

CASE NO.:
Appeal (civil) 687 of 2008

PETITIONER:
SHANTI DEVI

RESPONDENT:
STATE OF SIKKIM & ANR.

DATE OF JUDGMENT: 25/01/2008

BENCH:
ASHOK BHAN & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 10774 of 2006)

ALTAMAS KABIR, J.

1. Leave granted.

2. This is one of those rare cases in which the decision impugned in the appeal not only merits intervention but also calls for certain observations to be made in respect of the order itself.

3. The appellant and her husband, Ram Nath Prasad, were running a grocery-cum-stationery shop in a rented premises owned by the respondent No.2 herein, at Ranipool in East Sikkim. The Trade Licence for running the aforesaid business was in the name of M/s Ram Nath Prasad.

4. Ram Nath Prasad died on 17.3.2004 leaving his widow, Shanti Devi, the appellant herein, to run the business from the said rented premises. The appellant continued to run the business in the name of M/s Shanti Enterprises and on 1.7.2004 she applied to the concerned authorities for issuance of a fresh Trade Licence in the name of her firm M/s Shanti Enterprises. For the sake of abundant caution, on 9.7.2004 she also filed an application with an alternative prayer for changing the subsisting Trade Licence from the name of M/s Ram Nath Prasad to M/s Shanti Enterprises.

5. It may be mentioned that prior to her said application the respondent No.2-landlord had on 19.5.2004 written to the respondent No.1 indicating that Ram Nath Prasad had expired and that the existing Trade Licence for the aforesaid business should not be renewed and no fresh Trade Licence should be issued in the name of the sons of Ram Nath Prasad without a \021No Objection Certificate\022 from him, in his capacity as the owner of the said premises.

6. On 23.8.2004, the concerned authorities informed the appellant that the Trade Licence issued in the name of M/s Ram Nath Prasad was to be treated as cancelled under Rule 12(m) of the Sikkim Trade Licence and Misc. Provisions Rules, 1985, with immediate effect. The said direction was given despite the fact that the appellant\022s application for transferring the Trade Licence from the name of M/s Ram Nath Prasad to M/s Shanti Enterprises, was pending decision along with the appellant\022s application for issuance of a fresh licence in the name of M/s Shanti Enterprises.

7. Aggrieved by the said order dated 23.8.2004 cancelling the Trade Licence issued in the name of M/s Ram Nath Prasad, the appellant filed a writ petition, being Writ Petition (C) No.32 of 2004, in the Sikkim High Court on the ground that the impugned order was illegal, having been passed in violation of Articles 21, 14, 19 and 300 (A) of the Constitution of India. Besides praying for the quashing of the said order dated 23.8.2004 the appellant also prayed for certain other reliefs, including a declaration that the provisions of Rule 12(m) of the Sikkim Trade Licence and Misc. Provisions Rules, 1985, were arbitrary and in violation of Articles 14 and 21 of the Constitution and were liable to be struck down.

8. The said writ petition was disposed of at the very initial stage on 15.9.2004 with liberty to the appellant or any of her representatives to meet the Joint Secretary, Licence Section, Urban Development and Housing Department of the State Government, for guidance in the matter of compliance with whatever requirements that were required to be complied with. The concerned authority was directed to dispose of the representation of the appellant within one month from the date of intimation of the order passed by the High Court.

9. Pursuant to the above observations made by the High Court, the appellant applied to the concerned authority on 1.7.2004 and by its letter dated 17.9.2004 the said authority directed the appellant to submit necessary documents for grant of a separate Trade Licence. One of the documents which was required to be submitted was a \021No Objection Certificate\022 from the landlord/respondent No.2. Since, according to the appellant the respondent No.2 was bent upon evicting her from the said premises, she informed the respondent-authority, that the respondent No.2 was not willing to provide the appellant with such \021No Objection Certificate\022 and accordingly prayed that she be exempted from submitting the same. Despite the fact that the appellant had complied with all the other requirements and had prayed for exemption from submitting the \021No Objection Certificate\022, the respondent authority by its letter dated 14.10.2004 informed the appellant that her request for grant of a Trade Licence could not be considered in the absence of a \021No Objection Certificate\022 from the house owner. Instead, she was directed to close down her business with effect from 15.10.2004.

10. Since it was impossible to obtain a \021No Objection Certificate\022 from the respondent No.2/landlord who was bent upon evicting her from the premises in question, the appellant filed a fresh writ petition, being Writ Petition No.24/2006, before the Sikkim High Court, inter alia, renewing her prayer for transfer of the Trade Licence issued in favour of M/s Ram Nath Prasad to the appellant and also for striking down the requirements of obtaining a \021No Objection Certificate\022 from the house-owner together with the provisions of Rule 12(m) of the Sikkim Trade Licence and Misc. Provisions Rules, 1985, as being arbitrary and illegal.

11. It is the decision in the said writ petition which has given rise to this appeal and calls not only for intervention by this Court but also for certain observations to be made regarding the manner in which the powers of the High Court under Article 226 of the Constitution have been misapplied.

12. The appellant, who had filed the writ petition, inter alia, for a direction to the concerned authorities either to transfer the Trade Licence in the name of M/s Ram Nath Prasad to M/s Shanti Enterprises or in the alternative for issuance of a fresh Trade Licence in her favour was not only made to suffer an order of dismissal of her writ petition with costs assessed at Rupees one lakh, but was also handed a mandatory order of eviction directing her to vacate the premises in question within a week from the date of the order.

13. We cannot help but observe that not only was the said order passed without jurisdiction, but the same was also arbitrary and injudicious to say the least. If the learned Judges were of the view that the writ petitioner was not entitled to any of the reliefs prayed for in the writ petition they should have simply dismissed the same with reasonable costs, if at all thought necessary. We are unable to fathom the thought - process of the learned Judges which caused them to impose a cost of Rs. One lakh while dismissing the writ petition. No special circumstances have been indicated by the learned Judges in their impugned order to indicate why such a heavy cost was required to be imposed on the writ petitioner.

14. What is even more surprising and of some concern is the alacrity and despatch with which orders were passed on the contempt petition filed by the respondent No.2 on the very next day after the expiry of the stipulated period indicated in the mandatory directions given by the learned Judges directing the appellant to vacate the premises in question within one week from the date of the order. The facts, as revealed in I.A.No.1 of 2006, filed by the appellant in the Special Leave Petition, reveals a sordid tale of how the judicial process was used to perpetrate an illegality which had its origin in the order of the learned Judges disposing of the writ petition filed by the appellant.

15. It may be noted that the order disposing of the writ petition filed by the appellant was passed on 26.6.2006 and the period of one week given by the learned Judges to the appellant to vacate the tenanted premises lapsed on 3.7.2006. The contempt petition was filed by the respondent No.2 on 4.7.2006 and was immediately taken up for hearing on the same day on which it was filed and the appellant was directed to appear before the Court on the very next day to reply to the allegations made by the respondent No.2 in the contempt petition. In addition to the above direction to the appellant, a further direction was given to the Officer in-Charge of Ranipool Police Station, to produce the appellant before the Court on 5.7.2006. The Registry was also directed to furnish a copy of the order along with the contempt petition to the Officer in-Charge, Ranipool Police Station, to enable him to hand over the same to the appellant with liberty to her to file her reply to the contempt application on 5.7.2006 itself. It will, therefore, be evident from the above that while the appellant was given time till 3.7.2006 to vacate the tenanted premises, on the next day orders were passed for the appellant to appear before the Court and also to file her reply to the allegations made in the contempt petition. The dates speak of the haste with which the orders were passed in the contempt petition which had the effect of ensuring that the respondent No.2 obtained possession of the shop-room before the appellant could take any steps before the higher forum against the said orders.

16. To make matters even worse, on 5.7.2006 itself the learned Judges, throwing all restraint to the winds, passed an order which merits reproduction and is reproduced hereinbelow:

\023Despite directions and orders of this Court in terms of the order dated 04.07.2006, it appears to us that Smt. Shanti Devi is avoiding to receive the notice served upon her by the Registry of this Court and rather absconding herself thus defying not only the order dated 04.07.2006 passed in this Contempt Case (C) No.03 of 2006 but also the Order dated 26.06.2006 passed in the Writ Petition (C) No.24 of 2006.

None appears on behalf of Smt. Shanti Devi. On perusal of the notice it reveals that notice was received by one Kameshwar Prasad, son of Smt. Shanti Devi who is living with the said Smt. Shanti

Devi in the same house. At this stage, we are of the view that it is a clear case of Contempt of Court as Smt. Shanti Devi willfully defied the related Order and Judgment of this Court passed on 26.06.2006 in Writ Petition (C) No.24 of 2006. It may be mentioned that she are defined the Order dated 04.07.2006 passed by this Court in Contempt Case (C) No.03 of 2006.

After application of our mind in this matter and strictly interpreting the Law of Contempt, we opine that Smt. Shanti Devi obstructed and interfered with the due course of judicial proceedings of this Court. In view of the above position, this Court at this stage pass the following orders and directions:

Non-Bailable Warrant of Arrest be issued against Smt. Shanti Devi. The Chief Judicial Magistrate (East & North) shall comply with this direction immediately and Smt. Shanti Devi shall be produced before this Court on 07.07.2006 at 10.30 AM. It is also made clear that the Police Department shall make their best endeavor to comply and execute the order of this Court to meet the ends of Justice for which a copy of this order, be sent to the Director General of Police as well as to the Superintendent of Police, East District and O.C. concerned. The Registry is directed to take immediate action in this matter.

It is also further made clear that if the petitioner is outside the State, the police authority shall contact their counterpart of any other State or States for production of Smt. Shanti Devi before this Court on the date and time mentioned above.

In view of the existing facts and circumstances of the case, the District Collector/District Magistrate, East District is hereby appointed as the Receiver of the articles now lying at the premises of the applicant/petitioner Shri Subhash Kumar Pradan of Ranipool and, the District Collector/Magistrate, East is authorized to break-open the lock(s), if any found in the said premises and to dispose of all the articles by public auction and the sale proceeds of it shall be deposited in the Registry of this Court or he is at liberty to hand over the same to Smt. Shanti Devo or her authorized agent or agents and hand over the possession of the said premises to the owner concerned (Shri Subash Kumar Pradhan) with immediate effect for which the Police Department shall cooperate and shall make their best endeavor to execute the Order of this Court. The District Collector/Magistrate, East is directed to dispose of all those articles within 3 (three) days and submit a report to the Registry of this Court.

The District Collector/Magistrate, East is to prepare an inventory of the articles in the presence of two local residents and put the articles on public auction as the said Smt. Shanti Devi claims that some goods are perishable and some are not perishable in the related application submitted by her in the connected main Writ Petition. At the very outset this Court took the assistance of the learned

Advocate General who submitted that the conduct of Smt. Shanti Devi virtually amounts to insult to the Court not only defiance of the related Court's orders.

The matter be listed on 07.07.2006 for necessary orders.

Let a copy of this Order be also sent to all concerned.

Sd/-
(N.S.Singh)
Acting Chief Justice

Sd/-
(A.P. Subba)
Judge

17. Losing sight of the fact that the notice on the appellant had been issued on a contempt application and was required to be personally served on the alleged contemnor, the learned Judges before passing the draconian order did not even verify whether the notice of the contempt proceedings had been served personally on the contemnor and that despite such service the alleged contemnor had failed to act in terms of the notice. As will be apparent from the order of 5.7.2006 the learned Judges recorded the fact that no one had appeared on behalf of the appellant and that on perusal of the notice it was seen that the same had been received by the son of the appellant. Further more, without waiting for any response from the appellant the learned Judges came to a finding that it was a clear case of contempt of court as the appellant had willfully defied the order and judgment of the High Court passed on 26.06.2006 in the appellant's writ petition. What follows thereafter is nothing short of authoritarianism and complete disregard of the principles of fair play in judicial proceedings. A non-bailable warrant of arrest was issued against the appellant on 5.7.2006 with a direction on the Chief Judicial Magistrate (East and North) to ensure production of the appellant before the Court on 07.07.2006 at 10.30 a.m. Directions were also given to the Police Department to execute the order of the Court and a copy thereof was sent to the Director General of Police as well as to the Superintendent of Police, East District, together with the Officer in-Charge concerned. The District Collector/ District Magistrate (East District), was appointed as Receiver of the articles lying in the appellant's tenanted premises with authority not only to the District Magistrate but also to the respondent No.2 to break-open the lock(s), if any found in the said premises and to dispose of all the articles by public auction. The District Magistrate was also directed, after breaking open the locks to hand over the possession of the premises in question to the respondent No.2.

18. The possession of the appellant's tenanted premises was made over to the respondent No.2 pursuant to the aforesaid orders in the manner aforesaid.

19. At this juncture it may be noted that the appellant in her application for stay of operation of the orders passed by the Sikkim High Court on 05.07.2006 in the Contempt proceedings, has quite lucidly explained as to why the contempt notice could not be served on her on 04.07.2006 as a result whereof she could not present herself before the High Court on 5.7.2006 as directed. The appellant has explained that having regard to the short time frame within which she had been directed to vacate the tenanted premises, she had to come to Delhi immediately in order to file the Special Leave Petition giving

rise to this appeal. She has categorically indicated that on 04.07.2006 she was in Delhi and the question of avoidance of the contempt notice or any deliberate intention on her part to disobey the same did not arise. In her said application the appellant has also mentioned the fact that her son had received the contempt notice and had thereafter telephoned her in Delhi informing her of the same.

20. Having regard to the aforesaid facts, the order passed on the contempt application directing possession to be taken by the Police authorities and to make over the same to the respondent No.2, appears to be in gross abuse of the due process of law which cannot at all be sustained.

21. What is of grave concern is the fact that the learned Judges completely disregarded the civil law relating to eviction and directed the writ petitioner on her writ petition for different reliefs to hand over possession of the tenanted premises to the respondent No.2. The case in hand is an example of how the writ courts have in recent times either forgotten or ignored the line between the reliefs which could be given by the Civil Courts and the Constitutional Courts. The learned Judges appear to have lost sight of the fact that they were deciding a writ petition for reliefs prayed for by the writ petitioner and not a civil suit for eviction against her and that in such a proceeding no mandatory order of eviction could be passed and certainly not against the writ petitioner herself. In fact, after imposing the cost of Rupees one lakh while dismissing the writ petition, the learned Judges added insult to injury by directing the writ petitioner to also vacate the premises, where she was running her business for about thirty years, within a week from the date of the order.

22. While deciding the writ petition, the learned Judges appear to have shifted their focus from the reliefs prayed for in the writ petition to what relief could be given to the respondents therein. This appears to be the reason for the learned Judges to have passed a mandatory order of eviction on the appellant's writ petition, wherein she had, inter alia, prayed for a direction on the authorities to issue a fresh Trade Licence to her on her husband's death. The learned Judges referred to the order passed in the earlier writ petition filed by the appellant for similar reliefs which had been disposed of with a direction to the appellant to approach the Joint Secretary of the concerned department for guidance as to how the requirements for the grant of a Trade Licence could be complied with. The learned Judges do not appear to have considered the fact that the appellant had complied with all the requirements except the requirement of obtaining a 'No Objection Certificate' from the respondent No. 2 who was bent upon evicting her from the tenanted premises from where she was running her business. The learned Judges generally observed that the appellant had totally failed to comply with the directions and the terms and conditions contained in the State's letter dated 17.9.2004. The order imposing cost of Rupees One Lakh and directing the appellant to vacate her tenanted premises and to deliver possession thereof to the respondent No. 2 follows such observation. The constitutional issues raised by the appellant regarding the provisions of the Sikkim Trade Licence and Miscellaneous Provisions Rules, 1985, were neither considered nor addressed by the learned Judges while disposing of the writ petition. The learned Judges have, in fact, observed that it was not necessary for the Court to go into the matter in depth as the writ petition deserved to be dismissed with heavy costs.

23. In the aforesaid circumstances, we have no hesitation in setting aside the order of the High Court dated 26.6.2006 and to direct the High Court to reconsider the matter afresh. Having regard to the arbitrary and unlawful manner in which possession of the premises in question was made over to the respondent No.2 the said respondent is directed to restore possession of the premises in question to the

appellant within a fortnight from date. The cost imposed by the impugned judgment and the contempt proceedings are also quashed.

24. This order will not preclude either of the parties from pursuing their reliefs, if any, further before the appropriate forum .

25. The appeal is accordingly allowed with cost of Rs.25,000/- to the appellant.

JUDIS