

(2003) 09 AP CK 0035

In the Andhra Pradesh High Court

Case No : SMCC No. 1082 of 2003 in AS No. 2754 of 1996

State of A.P.

APPELLANT

Vs

Mandalupu Ramaiah

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Advocates Act, 1961 — Section 34(1)
Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12, 2(C)(2)

Citation : (2003) 6 ALD 190

Hon'ble Judges : E. Dharma Rao, J;B.S.A. Swamy, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; P. Gangaiah Naidu, for G. Balarangaiah, for the Respondent

Judgement

B.S.A. Swamy, J.—This Court in exercise of suo motu powers by Order dated 23.9.2003 framed five points for consideration and directed the contemnor to show-cause whether the acts and omissions committed by him as noticed by the Court amounts to Criminal Contempt or not as envisaged in Section 2(c)(II) of the Contempt of Courts Act. If so, why he should not be punished u/s 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India. The points framed are as follows:

1. That the Appellant filed a copy of the Order in the Court said to have been issued by the Government on 11.10.2002, which is found to be a fabricated document and, in fact, the Court expressed in so many words to him that if he can unravel the truth, the Court may take a lenient view against him. But he never disclosed how he could get that order into his hands and how KUDA could act upon the said fabricated letter.
2. Having filed a suit against the Society, how the appellant could approach the Government for release of the excess land as if he is the owner of land having parted with the ownership of the same long long back.

3. Having obtained an Order for consideration of his application in W.P. No. 23032 of 1996, he approached the Commissioner, Warangal Municipal Corporation, who, in turn, rejected his request on 8.5.1997 and 12.12.2000. These facts were not brought to the notice of the Government while he approached the Government by using his political clout.

4. He filed the writ petition without disclosing the fact that he is fighting litigation against the society and obtained an order to consider his application for release of the excess land and when once the Collector rejected his request, without questioning the correctness or otherwise of those orders, how he could approach the Government again suppressing the orders passed by the Collector; and

5. In filing an application seeking permission of the Court to withdraw the petitions after the Court detected the fraud played by him and as well as changing the Advocate to avoid the Court, which has to hear the matter as per roster.

2. Having received notice in contempt proceedings the contemnor filed his counter on 14th September, 2003. The undisputed fact is that between 28th March, 1972 to 11th May, 1972, the contemnor along with the pattedars of land alienated an extent of Ac. 69 - 31 guntas of land situated in various Survey numbers in Warangal Town both under registered sale deeds as well as agreement of sales. As per the agreement entered into by him with the Central Excise Officers Co-operative Housing Society, Hanumakonda on 28.3.1972, the betterment charges for obtaining the lay out has to be paid by the contemnor. After obtaining lay out from the Director of Town and Country Planning on 1.12.1975 in LP No. 6/75 another agreement was entered into between the contemnor and the society where under Clauses 3 and 7 of the agreement dated 28.3.1972 were deleted and while the contemnor agreed to pay the betterment charges up to Rs. 1.50/- per Sq.Yard. The society agreed to bear the remaining amount payable towards the betterment charges. Under this agreement, the contemnor was also authorized to get clearance from the Municipality for construction of houses by paying the betterment charges.

3. After paying the betterment charges, the society seemed to have not paid the amounts to the contemnor. In those circumstances he got a legal notice issued in July, 1982 demanding a sum of Rs. 2 lakhs towards the amount spent by him for payment of betterment charges over and above his commitment. Since the said amount was not paid, a third agreement was entered into between the contemnor and the society on 3.12.1984. The basis for coming to that understanding may be that some official who was in know of things might have informed the contemnor that the Director of Town and Country Planning while approving the layout L.P. No. 6 of 75 left more open space than the required one under the lay out rules that were in force then.

4. The relevant clause of this agreement is as hereunder:

"Whereas the society was unable to pay the claim which was admitted by the

society due to lack of funds and thereby the society agreed that the excess plots will be available as per the revised layout and the said plots will be sold to the members by the society, who are nominated by Sri Ramaiah for the benefit of the society."

5. From this, it is evident that since the society is not able to raise the required funds for the payment of betterment charges, the society decided to apply for revised layout to convert open space into plots and to pay the amounts to the contemnor by selling the excess plots that are likely to be available as per the revised lay out to the persons nominated by the contemnor.

6. Thereafter, society filed application before the Commissioner. Warangal Municipality stating that the society has lost 41.72 per cent of the total land under approved lay out and requested the Commissioner to permit for conversion of Ac. 1.73 cents and 90 cents of land into plots in July, 1985. The said application was rejected by the Commissioner of Municipality in 1985 stating that since the lay out was approved by the Director of Town Planning, the Municipality has no power to revise the same.

7. We understand that while the Society filed revision before the Government, the contemnor filed OS No. 133 of 1986 on the file of sub-Court at Warangal, seeking specific performance of the contract dated 3.12.1984 or in the alternative to recover Rs. 2 lakhs with interest at the rate of 18 per cent per annum.

8. During the pendency of the suit, the Government rejected the request of the society for revision of the lay out and the same was marked as Ex.B-70.

9. We need not go into the merits of the suit since the suit was decreed by judgment and decree dated 19th July, 1996 by giving alternative relief of payment of Rs. 2 lakhs with 6 per cent interest from the date of decree till the date of payment by the society to the contemnor since there is no land available at that time to convey under Ex.A-2 in view of the rejection of the revised lay out proposals as disclosed from Ex.B-70. Therefore the relief of specific performance was not granted and prayer to that effect is dismissed.

10. From the judgment of the Court below, it is seen that the suit was disposed of on the basis of Ex.B-70, under which the Government rejected the request of the society to revise the lay out LP No. 6 of 75. Ex.B-70 is extracted as hereunder:

"GOVERNMENT OF ANDHRA PRADESH HOUSING MUNICIPAL ADMN., & URBAN DEVELOPMENT DEPARTMENT

Memorandum No. 2016/M2/87-2 M.A, dated 2.1.1988

Sub :--Warangal Municipality. Approved lay out of the Central Excise Officers Colony, L.P.No. 6/75 - Request for de-reservation of open space set apart in the approved lay out for utilization as residential plots - Rejected.

Ref: 1. From the Members Central Excise Officers Co-operative Housing Society Ltd., representation dated 18-9-1987.

2. From the Municipal Commissioner, Warangal and Vice-Chairman (In-charge) KUDA Warangal letter No. C1/2696/87 dated 7-12-1987.

The request of the Members of the Central Excise Officer's Colony, Warangal made in the representation first cited has been examined in detail. The Government considers that there is no justification to accord relaxation of lay out rules so as to dereserve the open space set apart in the approved lay out plan to utilize the same for residential plots. The request made for relaxations of lay out rules is therefore rejected.

C. Arjuna Rao Secretary to Government.

To

The Members Central Excise Officers' Cooperative Housing Society Ltd., Regd.No. 251 T Hanumakonda, Warangal.

Copy to the Commissioner, Warangal Municipality, Warangal".

11. From this it is evident that the request made by the members of the society for converting the open land of an extent of Ac1.73 cents and 90 cents of land into plots was rejected by the Government way back in 1988 and it has become final. Subsequent to this order only, the suit was disposed of.

12. Aggrieved by the said judgment and decree, the contemnor filed AS No. 2754 of 1996 and the society also filed cross-objections. The appeal and cross-objections are still pending for disposal by this Court.

13. While the appeal filed by him and the cross-objections filed by the society are pending consideration before the Court the contemnor invented the novel idea to knock away the open land in the layout filed a Writ Petition No. 23032 of 96 on the file of this Court seeking a writ of mandamus directing the KUDA and Warangal Municipality to reconvey the excess land covered by open spaces as the authorities concerned are not considering the innumerable representations made by him.

14. In the affidavit filed in support of the writ petition he stated that he filed the application on 10-2-1996. But that application is not available in any of the files of the respondents. Be that as it may, the above writ petition was disposed of at the admission stage by this Court on 1.9.1996 giving a direction to the respondents to consider the representation made by the petitioner on 10.2.1996 by giving an opportunity to the petitioner to produce relevant material in support of his case and to take an appropriate decision thereon in accordance with law.

15. With the help of the above said order initially he approached the Commissioner, Warangal Municipality for reconveyance of the excess land and the Commissioner rejected that request by a speaking order through his

proceedings dated 8.5.1997.

16. Admittedly, the contemnor received this order. But he did not choose to question the correctness of this order. He kept quiet for some time till the dust is settled.

17. In 1999 we understand that the Collector, Warangal tried to allot open space in the layout for Rythu Bazar creation the contemnor filed Writ Petition No. 1022 of 1999 to direct the respondents not to interfere with the possession of the land situated in Survey Nos. 45 (New Survey Nos. 444,445) Survey No. 55(New Survey No. 292) Survey No. 114 (New Survey No. 275 and/408) which are included in the layout. Initially he obtained an injunction order restraining the Collector from establishing the Rythu Bazaar. Thereafter, he also filed CC No. 18 of 2000 against the Collector by contending that the interim orders of this Court has been violated. Subsequently, the interim orders were modified and the contempt case was dismissed by holding that the Rythu Bazaar was already established on 7-3-2000 before receipt of the injunction order passed by this Court.

18. Once again he started his efforts afresh, by filing Petition before the Commissioner in the year 2000 and again the request was rejected by the Commissioner in his order dated 12.12.2000 by stating that the appeal preferred by the contemnor is pending before the High Court and any action amounts to sub-judice. A copy was marked to the KUDA as well as to the contemnor. While the very letter is available in the file of KUDA, the contemnor submits that he has not received a copy of the same. It is rather difficult to believe his statement since he was all through going round the office.

19. Since he was not able to get favourable orders from the District Authorities, he switched over his activity to the State Headquarters and he got filed a representation before the Honourable Chief Minister. The date of this representation is not known but the Principal Secretary to the Honourable Chief Minister in his letter dated 12.4.2001, informed the Collector that the contemnor was making requests for reconveyance of the excess land acquired from him by KUDA and the orders of this Court in Writ Petition No. 23032 of 1996 are not being implemented. Finally, he requested the Collector to send a detailed report on the action taken on the application of the contemnor. The then Vice-Chairman of KUDA in his proceedings RC No. C1/808/ 2000 dated 4.5.2001 sent a detailed report stating that as per the amended layout rules not less than 40 per cent of the gross area has to be left for open space and roads, which works out to Ac. 27.4 in the instant lay out but as per the site condition the open space and roads area is coming to Ac. 26.03 i.e., 38 per cent i.e., less than 40 per cent of the total area as required. This report was sent to the Principal Secretary to Government, MA & UD Department as well as the Principal Secretary to the Honourable Chief Minister. But from the Government record we could not see this letter.

20. Once again, the contemnor filed another representation dated 6-6-2001 along with the recommendations of local peoples representatives like M.L.A., M.P. and Chairman of T.D.P. Warangal to the Chief Minister to take action. Again, the Private Secretary to Honourable Chief Minister, in his letter dated 27.6.2001 forwarded the representation of the contemnor to the Principal Secretary, MA & UD Department, by stating that the Chief Minister desires that the matter may be examined and file may be circulated for orders. Thereafter what transpired was fully dealt with in the notice and having seen the sorry state of affairs prevailing in the Governmental Offices, we directed the Director General of Vigilance and Enforcement Department to conduct a detailed enquiry and submit the report to this Court directly as early as possible in any case not exceeding 3 months to decide the future course of action in the matter. The Director of Vigilance and Enforcement shall also take into consideration the present order that is being passed in the contempt case now since new facts came to light during the course of hearing while conducting enquiry into the whole affairs.

21. Now coming to the contempt proceedings initiated against the contemnor the first and foremost issue is: Having filed the order of the Government purported to have been passed on 11.10.2002 received the same as additional evidence which is ultimately found to be a fabricated one in CMP No. 15828 of 2003, has not disclosed how xerox copy of the order came into his hands even after the Court expressed in so many words to him, that if he can unravel the truth the Court may take a lenient view against him and how KUDA acted upon the said fabricated letter.

22. Now Sri Gangaiah Naidu brought to our notice para 10 of the counter-affidavit filed in this contempt case wherein the contemnor stated that while he was going round the Secretariat several times to get his representations disposed of, he came in contact with one A. Srinivasa Rao in the lounge of Secretariat building who in turn promised to get favourable orders provided he pays Rs. 5 lakhs towards expenses and he accepted the offer with a condition that it would be paid only after passing favourable orders by the Government as well as by KUDA. In the last week of November, 2002, the said Srinivasa Rao has informed him that the Government passed favourable orders and demanded the amount. It is also his case that he approached the KUDA thereafter and obtained a xerox copy of the order from the office of the KUDA.

23. Having shown this letter to his well wishers and having satisfied with the contents of the xerox copy of the letter dated 12.10.2002 as true, he paid the agreed amount and instructed his advocate to file this order along with the consequential order passed by KUDA on 8.2.2003. He also stated that apprehending threat to his life he did not open his mouth when the case was heard by this Court initially. Even now he did not disclose who this Srinivasa Rao is, whether he is a Government employee or a third person. No details about the person were disclosed in the affidavit. Further he has not stated when he met the alleged Srinivasa Rao in the lounge of Secretariat. Likewise it is his case that he

paid the entire amount of Rs. 5 lakhs as agreed to Srinivasa Rao, when and where he paid this amount also he has not stated. It is also interesting to know that a person who paid such a huge amount do not know the whereabouts of Mr. Srinivasa Rao or who is this Srinivasa Rao, it is not known how he could not get a copy of the order from Srinivasa Rao himself and why he went to the office of KUDA to get xerox copy of the order. Nextly, he says that xerox copy of the order was given in the office of the KUDA. But he does not disclose the name of the person who has given the copy to him. At the same time the original letter is not found in the files of the KUDA. The case of the KUDA is that when they received information from Additional Advocate-General with regard to filing of C.M.Ps. and to forward the files to the Court and when it was verified the original copy was missing and it was replaced by xerox copy. Nextly, in this case the Directors of the Urban Development Authority met under the Chairmanship of Muga Rama Mohan Rao, who is also the President of the District Telugu Desam Party, and also Chairman of the Zilla Grandhalaya Samstha and who represented the case of the contemnor to the Hon'ble Chief Minister and adopted a resolution on 3.1.2003 authorising the Vice-Chairman to implement the orders of the Government. The Vice-Chairman passed the consequential order to release 29 plots in the open spaces shown in the revised lay out DP No. 7/2003 dated 8.2.2003. At that stage some of the plot owners as well as the owners of the land in survey No. 55 against whom the contemnor obtained an injunction raised objections. Then the M.R.O. ordered for enquiry on the ownership of the land and stopped the registration of plots. At that stage, he decided to approach the Court by way of filing of the Government Order dated 11-10-2002 and consequential order passed by the KUDA on 8-2-2003 to receive as additional evidence and to amend the plaint to pre-empt the M.R.O. from conducting any inquiry.

24. All these facts lead to irresistible conclusion that the contemnor came out with a new story that one Srinivasa Rao having met him in the corridors of Secretariat, induced him to part with Rs. 5 lakhs to get favourable orders from the Government and some one in the office of KUDA gave him the xerox copy of the order etc. Absolutely there is no truth in this averment, since none of the particulars with regard to his identity, when he met him, how he paid the money, why the said Srinivasa Rao has not given copy of the order as discussed supra. Accordingly we hold that the statement of the contemnor that Srinivasa Rao without address is responsible for the fraud noted by the Court is only an after thought and even at this belated stage, he is not prepared to disclose the real facts to the Court. Accordingly, we reject the explanation of the contemnor as false.

25. Point No. 2: Admittedly, the contemnor along with the owners of the land sold the land to the Society long back i.e., 1972. The contemnor in his counter states that he has taken all the steps pursuant to a resolution adopted by the society and it is only on behalf of the society, he was making all the representations to various authorities concerned. The resolution on which, the contemnor placed reliance has not seen the light of the day. But the fact remains

that in the agreement dated 3.12.1984 the society has taken a decision to apply for revision of layout and to sell the excess plots to the nominees of the contemnor since they are not in a position to pay the amounts spent by him towards betterment charges. In fact the Society filed an application before the Corporation in July, 1985 and the same was rejected in October, 1985. At that stage the contemnor filed a suit for specific performance of the agreement dated 3-12-1984 or in the alternative to pay Rs. 2 lakhs spent by him over and above his commitment in payment betterment charges. During the pendency of that suit, the Government also rejected the request of the society by order dated 2-1-1988 marked as Ex.B-70 in the suit file filed for specific performance by the contemnor against society.

26, Hence, he is fully aware of the fact that the request of the Society for revising the lay out was rejected way back in 1988 and it has attained finality. He did not choose to question the correctness or otherwise of the Order of the Government. Subsequently, the suit was decreed by giving alternative relief. The contemnor carried the matter to this Court by filing appeal and the society also filed cross-objections while the appeal is pending in this Court, he started searching ways and means to grab the land vested in the Municipality for maintenance under layout Rules. In that direction he filed the Writ Petition No. 23032 of 1996 arraying the society as a third respondent. In fact, we perused the representations filed by the contemnor from the year 1996. Nowhere he stated that he is filing these applications under authorisation from the society. The very fact that the society filed cross-appeal shows that the society is not sailing with the contemnor. Hence, it is a bitter pill to swallow that he did all these things at the instance of the society or at the authorization of the society. On the other hand the contemnor wanted to grab the land vested in the Municipality having lost his title to the property long back by settling land to the Society. Hence this explanation was also rejected.

27. Point No. 3: The contemnor did not refer to the orders of the Commissioner dated 17.10.1985 or 2.1.1988 whereunder the request of the society to revise the lay out was rejected in the Writ Petition No. 23032 of 1996 filed in this Court. This very conduct on the part of the contemnor, in concealing the true facts of the case and trying to get a favourable order from this Court amounts to speaking falsehood in Judicial proceedings and amounts to interference with the administration of justice. Further under the innocuous orders of this Court in Writ Petition No. 23032 of 1996, the contemnor approached the Commissioner, Warangal Municipal Corporation, who in turn rejected his requests by his proceedings dated 8.5.1997 and 12.12.2000 and in the representations filed in April and June, 2001 before the Government he did not refer to these orders. In his counter, he admits the receipt of the order of rejection dated 8.5.1997 but he pleads ignorance of the order dated 12.12.2000 by saying that no copy was served on him assuming for a moment that order dated 12.12.2000 was not received. Admittedly, the order dated 8.5.1997 which is more emphatic and clear in rejecting his request was received by him. But he did not mention this fact in

his representations to the Government. Now in the counter he states that since the Commissioner rejected his representation by stating that he has no right to revise the layout, he approached the Government. The Commissioner rejected the revision of lay out on that ground in 1985 but not after he filed the writ petition. Hence there is no truth in his contention. This is yet another fraud played by him before the Government and mislead the Government to consider a stale matter with a view to obtain a favourable order to grab the land vested in the Municipality way back in 1975.

28. Point No. 4: When once the Commissioner rejected his request pursuant to the orders of this Court in Writ Petition No. 23032 of 1996 on 8-5-1997 the contemnor without questioning the correctness or otherwise of this orders how he could approach the Government again. In the counter, he stated that he is not aware of the order passed by the District Collector, Warangal rejecting his request as he did not receive any such order till today. Of course in the notice by inadvertence we used the word Collector but he is fully aware of the fact that it is the order of the Commissioner. It is not in dispute that he received the orders of the Commissioner dated 8.5.1997 which was issued by the Commissioner after considering the orders of this Court dated 1.9.1996. Likewise, when the order of the Commissioner dated 12.12.2002 was received by the KUDA it is highly difficult to believe that the contemnor did not receive that order, who is after the Governmental Offices day in and day out persuading the Officers to pass orders in his favour. Hence, it is very difficult to hold that he has no knowledge of the order dated 12.12.2002. Further if the Commissioner or KUDA is not disposing of his applications pursuant to the orders of this Court since September, 1996 a man who is involved in Real Estate Business would not have kept quiet and have moved either the Government or the Court to get orders one way or the other. On the other hand, he got the rejection order in 1997 itself.

29. Having given sufficient gap, may be till the old file disappeared from the office restarted making efforts again in 2000 when he received a Rejection Order again on 12-12-2000. He kept quiet for some time and then only he used his acquaintance with the political leaders of the District in approaching the Chief Executive of the State. Unfortunately, whatever the contemnor might be saying now, in the report of the Vice-Chairman, KUDA dated 1.9.2001 or 25.6.2002 sent to the Government on the letter of Special Secretary to Honourable Chief Minister second time i.e., 27.1.2001 no reference was made to these orders that were referred supra or the report of Vice-Chairman, KUDA dated 4.5.2001. In fact as stated supra we noticed that request of the society for permission to revise lay out was rejected by the Government in 1988. When we directed the learned Additional Advocate-General, he produced an endorsement said to have been given by the Section Officer MA&UD Department stating that the above memo is already destroyed as per the office manual of A.P. Secretariat after expiry of five years. We can understand destroying the back papers but if the original orders on the note file are also destroyed, the same gives a hand to the people like contemnors to get an order in their favour after lapse of considerable time by

observing silence till the Government files are destroyed. In his counter he did not offer any explanation for not questioning the correctness of the order of the Commissioner dated 8.5.1997 or 12.12.2000 or the orders of the Government dated 2-1-1988 which was marked as Ex.B-70 in the suit filed by the contemnor.

30. From the conduct of the contemnor, we have no hesitation to hold that he has neither respect for truth nor the law of the land and in his evil design to knock away the public land vested in the Municipality way back in 1975, he went on changing his versions to suit his convenience and ultimately succeeded in getting an order and he tried to have a last laugh at the functioning of a democratic institutions.

31. To his misfortune, having filed these two CMPs in the Court, he was caught on the wrong side otherwise he would have successfully brow beaten the Governmental authorities in getting favourable orders in his favour.

32. Point No. 5: Having realized that the trick played by him going to get rebuff before KUDA he got two applications CMPs No. 15828 and 15829 of 2003, one to amend the plaint and the other to receive the alleged order of the Government dated 11.10.2002 and the consequential order of the KUDA dated 8.2.2003 as additional evidence to pre-empt the KUDA from taking further action in the matter. When these applications came up for hearing on 22.7.2003, the Division Bench consisting of Justice Chalameswar and Justice Seshasayana Reddy having entertained a doubt about the genuineness of the order directed the Additional Advocate-General to find out the truth or otherwise of these orders. Meanwhile, KUDA passed an order dated 8-2-2003 cancelling the revised lay out after giving notice to the contemnor on the ground that there is discrepancy in the order passed by the Government dated 11-10-2002. When the matter came up for hearing again on 18.8.2003, the learned Additional Advocate-General informed the Court that the alleged order of the Government dated 11-10-2002 is a fabricated document and sought one week time to file counter. At this stage having realized that here also the wind is blowing against him, he got a letter dated 19.8.2003 filed by his Counsel, Mr. K. Muralidhar Reddy, Advocate to post these 2 CMPs on 20th August, 2003 for the purpose of withdrawal. On 25th August, 2003, the Court while granting time to file counter till 29-8-2003 directed the Additional Advocate-General to produce, all the connected records on that day.

33. Admittedly Mr. K. Muralidhar Reddy was looking after his litigation since 1996. He was his Counsel in the writ petition as well as in the appeal. In fact, he filed the applications for amendment of the plaint and also to receive the order of the Government as well as consequential order of KUDA as additional evidence. When they realized that the Government is going to take the stand that the letter of the Government is a fabricated one, he filed a letter before the Registrar (Judicial) on 19.8.2003 to post these two CMPs so as to enable him to withdraw these CMPs.

34. In the counter, he states that since KUDA issued notice to cancel the revised lay out, he thought it fit not to prosecute CMPs, and accordingly he instructed his Counsel to withdraw the 2 CMPs. Since his advocate Mr. K. Muralidhar Reddy was not taking interest in getting the matter disposed he entrusted the brief to Sri V. Brahmaiah Chowdary. It is only after the Court noticed the fraud and after the Additional Advocate-General informed the Court on 18.8.2003, that the letter filed by the contemnor is a fabricated one and the Order of KUDA dated 8.2.2003 were withdrawn on 20.8.2003, he get the letter filed on 19.8.2003 to withdraw the two C.M.PS. On 25th August itself the Court passed the order directing the Principal Secretary to file Affidavit and to produce all the concerned records. Hence, at that stage, the Court permitting the contemnor to withdraw the petitions is very remote. Obviously, the reason is that when the Court comes to know that the document filed by him is a fabricated one, in all probability he has to face contempt proceedings. Hence, even at the stage he tried to play fraud on the Court by changing the Advocate to see that the case is taken out from that Court.

35. Hence, we do not find anything unbecoming on the part of Mr. K. Muralidhar Reddy, Advocate. On the other hand he acted to the tunes of his client and tried to protect him even by going out of the way. He also filed letter on 19-8-2003 to post these C.M.Ps. on 20-8-2003 to enable him to withdraw those petitions. Then why Mr. K. Muralidhar Reddy was changed and why Mr. V. Brahmaiah Chowdary was engaged is obvious. It is a known fact that about five thousand advocates are on rolls and how the contemnor could find Mr. V. Brahmaiah Chowdary with whom he has no previous acquaintance. On the first day, when the matter came before us, we questioned the contemnor how he could engage Mr. V. Brahmaiah Chowdary, with whom he has no acquaintance. He stated that through his son's friend he came to know Mr. Brahmaiah Chowdary.

36. The crucial fact here is that it was, brought to the notice of the Court on 25.8.2003 by the Additional Advocate-General that the copy of order said to have been passed by the Government is a fabricated one and on 20th August, 2003 the Vice-Chairman of KUDA withdrew his earlier proceedings on 8.2.2003 and in those circumstance, the Bench directed the Principal Secretary to file an affidavit explaining the various documents referred to above and the genuineness and the background in which the Memo dated 11.10.2002 came into existence apart from directing the Government to produce all the records and posted the matter to 29.8.2003.

37. Overnight he changed his Advocate on 27th and he approached Mr. V. Brahmaiah Chowdary Advocate, who will not appear before Justice Chalameswar to avoid that Bench. Though in his counter he stated that he has not changed the Advocate to avoid the Division Bench which was hearing the matter as per the roaster, it is a blatant lie that is being spoken by the contemnor. When we questioned Sri V. Bhrahmaiah Chowdary, how he could appear in the midst of the case, he withdrew from the brief. Thereafter G. Bala Rangaiah filed Vakalat on his

behalf and that Bala Rangaiah was represented by Mr. P. Gangaiah Naidu, a Senior Advocate of this Court, who argued the matter at length and tried to convince us that the actions of his client are due to his ignorance and illiteracy. But we cannot accept the said contention and it is rejected outright. We have no hesitation to hold that the contemnor engaged Mr. Brahmaiah Chowdary to avoid that Bench. Otherwise the matter would not have been posted before this Court.

38. For the foregoing discussion, we hold that the contemnor made every effort possible to maintain two parallel proceedings and was operating at various levels in different forums i.e., civil proceedings by way of filing suit and appeal on one side to get Rs. 2 lakhs from the Society and trying to get favourable orders from the Government Officers under the innocuous orders of the Court in W.P. No. 23032 of 1996 by speaking falsehood from time to time to suit his convenience to knock away the land which vested in the Municipality way back in 1975 and in which he has no interest whatsoever having sold the land to the Society. All these acts amounts to criminal contempt and he being a real estate businessman, it cannot be presumed that he has done all these things due to his ignorance and illiteracy. Hence we hold that all these acts were done by him wilfully, wantonly and deliberately intended to interfere with the administration of justice and amounts to criminal contempt as defined in Section 2(c)(II) of the Contempt of Courts Act.

39. We are supported in our view by a judgment of the Honourable Supreme Court in *In Re: Bineet Kumar Singh*, AIR 2001 SC 2019, wherein the Honourable Supreme Court initiated contempt proceedings suo motu against Mrs. Megha Rude, the correspondent of the Late Savitri bai Sikshan Prasarak Mandal, Yavatmal (for short referred to as KSSP Mandal) for production of a fabricated order before the State authorities said to have been passed by the Supreme Court on 28.8.1998 while dismissing the SLP which reads as hereunder:

"R. Nos. 1 and 2 are directed to conduct the examinations for the year 1994-95 as per Student list Annex 8 and 9 submitted by the petitioners in Writ Petition No. 1621 of 1998 immediately. CF required from institutions. The SLP is dismissed."

40. Their Lordships of the Supreme Court considered issue in para No. 6 as hereunder:

"The law of Contempt of Court is essentially meant for keeping the administration of justice pure and undefiled. It is difficult to rigidly define contempt. While on the one hand, the dignity of the Court has to be maintained at all costs, it must also be borne in mind that the contempt jurisdiction is of a special nature and should be sparingly used. The Supreme Court is the highest Court of Record and it is charged with the duties and responsibilities of protecting the dignity of the Court. To discharge its obligation as the custodian of the administration of justice in the country and as the highest Court imbued with supervisory and appellate jurisdiction over all the lower Courts and Tribunals, it is

inherently deemed to have been entrusted with the power to see the stream of Justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour. To discharge this obligation, the Supreme Court has to take cognizance of the deviation from the path of justice. The sole object of the Court wielding its power to punish for contempt is always for the course of administration of justice. Nothing is more incumbent upon the Courts of justice, than to preserve their proceedings from being misrepresented nor is there anything more pernicious when the order of the Court is forged and produced to gain undue advantage. Criminal Contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and wilfully made by a party, to the proceedings to obtain a favourable order would undoubtedly tantamount to, interfere with the due course of judicial proceedings. When a person is found to have utilised an order of a Court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself or herself is the author of fabrication. On the aforesaid parameters, it would be necessary to examine whether it can be said that Mrs. Megha Rude can be held to be guilty of contempt. In view of our conclusion on the basis of materials available in the Inquiry Proceedings with regard to the role played by Mrs. Megha Rude, we have no hesitation to come to the conclusion that Mrs. Megha Rude is guilty of gross Criminal Contempt and must be suitably punished for the same.

41. From the above, it is seen that when a person is found to have utilized an order of either Government or Court which he or she knows is a fabricated one the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt irrespective of the fact whether he or she, himself or herself is the author of the fabricated order.

42. In this case also, the contemnor produced the alleged order of the Government dated 11.10.2002 which was found to be a fabricated one and the very fact itself will amount to Criminal Contempt of Court.

43. In *Afzal and another Vs. State of Haryana and others*, , Justice K. Ramaswamy, speaking for the Court held in para 31 as hereunder:

"The question then is: whether he committed contempt in the proceedings of this Court? Section 2(b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. It is seen that Ahlawat, respondent No. 3 to the main writ petition and in charge of the criminal administration, with his connivance caused turn minor boys" wrongful detention. He made an averment in the counter-

affidavit dated October 30, 1993, that they were not in wrongful detention nor they were taken into custody which was later found to be false. He first used fabricated counter-affidavit, forged by Krishan Kumar in the proceedings to obtain a favourable order. But when he perceived adverse atmosphere to him, he fabricated further false evidence and sought to use an affidavit evidence to show that Krishan Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he committed contempt of the Court by making false statements. Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements. Thereby, he committed criminal contempt of judicial proceedings of this Court."

44. The facts of these two cases will apply to the facts of the case on hand with all force.

45. On the other hand Sri Gangaiah Naidu pleaded that the contemnor is an illiterate and ignorant person. Apart from that he is aged 73 years suffering with heart ailment. Hence the Court may take a sympathetic view on him and pardon. In support of his contention he cited a decision reported in S.K. Sundaram, In Re 2001 SCC 304, wherein the contemnor was convicted and sentenced six months jail sentence suspended the sentence for five years as he was a heart patient on condition that he gave an undertaking that he would not have commit any act of Criminal Contempt in future.

46. In Para 7 the Supreme Court held as follows :

"Contempt of Court jurisdiction is not to protect an individual Judge, it is to protect the administration of justice from being maligned. Hence, when the contemnor's expectation that the Chief Justice of India himself would have personally filed a petition against the contemnor did not fructify, he cannot question the maintainability of the action which was initiated suo motu by the Supreme Court"

47. In that case the contemnor Mr. S.K. Sundaram, Advocate sent a telegraphic communication to Dr. A.S. Anand, Honourable Chief Justice of India to step down from the Constitutional Office of Chief Justice of India.

48. The facts of the case on hand are altogether different from the facts of that case. Even in that case the contemnor was awarded with punishment. But the same was suspended on the ground of heart ailment.

49. Since the actions of the contemnor affects the very faith of the public in the institution and the very existence of the institution is at stake in upholding the majesty of law, merely on the ground that the contemnor is having heart ailment for which no evidence is placed before us, he cannot be exonerated of the charges levelled against him.

50. Nextly, Mr Gangaiah Naidu contended that under explanation to Section 12

any apology shall not be rejected merely on the ground that the apology offered is a qualified or conditional apology. In other words Mr.Gangayya Naidu submits that his client tendered apology in good faith knowing fully well that his client offered conditional apology by stating that if the Court feels that the contemnor is responsible for contempt he may be pardoned. We have no hesitation to reject this contention.

51. We started hearing this case from 29th August, 2003 and the matter underwent at least four adjournments. We are keenly watching the contemnor who is present in the Court all through during the proceedings, we could not see any repentance in his face. Further, we are of the firm opinion that the conduct on the part of the contemnor in not only trying to subvert the law of the land but also in trying to change the advocate to avoid a particular Judge are very grave in nature and if people like this contemnor are allowed scotfree, the very existence of this institution will be at peril and every one may try to defy the law taking inspiration from people like the contemnor who believes in violating the law instead of abiding by law and tenders apology when they were caught. Hence, we reject this contention.

52. Now coming to the quantum of punishment to be given we have thought over the problem with all the seriousness that is required in the matter and we feel that unless lawlessness which is all pervasive in the society is not put an end with an iron hand the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the contemnor is allowed to go scotfree every law breaker violates the law with immunity and tenders apology in the Court. After leaving the Court he will laugh at the system. Hence, deterrent action requires to uphold the majesty of law. Hence, we are not inclined to take any lenient view in the matter since undue sympathy or inadequate sentence to the accused would undermine public confidence in the efficacy of law and society.

53. Hence, we are of the view that the contemnor shall be given maximum punishment in exercise of the inherent jurisdiction vested in this Court under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act.

54. In the result, we convict the contemnor u/s 12 of the Contempt of Courts Act and sentence him to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 2,000/-(Rupees two thousand only) within two weeks from the date of receipt of the order. In default he shall undergo simple imprisonment for another period of one month. He shall be detained in Central Prison, Chenchalguda, Hyderabad forthwith.

55. Before parting with this case, we deprecate the growing tendency among the members of the legal fraternity in accepting the briefs in the midst of the cases for one reason or other to avoid a particular Bench and becoming instrumental in playing fraud on the Court. In fact, Rule 12 of the Rules framed by the High

Court of Andhra Pradesh u/s 34(1) of the Advocates Act prohibits appearance of Advocates in any proceedings in which another Advocate is already on record for the same party without his consent unless the former advocate ceases to practice, or as by reason of infirmity of mind or body or otherwise unable to continue to act.

56. To put an end to this prevailing menace, which is often coming to the notice of the Court we are of the firm opinion that the rule needs modification to the effect that unless the Court permits for a change of the advocate in the midst of the case no advocate shall accept the brief. Clients cannot be permitted to change advocates at their whims and fancies and they should appear before the Court explaining circumstances under which they want to change the advocate. It is for the Court to permit the clients to change their advocates or not after satisfying on the facts and circumstances of each case.

57. Mr. V. Brahmaiah Chowdary filed vakalat in the midst of the case and when we expressed our displeasure he withdrew from the case on the ground that he was not informed of all these occurrences in this case. Hence, we cannot blame him. When Mr. Gangayya Naidu's services were engaged by the client, we permitted Sri Bala Rangayya to file vakalat to enable Mr. Gangayya Naidu to appear in this case.

58. Lastly, Mr. Gangayya Naidu pleaded for suspension of the sentence since his client is having a statutory right of preferring an appeal to the Supreme Court u/s 19(2) of the Contempt of Courts Act. It is true that the contemnor is having a right to appeal and it is always open to him to carry the matter in appeal to Supreme Court.

59. The other question that has to be considered is whether the conviction and sentence imposed on the contemnor has to be suspended for a limited period till he approaches the Appellant Court and get suitable orders. At the same time the Counsel for the State argued before us that suspension of conviction and sentence is not a matter of course and it depends upon facts of the case and it is purely within the discretion of the Court. Since we do not find any repentance on the face of the contemnor, having filed a counter-affidavit with all false and concocted statements in the contempt case, we are not inclined to suspend the conviction and sentence imposed in the contempt case.