



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

Contempt Petition No.2275 of 2023  
in W.P.No.15787 of 2023

Mrs.Noorjahan

.. Petitioner/Petitioner

vs.

1.Mr.AP.Mahabarathi  
The District Collector  
Mayiladuthurai District  
Mayiladudurai.

2.Mr.Semnthal Kumar  
The Tahsildar  
Sirgathi Taluk  
Mayiladudurai District.

3.Mr.Jaya Prakash  
The Chairman  
Kollidam Panchayat Union  
Kollidam, Sirgathi Taluk  
Mayiladudurai District.

4.Mrs.Arun Mozhi  
The Block Development Officer  
Kollidam, Sirgathi Taluk  
Mayiladudurai District.

.. Respondents/ Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent herein deliberately disobeying the order of this Court dt.7.6.2023 in W.P.No.15787 of 2023 for contempt of this Court and consequently also restore the petitioner to the possession of 6.97 acres in Survey Nos.634/1, 634/8, 638/2 & 635 .



For Petitioner : Mr.B.Kumar  
Senior Counsel  
for Mr.A.Abrar Ahmed

For Respondents : Mr.J.Ravidran  
Additional Advocate General  
Asst.by  
Mr.Tippusulthan  
Government Advocate for R1, R2

Mr.U.Baranidharan  
Additional Government Pleader for R3

Mr.P.Gurunathan  
Additional Government Pleader for R4

### **ORDER**

When the matter came up for hearing on 20.2.2024, this Court passed the following order:

When the matter came up for hearing on 12.01.2024, this Court passed the following order :-

This Court is not convinced with the counter affidavit filed along with the typed set of papers. This Court prima facie finds that there is violation of the order passed by this Court on 07.06.2023.

2. On reading of the counter affidavit, it has been stated that notice was given to the petitioner, before the possession of the property was taken. It seems that the notice was repeatedly issued to one Malik s/o.Aayub and this person was informing the respondents that he had nothing to do with the property and he requested the respondents to issue notice to the person, who is in possession of the property. It is not known as to why the respondents did not take any steps to issue notice in the name of the petitioner. It is brought to the notice of this Court that the respondents proceeded further and took possession of the property on 21.09.2023.



3. The respondents 2 to 4 shall be present before this Court on the next date of hearing. Post this case under the same caption on 29.01.2024 @ 2.15 p.m.

2. The matter was once again listed for hearing on 29.01.2024 and this Court passed the following order :-

Pursuant to the earlier order passed by this Court on 12.01.2024, the matter was posted for hearing today.

2. This Court had directed the personal appearance of respondents 2, 3 and 4 and all of them were present at the time of hearing.

3. Mr.T.Arun Kumar, learned Additional Government Pleader appearing for respondents 1 and 2, Mr.U.Bharanidharan, learned Additional Government Pleader appearing for third respondent and Mr.P.Gurunathan, learned Additional Government Pleader appearing for fourth respondent submitted that there has been a wrong understanding of the order passed by this Court. The Block Development Officer, who was present before this Court tendered his unconditional apology and stated that there has been a mistake in understanding the order and executing the same.

4. In the light of the above development, there shall be a direction to the fourth respondent to file an affidavit before this Court by tendering unconditional apology. The fourth respondent shall also mention in the affidavit as to when the property is going to be restored back to the petitioner. The restoration of property is mandatory since the possession was taken away from the petitioner in violation of the order passed by this Court.

5. The personal appearance of respondents 2 to 4 is dispensed with. The affidavit shall be filed by the next date of hearing. On such filing, this Court will pass further orders in this contempt petition.

Post this case on 05.02.2024 at 02.15 p.m.



3. When the above order was passed by this Court, the Block Development Officer (BDO) was present before this Court and he tendered his unconditional apology and he also gave an undertaking that he will file an affidavit and tender unconditional apology and will also mention in the affidavit as to when the property is going to be restored back to the petitioner. Even when this order was passed, this Court had expressed its mind and made it clear that it is mandatory on the part of the BDO to hand over possession of the property to the petitioner, since forcible taking over of the possession was in violation of the order passed by this Court in the Writ petition.

4. After the above order was passed, an affidavit came to be filed by the BDO dated 05.02.2024. This affidavit brought out the sinister motive on the part of the BDO. For proper appreciation, the relevant portions are extracted hereunder :-

4. I submit that thereafter on 01.09.2023 the 4th respondent, then BDO was transferred and the Deponent herein took charge as BDO on 01.09.2023. I submit that the deponent herein believing the actions taken by the then BDO to be correct proceeded further in evicting the unauthorised occupants. I submit that the possession was also taken on 21.09.2023. I submit that the said Mr.Malik was also present at the time of taking physical possession of the property and the same is evident from the video which was recorded on the said day.

5. I most respectfully submit that the deponent herein has come to the knowledge of the following facts from the perusal of the proceedings of the Tahsildar /Officer of Record of Tenancy Rights (the 2 nd respondent herein) in Ne.Mu.Ko.Oo.Pa.No.04/2022/A2 dated 19.09.2022, wherein the name of MR.Zahir Hussain (the other son of the petitioner) was recorded in the record of tenancy right in place of MR.Ayub (the husband of the petitioner). I submit that it stated in the said proceedings that MR.Ayub passed away on 17.09.2020. It is further



WEB COPY



seen that MR.Ayub passed away leaving behind her wife Mrs.Noorjahan (Petitioner), daughters Ms.Sabeera Beevi & Ms.NAssemabanu, Sons MR.Zahir Hussain and Mr.Abdul Malik as his legal heirs. Thereafter, MR.Zahir Hussain seems to have made an application with the 2 nd respondent to record his name in the register of record of tenancy rights. The petitioner and her daughters entered appearance in the above said proceedings of the 2 nd respondent and have given their consent to record the name of the MR.Zahir Hussain alone in the record of tenancy rights. It is also recorded in the said proceedings that the petitioner and the daughters have relinquished their tenancy right in favour of the said MR.Zahir Hussain.

6. I most respectfully submit that it is the case of 4 th respondent that neither Mr.Ayub nor his legal heirs have any right over the said property. I submit that the Kollidam Panchayat Union is the owner of the said properties. I submit that the 2 nd respondent have not issued any notice to the 4 th respondent in the proceedings of the Tahsildar / Officer of record of Tenancy Rights (the 2nd respondent herein) in Ne.Mu.Ko.Oo.Pa.No.04/2022/A2 dated 19.09.2022. Without affording any opportunity to the 4 th respondent herein, the 2 nd respondent has recorded the name of Mr.Zahir Hussain in the record of tenancy right in respect to the said lands.

7. I submit that the 4 th respondent on coming to the knowledge of the above said proceedings of the 2 nd respondent preferred an appeal before the deputy Collector, Revenue Curt, Mayiladuthurai on the ground that Mr.Ayub itself is not a cultivating tenant in the said lands. The said MR.Zahir Hussain failed to appear in the said appeal proceedings and Deputy Collector vide proceedings bearing Ku.Oo.Ma.Pa.Sa.02/2023 (Va.No) dated 30.01.2024 have setaside the proceedings of the Tahsildhar /Officer of Record of Tenancy Rights in Ne.Mu.Ko.Oo.Pa.No.04/2022/A2, dated 19.09.2022. I submit that



WEB COPY



the petitioner and the other legal heirs of Late.Ayub have no right of whatsoever in nature over the subject property.

8. I submit that in light of the above facts if this Hon'ble Court comes to a conclusion that the possession was taken in contravention to the orders of this Hon'ble Court, the 4<sup>th</sup> respondent herein will restore the possession within a period of seven days from the date of the order of this Hon'ble Court. I submit that upon doing so, this respondent will thereafter take appropriate steps and issue notice to the petitioner and others and take all steps in accordance with law for taking possession of the subject properties. I therefore pray to this Hon'ble Court to accept the unconditional apology of the 4<sup>th</sup> respondent and discharge the respondents from the contempt proceedings.

5. It is not in dispute that the Tahsildhar, Officer of records, Tenancy Rights, through proceedings dated 19.09.2022 recorded the name of one Zakir Hussain, who is the son of the petitioner in the record of tenancy right in the place of one Ayub, who is the husband of the petitioner and the father of the said Zakir Hussain. It is therefore clear that as on the date when the order was passed in the writ petition and as on the date, when the contempt petition was filed before this Court, it was Mr.Zakir Hussain, whose name was recorded in the record of tenancy right by a competent authority.

6. The BDO realized that if this status continues, it will be very difficult to take back the possession of the property even if the property is handed over to the petitioner in the light of the directions issued by this Court on 29.01.2024. Therefore, the BDO decided to device a method. In the counter affidavit that was filed by the BDO earlier, he had informed this Court that an appeal has been preferred to the Special Deputy Collector, Revenue Court, Mayiladuthurai and the enquiry is pending. According to the BDO, this appeal was preferred on 01.11.2023. The BDO decided that if this appeal proceedings are expedited and an order is obtained, it



WEB COPY



will be easy to take back possession of the property after restoring it to the petitioner. Hence, the proceedings were expedited before the Revenue Court.

7. The materials placed before this Court shows that the Revenue Court, Mayiladuthurai, issued a notice dated 18.01.2024 to the said Zakir Hussain calling for an enquiry on 23.01.2023 at 3.00 p.m. This notice is said to have been sent through registered post. The track consignment of the registered post through which this notice was sent shows that the notice was posted only on 23.01.2024 and it was delivered to the addressee on 30.01.2024. The revenue Court takes up the case on 30.01.2024 and considers the grounds raised in the appeal and also recorded that there was no representation on the side of said Zakir Hussain and proceeds to set-aside the order passed by the Special Tahsildhar under the Record of Tenancy rights dated 19.09.2022. The manner in which the appeal has been dealt with by the Revenue Court, Mayiladuthurai, shows that the entire proceedings was stage managed with the connivance of the BDO and the BDO wanted that order to be passed by the Revenue Court before the case comes up for hearing before this Court. After getting such an order from the Revenue Court, Mayiladuthurai, the BDO has filed the present affidavit before this Court on 05.02.2024.

8. This Court expressed its mind to proceed further against the BDO for contempt of Court. This Court also expressed to the learned Additional Government Pleader appearing on behalf of the 4<sup>th</sup> respondent that the BDO has orchestrated the entire proceedings and he has attempted to hoodwink this Court and the method that has been adopted by the 4<sup>th</sup> respondent, on the face of it will amount to contempt of Court. The contumacious conduct on the part of the BDO is apparent on the face of the record. Therefore, there must be no hesitation for this Court to proceed further to pass orders in this contempt petition.



WEB COPY



9. The learned Additional Government Pleader appearing on behalf of the 4<sup>th</sup> respondent submitted that the 4<sup>th</sup> respondent will ensure that the order passed by the Revenue Court, Mayiladuthurai, dated 30.01.2024 will be withdrawn. This statement made by the BDO further creates a larger doubt in the mind of this court. The order was passed in the appeal and the order was passed by an authority who is vested with such a power under the relevant Act. Therefore, the said authority cannot withdraw the order based on the some request made by the BDO. If that is to happen, it only means that the appellate authority is willing to dance to the tunes of the BDO. Whenever, the BDO wants an order to be passed in an appeal, such an order will be passed by the appellate authority and whenever the BDO wants the order to be withdrawn, the appellate authority will withdraw the order. This further confirms that the entire process of law has been abused in this case.

10. In a civil contempt, it must be shown that the disobedience of the order was deliberate or contumacious to make out a case for contempt. Useful reference can be made to the judgment of the Apex Court in **[Patel Rajnikant Dhulabhai and another Vs. Patel Chandrakant Dhulabhai and others]** in **2008 7 MLJ 376.**

11. In the instant case, the apology that is sought to be tendered by the BDO is not a genuine apology since even on the earlier occasion, the same BDO had tendered apology and based on the same, an order was passed on 29.01.2024. However, the BDO ensured that an order was passed by the Revenue Court on 30.01.2024 (the next day after he tendered an apology before this Court). Hence, the lack of genuineness on the part of the BDO is quite apparent in this case. Therefore, such apology that is tendered without any genuineness can never be accepted by this Court.



12. The conduct of the BDO clearly amounts to a contempt. Hence, he is liable to be punished by this Court under Section 12 of the Contempt of Courts Act. This Court has to step in and impose some punishment in this case because the act of the BDO clearly involves moral turpitude which can never be condoned.

13. Post this case under the caption for passing further orders on 26.02.2024 at 2.15 pm.

2. When the matter came up for hearing today, the BDO filed an affidavit before this Court and for proper appreciation, the same is extracted hereunder:

2.I at the foremost with folded hands with utmost respect tender my unconditional apology before this Honourable Court for the act committed by me which is definitely unpardonable and the gravest of mistake. The act committed by me can never be accepted but this Honourable Court may be grateful to show the least benevolence to me which of course I am unworthy of it.

3.I humbly and respectfully submit that, I do admit that the act committed by me is grave in nature, but accepting the same I am before this Honourable court seeking its mercy to pardon me accepting my sincere and unconditional apology and also that in future, I would never even think about committing such an act. This Honourable court considering my earnest plea and also accepting my unconditional apology may be pleased to pardon me for the said act committed by me. I have realised the consequences and repent for the same. I once again plead this Honourable court that this court, being the epitome of justice, be gracious enough to pardon my act. Unless this Honourable court accepts my unconditional apology and be gracious and magnanimous with motherly heart pardon me, I will be put to grave sufferings.

4.I humbly and respectfully submit that, I by mistake continued the proceedings of the erst while Block Development



Officer without advertent the order of this Hon'ble Court for which I with folded hands tender my unconditional apology and pray that this hon'ble court with magnanimity accept my unconditional apology. The said mistake committed by me neither wilful nor wantonly or not with an intention to disobey, disrespect and defeat the order of this Hon'ble Court.

3.The learned Senior Counsel appearing on behalf of the petitioner submitted that the possession has been restored back to the petitioner on 21.2.2024. The learned Senior Counsel further submitted that even though the possession has been restored, the order passed by the Revenue Court dated 30.1.2024, continues to be in force and it was contended that this appeal was filed after an enormous delay without filing an application to condone the delay. The learned Senior Counsel requested this Court to pass appropriate orders in this regard.

4.Mr.Ravindran, learned Additional Advocate General appearing on behalf of BDO submitted that the BDO had committed a mistake in this case and therefore, he has filed an affidavit before this Court to accept his unconditional apology and to pardon his act. The learned Additional Advocate General further submitted that he leaves it to this Court with regard to the order passed by the Revenue Court, Mayiladuthurai dated 30.1.2024 and requested this Court not to initiate any action against BDO.



5.The BDO, was also present before this Court and he requested that he has committed a mistake and that he will not repeat the same in future. He also tendered his unconditional apology and requested this Court to pardon him

6.Taking into consideration the fact that the possession of the land has been restored to the petitioner and also of the fact that the BDO has admitted his mistake and is seeking for pardon, this Court is inclined to show some leniency to the BDO.

7.The record of tenancy rights was recorded in the name of Mr.Zakir Hussain who is the son of the petitioner through proceedings dated 19.9.2022. If any party is aggrieved by such recording of tenancy right, the relevant act itself provide for the relief of appeal within a time limit. In the instant case, admittedly, the appeal was filed before the Revenue Court only on 1.11.2023, which was much beyond the period of limitation provided under the relevant Act. In spite of the same, the appeal was not even accompanied with a petition to condone the delay in filing the appeal and the appeal has straightaway been numbered and orders have been passed by the Revenue Court without affording any opportunity to the person in whose name the tenancy right has been recorded. Hence, the order passed by the Revenue Court, Mayiladuthurai dated 30.1.2024, is illegal and is liable to be interfered by this Court in order to render substantial justice to the party. This remedy



has to be granted to the petitioner since the BDO cannot approach the Revenue Court and seek for withdrawing the order. As held in the earlier order passed by this Court on 20.2.2024, the Appellate Authority is exercising his powers under law and therefore, the BDO cannot approach the authority and seek for withdrawing the order. The order has to be set aside only in the manner known to law. The same is being done by way of passing orders in this contempt petition. Accordingly, the proceedings of the Revenue Court, Mayiladuthurai dated 30.1.2024 is hereby set aside.

8. In the light of the above discussion, this Court lets of the 4<sup>th</sup> respondent, who is the BDO with a warning and the 4<sup>th</sup> respondent shall never violate the orders of the Court in future. If at all, there is any appellate remedy available, it should be exercised only in the manner known to law and orders can be passed only after affording opportunity to the person interested who in this case is the son of the petitioner, whose name has been recorded in the record of tenancy right through the proceedings of the Tahsildar dated 19.9.2022.

This contempt petition is disposed of in the above terms.

**26.02.2024**

1/2

KP

<https://www.mhc.tn.gov.in/judis>

Index: yes/no



WEB COPY



To

- 1.Mr.AP.Mahabarathi  
The District Collector  
Mayiladuthurai District  
Mayiladudurai.
- 2.Mr.Semnthal Kumar  
The Tahsildar  
Sirgathi Taluk  
Mayiladudurai District.
- 3.Mr.Jaya Prakash  
The Chairman  
Kollidam Panchayat Union  
Kollidam, Sirgathi Taluk  
Mayiladudurai District.
- 4.Mrs.Arun Mozhi  
The Block Development Officer  
Kollidam, Sirgathi Taluk  
Mayiladudurai District.
- 5.The Public Prosecutor  
High Court, Madras



WEB COPY



14

**N. ANAND VENKATESH, J.**

KP

Contempt Petition No.2275 of 2023  
in W.P.No.15787 of 2023

26.02.2024