

(2003) 10 AP CK 0008

Andhra Pradesh High Court

Case No: CA No. 6 of 2001 and LPA No. 306 of 2001

District Collector and Another

APPELLANT

Vs

Kotagadda Sayed Mahaboob
Basha

RESPONDENT

Date of Decision: Oct. 31, 2003

Acts Referred:

- Contempt of Courts Act, 1971 - Section 12

Citation: (2004) 3 ALD 605

Hon'ble Judges: K.C. Bhanu, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Advocate General, for the Appellant; P. Veera Reddy, for the Respondent

Final Decision: Allowed

Judgement

Bilal Nazki, J.

This LPA and contempt appeal have been filed against an order passed by learned Single Judge in C.C. No. 1300 of 1998. Learned Advocate-General submits that he had filed contempt appeal, but apprehending that the contempt appeal may not be maintainable in view of the fact that there has been no conviction in the contempt, therefore he has filed a Letters Patent Appeal against the judgment of the learned Single Judge. Both the appeals are therefore disposed of together without deciding as to whether a contempt appeal was maintainable or not. That question would remain open.

2. The parties will hereinafter be referred to as they are arrayed in the contempt case.

3. An application for initiation of contempt was filed being CC No. 1300 of 1998 which was decided by the learned Single Judge on 2.2.2001 alleging non-compliance of the orders passed by the Court on 30.7.1997 in W.P. No. 17363 of 1997. It appears that the Government had issued a memo on 27.12.1996 directing the respondents

i.e.. State authorities to reconvey the land admeasuring Ac.2-49 in Sy.Nos. 534/ 5, 534/6 and 534/7 of Proddatur Town, Cuddapah District to the petitioner. The order issued by the Government was not implemented and the writ petition was filed for implementation of the order. The High Court disposed of the writ petition on 30.7.1997 with a direction to District Collector to implement the order passed by the Government on 27.12.1996 reconveying the land to the petitioner. The High Court also asked the District Collector to implement its order within six weeks. It was alleged in the contempt petition that the order of the High Court had not been complied with. When the contempt was being heard, the Government filed a review application seeking review of the order dated 30.7.1997 passed by the High Court in W.P. No. 17363 of 1997 on the ground that the order passed by the Government dated 27.12.1996 was passed under some mistake and the reconveyance was not legally permissible in law. The review application was dismissed on 16.12.1999. Subsequent to the dismissal of the review application the Government passed another order being Memo No. 9734/ I.A.II/98, dated 12.10.2000 cancelling the earlier orders of reconveyance, dated 27.12.1996. The facts have been given in detail so that the controversy would be appreciated in its right context.

4. It appears that the land was acquired and after acquisition writ petitions were filed by owners of the land which were dismissed, but they continued to make representations to the Government for reconveyance of the Land and the Government passed an order on 27.12.1996 which inter alia reads as under.

"As per the Collector's report at reference 1st cited, the land of Ac.2-49 cents acquired by the Government on 10.1.1977 in Proddatur town, was not distributed to anybody for the last 20 years, and the compensation as per the award passed by the LAO. Proddatur on 23.10.1976 was also not received by the awardee. This land is being enjoyed by the petitioner (Sri. K.S. Mahabub Basha) and also as per the Municipal Act, the land is located in an Industrial Area and this cannot be assigned for house sites. Further as clarified by the Mandal Revenue Officer, Proddatur, the petitioner is a small farmer. Therefore, the Government consider that there is only one alternative of reconveyance of the acquired land to the petitioner. Government after careful re-examination, hereby order for the reconveyance of the land admeasuring Ac.2-49 cents acquired on 10.1.1977 in S.Nos. 534/5, 534/6, 534/7 in Proddatur town to the legatee of the owner of the land, Sri (late) K. Syed Khader as determined by the Sub-Judge, Proddatur in O.P. No. 25/93 dated 23.12.1994."

5. When this order was not implemented, the petitioner filed a writ petition being W.P. No. 17363 of 1997 and the learned Single Judge passed the following order:

"Under these circumstances, the writ petition is disposed of with a direction that the District Collector, the first respondent herein shall implement the orders passed by Government in Memo, dated 27.12.1996 within a period of six weeks from the date of receipt of a copy of this order,"

6. Then a contempt case came to be filed. A review application was filed which was not allowed and the Government passed an order on 12.10.2000. Before the learned Single Judge the Government had taken a plea that this was not a case of any intention or deliberate violation of the orders of the Court. Since the basis for the order of the Court was on order of the Government dated 27.12.1996 which no longer existed, therefore the Court's order had become unenforceable. It was contended before the learned Single Judge that on account of legal hurdles the earlier orders issued by the Government had to be cancelled. Before the order dated 27.12.1996 was passed by the Government in favour of the petitioner, the Government rejected his claim twice, but on third occasion an order of reconveyance was passed. This order, according to the Government, was not a legal order because it was not permissible under law. A review application had been filed before the Court which was dismissed. Therefore the Government thought it appropriate to revoke the order passed in 1996. The learned Single Judge, however, noted.

"The sequence of events as narrated above would clearly go to show that the Government have not acted in a bona fide manner. If it is the case of the Government that for two successive times the case of the petitioner was rejected and it was accepted at the 3rd time, it is to be understood that the Government has considered the case in depth and passed the orders of reconveyance on 27.12.1996. Even when the writ petition was pending, there was no such attempt to bring to the notice of the Court that the orders of reconveyance were illegal and it is only after the writ petition was disposed of and contempt proceedings were initiated, such a course appears to have been taken to thwart the orders of this Court on the premise that the orders of reconveyance passed earlier in 1996 are contrary to law. The respondents cannot be permitted to nullify the orders of this Court by recalling the orders, which were directed to be implemented. What could have been done prior to the order of this Court cannot be allowed to be done after the order as the mandate issued by this Court under Article 226 of the Constitution of India became final. It is impermissible for the Government to pass orders dated 12.10.2000 in the guise of recall. Though I find that the Government in passing the orders dated 12.10.2000 tried to interfere with the Courts of justice and thought it constitute deliberate violation of the orders of this Court and that the respondents are liable to be punished for contempt of Court, I am not inclined to punish the respondents as I feel that one more chance should be given to them to set right the things in accordance with the directions of this Court."

7. Consequently the Court ordered implementation of its order dated 30.7.1997 without reference to the subsequent proceedings issued by the Government on 12.10.2000. Now the learned Advocate-General submits that the order dated 12.10.2000 is a valid order passed with jurisdiction by the Government. This order has not been tested by the learned Single Judge and this order has not, in fact, been challenged, therefore in contempt proceedings the learned Single Judge could not

direct implementation of the Government's earlier order without implementing the Government's latter order. Law is well settled that contempt would only arise where there is a deliberate and wilful disobedience of the order of the Court. The Government had passed an order of reconveyance, it had not been implemented and a writ petition was filed. The High Court passed an order directing reconveyance in terms of the Government order dated 27.12.1996. Now the Government by its order dated 12.10.2000 revoked the earlier order dated 27.12.1996. The basis of the High Court's order has been removed. Therefore, in our view, there was no question of implementation of the order of the High Court passed in the writ petition. If the petitioner was aggrieved of the order passed by the Government in 2000 cancelling the earlier order dated 27.12.1996, he had to file a separate writ petition challenging the order of 2000. In this connection the learned Advocate-General has relied on various judgments of the Supreme Court to say that in contempt proceedings the Court cannot go beyond the order passed by it which was stated to have been violated. The order of the Court could only be implemented if the order of 1996 had remained in force. Whether the Government had the power to issue an order in 2000 cancelling its earlier order of 1996 or not could be a matter for dispute. Many things could be said in favour of the legality of order of 2000 and against its legality, but this could not be a case of contempt and the legality of this order could be gone into not in a contempt application, but in a regular writ petition. The learned Advocate-General submits that even the learned Single Judge has not gone into merits of the order dated 12-10-2000. He relies on a judgment of the Supreme Court reported in [J. Parihar Vs. Ganpat Duggar and others](#), . In this case the controversy was that the Government had refrained a seniority list after the judgment of the Court on the directions of the High Court. The allegation was that the seniority list drawn by the Government was not in conformity with the directions of the High Court. The Supreme Court was of the view that when a seniority list was drawn pursuant to the directions of the High Court, the High Court could not come to a conclusion whether the seniority list had been drawn in accordance with its direction or not, unless it had gone into the correctness of the decision taken by the Government in preparation of the seniority list. The Supreme Court stated: "The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the

matter on merits in the contempt proceedings. It would not be permissible u/s 12 of the Act."

8. The learned Advocate-General also refers to the judgment of a Division Bench of this Court reported in [Prof. Pannalal, Registrar, Osmania University, Hyd. Vs. Holy Bharathi P.G. College, Hyd. and others](#),), of which one of us was an author. In this case a writ petition was filed against Osmania University seeking a direction to consider the application of the writ petitioner for grant of affiliation. The High Court directed the University to consider the application of the writ petitioner and pass an order within four weeks. The University did not pass an order and a contempt petition was filed. In contempt the High Court passed an order asking the University to grant affiliation, while the contempt petition was pending. The University passed an order rejecting the application of the writ petitioner. Then the Division Bench of this Court set aside the order of the learned Single Judge on the ground that the order passed by the Osmania University rejecting the application of the writ petitioner was a fresh cause of action and the Court, while deciding the contempt petition, it had also decided the fate of the order passed by the University rejecting the application of the writ petitioner. The Court held:

"4. From the order of the learned Single Judge it appears that, on 11-9-2000 the Counsel for the University had stated that the report of the Inspection Committee was awaited. He had also stated that in all probability the University would be giving affiliation. But, an order was passed on 22-9-2000 rejecting the request of the writ petitioner by giving reasons. The reasons have been reproduced by the learned Single Judge in the order passed in contempt petition. The learned Judge found that the reasons given were non-germane to the controversy and according to him the University had no business to go into the aspects relating to infrastructure as according to the learned Single Judge these were matters which had to be considered by the AICTE, since AICTE had already given permission, therefore the University authorities could not go in such questions."

Then in Para 9 the Division Bench of this Court held,

".....the fact that the learned Single Judge has decided the fate of the order dated 22-9-2000 on merits, the learned Single Judge has found the order to be bad and therefore he has decided the matter finally between the parties pertaining to the legality of order dated 22-9-2000 rejecting the request of the writ petitioner for grant of affiliation, therefore even if it is accepted that this Court has no power u/s 19 of the Contempt of Courts Act, this Court has the power under Clause 15 of the letters Patent."

9. So in the present case also the learned Single Judge passed an order deciding the fate of the order of 2000 without going into the merit of that order. The learned Advocate-General has also referred to a judgment of the Supreme Court reported in *Lalith Mathur V. L. Maheswara Rao*, (2000) 10 SCC 285 . The Supreme Court in *Paras*

3 and 4 held:

"3. The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a Government department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or under Article 215 of the Constitution.

4. The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits,"

10. He has also referred a judgment of a Division Bench of this Court reported in *State of A.P. v. Venkayya* 1965 (1) An.WR 74. This judgment was pressed into service to say that after the acquisition of land the Government has no power to reassign the land to the owner. We are not going to that question either because that was not a question which had to be decided initially in the contempt application and the question cannot be decided by this Court as well in an appeal which is against the order passed in contempt case.

11. The learned Counsel for the respondent has referred to many judgments reported in [Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others](#), , [Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others](#), , [Delhi Development Authority Vs. Skiper Construction Company \(P\) Ltd. and another](#), and a judgment of this Court reported in *K. Veeraiah v. N. Venkateswarlu* 1985 (2) APLJ 193. In view of the fact that we have found that the Government had passed an order in 2002 and that order had not been challenged and the learned Single Judge had not gone into the merits of that order, and if the petitioner was aggrieved of that order, it was for him to challenge that order, therefore the judgments referred to above by the learned Counsel for the respondent would not be applicable to this case.

12. The appeal is accordingly allowed, the order of the learned Single Judge is set aside and we hold that till the order dated 12-10-2000, remains in tact, the order passed by the Court in WP No. 17363 of 1997 cannot be implemented and becomes unexecutable because the basis on which that order had been passed has been removed by the Executive by passing an order dated 12-10-2000.