

(1999) 03 MAD CK 0091

In the Madras High Court

Case No : Contempt Application No. 530 of 1997

D. Muthukrishnan

APPELLANT

Vs

The Superintendent of Police, St. Thomas Mount, Chennai-
600 016 and Others

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151
Constitution of India, 1950 — Article 215, 225

Citation : (1999) 03 MAD CK 0091

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N.S. Varadachari, for the Appellant; T.S. Ramasamy for 3rd Respondent, Mr. P. Jothimani for 4th Respondent, Mr. S.M. Pandian for 5th Respondent and Mr. A. Venkatesan for 6th Respondent, for the Respondent

Judgement

S.S. Subramani, J.—Petitioner seeks to initiate contempt proceedings against respondents for the alleged willful disobedience of orders passed in CrI. O.P. No. 8582 of 1992 dated 17.8.1992 and pass suitable orders and render justice. Petitioner along with his mother and brothers filed O.S.2125 of 1991 of the file of District Munsif, Poonamallee against Kundrakudi Aadinam as well as his agent for an injunction to restrain them from interfering in any way with their peaceful possession of landed property to an extent of 1.42 acres.

2. Fourth respondent in the Contempt Application, agent of Aadhinam also filed a suit against petitioner and others stating that he was in possession of the property and also filed an injunction application. An ad interim injunction was granted and the same was subsequently vacated by Munsif, and finally in C.R.P. 2786 of 1993 this Court also confirmed the order of vacation of injunction against Aadhinam. It was thereafter 4th respondent again tried to interfere with the possession of petitioner, which necessitated for filing of O.S.2125 of 1991 on the file of District Munsif Court, Poonamallee. Petitioner also filed 1.A.2842 of 1991 and injunction was granted and subsequently the same was made absolute on

14.9.1992. Even though 4th respondent and Aadhinam preferred appeal in C.M.A.31 of 1992, the same was subsequently withdrawn. Both the suits in O.S.2177 of 1990 and O.S.2125 of 1991 were transferred to the file of District Munsif Court, Tambaram and the suits are pending.

3. While injunction was in force, 4th respondent and Aadhinam, the third respondent again attempted to interfere with the possession of petitioner, which necessitated petitioner in coming to this Court in Crl. O.P. No. 8582 of 1992 and this Court passed an order granting Police protection to enforce the order of injunction.

4. It is said that 4th respondent is attempting to interfere with the possession along with others and he is flouting the orders of injunction. It is said that one Deepam Agencies are making constructions in the property and the order of injunction against 4th respondent was also brought to their notice. A Lawyer's notice was also issued to them. In spite of it, they are attempting to put up construction in the property and police also refused to interfere in their action, though such direction is given to them by this Court.

5. According to petitioner, the disobedience is willful and they committed contempt of Court. They are flouting orders of this Court and they are not prepared to obey the orders of Court. It is therefore prayed that proceedings will have to be initiated against respondents for their willful disobedience of orders of this Court.

6. Separate counter affidavits have been filed by respondents 2, 3, 4, 5 and 6.

7. In the counter affidavit of second respondent, it is said that he is working as Inspector of Police. It is his case that he has perused the documents and found that the property stands in the name of Aadhinam. Petitioner did not appear before, him in spite of orders passed by this Court directing Police protection. At the time when he went to property it was found that a school, church and auditorium have been constructed and that the petitioner was not in possession of the property. He also referred to O.S.,41 of 1998 filed by one B.K.K. Pillai in which he has been arrayed as a party and the subject matter of the litigation is part of 1.42 acres, to which petitioner was granted interim orders. According to second respondent, he has done what all he could do as his duty in accordance with law and whenever trespass was brought to his knowledge, he has also registered case. It is also said that this Court has not given direction to vacate the tenants and students of school and therefore, he cannot dispossess the occupants.

8. In the counter affidavit of third respondent who is Aadhinam, it is only said that he is not aware of any of the proceedings and it is for 4th respondent who is to answer the same.

9. In the counter affidavit of fourth respondent, he has said that he is in possession of property and various facts are also alleged. He also admits that

litigations are pending. He has also said that very same petitioner moved Munsif Court under Order 39 Rule 2A for initiating action for willful disobedience of orders of injunction.

10. In the counter affidavit of 5th respondent it is said that they have obtained lease from 4th respondent on 10.10.1991 and constructed school building and running shrine Velankanni Secondary School and children in the age of 3 to 13 are studying therein. He has also filed O.S.41 of 1998 on the file of District Munsif Court, Saidapet and the same is pending.

11. In the counter affidavit of 6th respondent it is said that they have obtained lease of one and half ground land from one Marimuthu Naicker and they got into possession on rental arrangement on 15.3.1997 which came into effect on 1.4.1997. They have put up temporary structures and it is said that they have nothing to do with 4th respondent. It prayed for dismissal of Contempt Application.

12. The question to be considered is whether respondents are liable to be proceeded for violating the orders of this Court?

13. Criminal O.P. No. 8582 of 1992 was filed by petitioner under following circumstances: Petitioner herein filed O.S.2125 of 1991 on the file of District Munsif Court, Poonamallee and filed I.A.2842 of 1991 to restrain Kundrakudi Aadhinam and 4th respondent herein from interfering in his possession and enjoyment of property. Entire facts are narrated in the order of Justice Swamidurai in Crl. O.P.8582 of 1992 and this Court passed the following orders:

...for the applicant herein that in the context of the refusal of ample police protection by the concerned Police inspite of the interim injunction granted by the learned District Munsif of Poonamallee in the application and the suit referred to in this application, I hereby direct the applicant to move the District Munsif's Court, Poonamallee immediately and get an order for Police protection from the concerned Police on the strength of the order of interim injunction granted by the learned District Munsif in the matter in question and the learned District Munsif, Poonamallee, is hereby directed to consider the matter on merits.

In is this order said to be violated by respondents.

14. Some more facts are also required to be considered before passing order on this application. Kundrakudi Aadhinam filed suit in O.S.2177 of 1990 on the file of District Munsif Court, Poonamallee and the suit was filed on 4.11.1990. In that suit they claimed that the suit property was in their possession and petitioner, his mother and brothers are attempting to interfere with their possession. In that suit, an ad interim injunction was sought for and the same was granted, restraining petitioners and others from interfering with the possession in the property. Subsequently, after hearing petitioner that order was vacated. Aggrieved by that order, Aadhinam filed CMA 8 of 1991 on the file of Subordinate Court, Poonamallee who originally dismissed the appeal. Matter was taken to this

Court in CRP 2786 of 1993 and dismissal order was set aside and CMA was directed to be taken up for fresh disposal. CMA was again dismissed and Aadhinam and 4th respondent again came to this Court in revision petition. The revision was allowed and CMA was directed to be disposed of afresh. Thereafter, by order dated 30.7.1993 CMA was allowed and an ad interim injunction was granted restraining petitioner and others from trespassing in the suit property. That order was challenged before this Court in CRP 2786 of 1993. Learned Judge of this Court set aside the order in CMA and restored the order passed by Munsif vacating injunction.

15. It was in the meanwhile petitioner filed O.S.2125 of 1991 restraining Aadhinam and 4th respondent and others from interfering with their possession. An ad interim injunction was granted and subsequently order was also made absolute. Aadhinam and 4th respondent filed CMA 31 of 1992, but subsequently, the same was withdrawn.

16. In view of these two orders, one thing is clear that there is a prohibitory order against Aadhinam and 4th respondent from interfering within the possession of petitioners and there is also another order refusing to grant relief of injunction asked for by Aadhinam and 4th respondent in which possession of petitioner is found.

17. Crl. O.P. was filed pursuant to the ad interim injunction granted in O.S.2125 of 1991. Relevant portion of which I have already extracted shows that petitioner and others are also given necessary Police protection to implement the order of injunction. Police was also given necessary direction to see that the interim order is maintained, until the same is varied by some other order. As on date, order has not been varied. I only find that the same has been confirmed by Court. Therefore, a duty is cast in Police authorities to see that the order of injunction is confirmed.

18. Order in Crl. O.P. was passed on 7.8.1992 and subsequently on 14.9.1992, interim order already granted was confirmed by trial Court and C.M.A. taken was also allowed to be withdrawn.

19. Further question that arises for consideration is whether grounds have been made out for initiating contempt. Except 6th respondent, other respondents are claiming only under third respondent. 4th respondent is only power of attorney of third respondent. In the counter affidavit of 4th respondent except for narrating how the properties are in their possession, he has no excuse why the order in Crl. O.P. cannot be implemented. Third respondent has only filed counter affidavit that he permanently resides only in far away place from the plaint property and he has not violated the interim order and 4th respondent alone knows the details of actions taken.

20. In the order in CRP 2786 of 1993, this Court found that petitioners are in possession. An argument was also put forward before learned Judge that 5th respondent is running a school. There are sheds and other constructions put up

therein. Learned Judge refused to entertain the plea on the ground that plaint did not disclose any right alleged to have been created in favour of 5th respondent. In the counter affidavit of 5th respondent, it is said that they have taken lease from 4th respondent on 10.10.1991.

21. O.S. 2125 of 1991 was filed by petitioner and others on 11.11.1991 and possession has been found in their favour. It is admitted by all sides that property is 1.42 acres. On 27.11.1990, Commissioner visited the property in O.S.2177 of 1990 from which it was found that except for name board in the property, there was no other structures except two huts on the borders of the plaint property. The alleged lease was granted pending suit and the same will not be binding on petitioner and others. Even on this date 5th respondent has not cared to produce lease deed to show that he has obtained possession on 10.10.1991. No materials are placed by 5th respondent to show that he has put up constructions before the suit was filed by petitioner. No construction would have been put within one month from the date of alleged lease deed. The ad interim order was granted on 11.11.1991 itself. Taking into consideration these facts, I feel 5th respondent might have come into possession or constructed building long after the suit was filed by petitioner. When O.S.2125 of 1991 was filed, respondents 3 and 4 did not contend that they have already leased out property to 5th respondent and he is in possession. What they contended was they are in physical possession of property and petitioners are not entitled to possession.

22. Considering these circumstances, I feel that the present claim put forward by 5th respondent is only an after-thought. Respondents 3 and 4 cannot put forward such a contention having taken a definite stand. 5th respondent is also bound by the same. I feel that the action of 5th respondent in putting forward such contention and putting construction in the property is intended only to defeat the rights of petitioner who is found to be in possession at least in the interlocutory stage, which has become final. Question of knowledge in such cases may not arise because respondents 3 and 4 are aware of all the proceedings, and if they have entered into any transaction, that can be treated only with an intention to flout the orders of this Court.

23. The case of 6th respondent is also similar. He claims right under some other Person, but form part of the same property. No documents were filed by 6th respondent to show that Marimuthu referred to in the counter has got any right over the property nor documents in their favour were placed before Court. Except for allegation that they are claiming under third party, I do not find any material to come to such conclusion.

24. From the above materials, it is clear that there had been an intentional flouting of orders of interim Injunction and direction by this Court to give necessary Police protection to implement the order was also not complied with by police officers as and when demanded.

25. In the counter affidavit of second respondent it is said that he has verified the records from Municipal Office and records are in favour of third and 4th respondent. What is the jurisdiction of second respondent to consider the documents when Civil Court has already held that the possession is with petitioner? If he has gone and verified the records in a Municipal Office that only shows that in spite of orders of this Court, he does not want to implement the order of injunction and give police protection. But somehow or other wanted to help others parties A Police Officer, who is expected to obey the orders of this court has disregarded the same and has justified his inaction. The contention of Police Officer that petitioner must come before him and seek police protection itself is sufficient that they are not prepared to obey the orders of this Court.

26. Another contention of 4th respondent is that petitioner has already moved trial Court for initiating action under Order 39 Rule 2A of CPC for violation of order of injunction. I do not think pendency of that application will be bar for entertaining proceedings before this Court. The decision reported in Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another, completely answers the said point. Their Lordships in the said Judgment at paragraph 46 in page 2757 held thus,

46. We can see thus clearly that the Courts in India invariably accepted the law applied in England and found (1) a party to the suit if he had notice or knowledge of the order of the Court and (2) a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of civil contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order of direction, if it is found in the instant suit that Sri Shukla was directly or indirectly a party defendant in the suit and the order of the learned single Judge was directed to his conduct also and he violated the order after notice or knowledge, he shall be guilty of civil contempt. He can still be found guilty of civil contempt if he is found to have aided and abetted the violation of the order of the Court. Even otherwise it is found that he obstructed or attempted to obstruct the implementation of the Court's injunction/direction, he may be found guilty of criminal contempt provided he had the notice or the knowledge of the order of the Court. It will be only after a determination of the nature of the disobedience that it will be possible for the Court to say whether the procedure applied to a civil contempt shall be applied to the contempt proceedings in his case or the procedure applied to a criminal contempt, will be applied to it. In the former case, the learned single Judge shall be competent to proceed. In the latter case, it shall be before a Division Bench and subject to such conditions as are envisaged under the Contempt of Courts Act 1971. We have however no hesitation, in view of the principles of law noticed by us that this Court's power as the Court of Record will extend not only to the determination of the contempt but also the determination whether on the allegations brought before it, a civil contempt is made out or a criminal contempt is made out and instead of any action of committal for contempt, the Court should make any such order which

would be in the administration of justice or not. We have already noticed that there are provisions in Order XXXIX Rule 2A of the CPC as a remedy for the violation of temporary or interim injunction. Besides what is contemplated under Order XXXIX Rule 2A of the Code of Civil Procedure, Courts have found another source of power in Section 151 of the CPC and if that is also ignored for a moment, this Court's power as a Court of Record and a Court of Special Jurisdiction is preserved under Articles 215 and 225 of the Constitution of India. There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the CPC is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done.

27. I find that there is violation of orders of this Court. The Court can also take notice of the fact that this Court exercised the jurisdiction only because of interim order in favour of petitioner. That order even now stands confirmed by subsequent order. For that reason, petitioners will be legally entitled to order in Crl. O.P. enforced.

28. But before punishing respondents, I feel it is only proper that one more opportunity must be given to them. I hold that these respondents have violated interim order and respondents 1 and 2 have disregarded the orders passed by this Court in Crl. O.P. by not giving police protection and failed to implement injunction order as was directed by this Court. By the silence or inaction, they have allowed respondent 3 onwards to interfere in the possession of petitioner, already declared by Civil Court. The violation is intentional.

29. I give respondents 3, 4, 5 and 6, 15 days time from today to vacate the property in 1.42 acres referred to in the order in Crl. O.P. and hand over possession to petitioner. In case they fail to do so, respondents 1 and 2 are duty bound to see that the order of injunction is implemented as was directed in the Crl. O.P. which means they have to see that all occupants including respondents 3, 4, 5 and 6 vacate from the property and also dismantle entire structure. On expiry of 15 days if respondents 3, 4, 5 and 6 do not vacate from the building, respondents 1 and 2 shall act immediately and see that the possession of property is restored to its original position. Any failure on the part of respondents to obey this order will make respondents liable to be punished under Contempt of Courts Act. For reporting compliance and for further orders, any, post the matter on 11.3.1999.