
(2016) 04 AP CK 0038

In the Andhra Pradesh High Court

Case No : Contempt Case No. 1643 of 2015

Sabza Ali and others

APPELLANT

Vs

Mr. M. Raghunandan

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : (2016) 5 ALT 226 : (2016) 4 AndhLD 520

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri Lasetty Ravinder, Advocate, for the Appellant; Sri V. Narasimha Goud, SC for HMDA Sri P. Raghavender Reddy and Sri G. Narender Reddy, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

A. Ramalingeswara Rao, J.—This Contempt Case is filed alleging non-implementation of the order dated 24.11.2014 passed by this Court in WP No. 27465 of 2009.

2. Three petitioners claimed that they are the owners of the land of an extent of Ac.4-00 in Survey No.50 and 0-20 gts. in Survey No.50/RU, situated at Pocharam village, Ghatkesar Mandal, Ranga Reddy District. They stated that there was a road of 60" wide on the southern side of their land leading from Cherlapalli village to Pocharam village. The said road is the access for their lands. The road was earmarked in the master plan of Hyderabad City as a proposed 60" wide road. While so, when M/s.Infosys, sixth respondent constructed a compound wall by blocking the existing village road in September 2009, they filed the Writ Petition challenging the inaction of the respondents 2 to 5 in not acting on the complaint of the petitioners dated 24.09.2009 for removal of the compound wall by the sixth respondent.

3. In the writ petition, a counter was filed by the fifth respondent, HMDA stating that they visited the site and found that the sixth respondent constructed the

compound wall without demarcating the proposed 60" road as per the master plan notified in GO Ms No.288 dated 03.04.2008. Then, the fifth respondent addressed a letter on 29.07.2009 requesting the second respondent - District Collector to direct the DPO, Ranga Reddy District and the Executive Officer of Pocharam Grampanchayat, the fourth respondent to initiate necessary action for retaining the notified master plan road.

4. In view of the said statement, this Court disposed of the writ petition on 24.11.2014 directing the respondents 2 to 4 to take necessary action in accordance with law for removal of encroachments, if any, from the proposed master plan road as notified in G.O. Ms. No.288 dated 03.04.2008. When an objection was raised by the counsel for the sixth respondent stating that there was no mention with regard to the proposed road by the Government in the said G.O., the respondents 2 to 4 were directed to verify the records and take necessary action after issuing notice to the sixth respondent.

5. Thereafter, counsel for the petitioners issued a notice to the Grampanchayat, Pocharam for implementing the orders. A similar request was made to other respondents also. It appears that the Grampanchayat, Pocharam issued a show cause notice to the sixth respondent on 23.01.2015, for which the sixth respondent sought time for reply on 27.01.2015 and 10.02.2015. Ultimately, they filed a reply on 13.02.2015 before the fourth respondent - Grampanchayat denying the existence of proposed 60" wide road. The Grampanchayat addressed a letter on 16.05.2015 to the counsel for the petitioners in reply to the legal notice stating that they addressed a letter on 13.05.2015 to HMDA for surveying the land and fixing the boundary stones for implementing the orders of this Court with a copy to all other respondents. When no action was taken by the District Collector, the above contempt case was filed on 10.08.2015 against him, District Panchayat Officer and Secretary of the Gram Panchayat.

6. This Court ordered notice before admission on 04.09.2015 and on filing the counter affidavits by 01.10.2015 the case was adjourned to 30.10.2015. Thereafter, on 13.11.2015 when this Court noticed that the first respondent herein filed affidavit stating that the proposed master plan road is under examination by the HMDA and hence he could not take action, this Court thought it is a case of overreaching the order passed by this Court and accordingly issued Form-I notices to the respondents 1 and 2 in the present Contempt Case.

7. In response to the notice, the second respondent was present on 11.12.2015, but the first respondent filed an affidavit stating that in view of his unavoidable preoccupation with legal matters in the Hon"ble Supreme Court, he was unable to be physically present. This Court, in the absence of justifiable reason, issued bailable warrant to the first respondent and posted the case to 28.12.2015. On 28.12.2015 the first respondent was present and the learned Additional Advocate General, who appeared for him stated that he would comply with the order and requested for posting the case after Sankranti Vacation, 2016. Thereafter, the learned Additional Advocate-General never appeared but was represented by the

Special Government Pleader who took three more adjournments. When a further adjournment was sought on 26.02.2016, this Court passed a detailed order directing the Vice-Chairman, HMDA to depute his officers for demarcation of 60" wide road and the Grampanchayat, Pocharam was directed to restore the road by removing the encroachments, if any, as the first respondent failed to discharge his duties. The Commissioner of Police, Cyberabad was directed to provide necessary protection to the Grampanchayat for implementation of the order.

8. After receipt of the said order, the Commissioner, HMDA passed an order on 10.03.2016 constituting a committee of officers for demarcation work and when the order was about to be implemented, the sixth respondent in the Writ Petition filed a Contempt Application No.293 of 2016 in Contempt Case No.1643 of 2015 on 17.03.2016, which was moved by way of lunch motion seeking impleadment. Sri A. Sudarshan Reddy, learned Senior Counsel was heard for the sixth respondent, but this Court declined to stay the operation of the order dated 26.02.2016. Ultimately, the order was implemented on 16.03.2016 by the officers of the HMDA in the presence of panchayat officers and representatives of all other respondents and none raised any objection. Thus, the order of this Court was implemented pursuant to a further order of this Court dated 26.02.2016 to the HMDA and Grampanchayat who were provided with police protection.

9. In the circumstances, it has to be examined whether the first respondent - District Collector had complied with the order of this court or not?

10. The road in question appears as follows.

IMAGE

11. As stated above, in response to the notice before admitting the Contempt Case, the first respondent filed a counter stating that due to instructions of HMDA through their letter No.417/Plg/HMDA/2015, dated 02.03.2015, the proposed action for removal of compound wall of Infosys was delayed. It was ultimately stated as follows.

"It is submitted that the HMDA through their letter No.417/Plg/HMDA/2015, dated 02.03.2015, has informed the District Collector, Ranga Reddy District that as per guidelines issued under Special Economic Zone Scheme by the Govt. of India, orders of Hon"ble High Court and basing the representation of Infosys Ltd., the proposed master plan road that is passing through the Infosys campus is under examination by the HMDA for re-alignment/alternate road to the master plan, due to which no action taken by the respondents in this case. Soon after providing alternate road in master plan by the HMDA further action will be taken in the matter."

12. The HMDA had already communicated its decision on 27-9-2009 to the District Collector and he was asked to take further action. The Writ Petition was disposed of on the basis of such communication. Hence, he could not have said

that further action would be taken only after providing alternative road in the master plan by the HMDA as the direction was to him, based on the letter of the HMDA dated 27.09.2009 requesting him to take further action. In fact, he did not take any action after receipt of orders of this Court. The record shows that a letter was addressed by the District Collector (PW), Ranga Reddy District to the Panchayat Secretary, Gram Panchayat, Pocharam, the Extension Officer (PR&RD), Ghatkesar Mandal and the Divisional Panchayat Officer, R.R. East Division, informing them that the matter is under examination by the HMDA for realignment of alternative road to the master plan and the Panchayat Secretary, Grampanchayat, Pocharam of Ghatkesar Mandal was directed to take necessary action in the matter. It is an indirect suggestion to wait.

13. The factual information with regard to the case was provided by the District Panchayat Officer to the District Collector in her letter dated 07.03.2015 and it was categorically stated that the Grampanchayat along with staff examined the spot and noticed that the sixth respondent in the Writ Petition constructed the compound wall illegally. It was also stated that due to the construction of the compound wall, there was trouble to vehicles going from Hyderabad to Warangal National Highway to Cherlapalli industrial area. After the first respondent appeared before this Court through the learned Additional Advocate-General, he assured that the order would be implemented, but did not implement and on the other hand took three adjournments. After three adjournments only, this Court was forced to pass an order on 26.02.2016 to move the administrative machinery ignoring the District Collector which led to the ultimate implementation of the order.

14. This is a clear case where the District Collector wanted to protect the sixth respondent who constructed a compound wall blocking the way of the people. The sixth respondent did not submit any plausible explanation to the Grampanchayat in reply to the show cause notice. In spite of submitting the factual information by the District Panchayat Officer on 17.03.2015, the District Collector did not move and on the other hand, as stated above, filed an affidavit stating that he would take action only after realignment of the road by the HMDA.

15. After implementation of the orders of this Court, the first respondent filed additional counter affidavit stating that he issued proceedings on 15.03.2016 directing the Panchayat Secretary to be present on 16.03.2016 during the demarcation work and restore the road by removing the encroachment as soon as may be possible. He, ultimately, stated that he has utmost respect for the orders of this Court and implemented them by removing the encroachments on the master plan road. He forgot that the machinery was moved only after this Court passed an order on 26.02.2016 noticing the inaction of the first respondent. The Commissioner, HMDA also filed an affidavit on 20.03.2016 stating that he took all necessary steps pursuant to the order of this Court dated 26.02.2016.

16. The order of this Court cannot be made subject to the will and pleasure of

the officers who were directed to implement the orders. This Court passes an order after hearing the parties by giving due opportunity to them. If any of the parties is aggrieved, he has a remedy to file an appeal. If none of the respondents choose to file an appeal, but wants to implement the orders, for which time is required, they should approach this Court seeking time. None of the steps were taken by the first respondent in the present Contempt Case. On the other hand, he filed an affidavit initially stating that he would implement the orders only after realignment of the road by the HMDA. He appeared before this Court through the learned Additional Advocate-General and assured implementation of the order. After three adjournments, he did not implement the order and this Court was forced to step in. Thus, the violation of the orders of this Court by the first respondent is clear and undoubted. The circumstances make it clear that it is wilful.

17. In *E.T. Sunup v. C.A.N.S.S. Employees Association*, (2004) 8 SCC 683, the Hon'ble Supreme Court considered the case of a convicted Commissioner-cum-Secretary to Government, Finance Department, Government of Nagaland. When he did not act on the direction of the High Court for lifting the ban on withdrawal of GPF, the High Court convicted the officer for violating the order and the same was confirmed by Supreme Court but modified the sentence of imprisonment with fine, by taking into consideration the incumbent being at the verge of retirement and having unblemished career of 30 years of service. The Supreme Court observed as follows:

"It has become a tendency with the Government Officer to somehow or the other circumvent the orders of Court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the court's order cannot be countenanced. This Court, time and again has emphasised that in democracy the role of the Court cannot be subservient to the administrative fiat. The executive & legislature has to work within Constitutional frame work and the judiciary has been given a role of watch dog to keep the legislature & executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of Court's Order and appellant is guilty of flouting the Courts Order.

18. The said case was taken into account in *Maninderjit Singh Bitta v. Union of India*, (2012) 1 SCC 273, wherein the Hon'ble Supreme Court made the following observations:

"In *Vinay Chandra Mishra* [(1995) 2 SCC 584], this Court held that `judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart

from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the Courts have to be respected and protected at all costs".

Another very important aspect even of the Civil Contempt is, "what is the attribution of the contemnor?" There may be cases of disobedience where the respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the cases where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

It is also of some relevancy to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad's case [(2006) 5 SCC 1]). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority.

It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction, to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personam simpliciter. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance of its orders in future. This principle has been applied in the United States and Australia as well.

For execution of the orders of the court even committal for an indefinite term has been accepted under Australian law [Australasian Meat Industry Employees Union v. Mudginberri Station Pty. Ltd. (1986) 161 CLR 98 (Australian High Court)] and American law, though this is no longer permissible under English

Law. While referring to detention of a person for a long period to ensure execution of the orders in *Re Nevitt* [117 F. 448, 461 (1902)] Judge Sanborn observed that the person subjected to such a term "carries the keys of his prison in his own pocket."

Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. It is inappropriate for the parties concerned to keep the execution of the court's orders in abeyance for an inordinate period. Inaction or even dormant behaviour by the officers in highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Inordinate delay of years in complying with the orders of the court or in complying with the directed stipulations within the prescribed time, has been viewed by this Court seriously and held to be the contempt of court, as it undermines the dignity of the court. Reference in this regard can be made to *Maniyeri Madhavan v. Inspector of Police, Cannanore* [AIR 1993 SC 356] and *Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors.* [(2002) 4 SCC 21]. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance of the orders of the court at the earliest and within stipulated period."

(emphasis supplied)

19. In the instant case, the facts would make it clear that the first respondent - District Collector did not choose to implement the order, but wanted to wait till the road is realigned and a decision is taken in that respect. He wanted to help the sixth respondent in the Writ Petition. The assurance through the learned Additional Advocate-General for implementation of the order was not proved bona fide. He did not move, in spite of the letter of the District Panchayat Officer dated 07.03.2015. This Court got it implemented by its order dated 26.02.2016 and two days before implementation he comes up with a plea that he himself was responsible for the implementation as he passed an order on 15.03.2016 directing the Panchayat Secretary to be present on the spot. In the circumstances, this Court is of the opinion that the first respondent has committed violation of the order of this Court dated 24.11.2014 and he is liable for punishment.

20. Coming to the punishment, this court rarely punishes the Contemnors. The conduct of the first respondent in respect of implementation of the orders of this Court is not without blemish. He was already convicted by a Division Bench of this Court in C.C.No.534 of 2010 dated 02.12.2015 and the matter is pending before the Hon'ble Supreme Court. The record in the present case also shows that he has no respect or seriousness in implementing the orders of court. In fact, it appears that he does not take the orders seriously. In spite of sufficient opportunity, he did not take action. He was anxious to help the sixth respondent

in the Writ Petition than restore the road in public interest by implementing the orders. This attitude cannot be encouraged by this court. This is an unfortunate situation. Taking the over all facts into consideration, this court imposes a fine of Rs.1,116/- (Rupees One thousand one hundred and sixteen only) to be payable from his pocket to the Telangana Legal Services Authority, Hyderabad within a period of eight (8) weeks from the date of receipt of a copy of this order, failing which to undergo simple imprisonment for a period of two (2) days. This punishment should be a red light in his future career to be careful with the orders of the judiciary. He should realise that the job of judiciary is a serious business and should not be taken lightly.

21. The Contempt Case is, accordingly, allowed.

22. In view of implementation of the order of this Court and coupled with the violation by the sixth respondent, the application in CA No.293 OF 2016 is dismissed as not maintainable.

23. As a sequel thereto, the miscellaneous applications, if any pending in this Contempt Case shall stand closed.

24..... The Registry is directed to send a copy of this order to the Chief Secretary to Government of Telangana for taking remedial measures preventing recurrence of this type of cases as this court noticed spurt in allegations of violation of orders. A copy of the order be marked to the Lal Bahadur Shastri Academy of Administration, Mussorie for sensitising the Officers coming for training.