

MRITYUNJOY DAS AND ANR.

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v.

SAYED HASIBUR REHAMAN AND ORS.

MARCH 16, 2001

[U.C. BANERJEE AND S.N. PHUKAN, JJ.]

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Contempt of Courts Act, 1971 : Section 2(b).

Contempt Petition—SLP filed before Supreme Court by members of Sangha against the judgment of High Court pertaining to constitutionality of certain provisions of West Bengal Land Amendments Act of 1981 and 1986—Interlocutory application filed seeking maintenance of status quo in respect of the land in question till the disposal of the SLP—Supreme Court ordered status quo regarding possession of land in connection with the members of Sangha who were before the High Court in the writ petition out of which present proceedings arose—Subsequently, Supreme Court directed that any vesting order passed in respect of lands of the members of Sangha who were before the High Court should not be implemented until further orders—Revenue Officer ordered handing over of possession of land in respect of those petitioners who were not members of Sangha on the date of filing of writ petition before High Court—Held : Exercise of powers under the Contempt of Courts Act has to be rather cautious and used sparingly—There is a doubt whether Supreme Court's order covered only those petitioners who were members of the Sangha on the date of filing of writ petition before High Court or it covered all the members presenting the petition before Supreme Court—Hence, benefit of doubt given to alleged contemnors—Contempt petition dismissed.

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A Special Leave Petition (SLP) was filed before this Court by members of a Sangha against the judgment of the High Court pertaining to constitutionality of certain provisions of the West Bengal Land Reforms Amendment Act of 1981 and 1986. An interlocutory application was filed before this Court seeking maintenance of status quo in respect of the land in question till the disposal of the SLP. This Court ordered status quo regarding possession of land in connection with the members of the Sangha who were before High Court in the writ petition out of which the present proceedings arose. Subsequently, this Court directed that any vesting order passed in respect of lands of the members of the Sangha who were before the High Court should not be implemented until further orders.

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A The Revenue Officer passed an order directing handing over of possession of land in respect of those petitioners who were not members of the Sangha on the date of filing of the writ petition before the High Court. Hence this Contempt Petition.

B On behalf of the petitioners it was contended that the order of this Court covered all members of the Sangha presenting the petition before this Court.

C On behalf of the respondents it was contended that the order of this Court covered only the members of the Sangha who were before the High Court.

Dismissing the petition, the Court

D HELD : 1. Exercise of powers under the Contempt of Courts Act, 1971 shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice, which if allowed, would even permeate in our society. [479-B-C]

E *Murray & Co. v. Ashok Kr. Newatia*, [2000] 2 SCC 367, relied on.

F 2. The common English phrase “he who asserts must prove” has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the ‘standard of proof’, a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the ‘standard of proof’ required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. [479-F-H; 480-A]

G *The Aligarh Municipal Board v. Ekka Tonaga Mazdoor Union*, [1970] III SCC 98; *V.G. Nigam v. Kedar Nath Gupta*, [1992] 4 SCC 697 and *In Re : Bramble vale*, (1969) 3 All ER 1062, referred to.

Archana Guha v. Ranjit Guha Neogi, (1989) II CHN 252 (Cal.), approved.

H 3. Admittedly, this Court directed maintenance of *status quo* with the following words - “the members of the petitioners Sangha who were before

the High Court in the writ petition out of which the present proceedings arise". And it is on this score the applicant contended categorically that the intent of this Court is to include all the members presenting the Petition before this Court whereas the respondent contended that the same is restricted to the members who filed the writ petition before the High Court, which culminated in the initiation of proceeding before this Court. The issue thus arises as to whether the order stands categorical to lend credence to the answers of the respondent or the same supports the contention as raised by the applicants. However, probabilities of the situation may also warrant a finding in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged contemnors are entitled to have the benefit or advantage of such a doubt having regard to the nature of proceeding. [480-G-H; 481-A-D]

CIVIL APPELLATE JURISDICTION : Contempt Petition No. 202 of 2000.

Under Article 136 of the Constitution of India.

IN

Special Leave Petition (C) No. 1416 of 1997.

From the Judgment and Order dated 26.7.96 of the Calcutta High Court in A. No. 400 of 1992.

S.B. Sanyal, A.K. Ganguli, Tapas Chandra Ray, N.R. Choudhary, R.K. Gupta, M.K. Singh, A.N. Bardiyar, S.K. Puri, Rajesh Srivastava, Ujjal Banerjee, Ms. Anindita Gupta, Somnath Mukherjee, V.P. Sharma, Arvind Mishra, N.R. Choudhury, J.P. Pandey, Somnath Mukherjee and H.K. Puri for the appearing parties.

The Judgment of the Court was delivered by

BANERJEE, J. The introduction of the Contempt of Courts Act, 1971 in the statute book has been for purposes of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason wherefor it must thus be exercised with due care and caution and for larger interest.

Incidentally, a special leave petition (1416/1997) was filed before this Court by Paschim Banga Rajya Bhumijibi Sangh against the judgment of the

A Calcutta High Court pertaining to the question of constitutionality of certain provisions of West Bengal Land Reforms Amendment Acts 1981 and 1986. The said Sangha filed an Interlocutory Application being I.A.No.3 of 1999 for issuance of certain directions which *inter alia* reads as below:

B “(a) direct the State of West Bengal and its Revenue Authorities not to initiate any proceedings for vesting of the land against the members of the Petitioner Sangha and if any vesting proceeding has been already initiated against the members of the Petitioner Sangha in that event not to pass any order and maintain status-quo in respect of the land in question in all respects till the disposal of the Special Leave
C Petition (Civil) No.1416 of 1997 pending before this Hon’ble Court or in alternative clarify that the order dated 20.3.1998 as quoted in paragraphs 19-20 will apply only to the parties thereto and not to the members of the Petitioner No.1 Sangha.”

D The Interlocutory Application was heard on 29th October, 1999 and this Court was pleased to pass an order therein to the following effect:

E “At the request of Learned counsel for the Applicants four weeks’ time is granted to enable him to put on record appropriate information regarding members of the Sangha for whom the application is moved and the nature of the stay required.

In the meantime Learned Counsel for the Respondent will also take appropriate instructions in connection with this I.A.

F Subsequently on 16th December, 1999, this Court in I.A.No.3 passed an interim order to the effect as below:

G “Having heard Learned counsel for the parties, by way of an interim order, it is directed that status-quo regarding possession on spct shall be maintained by both the sides in connection with the *members of the Petitioner-Sangha who were before the High Court in the Writ* Petition out of which the present proceedings arise.

(Emphasis supplied)

H In the meantime, *learned senior counsel for the respondent-State of West Bengal will verify the list of these members*, (Emphasis supplied) which is furnished to him by Learned Counsel for the Petitioner and

subject to that verification further orders will be passed after three months.

To be placed after three months.”

In the application (I.A.No.3) a further order was passed on 17th April, 2000 which reads as below:

“We have heard learned senior counsel for the Petitioners, Mr. Shanti Bhushan and Learned Senior Counsel for respondent-State of West Bengal, Mr. Ray, Learned Senior Counsel for respondent-State of West Bengal is right when he says that some more time is required as 13,000 persons are listed and they have to ascertain about their existence on the spot. We grant time up to the end of July, 2000. I.A. will be placed in the second week of August, 2000. In the meantime, at the request of Learned Counsel for the Petitioners, Mr. Shanti Bhushan we grant additional interim relief in continuation of our earlier order dated 16.12.1999 to the effect that if in the meantime, any vesting orders have been passed in respect of the lands of members of Petitioner - Sangha who were before the High Court in the matter out of which the present proceedings arise, then those vesting orders shall not be implemented until further orders.”

It is this order which is said to have been violated and thus bringing the orders of this Court into ridicule. The factum of violation is said to have been deliberate since in spite of the order as above and even after the service of the order dated 17th April, 2000 to the authorities of Land Reforms Department, Government of West Bengal for its compliance, the Petitioner No.1 being a resident of village Amriti, District, Malda, West Bengal and a life member of the Paschim Banga Rajya Bhumijibi Sangha was served with a notice dated 5.4.2000 under Section 57 of the West Bengal Land Reforms Act together with Section 14-T (3) of the said Act read with Rule 4 of the Rules framed thereunder by the Revenue Officer Cell, Malda asking to submit details of land held by him and his family members since 7.8.1969 and particulars of land transferred by him after that date. The records depict that a reply to the said notice was furnished as early as 30th April, 2000 alongwith the certification of membership of the Sangha and copy of the order dated 16th December, 1999 passed by this Court. It further appears that a hearing did take place and the Revenue Officer passed an order of vesting on

- A 17th April, 2000. Subsequently, on the factual matrix, it appears that by the notice dated 26th April, 2000 issued by the Revenue Officer, possession of 37.471/2 acres of land was directed to be made over to the Land Revenue Authority on 27.4.2000. It has been the definite case of the petitioners that in spite of receipt of both the orders dated 16th December, 1999 and 17th
- B April, 2000, the Block Land & Land Reforms Officer, English Bazar, Malda came on the site and took possession of the said land. Similar is the situation as regards the land belonging to petitioner No.2 and possession 20.76 acres of land was also obtained by the Block Land & Land Reforms Officer, English Bazar, Malda. This act of obtaining possession from the applicants herein is stated to be a deliberate violation of this Court's order and thus
- C cannot but be ascribed to be contemptuous in nature.

Mr. Sanyal, the learned Senior Advocate appearing in support of the petition for Contempt contended that the high handedness of the executive authorities is apparent in the deliberate action of taking over possession of land from two of the members of the Samiti even after coming to know of the orders of this Court and resultantly committing an act of gross contempt.

Admittedly, this Court passed an order on 17th April, 2000 as a continuation of the earlier order dated 16th December, 1999 to the effect that if in the meantime, any vesting order has been passed in respect of the land of members of petitioner's Sangha who were before the High Court in the matter out of which the present proceeding arise, then those vesting orders shall not be implemented until further orders. The order dated 16th December, 2000 also categorically records the maintenance of status quo regarding possession on spot by both the State and Private Respondents. As regards however the Private Respondents, the order was directed to be made applicable to the cases of the members of the petitioner's Sangha who were before the High Court in the Writ Petition out of which the present proceeding arose.

Needless to state that Land Reforms Legislation in States have been introduced with a view to proceed with the socialistic approach as enshrined in the Constitution. The amendments have been effected in the main provisions of the act, validity of which stands further scrutiny before this Court. We are however, not called upon to delve into these issues neither we intend to do the same. The noting aforesaid is just to introduce the subject for our consideration though in a separate jurisdiction being of extra-ordinary nature but as conferred by and under the statute.

Let us however, at this juncture consider the counter affidavit as filed by the alleged Contemnors and assess the situation as to whether there is any deliberate act on the part of the revenue officers of the State or an omission to note the true effect of the order which has resulted in such an action which is said to be contemptuous in nature. The alleged Contemnors No.2 and 3 being Sayed Kadar Hossain and Chitaranjan Chakraborti stated that as officers of the Government, they have tried to discharge their duties to the best of their ability, capacity and understanding. There was never any motive or intention to violate or disobey the orders of this Court. In paragraphs 4 and 5 alleged contemnors stated as below.

“4. We respectfully submit that as understood by us that the number of the Petitioners Sangha who were before the High Court in the Writ Petition were understood by us as parties on the date on which the Writ Petition was filed. The petitioners themselves have admitted that they became members only in 1992-93, and the order of this Hon’ble Court would not be applicable then as they were not members of the Sangha on the date of filing the Writ Petition. If the interpretation given by the Petitioners was sought to be accepted, then there could be no occasion for this Hon’ble Court making the order for verification of members of the Sangha. We never proceeded with the matter to violate the orders of this Hon’ble Court.

5. We also submit that in the proceedings, the Petitioners were given full opportunity of being heard and in fact the Petitioners appeared through Advocate and made submission and after considering the facts and circumstances of the case and also the material on record, the Revenue Officer being the Competent Authority under the Act (Contemnor No.2) recorded the following finding:

“It appears from certificate which was issued by that Sangha that Sl. No. of Life Membership of raiyat Mrityunjoy Das is 2698/93. It is clear that the raiyat obtained membership in the year 1993 and he was not the member of the said Sangha during the time of filing the Writ Application or before the Hon’ble High Court. So the raiyat is not entitled to get benefit of the order of the Hon’ble Supreme Court dated 16.12.1999.”

A true copy of the order dated 17.4.2000 in this regard is annexed herewith and marked as Annexure-R 1/1.

A We further submit that we have not tried to justify the conduct
any way, by making the aforesaid statements and have stated these
only to explain the circumstances and if any lack of understanding
as aforesaid has resulted in violation of this order and consequently
the Contempt of Court, I repent for the same and tender my
B unqualified apology before this Hon'ble Court. I further submit that
whatever I have done was in the course of my official work as a
Government servant and I have no personal interest whether the
process of Land Reforms continues or halts. On the face of this order
of this Hon'ble Court, or in that way any Order of any Court, which
C I am duty bound to obey. I again submit that if my interpretation of
the order of this Hon'ble Court was wrong that was because of my
limitations to understand but there is nothing malafide in it and I
cannot think of over-reaching or flouting the order of this Hon'ble
Court in any way or under any circumstances."

D On the state of pleadings as above, Mr. Tapas Chandra Ray, the learned
Senior Advocate appearing for the Respondents with his usual eloquence
submitted that the order of this Court dated 16th December, 1999 pertaining
to the maintenance of status quo regarding possession, has been rather
categorical in its application: This Court has restricted its applicability to the
members of the petitioners Sangha who were before the High Court in the
E Writ Petition and not all and sundry. Mr. Ray drew the attention of the Court
to a portion of the order (as emphasized in page 3 hereof) and submitted that
a contra interpretation to the order would not only be grossly irregular but
be totally unsubstantiated. The user of the words "*who were before the High
Court in the writ petition*" shall have to be attributed some meaning and the
intention has been rather clear and categorical as to its applicability. Mr. Ray
F contended that this Court obviously could not indulge in surplusage or record
a specific order without attributing any meaning thereto and it is in this
context Mr. Ray further contended that in any event, if two explanations are
available and out of which one stands adopted by the alleged contemnors
which cannot by any stretch, be termed to be wholly unwarranted, question
G of returning a verdict of guilty in an Application for Contempt does not and
cannot arise.

 Contra however, is the submission of Mr. Sanyal and Mr. Ganguli for
the petitioners with reference to the user of the words "present proceeding"
by this Court which cannot as contended but mean that the order has been
H intended to apply to the applicants before this Court, in addition to the

members who were members on the date of filing of the Writ Petition and this by no stretch be restrictive at all. Since, otherwise the order would only be partial and a majority of the persons proceeding with this litigation as parties herein would be deprived of the same - a situation which cannot possibly be conceived in the matters of an order of this Court since this Court confers benefit on to those who seek relief in a proceeding before this Court indeed an attractive submission.

Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide *Murray & Co. v. Ashok Kr. Newatia & Anr.*, [2000] 2 SCC 367, this is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of this Court in *Murray's* case (supra) in which one of us (Banerjee, J.) was party needs to be noticed.

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general.”

The other aspect of the matter ought also to be noticed at this juncture viz., the burden and standard of proof. The common English phrase “he who asserts must prove” has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the ‘standard of proof’, be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond

- A reasonable doubt. The observations of Lord Denning in *Re Bramblevale* (1969) 3 All ER 1062 lend support to the aforesaid. Lord Denning in *Re Bramblevale* stated:

- B “A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.... Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt.”

- D In this context, the observations of the Calcutta High Court in *Archana Guha v. Ranjit Guha Neogi*, (1989) II CHN 252, in which one of us was a party (Banerjee, J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith.

- E In *The Aligarh Municipal Board and Others v. Ekka Tonga Mazdoor Union and Others*, [1970] III SCC 98, this Court in no uncertain term stated that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemnors had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged.

- F In a similar vein in *V.G. Nigam and Others v. Kedar Nath Gupta and Another*, [1992] 4 SCC 697, this Court stated that it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

- G Having discussed the law on the subject, let us thus at this juncture analyse as to whether in fact, the contempt alleged to have been committed by the alleged contemnors, can said to have been established firmly without there being any element of doubt involved in the matter and that the Court would not be acting on mere probabilities having however, due regard to the nature of jurisdiction being quasi criminal conferred on to the law courts. Admittedly, this Court directed maintenance of status quo with the following words - “the members of the petitioner Sangha who were before the High
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Court in the writ petition out of which the present proceedings arise". And it is on this score the applicant contended categorically that the intent of the Court to include all the members presenting the Petition before this Court whereas for the Respondent Mr. Ray contended that the same is restricted to the members who filed the writ petition before the High Court which culminated in the initiation of proceeding before this Court. The Counter affidavit filed by the Respondents also record the same. The issue thus arises as to whether the order stands categorical to lend credence to the answers of the respondent or the same supports the contention as raised by the applicants herein - Incidentally, since the appeal is pending in this Court for adjudication, and since the matter under consideration have no bearing on such adjudication so far as the merits of the dispute are concerned, we are not expressing any opinion in the matter neither we are required to express opinion thereon, excepting however, recording that probabilities of the situation may also warrant a finding, in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged contemnners are entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding as noticed herein before more fully.

In view of the observations as above, we are not also inclined to go into the question of apology.

On the wake of the aforesaid, this Contempt Petition fails and is dismissed without however, any order as to costs.

V.S.S.

Petition dismissed.