
(2014) 12 OHC CK 0047
In the Orissa High Court
Case No : CONTC No. 1187 of 2014

Dhabala Prasad Pradhan

APPELLANT

Vs

Ramesh Chandra Panda

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15
Criminal Procedure Code, 1973 (CrPC) — Section 2, 24

Citation : (2015) 1 ILR 792 : (2015) 1 OLR 5

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—The petitioner files this petition under Section 15 read with Section 12 of the Contempt of Courts Act, 1971 for initiation of contempt proceeding against the contemnor-opposite party for non-compliance of the direction issued by this Court vide order dated 21.10.2014 passed in W.P.(C) No. 9997 of 2014.

2. The short facts of the case in hand is that the petitioner had purchased a piece of land comprising of an area of Ac.0.22 out of Plot No. 1708 in mouza-Gopalpur in the district of Cuttack pertaining to Khata No. 285 through registered sale deed dated 08.02.2013/11.02.2013. In order to meet the expenses for treatment of his ischemic heart disease or cardiac ailments, the petitioner wanted to sale the land and get the consideration money. The intending purchaser disclosed that there is no chance of registration of the sale deed since the name of the petitioner does not find place in the Record of Rights. Therefore, the petitioner filed W.P.(C) No. 9997 of 2014 before this Court. While entertaining such application, this Court passed an interim order on 6.8.2014 directing that on presentation of sale deed along with the Record of Rights pertaining to the said land proposed to be sold along with any other documents indicating the petitioner's title over the land, the registering authority shall proceed to consider registration in accordance with law forthwith, but the opposite party refused to register the sale deed only on the ground that the name of the transferor is not

reflected in the Record of Rights in respect of the land proposed to be alienated.

3. Pursuant to the notice, opposite party No. 4 in the writ petition (present contemnor herein) filed counter affidavit stating that the registering authority is not the authority to decide the title of the property of the vendee or vendor who are approaching for registration of the sale deeds.

4. After hearing the parties, this Court allowed the writ petition with the following orders:

"In the present case, along with the sale deed at Annexure-3 petitioner has produced not only registered sale deed at Annexure-2 executed by his vendor but also Annexure-1 the Record-of-Rights in which land purchased by the petitioner including land proposed to be sold by the petitioner to the vendee stands recorded in the name of petitioners vendor. Petitioner has filed documents to establish the flow title to him. Therefore, there is no reason for the opposite party No. 4-District Sub-Registrar, Cuttack not to be satisfied that the petitioner has right, title and interest over the case land. Hence, refusal of registration is not sustainable.

In view of the above, the writ petition is allowed. Order of refusal to register sale deed is quashed. Opposite party No. 4-District Sub-Registrar, Cuttack is directed to effect registration of the sale deed at Annexure-3 executed by the petitioner forthwith on presentation."

5. In compliance to the order passed by this Court dated 21.10.2014, the petitioner presented the sale deed on 28.10.2014 along with the certified copy of the order passed in W.P.(C) No. 9997 of 2014 before the District Sub-Registrar, Cuttack. Instead of registering the sale deed in compliance to the order dated 21.10.2014 passed by this Court, the opposite party deliberately and willfully caused harassment to the petitioner. Hence, the present contempt petition.

6. This Court issued notice by special messenger to the opposite party calling upon him to show cause as to why a contempt proceeding shall not be initiated against him for violation of the order dated 21.10.2014 passed by this Court. Though such notice was received by opposite party through his Head Clerk on 19.11.2014, he did not choose to appear on the date fixed, i.e. 25.11.2014. Since notice has been made sufficient as against the opposite party and none entered appearance on behalf of the opposite party, this Court passed order on 25.11.2014 directing personal appearance of the opposite party on 28.11.2014 at 10.30 A.M. and to file show cause as to why contempt proceeding shall not be initiated against him for violation of the order dated 21.10.2014 passed in W.P. (C) No. 9997 of 2014.

7. In response to the order dated 25.11.2014, the contemnor-opposite party, Ramesh Chandra Panda, District Sub-Registrar, Cuttack appeared in person and filed an affidavit admitting the fact that notice was issued by the office of the Orissa High Court on 19.11.2014 requiring him to file show cause before this

Court on 21.11.2014 and that the said notice was received by the Head Clerk of his office on 19.11.2014 at about 4.30 P.M. It is stated that on 20.11.2014 para-wise comments have been submitted to the office of the learned Advocate General, Odisha through his Jr. Clerk, Goura Mohan Das. On 26.11.2014 the opposite party was busy in the review meeting of all the District Sub-Registrars of the State and therefore, he enquired about the delivery of the letter on 24.11.2014 on which date the Jr. Clerk informed that the letter has been delivered in the Issue Section of the office of the Advocate General on 24.11.2014, but the same was sent to the concerned Section of Advocate General dealing with contempt matter on 25.11.2014 for which the instruction submitted by the deponent could not be brought to the notice of the Court on 25.11.2014 by the time the order was passed for personal appearance of the opposite party. It is stated that it is a mistake on the part of the opposite party who undertakes not to commit such type of mistake in future and he has also tendered unqualified apology for the delay in imparting instruction and undertaken not to repeat the same in future.

8. So far as compliance of the impugned order dated 21.10.2014 is concerned, it is stated that the opposite party had only received the letter from the petitioner on 31.10.2014. On receipt of the same, he intimated the Deputy Secretary (Registration), Board of Revenue, Orissa, Cuttack regarding registration of the said documents as per the direction of this Court in W.P.(C) No. 9997 of 2014 and sought for instruction at an early date. It is stated that on 11.11.2014 the petitioner was intimated by the opposite party-contemnor that his document has been accepted for registration and he awaits instruction from the higher authorities whereafter the petitioner would be intimated regarding registration of the document. The opposite party received a clarification from the State Government on 17.11.2014 regarding registration of the document in compliance to the order passed by this Court in W.P.(C) No. 9997 of 2014 and on receipt of such intimation, the opposite party informed the petitioner on 19.11.2014 to appear and to deposit the requisite registration fees to effectuate registration of sale deed presented on 28.10.2014, thereby it is stated by the opposite party that there is no willful or deliberate violation of the Court's order and for the lapses caused by him, he having tendered unqualified apology, seeks to drop the contempt proceeding initiated against him.

9. Mr. S.K. Dash, learned counsel for the petitioner strenuously urged before this Court that by way of affidavit filed by the opposite party, he is trying to justify his conduct and by that time he has already violated the order dated 21.10.2014 passed in W.P.(C) No. 9997 of 2014 and further it is stated that this Court has while quashing the order of refusal to register the sale deed, directed by order dated 21.10.2014 to opposite party No. 4, the present opposite party-contemnor to effect registration of the sale deed at Annexure-3 executed by the petitioner forthwith on presentation. Therefore, the intention of the Court is to effect registration "forthwith? on presentation of the sale deed. So, nothing remains to be considered by the opposite party except to effect registration of the sale deed

in compliance to the order passed by this Court dated 21.10.2014. Further, it is urged that in a contempt proceeding, learned counsel for the State has no authority to defend a contemnor, who is a Government servant. Therefore, it is submitted that the Additional Government Advocate being a public prosecutor should not defend the contemnor before this Court in a contempt proceeding.

10. Mr. A.K. Mishra, learned Addl. Govt. Advocate states that since steps have already been taken and the petitioner has already been called upon to execute the sale deed in compliance to the order dated 21.10.2014, the contempt proceeding so initiated against the opposite party-contemnor may be dropped on consideration of the facts and circumstances narrated in the affidavit filed by the opposite party-contemnor.

11. From the facts pleaded, it appears that this Court vide order dated 21.10.2014 while quashing the order refusing to register the sale deed, directed the opposite party No. 4, the present contemnor herein, to effect registration of the sale deed executed by the petitioner forthwith on presentation.

12. The meaning of "forthwith" as given in Black's Law Dictionary, 7th Edn. at page 664 is "Immediately, without delay". In *Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others*, , the apex Court held as follows :

"The expression "forthwith" would mean "as soon as may be", that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor a particular period is prescribed. There should not be any indifference or callousness in consideration and disposal of the representation. It depends on the facts and circumstances of each case."

In *Gopal Mondal Vs. State of West Bengal*, , the apex Court has held as follows:

"The word "forthwith" has been interpreted to mean "as soon as possible; without any delay."

13. This Court after due adjudication having quashed the order of refusal for registration of sale deed by directing the opposite party-contemnor to effect registration of sale deed executed by the petitioner forthwith on presentation, the opposite party has to simply register the same in accordance with law immediately. It is admitted by the opposite party that he received the sale deed on 28.10.2014 and called upon the petitioner to appear before him on 29.10.2014 and though on that date the petitioner appeared, the formal registration of the sale deed has not been done in compliance to the order passed by this Court. The reasons for non-registration has also not been communicated to the petitioner, but in the affidavit filed pursuant to the notice issued by this Court in this proceeding, the opposite party-contemnor is trying to justify his action stating that he has received the letter from the petitioner on 31.10.2014 and on receipt of the same, he intimated the Deputy Secretary (Registration), Board of Revenue, Orissa, Cuttack about the direction of this

Court for registration of such document and requested him to impart necessary instruction regarding the same. It is stated that the opposite party intimated the petitioner on 11.11.2014 that though he accepted the document for registration, he awaited the instruction from the higher authorities and the petitioner would be duly intimated regarding registration of the document. Though the clarification was issued by the higher authority vide letter dated 17.11.2014, the same was received by the opposite party-contemnor on 18.11.2014. On receiving the clarification, the opposite party intimated the petitioner on 19.11.2014 to appear before him to deposit the requisite registration fee and to admit the execution of the registration of sale deed presented on 28.10.2014. The normal practice for registration of sale deed is that on presentation itself, either the Sub-Registrar will register it or reject the same on the very same day. In spite of the order passed by this Court on 21.10.2014, the opposite party deliberately and willfully delayed the matter without understanding the meaning of "forthwith" and caused harassment to the petitioner. The affidavit itself indicates that there is deliberate delay in registration of sale deed, which amounts to over-reaching the order passed by this Court. After the order was passed by this Court, nothing further remains to be clarified by any authority as they are not sitting as an appellate authority over the orders passed by this Court save and except only to execute registration in compliance to the said direction of this Court. Therefore, the conduct of the opposite party is contemptuous one for not complying with the order passed by this Court.

14. In *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, , the apex Court has held as follows :

"Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute."

15. In *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others*, , the apex Court has held that violation of order or direction of the Court constitute contempt of Court provided such violation is willful.

16. Taking into consideration the proposition of law laid down by the apex Court and examining the contentions raised by the opposite party, it appears that there is deliberate and willful violation of the Court's order. Therefore, the opposite party is to be prosecuted under the provisions of the Contempt of Courts Act. But considering the unqualified apology tendered by him and also the undertaking furnished by him that he would not repeat the same in future, this Court does not want to award any punishment for violation of the Court's order dated 21.10.2014 while deprecating the conduct of the petitioner.

17. Let us now consider the contention that the State Counsel should not represent a Government employee in a contempt proceeding, in this connection, it is necessary to know the meaning of "Public Prosecutor". "Public Prosecutor"

has been defined under sub-Section (u) of Section 2 of the Code of Criminal Procedure as under:

"Public Prosecutor" means any person appointed under Section 24 and includes any person acting under the directions of a Public Prosecutor."

Section 24 of the Cr.P.C. deals with "Public Prosecutor". Sub-section (1) of Section 24 states as follows :

"24. Public Prosecutors-(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be."

18. The Additional Government Advocates, who have been appointed by the State Govt. to conduct the case before this Court on behalf of the State, are being declared as Public Prosecutors for conducting the cases on behalf of the State Govt. Therefore, the Additional Govt. Advocate being a Public Prosecutor within the meaning of sub-section (u) of Section 2 read with Section 24 of the Code of Criminal Procedure, he is authorized to prosecute the case on behalf of the State.

19. The General Administration Department of the State of Orissa had issued Letter No. 14537/Gen. dated 26.5.1992 laying down the procedure to be followed for defending Government servants in legal proceedings. Paragraph 11 of the said letter which deals with defence of Government servants on whom the contempt of Court charges have been served, provided that the Government servant concerned may be defended at Government cost, if the Administrative Department after careful consideration, have satisfied themselves that the Government servant was not personally responsible for non-implementation of the Court orders. It has also been provided therein that where the Administrative Departments are not satisfied as above, on the basis of the facts available with them, the defence of the Government servant should be left to himself.

20. The apex Court in Commissioner, Agra and Others Vs. Rohtas Singh and Others, laid down the following principles of law:

"(i) It is open to the State to nominate its Advocates to appear for its officials in contempt proceedings.

(ii) The State is entitled to authorize a Law Officer to appear in cases where the contempt consists of disobedience of an order of the Court by an Officer or employee of the State.

(iii) Where the conduct of the concerned official is contumacious the Court can direct him to pay costs personally."

21. Keeping in view the law laid down by the apex Court, the Chief Secretary of the State of Orissa issued a letter on 6.12.2000 laying down the guidelines to

defend officers/employees of the State Government in contempt proceeding.

22. If the terms of engagement of the Additional Government Advocate indicates that they have been appointed as Public Prosecutor, they cannot appear in a contempt proceeding for or on behalf of the contemnor, who may be a Government Servant for his willful and deliberate violation of the Court's order and the State exchequer will not be burdened for the errant act of the officer, who has got scanty regards to the orders passed by this Court, all expenses have to be borne by the contemnor himself and he should defend the case on his own.

23. In view of the aforesaid facts and circumstances, while dropping the proceeding initiated against the petitioner pursuant to the unqualified apology tendered by opposite party-contemnor, this Court directs the Chief Secretary, Odisha to intimate all concerned that Government exchequer will not be burdened to bear the expenses to defend the errant officers in contempt proceedings by the State Counsel where violation of the order is willful and deliberate.

24. With the aforesaid observation and direction, the contempt proceeding is dropped.