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High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Original Contempt Petition No. 1353 of 2004

Lakhwinder Singh	APPELLANT
Vs	
Jasbir Singh Bir	RESPONDENT

Date of Decision: Nov. 8, 2005

Acts Referred:

- Contempt of Courts Act, 1971 - Section 12

Citation: (2006) CriLJ 1011 : (2006) 142 PLR 727 : (2006) 1 RCR(Civil) 111

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: P.S. Hundal, for the Appellant; A.R. Takkar, for the Respondent

Judgement

M.M. Kumar, J.
This contempt petition filed u/s 12 of the Contempt of Courts Act, 1971, alleges violation of the undertaking given by the respondents to this Court on 16.10.2003, which was recorded while disposing of Civil Writ Petition No. 5812 of 2003. The Division Bench has recorded the following order, which was duly consented by the parties:-

Written statements on behalf of Vigilance Department. Punjab Police as well as the Municipal Corporation, Amritsar have been filed in Court today, taken on record.

After hearing learned Counsel for the parties it has been suggested that this matter can be disposed of by a consented order. The agreed terms and conditions are as under:-

(i) That the petitioner will be restored with this site by the Corporation staff in accordance with law on the date to the fixed by the Court.

(2) The petitioner gives a specific undertaking to the Court that he would not raise any permanent structure on the site in question and would carry on his business strictly as per the The Bazari terms.

(3) The goods which were taken into custody by the Corporation staff of which inventory is stated to have been prepared as per its procedure shall be returned to the petitioner at the site in the presence of the Commissioner appointed by this Court. The goods mentioned in the Inventory shalj be returned to the petitioner against the receipt in the presence of the Commissioner. All the applications or complaints made in this regard shall be deemed to have been filed.

With consent, the learned Counsel for the parties suggest the name of Mr. S.K. Verma, Advocate, who is present in Court to be appointed as Commissioner.

We find the above terms and conditions suggested by the learned Counsel for the parties are other wise just, fair and equitable and would meet the ends of justice.

We accept the undertaking of the petitioner that he will not raise any permanent structure on the site in question and would carry on the business strictly in accordance with Teh-Bazari terms. The parties shall abide by the above consented order. The Commissioner shall be paid Rs. 5000/- by the petitioner in addition to the expenses for his travel and stay in Amritsar. The parties shall appear in the office of the Commissioner in the presence of Court Commissioner on 20.10.2003 at 11 a.m.

2. According to direction issued by the Division Bench, Shri S.K.Verma, Advocate of this Court went to the office of the Municipal Corporation on 20.10,2003 at 11.00 a.m. as per the specified time but the Commissioner, Municipal Corporation, was not found available in his office. However, the copy of the order was handed over to the Additional Commissioner, Municipal Corporation, Amritsar. The Additional Commissioner assured Shri S.K.Verma (the Court Commissioner) that the goods would be delivered to the petitioner at the site in dispute at 12.30 p.m. According to the report submitted by Shri S.K.Verma, dated 22.10.2003 (P-2), Shri S.K.Verma went to the site at 12.00 noon and thereafter two Inspectors namely Shri Yuvraj Singh and Shri Ramesh Sachdeva alongwith one Clerk Shri Shashi Puri of the Municipal Corporation came at the site at 1.15 p.m. along with truck having incomplete damaged items as per the inventory made by the Municipal Corporation. Shri S.K.Verma in his report has further stated that he was assured by those employees of the Municipal Corporation that they would bring remaining goods at the site. He waited up to 5.00 p.m. and when no one came forward with the goods or to deliver the possession of the site, he returned back. Feeling aggrieved the petitioner filed the contempt petition on 13.10.2004.

3. The stand taken by the Commissioner, Municipal Corporation, Amritsar (Respondent No.3) in his written statement is that a kiosk (Khoka) has been constructed on the site a goodwill gesture and the Corporation is ready to deliver the possession of the same to the petitioner at any time. Mr. A.R. Takkar has supplemented the statement on the basis of record that the aforementioned kiosk has been constructed in the month of January, 2005. He has also emphasised that unconditional apologies have been submitted by the Commissioner, Municipal Corporation, Amritsar (Respondent No.3). Similar averments

have been made by Shri Jasbir Singh, former Commissioner, Municipal Corporation (Respondent No. l), who has stated that he had relinquished the charge on 27.5.2003 and, therefore, the whole responsibility could only be that of respondent No.3.

4. When the matter came up for consideration on 25.10.2005, this Court has passed the following orden-

In the reply filed by respondent No. 3 Shri Kulbir Singh Kang, IAS, Commissioner, Municipal Corporation, Amritsar, the stand taken is that a kiosk of steel sheets and wood has been built and the petitioner may take possession of the same any time.

Before proceeding further in the matter and to ascertain the conduct of the respondents, let the possession of the aforementioned kiosk be taken by the petitioner on 27.10.2005 in the presence of his counsel. The goods as per the inventory, photocopy of which has been produced by the learned Counsel for the respondent in the Court today and copy whereof has been furnished to the counsel for the petitioner, shall also be delivered to the petitioner.

Adjourned to 8.11.2005.

Be shown in the urgent.

In pursuance to the aforementioned order, learned Counsel for the petitioner states that the possession of the kiosk has been delivered to the petitioner and articles have also been given back.

5. The question remains to be considered as to whether the respondents have violated the undertaking given to this Court and the same has to be analysed in the light of the report submitted by Shri S.K. Verma, Advocate, who was appointed by this Court as Court Commissioner. His report dated 22.10.2003 (P-2) has not been controverted in the reply filed by respondent No.3. However, on the basis of the record it was sought to be projected that the petitioner had insisted for a restored kiosk, which was to be constructed by the Municipal Corporation.

6. I have heard the learned Counsel for the parties.

7. There are clear stipulations in the order dated 16.10.2003 that the petitioner, was to be restored with his site by the Corporation staff in accordance with law and the date for that purpose was fixed as 20.10.2003 at 11.00 a.m. It was also undertaken by the respondent No. 3 that the goods of the petitioner were to be restored back to the petitioner in accordance with the inventory prepared by the Corporation. With the consent of the parties, Smt. S.K. Verma, Advocate of this Court was appointed as Court Commissioner to oversee the implementation of the undertaking given to his Court. According to the report submitted by Shri S.K.Verma neither the possession of the site was delivered nor the goods were restored on 20.10.2003. The aforementioned report was submitted on

22.10.2003. Thereafter the petitioner was forced to file the instant contempt petition on 13.10.2004. It was after the issuance of notice to show cause that the respondents in January, 2005 constructed a kiosk for the petitioner and offer to deliver the possession of the kiosk as well as the goods. Therefore, it is amply clear that respondent No.3 has violated the orders, which were passed by this Court on the basis of the consent and undertaking given by him. The order was passed during his tenure as Commissioner of Municipal Corporation, Amritsar, who continuous to hold the aforementioned position even today. Therefore, there is a clear case of contempt made out against respondent No.3. However taking into consideration the fact that the goods have been delivered and site has now been restored to the petitioner, I am inclined to take a lenient view.

8. Having found that the orders dated 16.10.2003 were violated and after hearing learned Counsel for respondent No. 3, I am of the view that the ends of justice would be met if respondent No. 3 is administered an admonition to be careful in future. If in future, any other case of contempt is made out against him then a strict view shall be taken. This order may be communicated to the Chief Secretary to Government of Punjab.

9. Contempt petition stand disposed of.