

Ali Bln Abud Vs. Mrs. Devasena and Mrs. Grace Vijaya Kumari

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Court : Andhra Pradesh

Decided On : Sep-28-2001

Reported in : 2001(2)ALD(Cri)653; 2002CriLJ766

Judge : Bilal Nazki, J.

Acts : Andhra Pradesh Land Encroachment Act - Sections 3, 5, 6 and 7

Appeal No. : C.C. No. 899/2000

Appellant : Ali Bln Abud

Respondent : Mrs. Devasena and Mrs. Grace Vijaya Kumari

Advocate for Def. : S. Niranjana, Adv. for R3

Judgement :

ORDER

Bilal Nazki, J.

1. In W.P. No. 17008 of 1997 this Court on 28-4-99 passed the following order;

'Hence, the Writ petition is disposed of with a liberty to the petitioner to approach the Civil Court. However, it is obviously the petitioner cannot be dispossessed except in accordance with law and not by high-handedly.'

2. Now, it is contended that after obtaining the order which was served on the respondents and in spite of having the knowledge of the order the respondents without issuing any notice of whatsoever in nature came to the premises on 8-2-2000 at 2.00pm along with police force and high-handedly dispossessed the petitioner from the said premises. When the petitioner and his family members protested and demanded that Court order should be honoured they were pushed aside by the police. The materials like shamiyanas and cooking materials were also not allowed to be taken away by the petitioner and he was informed that they would conduct Panchanama and deliver the material to him.

3. After the notice was issued in this contempt petition the respondents filed counter. In the counter filed by Mrs. Devasena, Revenue Divisional Officer, she stated that Mandal Revenue Officer was the competent authority who initiated action and passed orders of eviction and at the time of handing over of possession she was also present. The possession was handed over in the presence of Panchas to the Education Department. She denied that the Hon'ble Court's order was ignored. Action had been initiated in pursuance of the directions of this Court. After passing the eviction orders the possession was taken from the petitioner and handed over to Education Department.

4. The Mandal Revenue Officer Smt. G. Grace Vijaya Kumari stated that, after receipt of orders of the High Court she issued a notice under section 7 of the A.P. Land Encroachment Act on 20th December, 1999 directing the petitioner to submit his explanation. The petitioner was not available. The watchman refused to take notice. The Mandal Revenue Inspector affixed the notice on the compound wall in presence of two witnesses on 23-12-99. No explanation was filed either by the petitioner or by his G.P.A holder. Consequently order of eviction was passed on 27-1-2000. This order was also refused to be received by the watchman and the same was affixed in the presence of two witnesses giving seven days time to vacate and deliver the possession. Neither the petitioner nor the G.P.A delivered the vacant possession. Consequently on 8-2-2000 a Panchanama was conducted in the presence of mediators and possession was delivered to the Education Department under the supervision of Revenue Divisional Officer. Copies of the two orders have been annexed with the counter affidavit. The order dated 20-12-99

reads as under;

'Whereas you are reported to be in unauthorized occupation of the land specified in the schedule below. Which is the property of Government (Education Department). You are hereby given notice that if you so desired you may before 20-01-2000 show cause either in person or in writing before me/ Collector, why you should not in addition to the full assessment on the land under section 3(i) of the Act to there/rate prescribed by or under section 3 (iii) of the Act charged a penalty for such occupation under section 5 of the Act III of 1905 and / or be subjected to eviction from the land and forfeiture of the crops products, building constructions and things deposited thereon under section 6 of the said Act.'

5. Then, schedule is given. This order was issued on 20th December,1999. It asked the petitioner to show cause by 20th January,2000. The second order was passed on 27th January,2000. It shows that since the petitioner had failed to submit his explanation therefore eviction order was passed.

6. When the case was being argued sometime earlier, the learned counsel for the petitioner pointed out that, on the backside of the first notice dated 20th December,1999 there was a report of the officer who had gone for serving the order on the petitioner. It mentions that, the watchman has refused to take the notice and had not even disclosed his identity therefore the notice had been affixed on the compound wall of the suit property in presence of two witnesses. The learned counsel submitted that, one of the witnesses after signing the endorsement had put the date as 17th August,2000 whereas the other witness had put the date as 23rd December,1999. The learned counsel for the petitioner submitted that it is after this contempt petition was filed that the respondents have tried to create evidence by preparing false documents. The contempt petition has been filed in February,2000. When this was pointed out to the other side, a third party affidavit came to be filed which was an affidavit filed by one of the witnesses Mr. Mohd. Zakir. This affidavit had been filed without the permission of the Court and this Court was of the prima facie view that records have been tampered with the help of this third party, therefore he was arrayed as one of the respondents by an order of this Court on 9-2-2001. Record was also directed to be produced. The

third party in his affidavit which was filed without the permission of the Court, stated that the Mandal Revenue Inspector affixed the notice on the compound wall in his presence and in presence of other witness Mr. Sharfuddin who is resident of Bada Bazaar, Yakutpura, Hyderabad. This notice was served in the month of December,1999. He further submitted that he came to know that the writ petitioner claimed that he was a tenant of the premises. He further stated that he had not given any date initially while signing but when the file was sent to the Government pleader he wanted to know the date therefore the Mandal Revenue Officer sent the file to him for putting the date. The file was sent to him on 17th August,2000 and without understanding the implications he put the date as 17-8-2000 although the notice had been served on 23rd December,1999 in his presence. After he was arrayed as respondent and summoned he filed another affidavit. In this second affidavit he came out clean. He submitted that he was an unemployed person and he was eking out his livelihood by doing certain jobs in the office of Municipal Corporation of Hyderabad. In the course of performance of such jobs he had developed certain acquaintances with the officers working in the said office. On 17th August,2000 he had gone to the office of Mandal Revenue Officer, Charminar Mandal for the purpose of obtaining some documents. The Mandal Revenue Officer Smt. Vijaya Kumari asked him to sign certain documents. When he asked her as to the contents of the document she stated that it was a routine administrative work and that she had to secure signatures of several persons. He trusted her and put his signature on the document and also put the date thereon. He further stated that he had forgot about the entire incident. He received a telephone call from Smt. Vijaya Kumari in the first week of November,2000. She asked him to file an affidavit stating that the date appended under his signature was not the date on which he had put the signature. She also told him that unless he files the said affidavit action would be taken against him for giving incorrect information. He was directed by Smt. Vijaya Kumari to go to the High Court of Andhra Pradesh and meet the Government pleader. He was further asked to meet the staff in the Government pleader's office and inform that he was sent by the Mandal Revenue Officer for signing the document. He proceeded to the office of the Government pleader and after identifying himself signed the document that was typed. Thereafter he received summons from the Hon'ble High Court. On

receipt of summons he got worried about the repercussions and the consequences. Even before he could make a decision he once again got a call from the Mandal Revenue Officer stating that the Revenue Divisional Officer Smt. Devasena wanted to meet him with regard to the said matter. He was asked to meet Mandal Revenue Officer and the Revenue Divisional Officer in the Court. As per the instructions he went to the Court, met Smt. Vijaya kumari and Smt. Devasena who told him that he would have to come to the Court on the date mentioned in the summons and make statement in accordance with what had been stated by him in the affidavit, if he deviated from the same he would be arrested. He approached some well wishers who advised him to go to a lawyer and then he met a lawyer. The lawyer advised him to be present in the High Court on the date of hearing and make the statement of true and actual facts. The affidavit is filed in pursuance of the directions of the Hon'ble Court and is giving the correct and true facts of the events.

7. After this affidavit, another additional affidavit came to be filed by both the respondents 1 and 2. The language used in the additional affidavit speaks volumes about the conduct of these contemnors. Some paragraphs need to be reproduced. In the affidavit filed by 1st respondent it is stated;

'When the watchman refused to take notice it was affixed to the premises. In the Panchanama conducted at that time, two witnesses and the Mandal Revenue Inspector signed on the notice to that effect. The Mandal Revenue Inspector and one of the witnesses put the date as 23-12-1999. The first witness by oversight did not put any date. Though strictly speaking, the omission was immaterial, he was requested to put a date and in an absent minded fashion he put the date on which papers were sent to him, instead of the date on which he actually signed. This is an innocent mistake and no sinister inference can be drawn. Rectification of an omission does not amount to tampering of record.

'There is no positive direction in the Writ petition. The learned Judge had made an observation of his expectation that the law would be duly observed. This is not equivalent to a command or direction.'

8. The second respondent repeated the same in her affidavit. When the first affidavit was filed by the third party no leave was sought from the Court to file such affidavit and it was filed by respondents 1 and 2 on their own. Since they had tampered the records they made an innocent and illiterate person file an affidavit in the Court without even seeking leave from the Court. When the third party came to the Court and disclosed the real facts even then the respondents 1 and 2 did not repent and took the pleas which have been quoted hereinabove. But, on the last date of hearing i.e., on 6-3-2001 an additional affidavit was filed in which an unconditional apology was submitted and it was stated that the properties which had been taken over from the possession of the petitioner had been handed over back to him under a cover of Panchanama on 30th August, 2001.

9. Normally this Court accepts apologies and is not interested in punishing people for committing contempt of Court. But, here the conduct of the respondents 1 and 2 is such that they almost for two years tried to play mischief with this Court. They tampered with the record and presented false pleas before the Court. They even used an innocent and illiterate person to play mischief with the Court. Therefore, in my view, they deserve to be convicted and punished for contempt of Court. Though apology has been tendered but it is only after exhausting all the avenues of playing mischief and fraud with the Court. The apology should have been at the earliest stage of the proceedings as has been held by the Supreme Court in various judgments including in *Debabrata Vs . State of W.B.* : 1969 CriLJ401 and *Mulkh Raj Vs . State of Punjab*, : 1972 CriLJ754 .

10. Since the respondents 1 and 2 have not apologized at the earliest and this Court does not feel that this apology is a bonafide apology, therefore, the apology is rejected and respondents 1 and 2 are convicted for committing contempt of this Court. Keeping in view that the respondents 1 and 2 are ladies, therefore, a lenient view is taken in punishing them. They are sentenced to pay a fine of Rs.500/- (Rupees five hundred) each to be paid within one week.

11. For the reasons given above, rule against respondent No. 3 is discharged.

12. The learned Additional Advocate General states that the property has been restored to the petitioner, but according to him the petitioner is not entitled to the

property. This order passed in contempt shall not be an impediment in the way of the respondents in proceeding against the petitioner in accordance with law. Any observation in this order shall not be taken as an expression of opinion with regard to the rival claims to the property in dispute.

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