

(2011) 11 BOM CK 0151

In the Bombay High Court

Case No : Contempt Petition No. 122 of 2010 in Writ Petition No. 169 of 2000

Mahatma Gandhi Taluka Shikshan Mandal

APPELLANT

Vs

Smt. Mankarnabai D. Deshpande (since deceased) through
her legal heirs and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 129, 215
Contempt of Courts (Bombay High Court) Rules, 1975 — Rule 19
Contempt of Courts Act, 1971 — Section 15, 17, 20
Limitation Act, 1963 — Section 17

Citation : (2012) 2 ALLMR 585 : (2012) 3 MhLj 122

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : BR Warma, for the Appellant; KJ Ghute-Patil, AGP for Respondent/
State, Mr. SB Yawalkar, Advocate for Respondents 1 to 4, Mr. YB Bolkar,
Advocate for Advocate for Resp. No. 5, Mr. DS Bagul, Advocate for Respondent
9 and Mr. PB Patil Mr. SB Yawalkar, Advocate for Respondents 1 to 4 Contempt
Petition No.122 of 2010 and Mr. BS Shinde, Advocate for Respondent 1 h/for Mr.
VP Latange Writ Petition No. 3137/2000, for the Respondent

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.

1) Heard finally. The petitioner has filed the present contempt proceedings under Article 215 of the Constitution of India and under the provisions of Contempt of Courts Act, seeking to punish the Respondent Nos.1 to 7 and 9 for willful violation of order of injunction dated 6th August, 2004 passed by this Court in Writ Petition No.3137/2000.

2) In the writ petition, the petitioner has questioned propriety of the letter dated 29.5.2000 of the Director of Town Planning, MS, Pune and the Division Bench of this Court, on 6.8.2004 considered it for admission and Rule was granted along with interim relief in terms of prayer clause (D). Prayer clause (D) reads as

under:

(D) Pending and final hearing and disposal of this writ petition in this Hon'ble High Court, Respondent Nos. 1 and 2, or their servants, agents, anybody claiming through or under them be restrained by an order of injunction, not to give effect or take any action pursuant to the letter dated 29.5.2000 being number - Chopada/Section-47/Gat No.1155(1 and 2) T.P.V.-4/3344.

3) Learned Counsel for petitioner submits, in spite of such restraint to the letter dated 29.5.2000, construction permission was granted on 5.6.2006. However, no occupancy certificate is issued in favour of the respondents, the construction permission would be treated as alive and the breach of the order dated 6.8.2004 is continuous.

4) Respondent Nos. 1 to 4 are owners of the property. Mr. Patil, learned Counsel for Respondent No.9 submits that his client was not party to the writ petition. His client has purchased the property on 29.12.2003 while interim relief was subsequently granted. It was prohibition against Respondent Nos.1 & 2. Respondent No.9 was not aware till he was served with the notice. He carried construction activities based on permission granted by the Municipal Council. The petitioner was in slumber for six years and then prosecuted. He reiterates, there is no reasonableness on the part of the petitioner.

5) Respondent No.5, in both the contempt petitions, submits that he had no role in issuing the letter dated 29.5.2000 or subsequent action, as he joined the duties on 12.6.1997, he was relieved on 20th October, 1999.

6) The respondents raised a basic question about maintainability of the contempt petition since there is bar of Section 20 of the Contempt of Courts Act, 1971.

7) Mr. Warma submits, the contempt petition is maintainable under Article 215 of the Constitution of India as the bar contemplated u/s 20 of the Act, would not be available. To stress his point, he has placed reliance to the following reported judgments:-

a) 1993 (2) Mh.L.J. 1331 - Usman Gani Vs. State of Maharashtra and Anr.;

b) Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, .

c) The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others, .

d) High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, .;

e) Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, .

(f) Pallav Sheth Vs. Custodian and Others, .

8) In the matter of Usman Gani, the learned Single judge (as then he was) has considered the Contempt of Courts (Bombay High Court) Rules, 1975, Rule 19(a)

and Article 215 of Constitution of India. In the said case, the controversy revolved to several proceedings injuncting the Corporation, making a statement by officials not to demolish the structure, still they demolished the structure, in spite of High court's orders. A notice of motion was moved in Original Side proceedings on the illegal acts of Municipal Corporation. It was a continuous process of breaches. It was observed in paragraph 13, as under:

13. Apart from this, as the power is being exercised under Article 215, there is no question of any limit being laid down within which the High Court may commit a person for contempt of itself. There is no question of section 20 of the Contempt of Courts Act in any manner prescribing either a pre-condition or a time limit within which the High Court may exercise its powers under Article 215 of the Constitution of India. Therefore, even presuming that the filing of the Notice of Motion did not amount to initiation of the proceedings and it is only when the Court really hears the Notice of Motion, that there is initiation of proceedings, still so long as the alleged Contemnor is made aware of the charge and is given full opportunity to meet the charge, this Court can commit for contempt at any time. Section 20 can in no trammel or curtail the inherent power of this Court.

9) In Pritam Pal's case, the Hon'ble Supreme Court (decided on 19-2-1992) observed, that power of Supreme Court and High Court to punish contempt is not restricted or trammelled by ordinary legislation. However, the power to be used sparingly and procedure should be fair. The Supreme Court further observed, summary procedure is to be followed. In that case, a Advocate made libelous allegations against sitting judges of the High Court, which the Supreme Court felt, amounts to interference with administration of justice and in that context, discussion in respect of Section 20 of criminal contempt arose. This judgment, would not be applicable, as the contemnor in that case sought action even against the sitting judges of the High Court and consequently, the Supreme Court observed in paragraphs 41 and 42 as under:

41. The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja Vs. Bhajan Lal,) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself.

42. If we examine the facts of the present case in the backdrop of the

proposition of law, the contentions raised by the appellant challenging the procedure followed by the High Court do not merit any consideration since the appellant has been served with a notice of contempt and thereafter permitted to go through the records and finally has been afforded a fair opportunity of putting forth his explanation for the charge levelled against him. Incidentally, we may say that the submission of the contemner that the impugned order is vitiated on the ground of procedural irregularities and that Article 215 of the Constitution of India is to be read in conjunction with the provisions of Sections 15 and 17 of the Act of 1971, cannot be countenanced and it has to be summarily rejected as being devoid of any merit.

Thus, this judgment deals with a different situation, where, an advocate was making scurrilous, offensive and malicious allegations which were beyond condonable limits. This would be of no avail to the petitioner. This judgment is being of 2 Hon"ble Judges of the Supreme Court, the later judgment dated 10.8.2001 in Pallav Sheth Vs. Custodian and Others, will hold the field.

10) In Pallav Sheth Vs. Custodian and Others, , it was observed : provisions of Section 20 of the Contempt of Courts Act, cannot be taken to abrogate constitutional powers in filing of applicability by a party or issuance of suo motu notice by Court. Section 20 of Contempt of Courts Act, 1971 has to be harmonized with constitutional provisions. The three-judges Bench overruled the judgment in the matter of Omprakash Jaiswal Vs D.K.Mittal - AIR 2000 SCW 722, and observations in Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, were held obiter.

11) The Hon"ble Supreme Court also held in the said case, there would be application of Section 17 of the Limitation Act, as the contemnor, who was restrained by the court from alienating, transferring of his assets, found to have set up benami companies and transferred his assets despite restraint order. Fraud perpetrated by contemnor revealed in income tax raid conducted 3 years after restraint order. Application for initiating contempt proceedings filed immediately on becoming aware of fraud. The Supreme Court held Section 17 of the Limitation Act would be applied and the provisions embodied fundamental principles of justice and equity.

12) The observations in the matter of Pallav Sheth, reading from any angle deals with the legal position vis-a-vis the Contempt of Courts Act 1971 and powers of High Court under Article 215 of Constitution. The Honourable Supreme Court has observed, Section 20 deals not only with criminal contempt, but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different. Section 20, as framed, is not happily worded. The heading of the section, however, indicates what it was to provide for "Limitation for actions for contempt". The wording of the section are negative but it is clear that terminus ad quem is the initiation of proceedings for contempt. The crucial

question that arise as to how or when are the proceedings for contempt initiated. The Honourable Supreme Court, in paragraph 38 of the said judgment observed that, "The Rules so framed by all the Courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the Court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of the Court exercising its jurisdiction."

13) The observations of the Honourable Supreme Court expressly illustrate scope, ambit and applicability of Section 20 vis-a-vis civil Contempt and essentiality of filing an application. The situation, as desired by the petitioner herein need not be dissected to mean that his petition being under Article 215 of the Constitution, the effect of provisions of Contempt of Courts Act, 1971 are defused or deflated or non est. The theme in the language of the Apex Court in the matter of Pallav Sheth illustrates both the provisions i.e. Article 215 and Contempt of Courts Act, 1971, is to be read harmoniously. This is more so, from Section 20 of the said Act. In the situation, I hold that even for a petition purported to be under Article 215 of Constitution of India, since the body of the petition itself inform contempt of particular orders of the Court, and it is filed under Contempt of Courts Act, it would attract provisions of Section 20 of the Contempt of Courts Act, 1971. The High court has not initiated suo-motu action under Article 215 of the Constitution of India.

14) The action complained of enjoined in WP No.3137/2000 was dated 6.8.2004 while the contempt, allegedly committed by the respondents is after more than six years of the said orders. The petitioner did not venture to explain as to what he was doing for all these years when the alleged contemnor were developing the property, property changed hands by sale-deed executed by Respondent Nos.1 to 4 in favour of other respondents. One of the principles underlying the law of limitation is that a party has to act diligently and not sleep over its rights. It is quite clear, the acts of Respondents were not hidden to create an anomaly and hardship for petitioner not to be aware of developments.

15) Each of the respondents has tendered unconditional apology to this Court. It is informed, there is no willful act or disobedience of contempt or breach of the order of this Court.

16) Considering overall effect, the impact of Section 20 of Contempt of Courts Act will not be diluted even if petition is styled under Article 215 of Constitution of India, I do not see any breach of the orders to cause issuance of notice and action under Contempt of Courts Act. Notice discharged. Respective Contempt Petitions dismissed.