
(2007) 08 GAU CK 0034
In the Gauhati High Court

Utpal Kumar Das

APPELLANT

Vs

Court of the Munsiff No. 1

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 74
Constitution of India, 1950 — Article 154, 159, 162, 261

Citation : AIR 2008 Guw 62 : (2011) 1 GLR 671 : (2007) 4 GLT 625

Hon'ble Judges : Jasti Chelameswar, C.J;A. Hazarika, J

Bench : Division Bench

Judgement

Jasti Chelameswar, C.J.—Challenging the order dated 16.07.2007 passed by the Munsiff No. 1. Kamrup, Guwanati the present writ petition is filed. By the said order the learned Munsiff directed that warrant of arrest be issued against the petitioner," who is a police officer in charge of Hatigaon Outpost.

2. The facts leading to the issuance of warrant are as follows:

The impugned order was passed by the learned Munsiff in Title Execution Case No. 16/2004 on 16.07.2007. Though the material on record is not very clear, we are informed at the Bar that the petitioners in the above petition are the decree holders, who obtained a decree for delivery of possession of an immovable property. For execution of the said decree it appears that they moved the petition numbered T. Ex. Case No. 16/04. It appears from the order dated 29.06.2007 that the executing court passed an order directing delivery of the decree schedule property to the decree holders and also directed that appropriate assistance be given by the police for the execution of the decree. In obedience of the orders of the Court, the Civil Nazir proceeded to the decree schedule property along with Revenue Staff on 13.07.2007. It appears that the decree could not be executed on that date. Thereafter the decree holders filed Petition No. 4275/07, the substance of which, as recorded by the impugned order is as follows:

?In terms of the order passed by this Court on 29.6.07 the decree holder, the

reserve police battalion. Revenue staff and Civil Nazir went to the suit land for execution of the decree after completion of all the formalities. But when the reserved police force reached the local police station i.e. Hatigaon Out Post the In-charge Shri Utpal Kumar Das without assigning any reason had sent back the police force to the police reserve. But due to the persistent effort of the Decree Holder and Civil Nazir the reserve police forces were taken akach to the suit land and the execution work was started after demarcation of the suit land by the Mandal Kanungo. Accordingly, the execution work is going on peacefully and smoothly. But when the execution work is on the verge of completion the I/C Hatigaon Out Post Shri Utpal Kumar Das emerged at the suit land and without assigning any reasons withdraw the police force and misbehaved with the decree holder, who are all female person. The I/C U.K. Das withdrawn the force and stopped the lawful execution of the decree for extraneous reasons. When he was told/asked not to cause any interference, the I/C abused the decree Holder No. 2 who is an advocate by profession and abused her with filthy language.

The learned Munsiff proceeded to examine the said petition and passed the impugned order dated 16.07.2007.

The Munsiff also recorded in the said order that the Civil Nazir of the Court submitted a report on 13.07.2007 in substance corroborating the statement of the decree holder, it appears from the impugned order that the Civil Nazir also gave on affidavit narrating the whole episode.

3. On the other hand, the petitioner herein filed a report before the Munsiff stating that there was huge gathering at the decree schedule property intending to resist the delivery of the decree schedule property and as the police force available with him was not sufficient to handle the situation and consequently he had to withdraw the police. We do not propose to examine the truth of the content of the report submitted by the petitioner.

4. It is in the background of the abovementioned facts, the learned Munsiff recorded a finding as follows:

?Therefore this Court has come to a definite finding that the I/C Hatigaon Out Post Sri U.K. Das caused illegal resistance in the execution of the decree and he is liable to be detained in Civil Prison for causing interference in the administration of Justice by a Court of Law.

Let arrest warrant be issued to I/C Hatigaon Out Post Sri U.K. Das. The O/C Dispur P.S. is directed to arrest him and produce before this Court with all convenient speed for putting him in Civil prison for causing interference in the administration of justice by a Court of law.

Hence, the present writ petition.

5. Having regard to the serious implications of the matter, we thought it appropriate to dispose of this matter at the earliest opportunity and by order dated 26.07.2007 while directing notice before admission to the Respondents,

thought it fit to request Shri N. Dutta, learned Advocate General, Arunachal Pradesh and Shri A.K. Phukan, learned Advocate General, Assam to assist the court.

6. Though the writ petition is filed challenging the impugned order principally on the ground of violation of the principles of natural justice, this Court thought that a more serious question of the legality of the order itself is required to be examined. Ex-facie, the order does not disclose the authority of law, which authorized the executing court to issue a warrant and direct the imprisonment of the petitioner.

7. Shri Dutta, learned Amicus Curiae submitted that the only source of authority in law for the executing court is to be found in Rule 98 of Order 21 of the Code of Civil Procedure. Rule 98 reads as follows:

98. Orders after adjudication: (1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of Sub-rule (2)-

(a) Make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) Pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the Civil prison for a term which may extend to thirty days.

8. Sub-rule (2) no doubt authorizes the Court to order detention in civil prison for a term, which may extend to thirty days of either the judgment-debtor or any person acting at his instigation or on his behalf, who resist or obstructs the execution of a decree for delivery of possession of immovable property. A police officer who is directed by the executing court to assist the process of the execution of a decree of delivery of immovable property, is neither a judgment-debtor nor prima facie a person either acting on behalf of or at the instigation of the judgment-debtor in the legal sense. To appreciate the amplitude of the authority of the executing court to order the imprisonment of any person an analysis of the relevant provisions of the Order 21 and other relevant provisions of the CPC is necessary.

9. Section 74 of the CPC authorize that where the decree is for the delivery of any immovable property, the possession thereof is required to be delivered to the decree-holder, if necessary by removing any person bound by the decree, who

refuses to vacate the property. Section 74 reads as follows:

74. Resistance to execution--Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

10. Rule 35 of Order 21 reiterates the principle contained in Section 74. Rule 35(1) reads as follows:

35. Decree for immovable property--(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

11. Rule 97 (1) of Order 21 deals with the situation where the decree-holder is resisted or obstructed from obtaining the possession of the decree scheduled property. The Rule enables the decree-holder to make an application to the executing court complaining of such resistance or obstruction. Sub-rule (2) mandates that the executing court shall adjudicate such application whenever made. The scope of the adjudication itself is indicated under Rule 101 which reads as follows:

101. Question to be determined--All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

12. It can be seen from Rule 101 that all questions including the question relating to right, title and interest in the property arising between the parties to a proceeding in an application under Rule 97 shall be determined by the executing court. It is worthwhile to mention that Rule 101 was substituted for the original rule by an amendment under Act 104 of 1976. Prior to the amendment, the questions of title were required to be decided in a separate suit and could not be decided by the executing court. Upon determination of the various questions raised by the parties to an application under Rule 97 the executing court is mandated to pass an order under Rule 98 directing the applicant to be put in possession of decree schedule property if the objection raised by the obstructor is found untenable or in the alternative dismiss the application if the objection

raised by the obstructers is found tenable. Rule 98(1) reads as follows:

98. Orders after adjudication--(1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of Sub-rule (2)-

(a) Make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) Pass such other order as, in the circumstances of the case, it may deem fit.

13. The scheme of Rule 97, 98 and 101 (prior to and after the amendment of 1976) of the CPC fell for consideration before the Supreme Court in the case of Shreenath and Another Vs. Rajesh and Others, At paragraphs 13 and 14 of the said judgment the Supreme Court held as follows:

13. So far Sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provisions under Sub-clause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree holder in possession where the court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application. Thus even prior to 1976, right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property on the own, if resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he was to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.

14. We find that both either under the old law or the present law, the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21 Rule 97 has to be decided by the executing court itself.

In the said judgment the Supreme Court also considered various cases decided by it earlier which demonstrate some of the various possible objections that could be raised by a person obstructing or resisting the execution of a decree.

14. Under Sub-rule (2) of Rule 98, if the executing court in the course of the adjudication of an application under Sub-rule (2) of Rule 97 reaches a conclusion

that the resistance or obstruction was not justified in law, it shall direct that the decree holder be put in possession of the property. Sub-rule(2) of Rule 98 further stipulates that in spite of order under Sub-rule (2) of Rule 98 directing the decree-holder to be put in possession of the property and if the execution is still obstructed, the executing court is mandated to pass an order directing such an obstructor or a person resisting the order be detained in civil prison.

15. Necessarily, the question arises whether a police officer like the petitioner, who was directed to render assistance but fails to render such assistance to the officers of the executing court entrusted with the responsibility of executing a decree for delivery of immovable property can be said to be a person resisting or obstructing the execution of such a decree falling within the sweep of Rules 97 & 98 of Order 21 of the Code of Civil Procedure.

16. Learned Counsel Shri N. Dutta submitted that the words "resisted or obstructed by any person" are wide enough to take within their sweep even a police officer like the petitioner, who was directed by the Court to render assistance for executing the decree for delivery of immovable property. He further submitted that to hold otherwise as the construction of the above referred clause would generate a great public mischief as there would be no effective means of compelling the public authorities to render proper assistance for the execution of decree of a civil court. Learned Counsel has placed reliance on the Black's Law Dictionary, 8th Edition, where obstruction of process is explained as "Interference of any kind with the lawful service of execution of a writ, warrant, or other process. Most jurisdictions make this offence a crime--Also termed obstructing process; resisting process". He also placed reliance on Stroud's Judicial Dictionary of Words and Phrases, 5th Edition wherein as many as 29 instances were examined as regards the meaning of the expressions "obstruction or wilful obstruction" occurring under various enactments. More particularly, Mr. Dutta has relied upon the following paras of Stroud's Judicial Dictionary and submitted that the expression carrying under Order 21 Rule 97 must be construed as anything, which makes it more difficult for the officers of the executing court to execute a decree for delivery of immovable property.

(20) "Wilfully obstructs" (Police Act 1964 (c. 48), Section 51(3). "Wilfully" in this section means an intention that the deliberate act should in fact obstruct the police officer (Willmott v. Atack [1977] Q.B. 498). A person willfully obstructs a police constable in the execution of his duty within the meaning of this section if he deliberately does an act which, though not necessarily aimed at or hostile to the police, in fact makes it more difficult to carry out his duty and he knew that his conduct would have that effect (Lewis v. Cox 1984 3 WLR 875. A person "willfully" obstructed a police constable contrary to this section when he, without hostility, intervened because he thought the constable was arresting the wrong man (Hills v. Ellis 1983 2 WLR 234. A police constable who warned the licensee of a public house of a possible police investigation of the conduct of the premises on a particular night was held to have "obstructed" the police but not "willfully"

(Moore v. Green [1983] 1 All E.R. 663).

(21) "Obstructing" the police is not confined to physical obstruction (Sykes v. Director of Public Prosecutions [1962] A.C. 528), and includes anything which makes it more difficult for the police to carry out their duties (Hincheliffe v. Sheldon [1955] 1 W.L.R. 1207).

17. Holmes, J. in *Towne v. Eisner* (1917) 245 US 418 , observed "A word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. The Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, at page-62 of the judgment of Sikri, CJ. observed--"It is not right to construe the words in vacuum and then insert the meaning into an article. In this context, His Lordship quoted a passage from *Bide v. General Accident, Fire and Life Assurance Corporation* (1948) 2 All ER 995 .

?In construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: "In this state, in this context, relating to this subject-matter, what is the true meaning of that word?

18. There is no doubt that a police officer like the petitioner, who is directed to render assistance for execution of a decree of delivery of immovable property, by not rendering necessary assistance certainly makes it difficult to execute a decree and, therefore, perhaps causes obstruction for the execution the decree in a broad sense. But, the question is whether such an omission is comprehend within the meaning of the expression "obstruct or resist" occurring under Order 21 Rule 97 CPC.

19. In our view, the activity of the petitioner in not rendering assistance, though directed so by the competent civil court executing the decree, can probably be described in law only as an omission. He is duty bound to render all necessary assistance, which he is capable of both in fact and law for the purpose of execution of the decree. Such an obligation, in our view, flows from the mandates of Article 261 sub-Article (3), Article 154(1) and 162 of the Constitution, as follows:

261 (3)--Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

154(1)--The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

20. When Article 154 declares that the executive power of the State shall vest on the Governor and such powers shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution, the Governor of the State is bound to give effect to the declaration contained in Article 261 sub-Article (3). Such power, as recognized by the Constitution, can be exercised by the Governor directly or through officers subordinate to him. The petitioner being an employee of the State appointed by the Governor ushers the same obligation to see that the obligation accorded under Article 261(3) is fulfilled. It is not a mere formality that the Constitution declares the form of oath i.e. to be taken by the Governor under Article 159, the relevant portion of which reads as follows:

?That I will faithfully execute the office of Governor and will to the best of my ability preserve, protect and defend the Constitution and the law....

It goes without saying that the preservation, protection and defence of the Constitution can only be achieved by faithfully implementing the provisions of the Constitution and the laws.

21. The distinction between an act and an omission is well settled in law. In our view an omission such as the one attributed to the writ petitioner herein and discussed earlier does not amount to as an obstruction or resistance to the execution of a decree for possession of immovable property. We reach this conclusion in view of the Scheme of the Rules 97, 98 and 101 of the CPC. As already noticed, the decree holder for possession of immovable property or a holder of decree for possession of immovable property facing any resistance is entitled to approach the executing court complaining of such resistance or obstruction and upon receipt of such a complaint the court is required to examine "all questions including questions relating to right, title or interest in the property arising between the parties". Obviously, such questions of right, title or interest in the property cannot arise between the decree holder and an officer of the State who is ordered to assist the execution of the decree. We are conscious of the fact that in a given case an officer so directed might himself have a legal interest in the property in which case, if he desires to resist the execution of the decree, it would be plainly his duty to bring it to the notice of the executing court that he has a conflict of interest between duty in his official capacity and his individual capacity.

22. One more reason which compels us to reach the same conclusion as indicated above is that under Sub-rule (2) of Rule 98 after the determination of the questions of right, title and interest etc. if the court is satisfied that the resistance or obstruction was offered without any just cause by any one of the categories of persons referred to under Rule 98, the court is required to direct that the applicant/decreed holder be put into possession of the property. If the decree holder is still resisted, thereafter the court is empowered to order detention of the obstructor in the civil prison. If the various classes of persons referred to under Rule 98, Sub-rule (2) take within their sweep a public servant

who has no legal interest in the property but simply derelicts in his duty to render the necessary assistance for the execution of the decree such a public servant would get one more opportunity for frustrating the execution of the decree before he is directed to be detained in civil prison. Therefore, we decline to accept the submissions advanced by Mr. Dutta, learned senior counsel.

23. We may also refer to a judgment of the Supreme Court in the case of *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*, in support of our conclusion. At paragraphs 11 and 12 of the said judgment the court held as follows:

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97 (2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the subsection.

24. In view of our foregoing discussion it necessarily follows that the impugned order, insofar as it directed the issuance of warrant of arrest against the petitioner, is without any authority of law. The same is, therefore, required to be quashed which we accordingly do. But, that does not necessarily mean that the petitioner or any other person similarly situated can with impunity frustrate the process of law by declining to render the appropriate assistance for execution of the decrees of the competent civil courts, when they are called upon to so assist. Such refusal, without any valid justification in law, in our view, would amount to dereliction of duty and, therefore, a misconduct in the context of his obligation as a public servant rendering him liable for disciplinary action under the appropriate

law. Secondly, it also constitutes disobedience to the orders of the competent civil court attracting action for contempt of court.

We, therefore, direct the State of Assam to initiate appropriate disciplinary proceedings against the petitioner. We also direct the Registry of this Court to initiate proceedings under the Contempt of Courts Act against the petitioner.

25. The writ petition is accordingly disposed of but, under the circumstances, without cost.