

(1985) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Contempt Appeal No. 11 of 1984

Kanedena Veeraiah and Others

APPELLANT

Vs

Narra Venkateswarlu and Others

RESPONDENT

Date of Decision : 01-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 129
Constitution of India, 1950 — Article 215, 227
Contempt of Courts Act, 1971 — Section 23
Contempt of Courts Rules, 1980 — Rule 27
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1985) 2 APLJ 193

Hon'ble Judges : Lakshmana Rao, J;K. Jayachandra Reddy, J

Bench : Division Bench

Advocate : P. Ramchandra Reddy, S. Venkata Reddy and M. Ramaiah, for the Appellant; A.G., Govt. Pleader and P.L. Narasimha Sarma, for the Respondent

Judgement

Jayachandra Reddy, J.—This is an appeal under S. 15 of the Letters Patent filed against the judgment of our learned brother, Seetharama Reddy, J. in Contempt Case No. 153 of 1983. The facts which give rise to this appeal are as follows :-

The first respondent herein filed writ petition No. 4294 of 1983 questioning the land acquisition proceedings initiated by second and third respondents namely the District Collector, Prakasam District and the Tahsildar, Parchur, Prakasam District, pursuant to a notification under S. 4(1) of the Land Acquisition Act issued on 13-4-1983. The first respondent filed W.P.M.P. No. 5878 of 1983 along with the writ petition seeking stay of all further proceedings including taking of possession, on which our learned brother passed an order on 24-5-1983 which is to the following effect :

"all further proceedings including taking of possession of about Ac 9-60 cents in S. No. 25/10, Annambhotlavari Palem, Prakasam District, be and hereby are stayed pending further orders on this petition."

The above order was communicated on 25-5-1983 to both the respondents. The first respondent however, got issued a fresh notification under S. 4(1) of the Land Acquisition Act on 9-6-1983. In respect of the same land and the second respondent in violation of the above orders of this Court, has recorded as though the possession was taken on 1-8-1983. The second notification dt. 9-6-1983 was also challenged in another Writ Petition No. 6799/83 and Jeevan Reddy, J. admitted Writ Petition and stayed further proceedings. The first respondent filed Contempt Case No. 153 of 1983 for punishing the two respondents namely the Dist. Collector and the Tahsildar, for violating the orders of this court passed in W.P.M.P. No. 5878 of 1983 in W.P. No. 4294 of 1983 dt. 24-5-1983. Our learned brother, Seetharama Reddy, J. in an elaborate order held that the two officers have wilfully disobeyed the orders of this Court, which amounted to contempt of Court and accordingly convicted them. He, however, let off both of them by administering a warning that any recurrence in future will be dealt with more severely. The officers who were held thus guilty, have not preferred any appeal. The learned Judge further proceeded and gave a direction that the land should be restituted back to the first respondent namely, the owner, as the justice of the case requires to restore the possession ante as it obtained on the day when the stay was granted on 24-5-1983. Questioning this part of the order the appellants, who claim to be the beneficiaries claiming that they were given pattas and were put in possession of the respective plots, have preferred this appeal. It may be mentioned that these appellants were also impleaded as party-respondents in Contempt case. The main submission on behalf of the appellants is that neither the provisions of the Contempt of Courts Act nor the Rules framed by the High Court under the said Act contain any specific provisions under which the Court while punishing the contemners, can grant the consequential relief of restoration of possession of the land to the applicants in the Contempt Case. The submission on behalf of the respondent, on the other hand is that the Court has inherent power to grant such relief.

2. The principal question, therefore, that arises for our consideration in this appeal is whether this Court can grant the consequential relief of restoration of possession, while disposing of a Contempt Application. We also had the advantage of hearing the learned Advocate-General and he supported the plea that the Court can grant such relief.

3. Sri P. Ramachandra Reddy, the learned counsel for the appellants, submits that the rights of the third parties have intervened, and in such a situation the third parties, even if they are considered to be trespassers, can be dispossessed only in accordance with due process of law and that the relief of restoration cannot be granted by the Court while disposing of a contempt application as it has no such power. It is true, as contended by the learned counsel for the appellants, there are no specific provisions in the Contempt of Courts Act providing for grant of such a, relief. This Court framed Rules regulating the proceedings of contempt of subordinate Courts and the High Court in exercise of the powers conferred on this Court under S. 23 of the Contempt of Courts Act

read with Arts. 215 and 227 of the Constitution and by S. 129 of the Civil P.C. Rules 27 of the Contempt of Court Rules, 1980 reads thus :-

"The Court may pass such orders as the justice of the case requires."

Our learned brother, Seetharama Reddy, J. apart from relying on certain decisions also referred to this Rule and held the words "as the justice of the case requires" occurring in R. 27 appear to be assisting the argument of the learned counsel for the petitioner when he submitted that it is certainly within the competence of this Court to pass any orders apart from the order imposing punishment on the contemnors. The learned counsel for the appellants assails this finding and submits that these rules which are framed under S. 23 of the Act have limited scope, namely, "to Provide for any matter relating to its procedure" and R. 27 cannot be interpreted as to empower the Court to give further relief apart from the order imposing punishment on the contemnors. S. 23 of the Contempt of Courts Act, 1971 reads thus :-

"The Supreme Court or as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act providing for any matter, relating to its procedure."

It is true that this section lays down that the High Court may make rules providing for any matter relating to its procedure. But the Rules framed by this Court are under S. 23 of the read with Arts. 215 and 226 of the Constitution also. Art. 215 of the Constitution lays down that "Every High Court shall be a Court of record and shall have all the powers of such a Court, including the power to punish for contempt of itself."

4. In *Sukhdev Singh v. Teja Singh* AIR 1954 SC 186 : 1954 Cri LJ 460 the scope of this article is considered and it is held that "Every High Court has jurisdiction to punish for contempt. This jurisdiction is inherent in a Court of Record from the very nature of the Court itself and all that is necessary is that the procedure is fair and if the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself." Their Lordships also further observed "Contempt" is a special subject and the jurisdiction is conferred by a special set of clauses peculiar to Court of Record.

5. It is enshrined in Art. 215 that the High Court, as a Court of Record has undoubtedly inherent power to punish for contempt of itself and to exercise all the powers of the Court of Record. While so, it has to be seen whether the High Court as a Court of Record in exercise of its inherent jurisdiction, can pass any other order while disposing of a contempt petition with the sole purpose of helping the administration of justice. The source for the Rule of inherent powers of a Court can be traced to a Latin Maxim; "*Quando Lex Aliquid alicui concedit, Concedere Videtur id Sine Quo res ipsa esse non-potest*". Which means that "when the law gives anything to any one, it gives also all those things without which the thing itself could not exist." There can be no doubt that the object underlying the Contempt of Courts Act is to uphold the majesty and dignity of

the Law Courts and their image in the minds of the public. Art. 215 vests in a High Court all the powers of a Court of Record including the power to punish for contempt. The words "powers to punish for contempt" do not limit the other powers of the High Court as it possesses as a Court of Record. The Contempt of Courts Act is meant for limiting the powers of Courts in punishing and to regulate the procedure and in addition it expressly confers upon the High Court power to commit for contempt of subordinate Courts also. But under Art. 215, the powers of a High Court, as a Court of Record are wide enough to give appropriate direction "to close the breach" which is a result of interference with the due course of justice committed by contemnors. The learned Advocate General has fairly submitted that the High Court while exercising this inherent jurisdiction can give suitable directions by way of an order with a view to undo the mischief caused by the act of contempt committed by the contemnors. In Oswald's Contempt of Court (Third Edition), a passage at p. 16 reads thus :

"The Court, however, has power to restrain by injunction threatened contempts. It is competent for the Court where a Contempt is threatened or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration whether the offender is a party to the proceedings or not".

This passage suggests that the Court can pass certain other orders in a Contempt petition.

6. In Halsbury's Laws of England (Fourth Edition, Volume 9) Chapter "Civil Contempt" a passage in para 104 dealing with the subject of "other remedies" reads thus :

"The Court may, in its own discretion grant an injunction, in lieu of committal or sequestration, to restrain the commission or repetition of a civil contempt. The Court may in lieu of any other penalty require the contemner to pay the costs of the motion on a common fund basis.

In a doubtful case, the Court may instead of proceedings for contempt grant an order requiring the defendant to state whether he has complied with an undertaking.

If an order of mandamus, a mandatory order, injunction or judgment or order for the specific performance of a contract is not complied with, the Court may besides or instead of proceedings for contempt, direct the act to be done by some person appointed for that purpose."

From this passage also it becomes clear that the Court can, by way of relief, give certain other directions also in a contempt application with a view to help the administration of justice.

7. Sri P. Ramachandra Reddy, learned counsel for the appellants, however, submits that even assuming that the High Court has such inherent power still the Court cannot give directions for restoration of possession, when the rights of the

third parties have intervened. But, this again depends to what extent in a given case the High Court which is the Court of Record. (sic) Which is vested with inherent power under Art. 215 of the Constitution can pass appropriate orders in the interest of administration of justice. (sic) In this context, it is useful to refer to some of the decisions particularly those of the Supreme Court.

8. In *Elliot v. Klinger* (1967) 3 All ER 141, the learned Judge referred to the passage in *Oswald's Contempt of Court* (supra) and observed thus :

"I do not for a moment quarrel with that statement of the law but in my experience the lenient course mentioned in the passage which I have read is taken by this court on its own initiative and not at the instance of a plaintiff whose proper remedy, where an injunction has been disobeyed or where there has been aiding and abetting by a third party of a breach of an injunction, is to move either to commit, or to apply, in the case of a company for a writ of sequestration."

It may be noted that this is a case where the plaintiff moved against the persons who were not parties to the action and the learned Judge, while approving the passage in *Oswald's Contempt of Court*, observed that the grant of injunction sought would not give any further advantage to the plaintiff. It may be noted that in the case before us the appellants were also party-respondent in the contempt application as they were brought on record and after giving an opportunity to them the order of restoration was passed. Now we shall examine some of the cases decided by the Supreme Court.

9. In *Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others*, their Lordships while disposing of a contempt case observed thus :

"On merits the learned counsel submitted that the undertaking given was not in respect of the property concerned and that in any case the learned single Judge was not justified in giving certain directions in addition to punishing the petitioners for contempt of Court. We find no substance in the submissions made by the learned counsel. There was a clear breach of the undertaking given by the petitioners and we are of the opinion that the single Judge was quite right in giving appropriate directions to close the breach."

10. In another contempt case, *Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others*, their Lordships while dismissing the contempt application, passed an order vacating the interim order passed by the High Court.

11. From the foregoing discussion it emerges that the High Court, as a Court of Record, has undoubtedly inherent power as enshrined in Art. 215 of the Constitution to punish for its contempt and to have all the powers of such a Court of Record to pass orders in exercise of its inherent power to help the administration of justice, and R. 27 of the Contempt of Court Rules framed by this Court by virtue of the powers conferred under S. 23 read with Art. 215 of the Constitution only reiterates what is enshrined in Art. 215 and is in conformity

with the ratio laid down by the Courts in the above mentioned cases.

12. The learned counsel for the appellants, however, submits that the High Court, while granting such relief particularly where the third parties have come into picture should see whether any such order or direction is enforceable or whether it is just and necessary to allow the matter to be adjudicated in accordance with law before other forums. According to the learned counsel, the appellants herein are given pattas and they have also raised huts and that they can be evicted only by taking other necessary steps in accordance with law. So far as this aspect is concerned, as already observed, it depends upon the facts in each case. This Court can examine the facts and circumstances and see as to what appropriate orders can be passed. Merely because third parties have intervened, that by itself cannot be circumstances that can come in the way of exercise of inherent jurisdiction of the High Court and pass just and necessary orders while disposing of a contempt application. If in a given case the Court comes to the conclusion that change in the circumstances is such that no relief can be granted while exercising its inherent jurisdiction, then the Court may refrain from passing any order and simply dispose of the contempt application. But, on the other hand, if the Court, after examination of the facts and circumstances, finds that interests of justice warrant to give relief and if it is possible to give such relief, nothing prevents the Court from passing appropriate orders giving such relief.

13. Coming to the facts in the instant case, we have noticed that our learned brother Seetharama Reddy, J. has considered in detail all the aspects in the context of the order of restoration. S. 145 proceedings were initiated in the year 1981, when certain persons forcibly occupied the land on the ground that the owner has sold the land. An order was passed by the Sub-divisional Magistrate, Ongole, on 16-2-1984, declaring the owners to be in possession. A revision petition filed against that order was also dismissed. W.P. No. 6799 of 1982 was filed challenging the validity of the second notification and the same was admitted by Jeevan Reddy, J. When the matter came up before another learned single Judge, a report was called for from the learned District Munsif, Chirala, to find out whether physical possession was taken on 1-8-1983 and whether patta were granted to the appellants herein and whether there are any constructions on the land. The learned District Munsif submitted his report stating that the tenant, Govindu, was in actual possession of the land and that pattas were prepared in favour of 121 persons but were distributed only to 62 persons. The report also shows that the District Munsif visited the land on 24-7-1984. He noticed that there were 10 rows of huts and many of them were small huts. The learned single Judge also noticed the fact that out of 121 alleged beneficiaries, there are as many as 46 belonging to forward communities. Seetharama Reddy, J. has also considered the averments made in the counter-affidavit filed by respondents 3 to 123 in the contempt petition, who are the appellants herein. In that counter-affidavit they asserted that they were given pattas. A reply affidavit was also filed denying these allegations. Having considered all these reports as well as the averments in affidavits and counter-affidavits the learned Judge

observed :

"The peculiarity of this case with its fairly long history indicates that there have been pulls and counter-pulls, since long somehow to acquire the said land, notwithstanding that earlier two District Collectors had given their mind categorically and positively expressing that the land need not be acquired, as the Housing Society is not a genuine one."

In this view of the matter, he ordered the restoration of the land to the respondents, as the justice of the case requires so. After careful examination of the facts and circumstances of the case, we see no grounds to disagree with this finding of the learned Judge. We may also add that the issuance of pattas again is after taking possession of the land, which is in utter disobedience of the orders of this Court, and the same has resulted in hampering the administration of law and interfered with the due course of justice. Therefore, the pattas cannot have any sanctity and consequently the mere issuance of pattas in this case cannot be given undue weight and the same cannot come in the way of this court, from passing on order of restoration in the interests of justice.

14. For the aforesaid reasons, the appeal is dismissed, but in the circumstances, without costs.

15. Appeal dismissed.