

CASE NO.:
Contempt Petition (civil) 222 of 2006

PETITIONER:
Y.N. Gangadhara Setty & Ors

RESPONDENT:
Jaya Prakash Reddy, MD, Karnataka Cooperative Milk Producers Federation

DATE OF JUDGMENT: 02/11/2007

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGEMNT

CONTEMPT PETITION NO.222 OF 2006
IN
SPECIAL LEAVE PETITION (C) NO. 24199 OF 2005

Dalveer Bhandari, J.

1. This case has a chequered history. It is alleged that despite orders of this Court in Civil Misc. Petition No.5513 of 1972 in Civil Appeal No.514 of 1971 dated 30th August, 1972, (about 35 years ago) there has been a willful disobedience and defiance of the order of this Court. It is further alleged that there is also non-compliance of order dated 5th December, 2005 passed by this Court in SLP (C) No.24199 of 2005.

2. Brief facts which are relevant to dispose of this contempt application are recapitulated as under:-

The applicants M/s YS Setty & Sons were the owners of land admeasuring 20 acres and 3 guntas which was acquired by the State of Karnataka on 19.1.1961 under the Land Acquisition Act. The disputed land bearing Survey No.76/2 measuring 2 acres and 5 guntas being part of the total land.

3. The applicants filed several representations in the year 1962-63 before the Government of Karnataka for recovery of only 2 acres 5 guntas in survey no.76/2 in favour of YS Setty & Sons out of the total land acquired by the contemnor. On 15.5.1962, the applicants M/s Y.S. Setty & Sons received compensation of land. An appeal was filed before the High Court seeking enhancement of compensation. The High Court allowed the appeal in part. The Special Land Acquisition Officer challenged the order of the High Court before this Court by way of a special leave petition.

4. On 15.9.1967 vide Government Order No. RD 74 LGB 67, sanction was accorded to reconvey the disputed land in favour of the applicants YS Setty & Sons by the State Government subject to fulfilling of certain conditions.

5. On 14.10.1969, the Land Acquisition Officer wrote to the State Government informing that the disputed land has been reconveyed in the name of YS Setty & Sons and the final order was awaited from the State Government.

6. The Special Land Acquisition Officer entered into a compromise in Civil Appeal No.514 of 1971 with M/s YS Setty & Sons and agreed to reconvey 2 acres 5 guntas of land in their favour. Pursuant to the compromise reached between the parties, this Court decreed the appeal in terms of compromise between the parties. The relevant portion of the order dated 30th August, 1972 reads as under:-

\023The Application for recording compromise above-mentioned being called on for hearing before this Court on the 30th day of August, 1972. Upon perusing the said application and the terms of Compromise and upon hearing Mr. R.B. Datar, counsel for the petitioner residing appellant herein and Mr. K.N. Bhatt, counsel for the respondent, the Court took on record the said terms of compromise and by and with the consent of the parties herein, the court decreed the appeal in respect of 2 acres and 5 guntas of land out of 15 acres and 18 guntas of the land in Survey no.76/2 Adugodu Village in terms of the said terms of compromise annexed thereto as Schedule \021A\022.\024

7. It is alleged that despite the orders passed by this Court in a compromise petition, the possession of the land was not handed over to the applicants YS Setty & Sons or their predecessors-in-title.

8. The firm YS Setty & Sons was dissolved on 31.12.1973. The legal heirs and successors-in-interest of YS Setty & Sons made various representations before the State Government to reconvey the disputed land in their favour but the same were of no avail as the Government has not handed over the possession till date. Instead of giving the possession, the contemnor herein made construction over the disputed land.

9. The erstwhile partners and successors-in-interest of the applicants YS Setty & Sons filed a writ petition bearing Writ Petition No.4276 of 1995 before the High Court seeking directions to the contemnor herein to comply with the order dated 30.8.1972 passed by this court and to direct the State Government to comply with the government order dated 15.9.1967.

10. The applicants herein filed suit OS No.6969/1999 before the City Civil Court at Bangalore for reconveyance of the scheduled/disputed property. The court granted interim injunction in favour of plaintiff on 15.2.2000.

11. The contemnor herein challenged the said order before the High Court in MFA No.1189/2000. The High Court vide order dated 11.4.2000 vacated the interim injunction and directed the trial court to dispose of the suit untrammelled with the observations made in the judgment.

12. The applicants herein filed a special leave petition against the order dated 11.4.2000 and filed an interim application in Civil Appeal No.514 of 1971 seeking reconveyance and delivery of the disputed land. This court vide common order dated 03.12.2001 dismissed the special leave petition and directed the trial court to

expedite the hearing of the suit, if possible within six months. This Court further disposed of the interlocutory application filed and recorded the statement made by the State Government that \023\005.the government has executed the conveyance deed.\024

13. The State Government executed reconveyance deed dated 31.5.2001 in favour of the applicants herein by the Deputy Commissioner, Bangalore for the disputed land. In spite of the execution of the reconveyance deed, the State Government did not hand over possession of the land to the applicants herein. This attitude of the State Government compelled the applicants to file a writ petition before the High Court bearing no.18166 of 2002.

14. The learned Single Judge vide Order dated 31.3.2004 allowed the writ petition and directed as under:-

\023Direction is issued to the KMF to restore possession of the schedule land measuring 2 acres 5 guntas in Survey No.76/2 of Audigodo Village, Bangalore, South Taluk, bounded on the east by Sy.No.76/1, West by 76/2, north by 76/3 and south by Bangalore Hosur Road, within three months from today.\024

15. The learned Single Judge had recorded that the contemnor herein, i.e., Karnataka Milk Federation have, \023\005\005..no right whatsoever in respect of the scheduled property, has no right to resist delivery of possession pursuant to the deed of sale executed by the State Government in favour of the petitioners.\024 The Court further held that \023The KMF being an instrumentality of the State shall not come in the way of the State Government in honouring its commitment made in the compromise petition filed before the Supreme Court, much before the KDDC came into existence.\024

16. The Court also recorded that, \023The KMF proceeded to put up construction contrary to the directions issued by the State Government to deliver possession of the scheduled land to the petitioners. Further, the KMF being aware of all the above narrated facts proceeded to put up construction. This Court in the MFA (1189/2000) referred to above has observed that the KMF cannot plead any equity in its favour in the event it has been proceeded to put up construction. The suit filed by the petitioners is also disposed of since the State Government itself has reconveyed the property under the registered deed dated 31.5.2001. This Court also disposed of the SLP (C) No.9309/2001) and the application filed in SLP No.514/71 taking into consideration the subsequent development of the Government reconveying the property in favour of the petitioners (applicants herein).. \005.\024 Therefore, in considered view of the Court the petitioners were entitled for possession of the scheduled land from the KMF.\024

17. The contemnor aggrieved by the order dated 31.3.2004 filed a writ appeal before the Division Bench of the High Court. The Division Bench vide order dated 13.7.2005 dismissed the appeal and held as under:- \023Even though several contentions were raised

before the learned Single Judge, the learned Single Judge considering the fact that a compromise was entered into between the parties before this Court, the appellant cannot go back from the same. It was contended before the learned Single Judge that the State Government had no authority to enter into a compromise because the land when once acquired and handed over to Bangalore Dairy, it cannot be de-notified and given back to the owners. That contention has been rightly rejected by the learned Single Judge. The Government of then State of Mysore acquired the land for the Bangalore Dairy which was a wing of the State Government at that time. The appellant Corporation had not come into existence at that time. The acquisition was therefore for itself. Therefore, the Government had rightly agreed for the compromise before this Court. Hence, there was nothing wrong in the Government agreeing to de-notify the land which was acquired earlier. The present appellant which came into existence later on in place of the earlier Bangalore Dairy cannot question what had been done by the State Government in their own interest before this Court. The Division Bench therefore did not see any error committed by the learned Single Judge in rejecting the contention of the appellant.\024

18. The contemnor herein filed a special leave petition against the order dated 13.7.2005 passed by the learned Division Bench. The special leave petition was dismissed by this Court vide order dated 5.12.2005. This Court held as under :

\023We do not find any ground to interfere with the order. The SLP is dismissed accordingly.\024

19. Thereafter, the applicants through their advocates sent a legal notice dated 17.1.2006 and called upon the contemnor herein to comply with the orders dated 30.8.1972 and 5.12.2005 passed by this Court. The contemnor addressed a letter dated 25.1.2006 to the applicants herein and has merely made an offer to give possession of the land which is neither the scheduled land nor adjoining to the scheduled land.

20. The applicants thereafter had sent another letter dated 6.2.2006 through their advocate and again called upon the contemnor to comply with the order dated 30.8.1972 and 5.12.2005 passed by this Court and to deliver possession of 2 acres and 5 guntas of land as per the compromise reached between the parties before this Court. The contemnor-federation herein through its advocate addressed another letter dated 14.2.2006 to the advocate of the applicants herein and reiterated the offer made in the letter dated 25.1.2006.

21. In the contempt petition, it is alleged that the contemnor had made all attempts to avoid compliance of the orders of this Court and made every efforts to circumvent and over-reach the orders passed by this court.

22. It may be pertinent to mention that the Map which has been annexed with this petition shows that initially the contemnor had agreed to hand-over 2 acres 5 guntas of land from the portion marked as \023A\024. The contemnor-federation herein showed its inability to give that portion, therefore, the applicants herein YS Setty & Sons had agreed to take 2 acres 5 guntas of land, as per Map shown in Schedule \021B\024 which the contemnor agreed to give to the applicants.

23. We have heard learned counsel for the parties at length and we find considerable merit in this application. On consideration of the totality of the facts and circumstances, we direct the respondent-federation to hand-over possession of 2 acres 5 guntas, as per annexed Map shown as Scheduled \023B\024 without any loss of time.

24. We further direct that the cost of the reconstruction of the existing buildings shall be valued by an independent Government approved valuer within two weeks from today. The re-construction cost so fixed shall be deposited within a week from the report of the valuer.

25. The respondent-federation will be entitled to demolish the buildings within 8 weeks from the date of deposit and shall hand over vacant possession of the area of 2 acres 5 guntas as per Schedule \021B\024. The original re-conveyance deed shall be rectified within four weeks of handing over vacant, peaceful and physical possession by the respondent-federation.

26. In case there is non-compliance of the orders of this Court, the court will take very serious view of the matter and pass appropriate orders.

27. The contempt petition is disposed of accordingly.