Punjab-Haryana High Court
Swaran Singh vs Bhagwanti on 21 September, 1993
Equivalent citations: (1993) 105 PLR 556
Bench: G Majithia, H K Sandhu
JUDGMENT G.R. Majithia, J .

1. This appeal under Section 19 of the Contempt of Courts Act, 1971 (hereinafter called the Act) is directed against the order of the learned Single Judge dated 22.8.1986 convicting the appellant under Section 12 of the Act and sentencing him to pay fine of Rs. 1000/- and in case of default of payment of fine to undergo simple imprisonment for a period of 15 days.

2 The brief facts:-

Smt. Bhagwanti (hereinafter referred to as the petitioner) was transferred area situated at Jalandhar under the orders of the Settlement Officer (Urban) vide order dated 24.5.1969. The appellant challenged the transfer in favour of the petitioner. The authorised Settlement Commissioner vide his order dated 27.5.1993 cancelled the transfer in favour of the petitioner. The petitioner challenged the order of the Authorised Settlement Commissioner who set aside the order of the Authorised Settlement Commissioner and restored the transfer in favour of the petitioner. The appellant challenged the order of the Chief Settlement Commissioner in a revision under Section 33 of the Displaced Persons (compensation and Rehabilitation) Act, 1954 before the Financial Commissioner Revenue). The same Was disposed of observing thus:-

"..... The allotment already made in favour of Smt. Bhagwanti in the year 1969 should not have been quashed unless it was definitely established that it was illegal or made on wrong facts. There being lot of confusion in this case, it requires to be sent back to the M.O. (U), Jalandhar for re-examination in the light of the observations made above in presence of the parties and I order accordingly. The transfer of the plot already made in favour of Smt. Bhagwanti shall not be cancelled unless the M.O., after visiting the spot and on the basis of evidence that may be produced by the petitioners (parties) comes to the conclusion that allotment in her favour merits cancellation. As to the claim of the petitioner, that would arise only if the competent authority first comes to the view that plot should not have been ab-initio transferred in favour of Smt. Bhagwanti and further that the petitioner has any rightful claim. In doing so, he will take into account the revenue record, the entire history of pleas adopted by the petitioner before different authorities from time to time as also the source on which his claim arises."

After remand, the Assistant Settlement Commissioner-cum-Managing Officer Rehabilitation cancelled the allotment to the extent of area measuring 90 square yards out of 419 square yards vide order dated 9.7.1979. The petitioner unsuccessfully challenged the order before Settlement Commissioner which dismissed the appeal vide order dated 3.9.1979. Still aggrieved against the order the Settlement Commissioner she assailed the same in revision before the Chief Settlement Commissioner which was dismissed on 16.4.1980. The petitioner challenged the order of the Chief Settlement Commissioner in Second Revision under Section 33 of the Displaced persons (Compensation and Rehabilitation) Act before the Delegatory Central Government which was

dismissed on 20.6.1980. The order of the Delegatory Central Government under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act was challenged in C.W.P. No. 2713 of 1980. The same was dismissed by a learned Single Judge of this Court on 29.01.1993 and the judgment in reported as Smt. Bhagwanti v. Financial Commissioner Rev. Punjab, (1993-2) C.L.J. (C.Cr.& Rev. 310). During the pendency of Writ Petition, the petitioner moved Civil Miscellaneous No. 2250 of 1985 praying that the appellant be restrained from demolishing remaining constructed portion on the disputed site and he should further be restrained from making any alterations on the dispute site. This application was disposed of by a learned Single Judge observing thus:-

"It is agreed between the learned counsel that the Respondent be allowed to reconstruct the fallen roof and that the said respondent will not be allowed to remove the Malba in case the Writ Petition is decided in favour of the Writ Petitioner. I order accordingly.

September 17,1985. Sd/-

R.N. Mittal, Judge."

The appellant was the respondent in the Writ Petition. The petitioner initiated contempt proceedings against the appellant for having raised construction on the disputed site which was not within the ambit of the order reproduced above. The learned Single Judge held that the appellant had made construction over and above permitted under the order and after so holding, he convicted the petitioner under Section 12 of the Act as indicated above.

3. We do not thing it proper to go into the contentions raised by the learned counsel for the petitioner that the construction made by the appellant was not envisaged under order the order passed in Civil Miscellaneous No. 2215 on 17.9.1985. In our view the order reproduced (supra) will not constitute an undertaking given by the appellant in court. Section 2(b) of the Act defines Civil Contempt. It means wilful disobedience to any judgment, decree, direction, order writ or other process of a court or wilful breach of an undertaking given to a court. A bare reading of the definition will suggest that the term "Undertaking given to the court" would apply to only cases where the undertaking is given in writing to the court or where the court in its order specifies that in view of the undertaking it passed a certain order. In the instant case the graveman of the charge against the appellant is that he has committed a serious breach of the undertaking given to the court. We have not been referred to any undertaking given by the appellant to the court. Any person appearing before the Court can give an undertaking in two ways; (i) that he filed an application or an affidavit clearly setting out the undertaking given by him to Court, or (2) by a clear and express oral undertaking given by the contemnor and incorporated by the court in its order. If any of these conditions are satisfied then a wilful breach of the undertaking would doubtless amount to an offence under the Act. The learned Single Judge has construed the consent order as an implied undertaking given by the appellant. There is a clear cut distinction between a compromise arrived at between the parties or a consent order passed by the court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former case, if there is violation of the compromise or the order, no question of contempt of court arises. In Babu Ram Gupta v. Sudhir Bhasin,1, A.I.R. 1979 S.C. 1528, dealing with the disobedience of the compromise decree or consent

order held that it did not amount to contempt and observed thus:-

"These are the tests laid down by this court in order to determine whether a contempt of court has been committed in the case of violation of a prohibitive order. In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that would co-operate with the receiver or that he would hand over possession of the cinema to the receiver. Apart from this, even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he could hand over possession of the property to the receiver. In the absence of any express undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking. What the High Court appears to have done is that it took the consent order passed which was agreed to by the parties and by which a receiver was appointed, to include an undertaking given by the contemner to carry out the directions contained in the order. With due respect, we are unable to agree with this view taken by the High Court. A few examples would show how unsustainable in law the view taken by the High Court is. Take the instance of a suit where the defendant agrees that a decree for Rs. 10,000/- may be passed against him and the court accordingly passed the decree. Can it be said in these circumstances that merely because the defendant has failed to pay the decretal amount he is guilty of contempt of court? The answer must necessarily be in the negative. Take another instance where a compromise is arrived at between the parties and a particular property having been allotted to A, he has to be put in possession thereof by B. B does not give possession of this property to A. Can it be said that because the compromise decree has not been implemented by B, he commits the offence of contempt of Court? Here also the answer must be in the negative and the remedy of A would be not to pray for drawing up proceedings for contempt of court against B but to approach the executing court for directing a warrant of delivery of possession under the provisions of the Code of Civil Procedure. Indeed, if we were to hold that non-compliance of a compromise decree of consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation for proceedings for contempt of court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking impliedly or expressly incorporated in the order impugned. Thus, there being no undertaking, at all the question of breach of such an undertaking, does not arise."

We are of the opinion that however improper the conduct of the appellant may yet the act of not complying with the term of the consent order does not amount to an offence under Section 2(b) of

the Act. His conviction and sentence is wholly unwarranted by law.

4. For the reasons stated above, the appeal succeeds and the order of the learned Single Judge is set aside.