

## **R.N. Dey And Others vs Bhagyabati Pramanik & Others on 19 April, 2000**

**Equivalent citations: AIRONLINE 2000 SC 144, 2000 (4) SCC 400, (2000) 3 LAND LR 572, (2000) 2 ALL WC 1600, (2000) 4 CIV LJ 76, (2000) 2 REC CIV R 727, (2000) 3 SCALE 365, (2000) 3 ICC 339, (2000) 2 UPLBEC 1754, (2000) 4 JT 629, (2000) 3 SUPREME 363, (2000) 1 ANDH LT (CRI) 329, (2000) WLC (SC) CIVIL 418, 2000 UJ(SC) 1019, (1995) 28 STA 281, (1995) 96 STC 204, 1995 BLJR 1 100, 1995 KERLJ(TAX) 417, (2000) 4 JT 629 (SC), 2000 UJ(SC) 2 1019, (2000) WLC(SC) CVL 418, (2002) 1 RAJ LR 751, (2002) 2 WLC (RAJ) 690, (2002) 3 RAJ LW 1804, (2002) 5 SERVLR 190**

**Bench: M.B.Shah, K.T.Thomas**

PETITIONER:

R.N. DEY AND OTHERS

Vs.

RESPONDENT:

BHAGYABATI PRAMANIK & OTHERS

DATE OF JUDGMENT: 19/04/2000

BENCH:

M.B.Shah, K.T.Thomas

JUDGMENT:

Shah, J.

Delay condoned. These appeals are filed against the judgment and order dated 4th August, 1998 passed by the High Court of Calcutta in C.R. No.1186 of 1993 and C.P.A. N. No.1822 of 1997 in F.A. No.232 of 1983. By the impugned order, the Court accepted unqualified apology tendered by the appellants in compliance with the orders of the Court for not paying the balance award money due to the respondents. The Court further directed the appellants to deposit with the Registrar (Appellate Side) the compensation money determined in terms of order of the learned Land Acquisition Judge in respect of the lands acquired by the State as mentioned in the order and decree within two weeks from the date of the order without prejudice to the rights and contentions of the parties in such proceedings. Further, the Court did not pass any order on the application filed by the Collector for vacating the Rule issued in the contempt proceeding holding that Collector cannot go

behind the Award passed by him as provided under the Land Acquisition Act.

It is the contention of the appellant that the land in question has vested in the State Government under the Estates Acquisition Act, 1953 and the intermediaries were paid the compensation under the said enactment. It is also contended that respondents-claimants have obtained a decree by fraud in their favour after the said Act, therefore, it is nullity as the land vested in the State Government. Further, by mistake, the Collector made an order under the Land Acquisition Act for the acquisition of 39.02 acres of land @ Rs.27,126/- per acre. That compensation was enhanced to @ Rs.4,23,500/- per acre. The State of West Bengal filed appeal (First Appeal No.232 of 1988) against the said Judgment and Decree. In the said appeal, an application for stay was also filed on which the High Court made an order directing that payment @ Rs.600/- per cottah be made as an interim relief. The claimants filed an application before the Appellate Court for a direction that compensation amount be paid. However, the Appellate Court directed an ad hoc payment of Rs.1,00,000/-. That amount was paid. Further, on 15th May 1992, the High Court passed an interim order which reads as under:

Accordingly, the appellant should pay at this stage to the respondent/claimant a sum equivalent to 3/4th of the rate admitted by the appellant, i.e. 3/4th of Rs.800/- per cottah including the benefits awarded by the learned L.A. Judge within two months from today.

Thereafter, it came to light that claimants have no right, title or interest in the land and, therefore, no compensation was payable to them. In these circumstances, the State of West Bengal moved an application for vacation of the order for the payment. Thereafter, the claimants filed an application stating that the officers of the State of West Bengal were in contempt for not having complied with the order of the High Court.

It is also pointed out that against the order of the High Court directing that 2/3rd of the compensation be paid to the claimants, the State approached this Court by filing a petition but the same was withdrawn with liberty to move the High Court for suitable orders. Subsequently, claimants filed an application before this Court seeking clarification of order dated 09.9.1992. This Court vide order dated 23.8.1993 clarified its order by stating that order dated 09.9.1992 does not, in any way, come in the way of claimants getting the admitted compensation. Subsequently, the High Court passed an order that application for vacating interim order would be heard on the date fixed for hearing of the contempt rule.

In the background of these facts, it is submitted by the learned counsel for the appellants that First Appeal No.232 of 1988 is pending before the Court and that there is no specific order staying the judgment and award passed by the Land Acquisition Judge. Therefore, instead of filing contempt application, the claimants could, at the most, have proceeded with the execution of the decree or award. It is further submitted that in view of the facts stated above contempt application was wholly untenable and the issuance of Rule in said matter was unjustifiable. Hence, the High Court

committed grave error in proceeding on the basis that the officers of the State Government are in contempt. It is also pointed out that pursuant to the various orders, the State has paid in all appeals approximately Rs.50/- lacs even though it is the contention of the State Government that nothing was payable to the claimants as the land has vested in the State Government. As against this, it has been contended by the learned counsel for the respondents that after tendering unqualified apology it was not open to the appellant to file these appeals. At present, since the matter is kept pending before the High Court, this Court should not interfere at this interlocutory stage.

We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment debtor and hence the court should not normally lend help to a party who refuses to take legally provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree.

The learned counsel for the respondents submitted that after issuance of notice for contempt proceedings initiated by the respondents, the Court has only issued Rule and the matter is not finally decided, therefore, the appeal against such order is not maintainable. It is submitted by the learned counsel for the appellants that respondents want to take undue advantage of pending contempt proceedings and coerce the officers of the State in making payment on the basis of the award even though they are not entitled to recover the same as the property had already vested in the State and that the appellants were required to pay in all approximately Rs. 50 lakhs to the claimants.

In our view the aforesaid contention of the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, concerned officers tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the Rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides

to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the Rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable. For the aforesaid purpose, reference can be made to the decision in *P.D. Goel v. B.S. Dhillon and Others* [(1978) 2 SCC 370] wherein the Court observed that: - If the alleged contemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court.

The Court further observed that if the order decides some disputes raised before the Court by the contemnor asking it to drop the proceedings on one ground or the other, the appeal against the said order is maintainable.

In the present proceedings the question whether appeal under Section 19 is maintainable or not is not required to be decided finally as, in our view, facts of this case are grossly inadequate and the contempt proceedings were not required to be initiated at all. In any case, the unconditional apology tendered could have been accepted and further proceedings dropped and Rule ought to have been discharged.

In the result, the appeal is allowed, the impugned order passed by the High Court issuing Rule in contempt proceedings is set aside. The First Appeal filed by the State is pending since 1988 and it has been contended by the State that the property which was acquired had already vested in the State Government, therefore, the High Court is requested to expedite the hearing of the First Appeal and dispose it of as early as possible. The appeals stand disposed of accordingly with no order as to costs.