

(2011) 09 KAR CK 0031
In the Karnataka High Court
Case No : C.C.C. No. 3046 of 2011 (Civil)

Sri. Raghunathrao Patil

APPELLANT

Vs

Sri B. Basappa

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (2013) 2 AKR 326 : (2012) ILR (Kar) 595

Hon'ble Judges : H.S. Kempanna, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : C.M. Poonacha, for Sri Ameet Kumar Deshpande, for Complainant, for the Appellant; Gourish S. Khashampur, Advocate for Accused, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—Contempt jurisdiction is essentially meant to uphold the majesty of law; the authority and the efficacy of the judicial system and may be incidental to ensure that the orders passed by this Court are not belittled and disregarded by persons against whom such orders are passed. Mere non-compliance with an order passed by this Court by a person ipso facto will not give cause for initiating proceedings against the person in the contempt jurisdiction, unless, it is demonstrated that non-compliance or disregard of an order is deliberate and intentional and has the effect of bringing down the majesty or law and efficacy of the legal system.

2. Orders obtained by the individuals for furtherance of their private interest can only be in civil jurisdiction and through the process as recognized by the present legal system.

3. Writ jurisdiction is a constitutional jurisdiction conferred on the High Court by the Constitution essentially to keep under check, the other two organs of the State namely the executive and legislature. Writ jurisdiction is basically judicial

review of administrative acts and along legislative actions when the validity of a law made by the legislature is called in question before the Courts.

4. The examination in Writ jurisdiction is about the manner in which the State has been exercising its powers and authority, as to whether it is in a statute conforming manner, as to whether it is in conformity with the provisions of the Constitution.

5. A person who comes to the High Court in a writ petition under Articles 226 and 227 of the Constitution of India may be a person, who brings a cause before this Court for examination, but the examination is not from the angle of what the person can get or cannot get, but as to in what manner a public authority - the State has acted or functioned, which perhaps could have affected the existing rights of the petitioner and if the action taken by the State or Officials of the State is either arbitrary or non-statute conforming or outright unconstitutional, in the sense, a discriminating act or depriving a fundamental right given to the citizens in part-III, then such actions will have to be annulled or quashed by issuing a proper writ. This itself will ensure the petitioner getting some relief and it is not because something is to be given to the petitioner, a writ is issued, but something which the petitioner already possesses is saved from being denied or deprived by an illegal act of the State! No rights are conferred on any person in Writ Jurisdiction, but existing right if any is saved, from being affected and it is only for the saving of that right, Writ Jurisdiction is exercised and to reign in the State to function in accordance with law and at any rate not to allow the State to function in any manner so as to affect the existing rights of the citizens and persons coming to the Court.

6. In this background, it is of some significance to notice that the constitutional jurisdiction under Articles 226 and 227 of Constitution of India exercised by the High Court is not on par with a Civil jurisdiction exercised by the High Court either as an Appellate Court or as an Original Court and such matters involving property rights etc., are essentially examined on the touchstone of the legal principles as evolved in the adversary English legal system.

7. Legal principle evolved in the context of the adversary English legal system ill-fits into an examination undertaken by the High Court in the exercise of its constitutional jurisdiction.

8. Contempt jurisdiction should not be confused to be on par with the jurisdiction of Civil Courts for executing a decree granted by the Civil Court. In fact, while contempt jurisdiction is exercised when warranted but not as even in Writ Jurisdiction. It may so happen that some times the effect and the consequences may be on par with the exercise of the jurisdiction by an executing Court, but that does not necessarily covert a contempt Court into a Court for executing the orders passed by the very Court or subordinate Courts.

9. The present contempt petition is filed by the writ petitioner in W.P. No. 5452/2007, which had come to be partly allowed in the following manner.

8. As far as the first part of the order cancelling the building plans is concerned, no material is placed either before the respondents or on the record of this Court to show that the petitioner and/or his father have perfected the title. When the title cannot be traced to any document, the 2nd respondent is well within its limits to cancel the building plans sanctioned earlier. I therefore uphold that part of the order of the original authority (order of the 2nd respondent) and the 1st respondent's order confirming it, which pertains to the cancellation of the building plans.

9. However the second part of the 2nd respondent's impugned order and the 1st respondent's order confirming it are not sustainable at all. The direction for deleting the name of the petitioner from the Municipal records in respect of the property in question is issued clearly in excess of the jurisdiction conferred upon the 2nd respondent by the statute, I therefore, quash that part of the order directing deletion of the petitioner's name from the Municipal records.

10. Liberty is also reserved to the petitioner to submit fresh building plans with the necessary supporting documents. Liberty is also reserved to the 2nd respondent to initiate such proceedings involving such provisions of law as are necessary for the deletion of his name from the Municipal records or for taking the possession of the property in question from the petitioner. If such proceedings are indeed initiated, it is open to the petitioner to take such defences, as are open to him in law.

11. That the relevant file is missing from the records section of the 2nd respondent is not a ground to deprive the petitioner of his claim, if it is otherwise tenable. The 2nd respondent shall do every possible endeavor to retrieve the missing file. Despite its best endeavors, if it is not traced, the 2nd respondent shall also make honest efforts to rebuild file taking the contemporary records from the concerned sections and offices. On such tracing of the file or building a fresh file, it shall issue copies of such documents, which the petitioner requires. Needless to observe that it is also open to the petitioner to seek copies of the documents under the Right to information Act, 2000.

12. In the result, this petition is allowed in part. No order as to costs.

It was further improved upon by the writ petitioner in the Writ Appeal preferred by the writ petitioner in terms of the judgment dated 25.08.2008 passed in W.A. No. 689/2008 as under;

The Learned Single Judge has found that the direction given by respondents No. 2 for deleting the name of the petitioner from Municipal records is illegal. The appellant was given liberty to submit fresh building plan. The second respondent is given liberty to initiate fresh legal proceedings for deleting the name of appellant and for taking possession in accordance with law. The file relating to auction is said to be missing. The Learned Single Judge directed the second respondent to rebuild the file. The appellant aggrieved by the order, has filed this appeal.

On thorough consideration of facts and evidence, we find that the previous Commissioner has held a valid enquiry and passed an order vide Annexure-H dt. 3.7.1993. In the said order, the Commissioner has found from the records that there was a valid auction and the bid amount of Rs. 1,300/- has been deposited. In addition, the development charges of Rs. 1,250/- is also paid. The observations of the Commissioner in the impugned later order at Annexure "L" that the order Annexure "H" has no binding effect is an incorrect view in law. Whatever the proceedings conducted by the predecessors shall bind the successors in Office and as well the second respondent unless validly set-aside by the competent authority. When as of fact, in an enquiry it is found that auction amount has been deposited, it is impermissible for the second respondent now to contend that the auction amount is not deposited, therefore, the appellant has no title over the property. In fact, the stand taken by the respondent No. 2 is that the file is missing. If it is so without records and valid basis it was impermissible for the second respondent to contend that the appellant has not deposited the bid amount, moreso, when appellant has produced an order passed at Annexure- "H" which confirms the facts that the bid amount is deposited.

7. In that view of the matter, the entry of the appellant's name in the Khata cannot be deleted. On that basis, cancellation of building licence is also bad in law. In that view, appeal is allowed. However, the second respondent is at liberty to initiate action if the constructions are not in accordance with the building licence.

10. It is in respect of non-compliance or non-implementation of the order of the Learned Single Judge passed by this Court as improved by a Division Bench of this Court contempt petition No. 1366/2009 had been presented before this Court.

11. The contempt petition was disposed of by a Bench of this Court as per the order dated 9.12.2009 as under :

20. Cost to be paid to the respondents within a fortnight's time. We drop all further proceedings against the respondents in this contempt proceedings as totally unwarranted.

21. That would still not take us to the conclusion of this contempt petition as we find that the complainant has virtually abused the process of this Court and the memo for withdrawal or for closing of the contempt proceedings having been filed before this Court only at a belated stage having realised the bluff of the complainant has been exposed and the records reveal there was no cause for the complainant either to file the writ petition or to file the present contempt petition.

22. Change of Counsel at any stage of the proceedings will not change the litigant or the facts. Law also remains the same. The change of Counsel cannot make any differences to the merits of a case and though the ability of different Counsel to present the case before the Court may vary from Counsel to Counsel

cases are decided on the merits of the case and not by the mere appearance of a Counsel.

12. While the contempt proceedings initiated by the very complainant in the earlier round came to be dropped as indicated in paragraph-20 of the order referred to above, the initiation of the contempt proceedings against the very complainant was examined by this Court and was dropped with the following opinion by a Division Bench of this Court as per the order dated 01.02.2010 observing as under :

The question whether those reliefs were obtained by the petitioner by abusing the process is a matter to be agitated in the Apex Court which has been done and which is concluded with the dismissal of the Special Leave Petition. In our humble view, the said matter cannot be re-opened in a fresh criminal proceedings initiated as per the aforesaid order. In view of the aforesaid subsequent event, we do not find any justification to proceed with this contempt proceedings.

13. Mr. Poonacha, Learned Counsel appearing for the complainant brings to our notice that insofar as that part of the order directing initiation of the contempt proceedings against the complainant in CCC No. 1366/2009 is concerned, it had been made the subject matter of SLP No. 15341/2010 before the Supreme Court of India and in terms of the order dated 18.02.2011 the Supreme Court of India dismissed the SLP observing as under;

It is brought to our notice by the Learned Counsel appearing for both the parties that the notice of contempt issued against the petitioner herein has been withdrawn. In such view of the matter, we are not incline to interfere in this matter. The remedy of the petitioner, if any, is left open. The SLP is accordingly, dismissed.

14. Mr. Poonacha, Learned Counsel appearing for the complainant submits that it is in this background that it has become necessary for the complainant to approach this Court again in the second round of the contempt petition and on the very grounds as had been urged earlier in CCC No. 1366/2009.

15. Mr. Poonacha, Learned Counsel for the complainant submits that the respondents are guilty of suppressio veri; that though the SLP which had been preferred against the judgment of a Division Bench of this Court in WA. No. 689/2008 had come to be dismissed by the Supreme Court on the ground of delay and this was a fact within the knowledge of the respondents, it was either deliberately not brought to the notice of this Court at the time of dropping of the contempt proceedings as per the order dated 9.12.2009 and at any rate, this Court was ignorant of all these developments and further observation by the Supreme Court while dismissing the SLP of the present complainant noticing the subsequent developments such as dropping of the contempt proceedings that had been initiated by this Court against the very complainant as a development which had influenced the Supreme Court not to interfere in the matter and the

Supreme Court having left the petitioner to work out his rights while dismissing the SLP and the remedy being left open it has become necessary for the complainant to come up with the present contempt petition to really work out his remedy in terms of the order passed by the Learned Single Judge in W.P. No. 5452/2007 and further improved by a Division Bench of this Court in terms of the judgment in W.A. No. 689/2008.

16. Jurisdiction of the Court is facility provided to the litigants and the citizens of this Country under our Constitution and is to ventilate their legitimate causes, bona-fide grievances and for seeking remedy and relief in accordance with law. Writ jurisdiction is an extraordinary, discretionary, constitutional jurisdiction conferred on the High Court under the Constitution of India for the benefit of the citizens. It is a jurisdiction which is required to be exercised by the High Court with considerable care, caution and being discretionary in nature, the bona fides of a person seeking relief in Writ Jurisdiction is a matter of utmost importance. The Supreme Court had occasion to examine the manner in which the Writ jurisdiction has to be exercised and what should be the guiding factors in exercising the discretion of the High Court in the case of Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, . Following guidelines/ observation have been made;

12. This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention -punitive or preventive -is shown to have been made under the law so made for the purpose. This is to point out the limitations which the High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decision have evolved them over a period of years taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the order or decision complained of the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought etc. To illustrate these limitations (i) in the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as Courts of appeal or revision, correct mere errors of law or of facts; (ii) the resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the Writ Jurisdiction, permit the machinery created by the statute to be by-passed; (iii) it does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed; (iv) it does not

interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala-fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice or any constitutional provision; (v) the Court may also intervene where (a) the authority acting order the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is dictated; or (b) where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or (c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose; (vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief If the Court is of opinion that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the petitioner's legal right, it will grant final relief but will not dispose of the petition only by granting interim relief; (vii) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it ought to have, the Court interferes with the resultant order; (viii) in proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded.

17. Writ jurisdiction is not in the nature of an appellate jurisdiction but essentially meant for judicial review of administrative and legislative actions. It is observed that though this Court while dropping the proceedings against the respondents in the first round in terms of the order dated 9.12.2009 was oblivious of any of the developments that had led to the order or judgment by the Single Judge and/or Division Bench of this Court, it is only after an overall examination of all aspects of the matter, the contempt proceedings had been completely dropped and the contempt petition dismissed.

18. Though Sri. Poonacha, Learned Counsel appearing for the complainant has made valiant efforts and has strained to impress upon us that two rounds of dismissal of the special leave petition, once the SLP filed by the respondents and on the second round by the complainant which has been referred to above, this Court was aware of the two orders one by the Single Bench and the other by the Division Bench and on an overall examination had dismissed the contempt

petition and therefore it is not necessary for this Court to examine it yet again in this contempt petition of the complainant as presented now.

19. Even on an overall examination and perusal of all relevant orders annexed to this contempt petition, we do not find that the earlier order of this Court dated 9.12.2009 insofar as it relates to dropping of the contempt proceedings as contained in paragraph 20 has been in any way modified or set-aside or is no more in existence in law.

20. As observed in the earlier part on this order the contempt jurisdiction is very special jurisdiction required to be exercised with utmost care, caution and trepidation. It is not exercised as a matter of course and just because some litigant is disgruntled wants to make a point for realizing what according to the presumption of the petitioner are the fruits of the order and has not been realised in the manner in which the petitioner has desired and as per the understanding of the order by the petitioner. Be that as it may, when this Court has already dropped the contempt petition in respect of the very complainant and in respect of the very proceedings, entertaining the second round of contempt petition is neither appropriate nor proper utilization of the contempt jurisdiction, in our considered view, while the present contempt petition is not enabled to be entertained by any subsequent development and is nothing short of misuse or abuse of the process of this Court, but having noticed past history of earlier orders issued by this Court in this matter, we refrain from initiating any further proceedings against the complainant but just dismiss the contempt petition.