
(2016) 01 CAL CK 0105
In the Calcutta High Court

Case No : W.P.C.R.C. No. 287 (W) of 2015 in W.P. No. 28676 (W) of 2014

Binoy Kumar Chakraborty

APPELLANT

Vs

Sabita Das

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 421
Howrah Municipal Corporation Act, 1980 — Section 177

Citation : (2016) 3 CalHCN 423 : (2016) 3 WBLR 131

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Debanik Banerjee, Advocate, for the Appellant; Haradhan Banerjee, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Debangsu Basak, J.—1. The petitioner complains of violation of an undertaking given to Court as recorded in the Order dated October 14, 2014. The alleged contemnor had suffered an order of demolition passed by the Howrah Municipal Corporation as she was guilty of construction beyond the sanctioned plan. In the writ petition filed by her challenging the order of demolition, she had undertaken not to make any construction at her house till the disposal of her application under Section 177 of the Howrah Municipal Corporation. The alleged contemnor has constructed subsequent to such order in breach of her undertaking. The alleged contemnor did not make any application under Section 177 of the Howrah Municipal Corporation Act, 1980.

2. It is submitted on behalf of the petitioner that, the building was incomplete on the date of the order. The fact that the building was incomplete on the date of filing of such writ petition as well as the passing of the Order dated October 14, 2014 has been admitted in the writ petition. The Howrah Municipal Corporation authorities had issued a notice to stop work in the month of May 2014. The stop work notice was not withdrawn by the Municipal authorities. Therefore, there was

no possibility of construction subsequent to the month of May 2014. The photographs disclosed in the contempt petition shows construction being done subsequent to the Order dated October 14, 2014. Therefore, the status obtaining on the date of the Order dated October 14, 2014 should be restored.

3. On behalf of the alleged contemnor it is submitted that, the status of the building is not clear from the writ petition in which the Order dated October 14, 2014 was passed. The alleged contemnor is not guilty of any violation of the undertaking given to Court. The Howrah Municipal Corporation authorities are yet to decide on the application under Section 177 of the Howrah Municipal Corporation Act, 1980. The building remains incomplete and in the status as obtaining on October 14, 2014.

4. Two authorities have been cited on the provisions of the Contempt of Courts Act, 1971, namely, 2010 Volume 1 Calcutta High Court Notes page 306 (Subrata Kunda & Ors. v. Kshiti Goswami & Ors.) and , 2007 Volume Calcutta Law Times page 311 (H.C) (All Bengal Excise Licensees" Association & Ors. v. The State of West Bengal & Ors.).

5. Initially, directions for affidavits were given on March 13, 2015 in the petition. The alleged contemnor has filed an affidavit pursuant thereto. The alleged contemnor thereafter wanted to leave to file an affidavit to bring on record the earlier writ petition and the other facts. The same was allowed by the Order dated June 25, 2015. Affidavit to such effect was filed. Rule was issued on July 31, 2015. By the Order dated August 31, 2015 the alleged contemnor was allowed to file an affidavit in answer to the Rule. She had filed such affidavit. The contempt petition has taken up for hearing after issuance of Rule and completion of affidavits. During the course of hearing on October 1, 2015, the alleged contemnor volunteered to file an affidavit. Such leave was granted. The alleged contemnor has filed a supplementary affidavit. The petitioner has filed an affidavit dealing with the same.

6. A demolition Order dated September 20, 2014 was issued by the Howrah Municipal Corporation in respect of premises No. 112/1, Benaras Road, Salkia, Howrah. The alleged contemnor complaining that, such demolition order was issued without affording her an opportunity to exhaust her remedies under Section 177 of the Howrah Municipal Corporation Act, 1980 had filed a writ petition being W.P. No. 23563 (W) of 2014. Such writ petition was taken up for hearing during the vacation. Such writ petition was disposed of by an Order dated October 14, 2014. It was conceded by on the date of hearing of the writ petition that, she had deviated from the sanctioned plan. On October 14, 2014 the alleged contemnor gave an undertaking not to make any further construction at such premises during such time her application under Section 177 of the Howrah Municipal Corporation Act, 1980 was not disposed of. In the affidavit affirmed on September 7, 2015, the alleged contemnor has stated that, the photographs annexed in W.P. No. 23563 (W) of 2014 showed the status of construction at the building as in the month of March 2014. According to the

alleged contemnor further construction at the building was made by her subsequent thereto. She had progressed with the construction in the months of June, July, August and September 2014. She has, however, not stated that she had made any construction for the period from March 2014 to May 2014.

7. During hearing it has been admitted by the parties that the Howrah Municipal Corporation had issued a notice to stop work in the month of May 2014. It appears from the writ petition being W.P. No. 23563 (W) of 2014 that, the Howrah Municipal Corporation had issued a demolition Order dated September 20, 2014.

8. The status of the building as in March 2014 appears from W.P. No. 23563 (W) of 2014. Photographs of the status of construction of the building are annexed therein. Such writ petition is annexed to the affidavit of the respondent affirmed on September 7, 2015. The Howrah Municipal Corporation authorities had issued stop work notice in the month of May 2014. The alleged contemnor has claimed to have constructed subsequent to the issuance of the stop work notice in the months of June, July, August and September 2014. There is no averment that the alleged contemnor had constructed during the period of March 2014 to May 2014. No material has been produced to show that the Municipal authorities had withdrawn the stop work notice. Therefore, in law, the status of the building obtaining as in March 2014 and as disclosed in W.P. No. 23563 (W) of 2014 must be maintained. The construction, if any, made subsequent to the stop work notice, cannot be taken note of. Such construction is illegal. The alleged contemnor cannot be allowed to enjoy the fruits of acts done by her which are patently illegal. The alleged contemnor has not disclosed any material to show the status of the building as on October 14, 2014 apart from which the law must recognize to be obtaining. Consequently, in law the only status of the building that can be recognized is that as obtaining in March 2014 and as disclosed in W.P. No. 23563 (W) of 2014. A photograph of the status of the building appears at page 86 of the affidavit of the alleged contemnor affirmed on September 7, 2015. Admittedly, the constructions have happened subsequent thereto changing the status of construction obtaining at the relevant time. Even subsequent to October 14, 2014 there has been construction at the building as would appear from the photographs annexed to the contempt petition. These photographs are sought to be denied in affidavit. The denial of the alleged contemnor is not convincing. During hearing repeated adjournments and repeated opportunities were taken by the alleged contemnor to place on record her version of the extent of construction done subsequent to October 14, 2014. However, in every opportunity given to her she did not place on record by affidavit what was admitted in Court. She has admitted to constructing subsequent to October 14, 2014 during the dates of hearing of the contempt petition. The alleged contemnor is, therefore, guilty of violation of the undertaking given by her to Court. The application under Section 177 of the Howrah Municipal Corporation Act, 1980 has not been shown to have been disposed of. Therefore, the alleged contemnor was obliged to maintain the status obtaining on October 14, 2014 in

respect of the building. She has not done so. Therefore, she must be directed to purge herself of the act of contempt.

9. In *Subrata Kunda* (supra) it has been held that, civil contempt is not meant for punishing the alleged contemnors. It is directed towards enforcement of the order. Awarding punishment is the secondary object. However, if the order is carried out but not in accordance with the directions of the Court, awarding of punishment becomes the primary object.

10. In *All Bengal Excise Licensees' Association & Ors.* (supra) it has been held that, if there is a doubt regarding interpretation of the orders passed by Court then the benefit or advantage of such a doubt must be given to the alleged contemnor, as the Act of contempt must be established beyond all reasonable doubt. It has not been suggested on behalf of the alleged contemnor that, there is any doubt regarding interpretation of the Order dated October 14, 2014 or the undertaking recorded therein, in the present case.

11. In the present case, there is a gross violation of an undertaking given to Court by the alleged contemnor. In course of hearing I had given repeated opportunities to her to purge herself of the acts of contempt. She was allowed to file repeated affidavits on the prayer made on her behalf that she would do the needful. Apart from extending contrived apologies, she has ventured not to purge herself of the acts of contempt. Her conduct is deplorable. Repeated submissions have been made emphasizing the age and gender of the alleged contemnor. I am not persuaded by the same. The alleged contemnor has allowed herself to be misutilized by others in violating the undertaking. Such others are seeking to take shelter under the age and gender of the alleged contemnor and utilize and enjoy the fruits of the breach of the undertaking given by her. Such a position must not be allowed to obtain. Neither age nor her gender gives her a licence to flout her undertaking. Everything else remaining constant, law is equal for every person irrespective of the gender and age of that person. In such circumstances, I hold her guilty of contempt having acted in breach of her undertaking given to Court. In view of the conduct of the contemnor, I am not in a position to accept her apology.

12. From the conduct of the contemnor, I am convinced that she had filed W.P. No. 28676 (W) of 2014 with the fraudulent intent of obtaining an order to undertake illegal construction. She was admittedly guilty of construction in deviation of the sanctioned plan to an extent to suffer an order of demolition. She had constructed notwithstanding the stop work notice. By her writ petition she had succeeded in stopping the demolition on the basis of an undertaking which she had no intention of adhering to. She had no intention of adhering to the undertaking when giving the same on October 14, 2014. She had practised fraud on Court to obtain such order. As I am hearing a contempt petition, I am not in a position to recall such order. Parties are at liberty to take steps with regard thereto in view of the findings returned.

13. The contemnor is directed to demolish such parts of the building standing at the premises concerned so as to make it in conformity with the photograph at page 86 of the supplementary affidavit dated September 7, 2015. She will commence demolition immediately and will complete the same within 4 weeks from date. In the event of her failure to complete the demolition within the time allowed, the Howrah Municipal Corporation authorities will do the needful at the cost and expense of the contemnor. The Howrah Municipal Corporation authorities will commence implementing the order immediately on the receipt of request to such effect from the petitioner. The petitioner is at liberty to make such request to the Howrah Municipal Corporation authorities after expiry of 4 weeks from date.

14. As I have found the petitioner to be in violation of her undertaking and guilty of an act of contempt, I impose a costs of Rs. 50,000/- against her, as punishment, to be paid by her to the West Bengal State Legal Services Authority, Howrah District within 2 weeks from date. In default of payment within the time prescribed, the District Magistrate, Howrah will take steps for realization of the costs as arrears of land revenue from the movable and immovable properties of the contemnor, in terms of Section 421 of the Criminal Procedure Code, 1973.

15. W.P.C.R.C. No. 287 (W) of 2015 is disposed of.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.