

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

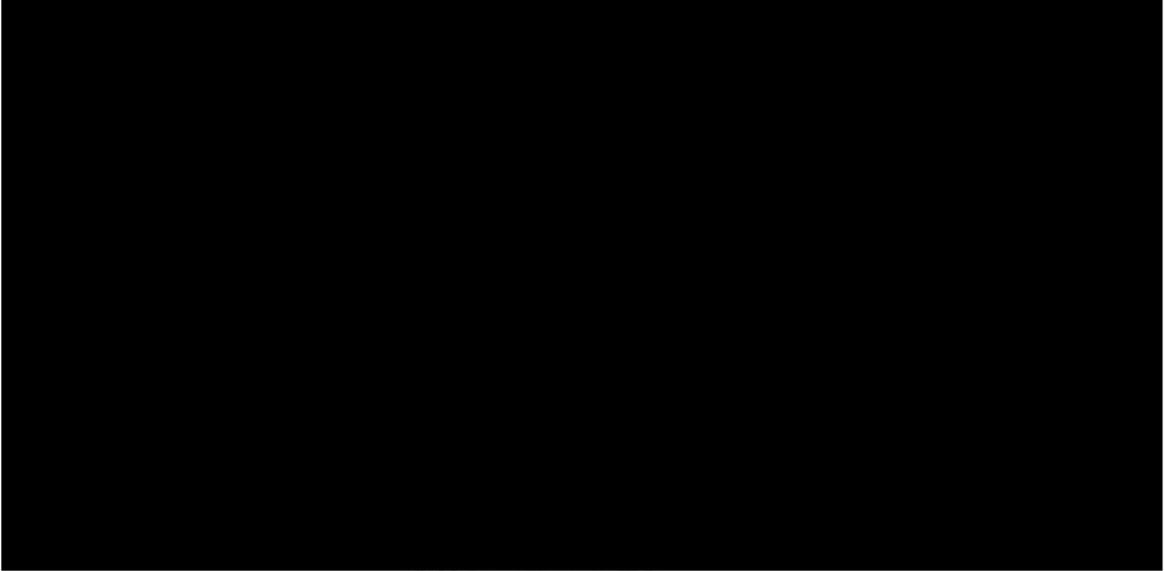
THE HONOURABLE MR. JUSTICE GOPINATH P.

Thursday, the 4th day of January 2024 / 14th Pousha, 1945

CONTEMPT CASE(C) NO. 1688 OF 2023 (S) IN WP(C) 9165/2023

PETITIONERS/PETITIONERS:

- 1.
- 2.
- 3.
- 4.
- 5.



BY ADVOCATES M/S.N.JAMES KOSHY & ALEX ABRAHAM

RESPONDENTS/RESPONDENTS NOS. 3 & 5:

1. SMT.SHEEBA GEORGE, DISTRICT COLLECTOR, COLLECTORATE, KUYILIMALA, IDUKKI DISTRICT, PIN - 685603.
2. ANILKUMAR G., PROJECT OFFICER, INTEGRATED TRIBAL DEVELOPMENT PROJECT, MINI CIVIL STATION, NEW BLOCK, THODUPUZZHA, IDUKKI DISTRICT, PIN - 685584.

BY GOVERNMENT PLEADER

This Contempt of court case (civil) having come up for orders on 04.01.2024, the court on the same day passed the following:

P.T.O.

GOPINATH P., J.

Con. Case (C) No. 1688 OF 2023

DATED THIS THE 4th DAY OF JANUARY, 2024

ORDER

This contempt of court case has been filed alleging non-compliance of the directions issued by this court in W.P (C) No.9165/2023 dated 10-04-2023. Through that judgment, this court found that the lands now belonging to the petitioners (legal heirs of one Benny Sebastian) had been identified by the Government for purchase (with the intention of rehabilitating landless scheduled tribe families) and that all the procedures for purchase of the land had been completed and that the Government had also sanctioned the amount for payment to the petitioners. It was accordingly that this Court held as follows :-

“5. Having heard the learned counsel appearing for the petitioners and the learned Senior Government Pleader appearing for the respondents, I am of the view that there is considerable merit in the contention taken by the learned counsel for the petitioners. The record of the case and the facts narrated above clearly indicate that all the competent authorities have considered the matter and decision was taken to purchase the land belonging to late Benny Sebastian, after fixing a value for the same. The Government in the Revenue Department has accepted the proposal and has issued Ext.P23 Government Order as early as on 25.4.2022 directing the 3rd respondent District Collector to proceed with the proposal for taking over the land belonging to late Benny Sebastian at the value indicated in that Government Order. Nearly one year has elapsed after Ext.P23 order was issued by the Government in the Revenue Department. The 5th respondent has not completed the proceedings. Considering the fact that a part of amount has to be paid to the bank (SBI) to settle the liability of late Benny Sebastian, any further delay in the proceedings will cause serious prejudice to the petitioners.

Therefore, this writ petition is allowed and respondents 3 and 5 are directed to complete the proceedings to take over the land belonging to late Benny Sebastian in terms of Ext.P23 Government Order, after paying part of the compensation to the State Bank of India for settling the loan liability and the balance to the petitioners and after completing the such other formalities as may be required, without any further delay and at any rate, within a period of six weeks from the date of receipt of a certified copy of this judgment.”

When this Contempt of Court case was taken up for consideration today, the learned Government Pleader placed before me an order bearing No. G.O (Rt) No.1479/2023/SCSTD dated 30-12-2023 issued by Dr. A. Jayathilak I.A.S., Additional Chief Secretary to Government (who is also Secretary to SC/ST Department) directing that the amounts directed to be paid to the petitioners shall be paid only after the land in question is made suitable for distribution and rehabilitation of tribal families. *Prima facie*, the order issued by the aforesaid officer appears to be an affront to the directions issued by this court as also the direction issued by the Division Bench while disposing of WA No.1757/2023 (which was filed by the State of Kerala and its officers challenging the judgment of this court in W.P (C) No.9165/2023). While disposing of WA No.1757/2023, the Division Bench observed as follows:-

“2. Learned Senior Government Pleader, on instructions, states that, now the Government has decided to take the land for rehabilitation of the Scheduled Tribes by way of settlement with the owners of the property, i.e. the present respondents. He further states that the amount determined as the value of the land shall be paid to the respondents within a period of two weeks from today.”

The Division Bench, after noticing the aforesaid statement of the learned Senior Government Pleader, had also directed that the amounts shall be paid to the petitioners herein on or before 18-12-2023.

2. The Supreme Court, in its recent judgment in ***The State of Uttar Pradesh & Ors. v. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors.*** [Civil Appeal Nos 23-24 of 2024] has held that Government Officials should not be summoned unnecessarily and without sufficient reason. The Supreme Court has formulated a “***Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court Proceedings***” and has directed that this Standard Operating Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court. The same reads:-

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

a. Evidence-based Adjudication: These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be

physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.

b. Summary Proceedings: These proceedings, often called summary proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

c. Non-adversarial Proceedings: While hearing non-adversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.

1.2 Other than in cases falling under para 1.1(a) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3 The presence of a government official may be directed, inter alia, in cases where the court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4 The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for by the court, the court

should allow as a first option, the officer to appear before it through video conferencing.

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials:

In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 Scheduled Time Slot: The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 The conduct of officials: Government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4 The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decision-making by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe as per the specifics of the case.

4.2 If an order has already been passed, and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2 Preliminary Determination of Contempt: In a proceeding instituted for contempt by wilful disobedience of

its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3 Notice and Subsequent Actions: Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 Procedure when personal presence is directed: In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.

5.5 Addressing Non-Compliance: The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.”

3. In the facts of the present case, and after noticing the SOP issued by the Supreme Court, I am constrained to direct the personal appearance of Dr. A. Jayathilak I.A.S, Additional Chief Secretary to Government and Secretary, SC/ST Department on account of the following:-

(A) Immediately after this contempt of court case was filed, on 20-09-2023, I had issued the following order:-

“The 2nd respondent is present in person before the Court. He submits that the land directed to be taken over/purchased in the Government Order (referred to as Ext.P23 in the judgment of this Court) is not suitable for the project. To a specific question from the Court as to what prompted him to initiate a request for re-determining the suitability of the land, he stated that he had received an objection from an undisclosed person over telephone and therefore, he initiated proceedings for redetermining the suitability of the land. This is, to say the least, extremely suspicious, as I cannot believe the version of the 2nd respondent that he had decided to undertake a reassessment of the suitability of the land on the basis of an objection received from an undisclosed person over telephone .

2. *It is seen from the document produced as Ext.P26 along with the writ petition that, as early as in the month of June, 2022, on the basis of the request made by the 2nd respondent, Rs.2,90,89,005/- (Rupees Two Crores Ninety lakhs Eighty nine thousand and five only) was sanctioned to the 2nd respondent for the purposes of taking over the land. It is also seen from Annexure A4 communication issued by the District Collector, Idukki to the 2nd respondent that the District Collector has received legal opinion that the judgment of this Court in W.P. (C). No.9165 of 2023 (in respect of which the Contempt of Court case is filed) has to be implemented forthwith. Annexure A4 is dated 26.04.2023. Even today, the 2nd respondent has not taken any steps to implement the directions contained in the judgment.*

3. *Prima facie, it appears that the contention of the learned counsel appearing for the petitioners that the 2nd respondent is acting in this manner with mala fide intentions appears to be correct. I am constrained to observe that the conduct of the 2nd respondent is clearly contemptuous. He has also*

disobeyed the orders of the District Collector, Idukki. However, in order to give a chance to the 2nd respondent to explain his conduct, the 2nd respondent shall file a detailed affidavit producing therewith every communication issued by him regarding the matter, from the date on which he took charge as Project Officer, Integrated Tribal Development Project, Mini Civil Station, New Block, Thodupuzha, Idukki . The affidavit shall be on record on or before 28.09.2023. Post the matter for consideration on 28.09.2023 The 2nd respondent shall also remain personally present on 28.09.2023.”

Thereafter, the District Collector, Idukki, filed an affidavit dated 26-9-2023, which categorically states that the Project Officer ITDP had been instructed to comply with the directions of this Court without delay. The Project Officer ITDP has filed an affidavit dated 27-9-2023, producing therewith as many as 58 communications, several of which indicate overzealousness on the part of the officer to somehow delay compliance with the directions issued by this Court. Thus, this is a case where I have already observed that the conduct of the Block Development Officer is not only in utter disregard of the directions issued by this Court but is highly suspicious for reasons noted in the order.

(B) At the behest of the Project Officer ITDP, the Government decided to conduct a further assessment of the site through the Disaster Management Authority and that Authority had given a further recommendation that the land which was to be taken over was suitable for rehabilitation.

(C) WA No.1757/2023 was disposed of on 04-12-2023 by a Division

Bench of this court (after noticing the statement made by the Senior Government Pleader that the State shall pay the amounts directed to be paid in terms of the judgment in W.P (C) No.9165/2023 within two weeks) directing payment of amounts on or before 18-12-2023. In G.O (Rt) No.1479/2023/SCSTD dated 30-12-2023, one of the documents referred to is the Judgment of the Division Bench in W.A 1757/2023. Yet the officer had the audacity to pass an order in direct violation of the directions of the Division Bench.

4. Therefore, as already noticed above, the order, namely G.O (Rt) No.1479/2023/SCSTD dated 30-12-2023, is an affront to the directions issued by this court as also by the Division Bench in WA No.1757/2023. The Registry shall forthwith issue notice to Dr. A. Jayathilak I.A.S as to why *suo moto* contempt of court proceedings should not be initiated against him for having passed an order which clearly flouts the directions issued by this court in W.P (C) No.9165/2023 as also the directions issued by a Division Bench of this court in W.A. No.1757/2023. The show cause notice shall be issued by speed post as well as by E-mail to the aforesaid officer at [REDACTED] and at [REDACTED] (The learned Government Pleader has provided the E-mail addresses of the officer on the basis of oral directions issued by this Court). In order to provide an opportunity to the officer to withdraw G.O (Rt) No.1479/2023/SCSTD dated 30-12-2023 and to pass fresh orders

taking note of the directions issued by this Court, I adjourn this Contempt of Court Case to 12-01.2024. If the orders issued by this court in W.P (C) No.9165/2023 and WA No.1757/2023 are not complied with by 11-01-2024, Dr. A. Jayathilak I.A.S shall remain personally present in this court at 10.15 a.m. on 12-01-2024.

Sd/-
GOPINATH P.
JUDGE

AMG

