

PUNJAB AND HARYANA HIGH COURT

Narain Singh

Vs

S. Hardayal Singh Harika

(Tek Chand, J.)

25.10.1957

ORDER

Tek Chand, J.

1. This is an application under Section 3 of the Contempt of Courts Act praying that the respondent, who is the Executive Officer of the Municipal Committee of Patiala, has committed contempt of Court and he should be suitably punished.

2. The allegations of the petitioner are that he has been in possession of a piece of land measuring 252 square yards at Patiala for a long time. He received a notice dated 13th February, 1953, from the respondent as the Executive Officer of the Municipal Committee of Patiala, under Sections 172/195 of the Punjab Municipal Act, stating that a notice under Section 172 had been served upon him for removing the illegal construction but he had not complied with it. Therefore, notice under Section 220 was being given for removing the illegal construction and he was called upon to demolish or remove the kitchen within six hours failing which the structure would be got demolished through the Government labour. On receiving this notice, the petitioner on 21st of February, 1953, brought a suit in the Court of Subordinate Judge Second Class, Patiala, impleading the Municipal Committee, Patiala, as the defendant. The prayer in the suit was for a permanent injunction restraining the defendant from demolishing the petitioner's kitchen, alleged to have been constructed long ago on the land which had been under his possession. In the plaint, it was stated, that he had been in possession of the site for over forty years and he had constructed a kitchen which was shown as 'A' in the attached plan. He had been aggrieved by the service of the notice upon him by the defendant. The site where the kitchen had been constructed was not a municipal street and, therefore, the question of encroachment did not arise. On the other hand, the petitioner had been in possession of the site as an owner. He further stated that the kitchen had been constructed more than twelve years ago.

The Municipal Committee submitted a written statement dated 7th of May, 1953, traversing the pleas of the petitioner. The power of attorney in favour of the defendant's counsel had been signed by the respondent as the Executive Officer. On 31st of May, 1954, the Subordinate Judge

Second Class, Patiala, decreed the petitioner's suit and granted an injunction against the defendant restraining him from interfering or obstructing the petitioner's enjoyment of possession of the site in dispute.

The Subordinate Judge found, after perusal of the documents placed on the record, that the petitioner Narain Singh and his father had been in possession of this site for a long time and there was no evidence on the record that the site belonged to the Municipal Committee. He also found that there was no encroachment upon the public street and Section 172 of the Punjab Municipal Act had, therefore, no application and the Committee had no right to deliver any notice under that section to the petitioner. The site did not vest in the Committee. Consequently the injunction as prayed for was granted.

3. On 13th of May, 1955, the respondent, as the Executive Officer, sent a notice under Section 172 of the Punjab Municipal Act to the petitioner stating, that information had been received that he had constructed a kitchen on municipal land without obtaining sanction under Section 189 (1) of the Act. He was, therefore, informed that this illegal construction (khilaf warzi) should be removed within seven days of the receipt of this notice. The Very next day, the petitioner sent a reply to the Executive Officer to the effect that the notice sent by him was illegal and tantamount to disobedience to the order of the Court passed in Civil Suit No. 142 on 31st of May, 1954. He also stated that the land upon which the construction stood did not belong to the Patiala Municipal Committee and it appeared that the respondent and some members of his staff were harassing him out of enmity.

4. In the meanwhile the petitioner had applied to the Administrator of the Patiala Municipal Committee for sanction for constructing a house on some old foundations, as per plan attached. The Executive Officer passed an order on the file expressing the view that the petitioner's application should not be sanctioned under Section 193 of the Act. On this, the Administrator wrote an order on the file that the petitioner had taken the Committee's permission not once but at least thrice after having duly submitted the plan. He disagreed with the Executive Officer's suggestion and expressed the view that sanction for construction of building having once been given, should not be revoked. In this order, he also stated, that on a part of this land the petitioner had built a small kitchen and the civil Court had given a judgment against the Municipal Committee. He then said:

"To serve a notice for demolition of the kitchen at this stage would tantamount to contempt of Court and the only alternative left to the committee is either to give up its claim or ask the Legal Adviser to file a suit for dispossessing Narain Singh from the illegal occupation of land which belongs to the committee."

5. On 15th of June, 1955, the petitioner received another notice from the respondent purporting to be under Section 220 for demolition of a latrine. The petitioner, on 28th of June, 1955, sent a reply to the Executive Officer stating that the notice was illegal and it amounted to disobedience

to the Court. In that reply he reproduced the operative portion from the judgment of the civil Court and complained of being harassed. On 22nd of August, 1955, the petitioner received another notice under Section 173 stating that he had kept his building material on the public street which caused nuisance to the passers-by, and that he should remove it within three days failing which, action would be taken against him in accordance with law. On 31st of August, 1955, the plaintiff sent a reply to the Administrator of the Municipal Committee stating that the notice was invalid and without jurisdiction and mentioned the decision of the civil Court dated 31st of May, 1954, in his favor and against the Municipal Committee. Copy of this reply was sent to the respondent,

6. The report of the Sanitary Inspector Madhusudan Singh, dated 3rd of September, 1956, is an important document which is marked as annexure 'Q'. In this report. Madhusudan Singh mentioned that Section 172 was meant where there had been an obstruction on the street and not on the Government land. He then proceeded to state:

"The Municipal Committee has already lost the civil case in the civil Court for this very land. So the interference into this may not effect the contempt of Court. It is, therefore, humbly submitted for your kind consideration. To be, on the safe side, in the eye of law, if approved, the legal opinion be obtained, before the further proceedings are started." On the above report, the respondent remarked: "Have the compliance made by our nafri with police help, if necessary."

7. As the Superintendent of Police, despite request, had not given police help, the respondent desired that a demi-official letter be written to the Superintendent of Police for police help. The Executive Officer, under his signatures, sent a letter dated 3rd of December, 1956, to the Superintendent of Police requesting him to direct the City Kotwal to depute a Sub-Inspector of Police and four con-stables and his overseer would take them to the site. On 6th of December, 1956, the respondent ordered his overseer to go personally to the Police Station and obtain police help. Failure to do so would entail strict action against the overseer. On 30th of January, 1957, Amar Singh Overseer put up a note that on the previous day Municipal nafri and a truck had been taken "for the removal of khilaf warzi of Narain Singh" but the Sanitary Inspector was not present in the office and therefore the orders could not be carried out. On this the respondent wrote the following note : "I will not listen to such like complaints in future. The man concerned shall be taken to task for non-compliance."

8. Amar Singh then sent a report on 1st of February, 1957, stating that a truck of old small bricks had been removed and the barbed wire fence had also been dismantled, and that on the next day he would proceed to remove the other malba etc. The respondent again made a remark to the effect that the police help should be sent for. There are other notings on the municipal file to the similar effect but they need not be noticed in detail. Besides the documents referred to above the petitioner has also produced four affidavits from the neighbours and an affidavit from Madhusudan Singh Sanitary Inspector who, in the meanwhile, had retired from municipal service. The affidavits are to the effect that the kitchen and other structures of the petitioner had

been existing for very many years and these constructions were demolished and the malba had been removed in municipal trucks.

9. On the strength of these documents it has been argued by Shri Nehra, Advocate for the petitioner, that the respondent had full knowledge of the judgment and decree passed by the civil Court on 31st of May, 1954. The respondent had been warned by the petitioner, that he was flouting the order of the civil Court. The Administrator of the Municipal Committee, and Madhusudan Singh Sanitary Inspector also drew the pointed attention of the respondent, that his act in causing the demolition of the petitioner's structures, and in having the malba removed, would amount to contempt of Court, as that would be disobedience of the injunctive order of the Court.

10. Shri Atma Ram, Advocate for the respondent, has urged that the respondent was not a party to the civil suit, the defendant being Municipal Committee, Patiala, and therefore he could not be held guilty of contempt of Court for having directed demolition of the structures and removal of the malba. He has relied upon a Privy Council authority in *S. N. Bannerjee v. Kuchwar Lime and Stone Co. Ltd.*¹. In that case, the Government had granted lease of quarrying rights to Kuchwar Lime and Stone Company and this company took possession of the quarries. In a dispute concerning this lease the Government and its servants were restrained by an injunction from disturbing possession of Kuchwar Lime and Stone Company. The actual wordings of the injunction were "to restrain the defendant (Secretary of State for India in Council) and his servants from interfering with the plaintiffs' lease". Two persons, Ghose and Bannerjee, who were employees of another concern, called the Kalyan-pore Lime Works, Limited, and who were not party to the injunction proceedings, but who derived their supposed right from the Government, continued to work the quarries. On this Kuchwar Lime Company brought an action for contempt proceedings against the Government for disobedience of the injunction and against Ghose and Bannerjee, the employees of the Kalyanpore Lime Works for aiding and abetting the disobedience. It was held on the facts of that case, that the Government could not be said to have disobeyed the injunction and as the Government was not liable, Ghose and Bannerjee, who were employees of the Kalyanpore Lime Works, could also not be held liable for disobedience. The decision in that case, on its peculiar facts, is of no assistance to the respondent where the facts are totally dissimilar.

11. Under Section 4 of the Punjab Municipal (Executive Officer) Act, 1931, the executive power, for the purpose of carrying on the administration of the municipality, vests in the Executive Officer. The respondent in this case had executed the power of attorney on behalf of the Municipal Committee in favour of the counsel who conducted the defence in the civil suit. The contention that the defendant in that case was the Municipal Committee and not the respondent is more specious than true.

12. In order to render a person amenable to an injunction, it is not indispensable, that he should

have been a party to the suit in which the injunction was issued or that he should have been served with a copy of it. Such a person is amenable where with actual knowledge in his possession of the injunction he defied the injunctive order. A stranger is not punishable for contempt for an act, with which he had no connection, for which he was not responsible, or for acts done without his knowledge or consent.

But this is not the case here. Despite the knowledge of the order granting injunction and despite having been warned, that his act would amount to contempt of Court, the respondent with full knowledge of all the facts and disdainful of the consequences, knowingly embarked upon a perilous adventure. It is well-known, that corporations are subject to punishment for contempt and officers, agents, and others, who act for a corporation, and who knowingly violate or disobey an injunction Against the corporation, are punishable for I contempt even though the injunction is issued only against the corporation.

The officers of a municipal corporation cannot be deemed to have a licence to knowingly violate an injunctive order against a municipality. An injunction against a municipal corporation is equally binding on all individuals acting for the corporation, to whose knowledge the injunction comes, although they may not be parties to the suit. The officers and agents of a municipal corporation, through whom it acts, are punishable where they had notice of the injunction, and although they were not served with process : vide 43 C. J. S. Article 263. The violation or disobedience of an injunction order issued by a Court having jurisdiction in the matter, when committed by a party to the injunction suit or by a third party, having actual notice, is a contempt of Court This rule is not confined to parties to the injunction. One who is not a party to the injunction suit, but who is within the class of persons whose conduct is intended to be restrained or who acts in concert with a party litigant or with a third party, is guilty of contempt. Persons who act as agents, servants, associates, or confederates of parties to the injunction suit may be held guilty of contempt in doing acts forbidden by the injunction order." Vide 12 Am. Jur. para 26.

13. Courts in England have punished for contempt strangers aiding and abetting breaches of prohibitory orders, thereby obstructing the course of justice: vide *Seaward v. Paterson*² *Lindley L. J.*, *Harvey v. Harvey*³, *Wellesley (Lord) v. Mornington (Earl)*⁴, and *Avery v. Andrews*⁵,

14. An argument raised on behalf of the respondent is that the order of the civil Court was erroneous in so far as the site in question had vested in the Municipal Committee of Patiala and the petitioner had encroached upon it. This argument is entirely without merit. So long as the injunction order has not been vacated or modified by the Court granting it, or has not been reversed on appeal, no matter how unreasonable and unjust the injunction may be, the order must be obeyed. Violation or the order of injunction cannot be excused on the ground, that though the Court acted within its jurisdiction but the order that it passed was erroneous. The order granting injunction might have been erroneous, or granted improvidently, or obtained irregularly, that will not excuse the person violating it. The only questions open for consideration in proceedings for

contempt for violating an injunction are, whether the Court had jurisdiction to award the injunction, and whether it had in fact been violated. Further inquiry as to its advisability or legality is not called for. The Court, in contempt proceedings, will not inquire into the merits of the case in which the injunction was issued. That is the function of the Court grant-ing the injunction and if that order is challenged in appeal, then of the Court of appeal. If the question has been determined wrongly by the trial Court, it can be re-examined only on appeal. So long as the Court has an authority to determine the issue, its order has to be obeyed, no matter how clearly it may be erroneous : See the People, Ex Rel Davis and *Palmer v. Sturtevant*⁶,

15. The facts in this case leave no room for doubt or speculation. The ' order of injunction passed by the civil Court was clear, and it has been violated, despite knowledge of its issuance, and warnings of the consequences of its disobedience. The act of the respondent in setting at naught the injunction order was deliberate, wilful, and flagrant. Ordinarily, in the case of civil contempts, the Courts are reluctant to interfere unless the disobedience to the Court's order issued for the benefit of the other party, is wilful, but in this case the act of disobedience on the part of the respondent was of a bold and calculated character. The sanctity of the orders of the Court cannot be permitted to be undermined, and an injunctive order, after it is passed, cannot be suffered to be deliberately disobeyed. If a conduct such as has been exhibited in this case by the respondent, is allowed to go unpunished, the prestige of the Courts and the inviolability of its commands, will suffer and in consequence, the confidence of the public in the administration of justice, and the sense of security felt by the citizen, on account of the protection given by the judicial orders, will be shaken.

16. In this case the respondent has submitted an apology expressing regret for his conduct. But in a case of such gravity like this where the respondent has been persistently contumacious, apology is not enough and he should not go unpunished. But in view of the unqualified apology submitted by him, he deserves some leniency in the matter of punishment. I, therefore, sentence him to pay a fine of two hundred rupees for the offence of contempt of Court committed by him, under Section 3 of the Contempt of Courts Act by knowingly disobeying the order of injunction passed on 31st of May, 1954, by the Subordinate Judge Second Class, Patiala, in file No. 142 of 1953 in *S. Narain Singh v. Municipal Committee of Patiala*. The respondent is also ordered to pay the costs of the petitioner which are assessed at one hundred rupees. In case of default in payment of the fine, the respondent will be liable to undergo simple imprisonment for one month.

Cases Referred.

- 1 AIR 1938 PC 295 (A)
- 2(1897) 1 Ch 545 (B)
- 3(1681) 22 ER 857 (C)
- 4(1348) 11 Beav 181 (D)
- 5(1882) 51 LJ Ch 414 (E)
- 69 NY 263 (F)

