

SUPREME COURT OF INDIA

T.C.Gupta

Vs.

Bimal Kumar Dutta

C.A.No.9476 of 2013

(P. Sathasivam CJI. and Ranjan Gogoi JJ.)

25.10.2013

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. By its order dated 23.07.2012 the High Court of Punjab and Haryana has found the appellant guilty of commission of contempt in respect of an order dated 18.08.2011 passed in Civil Misc. No.10994 of 2011 arising out of Writ Petition (C) No.11684 of 2011. Consequently, the appellant was summoned to appear before the High Court on 30.07.2012 for hearing before pronouncement of order on the punishment to be imposed. Aggrieved, the present appeal has been filed.

3. The facts that will be necessary to be noticed are as follows: The respondent No.1 herein, as the writ petitioner, instituted a Public Interest Litigation before the High Court (C.W.P. No.11684 of 2011) raising a grievance with regard to the Final Development Plan 2025-AD for Gurgaon-Manesar Urban Complex published vide Notification No. CCP (NCR)/FDP(G)/2011/1386 dated 24.05.2011. Specifically, it was contended that Sectors 63-A and Sector 67-A have been carved out in the Development Plan contrary to the Zoning Regulations which are required to be followed. The Final Development Plan, it may be noticed, is prepared under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the Act of 1963).

4. Notice on the writ petition was issued by the High Court on 8.07.2011. Thereafter, on 11.08.2011 Civil Misc. Application No.10994 of 2011 was filed

before the High Court for stay of the implementation of the Final Development Plan “in view of contemplated grant of licence to the colonizers/developers/societies.” On 18.08.2011 the following order was passed by the High Court in C.M.No.10994 of 2011:

“Notice for the date fixed.

Mr. Anil Rathee, Addl. A.G., Haryana, present in Court, accepts notice.

In the meanwhile, there will be status quo as to allotment as on today.”

5. Though an application to vacate the aforesaid interim order was filed by the Respondents in the writ petition the interim order was neither vacated nor modified by the High Court and continued to remain in force. While the matter was so situated the appellant who then serving as the Director General, Town & Country Planning, Haryana, had granted a licence dated 28.12.2011 for setting up of a Residential Plotted Colony on land measuring 100.262 acres falling in Sector 63-A of the Gurgaon-Manesar. The aforesaid grant of licence [under the Haryana Development and Regulations of Urban Areas Act, 1975] (hereinafter referred to as ‘Haryana Act of 1975’) by the appellant had led to the institution of the contempt proceeding in question which was registered as C.O.C.P. No.120 of 2012. The said action was initiated on the basis that the grant of the licence dated 28.12.2011 by the appellant is in violation of the order of the Court dated 18.08.2011.

6. The appellant had filed his response in the contempt proceeding contending that no allotment was made by him or by any other authority so as to constitute violation of the order of the High Court dated 18.08.2011. The appellant, in his reply, further stated that in every residential sector, a maximum of 20% of the net planned area was earmarked for group housing and 3.5% for commercial purposes whereas for plotted residential colonies there was no restriction except the requirement of a minimum area of 100 acres. It was also stated that while the applications for group housing and commercial activities was to be accorded priority on the basis of date of application the same was not so in respect of applications for plotted colonies which are to be considered and licences are to be granted on fulfilment of the conditions prescribed. It was further stated by the appellant that though not specifically prohibited by the order dated 18.08.2011, out of sheer deference, no licence has been granted or contemplated for group housing colony/commercial colony as such licences can be granted upto a maximum limit of the net planned areas. Licences for plotted colonies, according to the appellant,

stood on a different footing inasmuch as for grant of such licences no ceiling limit exists. After offering the aforesaid explanations, in the penultimate paragraph of the reply the appellant had tendered his unqualified and unconditional apology in the following terms:

‘It is humbly submitted that the answering deponent has unfailing regard for this Hon’ble Court and all others courts of India and cannot think of disobeying any order passed by the Hon’ble Law Court. It is an article of faith for them to respect the orders passed by the Hon’ble Courts. However, if this Hon’ble Court still comes to the conclusion that the answering deponent has committed any contempt of court, the deponent tender unqualified and unconditional apology for the same.’

7. The High Court, on consideration of its interim order dated 18.08.2011 and response of the appellant referred to above, came to the conclusion that its order dated 18.08.2011 has to be understood to have imposed a comprehensive embargo on issuance of all kinds of licences and, therefore, the grant of licence dated 28.12.2011, though for a plotted housing colony, amounted to violation of the order dated 18.08.2011. Accordingly, the High Court held the appellant guilty of commission of contempt and passed orders for his personal appearance for hearing on the quantum of punishment.

8. We have heard Mr.Goolam E. Vahanvati, learned Attorney General for India, appearing for the appellant, Mr. Kamal Mohan Gupta, learned counsel for the respondent No.2 and Mr. Soli J. Sorabjee, learned senior counsel for the respondent No.3. None has appeared on behalf of the first respondent i.e. writ contempt petitioner before the High Court.

9. It is the common ground of the learned counsels appearing for the contesting parties that the interim order of the High Court dated 18.08.2011 had only restrained the concerned authority from making any allotments. Admittedly, no allotment(s) were made. There was no specific order prohibiting the implementation of the development plan, though such a relief was prayed for before the High Court. It is urged that the appellant, in his reply, had set out the manner in which he had understood the order dated 18.08.2011, namely, that the said order had not placed any kind of prohibition on grant of licences under the Haryana Act of 1975. Yet, out of deference to the order of High Court, no licence either for group housing or commercial activities in either Sector 63-A or 67-A was issued or granted and the entire of the earmarked land in both these sectors for Group Housing and Commercial purposes was kept vacant. Only in respect of

plotted colonies for which there was no ceiling limit the licence dated 28.12.2011 was issued. It is further urged that in the light of the specific order passed by the High Court it cannot be said that the appellant or any other person or authority had violated the same. It is also pointed out by the learned counsels that, in any view of the matter, the appellant had tendered his unqualified and unconditional apology which, in fitness of things, ought to have been accepted by the High Court. Lastly, the learned Attorney General, by drawing the Court's attention to the counter affidavit filed before this Court by the second respondent, has submitted that the writ petition itself had been dismissed by the High Court on 30.10.2012 holding that the validity of the development plan published by the Government in accordance with the relevant provisions of the Statute is not open to challenge by means of a Public Interest Litigation. It is also pointed out that the aforesaid order of the High Court has attained finality in law.

10. The terms of the order of the High Court dated 18.08.2011; the averments/statements made in the contempt petition and the reply thereto on behalf of the appellant as well as the subsequent facts placed before us have received our due and anxious consideration. The interim order of the High Court had directed status quo to be maintained in respect of allotments. Admittedly, no allotments had been made by the appellant or any other authority. A contempt action being in the nature of quasi criminal proceeding the degree of satisfaction that must be reached by the Court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt. The order of the Court in respect of which violation is alleged must, therefore, be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged. An interpretation of the terms of Court's order in respect of which disobedience is alleged would not be appropriate while dealing with a charge of contempt. Such a charge cannot be brought home by unravelling the true meaning of the Court's order by a subsequent order when there is an apparent ambiguity, lack of clarity or dichotomy in the initial order. In a situation like the present where the High Court had directed maintenance of status quo as to allotment when the interim prayer was to stay the implementation of the final development plan "in view of contemplated grant of licence to the colonizers/developers/Societies" it was not open for the High Court to hold the contemnor guilty of commission of contempt by understanding the order dated 18.08.2011 to mean status quo or a restraint in respect of grant of licences under the Haryana Act of 1975.

11. In an earlier part of the present order, we have noticed the unqualified and unconditional apology tendered by the appellant before the High Court in the event

his explanations were to be found unacceptable. The explanation to Section 12 of the Contempt of Courts Act, 1971, makes it clear that an apology tendered by a contemnor should not be rejected merely on the ground that it is qualified or conditional so long it is made bona fide. In his reply, the appellant, after offering his explanations, had tendered his unconditional and unqualified apology in the event the explanations did not commend for acceptance of the High Court. In the decision rendered in O.P.Sharma and Ors. Vs. High Court of Punjab and Haryana[1], this Court has already held that in view of the explanation to Section 12 of the Contempt of Courts Act an apology ought not to be rejected only on the ground that it is qualified so long as it is made bona fide. In the present case there is nothing on record to suggest that the unqualified and unconditional apology tendered by the appellant in his reply before the High Court was actuated by reasons that are not bona fide.

12. It has also been noticed by us that the writ petition in which the interim order dated 18.08.2011 came to be passed has been finally terminated by an order dated 30.10.2012 dismissing the writ petition and also that the said order has attained finality in law. This is another relevant circumstance that cannot be ignored though we should not be understood to be saying that all cases of dismissal of the writ petition, by itself, would absolve a contemnor of the charge of commission of contempt in respect of an interim order passed while the writ petition had remained pending.

13. In view of the aforesaid, we are unable to sustain the order dated 23.07.2012 passed by the High Court. We accordingly set aside the said order dated 23.07.2012 and allow the appeal.

[1] (2011) 6 SCC 86 [para 34 and 35]