
Gyaninder and Others Vs Shri Surender Singh, S.O. and Others

CCP No. 153 of 2008 in CS (OS) No. 349 of 2006

Court: Delhi High Court

Date of Decision: Feb. 4, 2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A#Contempt of Courts Act, 1971 " Section 11, 12, 2#Land Acquisition Act, 1894 " Section 48

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Sunil Chauhan, for the Appellant; Sangeeta Chandra, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar, J.

The petitioners have filed this contempt petition u/s 11 and 12 of Contempt of Courts Act for alleged violation of the

judgment and decree dated 4th April, 2008 passed by the Court in CS(OS) No. 349 of 2006 titled Shri Ganga Ram and Ors. v. Delhi

Development Authority. The petitioners were not party to the said suit nor are they the decree holders.

2. The petitioners alleged that they are the owners and in possession of land comprised in Khasra No. 31/7 min. (0-4) situated within the revenue

estate of Village Palam, New Delhi. The said land measuring 5 bighas and 12 biswas is alleged to be recorded in the bhoomidari holdings of the

petitioners and their predecessor-in-interest and is alleged to have been notified for acquisition and award No. 157-86/87 was announced.

However, according to the allegations of the petitioners, the possession of an area measuring 4 biswas out of the total of 5 bighas and 12 biswas

was not taken by the Land Acquisition Collector as the said area was built up and the said area remained in the possession of the petitioners.

3. Petitioners have alleged that the land measuring 4 biswas has always been used by the petitioners and other co-owners as "gher and Gitwar",

for tying their milch cattle and for storing fodder and other agriculture implements. According to the petitioners, on account of interference by the

employees of Delhi Development Authority in their peaceful possession, the other co-owners, namely, Shri Ganga Ram, Shri Puran Mal - both

sons of late Shri Ram Chander; Shri Kuldeep Kumar, Shri Vinod Kumar - both sons of late Shri Satdev; Shri Devi Dutt, Shri Mukesh, Shri Sanjay

and Master Naresh - all sons of Late Shri Murarli Lal, had filed a suit being CS(OS) No. 349 of 2006 titled Shri Ganga Ram and Ors. v. Delhi

Development Authority which was compromised and a judgment and decree dated 4th April, 2008 was passed. The decree for permanent

injunction was passed in favour of plaintiffs and against Delhi Development Authority restraining DDA from dispossessing the plaintiffs from the suit

property as shown in the site plan annexed with the plaint till the final decision of their representation pending before Hon"ble Lieutenant Governor,

Delhi, u/s 48 of Land Acquisition Act, 1894 and all the pending applications in the suit were also disposed of.

4. This has not been disputed that the present petitioners were not party to the suit filed by the alleged co-owners of 4 biswas of the land and that

the judgment and decree was not passed in their favor but it was passed in favor of other co-owners of the said land.

5. According to the petitioners, Delhi Development Authority has committed Contempt of Court as Shri Surender Singh, S.O., Horticulture

Department, had filed a false and frivolous complaint before the SHO, Police Station Dwarka, New Delhi, alleging that the petitioners constructed

a room in the suit property. On the complaint being filed, the SHO concerned, Shri T.R. Mongia, is alleged to have called the petitioners to Police

Station and allegedly illegally detained the petitioners No. 1 and 2 for hours together without registering any case against them.

6. It is further contended by petitioners No. 1 and 2 that after their detention by the Police, the other petitioners with their counsel went with the

certified copy of the judgment and decree passed in favour of other co-owners. It is asserted that it was proclaimed by the police officials and

other officials that the judgment and decree produced by the petitioners are false and fabricated.

7. The allegation is also made that the contemnor No. 1 openly claimed that he does not care about any order of the court and so carried out

demolition. He also threatened that in case the petitioners try to resist the demolition, then he will get them arrested. The grievance of the petitioners

is also that SHO after seeing the judgment and decree did not register any case against contemnor nor did he register any case against the

petitioners as he was convinced that the land is owned by the petitioners and consequently the concerned SHO directed the alleged contemnor

No. 1 to file appropriate complaint through his nodal officer after verifying the facts.

8. The allegations is also made against contemnors No. 1 and 2 that without verifying the facts and giving notice they came to site on 23rd June,

2008 along with labourers and carried out illegal demolition of boundary walls of the petitioners. According to the petitioners, the demolition was in

violation of judgment and decree of this Court and was done willfully and intentionally and thus the respondents are liable for committing contempt

of this Court.

9. The petitioners have also alleged that the respondents are filing false and frivolous cases against the petitioners and harassing them and therefore,

interfering with the judgment and decree passed in favor of other co-owners of the property.

10. The notice was issued to the respondents and Ms. Sangeeta Chandra, Advocate, had appeared for the respondents/contemnors and has

contended that the contempt petition is not maintainable in the present form and in the facts and circumstances. According to the learned Counsel,

the judgment and decree was passed in favour of other co-owners and in case there is a violation of the judgment and decree passed in favour of

decree holders, they can file appropriate application against violation of judgment and decree passed in favour of plaintiffs/decree holder in

CS(OS) No. 349/2006. It is asserted that merely because the petitioners are the co-owners, they do not get any benefit under the judgment and

decree dated 20th February, 2006. It is contended that unless the decree holder takes up the issue regarding alleged violation of the judgment and

decree, the petitioner cannot allege that the judgment and decree has been violated nor can seek execution of the decree passed in favor of other

decree holders.

11. It is further contended that for enforcement of judgment and decree, the course available to the decree holders in CS(OS) No. 349 of 2006 is

to file an appropriate application under Order XXXIX Rule 2A and not under the Contempt of Courts Act. Learned Counsel for Delhi

Development Authority has also relied on a judgment of this Court, Anand Kumar Deepak Kumar v. Haldiram Bhujawala and Ors. 146 (2008)

DLT 100, where it was held that filing a contempt petition under the Contempt of Courts Act, 1971 would not be appropriate remedy when

disobedience of an injunction order passed under Order XXXIX Rules 1 and 2 of CPC is the bone of contention and the proper remedy is to file

an application under Order XXXIX Rule 2A of Code of Civil Procedure.

12. In the present case, the judgment and decree for permanent injunction has been passed against DDA and in favour of other co- owners and

not in favour of petitioners. The petitioners being merely the co-owners cannot implement the judgment and decree without the assistance or

without the decree holder. Even if a petition is to be filed by the decree holders of CS(OS) No. 349 of 2006 titled Shri Ganga Ram and Ors. v.

Delhi Development Authority, the proper remedy for them would be to file an application under Order XXXIX Rule 2A of CPC and not a petition

for committing Contempt of Court.

13. For the alleged harassment allegedly caused to the petitioners by filing false complaints against them and for their alleged illegal detention, the

remedy for them is to file appropriate proceedings in the appropriate forum and not a contempt petition for the violation of judgment and decree

for permanent injunction passed in favour of the other co-owners.

14. A proceeding under the extraordinary jurisdiction of the court under the provisions of the Contempt of Courts Act, 1971 is quasi- criminal and

the exercise of power within the meaning of the Act of 1971 is comparatively a rarity and should be used sparingly and in the larger interest of

society and for proper administration of justice. It is also true that mere disobedience of an order may not be sufficient to amount to ""Civil

Contempt"" within the meaning of Section 2(b) of the Act of 1971. The element of willingness and intention is an indispensable requirement to take

action. It is also true that if two interpretations of the action of alleged contemnor are possible and one of such interpretations raise doubts about

the willful nature of conduct, then contempt will not be made out. In the present case, the judgment and decree is not in favor of the petitioners. For

the alleged false complaints and their alleged detentions, the contempt of Courts proceedings cannot be initiated against the alleged offenders in the

present facts and circumstances.

15. Consequently, the contempt petition of the petitioners is not maintainable and it is, therefore, dismissed. It is, however, made clear that no view

has been expressed by this Court on the merits of the matter regarding the demolition of the structure by the officials of DDA and violation of the

judgment and decree dated 4th April, 2008 and the alleged illegal action of the police officials in detaining the petitioners. The contempt petition

has been decided purely on the question of maintainability and the petitioners shall be free to invoke the appropriate remedy in the facts and

circumstances. In the facts and circumstances, there will not be any order to cost on the parties.