

Before S. S. Sandhawalia and S. P. Goyal, JJ.

TEJA SINGH,—Appellant

versus

RAM LAL ETC.,—Respondents.

Civil Appeal Contempt No. 21 of 1975

May 3, 1977.

Contempt of Courts Act (70 of 1971)—Section 12—Court exercising contempt jurisdiction—Ancillary order directing change of physical possession of land—Whether can be passed in the exercise of such jurisdiction.

Held, that there is no provision in the Contempt of Courts Act, 1971, which directly would warrant the passing of an ancillary order directing the change of the physical possession of the land. Proceedings in Contempt of Courts—both civil and criminal, and quasi-criminal if not entirely criminal in nature. Contempt is thus essentially an offence for which a provision for punishment is provided under the Act and the procedure for inflicting the same is laid out thereby. The punitive provision is section 12 of the Act which lays down a punishment of simple imprisonment for a term which may extend to six months or with fine up to Rs. 2,000 or with both. The five detailed sub-sections of this provision do not spell out any inherent power to direct the change of the possession of or any ancillary order of this nature. Whenever the Legislature has envisaged a restoration of possession consequent upon an offence, it has in very explicit terms provided for the same in the statute itself. As in the case of section 456 of the Code of Criminal Procedure, 1973, there is no similar or even remotely analogous provision thereto in the Contempt of Courts Act. It is inapt, therefore, to read any inherent power to pass ancillary orders directing the change of the physical possession of the land under the provisions of this statute.

(Paras 8 and 9).

Appeal under Section 19 of Contempt of Courts Act 1971 against the judgment of Hon'ble Mr. Justice A. S. Bains passed in Civil Original (Civi Contempt) No. 75 of 1975 dated 18th September, 1975, holding that no contempt is made out against any of the respondents and directing the authorities concerned to hand over the physical possession of the land in dispute to the petitioner in village Bassi Daulat Khan as well as to the respondents in village Marauli Brahamanan.

Petition u/s 12 of the Contempt of Courts Act, 1971, for suitably punishing the respondent for not implementing the order of the Deputy Custodian General dated 2nd March, 1954.

H. S. Gujral, Advocate, *for the appellant.*

A. S. Cheema, Advocate, *for respondent Nos. 6 to 8.*

D. N. Rampal, D.A.G., *for respondent Nos. 1 to 5 and 9 to 10.*

JUDGMENT

S. S. Sandhawalia, J.

(1) Whether any ancillary order directing the change of the physical possession of land can be passed in the exercise of the jurisdiction under the Contempt of Courts Act, 1971 is the primary issue of some significance in these two connected appeals.

(2) For the purposes of this judgment it is unnecessary to get enmeshed in the details of the tortuous litigation extending over a period of two decades betwixt the appellants in these appeals. It would suffice to mention that the main plank of the appellant Teja Singh rests on the order of the Deputy Custodian General passed way back in the year 1954 whereby he had directed the allotment of an area measuring 11 S.A. 9½ U. in village Bassi Daulat Khan to the petitioners before him after cancelling the same from the name of the respondents. A spate of litigation followed between the parties subsequent to the order above-said and after passing through the mill of Rehabilitation authorities the matter was ultimately brought to this Court in three separate writ petitions. The decisions rendered therein were the subject-matter of two appeals under clause 10 of the Letters Patent.

(3) Thereafter Teja Singh appellant brought a petition under section 12 of the Contempt of Courts Act because of the alleged refusal of the respondent-officials to implement the order of the Deputy Custodian which according to him had been wholly upheld by the judgments of this Court in the proceedings referred to above. Respondent No. 1 Shri Ram Lal Naib Tahsildar (Sales)-cum-Managing Officer, Hoshiarpur District, however, in his return took up the plea that he had implemented the order of the Deputy Custodian in letter and spirit and had duly directed the delivery of possession to Teja Singh appellant in accordance with the judgments of this Court which followed. However, he pointed out that even in the order of the Deputy Custodian General, it was nowhere mentioned that the

Teja Singh v. Ram Lal etc. (S. S. Sandhawalia, J.)

appellant Teja Singh would continue to retain an area of 2 S.A. and 8½ U. in village Marauli Brahmanan.

(4) The learned Single Judge in a brief order after noticing the tortuous and complicated litigation between the parties found that no wilful contempt was made out against anyone of the respondents. However, after recording this finding in terms, he also proceeded to pass the following ancillary order:—

“* * *. In this view of the matter, I find that no contempt is made out against any of the respondents. Mr. Gujral learned counsel for the petitioner, says that the actual possession has not yet been delivered to the petitioner in Bassi Daulat Khan. On the other hand Mr. Cheema, learned counsel for respondents Nos. 6 to 8 says that the petitioner has also not surrendered the land in village Marauli Brahmanan. The authorities concerned are directed to hand over the physical possession to the petitioner in village Bassi Daulat Khan as well as to the respondents in village Marauli Brahmanan. With these observations, the petition is disposed of.”

Two appeals have been preferred against the judgment above-said. Teja Singh appellant in Civil Appeal (Contempt) No. 21 of 1975 has pressed his claim that the respondents should be convicted for contempt. On the other hand, Kishan Singh and others in Civil Appeal (Contempt) No. 12 of 1975 have prayed that the ancillary order regarding the change and delivery of possession of land is beyond the scope of the provisions of section 12 of the Contempt of Courts Act.

(5) As regards the appeal of Teja Singh it suffices to mention that on the 20th January, 1975, the Naib Tahsildar (Sales), Hoshiarpur, after referring to the long background of the litigation passed on order, the concluding and operative part whereof was in these terms:—

“* * *. Thus the petitioner Shri Teja Singh s/o Randhir Singh will be eligible to get allotment to the extent of (11-9½) S. A. in village Bassi Daulat Khan. Necessary amendment in the revenue record should be made accordingly and parties to be delivered possessions of the respective land in accordance with the law. A copy of the order

should be forwarded to the Tehsildar (Mahal), Hoshiarpur, for implementation of these orders."

It is worthy of notice that against the above-said order, two appeals were filed—one by Kishan Singh appellant & others and the other by Teja Singh appellant himself which stand dismissed by the order of the Settlement Commissioner, dated the 16th of May, 1975. It is, therefore, of significance to note that the issue was contentious enough to compel the appellant Teja Singh himself to challenge the order of the Naib-Tahsildar in appellate proceedings. Therefore, it could hardly lie in his mouth that a litigation which was being instituted at his own instance was so devoid of jurisdiction that it amounted to a wilful contempt of the order of the Deputy Custodian General on the part of the officials before whom he was agitating the matter. It is equally significant to note that against the order, annexure R-1, dismissing the appeals a further revision was carried under section 24 of the Displaced Persons (Rehabilitation and Compensation) Act before the Chief Settlement Commissioner as well.

(6) It is plain from the above resume of facts that whilst there may be some grievance on the part of the appellant Teja Singh, that the full fruits of the litigation have been denied to him over a considerable period, it would nevertheless be a far cry for holding that the respondent-officials were in gross contempt of Court because of the inevitable delay in the litigation and therefore, to meet out criminal punishment. It is well settled that the issue of contempt is primarily between the Court and the contemner and the learned Single Judge on the material before him has in categorical terms arrived at the conclusion that no contempt had been made out. We find no reason whatsoever to differ from that finding rightly arrived at on the basis of the material before the Court. Teja Singh's appeal is thus without merit and has necessarily to be dismissed.

(7) However, in Civil Appeal (Contempt) No. 12 of 1975, Mr. Cheema's plainly meritorious contention on behalf of the appellants is that the contempt jurisdiction does not warrant any order of the nature passed by the learned Single Judge whereby he has directed the change of the physical possession of land betwixt the parties. He submitted that the valuable civil rights of the appellants have been affected in a summary manner in a jurisdiction in which they were not at issue whilst proceedings under the Displaced Persons (Rehabilitation and Compensation) Act regarding the very land were yet pending between the parties.

Teja Singh v. Ram Lal etc. (S. S. Sandhawalia, J.)

(8) We have closely examined the contents of the Contempt of Courts Act, 1971 and are unable to find any provision therein which directly would warrant the passing of an order of the nature which is under challenge. It is worth recounting that the proceedings in Contempt of Courts—both Civil and Criminal, have been repeatedly held to be a quasi-criminal if not of entirely criminal nature. Contempt is thus essentially an offence for which a provision for punishment is provided under the Act and the procedure for inflicting the same is laid out thereby. The punitive provision is section 12 of the Act which lays down a punishment of simple imprisonment for a term which may extend to six months or with fine up to Rs. 2,000 or with both. The five detailed sub-sections of this provision do not in our view spell out any inherent power to direct the change of the possession of land or any ancillary order of this nature. It is worthy of recollection that the present Contempt of Courts Act, 1971, replaces and repeals the earlier provision of 1952 and since the law on the point stands codified the powers thereunder have necessarily to be sought from the plain language of the statute. Apart from there being no provision directly warranting an order for the change of the possession of the land we are unable to necessarily imply any inherent power to pass an order of this nature under this jurisdiction.

(9) By way of analogy reference in this context may be instructively made to section 456 of the Criminal Procedure Code, 1973, which in terms corresponds to the earlier provision of section 522 of the Code of Criminal Procedure of 1898. These provisions in express terms empower a Court to restore possession of immovable property when a person is convicted of an offence attended by criminal force or criminal intimidation etc. whereby any person has been dispossessed of any immovable property. It follows therefrom that when the legislature envisages a restoration of possession consequent upon an offence, it has in very explicit terms provided for the same in the statute itself. We are unable to find any similar or even remotely analogous provision thereto in the Contempt of Courts Act, 1971. Therefore, it appears to us inapt to read any inherent power to pass ancillary orders of this nature under the provisions of this statute.

(10) We had repeatedly pressed Mr. H. S. Gujral, learned counsel for respondent, to cite any precedent where a similar order affecting the civil rights of the parties had been passed under the Contempt of the Courts Act in an ancillary manner. Counsel was unable to assist us with any decision in his favour.

(11) On principle also we are extremely sceptical whether an ancillary order seriously affecting the civil rights of the parties in a property can be passed in a summary manner under the Contempt of Courts Act, 1971. We are fortified in this view by the following observations of the Division Bench in *A. Ramalingam v. V. V. Mahalinga Nadar*, (1) :—

“* * * Another reason that accitates us that where the matter is one of infringement of a decree or decretal order embodying rights, as between parties, it is clearly not expedient that contempt should be invoked and exercised in essence, as on mode of executing that decree, or merely because other remedies may take time, or are more circumlocutory in character.”

(12) We are constrained to allow Civil Appeal (Contempt) No. 12 of 1975 and modify the order of the learned Single Judge by setting aside the direction regarding the delivery of possession. There will be no order as to costs.

H. S. B.

MISCELLANEOUS CIVIL

Before R. S. Narcla, C.J. and Prem Chand Jain, J.

RAM SINGH,—Petitioner.

versus

THE STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 53 of 1977

May 4, 1977.

Punjab Co-operative Societies Act (XXV of 1961)—Rules of Election to the Committees of Cooperative Societies (Haryana)—Rules 1 and 34—Assistant Registrar—Whether can act as “returning officer” without being authorised by the Registrar.

(1) A.I.R. 1966 Madras 21.