

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CONTEMPT CASE NO. 1436 OF 2019

Between:

Ganta Sudheer Kumar :

.....Petitioner

And

Sri T Nagi Reddy, Commissioner,
Bhongir Municipality, Bhongir,
Yadadri Bhongir District & others

.....Respondents

JUDGMENT PRONOUNCED ON : 10-06-2022

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : YES
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
See fair Copy of the Judgment ? :

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**
+CONTEMPT CASE NO.1436 OF 2019

%10-06-2022

Ganta Sudheer Kumar

.....Petitioner

Vs.

\$ Sri T Nagi Reddy, Commissioner,
Bhongir Municipality, Bhongir,
Yadadri Bhongir District & others

.....Respondents

!Counsel for the petitioner : Sri M.V.Hanumantha Rao

Counsel for the Respondents: Sri N.Praveen Kumar, learned
Standing counsel for Municipality for
1st respondent;
Sri P.Rama Sharan Sharma for 2nd
and 3rd respondents

<Gist :

>Head Note:

? Cases referred:

2002(4) SCC 21
(2008) 14 SCC 561
1967(1) An.W.R.129
(1999) 7 SCC 569
(2012) 4 SCC 307

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO. 1436 OF 2019

ORAL ORDER:

Heard learned counsel for petitioners Sri M.V.Hanumantha Rao, learned standing counsel for first respondent Sri N Praveen Kumar and learned counsel for second and third respondents Sri P.Rama Sharan Sharma.

2. According to petitioners Sri P.Yellaiah is owner of total extent of Ac.2.00 guntas in Survey No. 764 (part) situated opposite to Teachers Colony, Bhongir town, Yadadri Bhongir district, out of which they purchased Ac.1.00 guntas vide registered document dated 17.4.2013. Petitioners filed WP No.18238 of 2019 alleging that unofficial respondents though unconnected to the subject land, fraudulently obtained building permissions from the Bhongir Municipality and started unauthorised construction over their land and that the Commissioner, Bhongir Municipality without issuing any notice to petitioners and without verifying the documents granted said building permissions.

3. This Court having considered the rival contentions, granted interim order on 23.8.2019 directing the respondents 5 and 6 therein not to make any construction and further directed

Commissioner, Bhongir Municipality to ensure that no construction is made by respondents 5 and 6. Alleging violation of said orders, this Contempt case is filed.

4. First respondent filed counter affidavit denying the allegations made by petitioners. It is stated that after clarification from HMDA vide its letter dated 20.11.2018, building permissions were granted by the Municipality to Mr Ritesh Kumar Sahu on 4.1.2019 and Mr Kolla Gangadhar on 17.1.2019. It is further stated that pursuant to interim orders of this Court, notice dated 27.8.2019 was issued to 5th and 6th respondents in writ petition directing them not to make any further construction. Along with counter affidavit photos taken on 27.8.2019 showing the status of the building were filed. In so far as 7th respondent is concerned it is stated that he is making construction as per sanctioned plan.

4.1. In the additional counter affidavit first respondent deposed that though intimation letter dated 27.8.2019 was issued to respondents 5 and 6 not to make any further construction, during the covid 19 pandemic situation, unofficial respondents completed the construction and residing therein. It is further stated that notices under Section 174 (4) and 178 (2) of Telangana State Municipalities Act, 2019 and Section 23 of HMDA Act, 2008 dated 11.2.2021 and 12.2.2021 and final notices dated 23.2.2021 were issued and in turn respondents submitted their reply dated 6.4.2021. It is further stated

that questioning the final notices, WP Nos. 13068 and 12536 of 2021 are filed and said writ petitions are disposed of remanding the matter for passing fresh orders assigning valid reasons. Pursuant to said orders, hearing was conducted and orders were passed on 9.8.2021 and it was decided to impose penalty as per rules.

5. This court having regard to the submission of the learned standing counsel for respondent municipality that respondents 2 and 3 herein have undertaken construction activity even after the interim orders were passed, admitted contempt case and issued notice in Form I by order dated 10.12.2021.

6. Court was informed that second respondent sold the property to third respondent long before the interim orders were passed. Therefore, even if construction was carried on by the buyer who is not a party to the writ petition or to this contempt, the second respondent cannot be held guilty. Accordingly, by order dated 4.3.2022 contempt was closed against second respondent.

7. In the affidavit filed by Sri K Gangadhar-the third respondent, he would urge that from the reading of interim order, he understood that he should not undertake further construction, if there is no building permission, whereas he was having valid building permission, and thus, he undertook further construction. He would submit that by the time interim order was passed, construction was almost completed and he had only undertaken finishing work. He

honestly believed that he could complete the construction and therefore his action was not wilful or deliberate. He would submit that the statements made by the petitioner were misleading and by making a false averment that HMDA rejected building permission, he obtained interim order, whereas the HMDA only directed the deponent to apply to the Municipality. Accordingly, building permission application was made to the Bhongir Municipality and the Municipality granted permission.

8. In the affidavit in the contempt counters and replies, parties referred to several aspects on issues concerning ownership, litigation and manner of obtaining building permissions, however, the Court is not considering all those aspects touching upon merits of rival claims. The only issue for consideration is whether the 3rd respondent violated the order of the Court and such violation was deliberate and wilful.

9. Once an order is passed by the Court not to act in a particular manner, that order must be followed in true letter and spirit. The sanctity to judicial proceedings is paramount to a society governed by law. Otherwise, the very edifice of democracy breaks and anarchy rains in.

10. The interim order passed on 23.8.2019 in WP NO. 18228 of 2019 reads as under:

"According to learned counsel for petitioners, an unapproved layout was prepared by Mr. Bojedla Venkateshwarlu and others, and in the process of making an unapproved layout, they have also encroached into the land of petitioners. In addition to the contention of the encroachment, the petitioners also contend that unofficial respondents are undertaking construction of buildings and the same is not valid. Further, even when the building permissions are rejected, building construction is going on. **From the document at page No.73, it is seen that the building permission-applications submitted by Mr. Ritesh Kumar Sahu and Mr. Kolla Gangadhar were rejected. That being so, respondent Nos. 5 and 6 are directed not to make any construction**, and respondent No,3-Municipality is directed to ensure that no construction is made by respondent Nos. 5 and 6.

At request of Standing Counsel, post on 03-09-2019 for instructions."

11. The portion underlined in the order is crucial to assess whether the third respondent is guilty of contempt. The direction portion of the order *'respondent nos. 5 and 6 are directed not to make any construction is qualified by 'that being so'*. Literally, **'that being so'** means *'to be able or permitted to do something' ; 'accordingly' ; 'as a consequence' ; 'as a matter of course' ; 'as a result' ; 'as matters stand' ; 'Assuming that to be the case'*. It is used to convey the intendment of the author on effect of sentence preceding the phrase. Going by this literal meaning, I see merit in the submission of third respondent that the order not to undertake further construction is on the assumption that there was no building permission. The operative direction has to be seen in the light of submissions of petitioner recorded earlier and what was

noticed by this Court. In the peculiar facts of this case, at any rate, decision of 3rd respondent that he can go ahead with further construction if he has a valid building permission can not be said as amounting to violating the orders of this Court, much less wilful and deliberate. To hold a person guilty of civil contempt 'wilful disobedience' is an indispensable requirement. Whether the conduct of contemnor is deliberate and wilful can be considered by assessing the material on record and attendant circumstances.

12. The Contempt of Courts Act is intended to correct a person deviating the norm and trying to breach the law/ assuming law on to himself. It intends to secure confidence of the people in the administration of justice by disciplining those erring in disobeying the orders of the Court.

13. Section 2(b) of the Contempt of Courts Act, 1971 defines 'civil contempt' to mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a court.

14. Constitutional Courts have laid down principles on when to exercise contempt jurisdiction. It is emphasised that there can be no laxity, as otherwise orders of court would be the subject of mockery (**Anil Ratan Sarkar v. Hirak Ghosh**¹; **Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**²). Disobedience of orders of the Court

¹ 2002(4) SCC 21

² (2008) 14 SCC 561

strikes at the very root of the rule of law on which the judicial system rests.

15. Disobedience of an order of court, whether prohibitive or mandatory, whether made *ex parte* or upon hearing both parties, or interim or perpetual, amounts to contempt if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard (**Jagarlmudi Chandramouli v. K.Appa Rao**³). The power, to punish for contempt, is exercised to prevent perversion of the course of justice. (**Kapildeo Prasad Sah v. State of Bihar**⁴).

16. The following conditions must be satisfied before a person can be held to have committed civil contempt:

(i) there must be a judgment, decree, direction, order, writ or other process of a court or an undertaking given to a court; (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court or breach of undertaking must be wilful. [**Patel Rajnikant Dhulabhai** (supra)].

17. It behoves *the court to act with as great circumspection* as possible, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise,

³ 1967(1) An.W.R.129

⁴ (1999) 7 SCC 569

arises that the contemnor must be punished. Punishment under the law of contempt is called for *when the lapse is deliberate* and in disregard of one's duty and in defiance of authority. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/ rights, including benefit of doubt (**Kanwar Singh Saini v. High Court of Delhi**⁵).

18. In the facts of this case, it can not be said that the actions of respondent-contemnors amounts to wilful and deliberate disobedience of the order of this Court, warranting action under the Contempt of Courts Act, 1971. Contemnors are discharged. Accordingly, the Contempt Case is closed.

JUSTICE P.NAVEEN RAO

Date: 10.06.2022
TvK/Pt

Note: L R Copy to be marked. YES

⁵(2012) 4 SCC 307

HON'BLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO. 1436 OF 2019

Date: 10.06.2022

Tvk/pt