

(2000) 04 MAD CK 0002

In the Madras High Court

Case No : Contempt Application No. 268 of 1997 and Sub-Appln. No. 187 of 1999

Adyar Venkataratnam Nagar Residents Welfare Association

APPELLANT

Vs

Pannai Paramasivam

RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Citation : (2000) CriLJ 4322

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : P.K. Rajagopal, for the Appellant; T.S. Rajmohan, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—This contempt application has been filed by the petitioner-Welfare Association praying to punish the respondent for wilful

disobedience of the order of this Court made in W.M.P. No. 19945 of 1996 in W.P. No. 14569 of 1994, dated 8-10-1996 as confirmed by the

order dated 10-3-1997 thus committing contempt of this Court.

2. In the affidavit filed in support of the contempt application, the petitioner would submit that the petitioner-Association is a society registered

under the provisions of the Tamil Nadu Societies Registration Act; that the petitioner along with the above writ petition, filed two writ

miscellaneous petitions, the first one in W.M.P. No. 19445 of 1996 praying for an injunction restraining the respondents 2, 3, 4 and 6 from

interfering with the upkeep, and maintenance of the disputed space by the petitioner-Association and this Court was pleased to admit the writ

petition and granted an order of injunction on 8-10-1996 and when the above

W.M.P. came up for final disposal on 10-3-1997, this Court made the interim order absolute with certain specific directions; that all the respondents concerned had knowledge of the order.

3. The further submission of the petitioner is that the sixth respondent in the writ petition who is the respondent herein in the above WMP., in

violation of the order of this Court, dumped public from his building construction into the space concerned besides his man letting therein; that a

legal notice has been caused followed by objections on 3-2-1997 and a complaint had also been lodged with the Police, consequent to which he

removed the rubble; that even after passing of the order dated 10-3-1997, he started dumping the rubble into the space contained in spite of

warning; that he also put up a projection on the rear side of his building to the extent of 2 1/2 feet into the space concerned supported by concrete

pillars of about two feet height; that the Police complaint lodged was of no avail since no action was initiated; that the said acts committed on the

part of the respondent constituted wilful disobedience of the order of this Court made in WMP. No. 19948 of 1996 in W.P. No. 14569 of 1996

dated 8-10-1996 and 19-3-1997. On these averments, the petitioner Association has come forward to file this contempt application praying to

punish the respondent for committing disobedience of the order of this Court dated 8-10-1996.

4. In the counter-affidavit filed by the respondent, he would submit that at no point of time he had disobeyed the orders of this Court and in the

event that this Court finds him to have shown any disregard to its order, he would tender his unconditional apology. It would further be contended

that in Shastri Nagar, four grounds were earmarked by the said City Co-operative Housing Society Limited for public purpose falling in S. No.

381; that the Society by Resolution dated 34-3-1991 resolved to construct a Community Hall-cum-Office Building to be thrown open to public;

that it is fully compounded and kept under lock and key; that on 18-9-1996, the President and the Ex-President of the said Association trespassed

into the said property and started cutting trees and shrubs; that the then Special Officer lodged Police complaint on 18-9-1996 to prevent their

illegal activity.

5. The further averments of the counter-affidavit is that a perusal of the counter-

filed by the City Co-operative Housing Society in the very writ petition would go to show that the writ petition is highly vexatious and bereft of bona fides; that an area of 664 sq. ft. had been sold by the society in his favour for a valid consideration; that he has put up a shopping complex in it and that the petitioner has become highly prejudiced against the respondent right from the date of purchase of the said area by him from the society; that the repeated allegation that he was dumping the rubble into the space is totally false and bereft of truth; that the other allegations that he had put up projection on the rear side of his building being an RCC Platform about 2-1/2 feet are also equally ill-conceived; that whatever act had been done by him in the course of construction of the huge shopping complex, the same had been within his property and he had never exceeded the limits and had not trespassed into the adjoining property; that the prayers in the writ petition and the WMPs. have been made out with malafide intentions and on false grounds, that he reiterates that he has never disobeyed the order of this Court, nor had the intention of doing so; that the President of the petitioner Association in connivance with the Secretary, not only expecting money in ransom have filed this application on false grounds but also to blackmail and for nothing else. On such and other averments, the respondent would pray to dismiss the contempt application.

6. The petitioner would file a reply affidavit denying those new allegations brought forth in the counter-affidavit filed on the part of the respondent.

Citing the Supreme Court judgment reported in Bangalore Medical Trust Vs. B.S. Muddappa and others, and AIR 1993 SC 430, the petitioner

would contend that the position of law is such that once a space is earmarked for public purpose, the promoter or owner (in the case the Co-

operative Society) ceases to be a legal owner and becomes a trustee of the residents of the Layout. Hence, it is the residents who are the legal

owners of the public purpose space; that the contemner in collusion with the Co-operative Society, has come forward to deny the version of the

petitioner as false. On such and other averments, the petitioner in the reply affidavit would confirm that the contemnors have no regard for law or for

Court orders.

7. When the above matter has been taken up for consideration, the learned counsel appearing for the petitioner besides laying emphasis on the

pleadings of the contempt application as brought forth supra would also cite two judgments both of the Supreme Court of India, the first one

delivered in Bangalore Medical Trust Vs. B.S. Muddappa and others, and the second one delivered in Pt. Chet Ram Vashist (Dead) by Lrs. Vs.

Municipal Corporation of Delhi, . The first of the above two judgments has been cited laying stress on the point that the petitioner Association has

a locus standi to file the petition in the representative capacity of the members of the petitioner Association. In the said judgment, it is held:

The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of

public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal

injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to

sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative

guidance is forcing citizens to espouse challenges with public interest flavour. It is also late in the day, therefore, to claim that petition filed by

inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public

spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored

or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of

this branch of jurisprudence is towards free movement both in nature of litigation and approach of the Courts.

So far as the second judgment cited above is concerned, it is stressed that reserving any site for any street, open space, park, school etc. in a

layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such

reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in

general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. Yet in order

to protect interest of the owners of house and residents of the colony, the Corporation shall have right to manage the land which was earmarked

for school, park etc. and that the Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

8. Among the above two judgments, even though the first one pertains to the filing of the petition in the public interest or in the interest of the members of the petitioner Association in its representative capacity, which is fully justified by the said judgment, the second one even though lays emphasis on such places of public activities to be maintained by the Corporation as its owner still, the second judgment does not have much to do with the case in hand.

9. Assessing the merit of the contempt application in consideration of the facts and circumstances and having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the interim order passed by this Court dated 8-10-1996 made in WMP No. 19944 and 19945 of 1996 made in W. P. No. 14569 of 1996 granting interim injunction as prayed for and later making the same absolute as per its order dated 10-3-1997 has been disobeyed by the respondent according to the petitioner. Hence, it has become relevant to know as to what is the prayer of the petitioner. So far as WMP. No. 19944 of 1996 is concerned, it was only restraining respondents 2 to 4 from alienating, conveying S. No. 18/3 (New S. No. 38/ 1) of Pallipattu Village, Adyar, Madras with which the present respondent is unconcerned since he being the sixth respondent therein. So far as the other WMP. No. 19945 of 1996 is concerned, the prayer is to the effect of injunction restraining the respondents 2, 3, 4 and 6 from interfering with the upkeep, use and maintenance of the public purpose space in Old S. No. 18/3 and new S. No. 38/1 of Pallipattu village, Adyar, Madras by the petitioner Association on behalf of the residents of the area pending disposal of the writ petition.

10. No doubt, immediately on filing the above writ petition along with the WMPs. during admission, the learned single Judge of this Court has granted an interim injunction as prayed for in both the petitions and later upon hearing the parties, had also made it absolute. But the case of the petitioner is that these orders have been disobeyed by the respondents herein causing, interference by placing rubble in the place mentioned in the

petition and thus committed contempt of this Court order.

11. The only point that is to be decided in the circumstances of the case is whether the respondent placed rubble in the land in which the

respondent has been enjoined from doing so as per the order of this Court mentioned supra. Absolutely, no iota of evidence has been either

placed before this Court or substantiated on the part of the petitioner to the effect that the respondent either placed the rubble in the manner as

alleged in the writ petition on the part of the petitioner so as to cause hindrance to the activities of the petitioner in the maintenance of the said

lands, or substantiated the same with proper evidence or circumstances in a convincing manner especially in view of the strong rebuttal made on

the part of the respondent that he had not committed contempt of this Court by causing disobedience in violation of the orders passed by this

Court. Unless these aspects have been proved, no conclusion could be arrived at by this Court to the effect of the prayer of the petitioner to hold

that the respondent acting in violation of the orders of this Court, has committed contempt of this Court. In the absence of any such proof muchless

placed in a reliable and tangible manner, merely based on allegations and accusations, no conclusions could be drawn by this Court and in these

circumstances, the only course that is left open for this Court is to conclude that the petitioner has failed to substantiate his claim as put forth in the

contempt application.

In result, the above contempt application fails and the same is dismissed. No costs. Consequently, Sub Application No. 187 of 1999 is also

dismissed.