

(2002) 10 MAD CK 0095

In the Madras High Court

Case No : Review Sub Application No. 366 of 2001 in Con. Application No. 560 of 2000

Kumaran Silk Trade Ltd.

APPELLANT

Vs

Dr. Devendra and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1981 — Section 113A

Citation : (2002) 10 MAD CK 0095

Hon'ble Judges : P. Shanmugam, J;K. Sampath, J

Bench : Division Bench

Advocate : Gopalasubramaniam, for S. Kadarkarai, for the Appellant; K. Muthuramalingam, for Respondent No. 1, C. Ravichandran, for Respondents Nos. 2, 4 and 5 and V. Perumal, for the Respondent

Judgement

P. Shanmugam, J.—This is a petition seeking to review the order passed in Contempt Application No.560 of 2000 dated 2.3.2001 in Writ Appeal No.1171 of 2000. By the above order, the Division Bench allowed the contempt application against the petitioner herein by imposing a fine with a further direction to demolish the unauthorised and deviated construction within one month from 2.3.2001, and on their failure, directing the second and third respondents herein to carry out the direction. The appeal C.A. No. 1837 of 2001 filed by the petitioner against the said order before the Supreme Court was withdrawn with a liberty to approach the High Court for appropriate relief by way of a review petition.

2. The brief facts of the case are as follows :-

The petitioner herein is the owner of property measuring about 4-1/2 grounds at Door No. 67, Usman Road, T. Nagar, Chennai. He obtained a planning permission from the third respondent herein dated 3.4.2000 for putting up construction of basement floor, Stilt parking floor and four other floors with a condition that the ground floor should be used with Stilt car park. The first respondent herein, who

is the owner of the land adjacent to the petitioner's land, alleging that the petitioner had started construction violating the approved plan, filed Writ Petition No. 10965 of 2000 and obtained an interim injunction before a learned Single Judge of this Court in W.M.P. No, 15739 of 2000 on 30.6.2000. The said order was vacated by another learned Judge of this Court by order dated 7.7.2000 stating that the third respondent herein had seized of the matter and it is for them to consider and ascertain whether there is any violation of any of the provisions of the Development Control Rules and giving liberty to the third respondent to take appropriate action if there is any deviation, vacated the interim injunction. The first respondent herein filed W.A. No. 1171 of 2000 and by a judgment dated 3.8.2000, the Division Bench permitted the petitioner to put up construction as per the approved plan/sanctioned plan, provided he also furnishes an undertaking to the effect that if any construction is found in variation or in violation of the sanctioned plan, he will demolish the same at his own risk and cost. The first respondent was directed to furnish the undertaking and only then could he proceed with the construction as per the approved plan. It was made clear that the third respondent was free to take any action against violation by the petitioner herein and that the pendency of the writ petition will not be a bar to the same. The first respondent herein moved Contempt Application No. 560 of 2000, inter alia, contending that the petitioner has disobeyed the directions. After considering the petition, by an order dated 2.3.2001, the Division Bench allowed the application and found the petitioner guilty of contempt and also imposed a fine with a direction to demolish the unauthorised and deviated construction made after 3.8.2000. The appeal C.A. No. 1837 of 2001 filed by the petitioner before the Supreme Court was withdrawn with liberty to approach the High Court. Hence the present review application.

3. Learned senior counsel Mr. Gopalasubramaniam appearing on behalf of the petitioner submits that the Division Bench proceeded as though there was no undertaking furnished. According to him, the investigation conducted as per the directions established the factum of furnishing the undertaking. That apart, there is intrinsic evidence as to the receipt of the undertaking. The Member Secretary of the third respondent, by his letter addressed to the petitioner dated 18.9.2000, has acknowledged receipt of the undertaking. Therefore, there is no cause of action for a contempt and even if there is any, the same has been obliterated. According to him, there was a revised plan filed on 19.7.2000 and the construction was being put up only in accordance with the said revised plan and any construction could have been possible only as per the revised plan. He further submits that though the said application was rejected by the third respondent by their order dated 14.9.2000, the petitioner had filed an appeal before the Government and thereafter, a ratification application u/s 113(a) of the Tamil Nadu Town and Country Planning Act came to be filed. Learned counsel also submits that any construction to demolish the construction would nullify their appeals for regularisation and ratification and therefore seeks review of the

order.

4. Mr. V. Perumal, learned counsel appearing on behalf of the third respondent submitted that the points raised by the petitioner herein have been fully considered and there is no scope for review. He has referred to the report submitted by the Chennai Metropolitan Development Authority pointing out the extent of violation on account of the construction made in spite of the specific direction by this Court. He further submits that the petitioner has deliberately disobeyed the directions, the planning permission and the rules and therefore, the order passed in the contempt application is the most appropriate order that could have been passed and it does not call for any review.

5. Mr. C. Ravichandran, learned counsel appearing on behalf of respondents 2, 4 and 5 submits that review is not maintainable as against the order passed in contempt. Insofar as the merits of the matter is concerned, they adopt the arguments advanced by the third respondent.

6. Mr. K, Muthuramalingam, learned counsel appearing on behalf of the first respondent submits that the petitioner has taken the law into his own hands and has commenced the construction from day one in utter violation of the building rules and the planning permission. According to him, there is no scope for review of the order passed in the contempt.

8. We have heard the counsel and given our anxious consideration to the same. Both sides have referred to a number of decisions in support of their respective submissions which we will consider later.

9. The main thrust of the argument of the counsel for the petitioner is that an undertaking was filed and that the petitioner has proceeded with the construction only as per the revised plan and therefore, there was no contempt. It is further pointed out that the court did not consider the entitlement of the petitioner to go ahead with the revised plan and for the ratification u/s 113(a) of the Tamil Nadu Town and Country Planning Act. The petitioner had obtained a planning permission on 3.4.2000. According to him, he had completed construction on 3.8.2000 and has proceeded with the construction as per his revised application dated 19.7.2000 and as on date, they have completed construction as per the revised plan.

10. In order to appreciate this construction, the report submitted by the C.M.D.A. as per the directions of the Division Bench dated 18.7.2002 in the review petition is extracted hereunder :-

"The Planning Permission was issued for construction of Basement Floor + Stilt Parking Floor + 4 Floors for commercial purpose for the proposed building at Door No.67, Usman Road, T. Nagar, Chennai 600 017 vide permit No.B/Special Building/62/2000, dated 27.03.2000, in letter No.B 1/925/2000, Dated : 27.3.2000. The building was constructed in total deviation to the approved plan with additional unauthorised floors of 4th, 5th, 6th, 7th and Workers Toilets in

the part of 8th Floor.

The construction of basement floor + ground floor + 7th floor + 8th floor part (toilet block) violate the following development control rules:-

11. The judgment in Writ Appeal No. 1171 of 2000 dated 3.8.2000 contained the following directions :

(1) The petitioner herein has to furnish an undertaking before proceeding with the construction as per the approved plan.

(2) The undertaking is to the effect that if any construction is found in variation or violation of the sanctioned plan, the petitioner will demolish the same at his own risk and cost.

(3) Petitioner cannot take advantage of the permission which is in variance or violation of the rules.

(4) He cannot seek ratification for that.

(5) The C.M.D.A. is free to take action notwithstanding the pendency of the writ petition.

12. The parties before the Division Bench in the writ appeal understood that the petitioner should construct only as per the sanctioned plan. The complaint against the petitioner by the first respondent herein is that he was constructing against the sanctioned plan and that if he is not stopped at this stage, he may make the illegal construction and seek for ratification later. Hence, the Division Bench, in order to safeguard the interest of the parties, allowed the petitioner herein to make the construction as per the approved plan. This permission was subject to the directions stated above. The said judgment has become final inasmuch as the SLP filed against the said judgment was dismissed by the Supreme Court vide its order dated 24.9.2001. The order of the Supreme Court is as follows :-

"S.L.P.(C) 5333/2000 is dismissed in view of the conduct of the petitioner in not complying with the order made by this Court."

13. Even though there is some controversy regarding the date on which the undertaking was given by the petitioner, the undertaking given by him is extracted below:-

" August 4, 2000.

From K. Nanthugopal Director M/s. Kumaran Silk Trade Ltd. # 67 Usman Road T. Nagar Chennai-600 017.

To Member - Secretary Chennai Metropolitan Authority Eg more Chennai.

Sir,

Sub : Undertaking pursuant to order made by the Hon''ble High Court Ref : Order

made in W.A. 1171 of 2000 dated 03.08.2000

I would like to hereby undertake to put up my construction at No. 67, Usman Road, T. Nagar, Chennai 600 017 as per the Approved Plan dated 27.03.2000 and revised plan submitted by me on 19.07.2000.

Thanking you,

Yours, for KUMARAN SILKS TRADE LIMITED K. NANTHUGOPAL Director."

In spite of a specific direction in the judgment in the writ appeal that the petitioner cannot construct beyond the approved or sanctioned plan and that he must give an undertaking that he will not violate against the sanctioned plan and that he can go ahead with the construction only as per the approved plan and that he must give an undertaking to that effect, the undertaking was given stating that he will put up construction as per the revised plan submitted by him on 19.7.2000.

14. In the contempt order, the above fact was taken note of and it was found that the undertaking was not as per the directions. The Division Bench, in the order in the contempt application in paragraph 16 has observed as follows :

"Thereby he wants to justify his construction by adding, "... and revised plan submitted by me on 19.7.2000", whereas this Court has allowed the respondent to make construction as per the approved plan, and to furnish an undertaking to that effect. Therefore, it was not at all an undertaking as ordered as has to be construed as nothing but a camouflage to take advantage of allowing construction and continue further."

Therefore, the filing of an undertaking, even if it could be accepted for the sake of argument, cannot absolve the finding of the court that the petitioner had wilfully disobeyed the orders of the court. As a matter of fact, the argument of the counsel for the petitioner was referred to and found against him, which is as follows :

"Mr. R. Krishnamoorthy, learned senior counsel, suggested that this Court will not go into the effect of further construction in this contempt petition and argued that it will only be considered by the C.M.D.A., it is not acceptable for the reason that admittedly, the 5th respondent was not making construction as per the approved plan, more particularly, when his ratification application has also been rejected long back and he never sought for any permission from this Court before making any construction and no application was brought to the notice of this Court."

The Court further found,

"In other words, in the interest of justice, he was allowed to proceed with the construction as per the plan subject to furnishing an undertaking to as stated. Under the circumstances, the alleged facts themselves do not justify that he has made construction with bona fide intention or as per the order of this Court, and

this act will amount to deliberate and wilful violation of the order of this Court."

The further submission that there was a scope for regularisation was taken note of in the order in the contempt application in paragraph 18, wherein it was submitted on behalf of the third respondent that the ratification is not permissible.

15. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , the Supreme Court held that construction being unauthorised and illegal, it must be demolished irrespective of whatever expenditure incurred by the builder. Their lordships observed as follows :

"The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the applicant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters."

In *Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others*, , the Supreme Court has held as follows :

"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. The SLP is, therefore, dismissed."

A Division Bench of this Court, in Writ Appeal No. 610 of 1999, in their judgment dated 19.2.2002 has upheld the order of the M.M.D.A. stating that the violations are such that there could not be any regularisation. Their lordships observed as follows :

"We know that demolition affects the appellant both mentally and also financially. We tried to find a solution as to whether the dicta laid down by the Supreme Court in *Rajatha Enterprises Vs. S.K. Sharma and Others*, can be invoked in the present case, but the said judgment cannot also come to the rescue of the appellant herein. As against the permissible Floor Space Index of 1.75, the appellant has constructed 4.00 Floor Space Index. This is apart from other violations, which have been done with all impunity and in utter disregard of law. In the circumstances, this writ appeal is dismissed."

16. In *Baldev Bhai Bhopal Bhai Patel v. K.M.V. Co-operative Housing Society Limited*, the Supreme Court was dealing with an order of the High Court to demolish the construction in order to purge the contempt. Their lordships held that the issue relating to the permissibility of the disputed construction was not finally decided and therefore, the punishment was only for breach of the Court's order, which is different from the right of the contemnor to put up the disputed construction. Besides, it was found that the contemnor had already undergone imprisonment for 28 days and had paid the fine. In our case, the direction in the judgment in the writ appeal to the petitioner was to put up construction only as per the approved plan and that he should not seek for ratification for any violation and that he must also file an undertaking to that effect. The petitioner has not only violated the direction by carrying out construction beyond the approved plan, but has also given an erroneous interpretation to the direction of the Court in his undertaking by stating that he will put up construction as per the revised plan submitted by him. This was rightly taken into account as wilful disobedience of the direction to put up construction as per the approved plan and his defiance to go ahead with the revised plan. The order in the contempt application also took note of the submissions made on behalf of the C.M.D.A. that there is no scope for approval of the revised plan or ratification or regularisation of the illegal construction. Therefore, it has to be taken that the issue regarding the illegal construction has been finally decided, the writ appeal having been dismissed and the SLP as against the judgment in the writ appeal also having been dismissed by the Supreme Court thereafter. As a matter of fact, the conduct of the petitioner was taken note of by the Supreme Court and the SLP was dismissed on that ground also. Therefore, this judgment, in our view, will not support the case of the petitioner.

17. In *M.M. Thomas Vs. State of Kerala and Another*, the Supreme Court has held that the High Court, as a Court of Record, has a duty to itself to keep its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only the power, but a duty to correct it. The High Court's power in that regard is plenary. In *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa*, the Supreme Court has held that the High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. In *High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others*, the Supreme Court held that the High Court can decide as to how original jurisdiction can be exercised and governed by the relevant rules or as per the general rule-making power flowing from the relevant provisions of the constitutional scheme. In the light of these three decisions, we are of the view that the review is maintainable, the High

Court being a Court of Record having original jurisdiction and has inherent and plenary powers.

18. In *State Vs. Baldev Raj*, a Division Bench of the Allahabad High Court has taken the view that the Contempt of Courts Act, 1971 does not expressly give any inherent power to the High Court in the matter of Contempt of Court. It provides appeals from the order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. Therefore, when the Act does not confer any inherent power or power of recall or review and provides remedy against the order or decision in the matters of contempt, the power of the High Court of recall or review in matters of contempt cannot be invoked. It was held therein that the High Court has inherent powers to correct only the clerical or typing mistakes. In *Chet Ram v. Khub Ram*, 1994 3 Crimes 141, a Division Bench of the Himachal Pradesh High Court has taken a similar view that an application for review of an order in a contempt application is not maintainable under the provisions of the Contempt of Courts Act, 1971. These two judgments, in our view, cannot be said to have laid down the correct position of law, in the light of the law laid down by the Supreme Court referred to in the earlier paragraph, that the High Court has got inherent power, as a Court of Record, to review its order if there is any apparent error in the order passed by it.

19. In these circumstances, we hold that the review petition is maintainable. However, for the reasons discussed earlier, we do not find any error, much less any apparent error on the face of the record in the order passed in the contempt application dated 2.3.2001. The points raised by the counsel for the petitioner have been taken note of by the Division Bench and well examined before passing the final order in the contempt application. The petitioner, who was found to have deliberately and wilfully violated the judgment in the writ appeal, was found liable to be punished for contempt and the Division Bench has taken note of the punishment that has to be awarded and accordingly directed demolition of the unauthorised construction. The petitioner cannot be heard to say that he could violate the order of the High Court and construct the building beyond the approved plan and get it ratified by the C.M.D.A. at a later date. The authorities have made it very clear that there is no scope for any ratification or regularisation in this case. If we go into the conduct of the petitioner, we can only find, as rightly pointed out, that right from day one of the construction, it has been going on in full swing, in utter disregard to the approved plan, the building rules as well as the directions of the High Court. The petitioner has also disobeyed the directions given by the Supreme Court, which prompted the Supreme Court to dismiss the appeal preferred by him in the light of the behaviour of the petitioner. We are of the view that the direction given by the Division Bench to demolish the unauthorised construction cannot be held to be an error apparent so as to call for a review of the said order.

20. For all the above reasons, we hold that there are no grounds whatsoever to review the order passed by this Court on 2.3.2001 in Contempt Application

No.560 of 2000 in Writ Appeal No. 1171 of 2000. The above review petition is, therefore, dismissed. Consequently, Review Sub Application Nos. 367 to 369 of 2001 are also dismissed.