

CASE NO.:
Contempt Petition (civil) 136-137 of 2005

PETITIONER:
Palitana Sugar Mills Pvt. Ltd. & Anr

RESPONDENT:
Smt. Vilasiniben Ramachandran & Ors

DATE OF JUDGMENT: 20/03/2007

BENCH:
CJI & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
CONTEMPT PETITION (CIVIL) NO. 136-137 OF 2005
IN
C.A. No. 6798-6799 OF 2004
WITH
I.A. NO. 21-30, I.A. NOS. 17-18 & I.A. NO. 1 IN
I.A. NOS. 17-18
IN
C.A. NO. 6798-6799 OF 2004
Dr. AR. Lakshmanan, J.

This Court, on 15.10.2004, by a detailed judgment and order passed in Civil Appeal No. 6798 and 6799 of 2004 issued, inter alia, the following directions:
"73. In the result, we allow the appeals in part and direct the Collector, Bhavnagar to grant non-agricultural permission in respect of the land of about 76 acres 36 guntas comprised in Survey No. 469/1, Bhavnagar District after collecting the non-agricultural tax calculated at the rate of 5% per sq. m applicable at the time when the application was made by the applicant i.e. 24.2.3003 which aggregate to Rs. 15,57,540. Dispute, if any, with regard to the tax calculated and the rate has to be agitated separately and collected later. The Commissioner of Bhavnagar Municipal Corporation is directed to consider the application for sanction within four weeks, the layout and building plans as per the current development control rules and pass order in accordance with law.

74. We also direct Respondents 1 and 2 to collect non-agricultural permission charges and conversion charges for the lands bearing Survey Nos. 470/1, 471/2, 471/3 and 472 situated at Village Vadva, Bhavnagar as prevalent in the year 1981."

The petitioners sent a representation to the Government along with a copy of the aforementioned judgment with a request to comply with the directions contained in the judgment. The petitioners, thereafter sent several reminders to the respondents to comply with the said judgment.
Notification was issued by the State Government wherein the lands of RS Nos. 471/2 and 472 were notified as a water body in purported compliance with the High Court's order dated 02.08.2002. By the said order, the High Court had directed the State Government to notify the water bodies in the territory of the State that

vest in the State and/or the Area Development Authorities or the Local Bodies including the Panchayat in the Official Gazette within 3 months from the date of this order and not a private land.

The Deputy Secretary of the Revenue Department wrote to the Collector, Bhavnagar District that the Government had accepted the said judgment of this Court except for the land of RS No. 472 and requested the Collector to take steps for the entire survey Nos. except for the abovementioned survey No. 472 and to immediately inform the Government about the steps taken by him. This communication was sent on 16.02.2005. Although the direction from the Revenue Department was for accepting the judgment of this Court except for the land covered by survey No. 472, the Collector not only refused to follow the judgment for survey NO. 472 but also for 80 acres of survey No. 471/2. On 28.06.2005, the above contempt petition was filed in this Court with the following prayer:-
(a) "initiate contempt proceedings against the respondents no. 1 to 10 herein for deliberately and willfully not complying with the specific directions of this Hon'ble Court contained in the judgment dated 15.10.2004 in Civil Appeal No. 6798-99 of 2004;

(b) direct the respondents to forthwith grant non-agricultural permission and other necessary building and development permission in respect of part of the land of R.S. No. 471/2 (admeasuring about 80 acres) and 472 (admeasuring about 50 acres) of Village Vadva, District Bhavnagar.

(c) Pass such other and suitable order/s as this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case and in the interest of justice."

On 25.07.2005, this Court issued notice regarding non-compliance of directions contained in para 74 confining survey Nos. 471/2 and 472. After the notice was issued in the contempt petition, the State Government filed an application for directions in IA No. 17 and 18 of 2005 for certain directions. On 09.05.2006, this Court passed the following order:-

"The clarification sought for in these contempt petitions is by way of review petition. Let the entire matter be placed before the appropriate bench which delivered the judgment dated 15.10.2004.

The contemnors must be present on the next date of hearing".

This Court corrected the mistake in the order dated 09.05.2006 and passed the following order:

"In our order dated 9.5.2006 in place of Contempt Petition the IAs shall be recorded".

A letter was written on 10.01.2007 to the Revenue Department by the Collector to take steps as the State Government has taken a decision to accept the judgment of this Court dated 15.10.2004 for land admeasuring 17 acres 4 guntas, 32 guntas and 1 acre 14 guntas upon which sundervas bungalow is located. However, to nullify the aforesaid acceptance of the judgment in respect of the land mentioned in survey Numbers above,

permission for non-agricultural use has been given for the recreation use and not for the residential use thus depriving the petitioner of the right to construct residential building.

We heard Mr. Mukul Rohatgi, learned senior counsel for the petitioner in the contempt petition and Mr. L.N. Rao, learned senior counsel for the respondents in contempt petition and the petitioners in IA No. 17 and 18 of 2005.

At the time of hearing, our attention was drawn to the details of the earlier proceedings where the contention was that the land on survey Nos. 472 and 471/2 which form part of the lake/water body was taken by the State Government. Our attention was also drawn to the following documents:

"1. Affidavit-in-reply dated 12.12.2001 filed by Shri Kantilal A Patel, former District Collector, Bhavnagar before this Hon'ble Court in IA Nos. 2-3 of 2001 in Civil Appeal No. 5556 of 2001.

2. Affidavit-in-rejoinder dated 21.3.2002 filed by Shri Natvarlal R Agravat, Legal Officer, Bhavnagar Municipal Corporation before this Hon'ble Court in Civil Appeal No. 5556 of 2001 filed by the Bhavnagar Municipal Corporation.

3. Affidavit-in-rejoinder dated 21.3.2002 filed by Shri Natvarlal R Agravat, Legal Officer, Bhavnagar Municipal Corporation before this Hon'ble Court in Special Leave Petition No. 1561 of 2002 filed by the Bhavnagar Municipal Corporation.

4. Synopsis filed in Civil Appeal No. 5556 of 2001

5. Chronology of events filed on behalf of Bhavnagar Municipal Corporation in the aforementioned Civil Appeal No. 5556 of 2001

6. Civil Appeal No. 5556 of 2001 after elaborate arguments was dismissed as withdrawn by this Hon'ble Court vide order dated 14.11.2002.

7. Review Petition No. 33 of 2003 filed for the review of the judgment of this Hon'ble Court dated 5.12.2002 passed in SLP No. 1561-63 of 2002. The affidavit in support of this review petition was filed by Mr. Kantilal A Patel.

8. The Review Petition was dismissed by this Hon'ble Court vide order dated 6.2.2003."

Mr. Mukul Rohatgi invited our attention to the various findings and categorical directions issued by this Court to the respondents State of Gujarat and its officers. It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt is to belittle the issues and the orders of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the Apex Court.

Our attention was also drawn to the letter dated 16.02.2005 by the Government of Gujarat to the Collector, Bhavnagar regarding the judgment of this Court dated 15.10.2004 and letter dated 11.05.2005 of the Collector, Bhavnagar in No. RO/KB-21/2005 and, in particular, to para 6 of the said communication which reads thus:

"In connection with the judgment of the Hon'ble Apex Court dated 15.10.2004, the Revenue Department of the State Government vide letter dated 16.2.2005 at Reference No. 3 had accepted the judgment rendered by the Hon'ble Apex Court for all the lands except for the land of RS No. 472 of Mauje Vadva. Thus, directions have been given to this office to initiate process for the land of all the survey numbers except for the area of S.No. 472 of Vadva. For initiating further process in connection with the letter dated 16.2.2005 of the Government, by the order at Reference No.5 whereby the Scheme was sanctioned for construction of dwelling units for weaker sections of the society for total 34,47,918 sq.mtrs. out of which about 80 acres of land of Acres 550 and 31 gunthas of RSN 471/2 is being shown as "Water Body" in the sanctioned development plan of the Bhavnagar Area Development Authority and as the land of S.No. 472 is to be kept pending for the present, except this lands as well as the land for which earlier non-agricultural permission has been granted, considering the land of acres 699-03 gunthas (2829020.5 sq. mtrs) forming part of ULC Scheme to be Deemed NA (land termed to be non-agricultural land) pursuant to the judgment dated 15.10.2004 of the Hon'ble Apex Court, after assessment under the provisions of Section 48 of the Bombay Land Revenue Code, 1879, it was intimated by this Office to the State Government by letter at Reference No. 4 that permission can be given."

Mr. Rohatgi, learned senior counsel further submitted that despite our clear and unambiguous direction the respondent No.3 \026 Deputy Secretary, Revenue Department of the State Government under specific instructions from respondent Nos. 1 and 2 Secretaries of the Revenue Department has vide letter dated 16.02.2005 conveyed to the Collector the stand of the Government not to accept the judgment dated 15.10.2004 in respect of the land admeasuring 50 acres situated in survey No. 472 and grounds which are wholly untenable. Pursuant thereto respondent No. 8 \026 the Collector acting on the aforementioned instruction of respondent Nos. 1, 2 and 3 has also refused to grant such no objection in respect of survey No. 471/2 and 472. A perusal of the said correspondence would, in our view, show that the respondents have expressly stated that the Government has decided not to accept the judgment of this Court insofar as the aforementioned lands are concerned. It is needless to emphasize that judgments of this Court are binding on all authorities and the Government cannot arrogate to its powers to reject the judgment of this Court. As regards the land admeasuring 80 acres in survey Nos. 471/2 and 50 acres in 472 are concerned, the respondent-authorities are refusing to grant the NA permission on the self same issues, namely, that the said land is a government land. The said issues have already been finally concluded in favour of the petitioners by the various judgments of this

Court in the earlier litigations.

In para 68 of the judgment, this Court has observed as under:-

"68. From the above discussion by us and of the record would clearly go to show that the following issues are covered by the earlier proceedings and finally decided by the Courts and reached its finality and which cannot be reopened again:

- 1) The lands in Survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 aggregating about 952 acres sold in favour of the appellants by the former ruler with the permission of the Collector and registered has become final and conclusive.
 - 2) The lands in question being pasture land (Bid land) and not being fit for cultivation was excluded from the purview of the Gujarat Agricultural Land Ceiling Act, 1960.
 - 3) The Right, Title Entry made in the revenue records in respect of the lands in question in the name of the appellant has become final and conclusive and, therefore, removal of the appellant from any of the Survey Numbers in question is not permissible.
 - 4) The declaration issued by the competent authority and Additional Collector under the ULC Act, in exercise of the power under Section 21(1) of the ULC Act after verifying the title of the appellant in respect of the above survey numbers is final and conclusive.
 - 5) The writ petition filed by the Bhavnagar Municipality for quashing and setting aside the order dated 6.12.1979 granting exemption to the lands and sanctioning the scheme under Section 21 of the ULC Act was valid and legal.
 - 6) It is not in dispute that the appellants have raised construction on the lands and the lands have been fully developed, save and except, the lands in Survey No. 469/1.
 - 7) The orders dated 9.11.1979 and 20.11.1979 whereby the Deputy Collector dropped the proceedings filed by the former Ruler under Section 8 of the ALC Act for a declaration that the sale deed dated 31.3.1971 was not effected by him with a view to defeat the ALC Act was rejected by the Tribunal in Revision application by the State Government. In respect of the ALC proceedings, the said order was finally concluded since under the ALC Act no further appeal was preferred by the State Government.
 - 8) This also was not in dispute that pursuant to the cabinet decision of the Gujarat Government, the appellants withdraw all the pending proceedings and, thereafter notices were issued under Rule 108(6) of the Bombay Land Revenue Code seeking to revise the right and title Entry No. 1950 principally contending that the sale deed dated 31.3.1971 was invalid.
- On the abovementioned grounds, the mutation entry was sought to be cancelled. The Deputy Collector, Bhavnagar held that the ownership of the land in question was of the appellant and a decision was taken that the revenue mutation No. 1950 as recorded in Village Form No. 6 was legal and valid which was also decided to withdraw the show cause notice dated 27.7.1991 and to drop all the proceedings commenced under the said notice.
- 9) The Deputy Collector also confirmed the order of the City Mamlatdar dated 16.9.1962. The reservation of Survey No. 469/1 in favour of the Bhavnagar

University had lapsed.

10) The High Court, in its judgment, in SCA No. 1032 of 1996 quashed the notice dated 25.1.1996 of the Collector. The High Court observed that it is unfair for the Collector to raise various issues such as illegal sale of bid land, breach of the Saurashtra Gharkhed Ordinance, ALC Act etc. which were closed and decided earlier.

11) The issue of ULC Act and ALC Act was concluded by the judgment of the High Court in SCA No. 941 of 1980.

12) No further action can be taken for disturbing the finality of the mutation entry in view of the judgment of the High Court rendered on 24.11.2000 in SCA No. 1032 of 1996 and, therefore, there is no question of disturbing the mutation entry on the strength of the contravention of the provisions of other enactments now.

13) Civil appeal No. 5536 of 2001 preferred by the Municipal Corporation was dismissed as withdrawn. Thus the issue of ULC Act and ALC Act raised in SCA 941 of 1980 was finally concluded by the said judgment.

14) in the judgment in Bhavnagar University v. Palitana Sugar Mills Ltd. (supra), this Court decided the dispute between the Bhavnagar University and the appellant with reference to Gujarat Town Planning and Urban Development Act, 1976. The appeal filed by the Bhavnagar University was finally dismissed by this Court.

15) Review petition No. 33 of 2003 was also dismissed by this Court."

It is thus clear and apparent that despite the clear observations of this Court in paragraphs above of the present judgment that no issue raised in prior litigations can be raised again and no attempt to challenge the right and title in respect of the land in question could be made against the petitioners, namely, the respondents have once again sought to raise the same issues with a view to flout the directions of this Court and deprive the petitioners of the legitimate rights accruing to them from the judgment of this Court. The aforesaid attitude persists notwithstanding that the judgment of this Court has been passed in contempt proceedings and this Court has expressly observed that any further lapse shall be viewed extremely seriously.

We have already elaborately dealt with the history of the present litigation between the parties which shows that despite the petitioners having succeeded before this Court in 4 different hotly contested litigations vide judgments dated 14.11.2002, 03.12.2002, 05.12.2002 and 06.02.2003, the respondents have in one way or the other not complied with the judgment or not given the petitioners the development and building permissions required to construct on the lands in question. In our opinion, the respondents have with impunity flouted our judgments dated 15.10.2004. Mr. L.N. Rao invited our attention to the reply filed by respondents in order to justify their action in the contempt petition raising new pleas and new contentions in regard to survey No. 472 and 47/1. This apart they also filed IA Nos. 17 and 18 for certain directions after the notice was issued by this Court in the contempt petition regarding non-compliance and directions. The learned senior

counsel reiterated the submissions made in the two IAs. The respondents sought to file the above 2 IAs under the guise of filing the review petition. During the pendency of the contempt petition and the IAs, a letter was written by the Revenue Department to the Collector, Bhavnagar to take steps as the Government has taken a decision to accept the judgment of this Court dated 15.10.2004 for the land admeasuring 17 acres 4 guntas and 0.32 guntas and 1 acre 14 guntas upon which sundervas bungalow is located. The Collector was directed to comply with the said direction. However, in order to nullify the aforesaid acceptance of the judgment in respect of the land mentioned above, permission for non-agricultural use has been given for the recreation use and not for the residential use thus depriving the petitioner of the right to construct residential houses. The action of the respondents and the Collector in issuing permission for non-agricultural use for the recreation use is with an oblique motive to deprive the petitioner of the right to construct residential houses as already ordered in our judgment dated 15.10.2004. We, therefore, direct the Revenue Department and the Collector, Bhavnagar to forthwith issue permission to the petitioner for residential use with a right to construct residential houses for the above survey Nos. as mentioned in the letter dated 10.01.2007 of the Revenue Department to the Collector, Bhavnagar. In an answer to a query put by this Court to Mr. Mukul Rohatgi as to whether survey No. 471/2 was a water body, the learned senior counsel while disputing the statement of learned senior counsel for the State made a categorical statement that the said survey No. 471/2 is not a water body. The statement made by the learned senior counsel is placed on record. If it is not a water body, there cannot be any impediment on the part of the respondents' authorities in granting non-agricultural permission and other necessary building and development permission in respect of RS No. 471/2 admeasuring 80 acres and 472 admeasuring about 50 acres of village Vadva Dist. Bhavnagar. If 471/2 is the Water Body the respondents would be at liberty to decline Non Agriculture permission. We also direct the respondents to collect non-agricultural permission charges and conversion charges for the lands bearing survey Nos. 470/1, 471/2, 471/3 and 472 situated at village wadera Bhavnagar as prevalent in the year 1981. In our opinion, all the respondents had deliberately and with mala fide motive committed contempt of our order dated 15.10.2004. We have already explained their conduct and refusal to comply with our earlier orders. When they were advised to comply with the order by this Court during the pendency of the contempt proceedings, the act of the respondent in not complying is not only willful but also deliberate and contumacious. The respondents have not even tendered unqualified apology before this Court but filed an application in IA No. 17 and 18 of 2005. We, therefore, hold them guilty of willful and deliberate act of contempt of our order dated 15.10.2004. However, taking a lenient view and taking into consideration of the future prospects of the officers, we are not imposing any punishment for their willful and contumacious violation of the order of this Court. They are severely warned that they shall not involve themselves or violate the order of the highest Court of the

land and will not resort to the unacceptable new pleas by way of defence for the first time in the contempt proceedings. They shall not hereafter also take the plea of inventing an innovative defence that they did not realise the implications of the order passed by this Court when no such argument was ever advanced at the time of hearing before this Court and on earlier occasions. Courts have held in a catena of decisions that where in violation of an order of this Court, something has been done in disobedience, it will be the duty of this Court as a policy to set the wrong right and not to allow the perpetuation of the wrong doing. In our opinion, the inherent power will not only be available under Section 151 CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest. All the respondents are senior and experienced officers and must be presumed to know that under the constitutional scheme of this country orders of this Court have to be punctually obeyed and should not be trifled with. We have already found hereinabove that they have acted deliberately to subvert the orders of this Court. We, therefore, hold them guilty of contempt of Court and do hereby censure severely their conduct. Though a copy of this order could be sent which shall form part of the annual confidential record of service of each of the said officers, we refrain from doing so by taking a lenient view of the matter considering the future prospects of the officers. As already stated, the officers shall not indulge in any adventurous act and strictly obey the orders passed by the Courts of law. We by this order grant four weeks time to the respondents to comply with all our directions given in the judgment dated 15.10.2004. The petitioner is at liberty to move this Court if the directions are not complied with in its letter and spirit. The contempt petition stands allowed and the IAs stand dismissed.