

(2008) 01 MAD CK 0056

In the Madras High Court

Case No : Contempt Petition No. 1083 of 2004

V.K.R. Akkayasamy

APPELLANT

Vs

V.R. Maheswaran

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0056

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; B. Rajendran, for the Respondent

Judgement

M. Jaichandren, J.—Heard Mr. S. Subbiah, the learned Counsel appearing on behalf of the petitioner and Mr. B. Rajendran, the learned

Counsel appearing on behalf of the respondent.

2. The contempt petition has been filed praying that this Court may be pleased to punish the respondent for the wilful disobedience of the order of

this Court, dated 22.06.2004, made in W.P.M.P. No. 37915 of 2003 in W.P. No. 31140 of 2003.

3. It is stated by the petitioner in the above contempt petition that he had filed a writ petition before this Court in W.P. No. 31140 of 2003 to

quash the order, dated 14.02.2003, passed in R.P. No. 80 of 2002 in D.R.C. No. 171 of 2001 (Old D.R.C. No. 322 of 1999), on the file of the

Recovery Officer, Debts Recovery Tribunal, Coimbatore.

4. The petitioner had also filed a Writ Petition Miscellaneous Petition in W.P.M.P. No. 37915 of 2003 to stay all further proceedings pursuant to

the said order, dated 14.02.2003, stating that the petitioner is in effective and constructive possession and enjoyment of the property in question as

a statutory tenant. It is further stated that the writ petition had been admitted by this Court, on 03.12.2003 and notice had been ordered to be

served on the respondents therein. After service had been completed, the respondents had entered appearance through their counsel. The writ

petition miscellaneous petition in W.P.M.P. No. 37915 of 2003 was taken up for hearing on 22.06.2004. After hearing the learned Counsel

appearing on behalf of the petitioner, as well as the respondents, this Court had granted an interim order, which is as follows:

Heard. As it is the case of the second respondent that he has already taken possession, question of grant of stay at this stage would not arise, as it

would dislodge the second respondent from the property. However, it is directed that the second respondent shall not alter the physical features of

the property.

5. The above order had been received by the respondent herein either on 14.07.2004 or within a few days thereafter. It is further stated that the

petitioner had noticed the respondent demolishing the buildings in the disputed property, on 06.11.2004. In spite of the police complaint being

lodged with the South Gate Police Station, Madurai, no effective action was taken against the respondent. Therefore, the petitioner had sent a

telegram, on 7.11.2004, to the respondent stating that he was committing contempt of Court by demolishing the buildings in the property in

question, as there was an interim order passed by this Court not to alter the physical features of the property in Door No. 66, South Perumal

Maistry Street, Madurai-1. However, the same was returned with an endorsement ""No Such Person"".

6. The petitioner has also stated that the respondent had demolished the entire disputed property and had newly constructed a compound wall, in

spite of the order passed by this Court, on 22.06.2004. The petitioner had also taken photographs of the property to show that the respondent

had demolished the buildings in the property and had also put up a Board stating that the property was for sale. The learned Counsel appearing on

behalf of the petitioner had submitted that from the CNO: 39505/924/COP-MC, dated 16.07.2003, given by the Inspector of Police, B-5 Police

Station Madurai, it is clear that there was a building in the property in question, at the time of the submission of the said reply.

7. A counter affidavit has been filed on behalf of the respondent, wherein it has been stated that the respondent is a Court auction purchaser, having purchased the property in question through an auction of the Debts Recovery Tribunal, on 27.08.2001. The Recovery Officer had given the certificate of sale, on 09.11.2001. The Recovery Officer had issued the necessary proceedings, on 05.09.2002, directing the petitioner and one Jaffer Ali to hand over the properties, within 15 days from the date of receipt of the said proceedings. In the said proceedings, it was mentioned that they had already demolished the property and had taken away wooden items valued at more than Rs. 5 lakhs. On a further representation made by the respondent the Debts Recovery Tribunal passed an order, dated 14.02.2003, in which it has been clearly stated that the possession of the property should be handed over by the petitioner to the respondent. The Debts Recovery Tribunal had also directed the auction purchaser, by virtue of the order, dated 1.7.2003 in R.P. No. 80 of 2002, to approach the North Police Station, Madurai, to take possession of the property. Thereafter, the respondent had given a complaint to the Commissioner of Police, Madurai, clearly stating that there is only a vacant site and that the petitioner, Jaffer Ali and their men had already removed all the wooden items and other materials from the property. The complaint had been lodged on 16.7.2003. Thereafter, the respondent had taken possession of the property on 17.7.2003. They had given a statement before the police that the property had been surrendered as a vacant site and the said statement had been endorsed by the Inspector of Police, clearly indicating that the respondent had taken possession of the property in question only as a vacant site.

8. It has also been stated that the respondent is a law abiding citizen having high regard for this Court and he would definitely abide by the orders passed by this Court, both in letter and spirit. It has also been stated that even though the respondent had not committed any contempt by wilfully disobeying the order passed by this Court, he would tender an unconditional apology, if this Court finds that he had, in some way, not complied with the order passed by this Court on 22.06.2004.

9. On a perusal of the records placed before this Court and on analysing the contentions raised on behalf of the petitioner, as well as the

respondent, it is clear that the respondent had taken possession of the property in question by an order passed by the Debts Recovery Tribunal,

Coimbatore, in R.P. No. 80/02 in D.R.C. No. 171 of 2001 (Old D.R.C. No. 322 of 1999). The respondent had taken possession of the vacant

land as claimed by him and there has been no building on the said property, on 22.06.2004, when the order was passed by this Court in

W.P.M.P. No. 37915 of 2003 in W.P. No. 31140 of 2003. The respondent had relied on the various documents filed before this Court to show

that the property in question was a vacant land at the time of his taking delivery of the property.

10. On the other hand, the petitioner has not been in a position to show that there was a building in the property in question, which had been

demolished after the order was passed by this Court on 22.6.2004. In such circumstances, it cannot be said that the respondent had wilfully

disobeyed the order of this Court, dated 22.06.2004, amounting to contempt of Court. Hence, the contempt petition stands closed. No costs.