

(2016) 09 MEG CK 0003

In the Meghalaya High Court

Case No : Cont. Case (C) No. 12 of 2016 in W.P. (C) No. 260 of 2015

Smt. Philisita Lyngdoh

APPELLANT

Vs

Lt. Col. Rajeev Malhotra

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(b)

Citation : (2017) 169 AIC 468

Hon'ble Judges : Dinesh Maheshwari, CJ.

Bench : Single Bench

Advocate : Shri H.S. Thangkhiew, Sr. Advocate with Shri P.N. Nongbri, Advocate, for the Petitioner; Capt. Pradeep Kumar with Shri K.P. Bhattacharjee, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, C.J. (Oral) - In this contempt petition, the petitioner of WP(C) No. 260 of 2015 has alleged that the respondents have not carried out adequate compliance of, and have wilfully and deliberately disobeyed, the order dated 02.11.2015, as passed by this Court in the said writ petition.

2. The referred order dated 02.11.2015, in its entirety, reads as under:-

"02.11.2015 Mr. H.S. Thangkhiew, learned senior counsel, assisted by Mr. P.N. Nongbri, learned counsel, appears for the petitioner.

Mr. K. Paul, learned counsel has entered appearance on behalf of respondent No. 1 and Mr. K. Khan, learned Addl. Senior GA, for respondents No. 2 and 3.

We have heard learned counsel for parties and perused the pleadings.

Learned senior counsel appearing for the petitioner states that the three meters extra land, being the subject matter of controversy herein does not form the part of the land under the land acquisition proceedings. However, he also states that in case the extra land is required for public purpose, the National Highways

Authority of India should pay the compensation. Learned counsel, Capt. Pradeep Kumar appearing on behalf of the National Highways Authority of India also states that in case of acquisition of extra land, the petitioner would be entitled to get the compensation. Thus, in view of consensus between learned counsel for parties, we dispose of the matter while directing the National Highways Authority of India to resolve the issue by paying compensation in case the land in question is found to be extra by three meters than the one acquired under the land acquisition Act, within a period of one month from the date of receiving copy of this order.

Writ Petition (C) No. 260 of 2015 as well as MC No. 197 of 2015 filed therein stands disposed of in terms of the direction."

3. The petitioner has alleged that after the order aforesaid, the officers concerned visited the site only once and took some measurements, but she was neither informed as to what was being carried out nor any report was supplied to her. It is submitted that inaction of the respondents, where they have failed to resolve the issue by appropriate proceedings is in gross violation of the directions of this Court.

4. Per contra, it is asserted on behalf of the respondents that in compliance of the order aforesaid, a joint inspection with the petitioner was carried out on 17.12.2015 by a team of officials/consultants of NHAI, contractor engaged by NHAI and the Land Record Officers from the Office of the Deputy Commissioner, Nongpoh; and, the "right of way was marked in the presence of the petitioner". It is submitted that in the given circumstances, where the respondents have carried out the requisite compliance and have not committed any wilful disobedience, this petition deserves to be dismissed.

5. Apart from the above, it has also been indicated in the reply submissions that in fact, before filing the writ petition aforesaid, the petitioner had filed a Title Suit bearing number 3 (T) of 2015 in the Court of the Assistant to Deputy Commissioner (Judicial), Nongpoh when the NHAI moved to the site for construction of the utility corridor and service road on the acquired land; and also made an application [being Misc. Case No. 4 (T) of 2015] seeking temporary injunction against the respondents, but the said application was dismissed on 28.09.2015. It has been submitted that the petitioner preferred the aforesaid writ petition [WP (C) No. 260 of 2015] only after her prayer for temporary injunction was declined by the learned Trial Court. It has also been pointed out that the said title suit [No. 3 (T) of 2015] was placed before the Lok Adalat on 12.03.2016, but the petitioner did not appear; and thereafter, the said suit was fixed on 18.04.2016 when the petitioner again failed to appear, but the matter was adjourned to 04.05.2016; but the petitioner yet again did not appear and, therefore, the Trial Court proceeded to dismiss the suit in default. It has, however, been pointed out that the petitioner has filed an application seeking restoration of the suit that remains pending.

6. On the earlier occasion, this matter was adjourned on the request made by the learned counsel for the parties but, on 16.08.2016, it was made clear that this matter shall proceed further, irrespective of pendency or disposal of the application for restoration.

7. Upon the matter being taken up today, learned counsel for the petitioner has strenuously argued that in its essence, by the order dated 02.11.2015, this Court expected the respondents to take concrete steps to resolve the issue rather than asserting their own defence. Learned counsel would argue that the so called proceedings of measurements were attempted to be carried out in a non-transparent manner while leaving the petitioner clueless; and such steps by the respondents cannot be said to be of adequate and proper compliance of the order passed by this Court. The learned counsel has, of course, submitted that the application for restoration of the title suit remains pending yet.

8. Per contra, learned counsel for the respondents have contended that pursuant to the order passed by this Court, the requisite proceeding for measurement and demarcation was carried out at the site in the presence of the petitioner and with reference to the revenue records; and the grievance as suggested in this petition is not justified.

9. Having heard learned counsel for the parties and having perused the material placed on record, this Court is clearly of the view that no case for proceeding against the respondents in contempt is made out but then, the matter otherwise deserves to be left open for adjudication in accordance with law and in appropriate forum.

10. In a comprehension of the order dated 02.11.2015, it is but evident that nothing was adjudicated by this Court on the rights sought to be claimed by the petitioner and the matter was left open to be resolved with measurements at the site. The petitioner has been asserting that the respondents were taking over extra land belonging to her. However, her claim for compensation in regard to such alleged three metres extra land was neither upheld nor rejected by the Court. The order dated 02.11.2015, read as a whole, makes it clear that instead of adjudicating on the matter, the Court, in view of the submissions of parties, left the issue to be resolved by paying compensation, "in case" the land in question was "found" to be extra by three metres than the one acquired.

11. A significant factor remains indisputable in this case that before filing the writ petition, the petitioner had indeed filed the title suit and sought a relief against the respondents that they may not deal with the land in question. However, the prayer for temporary injunction therein was declined by the Trial Court. The petitioner did not challenge the said order rejecting her prayer for temporary injunction and instead, filed the writ petition aforesaid. In the writ petition, the petitioner, of course, referred to the fact of filing of the suit and rejection of application for temporary injunction but, thereafter, did not seek any relief in that regard; and asserting the rights differently, attempted to seek relief of

compensation in accordance with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. In the given set of circumstances, when this Court did not adjudicate on the rights claimed by the petitioner and left the things to be carried out by the respondents; and when the respondents assert that they did carry out measurements and demarcation at the site with reference to the revenue records; and when the petitioner, on the other hand, alleges that she was not properly associated with the process or was left clueless, it is difficult to find a case of wilful and deliberate disobedience on the part of the respondents. Thus, this contempt petition is required to be dismissed.

13. However, it needs to be observed, in continuity with the observations foregoing, that even when this Court does not find it justified to proceed against the respondents for contempt, the petitioner indeed has a right to seek adjudication of her claim, of course, strictly in accordance with law; and for that matter, closure of the proceedings herein, by itself, is not decisive of the rights sought to be claimed by the petitioner. As noticed, the rights sought to be claimed by the petitioner have not been adjudicated in any substantive proceedings.

14. This Court would not be making any comment as regards the pending application for restoration of the title suit or recourse to any other proceedings which the petitioner may choose. Suffice it to observe for the present purpose that closure of the matter herein, by itself, is not decisive of the claim of the petitioner, which may be examined at the appropriate stage and in the appropriate forum in accordance with law.

Subject to the observations foregoing, this contempt petition is dismissed.