
(2013) 12 AP CK 0064
In the Andhra Pradesh High Court
Case No : C.C. No. 1564 of 2013

Suresh Kumar Shaw

APPELLANT

Vs

B. Rajesham, Deputy Collector and Tahsildar

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 2 ALD 310 : (2014) 3 ALT 33

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : G. Ram Gopal, for the Appellant;

Judgement

C.V. Nagarjuna Reddy, J.—This Contempt Case is filed alleging willful disobedience of order dated 27-8-2013 in W.P. No. 25046/2013. The petitioner also sought compensation of Rs. 7 lakhs for the alleged illegal demolition of his structure. The brief facts leading to the filing of this Contempt Case are stated hereunder:

2. The petitioner purchased premises bearing Door No. 2-9/B, Gachibowli, admeasuring 174 sq. yards., under registered sale deed dated 19-8-1983 and he has been in possession and enjoyment of the same since then. On 26-4-2013, the respondent has issued a notice u/s 7 of the A.P. Land Encroachment Act, 1905 (for short "the Act"). The petitioner submitted his explanation on 3-5-2013. The respondent has passed order dated 4-5-2013 u/s 6 of the Act. Assailing the said order, the petitioner filed an appeal before the Revenue Divisional Officer on 7-5-2013. As no order on the stay application was passed by the appellate authority, the petitioner filed W.P. No. 14686/2013. This Court disposed of the said Writ Petition by order dated 15-5-2013 directing maintenance of status quo till disposal of the appeal. By order dated 12-7-2013, the appellate authority dismissed the appeal. On 15-7-2013, the respondent issued notice to the petitioner to vacate the premises within 24 hours. The petitioner pleaded that by the time he received the said notice from the respondent, he was not informed of the result of the appeal nor a copy of the order passed therein was served on

him and that after filing W.P. No. 21074/2013 questioning the purported order passed in the appeal, the petitioner was served with a copy of the said order. The petitioner has filed a Revision Petition before the Joint Collector-1, Ranga Reddy District on 22-7-2013 against order dated 12-7-2013 of the appellate authority. On 24-7-2013, this Court disposed of W.P. No. 21074/2013. The relevant portion of the said order is as under:

Therefore the Writ Petition is disposed of with liberty to the petitioner to pursue the Revision filed by him. To enable the petitioner to secure appropriate interim order pending the Revision, the interim order dated 17-7-2013 passed by this Court shall continue for a period of one month from today.

As no interim order was passed by the Revisional authority, the petitioner filed W.P. No. 25046/2013 on 26-8-2013 apprehending dispossession by the respondent. On 27-8-2013, this Court disposed of the said Writ Petition with the following direction:

After hearing the learned counsel for the parties and having regard to the facts and circumstances of the case, the Writ Petition is disposed of with the direction to respondent No. 2 not to evict the petitioner from the property in question till the revision petition filed by the petitioner before respondent No. 3 is disposed of.

3. The petitioner pleaded that he is running a Kirana shop in the subject premises, which will be opened at 10.30 A.M. and closed at 9 P.M. everyday; that he resides at Mehdipatnam; that on 28-8-2013, the petitioner's salesman Basava Reddy came to the shop at around 10 A.M.; that to his surprise the said Basava Reddy noticed that two-thirds of the shop rooms were demolished by the respondent and that he immediately informed the respondent and his subordinates that this Court has granted stay on 27-8-2013 and requested him to wait till the petitioner approaches them; and that without heeding to the said request, the respondent and his subordinates have demolished the shop rooms comprising three shutters. The petitioner therefore alleged willful disobedience of order dated 27-8-2013.

4. The respondent filed a counter-affidavit wherein he has inter alia denied disobedience of the order of this Court. While pleading that the District Level Committee in its meeting held on 30-5-2013 rejected the petitioner's application for regularization of his possession of the premises in question, the respondent has further stated that in pursuance of the instructions issued by the Collector, Ranga Reddy District in his letter dated 30-5-2013, the Commissioner, Survey and Settlement, directed him to remove the structures from the encroached land; that an inspection was made along with the Assistant Director and the Inspector of Survey and that during the inspection it was found that the petitioner encroached 161 sq. yards and that thereafter the proceedings under the Act were initiated. While admitting the averments relating to the petitioner availing the remedies of appeal and Writ Petitions before this Court at various stages, the respondent has taken the stand that after the expiry of 30 days from

24-7-2013 stipulated by this Court in W.P. No. 21074/2013, during which period this Court has directed not to take coercive steps in pursuance of the eviction order as confirmed in the appeal, the petitioner has not communicated any stay order; that after completion of the period of one month from 24-7-2013, the respondent has initiated steps for eviction of the petitioner from the encroached land; that on 28-8-2013, no one has informed him about the passing of order by this Court on 27-8-2013 and that two days after the demolition of the structure i.e., on 30-8-2013, the petitioner has communicated the said order of this Court.

5. I have carefully considered the respective pleadings of the parties.

6. The main issue that needs to be considered is whether the respondent had knowledge of order dated 27-8-2013 passed in W.P. No. 25064/2013?

7. As noted above, the petitioner pleaded that when his salesman Basava Reddy went to the shop at around 10 A.M., on 28-7-2013, substantial part of the building was already removed and that the salesman has informed the respondent about the order of this Court. The best person to speak about the plea raised by the petitioner in this Contempt Case is his salesman. When the respondent has stoutly denied the allegation of having committed the contempt, the petitioner was expected to have filed the affidavit of Basava Reddy. For the reasons best known to the petitioner, he has not filed the affidavit of the said Basava Reddy. In the absence of such an affidavit, the petitioner's plea falls in the realm of "hearsay". It is not the pleaded case of the petitioner that the order of this Court was communicated to the respondent before 30-8-2013. The proceedings under the Contempt of Courts Act, 1971 being quasi-judicial in nature, unless there is proper evidence supporting the allegations, the Court cannot find the respondent guilty of contempt. As the petitioner failed to substantiate his plea of the knowledge of the order of this Court on the part of the respondent, such knowledge cannot be presumed. Therefore, this Court is of the opinion that the petitioner failed to inform the respondent about the order of this Court before the structure was demolished.

8. Though the petitioner failed to establish that the respondent has committed willful violation of the order dated 27-8-2013, this Court is thoroughly dissatisfied with the conduct of the respondent. Assuming that the petitioner is an encroacher, the respondent failed to act with fairness towards the petitioner. When the appeal filed by the petitioner was dismissed on 12-7-2013, even before the order passed therein was communicated to him, the respondent issued a notice on the third day of dismissal of the appeal giving the petitioner 24 hours for vacating the premises. At the hearing, the respondent has admitted his knowledge of the pendency of the Revision Petition. This Court has disposed of W.P. No. 21074/2013 in the hope that the Revisional authority will pass an appropriate order on the stay application of the petitioner. That was the reason why this Court has granted the direction while disposing of W.P. No. 21074/2013 on 24-7-2013, to continue the interim stay granted by it earlier for a period of one month. While the Revisional authority has let the petitioner down by not

passing the interim order within the said one month period, which expired on 23-7-2013, the respondent exhibited undue haste in straightaway demolishing the building without even further notice to the petitioner. After all, even an encroacher deserves a fair opportunity to exhaust all his legal remedies which are the lifeline for a citizen in a civilized society governed by democratic principles. On the one hand, the Revisional authority failed to exercise its statutory function of passing an appropriate order on the stay application of the petitioner, on the other hand the respondent has taken undue advantage of such failure of the Revisional authority by not giving a fair chance to the petitioner to avail further remedies. When this Court has directed status quo to be maintained for a period of one month pending the Revision Petition to facilitate the petitioner to secure an interim order, the least that was expected of the respondent was to once again give a notice to the petitioner as he has done on 15-7-2013 immediately after disposal of the appeal by the Revenue Divisional Officer. Without issuing any such notice, the respondent has exhibited indecent haste in demolishing the structure on the fourth day after expiry of the one month period stipulated by this Court. Such an attitude on the part of a public servant is highly despicable. It is surprising that the respondent pleaded that the District Collector has issued letter dated 30-5-2013 directing him to demolish the structure as by that time this Court has granted order of status quo till disposal of the appeal. The appeal was dismissed by the Revenue Divisional officer only on 12-7-2013. This fact shows that the respondent and other functionaries were subverting the due process of law by trying to force their will disregarding the judicial orders. However, in the absence of proper evidence to show that the respondent had the knowledge of order dated 27-8-2013, this Court has no option other than dismissing the Contempt Case, but not without placing on record its thorough dissatisfaction with the conduct of the respondent. The respondent is warned not to repeat such conduct in future.

9. Subject to the above observations, the Contempt Case is dismissed. As a sequel to the dismissal of the Contempt Case, C.A. No. 778/2013 filed for interim relief is disposed of as infructuous.