

(2014) 07 AHC CK 0112
In the Allahabad High Court
Case No : C.M.W.P. No. 38469 of 2014

Charan Singh

APPELLANT

Vs

New Okhla Industrial Development Authority

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2A, 151
Constitution of India, 1950 — Article 215, 226, 227, 300A
Contempt of Courts Act, 1971 — Section 12

Citation : (2015) 4 ALJ 448 : (2014) 107 ALR 857 : (2014) 5 AWC 5341 :
(2015) 126 RD 552

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : M.D. Singh Shekhar and R.D. Tiwari, Advocate for the Appellant;
Shivam Yadav, Advocate for the Respondent

Judgement

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Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.—Heard Sri M.D. Singh Shekhar learned counsel for the petitioners and Sri Shivam Yadav for the respondents.

2. This petition has been filed for issuing an appropriate mandamus to restore the status of the property and possession that was existing prior to 14.3.2014 and to pay damages for the loss incurred by the petitioners on account of forcefully demolition being violative of Article 300A of the Constitution of India in the background of facts as mentioned hereinafter.

3. The dispute centers around a short fact relating to the demolition of the constructions for which the petitioners demonstrate that an order of injunction had been passed by this Court in Writ Petition No. 867 of 2014. A copy of the said judgment is Annexure-6A to the writ petition as corrected by the order dated 24.3.2014.

4. It is alleged that the said order was in the knowledge of the respondents and they had been served with the same yet on 24.5.2014. The respondent authorities have forcibly demolished the boundary wall and the other constructions clearly violating the order passed on 14.3.2014.

5. Aggrieved, the applicant preferred a Contempt Application No. 3559 of 2014 in which notices have been issued to the officials of the opposite party on 30.5.2014 and the same is pending consideration.

6. This petition has been filed praying for restoring back the position as existing over the disputed land.

7. Sri Shivam Yadav states that this issue has already been raised in the contempt application and in the circumstances the writ petition for the said relief at this stage would not be maintainable.

8. Having considered the submissions raised, the contempt court in the exercise of its plenary powers which flow under Article 215 of the Constitution of India and under the Contempt of Courts Act, 1971 has a power to punish for contempt and can issue necessary directions for the purpose of restitution, in the event it is ultimately found that the orders have been violated without modifying, altering or going behind or beyond the parent judgment.

9. To elaborate this it would be appropriate to refer to a few decisions that are necessary to be kept in mind while proceeding in a contempt matter.

10. The Apex Court in the case of Baldevbhai Gopalbhai Patel and others v. K.M.V. Co-operative Housing Society Limited and others, 2000 (10) SCC 251 has held as follows in paragraph 8:

"Section 12 of the Act does not contemplate punishment of the said nature while considering the petition for contempt of court. The learned senior counsel for the respondents is not in a position to support that para of the order of the High Court ordering demolition of the construction put up in breach of the court's order. It is well known that the purpose of punishment for contempt is to act as deterrent and to uphold the prestige of the court. In this case, the issue relating to permissibility of the disputed construction is not finally decided. The punishment was only for breach of the court's order which is different from the right of the contemner to put up the disputed construction."

11. This aspect of the powers of the contempt court was further examined by a Division Bench of our court in the case of Provincial Medical Services Association and Others Vs. State of U.P. and Others, , that noticed the above mentioned decision of the Apex Court and then went on to analyze the other decisions of the Apex Court as well as the other High Courts that the High Court in exceptional cases can issue such directions in order to subserve the ends of justice. While considering the impact of the judgment of the Full Bench of the Madras High Court in the case of Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another, and the case of Sukhdev Singh Sodhi Vs. The Hon'ble Chief Justice S.

Teja Singh and the Hon"ble Judges of the Pepsu High Court at Patiala , held as follows in paragraph 16:

"Thus, in view of the above, the law on the, issue can be summarised that the power of punishing a contemner, is inherent in every Court of Record. It is essential and necessary for the purpose of smooth working of the court. The court while exercising the power of contempt generally does not go beyond the order passed earlier which has not been complied with, but in exceptional circumstances, where the facts so warrant the court can also pass the orders which are necessary in the facts and circumstances of the case."

12. Then comes the decision of the Apex Court in the case of State of Orissa and Another Vs. Aswini Kumar Baliarsingh, , where in paragraphs 8 and 9 the Apex Court held as under:

"8. The learned counsel, however, may be correct in contending that while exercising its contempt jurisdiction, the High Court may, in a given case, issue appropriate direction, although no penal action is taken against the contemnors. But, even in respect thereof, a finding would be required to be arrived at to the effect that the contemnors have disobeyed the order of the court. Only when such a finding is arrived at, the court may in exercise of its inherent jurisdiction put the parties to the same position as if its order was not violated.

9. In All Inida Regional Rural Bank Officers Federation v. Government of India, whereupon reliance has been placed, such a direction was issued, but only after a finding was arrived at, that the Central Government had issued a notification in utter violation of the orders passed by this Court."

13. The aforesaid decision was followed by one of us while sitting singly in the contempt jurisdiction in the case of Smt. Rita Yati and another v. Murari Giri and others, 2007 (2) ADJ 431, paragraph 13.

14. It is evident that under the Contempt of Courts Act, 1971 the power conferred is to punish. This is essential to uphold the majesty of the courts. However, there is a higher element which is the majesty and rule of law. An order passed by the court has to be respected and its violation not only brings about the consequences to be faced under the contempt jurisdiction, but it also obligates the court to put the parties back into the same position that existed on the passing of the order. This is what is known as purging the contempt. Etymologically the word purge is derived from the Latin word "purus" which means "clean" and "agere" which means "to make". The word purge therefore, means to cleanse, to purify and to atone. It means to distill which process is to be adopted to remove any objectionable elements. This is a process of filtering and is an act to compel repentance. The act of purging is to expiate with the help of an aperient. In sum and substance the removal of the wrong and to restore the pure stream of justice is the figurative meaning of the word purge. This is necessary to ensure the strict administration of justice.

15. The process therefore, apart from punishment in contempt proceedings attracts the inherent powers of the High Court to make amends and reconcile the position that should exist under the orders of the court. It is a satisfaction which is required to remove any pollution in the stream of justice. It is an act of reparation. Any defilement of the administration of justice has to be followed by correction of any error and remove the same so as to restore the rule of law. It is the duty of the court therefore, also to ensure that the contemnor purges the contempt and does not get away with a apology under the threat of punishment.

16. Thus, this is the twin role of the High Court under the contempt jurisdiction which has been acknowledged through various decisions and which in our opinion would be the guiding principles for the contempt court in such matters. It is in essence a process of restoration and restitution without adding or subtracting from the order of the parent judgment. For this the contempt court, as observed in the decisions referred to hereinabove, will have to record a finding and then proceed to issue necessary directions. The High Court enjoys a unique constitutional status as the highest court of the province to ensure the administration of justice and prevent its miscarriage in any form.

17. We are supported in our conclusions drawn above to hold that in order to complete justice between the parties and to ensure that the contemnor or any beneficiary does not derive any advantage by committing contempt, that directions are required to be issued, which may be referable to Article 226 read with Article 227 of the Constitution of India.

18. The Apex Court in the case of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, , has held that where an act is done in violation of an order of stay or injunction, it is the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. It further observed that the principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of contempt is well-settled. Paras 17, 18, 19 and 20 of the report are reproduced below:

"17. The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt is well-settled. In Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others, , this Court held clearly that undergoing the punishment for contempt does not mean that the court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions to in adding to punishing the petitioners for contempt of court. The argument was rejected holding that "the single Judge was quite right in giving appropriate directions to close the breach [of undertaking]".

18. The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In *Clarke v. Chadburn*, 1985 (1) All ER 211, Sir Robert Megarry V-C observed:

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

19. To the same effect are the decisions of the Madras and Calcutta High Courts in *Century Flour Mills Ltd. Vs. S. Suppiah and Others*, and *Sujit Pal Vs. Prabir Kumar Sun and Others*, . In *Century Flour Mill Limited*, it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrong-doing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The court refused to recognize that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. In *Suraj Pal*, a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The court directed the restoration of possession to the plaintiff with the aid of police. The court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule 2A of Order XXXIX will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law."

19. Even in matters of injunction arising out of the orders of the civil court under Order XXXIX of the Civil Procedure Code a Division Bench of our court in the case of *Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others*, , has ruled as under:

"22. So far as F.A.F.O. No. 251 of 1972 and Civil Revision No. 875 of 1972 are

concerned it may be pointed out that the mere fact that the applicants had been dispossessed after the interim injunction order had been issued would not be enough to treat the chapter in regard to possession over the house as closed. If a person has been dispossessed by willfully disobeying an order of injunction the court which issued the order of injunction can after considering the circumstances of each case and the conduct of the parties always pass such an order in the ends of justice as would undo the wrong done to the party in whose favour the order of injunction had been issued. The exercise of this inherent power vested in the court is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court: See *The State of Bihar Vs. Usha Devi and Another*, and *Magna and Another Vs. Rustam and Another*, ."

20. The said view has been followed by the learned single Judge of the Kerala High Court in the case of *Lakshmikutty Amma Retnamma Vs. P.N. Krishna Pillai and Others*, , has ruled as under:

"11. The only other contention urged is that Section 151, C.P.C. should not have been invoked, by the court below to "restore" possession. The court below stated that it was competent to restore possession". For want of elucidation, this statement has lent an argument to appellant. What was obviously meant by the court below, was that by violating the order of injunction, appellant could not gain possession and that Section 151, C.P.C. enables the court to make an order necessary for the ends of justice. When unlawful means are adopted by a party, it is plainly the responsibility of the court to invoke Section 151, C.P.C. to secure the ends of justice, or to prevent abuse of process of court. In the instant case, an order of injunction was issued under Order XXXIX, Rule 1. In disregard of that, the appellant took possession of the property. In such circumstances, the court was bound to intervene, and intervention was not to give an unrelated relief, but only to enforce the order under Order XXXIX, Rule 1. As observed in *Satish Chandra Maity Vs. Sm. Saila Bala Dassi and Others*, , when a party comes into possession of property violating an order of injunction, it is the duty of the court to restore possession, by recourse to its inherent powers under Section 151, C.P.C. The High Court of Rajasthan also, in *Magna and Another Vs. Rustam and Another*, , held that Section 151, C.P.C. can be invoked when one of the parties obtained possession, violating an order of injunction. The same view finds acceptance in *Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others*, , in *The State of Bihar Vs. Usha Devi and Another*, and in *Kochira Krishnan Vs. Joseph Desouza*, . Consensus of judicial opinion, without divergence, is that Section 151, C.P.C. cannot only be invoked, but should also be invoked to effectuate an order validly made by a court of competent jurisdiction. That is what the courts below did, and no more, and that is what they are required to do. The judgment and decree do not call for interference."

21. A conspectus of the aforesaid decisions and the discussions indicates that there has to be a determination in relation to the subject matter. In the instant

case the writ petition before this Court was finally disposed of with an injunction that was to operate till disposal of the application by the trial court. It is categorically stated and undisputed that the said application has not been disposed of which facts have been alleged in paragraph 10 of the writ petition and the original Suit No. 693 of 2011 is still pending adjudication.

22. It may also be noted that this is not a case of ex parte injunction order where the courts have been cautioned to exercise the jurisdiction of contempt only after the stay vacation application has been decided as held in the case of State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others, and in the case of Modern Food Industries (India) Ltd. and another v. Sachidanand Dass and another, 1995 (4) Supp SCC 465.

23. It is in this background that the boundary wall of the petitioner is alleged to have been demolished during the existence of a judicial order in the shape of an interim injunction.

24. The contempt jurisdiction of this Court has already been invoked and the officials have been put to notice as is evident from the order passed on 30.5.2014. The petitioners are at liberty to bring all these facts to the notice of the contempt court and the same can be appropriately dealt with in the said proceedings as observed above.

25. Consequently, we are not inclined to entertain this petition at this stage without prejudice to the rights of the petitioners to seek such a relief before the appropriate forum that may be desirable in law after orders are passed by the contempt court on taking notice of the facts as mentioned as also the judgments referred to hereinabove.

26. The writ petition is disposed of with the said observations.