

(2013) 04 DEL CK 0306
In the Delhi High Court
Case No : Cont. CAS (C) 345 of 2010

Vinod Kumar

APPELLANT

Vs

Parimal Rai and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Contempt of Courts Act, 1971 — Section 11, 12

Citation : (2013) 04 DEL CK 0306

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : P.D.P. Deo, for the Appellant; Madhu Tewatia and Ms. Sidhi Arora, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The present petition has been filed by the petitioner under Sections 11 and 12 of the Contempt of Courts Act, 1971. The necessary facts to be noticed for disposal of this petition and as stated are as under. On 3rd February, 2003, petitioner applied to the MTNL for allotment of a PCO at the back side of House No. D-11/155 West Kidwai Nagar, New Delhi. The MTNL issued a demand letter of the same date and called upon the petitioner to deposit the security amount for the PCO which was installed.

2. Another application was made in the year 2004 to the MTNL for another PCO at the same site with the installation address as Jhuggi on the back side of House No. D-11/155 GDR West Kidwai Nagar, New Delhi. Petitioner again made an application in the year 2004 for grant of a No Objection Certificate to run his PCO near Water Booster Station, West Kidwai Nagar, New Delhi consequent to which the site was surveyed by the officials of the NDMC on 29th and 30th June, 2004 and 1st July, 2004. After the said inspections of the site and despite repeated reminders and requests, the petitioner did not receive any response from the NDMC, which led to the filing of a writ petition being WP(C) No. 18493/2004 which was disposed of by an order dated 14th November, 2005. The NDMC was

directed to consider the application of the petitioner as per its policy and seniority of the petitioner. Petitioner made another application on 30th November, 2005 to the NDMC for allotment of land for the purpose of running PCO booth.

3. No response was received which led to the filing of another writ petition being WP(C) No. 8784/2006. This writ petition was disposed of on 19th May, 2006 when the following order was passed:-

Writ petition stands disposed of with a direction that the same would be treated by the Chairman, NDMC as petitioner's application seeking site to establish a PCO. Reasoned decision would be taken and communicated to the petitioner within 6 weeks from today.

No costs.

Dasti on payment of charges.

4. Pursuant to the directions issued in WP(C) No. 8784/2006, the petitioner received a reply on 28th June, 2006 from the Chairman, NDMC informing the petitioner that since the site did not belong to them, the petitioner may approach the Directorate of Estates for allotment of land in question. It is submitted by counsel for the petitioner that when the petitioner approached the Directorate of Estates, he was informed that the land belongs to NDMC. Petitioner thereafter filed another writ petition being WP(C) No. 16280/2006. Similar directions were issued to the Chairman, NDMC to examine the case of the petitioner afresh.

5. Petitioner filed another writ petition being WP(C) No. 8837/2008 which was disposed of directing the NDMC to inform the petitioner the present status of his application addressed to NDMC for allotment of a PCO booth within two weeks. Yet another petition being WP(C) No. 13261/2009 was filed which was dismissed as withdrawn on 20th November, 2009 to enable the petitioner to file a contempt petition against the respondents. On 29th September, 2010 the Chairman, NDMC passed an order by which the request of the petitioner has been declined.

6. Counsel for the petitioner submits that the petitioner has been made to run from pillar to post and the orders of the Court dated 19th May, 2006, 20th March, 2008 and 15th December, 2008 have been flouted.

7. Counsel for the respondent has opposed this contempt petition primarily on the ground that the petitioner has been unable to show that there is any violation of the orders sought to be relied upon by the petitioner. It is submitted that after WP(C) No. 13261/2009 was withdrawn by the petitioner on 20th November, 2009, a speaking and reasoned order has been passed by NDMC on 29th September, 2010. Counsel further submits that the allegations of the petitioner with regard to the wilful disobedience of the orders passed by this Court are wrong and denied in light of the following facts:-

(a) That after the passing of the orders dated 19.5.2006, 28.6.2010, 20.3.2008,

15.12.2008 and 20.11.2009, the petitioner was called for personal hearing on his application on 9.3.2010 by the Director (Enforcement), NDMC. The hearing was attended to by the petitioner wherein the matter was heard at length. The Director (Enforcement) found that the petitioner was not entitled to the PCO Booth in terms of the policy applicable thereto. On 23.3.2010, the petitioner was also apprised of the position.

(b) Inquiry into the matter had revealed that the petitioner had encroached on public land and was not residing in Flat No. D-II/255, West Kidwai Nagar, New Delhi as had been stated by him. Furthermore, the petitioner had made huge encroachment on government land in the form of jhuggis etc.

(c) It was found that the petitioner had misstated facts and was not eligible for allotment of PCO booth under the policy which lays down the following criteria:-

- (i) The handicapped person should have disability of 40% or more than 40%.
- (ii) He should be within the age group of 18-55 years;
- (iii) He should be a matriculate;
- (iv) He should not be gainfully employed in any vocation or business/trade;
- (v) He should be a resident of NDMC area; and
- (vi) The allotment shall be made by draw of lots.

8. Counsel submits that to dispose of the application submitted by the petitioner, the petitioner was heard in detail on 9th March 2010 by the Director, NDMC and while so doing it was revealed that the petitioner had misstated facts in order to mislead the authorities for the purpose of allotment of PCO booth under the NDMC policy. Necessary proceedings were recorded in the matter. Thereafter, the case was sent to the office of the Standing Counsel, NDMC where after going through the various Court orders, the case files were referred back to the department for necessary orders to be passed by the Chairman, NDMC on the basis of the record and necessary investigation carried out in the matter. That, on 29th September, 2010, after considering the representation of the petitioner in the light of the documents, necessary investigation, policy and facts of the case, the Chairman, NDMC passed necessary orders in terms of the directions issued by this Court.

9. Counsel submits that in case the petitioner is aggrieved by the order dated 29th September, 2010, petitioner may take recourse to such remedies which may be available. However, no contempt is made out.

10. I have heard learned counsel for the parties and considered their rival submissions. No doubt the petitioner has filed four writ petitions in this Court seeking relief for allotment of space to run PCO booth. Repeated directions were issued by this Court to the respondents to consider the request of the petitioner. A detailed speaking order has been passed while disposing of WP(C) No.

13261/2009. Learned counsel for the petitioner is unable to satisfy this Court that the respondents have wilfully flouted the orders dated 19th May 2006, 20th March 2008 and 15th December 2008 in WP(C) 8784/2006, 16280/2006 and 8837/2008 passed by this Court. In fact, subsequent to passing of the order dated 29th November, 2009 by this Court where the petitioner has withdrawn WP(C) No. 13261/2009 to file the instant contempt petition, the respondents have passed a detailed order on 29th September, 2010, a copy of which has been placed on record. In the present proceedings it is not for this Court to adjudicate the correctness of the order dated 29th September, 2010 passed by the respondents.

11. It has been repeatedly held that the power to punish for contempt is a special power, which is to be exercised with care and caution and should be used sparingly by the courts on being fully satisfied with regard to the contemptuous conduct of a party. It would be useful to reproduce the observations of the Supreme Court in the case of Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others, :

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the Court exercising the jurisdiction to punish for contempt does not function as an original or appellate Court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising

contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

12. Having regard to the fact that the respondents have finally passed a detailed reasoned order dated 29th September, 2010 no grounds are made out to initiate contempt proceedings.

13. Contempt petition is accordingly dismissed. It would be open to the petitioner to take recourse to such remedies which may be available to the petitioner in accordance with law. No costs.