolition exercise on the said land on 2nd March, 2023, which falls within the limitation period of 30 days as prescribed for filing an appeal.

7. Aggrieved by the same, the petitioner preferred a writ petition bearing no. 10739/2023 seeking restoration of the *status quo ante* with respect to the above said land. In the said writ petition, the predecessor bench of this Court



vide order dated 14th August, 2023 directed the respondent Authority to file an affidavit by bringing on record the facts relevant to the case.

8. Due to non-compliance with the above said order, the petitioner preferred an application seeking compliance with the order dated 14th August, 2023. During the disposal of the said application, the predecessor bench, while issuing notice, directed the respondent Authority to place the necessary documents on record within a two weeks time period and the matter was listed for hearing thereafter.

9. Aggrieved by the non-compliance with the said orders, the petitioner has preferred the present contempt petition against the respondent Authority.

10. The learned counsel appearing on behalf of the petitioner submits that the non-compliance with the orders passed by the Court on previous occasions demonstrate willful disobedience, therefore, making the respondent Authority liable for contempt under Section 12 of the Act.

11. It is submitted that the said willful disobedience can be clearly established by the fact that the respondent Authority did not give any plausible explanation for non-compliance with the order dated 14th August, 2023, in the subsequent proceedings despite clear instructions from this Court.

12. It is submitted that the said inaction by the respondent Authority satisfies the necessary ingredients required to be met for successful adjudication of the contempt petition.

13. It is further submitted that ‘right to speedy justice’ is a fundamental right granted to every citizen under Article 21 of the Constitution of India



and therefore, the petitioner has the right to obtain relief from this Court in due time.

14. It is submitted that the respondent Authority's deliberate and willful disobedience, as evident by their malicious conduct in failing to comply with the directions passed by this Court, is a blatant attempt to undermine the powers of this Court.

15. Therefore, in light of the foregoing submissions, the learned counsel for the petitioner submits that the present petition be allowed, and relief may be granted, as prayed.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent Authority vehemently denies the allegations and submitted that the respondent Authority has utmost respect for this Court and does not have any intent to disobey the orders passed by this Court.

17. It is submitted that the arguments advanced by the petitioner are devoid of any merit and the instant petition is merely an abuse of process of law.

18. It is submitted that the petitioner has failed to prove the willful disobedience by the respondent Authority and the material on record does not suggest that the Authority had deliberately disobeyed the order of this Court, therefore, the present petition does not satisfy the necessary ingredients of Contempt as enshrined and expounded by the Hon'ble Supreme Court in a number of judgments.

19. Therefore, in light of the foregoing submissions, the learned counsel for the respondent submits that the present petition, being devoid of any



merits, may be dismissed.

20. Heard the learned counsel for parties and perused the records.

21. In the present case, the petitioner is the resident of the jhuggis situated near the INA market, New Delhi which is a Government land acquired by the respondent Authority from the Union of India *vide* notification dated 20th July, 1974.

22. Pursuant to receiving notices for eviction, the petitioner had preferred a civil suit before the learned Trial Court, whereby, the learned Court below had directed the parties to maintain *status quo* till the final disposal of the said case. In the year 2023, the said suit was finally adjudicated and decided in favor of the respondent Authority leading to demolition of the said land on which the alleged illegal jhuggis were constructed.

23. Aggrieved by the same, the petitioner preferred the above said writ petition, whereby, the predecessor bench of this Court, *vide* order dated 14th August 2023, had directed the respondent Authority to submit the necessary details within a prescribed time period. Due to non-compliance with the said order, the petitioner filed an application in the said writ petition, for compliance with the above said order. The Coordinate bench of this Court had already issued notice to the respondent Authority and the matter is pending since then.

24. In the writ petition, this Court *vide* order dated 14th August, 2023 had directed the respondent Authority to file the necessary documents, however, did not issue notice, therefore, remaining silent on the aspect of maintainability of the said petition. The relevant part of the said order is



reproduced as under:

“5. Learned Standing Counsel for the Petitioner submits that the Petitioners have already filed an appeal against the Trial Court Judgment which is pending adjudication. However, it is submitted that without waiting for a final adjudication in the matter, the Respondent/DDA carried out the demolition activity and demolished the said property.

6. Learned Standing Counsel for the Respondent/DDA submits that since an Appeal has already been filed against the Trial Court Judgment, the Petitioner should raise all grievances before the Trial Court and not before this Court.

6.1 Learned Standing Counsel for the Respondent/DDA seeks time to take instructions on the date demolition activity was carried out by the Respondent/DDA and whether this was carried out after the statutory period for Appeal against the Trial Court Judgment, had elapsed.

7. Let the necessary instructions be placed on record by the learned Standing Counsel for the Respondent/DDA along with documents in support, if any, by way of an Affidavit within two weeks with an advance copy to learned Counsel for the Petitioners.

8. At request of learned Standing Counsel for the Respondent/DDA, it is being clarified that no Notice has been issued in the matter as yet.

9. List the matter on the issue of maintainability on 14.09.2023.”

25. Pursuant to the non-compliance of the direction of the Court by respondent Authority, the petitioner filed an application no. 50054/2023 seeking compliance with the earlier order where the Court had directed the Authority to file necessary documents required for adjudication of the issue.



In the said application, the Court issued notice where the counsel for respondent had accepted the said notice and submitted that the said documents shall be filed within stipulated time.

26. On perusal of the submissions made by the counsel for the respondent Authority, it is made out that even though the respondent Authority is yet to submit the necessary details, the ingredients necessary to establish contempt of the Court's order needs to be satisfied. The Civil contempt has been defined under Section 2(b) of the Act and reads as follows:

"2. Definitions

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court."

27. The perusal of the said provision clearly indicates that the term 'wilful disobedience' used in the provision is a necessary condition for initiation of civil contempt against any party. The said principle is a settled law and has been discussed by the Courts in various cases.

28. In *Niaz Mohd. v. State of Haryana*, (1994) 6 SCC 332, the Hon'ble Supreme Court discussed the nature and scope of the issuance of contempt proceedings against a party and held as under:

"9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or



persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not



possible for the contemner to comply with the order, the court may not punish the alleged contemner.”

29. The aspect related to the contempt was revisited by the Hon’ble Supreme Court in **Anil Ratan Sarkar v. Hirak Ghosh**, (2002) 4 SCC 21, where the Hon’ble Court observed that the element of willingness is an indispensable requirement to bring the charges within the meaning of the Act. The relevant part of the said judgment is reproduced herein:

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a “civil contempt” within the meaning of Section 2(b) of the Act of 1971 — the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation — the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

30. The aspect related to nature and scope of the civil contempt has been extensively dealt with by the Hon’ble Supreme Court in **Ram Kishan v. Tarun Bajaj**, (2014) 16 SCC 204, where the Court emphasized on the word willful, therefore, making it a necessary condition for initiation of the proceedings. The relevant part reads as follows:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the



majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)

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 a 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, bona fide 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". 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. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255 : AIR 1989 SC 2185] , Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122 : AIR 2006 SC 258] and



Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .)”

31. On perusal of the aforesaid judicial dicta it is made out that the condition ‘willful disobedience’ should be proved by the petitioner in order to be successful in the contempt proceedings against the alleged contemnor.

32. The above cited cases also clearly establish that the term ‘willful disobedience’ is not a mere formality which can be established by making certain assumptions, rather needs to be proven in *toto*. Therefore, this Court needs to analyze whether mere non-compliance with the orders of the previous bench constitute willful disobedience or not.

33. In the instant case, even though the respondent Authority has not yet submitted the documents, there is no indication that the Authority is willfully disobedient to the Court’s order.

34. In the application filed by the petitioner seeking compliance with the earlier order, the predecessor bench has already issued notice seeking reply from the respondent Authority on the said aspect and therefore, this Court fails to understand the need to file contempt petition during pendency of the said application seeking the exact same relief.

35. Furthermore, the assurance given by the counsel of the respondent Authority is compelling enough to satisfy this Court that the Authority is not willfully disobeying the orders of this Court.

36. Therefore, since the petitioner has failed to prove willful disobedience on part of the respondent Authority, the non-compliance with the order



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cannot qualify as contempt due to non-meeting of the condition.

37. In light of the above fact and circumstances, this Court is not inclined to initiate civil contempt proceedings against the respondents, since the petitioners have not been able to satisfy the requirements and ingredients of the civil contempt as has been mandated by the statutory provisions and judicial precedents.

38. Accordingly, the petition being devoid of any merit stands dismissed.

39. Pending applications, if any, also stands dismissed.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 20, 2023

gs/av/ryp

Click here to check corrigendum, if any