

Shri Rameshwar Sharma and Another Vs. M.C.D. and Others

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Court : Delhi

Decided On : Feb-02-2001

Reported in : 2001IIAD(Delhi)876; 2001CriLJ1501; 90(2001)DLT328; 2001(58)DRJ105

Judge : Mr. Manmohan Sarin, J.

Appeal No. : Notices dt. 21.02.2000 in CW. 5225/97

Appellant : Shri Rameshwar Sharma and Another

Respondent : M.C.D. and Others

Advocate for Def. : Ms. Madhu Tewatia for ; Zonal Engineer (Works), ; Mr. Anil Grover for MCD and ;

Advocate for Pet/Ap. : Mr. S.P. Pandey, Adv

Judgement :

ORDER

Manmohan Sarin, J.

1. By this order I would be disposing of the notices dated 21.2.2000 issued to Zonal Engineer (Works) and Assistant Commissioner (Licencing) as to why proceedings for contempt be not drawn up against them. Replies to the said notices have been filed by the concerned officers. No rejoinder to the said replies

has been filed by the petitioner. Counsel for the parties have been heard.

2. The factual matrix, relevant for disposal of the notices for contempt may be noticed: Petitioner had filed this writ petition against the alleged illegal demolition of his property. Petitioner sought a restraint against demolition of the remaining portion and from being dispossessed from the land.

3. Mr. Pandey, counsel for the petitioner, has urged before me that this was a case where there being an order for demolition, the property was illegally partly demolished. The respondents have been deliberately keeping away from the court, the record, which would show that there was no survey or a decision to demolish the petitioner's property and clear the area of alleged encroachments. He submits that repeated directions given by the court have been flouted as a result of which personal presence of the officers was directed. The officers failed to appear and perforce notices to show cause were issued. He submits that till today the original record has not been made available to Court. Petitioner had complained to the Mayor and an enquiry was conducted. As a result of the enquiry, minor punishment had been inflicted on two junior officials, who have been made the scape goat rather than these two officers.

4. Perusal of the order-sheet reveals that on 24.11.1999, this court directed the production of the case file and in case the same was not produced, Zonal Engineer (Building) was directed to be present in the court. As the record was not brought, and Zonal Engineer (Building) was also not present, court directed issuance of show cause notice as to why contempt proceedings be not initiated against the Zonal Engineer (Building). His personal presence was directed for 10.12.1999. On 10.12.1999, Zonal Engineer (Building) was present. It was clarified by the counsel for the respondent that the matter did not relate to the Building Department, but related to the Licencing Department. Zonal Engineer (Works) Mr. Anil Kumar Gupta, one of the contemnor was also present in court, who stated that the Works Department assisted the Licencing Department in carrying out demolition of properties. The court thereupon directed the Zonal Engineer (Works) to file an affidavit to show cause as to why the orders of the court were not being complied with. He was further directed to be present in court on the next date of

hearing. The presence of the Zonal Engineer (Building) was dispensed with. On the next date i.e. 21.2.2000 neither the Assistant Commissioner (Licencing) nor the Zonal Engineer (Works) were present, which led to the issuance of the notice for showing cause for contempt being issued.

5. Affidavit dated 4.4.2000 and additional affidavit dated 24.8.2000 have been filed by Mr. Anil Kumar Gupta, Zonal Engineer (Works). The deponent states that he is suffering from backache and cervical spondylitis. On 10.12.1999, he was restless and could not listen and fully comprehend the order passed. Further that he did not understand that he was required on 21.2.2000 to be personally present. It is further averred that he was present on 10.12.1999 as well as on the next date i.e. 29.3.2000. Non-appearance on 21.2.2000 was on account of his prolonged back ache, which got acute on the said date i.e. 20.2.2000. In any case Mr. Anil Kumar Gupta tendered, his unconditional apology for this lapse. The medical documents in terms of MRI reports etc. have also been produced. He has stated that there was no motive or intention on his part to abstain himself. In fact learned counsel Ms.Madhu Tewatia has urged that there was no order passed requiring his presence on 10.12.1999. He was present in court to assist the court and had clarified that the case related to the Licencing Department, which was responsible for the demolition and their role was only secondary in assisting them. In brief, it is stated that the absence on 21.2.2000 was purely on account of deponent not comprehending the order on 10.12.1999 requiring his presence. Besides his ailments and indisposition had contributed to his not comprehending the order resulting in his absence.

6. The order sheet affidavits filed in reply have been perused. I have considered the submissions made by the counsel for the petitioner as well as the counsel for the respondent. Counsel for the petitioner very fairly admitted that he was not urging any personal malafides against the said officers and his grievance was on account of the action by the Corporation which was without any authority of law and was totally arbitrary and high-handed. Counsel for the petitioner also urged that till the said persons have purged themselves of the contempt, by bringing forth in a bona fide manner all the original records, they should not be discharged.

7. On hearing counsel for the parties as well as perusal of the Explanationn given apology tendered on behalf of Mr. Anil Kumar Gupta, I am satisfied that his absence on 21.2.2000 was not deliberate or intentional. His conduct cannot be said to be contumacious, so as to call for the present proceedings being continued any further. He has also tendered an unconditional apology.

8. I am of the view that in these circumstances, the contempt proceedings against Mr.Anil Kumar Gupta need not be pursued further. Ordered accordingly. The notice is discharged. As regards the Assistant Commissioner (Licencing), contempt proceedings against him have already been discharged vide orders dated 8.8.2000.

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