

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th MAY, 2022

IN THE MATTER OF:

+ CONT.CAS(C) 92/2022

NIRMAL JINDAL

..... Petitioner

Through: Ms. Vertika Sharma, Advocate

versus

SHYAM SUNDER TYAGI & ORS

..... Respondents

Through: Mr. Debopriyo Moulik, Advocate for
Respondent No.1 (Shyam Sunder
Tyagi)

Shyam Sunder Tyagi - in person.

Mr. Sameer Vashisht, ASC(Civil)
GNCTD with Ms. Sanjana Nangia,
Advocate for R-2 to R-4

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. The instant contempt petition has been filed for the alleged willful violation of the orders dated 15.10.2020 and 21.12.2020, passed by this Court in W.P.(C) No. 7356/2021 & CM No. 33867/2020.

2. The facts, in brief, leading to the instant contempt petition are as follows:

- a) Aggrieved by the non-consideration of her application for putting up a boundary wall to secure her property in terms of

the revenue land records, the Petitioner herein approached this Court by filing W.P.(C) No. 7356/2021.

- b) Notice was issued on the writ petition and a Status Report was filed by the Police. The Status Report has been reproduced in the order dated 15.10.2020. After considering the Status Report, this Court on 15.10.2020 passed the following order:

“5. The photographs show that the petitioner’s property is unprotected and can be walked into and put to misuse by anybody. It is in nobody’s interest that the place be open to mischief. Therefore, in the interest of the parties, it should be secured in such a manner that all mischief is obviated. The petitioner is ready and willing to give an undertaking to the effect that if the boundary wall is secured, she will remove it in terms of such order as may be passed by the Deputy Commissioner Revenue, in her appeal and applications which are pending for more than half a decade.

6. In the circumstances, let the Deputy Commissioner dispose-off her appeal and/or her application for securing her property in terms of the above, preferably within a period of 2 months from today. The parties may be heard through video conferencing, through counsel.”

- c) As proper police protection had not been granted to the Petitioner, the Petitioner moved an application, being CM APPL. 33867/2020, seeking directions. The said application was considered by this Court on 21.12.2020 wherein this Court, in terms of the order dated 15.10.2020, directed the Police to grant protection to the Petitioner at the time of construction of

the boundary wall. Relevant portion of the said order reads as under:

“4. The learned counsel for the applicant/petitioner submits that the boundary wall has not been constructed as the petitioner was awaiting due action by the respondents.

5. The Court would note that assurance was given by the learned ASC for the State that status quo apropos the petitioner’s possession of the property would be secured. Since the petitioner is stated to be in possession of the property by the learned ASC for the State, let the boundary wall be constructed to secure the property in terms of the previous order as soon as possible, with due intimation to the learned ASC for the State. Albeit, the same would be without prejudice to the rights and contentions of the parties, in particular those of R-6, who states that some possession has been given to him.

6. The objective of the aforesaid exercise is that the property be secured from mischief. The appropriate undertaking as indicated in para 5 of the aforesaid order, shall be furnished by the petitioner before the Deputy Commissioner (Revenue) and a copy thereof shall be filed in this Court within one month.

7. The learned ASC for the State states that because of COVID-19 pandemic related administrative exigencies, the demarcation could not be carried out. Therefore, he seeks and is granted 3 more weeks’ time to comply with the order, with due notice to the parties. An endeavour shall also be made to dispose-off the petitioner’s appeal within a period of 5 months

from today”

- d) It is stated that the boundary wall was constructed on 24.12.2020, and in terms of the orders dated 15.10.2020 and 21.12.2020, passed by this Court in W.P.(C) No. 7356/2021 & CM No. 33867/2020, an undertaking was given by the Petitioner on 23.12.2020 that in case it was found that the boundary wall had not been constructed in terms of the orders of this Court or if the Deputy Commissioner, Revenue, so ordered, the Petitioner would demolish the boundary wall.
 - e) It is stated that on 03.01.2022, the Respondent No.1 herein, with the aid of certain persons, arrived at the premises and demolished the boundary wall constructed by the Petitioner.
 - f) It is stated that the Petitioner lodged an FIR against the Respondent No.1 at Police Station Burari, being FIR No.17/2022, dated 04.01.2022 for offences under Sections 448/511 IPC, and also approached this Court by filing the instant contempt petition.
 - g) It is pertinent to note that Charge-sheet in the abovementioned FIR for offences under Sections 447/448/451/511/34 IPC was filed on 04.05.2022 before the learned MM, Tis Hazari Courts.
3. Notice in the instant contempt petition was issued on 27.01.2022 wherein this Court observed as under:

“7. An FIR dated 04.01.2022, has been lodged against respondent no.1 by the petitioner. It is odd that the local police have done nothing in the matter, despite a lapse of 23 days since registration of the FIR. Surely, a prompt and robust response was expected from the

police, especially when the wall had been built up in terms of the court's orders, with due intimation to the police and the State.

8. Let the DCP look into the matter and file an affidavit before the next date. The learned ASC for GNCTD submits that the needful shall be done.

9. Issue notice to respondent No.1 through ordinary process, approved courier, Speed Post, WhatsApp, e-mail, SMS, Signal, and other viable modes of electronic service, through counsel as well, returnable on 07.03.2022.”

4. On 07.03.2022, this Court found that the Petitioner is guilty of contempt of Court and the apology tendered by the Respondent No.1/Contemnor was rejected by this Court on the ground that the manner in which the demolition was done by the Respondent No.1/Contemnor with the help of a JCB excavator machine, as evidenced in the photographs reproduced in the said order, portrayed that the demolition was a willful and deliberate act on the part of the Respondent No.1/Contemnor to flout the orders of this Court. Relevant portion of the said order reads as under:

“2. At the outset, the learned counsel for the R-1 submits that the wall demolished by the said respondent was possibly due to misconstruing of the court's directions, for which an apology is tendered. When the demolition was being carried out, with the assistance of a JCB excavator machine, as evidenced in the photographs, reproduced in the aforesaid order, the local police was intimated about the same and they reached the site.

3. The court is informed that an FIR has been registered. The court is informed that the wall has been

rebuilt by the petitioner with due protection being provided by the local police at the initiative of the SHO himself. He assures a thorough investigation in the matter. The court is also assured by the learned counsel for the State, that the charge-sheet, as may be, shall be filed shortly.

4. The learned counsel for the petitioner submits that the expenses for building up the wall are in the amount of Rs. 10,000/-. Let the said monies be paid by R-1 to the petitioner.

5. Insofar as the wall was built under the directions of the court, and the built wall is a part of record of this court, R-1 could not possibly have demolished it on his own. It was always open to R-1 to approach the court for variation in the order and/or to intimate the court, that he believed that the petitioner had mislead the court. Instead, R-1 has taken the law in his hands and has with much fanfare demolished the wall by a JCB excavator machine and has breached the court's directions. In the circumstances, R-1 is held guilty of having committed contempt of court under sections 2(b) and 12 of Contempt of Courts Act, 1971.

6. The oral apology tendered by R-1 lacks remorse and is accordingly rejected.

7. List for orders on sentencing on 11.05.2022.

8. The local police assures the court of due protection of the petitioner who is apprehensive of harm from R-1”

5. The matter was fixed for orders on sentencing on 11.05.2022. On 11.05.2022, the matter was adjourned to 12.05.2022, and thereafter to today, i.e. 13.05.2022.

6. Heard Ms. Vertika Sharma, learned counsel for the Petitioner, Mr. Debopriyo Moulik, learned counsel for the Respondent No.1/Contemnor, and Mr. Sameer Vashisht, learned ASC(Civil) GNCTD, and perused the material on record.

7. Learned counsel for the Respondent No.1/Contemnor contends that the property of the Petitioner is adjacent to the property of the Respondent No.1 and there is a dispute between them regarding demarcation of the property. He, therefore, submits that demolition was conducted because Respondent No.1 was under the misconception that the wall had been constructed on his land. He tenders an unconditional apology and prays that the Respondent No.1 ought not be punished under the Contempt of Courts Act, 1971.

8. The submissions of the learned counsel for the Respondent No.1/Contemnor cannot be accepted by this Court. The order dated 15.10.2020 was passed in the presence of the Respondent No.1/Contemnor wherein the Petitioner was directed to construct a boundary wall. Order dated 21.12.2020, granting protection to the Petitioner herein, was also passed in the presence of the Respondent No.1/Contemnor. The Respondent No.1/Contemnor cannot now plead ignorance regarding the area where the boundary wall had been constructed.

9. The boundary wall was constructed on 23.12.2020. Photographs evidencing the said construction have been filed along with the instant contempt petition (Annexure CP-3). Admittedly, the dispute as to whether the boundary wall has been constructed on the property of the Petitioner or on the property of the Respondent No.1/Contemnor is pending before the Deputy Commissioner, Revenue. Demolition of the boundary wall took

place on 03.01.2022, i.e. after more than a year of the construction of the boundary wall. This action, therefore, was not in the heat of the moment and, therefore, can only be construed as an attempt by the Respondent No.1/Contemnor to willfully flout the orders passed by this Court.

10. The manner in which the demolition took place, i.e. by using a JCB excavator and with the aid of other people, also indicate that the Respondent No.1/Contemnor harboured the intention to terrorize the Petitioner. This demonstrates that the Respondent No.1/Contemnor possess scant regard towards the orders of the Court, and has undermined the dignity of the Court and outraged the majesty of law. The action of the Respondent No.1/Contemnor cannot be said to be an outcome of confusion regarding the site where the boundary wall has been constructed, especially when the matter was still under consideration before the Deputy Commissioner, Revenue. In any event, the Petitioner had given an undertaking that in case it was found that the boundary wall is not constructed in terms of the orders of this Court or if the Deputy Commissioner, Revenue, so orders, the Petitioner would demolish the boundary wall.

11. The Supreme Court in the case of In Re: Vinay Chandra, (1995) 2 SCC 584, had delineated the purpose of the law of contempt in building confidence in the judicial process. The relevant paragraph of the said judgement has been reproduced as follows:

“39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts,

the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

12. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is

undermined. For the acts done by the Respondent No.1/Contemnor, he deserves no mercy from this Court. A strong message has to be sent to the society that the orders of the Court cannot be flouted by using strong arm tactics.

13. Keeping in view the contumacious conduct of the Respondent No.1/Contemnor (Shyam Sunder Tyagi), this Court sentences the Respondent No.1/Contemnor (Shyam Sunder Tyagi), who is present in Court today, to undergo 45 days of simple imprisonment along with a fine of Rs.2,000/-.

14. The Respondent No.1/Contemnor (Shyam Sunder Tyagi) is directed to be taken in custody forthwith.

15. Registry is directed to prepare the necessary warrants forthwith.

16. With these observations, the petition is disposed, of along with all the pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 13, 2022

Rahul