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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 771/2017**

RAM SINGH

..... Petitioner

Through: Mr. R.P Sharma and Mr. Manish
Bharadwaj, Advocates.

versus

GOVIND RAM & ORS

..... Respondent

Through: Mr. Anoop Prakash Awasthi,
Advocate for R-1. Mr. Ajay
Digpaul, CGSC, Mr. Kamal
Digpaul, Mr. Swati Kwatra,
Advocates for UOI.

Reserved on: 13th January, 2023

Date of Decision: 31st January, 2023.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present contempt petition has been filed stating that the Respondent, Addl. Distt. Magistrate/Collector (West), has not complied with the order dated 20.03.2012 passed by a coordinate Bench of this Court in W.P. (C) 5095/2011, whereby this Court directed as under:

“11. Such a casual approach of the authorities concerned in condoning inordinate delay cannot be countenanced. Indiscretion exercised in casually condoning the delay renders the impugned order (Annexure-A) as well as the appellate order (Annexure-F) unsustainable in law. Consequently, impugned order (Annexure-A) as well as appellate order (Annexure-I) are set aside and the mutation order of 29th November, 1990 (Annexure-B) is restored with the direction to the Additional Collector (West) to decide application of respondent-Rattan Singh, seeking condonation of delay afresh in accordance with the law.”

(Emphasis supplied)

2. The Petitioner herein is aggrieved by the order dated 20.01.2017 passed by the Respondent in pursuance to the remand issued by this Court *vide* its order dated 20.03.2012. In this petition, the Petitioner, in addition to seeking initiation of contempt proceedings is also seeking setting aside of the order dated 20.01.2017 ('impugned order') and a direction to the Petitioner to re-decide the application seeking condonation of delay.

3. Learned Counsel for the Petitioner states that the Respondent has not complied with the order dated 20.03.2012 of this Court inasmuch as the Respondent while passing the impugned order dated 20.01.2017, ignored the observations made and directions issued by this Court and has erroneously relied upon the earlier order dated 12.12.2007 passed by the Addl. Collector (West) and order dated 17.02.2011 passed by the Financial Commissioner. He states that the Respondent while passing the said impugned order has acted as an appellate Court above this Court and has not only upheld the orders dated 12.12.2007 and 17.02.2011, but virtually set aside the order dated 20.03.2012 passed by this Court.

3.1 He states that a property measuring (0-9 bighas), bearing Khasra No. 3047/731, Village Basai Darapur, Delhi ('subject property') was mutated in the name of the Petitioner *vide* order dated 30.11.1990, on the basis of a Will. He further states that necessary changes to the said effect were made in *Jamabandi* maintained by the Revenue department.

3.2 He states that the said mutation order dated 30.11.1990, was belatedly challenged by one Mr. Rattan Singh, who preferred an appeal dated 27.02.2005, under Section 64 of Delhi Land Revenue Act, 1954 ('DLR Act'), after a delay of about 14 years and 3 months. He further states that Mr. Rattan Singh had also filed an application seeking condonation of

delay in filing the appeal. He states that initially the Addl. Collector *vide* its order dated 12.12.2007, set aside the mutation order dated 30.11.1990 and directed the concerned RA/SDM (Patel Nagar) to decide the case, after affording proper opportunity of being heard to both the parties.

3.3 He states that the Petitioner being aggrieved by the aforesaid decision, preferred an appeal before the Financial Commissioner of Delhi, seeking setting aside of the order dated 12.12.2007, however, the said appeal was dismissed by the Financial Commissioner *vide* its order dated 17.02.2011 in case No. 49/2008/CA.

3.4 He states that in the writ petition filed before this Court, challenging the said orders dated 12.12.2007 and 17.02.2011, this Court observed that neither the order dated 12.12.2007, nor the order dated 17.02.2011, has adequately dealt with the delay aspect in its correct perspective. He states that the Court set aside the said orders dated 12.12.2007 and 17.02.2011 and remanded the matter to the Respondent herein to decide the application of Mr. Rattan Singh seeking condonation of delay, afresh in accordance with the law.

3.5 He states that however, the Respondent herein on remand passed the impugned order dated 20.01.2017 allowing the application of condonation of delay without adjudicating on the Petitioner's plea of lack of sufficiency of cause shown by Rattan Singh in filing the appeal belatedly.

3.6 He therefore prays that the impugned order dated 20.01.2017 be set aside and the Respondent be directed to decide the application for condonation in compliance with this Court's order dated 20.03.2012, in its letter and spirit.

4. In reply, learned Counsel for the Respondent states that the

Respondent passed the impugned order after requisitioning the record. He states that the Respondent, in fact, made an inquiry into the matter and thereafter, passed the order dated 20.01.2017, strictly in accordance with law.

4.1 He states that the Respondent during inquiry found that there was no evidence of a 'Notice' or 'Proclamation' being issued by the Naib Tehsildar of the area before allowing mutation in the name of Petitioner on 30.11.1990. He further states that the Respondent did not come across any evidence, which shows that Mr. Rattan Singh had knowledge of the mutation entry dated 30.11.1990, at any time before 20.02.2005.

4.2 He states that the Respondent on the basis of his personal legal knowledge and legal advice tendered, was of the opinion that the period of limitation for the cause of action arises from the date of knowledge, and accordingly, passed the impugned order dated 20.01.2017, allowing the application seeking condonation of delay, filed by Mr. Rattan Singh, who as per Respondent appears to be a victim of fraud.

4.3 He states that the Respondent had refrained from passing a detailed order while condoning the delay so as to not prejudice the merits of the matter.

4.4 He states that the Respondent followed the principles laid down by the Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath and Ors., (1994) 1 SCC 1*, while dealing with the subject matter of the case in his quasi-judicial capacity. He states that in his considered opinion not condoning the said delay would have led to failure of justice.

4.5 He states that the Respondent has not disobeyed or violated the order dated 20.03.2012 passed by this Court and has, in fact, passed the

impugned order after exercising his discretion, applying the law and in discharge of his quasi-judicial functions.

4.6 He states that the Respondent has the highest regard and tenders his unconditional apology for even creating an impression that he has acted in contempt of the orders of this Court.

5. This Court has considered the submissions of the parties and perused the paper book.

6. This Court has been apprised that the Petitioner has filed an appeal assailing the impugned order dated 20.01.2017 before the Financial Commissioner of Delhi and the same is pending adjudication.

7. It is well settled that contempt action ought to be proceeded only in respect of established willful disobedience of the order of the Court. In the present proceedings, the Petitioner herein is seeking setting aside of the order dated 20.01.2017 and further seeking a direction to the Respondent to decide the application for condonation of delay afresh.

8. It is not open for the Court in a contempt petition to go into the correctness or otherwise of the order dated 20.01.2017 or set aside the said order, which course can be adopted only in appeal jurisdiction. The Petitioner has already assailed the order dated 20.01.2017 in appeal and therefore, no such relief can be granted in the present proceedings. In this regard, the Supreme Court in **J.S. Parihar v. Ganpat Duggar and Others, (1996) 6 SCC 291**, has held as under: -

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or

deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

(Emphasis supplied)

9. Therefore, with the passing of the order dated 20.01.2017, on the remand issued by this Court on 20.03.2012, a fresh cause of action had arisen in favour of the Petitioner herein and he has rightly sought his redressal by filing an appeal. The averment of the Petitioner that the said order is contrary to law governing condonation, cannot be adjudicated in the contempt proceedings.

10. The learned counsel for the Petitioner sought to place reliance upon a decision of Orissa High Court in ***State of Orissa v. Bijaya Mohanty, 1993 SCC OnLine Ori 206***, however, the said decision deals with different circumstances which have no bearing over the facts of the present contempt petition. The Court in the aforesaid case was dealing with willful

disobedience by the police officer of a bail order passed by Sessions Judge, Cuttack, releasing an individual at bail.

11. This Court also does not find any merit in the plea of the Petitioner that the Respondent passed the order dated 20.01.2017 without consideration of the record. The Respondent in the counter affidavit has given detailed reasoning for reasons which weighed with the Respondent in condoning the delay. This Court does not find that the Respondent acted in contravention of the order dated 20.03.2012 by allowing the application, as the discretion to decide the application vests with the Respondent and is subject to correction by the Appellate Authority.

12. This Court is of the view that the Respondent has not disobeyed the order dated 20.03.2012 and therefore, the present petition seeking initiation of contempt proceedings against the Respondent is not maintainable.

13. The further relief sought in the present petition as regards the setting aside the order dated 20.01.2017 is not maintainable in the present proceedings. The said order has been challenged by the Petitioner by filing an appeal before the Financial Commissioner and it shall be subject to the outcome of the said appeal.

14. Accordingly, the present petition along with pending applications is dismissed. It is made clear that this Court has not examined the merits of the order dated 20.01.2017.

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2023/aa/msh