

(1990) 01 MAD CK 0015
In the Madras High Court

E. Chandra

APPELLANT

Vs

The Member-Secretary. Madras Metropolitan Development
Authority and Another

RESPONDENT

Date of Decision : 05-01-1990

Acts Referred:

Development Control Rules for Greater Mumbai, 1967 — Rule 17(a)

Citation : (1990) 1 MLJ 537

Hon'ble Judges : S. Sivasubramaniam, J

Bench : Single Bench

Judgement

S. Sivasubramaniam

1. This Contempt application has been filed for punishing the first respondent for contempt for having wilfully disobeyed the order of this Court

dated 16.3.1989 and made in W.P.No. 3897 of 1989.

2. In the affidavit filed in support of this contempt application, the following contentions have been raised: The petitioner applied for a planning

permission in respect of the additional construction put up by her on the fourth floor and the same was rejected by the first respondent herein. The

application was rejected as per the order in Letter No. K.Dis/C/16202/86 dated 17.2.1987. Even at the time of the said order, the additional

construction of fourth floor was in existence and the first respondent rejected the planning permission only after inspection of the building by his

officials. No construction has been put up thereafter. The measurements found in the application submitted to the Government for exemption were

on the basis of the violations reported by the officials of the first respondent after inspection, the petitioner approached the Government by way of

an appeal. The government by G.O.Ms.No. 1543 Housing and Urban Development dated 16.10.1987 directed the issue of planning permission

to the petitioner subject to certain conditions. The first respondent, by their letter No. C/4490 of 1987 dated 19.12.1987, informed the petitioner

that the planning permission for the additional construction of the fourth floor over the ground plus three floors at No. 21, First Main Road, Raja

Annamalaipuram, Madras-28 was issuable subject to the main condition that the petitioner should remit a sum of Rs. 3,050 towards development

charges and a sum of Rs. 24,000 towards security deposit. By letter No. C/4490 of 1987 dated 12.1.1989, the first respondent informed the

petitioner that unless the security deposit was paid, the plan would be rejected. Even though there was no need for depositing the said sum of Rs.

24,000 towards security deposit, the petitioner deposited the same on 24.2.1989. He paid a sum of Rs. 3,300 on 3.2.1989 towards development

charges of Rs. 3,050 and security charge of Rs. 250. There was absolutely no deviation or violation of any conditions imposed by the first

respondent and the additional construction put up by the petitioner is strictly in accordance with the order of the Government in G.O.Ms.No. 1543

referred to above. The petitioner has fulfilled all the conditions imposed by the first respondent in the letter dated 29.12.1987. Since the

Government has granted exemption and the first respondent informed the petitioner that the planning permission for the additional Construction was

issuable, the first respondent is bound to issue the planning permission as the petitioner has complied with all the conditions imposed by the first

respondent and in accordance with the order of exemption granted by the Government. In spite of repeated reminders, the first respondent failed

to issue the planning permission. Therefore, she filed a writ petition in W.P.No. 3897 of 1989. When the matter came up for admission on

16.3.1989, this Court passed the following order:

3. It appears that the first respondent, by its letter dated 29.12.1987, informed the petitioner that the planning permission for the additional

construction of the fourth floor was issuable subject to the main condition that the petitioner should remit a sum of Rs. 3,050 towards development

charges and a sum of Rs. 24,000 towards security deposit. The petitioner has already complied with the same. It further appears from the letter

dated 8.4.88 sent by the first respondent to the petitioner that the only condition that remained to be satisfied was the payment of security deposit

and the same was confirmed by another letter dated 12.1.1989 of the first respondent to the petitioner. As already stated, the petitioner has

complied with the said condition also.

4. The grievance of the petitioner is that in spite of the fact that she has complied with all the conditions, the first respondent has not issued the

planning permission so far. In these circumstances, the respondents will consider the application of the petitioner for the grant of planning

permission and pass orders on merits within two weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly.

3. Subsequent to the passing of the above said order, the first respondent herein passed an order in letter No. C/4990/87 dated 31-3-1989

rejecting the application for planning permission on baseless and fanciful grounds. As already stated, the additional construction of the fourth floor

was in existence when the first respondent originally rejected the application for planning permission on 17.2.1987, after the inspection of the

building by their officials. Afterwards, no construction was put up. Therefore, the exemption granted by the Government was with reference to the

existing building as it exists. It was only after due verification and inspection, the first respondent issued the said letter dated 29.12.1987 informing

the petitioner that the planning permission applied for by the petitioner was issuable and called upon the petitioner to remit the said payments. It is

not open to the first respondent to reject the planning permission on the ground that one of the allottees of the ground floor is using the place as a

clinic. As a matter of fact, the clinic is in existence from November, 1987, that is to say, even before the order of the first respondent dated

29.12.1987. No objection was raised in this regard at any earlier point of time and not even a show cause notice was issued to the petitioner. The

first respondent has wantonly rejected the application and thereby violated the order of this Court. As the entire construction was in existence

before the letters of the first respondent dated 17.2.1987, 29.12.1987, 4.8.1988 and 12.9.1988 etc. the present order of rejection on the ground

that there is violation is nothing but wilful disobedience of the order of this Court. The disobedience on the part of the first respondent under the

pretext of considering the matter on merits is nothing but flagrant violation of the order of the Court. The vindictiveness is evident from the fact that

before passing the order dated 31.3.1989, the first respondent did not issue any notice and that no opportunity was given to the petitioner. The

first respondent, by issuing the said order, has indirectly challenged the very authority of this Court and, therefore, undermined the prestige and dignity of this Court.

4. After the filing of the above contempt application, the petitioner filed Sub Application No. 94 of 1989 for impleading the State Government as

the second respondent on the ground that they have issued certain orders (sic) the pendency of the above contempt application in violation of the

order of this Court which is the subject matter of the contempt application. Notice was ordered and the learned Government Pleader was heard

both in this application and in the contempt application.

5. The first respondent resisted the application and filed a counter affidavit. The Member-Secretary of the M.M.D.A. has raised the following

contentions in his counter affidavit: It is true that the petitioner has obtained the Government Orders in G.O.Ms.No. 1543 dated 16.10.1987 to

relax certain rules under the Development Control Rules for her building in question. But the petitioner's construction on the site is not in

accordance with the Government Order. The said order was passed on 16.10.1987 and in the Government Order, it is specifically stated that it

will not be deemed to be a planning permission and will not confer the right on the applicant to proceed with the construction work straightaway.

The petitioner was therefore not given permission.

6. A separate counter affidavit was filed in behalf of the second respondent. The second respondent has passed G.O.Ms.No. 1543 dated

6.10.198 exempting from the application of certain rules under the Development Control Rules for the fourth floor over the existing ground floor

plus 3 floors. In the said Government Order, the fourth floor addition was exempted from certain provisions of Development Control Rules

indicated in the said order. But that did not dispense with the requirements of obtaining planning permission from the first respondent. Practically,

the second respondent has adopted the counter affidavit filed by the first respondent.

7. Mr. K. Doraiswamy, learned Counsel appearing for the petitioner submitted that all the defects existing and pointed out by order dated

17.2.1987 whereunder the first respondent rejected the petitioner's application for planning permission for certain violations of the rules for Multi-

Storeyed building under Rule 17(a) of Development Control Rules, were given exemption under the orders of the Government in G.O.Ms.No.

1543, dated 16.10.1987 on the appeal preferred by the petitioner. No additional construction or alterations were made in the building. According

to him, as a matter of fact, after the orders of rejection passed by the first respondent on 17.2.1987, not even a single brick was added to the

construction and that the additional construction of the fourth floor was in existence on the date of the order itself. It was only after considering

these facts, the Government was pleased to exempt the said violations and directed the first respondent to issue a planning permission. It was

further submitted that in pursuance of the said Government order, the first respondent also took necessary steps to grant planning permission. After

being satisfied about the eligibility of the petitioner to get planning permission, the first respondent directed the petitioner to remit the security

deposit. By order dated 29.12.1987, the first respondent has categorically stated that the planning permission applied for by the petitioner was

issuable subject to certain conditions. According to the learned Counsel, after having sent the said letter it was not open to the first respondent to

go back on his earlier letter and reject the application for planning permission and that it is nothing but a vindictive action for certain reasons known

to the respondents. He, therefore, submitted that the order passed by the respondents is nothing but a clear contempt of Court and it would

undermine the prestige and the dignity of this Court.

8. Mr. Somayaji, learned Counsel appearing for the first respondent submitted that the planning permission was refused for certain violations

enumerated in the order of rejection dated 31.3.1989, He pointed out that the order of exemption granted by the Government did not enable the

petitioner to put up constructions without obtaining planning permission and as a matter of fact there was a clear direction by the Government to

that effect. He pointed out that one of the residential units in the ground floor is put to use as office and clinic which is not permissible in Primary

Residential use Zone, and, therefore the petitioner was not eligible to get a planning permission. According to him, this Court has directed the first respondent to pass orders on merits and since it has been done, there is no question of contempt in this case. He took up a stand that it was open to the first respondent to pass any order he likes so long as there was no direction by this Court to issue a planning permission. Learned Counsel produced the concerned file to show that the action taken by the first respondent is bona fide.

9. Mr. Sridevan, the learned Government Pleader appearing for the second respondent submitted that the Government is not a necessary party and that it was a matter between the petitioner and the first respondent.

10. From a perusal of the file produced by the first respondent and the averments contained in the affidavit and the counter affidavit, the following facts emerge. The petitioner applied for a planning permission in respect of the additional construction put up by her on the fourth floor and the

same was rejected by the first respondent herein as per the letter dated 17.2.1987. The petitioner approached the Government by way of an

appeal and the measurements found in the application submitted to the Government for exemption were on the basis, of the violations reported by

the officials of the first respondent after inspection. Remarks were called for from the first respondent. The office note dated 29.6.1987 in the file

shows that all the violations were pointed out by the first respondent and the Government was requested to reject the appeal. The violations were

shown as Annexure-A, for approval. The Government, after a careful consideration of the representations made by the petitioner and the remarks

of the first respondent, decided to exempt the violations and the Government by G.O.Ms.No. 1543 Housing and Urban Development dated

16.10.1987 granted exemption to the violations and directed the first respondent to issue the planning permission to the petitioner subject to certain

conditions. After the said order, the first respondent took necessary steps to issue the planning permission. The office note dated 26.10.87 states

that the Government in the said G.O. has exempted all the violations subject to the condition that the appellant should pay security deposit and that

the said Government Order is in order. The concerned file was therefore transferred to Channel "C" for further action. The petitioner was directed

to file 9 sets of plans for issue of planning permission according to the Government Order. Accordingly the petitioner submitted the plans on

1.12.1987. The Office note dated 3.12.1987 read as follows: "'According to the G.O. the applicant has also submitted the revised plans. Hence

we may issue P.P. as per G.O. after collecting the D.C. and S.D.'" and the same was approved, by the authority concerned. The office worked out

the amounts to be paid and the same was communicated to the petitioner.

11. Consequent upon the exemption granted by the Government in G.O.Ms.No. 1543 dated 16.10.1987, the first respondent, by his letter dated

29.12.1987, intimated the petitioner that the planning permission applied for as per the said Government Order by the petitioner is issuable subject

to the condition stipulated therein. Apart from the usual conditions, the petitioner was directed to remit a sum of Rs. 3,050 towards development

charges and a sum of Rs. 24,000 towards security deposit which is refundable without interest after two years from the completion and occupation

of the building. She was also informed that after complying with the said conditions, action will be taken for issuing planning permission. In reply to

the said letter, the petitioner sent a Demand Draft for Rs. 3,300 towards development charges and security charges along with the covering letter

dated 23.1.1988 stating that since the building has already been completed as per the Government Order, no security deposit is payable and,

therefore she requested the first respondent to waive the remittance of Security deposit and issue planning permission at an early date. A receipt

dated 3.2.1988 for the said payment was issued by the first respondent. The office note dated 23.2.1988, after referring to the petitioner's letter

dated 23.1.1988, recommends the waiver of security deposit for the fourth floor as the building has been completed. Thereupon, first respondent

wrote to the petitioner on 8.4.1988 asking her to remit the security deposit. A reminder was sent on 15.6.1988. After the required number of

plans were submitted, a note was made in the file on 22.11.1988 to the effect that the revised plans submitted by the petitioner were in accordance

with the earlier plans and that as per the Government Order, the Government has relaxed the violations subject to the condition that the appellant

should pay security deposit amount to MMDA. On 12.12.1988, a decision was taken after discussion with the concerned authorities to reject the

application for non-payment of security deposit. On 16.12.1988, the Member-Secretary made a marginal note directing the issue of a registered notice to the petitioner to stop the work as the conditions in the Government Order including the remittance of security deposit are not complied with. Thereafter, an inspection appears to have been made and the file was transferred to "C" Channel for sending such a letter to the petitioner. It was only thereafter a review of 71 similar cases appears to have been made as seen from the note dated 20.2.1989 and a decision was taken to request the Government to revoke the Government Order.

12. On 24.2.1989, the petitioner paid a sum of Rs. 24,000 towards security deposit even though she felt that there was no need for such a deposit. A Demand Draft for the said amount was sent along with the representation which was considered by the first respondent. The first respondent accepted the Demand Draft. But no orders were passed regarding planning permission. In these circumstances, the petitioner filed a writ petition in W.P.No. 3897 of 1989 in which the order dated 16.3.1989 above referred to came to be passed directing the first respondent to pass on merits.

13. The above facts speak for themselves that the only condition remains to be fulfilled by the petitioner, as per the said Government Order, was the payment of security deposit. The petitioner was agitating that since the construction was completed, there was no necessity for such a deposit. Since the first respondent was going on insisting upon the remittance of such a deposit the petitioner finally made the payment on 24.2.1989. The entire proceedings of the first respondent show that they decided to reject the application only on the ground that security deposits was not made.

It is also on record to show that the construction was completed long before the writ petition was filed before this Court. It is the specific case of the petitioner that no modification or alternation or additions of any sort was effected subsequent to the letters of the first respondent "dated" 17.2.1987, 29.12.1987, 4.8.1988, 12.9.1988 etc. Even though the first respondent was aware of the fact that a Clinic was run in one of the flats occupied by a Doctor as his residence, no objection was raised on that basis till the final order was passed on 31.3.1989. Apart from that, all other violations pointed out by the order dated 31.3.1989 have been already

exempted by the Government in their order dated 16.10.1987.

Therefore, after accepting the security deposited on 24.2.1989, there was no justification for refusing the planning permission. The first respondent

was conscious of this fact and that is the reason why they decided to approach the Government for cancellation of the said Government Order.

Therefore, until the earlier exemption order is revoked, the first respondent was bound by the same. The first respondent was expected to pass

orders only under these circumstances. That is the reason why this Court, after having referred to the earlier proceedings, directed the first

respondent to pass orders in those circumstances. It is strange that after the receipt of the order of this Court, the first respondent rejected the

application for certain violations which have been already exempted by the Government. The only additional violation pointed out was about the

existence of a Clinic in one of the flats in the ground floor. The file produced by the first respondent shows that they were aware of the existence of

the Clinic for a long time. But that was not projected as one of the violations for rejecting the application. It is not known how the existence of such

a Clinic in the ground floor, which was already sold by the petitioner, would be a ground rejecting the planning permission for the fourth floor.

14. During the course of arguments, the main contention put forth on behalf of the respondent was that the Government Order did not enable the

petitioner to put up constructions before obtaining planning permission, and therefore, that would amount to violation of the said Government

Order. As already noticed, it is not as if that the respondents were not aware of the construction activities when violating were exempted. No steps

were taken to stop the work till the work was completed. It was only on 21.2.1989, we find a note in the file stating that stop work notice, for

whatever it is worth, may be served on the petitioner. In reply to the said contentions, a decision of this Court, reported in *Viswanathan Dr. P.G. v.*

Government of Tamil Nadu (1984 W L.R.257 was brought to the notice of this Court wherein a similar question was considered by S. Natarajan,

J. as he then was. The learned Judge elaborately considered the scope of Section 113 of the Tamil Nadu Town and Country Planning Act, 1971

which has conferred powers of an overriding nature on Government to grant exemption from all for any of the provisions of the Act or the Rules or

Regulations made thereunder. Regarding the stage at which such exemption can be granted, the learned Judge held as follows:

There is no stipulation in Section 113 that a party must invoke the powers of exemption of the Government under the above said Section only prior

to the putting up of a building and not when the construction of the building is half way through or is completed. It cannot therefore, be said that the

representations made by the Commissioner about the stage of construction of the building is per se illegal. Moreover, the Section does not limit the

powers of Government to grant exemption only in respect of buildings not yet constructed or partially constructed. In all such matters, the reasons

or non-obstacle powers being conferred on Government by the legislature has to be taken note of.

In this case, even assuming for argument's sake, that the owner of the building had obtained the order of exemption without specifically bringing to

the notice of the Government that building had become a fait accompli, the validity of the order cannot be challenged on that ground. In fact, it can

well be argued that if Government had deemed it necessary to grant exemption even before the building was put up, it would have deemed it more

necessary to grant exemption when the building had been completed in full.

The decision will be the direct answer to the abovesaid contentions raised on behalf of the respondents.

15. There is one other aspect which would show that the first respondent has not cared to pass appropriate orders. This Court in the above said

decision in *Dr. Viswanathan, P.G. v. Government of Tamil Nadu* 1984 W.L.R.257 has held as follows:

In this case the owner of the multi-storeyed complex would say that twelve of the apartments have been allotted to the respective purchasers and

the documents have been registered. In such circumstances, if any adverse order were to be passed against the owner, it would not affect him as

much as it would affect the third-party purchasers. Those persons are not parties to these proceedings, there is no information whether they had

purchased the apartments fully well knowing that the construction work had been undertaken by the owner before obtaining a building licence from

the authorities or obtaining an order of exemption from Government In that situation, if an order were to be made in these proceedings, in favour of

the petitioner, it would affect the interest of parties who have not participated in these proceedings and to whom no opportunity has been given to

put forth their case. Consequently, this factor constitutes an additional, but compelling, reason to decline relief to the petitioner.

In the present case also, it is not in doubt that the work on the fourth floor was completed long ago and it was represented that the flats have been

sold and occupied by purchasers. The above observation by this Court was not all considered by the first respondent.

16. On a careful consideration of the above said sequences of events and the background in which the order in W.P.No. 3997 of 1989 came to

be passed, I find that the first respondent was not really anxious to pass orders to meet the real spirit of the order passed by this Court. There was

an attempt to find out some excuse to reject the application on some ground or other thereby nullifying the effect of the order passed by this Court.

Mr. Somayaju, the counsel appearing for the first respondent took up a stand that the order of this Court has enjoined on the first respondent to

pass orders on merits and once that has been done, no question of contempt would arise irrespective of the fact whether that order is bona fide or

not. In effect, he has contended that it is not open to this Court to scrutinize the order on merits and that it was open to the first respondent to pass

any order he liked. The tenor of the counter affidavit also is to that effect that. It is directed to pass an order on merits only in the background in

which the said order was passed by this Court. After hearing petitioner, this Court directed the first respondent to pass order on merits and that

means the first respondent cannot go back on what had been done already. After having decided to issue planning permit on payment of the

security deposit and having accepted the security deposit, it was not open to the first respondent to find out a new reason and reject the

application. This only goes to show that the order passed by this Court was not obeyed in the real spirit in which the same was passed. As pointed

out by this Court in Abdul Wahab v. Government of India 1969 L.W.25 "any conduct which has the effect of diminishing the prestige and authority

of the Court which is likely to lower the esteem of the Court in the minds of public and which gives an impression that, with impunity, the orders of

the Court could be disobeyed by mere strategem or contrivance, would certainly amount to contempt." In the course of administration of justice, it

may be necessary to punish as a contempt, a course of conduct which abuses and make a mockery of the judicial process and which affects the interests of the public in the administration of justice. It is a mode of vindicating the majesty of law, in its active manifestation against an obstruction and outrage and on the law should not be seen to sit by limply, while those who defy it, go free, and those who seek, its protection, lose hope, as observed by the Supreme Court, in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . Therefore there is no difficulty incoming to the conclusion that the order passed by this Court has been violated.

17. Coming on the conclusion of punishment, this Court is conscious of the fact that the power of committal for contempt must be wielded with greatest reluctance and the greatest anxiety and only with the object of seeing that the dignity and authority of the Court are not impaired. Some distinction has got to be made between a case where disobedience of the orders of the Court is done deliberately and an act which lacks intention or want of knowledge of the real purport of the orders passed by the Court. In this case, we find that there was some misconception as to the correct interpretation of the order passed by the first respondent. His submission show that the first respondent must have been advised that it was open to him to pass an order he liked. It is quite possible that the first respondent would have obtained legal advice to that effect. Though it would not absolve the first respondent from liability, it would certainly be a mitigating circumstance. Therefore, this Court is inclined to take a lenient view of the matter and the imposition of severe punishment is not called for in the peculiar circumstances of the present case. The very purpose of the order is to maintain dignity of the Court and majesty of law. In these circumstances, the first respondent is let off with admonition with a hope that such things will not recur in future. This petition is ordered accordingly, no costs.

18. Witness the Hon''ble Dr. Adarsh Sein Anand Chief Justice at Madras aforesaid, this the 5th day of January, 1990.