

Court No. - 05

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1785 of 2020

Applicant :- Pradeep Kumar Srivastava And 2 Others

Opposite Party :- Vishal Singh And, Chief Executive Officer And 2 Others

Counsel for Applicant :- Ashish Kumar Singh, Ajay Kumar Singh

Counsel for Opposite Party :- Vineet Sankalp

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Sri Ajay Kumar Singh, learned counsel for the applicants and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Vineet Sankalp, learned counsel for the opposite parties.

Facts:

2. This contempt application under Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act, 1971') has been filed by the applicants alleging that the opposite parties have wilfully disobeyed the interim order dated 27.07.2012 passed by the Division Bench in PIL No.31229 of 2005 (Kautilya Society and another vs. State of U.P. and others). The relevant portion of the aforesaid interim order dated 27.07.2012 is reproduced below:-

“As directed above, the Varanasi Development Authority shall ensure that no further constructions within 200 meters from the highest flood level at banks of river Ganga at Varanasi is made and filed a compliance report by the next date fixed.”

Submissions:-

3. Learned counsel for the applicants submits as under:-
 - (i) By the aforesaid interim order dated 27.07.2012, the Division Bench has clearly restrained from raising any construction within 200 meters from the highest flood level at the banks of river Ganga at Varanasi.
 - (ii) In another PIL No.59698 of 2013 (M/s Prathik Samajik Sewa Samiti and another vs. State of U.P. through Secretary and 6

others), a Division Bench passed **an interim order** dated 08.11.2013 directing that the respondents shall ensure that no pakka constructions are raised within 200 meters of the bank of river Ganga at Varanasi till the next date of listing.

(iii) Despite the aforesaid **interim order** 27.07.2012 in Kautilya Society's case (supra), the **Chief Executive Officer of "Shri Kashi Vishwanath Special Area Development Board"** issued a **tender notice inviting tenders for certain constructions/development work in Shri Kashi Vishwanath Temple and surrounding areas**, which fall within 200 meters from the highest flood level of river Ganga at Varanasi. The Chief Executive Officer of "Shri Kashi Vishwanath Special Area Development Board", is the opposite party No.1. Thus, the opposite party No.1 has wilfully disobeyed the interim order dated 27.07.2012 passed by the writ court in Kautilya Society's case (supra).

(iv) In another Writ-C No.14997 of 2018 (Redis Market Vyavasaik Samiti and another vs. Union of India and 2 others), the writ court passed an order dated 30.04.2018 disposing of the writ petition with a direction to decide petitioner's representation in accordance with law on the point whether the plot falls within 200 meters of the holy Ganga river. In the counter affidavit in Writ Petition No.41249 of 2017 (M/s Knots India Carpets Private Ltd. Vs. State of U.P. and others), the Varanasi Development Authority, Varanasi has itself referred to the interim order dated 27.07.2012 passed by the writ court in Kautilya Society's case (supra), regarding restriction on construction within 200 meters of the bank of river Ganga. The Varanasi Development Authority has itself sought permission for construction of some new ghats which fact is evident from the interim order dated 29.07.2013

passed by the writ court in Kautilya Society's case (supra). Thus, the opposite party No.1 who is also Secretary of Varanasi Development Authority, Varanasi, has knowingly disobeyed the interim order dated 27.07.2012 passed in Kautilya Society's case (supra).

(v) The entire development work by "Shri Kashi Vishwanath Special Area Development Board" is being carried within 200 meters of river Ganga. The restriction with regard to the construction has not been lifted by the writ court. Therefore, the opposite party No.1 has wilfully disobeyed the interim order of the writ court passed in the aforesaid PIL in the Kautilya Society's case (supra).

(vi) The opposite party has not complied with one of the conditions of the permission granted by the N.M.C.G. and thus has rendered liable for punishment under Section 12 of the Act, 1971.

Submission on behalf of Opposite Party No.1:-

4. Learned Additional Advocate General has made submissions on behalf of the opposite party No.1 as under:-

(i) The order dated 27.07.2012 in Kautilya Society's case (supra) was in the background that some unauthorised construction was going on at the bank of river Ganga.

(ii) Several orders were passed by the writ court subsequently in Kautilya Society's case (supra). Pursuant to order dated 11.09.2014 and 29.01.2015 in Kautilya Society's case (supra), the National Mission for Clean Ganga, Ministry of Water Resources, River Development and Ganga Rejuvenation Government of India (for short NMCG), has constituted a committee of experts by order dated 17.02.2016. The terms of reference of the

Committee are mentioned in the order. The State Legislature has enacted **Shri Kashi Vishwanath Special Area Development Board Varanasi Act, 2018** (U.P. Act 31 of 2018) under which several houses nearby Sri Kashi Vishwanath Temple, were acquired in public interest for development and the authority constituted under the Act, is carrying on the development work including prevention of pollution in river Ganga. The aforesaid authority, i.e. Shri Kashi Vishwanath Special Area Development Board (hereinafter referred to as the Development Board), is carrying on work under the Act and has sought No Objection Certificate/ Permission from all concerned departments including the Committee constituted on 17.02.2016 under the orders of the writ court dated 11.09.2014 and 29.01.2015 in Kautilya Society's case (supra). Thus, the Development Board or the opposite party No.1 have not committed any wilful disobedience of the interim order of the writ court dated 27.07.2012 in Kautilya Society's case (supra).

(iii) The present contempt application is an abuse of process of court by the applicants who have not even disclosed their credentials. In paragraphs-3, 4 and 5 of the contempt application, the applicants have stated that the applicant No.1 is Ex Chairman of some Kashi Patrakar Sangh and the applicant No.2 is a practising lawyer at District and Sessions Court, Varanasi and is Ex General Secretary, Banaras Bar Association, Varanasi and the applicant No.3 is a practising lawyer at District and Sessions Court, Varanasi, and both are social workers.

(iv) The contempt application has been filed grossly concealing/ suppressing material facts, and making false and misleading

averments.

(v) The applicant Nos.2 and 3 despite being advocates as alleged by them and the applicant No.1 despite being a journalist as alleged by him, have filed the present contempt application without there being any wilful disobedience of the order of the writ court by the opposite parties. They have made false and misleading averments in the contempt application and have not even complied with the clear direction of this court dated 03.06.2020 to file a supplementary affidavit categorically stating as to what constructions are being raised contrary to the interim order dated 27.07.2012 granted by the writ court in Kautilya Society's case (supra).

(vi) The alleged supplementary affidavit is nothing but a waste paper and is grossly misleading and amounts to fraud played upon the court inasmuch as the aforesaid alleged supplementary affidavit dated 10.06.2020 does not bear signature of any of the applicants or the alleged deponent Sri Sunil Kumar Gupta (applicant No.3). It also does not bear identification by any advocate and verification of Oath Commissioner. It is also not accompanied by any application signed by the counsel of the applicants. Thus, the aforesaid alleged supplementary affidavit is nothing but a waste piece of paper and therefore, it deserves to be rejected. Since the applicants have not complied with the order of this court dated 03.06.2020, therefore, this contempt application deserves to be dismissed on this ground also.

(vii) This contempt application has no merit and deserves to be dismissed with exemplary cost.

Discussion and Findings:-

5. I have carefully considered the submissions of applicants and the learned Additional Advocate General for the opposite party No.1.

What is Civil Contempt:-

6. The word “Civil Contempt” has been defined in Section 2(b) of the Act, 1971, which reads as under:-

“Civil Contempt means wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”

7. Section 12 of the Act, 1971 provides for punishment for contempt of court. Thus, a person may be punished for civil contempt under Section 12 of the Act, 1971 provided he has wilfully disobeyed any judgment, decree, direction, order, writ or other process of a court or committed wilful breach of an undertaking given to a court. Proceedings in contempt are quasi criminal in nature. The law of contempt has to be strictly interpreted and the requirement of that law must be strictly complied with before any person can be committed for contempt. This is also the view of Hon’ble Supreme Court in **Rosnan Sam Boyce vs. B.R. Cotton Mills Ltd. (1990) 2 SCC 636 (para-9)**. In **Kapil Deo Prasad Sah vs. State of Bihar (1999) 7 SCC 569 (paras-9 and 11)**, Hon’ble Supreme Court elaborated commission of civil contempt and held, as under:

*“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. **Power to punish for contempt is to be resorted to when there is clear violation of the Court's order.** Since notice of contempt and punishment for contempt is of far-reaching consequence and these **powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out.** Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the Court's orders and its implication.*

.....

11. No person can defy the Court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's

order must allege deliberate or contumacious disobedience of the Court's order."

(Emphasis supplied by me)

8. Similar view has been expressed by Hon'ble Supreme Court in **Ashok Paper Kamgar Union vs. Dharam Godha [(2003) 11 SCC 1]**, **Anil Kumar Shahi vs. Professor Ram Sevak Yadav [(2008) 14 SCC 115]**, **Jhareswar Prasad Paul vs. Tarak Nath Ganguly [(2002) 5 SCC 352]**, **Union of India vs. Subedar Devassy PV [(2006) 1 SCC 613]**, **Bihar Finance Service House Construction Co-operative Society Ltd. vs. Gautam Goswami [(2008) 5 SCC 339]**, **Chhotu Ram vs. Urvashi Gulati [(2001) 7 SCC 530]** and **Avishek Raja vs. Sanjay Gupta [(2017) 8 SCC 435 (paras-20 to 23)]**.

9. In the case of **Noor Saba vs Anoop Mishra and another [(2013) 10 SCC 248 (para-14)]**, Hon'ble Supreme Court held as under:-

*"14. To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. **The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts.** In the present case not only has there been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/altere*

facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court"

(Emphasis supplied by me)

10. In **Anil Ratan Sarkar vs. Hirak Ghosh [(2002) 4 SCC 21]**, Hon'ble Supreme Court held as under:

*"13.....The Contempt of Courts Act, 1971 has been introduced in the statute-book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country - undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and **unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute.**"*

(Emphasis supplied by me)

11. Thus to hold a person that he has committed civil contempt, it has to be shown that there has been wilful disobedience of any judgment, decree,

direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. **The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the court is normally made on admitted and undisputed facts.** Power to punish for contempt is to be resorted to when there is clear violation of the court's order and this power should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's order and its implications. To hold a person guilty of contempt, the standard of proof required would be the same as in a criminal proceeding and **the breach alleged shall have to be established beyond all reasonable doubt.** The power of the court to punish for contempt is a special and rare power available both under the Constitution as well as the Act, 1971. It is a drastic power which, **if misdirected, could even curb** the liberty of the individual charged with commission of contempt and **the public interest.** The very nature of the power under the Act, 1971, casts a sacred duty upon Courts to exercise the same with the greatest of care and caution. Therefore, the Courts must not travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Power of contempt can be invoked only when a clear case of wilful disobedience of the court's order has been made out.

Burden of Proof and Standard of Proof:-

12. In **Aligarh Municipal Board vs. Ekka Tonga Mazdoor Union [(1970) 3 SCC 98 (para-8)]**, Hon'ble Supreme Court held that for charge of contempt of court for disobeying orders of courts, **those who**

asked that the alleged contemnors had knowledge of the order must prove that fact beyond reasonable doubt. In case of doubt, benefit ought to go to the person charged. In **Babu Ram Gupta vs. Sudhir Bhasin [(1980) 3 SCC 47]**, Hon'ble Supreme Court held that it is not open to the courts to assume an implied undertaking when there is none on the record. The aforesaid two judgments have been referred by Hon'ble Supreme Court in a subsequent judgment in **Rosnan Sam Boyce (supra)**. In **Chhotu Ram vs. Urvashi Gulati [(2001) 7 SCC 530 (para-2)]**, Hon'ble Supreme Court held, as under:

"2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

(Emphasis supplied by me)

13. The judgment in the case of **Chhotu Ram** (supra) has been followed by Hon'ble Supreme Court in its judgment in the case of **All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi, [(2009) 5 SCC 417 (para-78 to 81)]** after referring to the observations of Lord Denning in **Re. Bramblevale Ltd. [(1969) 3 All ER 1062](CA)**.
14. Thus, in matters of contempt, the person **who asserts deliberate disobedience** of the order of the court, **must prove it to constitute an act of contempt**. The jurisdiction of the court under the Act, 1971 is quasi criminal, and as such the **standard of proof required is that of a criminal proceedings and the breach shall have to be established beyond all reasonable doubt**.
15. In the present set of facts, **this court passed an order on 03.06.2020**, as under:

"Counsel for the applicant is granted a weeks time to file a supplementary affidavit categorically stating as to what constructions are being raised contrary to the interim order granted by the writ court in a PIL on 26.07.2012.

Put up as fresh on 10.06.2020."

16. Despite the afore-quoted order, **the applicants have filed some typed papers dated 10.06.2020 alleging it to be a supplementary affidavit** in compliance to the afore-quoted order dated 03.06.2020. Perusal of the aforesaid alleged supplementary affidavit dated 10.06.2020, a copy of which was served upon the opposite party; shows that **it neither bears signature of the alleged deponent/ applicant No.3 i.e. Sri Sunil Kumar Gupta nor it has been signed by the advocate nor by Oath Commissioner**. In paragraph-14 of the aforesaid paper (alleged supplementary affidavit), it is mentioned that due to non-availability of coupon with Oath Commissioner on account of lock-down caused due to COVID-19 Pandemic, present affidavit could not be sworn before the Oath Commissioner. The aforesaid alleged supplementary affidavit does not bear even signature of the deponent on any of the pages, who is stated to be the applicant No.3. Chapter XXXV-E, Rule 3(3) of the Allahabad High Court Rules, 1952 framed under Section 23 of the Act, 1971, is relevant, which is reproduced below:

“Rule 3(3)(a).- A petition for taking contempt of court proceedings shall be supported by an affidavit. In case of criminal contempt three copies of the application and the affidavit shall accompany the application :

Provided that if there are more than one opposite parties, the petition shall be accompanied by as many extra copies as there are opposite parties.

(b) When the petitioner relies upon any document or documents in his possession, he shall file the same along with the petition or a copy thereof as annexure to affidavit.

(c) A petition made under Section 15 (1) (b) of the Act shall also be accompanied by the consent in writing of the Advocate General and a copy thereof.”

17. The alleged supplementary affidavit of the applicant No.3 dated 10.06.2020, which neither bears signature of the alleged deponent on any page nor bears signature of the advocate nor signature and seal of Oath Commissioner; is not an affidavit at all. It is merely a waste paper. Therefore, the matters written in the alleged supplementary affidavit

cannot be considered at all. In fact, the applicants have wilfully and deliberately not complied with the order of this court dated 03.06.2020, which has been quoted above and have attempted to mislead this court during arguments that the aforesaid paper is the supplementary affidavit filed in compliance to the order dated 03.06.2020. The applicants have completely failed to prove that the opposite parties have wilfully disobeyed the interim order dated 27.07.2012 passed by the writ court in **Kautilya Society's** case (supra). **Thus, the applicants not only abstained to file supplementary affidavit despite order dated 03.06.2020 but also deliberately not even signed the aforesaid alleged supplementary affidavit so as to escape from the responsibility of matters typed in it.**

Suppression/ Concealment of facts:-

18. Perusal of the present contempt petition filed by the applicants shows that contempt has been alleged for disobedience of the interim order dated 27.07.2012 in Kautilya Society's case (supra). The applicants claimed themselves to be local residents of the Varanasi City. **Applicant No.1 claims himself to be a journalist while the applicant Nos.2 and 3 claimed themselves to be practising advocate of District and Sessions Court, Varanasi and yet they have conveniently suppressed the entire material facts relating to "Sri Kashi Vishwanath Special Area Development Board", constituted under "Sri Kashi Vishwanath Special Area Development Board Act, 2018 (U.P. Act No.31 of 2018)", subsequent orders of the writ court in Kautilya Society's case (supra) dated 11.09.2014, 29.01.2015, 28.04.2016, the office memorandum dated 17.02.2016 regarding constitution of an expert committee by the Ministry of Water Resources pursuant to the orders of the writ court dated 11.09.2014 and 29.01.2015, the minutes of the meeting of the committee dated 06.11.2019, No Objection Certificate/ Permission regarding execution of work in**

question by the Board in terms of the provisions of the Act and the No Objection Certificates/ Permissions dated 05.12.2019 granted by Indian National Trust for Art and Cultural Heritage (for short 'INTACH'), dated 08.01.2020 granted by the Town and Country Planning Organisation Government of India, dated 09.01.2020 granted by the Archaeological Survey of India, New Delhi, dated 15.01.2020 granted by the Central Ground Water Board, Aliganj Lucknow, dated 04.12.2019 granted by the Central Public Works Department, Varanasi, dated 27.05.2020 granted by Chief Environmental Officer, U.P. Pollution Control Board and dated 22.05.2020 granted by the State Level Environment Impact Assessment Authority, Uttar Pradesh. The applicants have also very conveniently suppressed the minutes of the meeting of the Expert Committee dated 29.02.2020 which considered all the permissions/ no objection certificates including those mentioned above.

Powers and functions of the Board and Remedy under the Act, 2018:-

19. **Section 2(j) of the Act, 2018 defines the words 'Special Development Area'** which undisputedly includes the area where development work is being carried on by the Board. Under Section 3 of the Act, 2018, the Board known as “Shri Kashi Vishwanath Special Area Development Board” has been created to exercise the powers conferred and perform the functions assigned to it under this Act. **The powers and functions of the Board are defined in Section 6 of the Act, 2018, which is reproduced below:**

“6. Power and functions of the Board. - (1) The Chief Executive Officer will be the executive head of the Board who will act and pass orders in accordance with the provisions of this Act or the rules and regulations made under this Act;

(2)(a) The Board shall, as soon as may be, prepare a plan for the Special Development Area-

(i) The plan shall define various sectors into which such area may for the purposes of development indicate the land in each sector which is proposed to be used and the stages by which any development shall be carried out;

serve as a basic pattern of frame-work, within which the development plans for various sectors may be prepared;

(ii) The plan may provide for any other matter necessary for the proper development of such area;

(b) The Board shall prepare a plan to rehabilitate, as may be required, and get it approved by the State Government in order to settle and rehabilitate residents, owners or occupants; who are to be relocated, for implementation of development plan for the Special Development Area;

(c) The Board shall make and execute a long-term plan to conserve the heritage that falls under its jurisdiction and shall ensure that the surrounding are according to the Sajra Bandobast Plan after due approval of the State Government.

(3) (i) Subject to the directions given by the State Government, the Board may acquire any building or land through mutual negotiations, purchase, donation, transfer, lease, rent or otherwise. It may also acquire any land, buildings in accordance with the provisions of law for the time being in force and shall publish a public notice in the local newspaper/gazette inviting persons who may have any claim or interest in such property, to file their claim;

(4) The State Government may vest any land to the Board, whether under its control or under the control of any local body by such terms and conditions as it may deem fit;

(5) The Board may sell, lease, rent or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Board in the Special Development Area with the prior approval of the State Government in such manner and on such terms and conditions as may be prescribed;

(6) The Board may on payment of such fees and on such conditions grant renew licence for such period as may be prescribed by regulations and renew to carry out any profession or trade in the Special Development Area;

(7) For the purposes of proper planning and development of the Special Development Area, the Board may issue such directions as it may consider necessary, regarding,-

(a) ban on erection or occupation of any building in contravention of regulations;

(b) protection of architectural features of the elevation or frontage of any building;

(c) layout and alignment of buildings on any site;

(d) restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings;

(e) number of residential buildings that may be erected on any site;

(f) erections of shops, workshops, warehouses, factories or buildings;

(g) maintenance of height and position of walls, fences, hedges or any other structure or architecture constructions;

(h) maintenance of amenities;

(i) restrictions of use of any site for a purpose other than that for which it has been allocated;

(j) the means to be provided for proper (i) drainage of waste water (ii) disposal of waste, and (iii) disposal of town refuse;

(k) the materials to be used for external and partition walls, roofs, floors and other parts of buildings and their position or location or the method of construction;

(l) the certificates necessary and incidental to the submission of plans, amended plans and completion and/or occupancy certificates.”

20. **Section 17 of the Act, 2018 confers revisional power** upon the State Government, which is reproduced below:

“17. Power of the State Government to call for records.- The State Government may, at any time either on its own motion or on application made to it in this behalf call for any record and may in case or an order passed by the Board or any officer authorised by it to perform any function under this Act for the purpose of satisfying itself as to the legality or propriety of any order, pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.”

21. Thus, the work in question is being carried on by “Shri Kashi Vishwanath Special Area Development Board, Varanasi” in terms of the provisions of the Act, 2018 and after requisite no objection certificates/permissions from the concerned authorities and with the consent of the expert committee constituted by the writ court in terms of the orders passed in Kautilya Society's case (supra).

Subsequent orders of the Writ Court in the Public Interest Litigation Kautilya Society's case which were suppressed by the applicants.

22. By order dated 11.09.2014 in Kautilya Society's case (supra), the writ court while considering the application of the State Government for permission to construct four new ghats at Varanasi has observed as under:-

“At this stage, it appears that the Union of India is also in the process of formulating a perspective plan for the preservation of the intrinsic character and heritage importance of Varanasi. Any proposal in that regard must also factor in the needs of millions of devotees who gather on the ghats and for whom even basic amenities are not available at present.

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We request the Amicus Curiae to make available a copy of this order to the Assistant Solicitor General of India in order to enable him to take appropriate instructions from the Union Government and to file an affidavit before the Court. The State Government shall also file an affidavit before the next date of hearing furnishing full particulars along the lines indicated above by the Court and any such further relevant information as would be of the assistance to the Court for passing a suitable order which would balance the need for protecting the environment and heritage character of the ghats with the need for providing proper amenities and infrastructure

to devotees who use the ghats. These affidavits shall be filed before the Court by 17 October 2014.”

23. On 29.01.2015 in Kautlya Society's case (supra), the writ court observed/ directed as under:

“A detailed order was passed by this Court on 11 September 2014 in which the Court expressed the view that it would be appropriate for both the Union and the State Governments to take a joint and coordinated action in order to apprise the Court of the steps which are being taken to preserve the intrinsic character and heritage importance of Varanasi. The Court had observed that it would be appropriate if a comprehensive analysis and plan is entrusted to a team of experts consisting of eminent persons drawn from diverse branches, including conservation architecture, ecology, hydrogeology, civil engineering and urban planning. Though the order was passed well over three months back, we find that there has been no concrete action either by the Union Government or by the State Government.

We direct the learned Assistant Solicitor General of India and the learned Chief Standing Counsel to take instructions at the appropriate level of their respective governments so that the Court can be apprised of the views of the Union and the State Governments in the matter by the next date of listing.

***An important issue which needs to be considered by the Court at an appropriate stage is the need for framing appropriate guidelines for dealing with cases of repair, restoration and rehabilitation.** Since this issue has been raised during the course of hearing today, we are of the view that it would be appropriate if a comprehensive perspective of the matter is formed having due regard to the Master Development Plan and all other applicable statutory requirements. This aspect may be considered by the Amicus Curiae so as to assist the Court by the next date of listing. Based on this, it would be necessary for the VDA to frame bye-laws and guidelines to cover cases of restoration, repair and rehabilitation which would be consistent with the overall nature and character of the Ghats.”*

24. In terms of the aforesaid orders of the writ court dated 11.09.2014 and 29.01.2015, a committee of experts was constituted vide office memorandum dated 17.02.2016 issued by NMCG, Ministry of Water Resources, River Development and Ganga Rejuvenation, Government of India. The terms of reference of the Committee was mentioned in the aforesaid office memorandum, as under:

“2. Terms of Reference of the Committee

"i. To preserve and restore the intrinsic character and heritage importance of Varanasi Ganga Ghats with comprehensive analysis and Plan.

ii. Identification of the historic Ghats, assessment of their heritage value, determining the present condition as well as the need and extent of restoration of existing Ghats and proposal of new Ghats.

iii. Consider and recommend repair of old constructions alongside the banks of River Ganga and the need to monitor the nature of work that may be permitted.

iv. Assess the extent of pollution and recommend mitigative measures arising

due to new construction, waste disposal, throwing of pious materials, and river-surface cleanliness along the Ghats.

v. Mechanism for monitoring of new construction, if any that may be permitted.

vi. Public utilities and services, sanitation and hygienic condition alongside of the Ghats.

vii. Addressing the issue of ecological imbalance."

25. In the order dated 28.04.2016 in Kautlya Society's case (supra), the writ court considered various projects including project of "Inland Water Ways Authority of India", repair of Ghats and construction of five new Ghats and observed as under:

"In our view, now that a broad based committee has been constituted by the National Mission for Clean Ganga, consisting both of the representatives of the State Government as well as the Union Government, it would be appropriate and proper if the proposals for repair of the Ghats are placed before the committee. The terms of reference of the committee include the preservation and restoration of the intrinsic character and heritage importance of the Ghats on the banks of the river at Varanasi. The terms of reference are broad enough to cover proposals for repair and restoration of the Ghats.

Hence, we are of the view that it would be but appropriate and proper that the broad based committee which has been constituted considers the proposals which have been moved before the Court. Upon the receipt of the consent of the committee, the State Government would be at liberty to proceed with the work of repair. In order to facilitate the fulfillment of the urgent need of repairing of the Ghats and to provide amenities to tourists, pilgrims as well as the local residents who visit the Ghats on a daily basis, we would request the committee initially to meet at least once every fortnight so as to facilitate an early decision on the proposal for repair. Once the requisite consent has been granted, the committee would be at liberty to schedule its meetings in accordance with the exigencies of work. To facilitate the work of repair of the Ghats, we lift the order of restraint. We clarify that subject to the above, the interim order shall not stand in the way of the carrying out of repairs to the Ghats.

II. Insofar as the proposal for the construction of four new Ghats is concerned (the learned Chief Standing Counsel has informed the Court that the initial proposal for four Ghats has now been enhanced to five new Ghats), we propose to issue a direction to the effect that this proposal should also be initially placed before the committee constituted on 17 February 2016 by the office memorandum referred to above. This application which has been submitted before the Court for construction of new Ghats and for the grant of permission by the Court would be taken up after the committee has an opportunity to consider the proposal and to submit a report in regard thereto containing its observations and findings. The committee would be at liberty to consider the matter from all its perspectives and suggest such environmental and other safeguards as may be necessary if the proposal is found to be in order. We would request the committee to finalize its report on these aspects preferably within a period of two months from today. We direct that the representative of INTACH be also associated with the work of

the committee.”

Legislation subsequent to the orders in the Public Interest Litigation (Kautilya Society's case) suppressed by the Applicants

26. The Act, 2018 was enacted to create, formulate, implement, regulate and maintain the special area under its jurisdiction for developing and maintaining the culture, spiritual, mythological and archaeological aesthetics in such area to promote tourism in consonance with the rich cultural heritage thereof. The Act 2018 is not in conflict with any of the orders of the writ court. Under the Act, 2018 “Special Development Area” was created which consists of the areas mentioned in Section 2(j). “Shri Kashi Vishwanath Special Area Development Board” has been constituted under Section 3 of the Act, 2018. Work in question is being carried under the Act, 2018 after due permissions/ NOCs and consent of the expert committee. Facts in this regard have been conveniently suppressed by the applicants which itself is contemptuous in nature.

Whether the Opposite Parties committed contempt:-

27. The applicants have wilfully tried to mislead this court. Despite specific order dated 03.06.2020, they failed to categorically state on affidavit as to what constructions are contrary to the interim order dated 27.07.2012 in Kautilya Society's case (supra). Thus, no case for wilful disobedience of the order of the writ court dated 27.07.2012 passed in Kautilya Society's case (supra), has been made out. Instead this contempt application is based on gross suppression and concealment of material facts and misleading averments, which itself are contemptuous in nature.

28. It is settled law that a person who approaches the court must come with clean hands and put forward all the material facts otherwise he shall be guilty of misleading the court and his application or petition may be

dismissed at the threshold. If an applicant makes false statement and suppresses material facts or attempts to mislead the court, the court may dismiss action on that ground alone. The applicant cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose. Suppression of material facts is not an advocacy. In **K.D. Sharma vs. Steel Authority of India and others [(2008) 12 SCC 481 (para-39)]**, Hon'ble Supreme Court observed that **suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation. This rule has been evolved in the larger public interest to deter unscrupulous litigant from abusing the process of court by deceiving it.**

29. The submission of learned counsel for the applicants that the opposite parties have not complied with a condition of the permission of N.M.G.C., is absolutely beyond the scope of civil contempt as defined under Section 2(b) of the Act, 1971.

30. All the facts discussed above leave no manner of doubt that the applicants have filed this contempt application concealing material facts and have tried to mislead this court and have also wilfully disobeyed the order dated 03.06.2020. They failed to discharge burden of proof even in *prima facie* manner. No case for contempt has been made out by the applicants. The contempt application has been filed by the applicants with oblique motive, so as to impede development work being carried by the Board under the Act 2018 in larger public interest, for pious cause and for protection of environment and cleanliness of river Ganga. Under the circumstances, this contempt application deserves to be dismissed with exemplary costs.

Cost:-

31. Courts across the legal system are choked with litigation. More than nine lakh fifty thousand cases are pending in our High Court. In such situation, frivolous and groundless filings constitute a serious menace to the administration

of justice. They consume time and clog the infrastructure. Thus, resources which should be deployed in handling of genuine cases are dissipated in attending frivolous and groundless cases like the present one, which has been filed to obstruct public interest. The applicants have abused the process of court.

32. While dealing with frivolous and groundless filing, Hon'ble Supreme Court in the case of **Dnyandeo Sabaji Naik Vs. Pradnya Prakash Khadekar, (2017) 5 SCC 496** (Para-14), observed as under:

*“This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. **The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.**”*

(Emphasis supplied by me)

33. For all the reasons stated above, this contempt application is dismissed with costs of Rs.5,000/- on each of the applicants, which shall be deposited by them separately within one month from today, with **“Shri Kashi Vishwanath Special Area Development Board”**.

CONCLUSION:-

34. The findings and conclusions recorded above are briefly summarised as under:-

I. A person may be punished for civil contempt under Section 12 of the Act, 1971 provided he has wilfully disobeyed any judgment, decree, direction, order, writ or other process of a court or committed wilful breach of an undertaking given to a court.

II. To hold a person that he has committed civil contempt, it has to be shown that there has been wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. **The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the court is normally made on admitted and undisputed facts.** Power to punish for contempt is to be resorted to when there is clear violation of the court's order and this power should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's order and its implications. To hold a person guilty of contempt, the standard of proof required would be the same as in a criminal proceeding and **the breach alleged shall have to be established beyond all reasonable doubt.** The power of the court to punish for contempt is a special and rare power available both under the Constitution as well as the Act, 1971. It is a drastic power which, **if misdirected, could even curb** the liberty of the individual charged with commission of contempt and **the public interest.** The very nature of the power under the Act, 1971, casts a sacred duty upon Courts to exercise the same with the greatest of care and caution. Therefore, the Courts must not travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Power of contempt can be invoked only when a clear case of wilful disobedience of the court's order has been made out.

III. In matters of contempt, the person **who asserts deliberate disobedience** of the order of the court, **must prove it to constitute an act of contempt.** The jurisdiction of the court under the Act, 1971 is quasi criminal, and as such the **standard of proof required is that of a criminal proceedings and the breach shall have to be established beyond all reasonable doubt.**

IV. The alleged supplementary affidavit of the applicant No.3 dated 10.06.2020, which neither bears signature of the alleged deponent on any page nor bears signature of the advocate nor signature and seal of Oath Commissioner; is not an affidavit at all. It is merely a waste paper. Therefore, the matters written in the alleged supplementary affidavit cannot be considered at all.

V. **Applicant No.1 claims himself to be a journalist while the applicant Nos.2 and 3 claimed themselves to be practising advocate of District and Sessions Court, Varanasi and yet they have conveniently suppressed the entire material facts relating to "Sri Kashi Vishwanath Special Area Development Board", constituted under "Sri Kashi Vishwanath Special Area Development Board Act, 2018 (U.P. Act No.31 of 2018)", subsequent orders of the writ court in Kautilya Society's case (supra) dated 11.09.2014, 29.01.2015, 28.04.2016, the office memorandum dated 17.02.2016 regarding constitution of an expert committee by the Ministry of Water Resources pursuant to the orders of the writ court dated 11.09.2014 and 29.01.2015, the minutes of the meeting of the committee dated 06.11.2019, various No Objection Certificates/ Permissions granted by Authorities/ departments and the minutes of the meeting of the Expert Committee dated 29.02.2020 which considered all the permissions/ no objection certificates.**

VI. The work in question is being carried on by "Shri Kashi Vishwanath Special Area Development Board, Varanasi" in terms of the provisions of the Act, 2018 and after requisite no objection certificates/ permissions from the concerned authorities and with the consent of the expert committee constituted by the writ court in terms of the orders passed in Kautilya Society's case (supra).

VII. The Act, 2018 was enacted to create, formulate, implement, regulate and maintain the special area under its jurisdiction for developing and maintaining the culture, spiritual, mythological and archaeological aesthetics in such area to promote tourism in consonance with the rich cultural heritage thereof. The Act 2018 is not in conflict with any of the orders of the writ court. Under the Act, 2018 "Special Development Area" was created which consists of the areas mentioned in Section 2(j). "Shri Kashi Vishwanath Special Area Development Board" has been constituted under Section 3 of the Act, 2018. Work in question is being carried under the Act, 2018 after due permissions/ NOCs and consent of the expert committee. Facts in this regard have been conveniently suppressed by the applicants which itself is contemptuous in nature.

VIII. The applicants have wilfully tried to mislead this court. Despite specific order dated 03.06.2020, they failed to categorically state on affidavit as to what constructions are contrary to the interim order dated 27.07.2012 in Kautilya Society's case (supra). Thus, no case for wilful disobedience of the order of the writ court dated 27.07.2012 passed in Kautilya Society's case (supra), has been made out. Instead this contempt application is based on gross suppression and concealment of material facts and misleading averments, which itself are contemptuous in nature.

IX. A person who approaches the court must come with clean hands and put forward all the material facts otherwise he shall be guilty of misleading the court and his application or petition may be dismissed at the threshold. If an applicant makes false statement and suppresses material facts or attempts to mislead the court, the court may dismiss action on that ground alone. The applicant cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose. Suppression of material facts is not an advocacy. **It is a jugglery, manipulation, maneuvering or misrepresentation. This rule has been evolved in the larger public interest to deter unscrupulous litigant from abusing the process of court by deceiving it.**

X. Courts across the legal system are choked with litigation. More than nine lakh fifty thousand cases are pending in our High Court. In such situation, frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Thus, resources which should be deployed in handling of genuine cases are dissipated in attending frivolous and groundless cases like the present one, which has been filed to obstruct public interest. The applicants have abused the process of court.

XI. The applicants have failed to discharge burden of proof even in *prima facie* manner. No case for contempt has been made out by the applicants. The contempt application has been filed by the applicants with oblique motive, so as to impede development work being carried by the Board under the Act 2018 in larger public interest, for pious cause and for protection of environment and cleanliness of the river Ganga.

XII. Contempt application is dismissed with costs of Rs.5,000/- on each of the applicants, which shall be deposited by them separately within one month from today, with "**Shri Kashi Vishwanath Special Area Development Board**".

35. For all the reasons stated above, **this contempt application is dismissed** with costs as above.

Order Date :- 19.06.2020

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