
(2007) 08 AP CK 0044
In the Andhra Pradesh High Court
Case No : CC No. 234 of 2007

C. Venkat Rami Reddy and Others

APPELLANT

Vs

J.S. Ranjan and Others

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 151
Contempt of Courts Act, 1971 — Section 10, 11, 12

Citation : (2007) 6 ALD 1

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : G. Anandam, for the Appellant; M. Surender Rao and Polisetty Radhakrishna, SC for A.P. Municipalities, for the Respondent

Judgement

P.S. Narayana, J.—The Contempt Case is filed under Sections 10 - 12 of Contempt of Courts Act, hereinafter in short referred to as Act for the purpose of convenience, praying the Court to punish the respondents 1 and 2 according to law for deliberate and wilful contempt of the Court Order dated 22.8.2006 made in Writ Petition No. 4889 of 2006.

2, This Court ordered Notice Before Admission on 26.3.2007 and on 28.6.2007 this Court admitted the Contempt Case and on 12.7.2007 respondents 1 and 2 were present and their presence had been recorded and the further appearance of respondents 1 and 2 was dispensed with until further orders.

3. Sri Malla Reddy, learned Senior Counsel representing the petitioners had pointed out to the order made by this Court and also the order made by the 1st respondent dated 13.4.2007 and would comment that in the light of the observations made by this Court, it cannot be said that the order had been complied with. Even otherwise, the learned Senior Counsel would contend that though the time was extended specifically observing that no further extension would be granted, even within the stipulated time the order was not made. The learned Senior Counsel also had taken this Court through the respective counter-

affidavits and the nature of the apology which had been tendered and would maintain that in the facts and circumstances of the case the apology cannot be said to be bona fide and if such an apology to be accepted, which is not bona fide, it may not be in the interest of protecting the majesty of the institution.

4. Per contra, Sri M. Surender Rao, learned Counsel representing 1st respondent had taken this Court through the contents of the order made by this Court and also the way in which the 1st respondent had referred to the relevant portions of the order and further made an order in detail recording certain reasons. The learned Counsel also would point out that though there is delay in compliance of the order, the order as such had been complied with. The Counsel also had taken this Court through the relevant portion of the counter-affidavit filed by the 1st respondent and would submit that in the light of the unconditional apology which had been tendered though the word "unconditional" as such had not been specified in the counter-affidavit, in the facts and circumstances it being an unconditional apology, the same may be accepted. At any rate the learned Counsel would maintain that this is neither deliberate nor intentional but because of certain administrative lapses of the concerned staff in circulating the file.

5. Sri Polisetty Radhakrishna, learned Counsel representing 2nd respondent would maintain that the role of 2nd respondent is limited and even otherwise in the light of the unconditional apology tendered by him in the counter-affidavit and also in the light of the stand taken by him in the counter-affidavit, the further contempt proceedings may be closed as against the 2nd respondent.

6. Heard the Counsel.

7. The petitioners filed Writ Petition No. 4889 of 2006 challenging the proceedings bearing permit No.D/BA/235/2005, dated 14.10.2005 issued by 2nd respondent granting permission to the respondents 3 to 5 for construction of building in the petitioner's plot bearing No. 51 in Survey No. 42, situated at Ramanthapur Village, Uppal Mandal, Ranga Reddy District on the ground that they are the owners of the same by virtue of a registered sale deed executed by G. Mallesham through the learned Principal Junior Civil Judge (East and North), Ranga Reddy District in terms of the decree made in OS No. 179 of 1994 as illegal, arbitrary and without any sanction of law and contrary to the provisions of A.P. Municipalities Act, 1965 and the Rules made thereunder besides being in violation of Principles of Natural Justice. It is stated that the petitioners inherited the property bearing plot No. 51 in S. No. 42 at Ramanthapur, Uppal Mandal, Ranga Reddy District from the late wife of the first petitioner Smt. C. Venkatamma and during her lifetime she entered into an agreement of sale with lawful owner and possessor G. Mallesham for a valid sale consideration and as he had not come forward to execute the registered sale deed in terms of agreement of sale, his wife filed OS No. 179 of 1994 on the file of Principal Junior Civil Judge, East and North, Ranga Reddy District, praying for the relief of specific performance of the said contract of sale and the said suit was decreed in her favour by a decree and judgment dated 2.5.2000. It is also stated that his wife

filed E.P. No. 226 of 2000 and accordingly a registered sale deed was executed in her favour by the owner through Principal Junior Civil Judge, East and North, Ranga Reddy District, vide sale deed bearing document No. 8716/2001, dated 24.7.2001. It is also stated that when respondents 3 and 4 made an attempt to obtain permission to construct a residential building, his wife got issued a legal notice dated 20.9.2000 to respondents 1 and 2 bringing to their notice the fact of their ownership and also requested them to give opportunity to file objections in case respondents 3 and 4 approached them praying for permission. It is also stated that on receiving the said notice, the 1st respondent had rejected the permission application made by respondents 3 and 4 on the ground that the land is under dispute and also not forming part of any layout and directed to approach the Court of law for land dispute vide its proceedings No. 7877/P4/HUDA/2000, dated 4.11.2000. It is also stated that meanwhile the 4th respondent had filed OS No. 455 of 2002 on the file of I Additional Senior Civil Judge, Ranga Reddy District praying for the relief declaring him as owner of the subject property and also for cancellation of decree made in OS No. 179 of 1994 on the file of Principal Junior Civil Judge, East and North, Ranga Reddy District, and for perpetual injunction, which are pending. It is also stated that the first petitioner came to know that the 2nd respondent-Municipality had granted permission to respondents 3 and 4 vide proceedings bearing permit No.D/BA/ 235/2005, dated 14.10.2005 granting them permission to construct residential building in the subject land, which includes plot bearing No. 51. Left with no other alternative, since respondents 1 and 2 failed to perform their part of the obligation in affording reasonable opportunity to them a say in the matter before granting permission, the petitioners filed the writ petition as already aforesaid.

8. This Court in Writ Petition No. 4889 of 2006, after recording the respective stands taken by the parties, made the following order:

On 4.11.2000, the Hyderabad Urban Development Authority made the following order:

"With reference to your application cited, for approval of compound wall and room permission in the site under reference has been examined and rejected as the said land under reference is under dispute and not forming part of any approved layout. Hence, you are advised to approach Court of law for land dispute.

In view of the above, your application for approval of building permission in the site under reference is hereby rejected.

The respective stands taken by the parties relating to the pendency of the suit and the nature of suit and other aspects already had been referred to supra. The principal stand taken by the 1st respondent is that inasmuch as the 1st respondent is not aware of the pending civil proceeding, inasmuch as the 1st respondent is not a party to the said civil proceeding, on the material available on record appropriate order was made. In substance the 2nd respondent also

had taken a similar stand. No doubt submissions at length were made in relation to the nature of the suit which is pending and whether these questions are to be agitated in the pending civil suit or respondents 1 and 2 are bound to consider the complaints or objections raised in relation to the building permission in question in the facts and circumstances of the case. In the light of the specific stand taken by both the respondents 1 and 2, this Court is of the opinion that it cannot be said that the impugned orders were made though these authorities in fact had knowledge of the pending civil litigation. What is the effect or what is the impact of the pending litigation and what is the scope and ambit of the suit and in the light of the relevant statutory provisions governing the field whether it is a case for granting permission or withholding the permission, or to make it specific, a conditional permission alone be granted which may be subject to further orders which may be passed in the civil Court, these are all aspects which may have to be considered by both the respondents 1 and 2 after putting the petitioners and also respondents 3, 4 and 5 on notice and taking into consideration all the facts and circumstances. In the light of the same, inasmuch as taking the respective stands taken by both the respondents 1 and 2 into consideration that they had no knowledge about the proceedings referred to in the affidavit filed in support of the writ petition, the respondents 1 and 2 are hereby directed to reconsider the issue after putting both the petitioners and respondents 3 to 5 on notice and pass appropriate orders in relation thereto within a period of three months from the date of receipt of this order.

9. It is stated that the copy of the said order was made available to the petitioners on 15.9.2006 and immediately the first petitioner made a representation dated 23.9.2006 communicating the said order dated 22.8.2006 and requested respondents 1 and 2 to comply with the orders of this Court. It is also stated that apart from this, a copy of the order also had been served on respondents 1 and 2 through the Registry of this Court. As there was no response to the above representation, the first petitioner was compelled to issue a notice through his Counsel on 26.10.2006 calling upon them to comply with the orders of this Court and further it was made clear in the said notice that in the event of non-compliance of the said order, the petitioners would be constrained to initiate necessary proceedings for violation of the orders of this Court treating the inaction as deliberate and wilful violation. Despite the same there was no response from respondents 1 and 2. It is also stated that at this juncture 1st respondent came up with an application in WPMP No. 429 of 2007 u/s 148 read with Section 151 of the CPC praying for extension of time granted in Writ Petition No. 4889 of 2006 for four weeks and this Court on 4.1.2007 granted extension of time by two weeks and further it was made clear that there would be no further extension. It is also stated that the said period also expired on 16.1.2007. It is further stated that 1st respondent through Estate Officer issued a letter dated 5.1.2007 calling upon the first petitioner and the respondents to appear before the Estate Officer on 11.1.2007 at 3 p.m., to produce documentary evidence in support of the respective claims of the parties and it is stated that all the

documents were furnished even at the threshold and subsequent thereto in response to the said letter also the Counsel representing the petitioners filed all the documents once again along with the memo and submitted arguments. Subsequent thereto on several occasions the first petitioner visited the office of the respondents 1 and 2, but the same was in vain and in such circumstances it is stated that inasmuch as the petitioners are left with no other option, the present contempt case had been filed.

10. In the counter-affidavit filed by the 1st respondent the relevant portion of the order made by this Court was referred to at Paragraph 7. Further it was stated that the allegation that the deponent of the contempt case made a representation dated 23.9.2006 is correct. It is also stated that a copy of the order made by this Court was received by HUDA on 22.9.2006 as is evident from the record and it is also true that a notice dated 26.10.2006 was issued to HUDA, but it appears that the said letters and notice were sent to Planning Section and after the file was circulated among the Junior Planning Officer, Chief Planning Officer, Director Planning and the Secretary, the Secretary of the HUDA seems to have taken a decision to move this Court for extension of time as it was felt that there was no time to give notice to the writ petitioners and respondents for hearing before the Vice-Chairman. The said decision was taken on 22.12.2006. It is further stated that the HUDA filed WPMP No. 429 of 2007 praying for extension of time and this Court was pleased to make an order dated 4.1.2007 granting extension of time by two weeks. Immediately after passing the order dated 4.1.2007, notice dated 5.1.2007 had been issued to the writ petitioners and the contesting respondents and the writ petitioners filed a Memo dated 11.1.2007 enclosing certain documents and the respondents gave a reply dated 17.1.2007. It is also specifically stated at Paragraph 11 of the counter-affidavit that the file appears to have been circulated amongst the various Officers of the HUDA and after going through the files circulated to him and after going through the representations made by the writ petitioners and respondents and after examining the legal position, 1st respondent made an order dated 13.4.2007, Certain procedural aspects and the aspects touching the merits and demerits of the matter also had been referred to in Paragraph 12 of the counter-affidavit. At Paragraph 13 of the counter-affidavit it was stated that the delay in passing the orders was not intentional and the same was due to the delay in circulation of the files to the 1st respondent and in Paragraph 15 of the counter-affidavit the 1st respondent had tendered an apology for the delay caused in his office and had reiterated that the delay is not intentional.

11. 2nd respondent filed counter-affidavit, wherein at Paragraph 4 it was stated that this respondent is not aware of the suits since the respondent was not made a party to the said suits and the respondent is not aware of the litigation of the permission application and further petitioner himself admitting that OS No. 179 of 1994 on the file of Principal Junior Civil Judge, Ranga Reddy District is pending. Several further factual details had been narrated in paragraphs 5 to 7 of the counter-affidavit and specific stand was taken and the office issued notices as

per the directions of this Court and further necessary action will be initiated soon after disposal of suit OS No. 455 of 2002. In Paragraph 9 of the counter-affidavit it was stated that there is delay in implementing the orders of this Court and the 2nd respondent may be pardoned for the delay and the delay is neither wilful nor wanton, but for the reasons which had been specified in the counter-affidavit.

12. The fact that the 1st respondent made an order on 13.4.2007 is not in serious controversy. As can be seen from the respective contentions of the parties, the affidavit and the respective counter-affidavits and also the material available on record, there cannot be any doubt whatsoever that even within the period of extended time granted by this Court, the order was not made. However, the fact remains that an order had been made on 13.4.2007 no doubt with some delay. Elaborate submissions were made by the Counsel on record that in the light of the conduct of both parties, the delay caused to be taken as deliberate and intentional. Hence, the question to be decided in the present contempt case is that in the light of the explanation given by the 1st respondent and also the apology which had been tendered by both 1st respondent and 2nd respondent as well, whether it is to be held that the respondents 1 and 2 are liable to be punished under the provisions of the Act.

13. In the realm of public administration when the directions are issued by the Court, the officers, who are made parties, are bound to comply with the said directions. In the hierarchy, be that a higher officer or a subordinate officer, they cannot escape from the consequences of the rigor of law on the ground that a particular officer is a superior officer and due to the lapses on the part of the subordinate officer, the same could not be complied with. Be that as it may, the learned Senior Counsel no doubt pointed out certain of the proceedings which had not been referred to at all while making the order dated 13.4.2007. It is needless to say that this is a contempt proceeding and the merits and demerits of an order which had been made by the 1st respondent in pursuance of the directions made by this Court cannot be adverted to in elaboration in the light of the limitations imposed on this Court while dealing with a contempt proceeding. Hence, this Court is not inclined to express any opinion relating to the said aspect, but it is made clear that the petitioners are at liberty to question the same in accordance with law, if the petitioners are so advised.

14. The next question with which this Court is concerned with is that in the light of the respective stands taken by the parties, whether respondents 1 and 2 to be held to be guilty of Contempt of Court in the facts and circumstances of the case.

15. In *Mulkh Raj Vs. State of Punjab*, it was held that apology is an act of contrition and unless apology is offered at the earliest opportunity and in good grace, apology is shorn of penitence and if apology is offered at a time when the contemnor finds that the Court is going to impose punishment, it ceases to be an apology and it becomes an act of cringing coward. Reliance also was placed on the decisions reported in *M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others*, and *Sri K. Ramadas Shenoy Vs. The Chief*

Officer, Town Municipal Council, Udipi and Others, .

16. It is no doubt true that this Court extended time and despite the same, within the time extended the 1st respondent could not pass an order. However, it is pertinent to note that on the very next day some further action had been taken and in a way this would show the bona fides or anxiety on the part of 1st respondent, but that could have been completed even by an early date. However, for certain reasons which had been explained some more time had been taken and ultimately the order dated 13.4.2007 was made. In the light of the explanation submitted by the 1st respondent in particular, this Court is of the considered opinion that there is no doubt delay on the part of 1st respondent, but in the light of the bona fide attempt made by the 1st respondent by initiating some action the very next day when an order of extension was made by this Court and also in the light of the apology which had been tendered by both the respondents at the earliest point of time while putting in the counter-affidavits before this Court, this Court is of the considered opinion that the further contempt proceedings need not be proceeded with. However, this Court cautions these respondents to be careful and cautious in complying with the orders or directions of the Court.

17. With the above observation, the contempt case is hereby closed.