

(2013) 07 AHC CK 0269

Allahabad High Court

Case No: Contempt Appeal No. 4 of 2013

Tarun Kumar Agrawal

APPELLANT

Vs

Executive Engineer, U.P. Avas
Evam Vikas Parishad

RESPONDENT

Date of Decision: July 12, 2013

Citation: (2013) 101 ALR 46 : (2014) 3 AWC 2331

Hon'ble Judges: Vinod Prasad, J; Anjani Kumar Mishra, J

Bench: Division Bench

Judgement

Anjani Kumar Mishra, J.

This Contempt Appeal u/s 19 of the Contempt of the Courts Act has been filed against the order dated 6.5.2013. The facts relevant for the instant appeal are as follows:

Plot number F-15 (40), Shastri Nagar, Meerut was allotted to one P.S. Mahesh by the U.P. Avas Evam Vikas Parishad . The original allottee applied for and obtained sanction of map No. 229 dated 28.4.2012 from the U.P. Avas Evam Vikas Parishad, Meerut for raising a residential house over the aforesaid plot. On an inspection, it was discovered that the constructions on the spot were not being raised in accordance with the sanctioned plan. A show-cause notice was therefore issued on 28.7.2012 to the recorded owner to show-cause why the unauthorised constructions be not demolished. Since none appeared on the date fixed in pursuance of the notice aforesaid, an Order for the demolition of the unauthorised constructions was passed by the Competent Authority on 8.8.2012.

2. After the order of the demolition was passed, two representations were made by the appellant. The first on 14.8.2012 wherein it was admitted that the constructions being raised on the spot were at variance with the sanctioned plan while by the second representation dated 28.5.2012 it was intimated that the appellant had purchased the plot in question from the original allottee, P.S. Mahesh.

3. The appellant challenged the demolition order by means of a Writ Petition No. 5391 of 2012, wherein a Division Bench on 10.10.2012, passed an order directing the parties to maintain status quo as regards the constructions in question.

4. The Executive Engineer, U.P. Avas Evam Vikas Parishad, Meerut filed a Contempt Application (Civil) No. 1456 of 2013 alleging therein that the order of status quo was being violated by the appellant and he was continuing with the constructions. Photographs of the constructions made in defiance of the order of status quo, snapped in November, 2012 were annexed alongwith the contempt application. It was further stated that a notice dated 13.12.2012 was issued to the appellant, calling upon him to stop the construction work being carried out in defiance of the interim order dated 10.10.2012. In response to this notice, Tarun Kumar Agrawal submitted a reply that he was only getting the finishing work done, that no work was being done as far as the disputed construction was concerned and that he had not been restrained from continuing the work in the rest of the house apart from the disputed constructions.

5. The contempt application aforesaid was entertained and notices were issued to the opposite party in the contempt petition (appellant herein) by this Court fixing, 6.5.2013.

On the date fixed, a counter-affidavit filed by Sri Tarun Kumar Agarwal was taken on record and the order impugned was passed.

6. We have heard Sri Gautam, learned Counsel for the appellant and have perused the record.

The stamp reporter has reported that the instant appeal is not maintainable.

A perusal of the order impugned shows that it grants time to the Counsel for filing a rejoinder-affidavit in response to the counter-affidavit filed by the contemnor and further directions contained in the said order have been issued only to ensure compliance of the order of status quo passed by the Writ Court on 10.10.2012. No order of punishment has been passed.

7. We have also perused the counter-affidavit filed by the appellant in the contempt petition as also the affidavit in support of the stay application in this appeal wherein the appellant has admitted that construction work was being carried out by him. However, the entire thrust of the averments is to justify the construction work being carried out. The object of invoking the appellate jurisdiction appears to be to obtain some order or observation, interpreting the order, contempt whereof is alleged, which would absolve the appellant of the contempt notice even before the contempt Court has applied its mind to the decide the matter finally. This, to our mind, is impermissible.

8. Section 19 of the Contempt of Courts Act, invoked by the appellant reads as follows:

19. Appeals.--(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt....

The Apex Court considering the import of the aforesaid provision of law in the case of [Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,](#) has held in paragraph 11 of the said judgment as follows:

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal u/s 19 is maintainable only against an order of decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order in initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of Court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt") and, therefore, not appealable u/s 19 of the CC Act. The only exception is where such direction or decision is incidental to, or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in the contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-Court appeal (if the order was of a Single Judge and there is a provision for an intra-Court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

9. As already observed by us, the order impugned does not award any punishment to the appellant and is therefore clearly covered by condition I aforementioned. Besides, the direction issued in the order under appeal is not one which would bring it within the ambit of condition IV above. In view of the preceding discussions and also considering the fact that no order of punishment has been passed by the impugned order, we have no reservations in holding that the instant Contempt Appeal is not maintainable.

The contempt appeal is therefore dismissed as not maintainable.