
(2016) 01 KL CK 0104

In the High Court Of Kerala

Case No : Con. Case (C) No. 1783 of 2015 (S) in W.P. (C) 32166/2014

Feroz Abubacker

APPELLANT

Vs

V.R. Raju and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Citation : (2016) 01 KL CK 0104

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : Anil S. Raj, K.N. Rajani, Radhika Rajasekharan P. and Anila Peter, Advocates, for the Appellant; K. Anand, SC, for the Respondent

Final Decision : Disposed Off

Judgement

Dama Seshadri Naidu, J.—1. An owner of a residential flat in an apartment filed W.P. (C) No. 32166 of 2014 complaining that the builder, the second respondent, raised illegal structures on the eleventh floor, the supposed common area, thereby blocking all ventilation and toilet ducts. As the eleventh floor has a residential house, instead of being a common area, its owner got himself impleaded at a later point in time as the additional third respondent.

2. On a serious contest of the matter, this Court has found from the sanctioned plan supplied by the Municipal Corporation that the eleventh floor had ducts projected, but they were blocked. Under those circumstances, disposing of the writ petition through Annexure A1 judgment, this Court has directed the second respondent builder and also the first respondent Corporation to take steps to open the ducts by ensuring that it does not cause any inconvenience either to the inmates of the eleventh floor or the occupants in all other floors, given the complaints of hygiene problem by certain persons because of the likely closure of the ducts.

3. Thus, in essence, this Court in Annexure A1 judgment directed the second respondent to open in forty five days the ducts in consultation with the additional

third respondent or any of his authorized agents, as well as the first respondent corporation.

4. In the last week of November 2015, the additional third respondent in the writ petition has filed the present contempt case complaining that the first and second respondents have violated the conditions imposed in Annexure A1 judgment. Respondents 1 and 2 have joined the issue and contested it essentially on the grounds that the judgment has been complied with.

5. The petitioner's contention is that on 29.10.2015, the second respondent issued a notice informing the petitioner that on 09.11.2015 it would carry out the structural changes on the eleventh floor. It has also asked the petitioner to ensure the presence of its representative on that day. Nevertheless, contending that the second respondent has not supplied the information such as drawings of the proposed work to be carried out, the petitioner has sent a reply.

6. On 03.11.2015, the second respondent supplied the necessary drawings, which are said to be not to the petitioner's satisfaction. This dissatisfaction has led to some e-mail correspondence between the petitioner and the second respondent. Eventually, having consulted his engineer, the petitioner sent two alternative proposals to the second respondent on 12.11.2015. Further, on 14.11.2015 he sent a reminder as well.

7. The petitioner has further contended that on 17.11.2015, the second respondent's workers turned up at the petitioner's flat with a view to carrying out the changes, but without the presence of any representative from the first respondent.

8. As can be seen, the second respondent's initial attempt on 17.11.2015 to open the ducts was not to the petitioner's satisfaction. As a result, he issued to the first and second respondents a notice on 18.11.2015, followed by another notice on 24.11.2015. In both the notices, the petitioner is said to have highlighted what are said to be the hazards that would follow if the second respondent went ahead with its efforts to open the ducts in the manner it proposed.

9. Under those circumstances, the petitioner has filed the present contempt case contending that the first and second respondents, instead of complying with the judicial directives in Annexure A1 judgment, have, on the contrary, violated them.

10. The first respondent has filed its counter affidavit contending that in response to the letter dated 04.11.2015 addressed by the second respondent, the Corporation officials went to the site on the dates mentioned and ensured that the directions in Annexure A1 judgment were duly complied with. According to the first respondent, on 21st, 26th, 29th and 31st of November 2015 and also on 03.12.2015, the Corporation officials were present at the apartment, where the necessary structural changes were carried out on the eleventh floor.

11. On most of those days, the petitioner's agent too is said to have been

present without complaining about the changes being carried out by the second respondent. Eventually, the Corporation has submitted that by 03.12.2015, work on five out of six ducts was completed and the sixth was left half done in view of the closure of the petitioner's house.

12. The second respondent, on its part, has averred substantially in tune with the contentions in the counter affidavit filed by the first respondent. It has specifically pleaded that the work commenced on 17.11.2015 was in the presence of the petitioner's authorized agent, apart from an engineer from the corporation. According to it, till 03.12.2015, the petitioner's representative at the apartment did co-operate with the second respondent.

13. As regards the petitioner's specific contention that he was not consulted at any point in time, the second respondent has gone on record to the effect that the second respondent's engineer in charge has held hour-long discussions over phone almost on daily basis with the petitioner regarding the plan and the progress of the work.

14. The second respondent has also contended that the only feasible option to mitigate the hardship of all the inmates of the apartment was to restore the ducts on the eleventh floor to the original position, which the second respondent did as had been permitted in the plan approved by the corporation. Eventually, the second respondent contends that after 02.12.2015, when only a part of the work remained-the opening of the sixth duct-the petitioner refused to co-operate.

15. In reply, the petitioner has contended that the second respondent has "punched gaping holes" on the eleventh floor, apart from putting up "ungainly, unscientific and completely useless structures", as could be seen from Annexure A8 series of photographs. He has also contended that the shape and elevation of the structure put up by the second respondent in the name of complying with Annexure A1 judgment is not available anywhere in the sanctioned plan, but was put up only with a view to "pulling wool on the eyes" of this Court.

16. The learned counsel for the petitioner, in the process of her submissions, has also made an allegation that the entire structure suffers from dysfunctional plumbing and drainage set up by the second respondent. Eventually, she contends that the second respondent has no intention of effecting the changes in the manner mandated by this Court, since it is an impossibility on account of fault in the initial design and construction.

17. Heard Smt. Rajani K.N., who is the learned counsel for the petitioner, the learned Standing Counsel for the first respondent Corporation, and Mr. George Abraham Pachayil, the learned counsel for the second respondent builder, apart from perusing the record.

18. At the very first blush, from the rival pleadings and submissions, this Court gathers that the issue involves disputed questions of fact-seriously disputed, at that.

19. As can be seen from Annexure A1 judgment, this Court, having gone through the sanctioned plan of the building, has felt it incumbent that the second respondent, the builder, should take every step to open the ducts on the eleventh floor occupied by the petitioner so as to ensure that it causes inconvenience to neither the petitioner nor the other residents of the apartment. Evident is the fact that the manner and method adopted by the second respondent in opening the ducts was not to the petitioner's satisfaction.

20. At this juncture, it is pertinent to see whether the second respondent consulted the petitioner before its attempting the structural changes. Indisputably, the second respondent did put the petitioner on notice, though the aspect of personal consultation has been disputed by the petitioner.

21. The petitioner in the reply affidavit has categorically pleaded that the direction issued by this Court in Annexure A1 judgment could not be complied with because of the inherent problem in the design and construction of the apartment. The petitioner has also submitted that the structure suffers from woefully inadequate drainage facilities.

22. Be that as it may, it needs no cogitation on the part of this Court to hold that the jurisdictional parameters of contempt jurisprudence run in very narrow confines. This Court, in the first place, cannot adjudicate on the disputed questions of fact in any writ petition, far less in contempt proceedings. In the event of affirmation and denial, in the absence of any conclusive proof as regards the violation of the judicial directive, the benefit of doubt ought to go to the respondents, the alleged contemnors.

23. In the present instance, notwithstanding the dissatisfaction as regards the manner and method of execution of the directions issued by this Court, the petitioner has not altogether denied that the second respondent did carry out certain structural changes on the eleventh floor.

24. In the facts and circumstances, I am of the opinion that if at all the petitioner has any grievance as regards the deficiency of service on the second respondent's part, the petitioner, being the consumer having his civil rights affected, has always got efficacious alternative remedies, such as approaching a competent Civil Court or a Consumer Forum.

25. At any rate, this Court is of the opinion that shortcomings there may be in complying with Annexure A1 judgment by the second respondent to the petitioner's entire satisfaction, but at any rate it cannot be said that the respondents are guilty of any willful, deliberate disobedience to the judicial directives contained in Annexure A1 judgment.

26. As a result, without expressing any opinion on the second respondent's justification in effecting the structural changes, this Court closes the contempt case holding that Annexure A1 judgment has not been violated.

27. I have not used the expression that Annexure A1 judgment has been

complied with-instead, I have used the expression that it has not been violated. Any imprimatur from this Court that the judgment has been complied with and that the petitioner ought to be happy on that count may foreclose his redressal mechanism as has been indicated above, which this Court does not intend to.

The Court, therefore, leaves the options available for the petitioner open; and any future adjudication of the issue before any competent forum shall be to the prejudice of none of the parties to the contempt proceedings.