
(2008) 09 SC CK 0007

In the Supreme Court Of India

Case No : Contempt Petition (C) No. 242 of 2006

Baldev Kumar

APPELLANT

Vs

B.M. Sharma

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Constitution of India, 1950 — Article 136

MADHYA PRADESH MUNICIPAL CORPORATION ACT, 1956 — Section 305, 436

Citation : (2009) 1 MPJR 95

Hon'ble Judges : Markandey Katju, J;Altamas Kabir, J

Bench : Division Bench

Advocate : B.S. Banthia and Vikas Upadhyay, Sushil Kumar Jain, Puneet Jain and Pratibha Jain, for the Appellant; K.K. Venugopal and S.K. Gambhir, Ankur Talwar, Anil Sharma, M.P. Jha, P.D. Bidua, Ram Ekbal Roy and Harshvardhan Jha, for the Respondent

Final Decision : Disposed Of

Judgement

1. This contempt petition arises out of an order passed by this Court in SLP (C) No. 10272/06 on 26th June, 2006 which reads as follows:

Issue notice.

Mr. M.P. Jha, Advocate, accepts notice on behalf of Respondent No. 1. counter affidavit to be filed by the Respondents. The Petitioner if also permitted to file additional affidavet.

In the meanwhile, status quo as on today be maintained.

2. As will appear from the said order, while issuing notice, which was accepted on behalf of Respondent No. 1. Municipal corporation, Gwalior, we had directed the parties to maintain status quo as on that date.

3. In the contempt petition, the Petitioner has alleged that despite having knowledge of the said order, the alleged contemnors willfully and deliberately

violated the same by proceeding with demolition of the Petitioner's house in respect of which a notice had earlier been issued u/s 305 of the Madhya Pradesh Municipal corporation Act, 1956.

4. The specific case made out is that the demolition work was commenced on 25th June, 2006, and continued on 26th June, 2006, and thereafter, although, the order of status quo was also made on the said date and the said order was intimated to the municipal corporation by telegram on the same date. It is the case of the Petitioner, which is supported by several affidavits affirmed by residents of the locality in question, that even after 26th June, 2006, the demolition work continued, and, in any event, the debris left over from the demolition of the structure was removed despite having the knowledge of the order of status quo even till 28th June, 2006.

5. It has been submitted in support of the petition that the filing of the SLP was known to the alleged contemnors on 22nd June, 2006 itself, since a caveat had been entered on behalf of the Municipal corporation, Gwalior. It has also been submitted that even on 26th June, 2006, when the matter was moved, Learned Counsel had appeared on behalf of the Municipal corporation and the order of status quo was passed in his presence. It was, therefore, submitted that even prior to the passing of the order of status quo on 26th June, 2006, the parties had knowledge of the filing of the Special Leave petition, but despite having such knowledge and without waiting for the SLP to be taken up for consideration, the alleged contemnors went ahead with the demolition of the Petitioner's structure in order to defeat any order that might be therein to stop the demolition work.

6. The Petitioner has, therefore, prayed that an appropriate action be taken against the alleged contemnors and that necessary restitution be effected in the Petitioner's favour.

7. As against the case made out by the Petitioner, it has been urged on behalf of the alleged contemnors that it would be evident from the materials on record that the demolition work was commenced and completed on 25th June, 2006, even before the order of status quo was passed by this Court and it has also been indicated that once the order of status quo was brought to their notice, even the removal of debris was stopped and the site is lying in the same condition as it was on 26th June, 2006.

8. In this regard, it may be pointed out that the proceedings have arisen out of the notice u/s 305 of the aforesaid Act which was unsuccessfully challenged before the High court before the learned Single Judge in writ Jurisdiction. The Petitioner, thereafter, without moving the Division Bench of the High court in appeal, moved this Court under Article 136 of the constitution. The SLP was disposed of with liberty to the Petitioner to file an appeal before the High court which has been filed and is pending.

9. In the meantime, the contempt petition was filed alleging deliberate and willful violation of the order of status quo passed on 26th June, 2006.

10. On the one hand, it has been submitted on behalf of the Petitioner that demolition work was commenced on 25th June, 2006 and continued thereafter till 28th June, 2006, including the removal of debris of the demolished structure, while, on the other hand, it has been submitted on behalf of the alleged contemnors that the demolition work was completed on 25th June, 2006, itself and part of the debris had been removed till the order of status quo was communicated to the contemnors, whereupon even the work of removal of debris was suspended.

11. From the materials on record it is difficult for us to arrive at a finding at this stage as to which of the versions is correct. Of course, the manner in which the demolition work was carried out, despite having knowledge of the SLP pending in this Court, speaks volumes and cannot be appreciated, but whether the case of violation of the order of this Court is made out, is a different matter altogether. From the photographs that have been shown to us during the hearing of the contempt petition, it is apparent that except for a certain amount of debris lying on the spot where the Petitioner's building was originally standing, no other activity is being undertaken on the site in question. In a proceeding of such a nature as this it will be difficult for us sitting in contempt jurisdiction to turn the clock back, even if we are inclined to order restitution. In our view, the validity of the notice u/s 305 of the aforesaid Act, as well as the legality of the manner in which the same was sought to be implemented, has to be considered in the pending appeal before the High court, particularly when the incidents, which are the subject matter of the contempt petition, occurred after the filing of the SLP in this Court. In fact, most of the submissions advanced by Mr. Jain, appearing for the Petitioner, concern the merits of the case pending in appeal.

12. In such circumstances, although, we do not appreciate the manner in which steps were taken to issue the notices under Sections 305 and 436 of the 1956 Act and implement the same, we are also constrained to indicate that we are unable to hold that any contempt has been committed.

13. In this regard we may add, that contempt proceedings being quasi-criminal proceedings of a summary nature, the allegations made have to be proved beyond reasonable doubt, which in this case does not appear to have been done.

14. Accordingly, we dismiss the contempt petition, but we make it clear that the Petitioner will be entitled to raise all the points that have been raised in the contempt petition and the SLP regarding legality of the issuance of the notices under Sections 305 and 436 of the 1956 Act and the Implementation thereof, together with the question of adequacy of the compensation awarded, in the pending The contempt petition is dismissed with the aforesaid direction.

15. There will be no order as to costs.

16. Any observation made in this order shall not influence the high court while disposing of the writ appeal, which, if possible, may also be disposed of expeditiously, preferably within this year.