

(1993) 02 SC CK 0068

In the Supreme Court Of India

Case No : Contempt Petition No. 159 of 1992 In Spl. Leave Petition (C) No. 12709 of 1991

Major Genl. B.M. Bhattacharjee (Retd.) and another

APPELLANT

Vs

Russel Estaqt Corporation and another

RESPONDENT

Date of Decision : 04-02-1993

Acts Referred:

Citation : AIR 1993 SC 1632 : (1993) 2 BLJR 1389 : (1993) CriLJ 2251 : (1993) 2 JT 109 : (1993) 2 MLJ 1 : (1993) 1 SCALE 444 : (1993) 2 SCC 533 : (1993) 1 SCR 750

Hon'ble Judges : Kuldip Singh, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In a suit for specific performance certain interlocutory orders were passed by a Single Judge of the Calcutta High Court. On appeal a Division Bench of the said Court modified the said orders. A number of special leave petitions were filed in this Court against the orders of the Division Bench. Though the petitioners in these special leave petitions are different, the contesting respondents - in all these cases are common, namely Russel Estate Corporation and its managing partner Sri Hari Narayan Bhan.

2. For the purpose of this petition, it is enough to mention that each of the petitioners in these S.L.Ps. is claiming to be entitled to allotment of one or more of the flats being constructed by the respondents at Calcutta. Their complaint has been that ignoring the agreements in their favour, the respondents have been allotting the constructed flats in favour of third parties thereby seeking to defeat their rights. On 1.8.1991 a Bench of this Court comprising S. Ranganathan, F. Fathima Beevi and N.D. Ojha, JJ. passed the following order in I.A. No. 2 of 1991 after hearing the respondents.

Counsel accepts notice. In the meantime, till this SLP is disposed of, respondents 1 & 2 should not make any further allotment of any other flats in the building in

dispute, with effect from today. Counsel for the petitioner contends that the allotment of the flat, originally allotted to him, to some other person violates an oral order of a Division Bench of the High Court. It will be open to the petitioner to move the High Court for appropriate relief in this regard if so advised.

3. This Contempt Petition is filed complaining that the respondents have allotted certain flats in favour of third parties in violation of the said order.

4. So far as the petitioners in this Contempt Petition (Major Genl. B.M. Bhattacharjee and Smt. S. Laha) are concerned, they claim to be interested in the flats on the 8th floor of the said building. At any rate the complaint in this Contempt Petition pertains to the said two flats. The petitioners say that the said flats have been allotted to the third parties in the month of January, 1992. They rely upon the report of a group of investigators (National Bureau of Investigation) in support of the said plea.

5. Notice was issued to the respondents. In their counter (filed by Shri Hari Narayan Bhan) it is stated that the two flats on the 8th floor (described as east and west flats) were allotted on 26th April, 1991 itself i.e., long prior to the order of this Court dated 1.8.1991. It is denied that the allotment of said flats took place in the month of January, 1992. The correctness of the Report of the National Bureau of Investigation is disputed. It is, however, conceded that the possession of the said flats was handed over to the said third parties on 17th August, 1991-which is admittedly a date subsequent to the date on which this Court passed the aforesaid restraint order. It is also not disputed by them that the registered sale-deeds in respect of said flats in favour of the said third parties were also executed in March, 1992.

6. The report of the Receiver (Smt. Pratibha Bonnerjea, a retired Judge of the Calcutta High Court who was appointed as such by an order of this Court dated 7.1.1992) also supports the petitioners' allegations. The relevant portion of the Report reads as follows:

Present condition of these two flats in the 8th floor:

The western apartment in the 8th floor is occupied by one Mr. & Mrs. Kamal Thavrani, Ms. Thavrani said that they are in occupation of the flat from December, 1991. Mr. K.K. Thavrani said that he had taken both the eastern and western apartments in the 8th floor. He produced a copy of the agreement executed on 26.4.91 on a stamp paper purchased on 26.4.91 by M/s. Russel Estate Corporation. The agreement relates to both the flats on the 8th floor for a total consideration of Rs. 13,40,000/-. It is stated that the occupiers have taken possession in December, 1991. Mr. Thavrani submits that the conveyance have been registered in March, 1992 but he is unable to produce the registered conveyance as the same is still lying with the Registrar. We found eastern flat was not complete. Wooden work was going on. Photos Nos. 3 to 5 are attached to this effect.

7. At the hearing of this Contempt Petition the respondents counsel took the stand that the delivery of possession on 17.8.1991 and the execution of the registered sale-deed in March, 1992 do not constitute violation of the Order dated 1.8.1991. His submission is that this Court merely restrained the allotment of flats. Allotment, according to the learned Counsel, means entering into the agreement of sale. Inasmuch as the agreement of sale with respect to the said two flats on the 8th floor was entered into long prior to the said Order of this Court, it is submitted, there is no disobedience to the order of this Court. It is submitted that delivery of possession and the registration of the sale-deed (s) is in pursuance of the aforesaid agreement of sale and not in pursuance of any agreement of sale entered into on or after 1.8.1991. The counsel further submitted that even on the date when the aforesaid order was passed on 1.8.1991, the second respondent had represented to this Court that agreement of sale in respect of all the flats have already been entered into. In this view, it is submitted, there has been no misrepresentation or suppression of relevant facts on their part.

8. We may mention that when we indicated our disagreement with the above stand during the course of hearing, the counsel for the respondents, Shri Dutta took time till 14th of January, 1993 to file a further affidavit/additional counter and/or documents in continuation of the counter already filed. The second respondent has accordingly filed a further affidavit on 14.1.1993.

9. The counsel for the petitioners' disputes the correctness, genuineness and validity of the agreement, allegedly entered into on 26.4.1991 in respect of said flats. According to him, it is fabricated document. He points out that the stamp paper for the said agreement of sale; was purchased by the Russel Estate Corporation and not by the purchaser of the flats. It is also pointed out that the agreement is not a registered one and that it could have been fabricated at any time putting a back date.

10. It is not necessary for us to pronounce upon the disputed question whether the agreement dated 26.4.1991 relating to the said two flats on the 8th floor is true and genuine. Assuming that the said agreement is true, we are yet of the opinion that the respondents have committed gross contempt of this Court by their brazen violation of the order dated 1.8.1991. By the said order this Court directed the respondents 1 and 2 not to make "any further allotment of any other flats in the building in dispute with effect from today." Now what does the word "allotment" mean in the context. In our opinion, the said word must be understood reasonably and having regard to the context The first respondent is not like a Government Department or Public Corporation where an allotment order or allotment letter is issued from the office in pursuance of which other steps are taken. The first respondent is a proprietary concern, according to the petitioners, whereas according to the respondents it is a partnership concern. In either event, there is no such thing as "allotment" in its case. Even now, it is not their case that they have issued any orders or letters of allotment. According to

them, there was first an agreement of sale, then delivery of possession and finally a registered sale deed. We are of the opinion that in the context and circumstances, the word "allotment" in the said order means making over of the flats. In other words, it means delivery of possession and registration of the sale-deeds. An agreement of sale, that too unregistered, has no significance in the context, difficult as it is to verify its truth and correctness. This court could not be presumed to have interdicted such an uncertain thing. It must be remembered that even according to the respondents they had represented to this Court, at the time the said order was passed, that they have already entered into agreement of sale in respect of the flats and yet this Court chose to pass the said order. In the circumstances, it cannot mean anything else than delivery of possession of flats - and their sale. It may also mean an agreement of sale but its meaning is certainly not confined to an agreement of sale. To say so, as do the respondent, is to rob the order of any meaning or content.

11. Mr. Dutta, the learned Counsel for the respondents contended that the second respondent understood the allotment in a particular manner and that the said misunderstanding, if any, was bonafide. We are not prepared to agree. Firstly, there could not have been any doubt in the mind of Respondent with respect to the meaning of the order. Secondly, assuming that he had any doubt regarding its meaning, the least he could have done was to ask for a clarification of the said Order. He could well have represented that he had already entered into an agreement of sale on 26.4.1991 in respect of these flats and that he may be permitted to deliver possession and/or execute sale-deeds in respect of said flats in favour of third parties. He did nothing of the sort. Having placed a highly restrictive and unwarranted interpretation upon the order of this Court, he went ahead and not only delivered possession of the flats to third parties subsequent to the said order but also registered sale deeds in their favour. He thus rendered the said order nugatory. It was not open to the respondents to place a convenient interpretation upon the order and proceed to act upon it, thereby totally nullifying the order of this Court.

12. In this context, we ought to refer to the conduct of the second respondent as disclosed from the order of this Court dated August 7, 1992 to which one of us (B.P. Jeevan Reddy, J.) was a party. The first two paragraphs of the said order may be quoted in full.

In these special leave petitions notice was duly served on the respondents and the matters came up for hearing initially before a Bench of this Court comprising of Ranganathan J., Fathima Beevi J. and Ojha J. on 31.7.91 and 1.8.91 when the parties were heard and certain interim orders were passed. Thereafter it was listed before a Bench of this Court (of which Ranganathan J. and v. Ramaswami J. were members) on a number of occasions at which the respondents were represented and no objection was voiced against the hearing of the matters by the said Bench. However, sometime later an attempt was made on behalf of the respondents to have these matters transferred from this Bench to some other

Bench on the allegation that one of the Judges (Ranganathan J.) was biased against the respondents. This request was made before a Bench presided over by the learned Chief Justice by the second respondent who appeared in person and made the request for the W transfer of the case. The prayer was rejected by the learned Chief Justice on 11.11.1991. Thereafter the matter was again listed before a Bench consisting of Ranganathan J, V. Ramaswami J. and Ojha J. on different occasions without any demur from the parties. It was then listed before a Bench comprising of Ramaswamy J., Yogeshwar Dayal J. and Mohan J. on 4.3.92. This Bench directed the cases to be posted before a Bench of which Ranganathan J. is a member. About this time, an application seems to have been presented to the Registrar that this case should be transferred to some other Bench. However, the matters came up before us again some time last week when counsel for the respondents agreed that the matters may be listed this week. The matters were listed yesterday. A person claiming to be the son of the second respondent made a request that the matter should not be heard by this Bench. We rejected this request and made it clear to him that he should make arrangements for the conduct of the case. The matters did not reach yesterday and when the matters came up today, a letter dated 6.8.92 written by the second respondent to his counsel revoking the counsel's vakalatnama has been placed before us. But the respondent No. 2 did not appear before us nor did he make other arrangements for the conduct of the case. Sri Chatterjee, his advocate on record, appeared but expressed his inability to conduct the case since his client "had withdrawn the vakalatnama. We understand that in one of the matters the respondents are represented by another counsel whose vakalatnama is also seen to have been revoked but she has not appeared or sought permission to withdraw from the case. In these circumstances we have no other option but to proceed against the respondents ex parte. We are unable to accede to the respondents request made on a previous occasion by the son of the second respondent for transfer of case to some other Bench. The circumstances narrated above would show that the respondent has appeared before the Bench on several occasions without protest. The request made for transfer, after the rejection of the earlier petition by the learned Chief Justice, is belated and is just an attempt by the second respondent to circumvent the order already passed by the Chief Justice rejecting a request for transfer and only because the Constitution of the Bench is not to his liking. Such a request, we are clear, cannot be countenanced.

13. It should be noticed that the said order dated August 7, 1992 was passed not only in the special leave petitions but also in this very Contempt Petition. The attitude adopted by them before the Receiver (Smt. Pratibha Bonnerjea retired Judge of Calcutta High Court, appointed by this Court as a Receiver in this case) also discloses the total disregard and disrespect of the Respondents have towards the orders of this Court. The Receiver says: "The next day, by a letter dated 22.8.92, Mr. H.N. Bhan informed me that he would not submit to the order dated 7.8.92 as the Bench was not properly constituted due to the fact that the

Hon'ble Mr. Justice v. Ramaswami was one of the judges and that an application would be moved for recalling the said order. Thereafter, there was complete non-cooperation by M/s. Russel Estate Corporation."

14. The conduct of the second respondent as evidenced from the aforesaid material establishes beyond doubt that the second respondent was trying to play with this Court and was consistently flouting its orders. In the circumstances, the theory of bonafide belief, now put forward before us by his counsel, cannot be accepted.

15. We may at this stage deal with the further affidavit filed by the second respondent on 14.1.1993. In para 3 of the affidavit the second respondent has stated that he has the highest regard of this Court, that he has all along complied with the orders passed by this Court and that he never intended to flout or defy the orders of the court. He stated further "If inspite of the aforesaid, any order of this Hon'ble Court has been violated, the same has been so done through mistake, inadvertence and by a misunderstanding of the meaning and purport of that order and surely not intentionally and for which I unconditionally apologise for self and on behalf of the Respondent firm and I beg to be excused."

16. Then in paragraphs'4 to 12 he has "without waiving the aforesaid and fully relying thereupon" repeated the contentions which were urged by his counsel before us and which we have dealt with hereinbefore. He stated that he understood this Court's order dated 1.8.1991 as prohibiting only the entering into of agreements of sale and not delivery of possession or registration of the sale deeds. All the said contentions we have dealt with hereinbefore. They need not be reiterated here.

17. So far as the apology contained in para 3 of the second respondent's further affidavit is concerned, it may firstly be mentioned that it is not really an unconditional apology though it purports to say so. While tendering unconditional apology in para 3, the second respondent has tried to defend his action in the subsequent paragraphs. Secondly, even if we construe paragraph 3 as tendering an unconditional apology, we are not inclined to accept the same having regard to the conduct of the respondent which we have adverted to hereinbefore with reference to the order of this Court and the report of the Receiver. Accordingly, we reject the apology tendered in para 3 of the further affidavit.

18. For the above reasons, we hold the second respondent guilty of Contempt of this Court. Having regard to the facts and circumstances of this case, we impose a sentence of one month's imprisonment in addition to a fine of Rs. 2,000/- upon the second respondent. The fine shall be paid into this Court within two weeks from today, in default thereof the second respondent shall undergo a further imprisonment of two weeks. The second respondent shall also pay the costs of the respondents in this Contempt case which are assessed at Rs. 5,000/- within two weeks from today. In case of failure, the Respondents are free to execute this order as a decree of Court and recover the same from the Respondents. Mr.

H.N. Bhan, who is present in the court, be taken into custody forthwith to undergo the sentence of imprisonment.