
(2012) 04 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Contempt Petition No. 58 of 2012

Madan Mohan Dammani

APPELLANT

Vs

Shri Maqsood Ahmed and Others

RESPONDENT

Date of Decision : 06-04-2012

Acts Referred:

Citation : (2013) 2 CDR 1071 : (2012) 3 WLN 17

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : M.C. Bhoot, assisted by Mr. Surendra Singh, for the Appellant; Vipul Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Dr. Justice Vineet Kothari

BY THE COURT:

1. The present contempt petition arises out of interim order dtd.19.1.2012 passed by the coordinate Bench of this Court in SBCWP No.2314/2011 - Madan Mohan Dammani V/s State of Rajasthan. The directions of interim order while admitting the writ petition after hearing the learned counsel for the respondent - UIT are in following terms :

As regards interim relief, in the interest of justice, this Court considers it appropriate to direct the parties to maintain status quo as exists today and not to create any third party's right further pendente instant petition. However, looking to the nature of controversy, this Court considers that the matter requires urgent final hearing; hence at joint request, matter may come for hearing on 14.2.2012.

The case revolves round the plot of land situated in the jurisdiction of UIT, Bikaner, of which the petitioner appears to have earlier held a lease for setting up of Burma Shell petroleum outlet which lease, admittedly came to an end in the

year 1984. The petitioner, however, continued to be in possession of said plot thereafter. The present writ petition No.2314/2011 in which aforesaid interim order was passed by this Court was filed on 14.3.2011 challenging the auction proceedings undertaken by the respondent UIT of the said plot of land. The respondent - UIT in the reply stated that the said auction of plot was undertaken in the month of March, 2011 on 24.3.2011 and lease-deed was executed in favour of one Yasin Enclave Enterprises Pvt. Ltd. on 11.5.2011. A copy of the lease-deed has been filed in the writ petition with additional affidavit of Maula Bux S/o Sh. Mohd. Hussain, OSD of UIT, Bikaner. The said auction in favour of Yasin Enclave Enterprises Pvt. Ltd. is said to have been finalised for a sum of Rs.3,84,81,250/-.

2. The learned counsel for the petitioner, Mr. M.C. Bhoot Sr. Advocate assisted by Mr. Surendra Singh submitted that after passing of the interim order on 19.1.2012, the same was communicated to the Secretary of the respondent - UIT vide letter Ex.3 dtd.20.1.2012. Vide para 4 of the contempt petition, it is stated that auction purchaser Mr. Yasin Khan of the said Company started the construction of a boundary wall on the disputed site at the oral instruction of contemnor No.1 Maqsood Ahmed, recently appointed as the Chairman of the UIT, Bikaner, who was so appointed on 19.12.2011. Mr. Bhoot urged that the matter was listed before this Court on 18.1.2012 when an oral undertaking was given before the Court by the learned counsel for the respondent UIT, Bikaner to maintain status quo. However, when the matter was again listed on 19.1.2012, the aforesaid order was passed by this Court. He submitted that after supply of copy of the stay order of this Court on 20.1.2012, from the reply of the respondents - contemnors, it appears that the Secretary of the UIT, Bikaner instructed the Tehsildar of UIT, Bikaner vide communication dtd.23.1.2012 to ensure compliance of the status quo order of this Court and again Secretary of the UIT, Bikaner appeared to have written to the auction purchaser M/s Yasin Enclave Enterprises Pvt. Ltd. vide Annex.2 dtd.27.1.2012 directing them to maintain status quo, which copy was received by them on 30.1.2012. Mr. M.C. Bhoot, therefore, urged that the respondent -contemnors Mr. Maqsood Ahmed, Chairman, UIT, Bikaner, Sh. Sudarshan Bhayana, Secretary, UIT, Bikaner and Maula Bux, Officer on Special Duty, UIT, Bikaner failed to comply and abide by the status quo order of this Court dtd.19.1.2012 and oral undertaking of the learned counsel for the respondents in letter and spirit and allowed the auction purchaser M/s Yasin Enclave Enterprises Pvt. Ltd. to go ahead with the construction of the boundary wall at the disputed site and they have committed contempt of this Court by breach of said interim order and they deserve to be suitably punished.

3. On the other hand, Mr. Vipul Singhvi, learned counsel for the respondents - contemnors submitted that firstly, the petitioner had no right over the land in question, which was put to auction after he remained in unauthorized possession of land in question for almost 3 decade after 1984 and when the auction proceedings were finalized in favour of M/s Yasin Enclave Enterprises Pvt. Ltd.

and lease-deed has been executed in its favour on 11.5.2011 and possession was also handed over to the said auction purchaser, without impleading the said lessee/auction purchaser, the present writ petition was filed by the petitioner in this Court on 14.3.2011 in which the aforesaid order dtd.19.1.2012 came to be passed by this Court. He submitted that without impleadment of lessee, the breach of orders passed by this Court cannot be alleged against the respondents - officers of the UIT, Bikaner including its Chairman and he also submitted that the said auction purchaser is not even a party in the contempt petition or writ petition either. He also urged that for construction of boundary wall, no permission of UIT, Bikaner as such was required and even the boundary wall has been raised by the said auction purchaser. The present respondents - contemnors cannot be held guilty for committing contempt of this Court and it is only the person who has undertaken such construction could be so held responsible for the same, but in the absence of said party being impleaded either in the writ petition or in the contempt petition, the present contempt petition against the officers of the UIT, Bikaner cannot be proceeded with. He denied emphatically the argument of any oral direction by the Chairman of UIT to the auction purchaser. He also submitted that soon after the service of status quo order on the respondents -UIT officials, they have given requisite communication to their Tehsildar, vide Annex.1 dtd.23.1.2012 and further to the auction purchaser vide Annex.2 dtd.27.1.2012 served upon them on 30.1.2012 for needful compliance. He also urged that restraint order was only for not further creating third party rights and for that, to maintain status quo with regard to ownership of plot of land, which has been maintained in letter and spirit. He, therefore, submitted that there was no deliberate disobedience of the interim order passed by this Court and hence the contempt petition deserves to be dismissed.

4. I have heard the learned counsel for the parties at some length and perused the record of the case.

5. This Court is of the opinion that the only allegations made in the present contempt petition in para 4 and 5 of the contempt petition are against the contemnor No.1, Chairman of the UIT, Bikaner that he gave oral instructions to the auction purchaser to erect the boundary wall and hence the respondents committed breach of the status quo order of this Court. Firstly, neither any specific date of giving such oral instruction to the auction purchaser and what was the instructions, to whom it was given and whether it was at all required for the said purpose or not, is spelled in the contempt petition nor it is supported by any other documentary evidence except affidavit of the petitioner filed in support of contempt petition. The fact that lessee/auction purchaser M/s Yasin Enclave Enterprises Pvt. Ltd. in whose favour auction was finalized in March, 2011 for Rs.3.84 crores and lease-deed is also said to have been executed by the UIT on 11.5.2011 in pursuance of auction held on 24.3.2011, it being the highest bidder at Rs.3.84 crores and having paid the entire sum to the respondent UIT, Bikaner, the said Company having not been impleaded party in the writ petition

challenging those auction proceedings nor in the contempt petition for allegedly having constructed the boundary wall at the disputed site stares in the face, for the reasons best known to the petitioner and irrespective of his rights in the writ petition, which are yet to be decided by this Court, it is difficult to hold that the Chairman of the respondent - UIT gave some oral instructions to the auction purchaser to raise construction of boundary wall and then having failed to restrain him from going ahead with the construction of the boundary wall after the order was passed by this Court on 19.1.2011 amounts to deliberate disobedience on the part of the respondents - contemnors/ officials of the respondent - UIT, Bikaner.

6. On the other hand, since the stay order was passed on 19.1.2012 and a copy of the same was served upon the respondents on 20.1.2012, it appears from the reply of the respondents and the documents annexed with the same that the Secretary of the UIT, Bikaner has not only instructed the concerned Tehsildar, but auction purchaser also vide communication Annex.1 dtd.23.1.2012 and Annex.2 dtd.27.1.2012 served on them on 30.1.2012 to abide by the status quo order of this Court. The status quo with regard to not to create any third party rights pendente writ petition was given. According to the respondents after finalizing auction on 24.3.2011 and lease-deed executed on 11.5.2011, that status is being maintained and possibly after the auction and lease deed in favour of M/s Yasin Enclave Pvt.Ltd., the UIT officials have no role to play in the change of status with regard to creating third party rights and the auction purchaser has not been arrayed before this Court at all.

7. Be that as it may, the only contention that between 19.1.2012 to 30.1.2012, the alleged failure of the respondents-officials of UIT to maintain status quo on the disputed site, cannot amount to deliberate disobedience of the stay order dtd.19.1.2012. As to whether the disputed construction of boundary wall took place prior to 19.1.2012 or thereafter before the said order was brought to the knowledge of the auction purchaser on 30.1.2012, are disputed questions of facts. In absence of auction purchaser being arrayed as respondents before this Court either in the writ petition or in the contempt petition, the averments made in the contempt petition for the breach of status quo order of this Court would remain unverified from the end of the person who ultimately might have raised such construction of boundary wall. Whether the terms of order of this Court covered any such act of raising boundary wall or not is also not borne out from the terms of the said interim order.

8. The contempt jurisdiction of this Court has to be based on firmer footing and full and specific averments have to be established and a deliberate breach of the clear directions of this Court has to be shown before the said jurisdiction can be invoked. The contempt jurisdiction is not to be loosely or frequently used just to threaten or coerce the respondents into submission. It is the jurisdiction vested to uphold the majesty and dignity of the courts and not a sword to be shone again and again particularly at the instance of the persons whose rights are yet

to be finally determined in the litigation pending before this Court. The interim orders, ought one know, abide finally by the final judgment of the Court and final judgment in the present case is still awaited. Whether the petitioner would ultimately get any right over this land or not lies in the womb of future. Therefore, at this stage to hook up the respondents to the interim orders and to take cognizance against them under contempt law without knowing the final fate of the petitioner's case would not be a fair exercise of contempt jurisdiction. The third party rights have admittedly already been created which are subject matter of challenge in the writ petition prior to the passing of the interim order on 19.1.2012. Such third party is not even before this Court in the writ petition as well as the contempt petition. Therefore to level the allegations of breach of interim order of this Court against the auction purchaser through the respondents - officials of UIT, Bikaner without impleading them in the array of respondents is too vague a case to invoke the contempt jurisdiction of this Court. This Court is, therefore, not inclined to invoke the contempt jurisdiction as no deliberate disobedience of directions of this Court by the officials of the UIT is made out.

9. Accordingly, the present contempt petition is dismissed. Notices are discharged.

10. The record of the writ petition was tagged with the present contempt petition even though there was no such direction of the Court, therefore it may be detached forthwith and be listed before appropriate bench immediately as it was directed in the order dtd.19.1.2012 for the same was to be listed on 14.2.2012 itself, but writ petition does not appear to have been so listed before the concerned bench so far over for two months. Getting the record of original writ petition tagged with such frivolous contempt petition without Court's order and alleging breach of interim order and then not allowing the main writ petition itself to be listed in the court for appropriate further orders is a mischief which the Registry has to guard against and scrupulously avoid. On the stipulated date 14.2.2012, the main writ petition ought to have been listed before the concerned bench in any case, which has not been done. Therefore, the Dy. Registrar (Judicial) and the concerned clerks should give their explanation and report as to why the writ petition was not listed before the appropriate bench on 14.2.2012, even though there was no direction of the Court to tag the record of the writ petition with the contempt petition and irrespective of that the writ petition was required to be placed before the concerned bench on 14.2.2012. The present contempt petition is dismissed as aforesaid. A copy of this order be placed in the file of writ petition also, alongwith their explanation and reports of the Dy. Registrar (Judl.) and concerned clerks.