
(1993) 08 DEL CK 0008

In the Delhi High Court

Case No : Contempt Civil Petition No. 31 of 1991

The Bharat Co-operative Group Housing Society Ltd.

APPELLANT

Vs

B.L. Gupta Construction (P) Ltd. and Others

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Citation : (1993) 27 DRJ 180

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : S.L. Watel, R.K. Watel, O.P. Khadaria and D. Khadaria, for the Appellant;

Judgement

P.N. Nag, J.

(1) In the petition filed by the petitioner. The Bharat Co-operative Group Housing Society Ltd. (hereinafter called the "Society") under Sections 2(b) and 12 of the Contempt of Courts Act against M/s B.L. Gupta Construction-Pvt. Ltd. and others (hereinafter called the "Contractor") it has been prayed that contempt proceedings be initiated against the Contractor and they may be punished in accordance with law. According to the Society, the order which has been violated is dated 12th March, 1991 passed by D.P. Wadhwa, J. in SuitNo.2235-A/90.

(2) The said suit was filed by the Contractor u/s 20 of the Arbitration Act for referring the disputes and differences arisen between the Contractor and the Society, with respect to a contract under which the Contractor was to build 308 flats for the Society, for adjudication to an arbitrator. Justice Wadhwa, J. while deciding that suit on 12th March, 1991 gave the following directions:

"THE petitioner shall remove all his material, etc. from the site and shall clear the site within ten days. There will be no restraint on the respondent society from completing the flats from other contractor."

(3) According to the aforesaid order of Wadhwa, J., the Contractor was to remove

all his material, etc. from the site within ten days from the date of the order,i.e.,on or before 22nd March, 1991.

(4) Mr. Watel, counsel for the Society, has vehemently argued that the Contractor has not cleared all his material etc. from the site within the stipulated period of ten days although he has removed the materials between 11 the and 12th May, 1991, i.e., much after the time stipulated by the order dated 12.3.1991 for the removal of such material from the site. According to him there is a clear ,deliberate and willful disobedience of the order dated 12.3.1991 passed by Wadhwa,J. and, Therefore, contempt proceedings may be initiated against the Contractor and punished in accordance with law.

(5) On the other hand, Mr. Khadaria, learned counsel for the Contractor equally vehemently stressed that the order of Justice Wadhwa was complied with fully in letter and spirit and there was absolutely no willful disobedience of the order by any stretch of imagination and the present contempt petition is a frivolous petition filed by the Society with a view to harassing them and the same, Therefore, should be dismissed.

(6) In order to appreciate the submission of counsel for the Society his submissions may be noticed. According to him, order dated 10.5.1991 passed by Justice Anil Dev Singh clearly shows that the material etc. was not cleared by the Contractor from the site even on 10.5.1991 as Mr. Khadaria, counsel for the respondent on that day stated that he would see that the material of his client was removed from thesitewithin48hoursandthatthe security guards or any other person appointed by the Contractor would be withdrawn after 48 hours from the site. In the order dated 13.5.1991 it has been stated by Mr. Khadaria that his client has removed the material. Counsel for the Society submits that steel slabs, brick bats etc. were lying at the site have not been removed by the Contractor. The contention of learned counsel for the Society is that the entire material was removed on 11th and 12th May, 1991 and that it was not removed within ten days from the date of the passing of the order by Wadhwa,J., i.e., after 22nd March, 1991.

(7) I have given careful consideration to the submissions of counsel for the Society but with regret I am unable to accept the same.

(8) My attention has been drawn by Mr. Khadaria, learned counsel for the Contractor to the reply dated 3.5.1991 filed on behalf of the Contractor whereby on the affidavit it has been stated by him that the Contractor had cleared the site and when they were, in the process of removing the goods from the site in due compliance of the orders of this Hon" ble Court, the Contractor was threatened with a letter dated 20.3.1991 by the petitioner/ Society staling that the respondents cannot remove the steel scrap, brickbats and ballast from the site till the Arbitrator advises the petitioner Society to do the same." Nothing was advised by the Arbitrator.

(9) The letter referred to in the reply dated 3.5.1991 by the Contractor reads as

under:-

"SUB.-Removal of material supplied by the society. Dear Sir, You are intending to remove Steel Scrap, Brick Bat And Ballast from the site. We are constrained to request you not to remove the material supplied by the society. Till the Arbitrator advises us to do. Counting on your cooperation."

(10) This letter of the Society, to my mind, has complicated the matter and has made it rather difficult to comply with the order of the Court dated 12.3.1991 as the Contractor was asked not to remove the material supplied by the Society. It was not pointed out in that letter that which was the material available at the site belonging to the Society and was not liable to be removed from the site by the Contractor. In spite of that, according to the Contractor, the material belonging to him was cleared by the due date, i.e., 22.3.1991.

(11) It has also been brought to my notice that before the arbitrator also the Society complained about the non-compliance of the order dated 12.3.1991 by the Contractor. Before the arbitrator, Mr. R.K. Goel, Secretary of the Society, was cross-examined. Cross-examination of Mr. R.K. Goel recorded by the arbitrator on 22nd and 24th August, 1993 has been filed by the Contractor as Annexures A & B in this contempt petition. No doubt in cross-examination recorded on 22.8.1992 by the arbitrator Mr. Goel has stated that the Contractor had removed the material after 20.3.1991 which belonged to the Society, like Kachi Rohri (brick ballast). In other words he has admitted that the material, like Kachi Rohri (brick ballast) which was removed by the Contractor after 20.3.1991 belonged to the Society. This material no doubt was not ordered to be removed by court vide order dated 12.3.1991. In the cross-examination recorded on 24.8.1993 by the arbitrator, Shri R.P. Goel has stated that the details of the material taken by the Contractor after 20.3.1991 have been given in Exts. B-12 to B-18. Exts. B-12 to B-18 filed before the arbitrator and have been filed by the Contractor as Annexure C in this contempt petition. A perusal of Exts. B-12 to B-18, Annexure C, clearly shows that the material which has been taken out by the Contractor from the Society premises and has been counter signed by one Mr. Gulab Chand, Gate Keeper of the Society, was taken out between 18th March 1991 and 31st March, 1991. In other words, the material was removed by the Contractor according to Exts. B-12 to B-17 within the time stipulated by the court vide order dated 12.3.1991, which belies the testimony of Mr. Goel himself. Ext. B-18 shows that Kachi Rohri was taken out from the site on 10th to 12th May, 1991 but that material belonged to the Society according to the testimony of Mr. Goel. That fact is in conformity with the testimony of Mr. Goel recorded on 22.8.1992 wherein he has stated that the Contractor had removed the material in May, 1991.

(12) It is no doubt true that on 10.5.1991 before Justice Anil Dev Singh, counsel for the Contractor had stated that he would see that the material of his client was removed from the site within 48 hours from that date and he also stated that the security guards or any other person appointed by the Contractor shall be withdrawn after 48 hours from the site. When I confronted Mr. Khadaria, counsel

for the Contractor, as to how he had made such a statement on 10.5.1991 before Justice AnilDevSingh, he said that he made the statement under the impression that if there was any material lying at the site that would be removed within 48 hours. But, on instructions later, he found that all the material already stood removed from the site within the stipulated time, which was apparent from the documents, Exts.B-12to B-17,Annexure C to this contempt petition filed on behalf of the Contractor, discussed by me above. He further stated that the Contractor was asked not to remove material which belonged to the Society vide letter dated 20.3.1991, referred to above. In my opinion, the Society has complicated the matter itself by writing letter dated 20.3.1991 to the Contractor asking him not to remove material belonging to the Society and thereby rather made it difficult for the Contractor to remove the material from the site immediately as he was first bound to identify and separate the material of the Society from his own material for such purpose. He further said that the Contractor even Had to remove the material belonging to the Society on 11th and 12th May, 1991 at his own expense as an abundant precaution with a view to avoiding the pain of contempt of court and that material was still lying in heaps near to the site. I am satisfied in those circumstances the statement was made by counsel for the Contractor that the material was to be removed within 48 hours. In these circumstances, to my mind there is no admission on the part of Mr. Khadaria, counsel for the Contractor, that the material was not removed within the stipulated time.

(13) Learned counsel for the petitioner then heavily placed reliance upon Annexures A and C to the contempt petition. Annexure A is a letter dated 23.3.1991 written by Contractor's counsel to the Society wherein it has been stated that the Contractor would continue to remain in peaceful possession of the said 308 flats constructed by them since there was a lien of Rs. 2.17 crores over the said property and in the event of handing over the possession to any third party or to the Society, there would be bleak prospects of any recovery being made by Contractor from the Society. According to learned counsel for the Society the court observed in the order dated 12.3.1991 that the Contractor cannot claim any lien on the site or the flats in question and this assertion in this paragraph aforementioned is clearly disobedience of the orders of this court. No doubt the court has observed that the Contractor cannot claim lien on the site or the flats under construction but I fail to understand how the assertion made in paragraph 3 of Annexure A will amount to disobedience of the order of this court passed on 12.3.1991. In this case, as already stated, the specific direction given by the court was that the Contractor would remove all his material etc. from the site and clear the site within ten days from 12.3.1991. To my mind, the argument of the learned counsel for the Society does not advance his case further and has to be rejected.

(14) Next reliance has been placed by the counsel for the Society on the letter dated 27.3.1991 written by the Contractor to the Society (Annexure C to the contempt petition) wherein "it has .been stated that since the possession of the

site is with the plaintiff company from the very beginning and it has been so acknowledged on 23.7.1990 by this Court while granting status-quo regarding construction and possession, Therefore, the defendant Society cannot dispossess the plaintiff company without a specific order from the competent court/ Arbitrator to whom the case has been referred. The Contractor's claim of lien on construction on and possession of the site amounts to disturbance of status quo and disobedience of the order of the court. This argument of the learned counsel for the Society is also devoid of merit as the question involved in this contempt petition is whether the material on the site has been removed within the time stipulated by the court's order dated 10.3.1991 or not and not the question for disturbing status quo regarding construction and possession.

(15) It has not been shown by counsel for the Society that in any form whatsoever the Contractor has put any hindrance in the way of Society for getting their flats completed from other Contractor. Learned counsel in order to substantiate his contention has relied upon Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, wherein it has been laid down that the court has the duty of protecting the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage". The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.

(16) Learned counsel for the Society has also relied upon The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others, wherein it has been observed that the contempt proceeding against a person who has, failed to comply with the court's order serves a dual purpose: (1) Vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contender to do what the law requires of him. The sentence imposed should effectuate both these purposes. To employ a subterfuge to avoid compliance of a court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt.

(17) These authorities have no relevance in the present case, as already discussed. The goods have been removed within the stipulated period of 10 days from the date of the order, i.e., before 22.3.1991. There is no question of disobedience, more so willful disobedience of order of the court and, Therefore, no contempt arises.

(18) It is settled principle of law that every infraction of the court's order does not amount to contempt of court. It is only a willful and deliberate violation of the court's order and contumacious conduct on the part of the contemner which is to be condemned in contempt proceedings. In the present case neither there is

any violation nor disobedience by the Contractor of this court's order dated 12.3.1991. Therefore, no contempt is made out and the petition is dismissed.

(19) In the circumstances of this case, however, I make no order as to costs.