

Before Rajendra Nath Mittal, J.

VIROCHAN,—Petitioner

versus

RAM SARAN DASS,—Respondent.

Civil Original Contempt Petition No. 52 of 1981

October 19, 1981.

Contempt of Courts Act (I.XX of 1971)—Sections 2(b) and 12—Ejection of a tenant ordered—Tenant giving an undertaking to the Court to deliver possession to the landlord within a specified period—Undertaking wilfully flouted by the tenant—Such conduct of the tenant Whether amounts to contempt of Court.

Held, that 'civil contempt' according to section 2(b) of the Contempt of Courts Act, 1971 includes wilful breach of an undertaking given to a Court. An undertaking given to the Court by a person in pending proceedings on the faith of which the Court sanctions a particular course of action or inaction has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt.

(Para 12)

Petition under section 12 of the Contempt of Court Act praying that respondent may be dealt with according to the Contempt of Courts Act and be suitably punished.

Ravinder Seth, Advocate, for the Petitioner.

D. V. Sehgal Advocate with P. S. Rana & Vinod Kataria, Advocate for the respondent.

JUDGMENT

Rajendra Nath Mittal, J.—

(1) The case of the petitioner is that he is the landlord of the land in dispute which was under the tenancy of Ram Saran Dass respondent. He filed an application under Section 13 of the East Punjab Urban Rent Restriction Act for the ejection of the respondent, before the Rent Controller, Jullundur. On 15th June, 1979 the Rent Controller accepted the application and ordered ejection of the respondent. Against that order he went up in appeal before the Appellate Authority, which was dismissed on 10th October, 1980. Later he filed revision petition (Civil Revision No. 226 of 1980) in this Court, which met the same fate on 19th November, 1980. However, he made a request for granting some time for vacating the premises. He gave an undertaking that he would vacate the premises on or before 19th January, 1981, subject to his right to approach the Supreme Court by way of special leave petition. He also undertook to deposit the arrears of rent, if any, and also the rent for the next two months on or before 19th December, 1980, before the Rent Controller. On the said undertaking he was granted time upto 19th January, 1981.

(2) The respondent filed a special leave petition (S.L.P. No. 679 of 1981) in the Supreme Court, which was again dismissed. The Supreme Court, however, directed that the order for eviction be not executed before the expiry of six months if the respondent filed an undertaking that he would hand over the peaceful vacant possession to the petitioner on or before the expiry of six months. The respondent did not file any undertaking as ordered by the Supreme Court. It is alleged that he deposited the arrears of rent on 19th December, 1980 but he refused to vacate the premises as undertaken by him in this Court. On the other hand, he filed objection petition in execution proceedings, which conduct of the respondent amounts to contempt of Court. The objections were also dismissed but in spite of that he failed to deliver the possession.

(3) It is further alleged that the respondent had moved an application in the Rehabilitation Department that the property belonged to that department. He continued to pursue that application before the Rehabilitation Department. It is, consequently prayed that he may be punished under the Contempt of Courts Act.

Virochan v. Ram Saran Dass (R. N. Mittal, J.)

(4) The main question that arises for determination is, if the respondent after giving an undertaking to vacate the premises by a particular date did not do so, whether he is guilty of contempt of Court. It is not disputed that the counsel for the respondent gave an undertaking on 19th November, 1980 that the respondent would vacate the premises after two months and would deposit the arrears of rent and also the future rent by 19th December, 1980. The order dated 19th November, 1980 reads as follows:—

“At this stage Mr. Sarin has made a request for granting some time for vacating the premises in dispute. The counsel undertakes on behalf of the petitioner to vacate the premises on or before 19th January, 1981 subject to his right to approach the Supreme Court by way of Special leave Petition. The counsel also undertakes on behalf of the petitioner to deposit arrears of rent, if any, on or before 19th December, 1980 in the Court of the Rent Controller as also the rent for the next two months. Ordered accordingly.”

On that undertaking he was given two months further time to vacate the premises. On 25th November, 1980 he made a statement in the executing Court that a stay order had been granted by the High Court. The case was adjourned to 27th November, 1980 for filing a copy of the order or an affidavit in that regard. On 27th November, 1980 the respondent produced a copy of the order dated 19th November, 1980 before the executing Court. Thereafter he also deposited the arrears of rent as ordered by the High Court. The executing Court, in view of the orders of the High Court, did not execute the order of ejection.

(5) The respondent also filed a special leave petition (Civil) No. 679 of 1981 against the order of dismissal of the revision petition, dated 19th November, 1980 by this Court, in the Supreme Court of India, which was dismissed on 15th January, 1981. However, the Supreme Court directed that the order of eviction would not be executed before the expiry of six months on the condition that the respondent filed an undertaking in that Court within two weeks, to the effect that he would hand over the vacant and peaceful possession of the premises to the petitioner on or before the expiry of six months. He did not file any undertaking as ordered by the Supreme Court.

(6) The learned counsel for the respondent has argued that the order, dated 19th November, 1980 containing the undertaking given by the counsel for the respondent has merged with the order of the Supreme Court and, therefore, the respondent cannot be held to be guilty of the contempt of Court in case he has not vacated the premises in accordance therewith. In support of his contention he made reference to *Commissioner of Income-tax, Bombay v. M/s. Amritlal Bhogilal and Co.*, (1); *Collector of Customs, Calcutta v. East India Commercial Co., Ltd., Calcutta*, (2) and *Krishan Kumar and others v. The Financial Commissioner, Taxation, Punjab*, (3)

(7) I have given due consideration to the argument of the learned counsel but regret my inability to accept it. No appeal is maintainable against the order of dismissal of the revision petition as a matter of right. However, the aggrieved party is entitled to make special leave petition under Article 136 of the Constitution of India to allow him to file an appeal against such an order. In case the Supreme Court allows the petition, he can file an appeal otherwise not. In the present case the respondent, as already stated above, moved a special leave petition, which was dismissed. Thus the dismissal of the special leave petition by the Supreme Court will not amount to dismissal of the appeal against the order, dated 19th November, 1980 by it. Therefore, it cannot be said that the order of this Court merged with that of the Supreme Court. The granting of the stay by that Court also does not amount to modification of the order of ejection. Further, time granted by the Supreme Court in the special leave petition was subject to the respondent's furnishing an undertaking within a period of two weeks that he would hand over the peaceful vacant possession of the premises to the petitioner on or before the expiry of six months which he failed to do. In the aforesaid view I find support from *Nand Kishore v. Sali Inderabai Holkar* (4). In that case a decree for ejection by the trial Court was affirmed by the High Court. Special leave petition against the decree of the High Court was dismissed by the Supreme Court, but it put a rider that the decree would not be executed upto a particular date. It was held that the Supreme

(1) A.I.R. 1958 S.C. 868.

(2) A.I.R. 1963 S.C. 1124.

(3) 1981 Revenue Law Reporter 206.

(4) A.I.R. 1981 Madhya Pradesh 21.

Virochan v. Ram Saran Dass (R. N. Mittal, J.)

Court only directed that the decree of eviction will not be executed upto a particular date. That clearly meant that the decree which was passed by the trial Court and maintained by the High Court was further maintained by the Supreme Court and did not amount to any modification of the decree. It only put a rider on the execution thereof. In *M/s. Amritlal Bhagilal's case* (supra) it has been observed that if an appeal was provided against an order passed by a tribunal, the decision of the appellate authority was the operative decision in law irrespective of whether it confirmed, modified or reversed the decision of the tribunal. Similar observations have been made in *East India Commercial Co's. cases* and *Krishna Kumar's case* (supra). There is no dispute about the principles laid in those cases. The observations therein, however, are not applicable to the facts of this case.

(8) It may also be highlighted that the respondent did not furnish any undertaking regarding the handing over of the peaceful possession of the property within a period of six months as directed by the Supreme Court. Therefore, the conditional stay granted by that Court cannot be deemed to have come into operation. Consequently, I am of the opinion that the undertaking given by the respondent for vacating the premises within a period of two months i.e., on or before 19th January, 1981 remained into operation and he cannot be allowed to say that that order will merge with that of the Supreme Court.

(9) Faced with that situation, the learned counsel for the respondent has sought to urge that the property belonged to Rehabilitation Department and the latter moved an application before the rent Controller, in the application for ejection, that the Union of India should be made a party. It was dismissed on 25th November, 1978 by him, observing that the orders passed in the ejection application would not in any way affect the rights which the Union of India might have in the premises. Later, on 31st October, 1980 the Assistant Custodian or Evacuee Property took cognizance of the matter and ordered *Status quo*, which was later confirmed on 11th November, 1980, by him. On 5th March, 1981 the order of *status quo* regarding possession was affirmed by the Custodian General, Punjab. He urged that the property was an evacuee property and therefore the orders of the Rehabilitation Authorities are binding on the petitioner and he could not get its possession from the respondent.

(10) On the other hand, the learned counsel for the petitioner has urged that the respondent had moved the application before the Rehabilitation Authorities to bypass the order of ejectment passed by the Rent Controller and affirmed by the High Court. He also challenged the jurisdiction of the Rehabilitation Authorities to take cognizance of the matter.

(11) I have given my thoughtful consideration to the arguments of the learned counsel. It is not necessary to determine as to whether the Rehabilitation Authorities had the jurisdiction to take cognizance of the matter or not. The Rehabilitation Authorities took cognizance at the instance of the respondent. He had approached them in order to circumvent the orders of ejectment. If after giving the undertaking he chose to take such an action, that itself tantamounts to contempt of the Court. After surrendering the possession to the petitioner, he could take legal action but he could not do so prior to that. The orders of the Assistant Custodian and the Custodian General, ordering *status quo* regarding possession between the parties, are in contravention of the order of ejectment passed by the Rent Controller and affirmed by this Court. No provision has been brought to my notice under which they could pass such orders. Therefore, the respondent cannot derive any benefit from the said orders. Even if the order of *status quo* is assumed to be legal, the respondent had no right to flout the order of ejectment by taking shelter under the order of the Assistant Custodian or the Custodian General, and refuse to deliver possession.

(12) 'Civil Contempt' according to Section 2(b) of the Contempt of Courts Act, 1971, includes wilful breach of an undertaking given to a Court. It has been held at page 44 Vol. IX of the Halsbury's Law of England (4th Edition) that an undertaking given to the Court by a person in pending proceedings on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt.

(13) From the narration of the facts given above, it is evident that the respondent has committed wilful breach of the undertaking given by him. It squarely falls within the definition of the "civil contempt". Same view was taken by the Supreme Court in *Chhaganbhai Norsinbhai v. Soni Chandubhai Gordhanbhai and*

Virochan v. Ram Saran Dass (R. N. Mittal, J.)

others, (5). In that case the appellant had given a solemn undertaking to the High Court to hand over the possession of the premises in his possession. In view of the undertaking the revision petition was dismissed. He committed breach of the undertaking. It was observed by Beg, J., speaking for the Court, that the case being a case of deliberate violation of an undertaking to the Court the effect was the same was that of breach of an injunction. Hence it amounted to contempt of Court. A similar case came up before the Delhi High Court in *Saleemuddin and another v. Sharfuddin and others*, (6). It was held there that a breach of an undertaking given to the Court amounts to a contempt in the same way as a breach of an injunction and is likely to be visited by the same punishment as for a breach of an injunction.

(14) After taking into consideration the above said facts, I am of the view that the respondent is guilty of contempt of the Court. The circumstances of the case go to show that his conduct has been highly contumacious. Thus, he does not deserve any leniency. I, therefore, sentence him to undergo simple imprisonment for three months and to pay a fine of Rs. 2,000, or in default of payment of fine to undergo further simple imprisonment for one month.

(15) Mr. Seth has stated that the executing Court delivered possession of the property in dispute to the petitioner but he was simultaneously dispossessed by the respondent. He requests that the warrant for possession be issued so that the petitioner may get possession of the property. I have given due consideration to the argument. The respondent had given an undertaking that he would deliver peaceful possession of the property to the petitioner but he committed breach of the undertaking for which he has been held guilty of contempt of the Court. He not only failed to deliver possession to the respondent but when it was delivered to him, he forcibly dispossessed him. He had no right to do so. Consequently, the petitioner is entitled to get possession of the property. I had also asked the respondent to deliver possession of the property peacefully to the petitioner but he did not agree to it. This Court has inherent powers to issue warrant of possession to do justice between

(5) A.I.R. 1976 S.C. 1909.

(6) A.I.R. 1980, Delhi 30.

the parties. In the aforesaid view, I am fortified by the observations in *Saleemuddin's case* (supra) of Delhi High Court, and consequently direct that the warrant of possession be issued in favour of the petitioner and police assistance may be given to him.

N.K.S.

Before S. S. Sandhawala C.J. and S. C. Mital, J.

S. S. MARWAH—Appellant

versus

THE UNION OF INDIA and others—Respondents

Letters Patent Appeal No. 468 of 1976

October 21, 1981

Fundamental Rules—Rules 7 and 56 (i)—Central Civil Services

(Classification, Control and Appeal) Rules, 1963—Rule 56 (i) Mandate

Public Servant compulsorily retired under Rule 56 (i) Ministry of Finance not consulted before passing of the order of retirement. Rule 7—Whether attracted—Superintendent in the Central Excise Department—Collector Central Excise and Customs—Whether the appointing authority of such Superintendents.

Held, that rule 7 of the Fundamental Rules was intended to safeguard the interest of the State against financial commitments which may be made without due realisation of financial implications and consequent monetary losses precipitated by improper and hasty action. Therefore, it is difficult to see how the compulsory retirement of a public servant under rule 56 (i) could have financial implications so as to attract Fundamental Rule 7 and the resultant consultation with the Ministry of Finance. This rule entrusted the Ministry of Finance with the task of weighing financial advantages and disadvantages of actions to be taken by other departments and

(301) **S. S. Marwah v. The Union of India and others**
(S. S. Sandhawalia, C.J.)

to advise them but was not even remotely intended to confer any right on any individual citizen. Thus, it is held that rule 7 has no application in the context of a compulsory retirement under rule 56(j) of the Fundamental Rules. (Paras 3 and 4).

Held, that reading rules 5 and 9 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with the relevant entries in the Schedule would leave no manner of doubt that the appointing authority of the Superintendents in the Central Excise Departments would be the Collector, Central Excise and Customs and not the Board. Serial No. 12 of the Schedule Part II Central Civil Services, Group B in express terms prescribes that the appointing authority of the Superintendents, Group B, is the Collector of Central Excise and Customs.

(Para 6).

Appeal Under Clause X of the Letters Patent Appeal against the Judgment delivered by Hon'ble Mr. Justice O. Chinnappa Reddy on 24th September, 1976.

Praying in the grounds that the appeal be accepted, the decision of the learned Single Judge be set aside and the writ petition be allowed with costs throughout.

J. L. Gupta, Advocate, for the Petitioner.

H. S. Brar, Advocate, for the Respondent.

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) Whether rule 7 of the Fundamental Rules is attracted in the case of an order of compulsory retirement under section 56(j) of the said Rules is one of the meaningful questions arising in this appeal under Clause 10 of the Letters Patent directed against the judgment of the learned Single Judge dismissing the writ petition preferred by the appellant.

2. It calls for notice at the outset that the appellant in his writ petition had challenged the order of compulsory retirement dated the 4th of October, 1975, passed by the Collector, Central Excise and Customs, Chandigarh, on a variety of grounds. The Motion Bench, however, admitted the writ petition only on the limited question noticed above. However, at the final hearing, as a matter of

abundant caution, the learned Single Judge allowed argument on other points as well in view of certain observations in *Vattipalle Esvariah v. Vattipalle Rameshwarayya*, (1). We are sceptical whether the ratio of the Madras judgment on the specific point of the admission of appeals under Order 41 rule 11 would be equally applicable in the case of writ petitions under Articles 226 and 227 of the Constitution of India. However, as the matter has not been debated before us we do not propose to express any final opinion thereon.

3. Inevitably the argument here would turn on the language of rule 7 afore-mentioned and it is, therefore, apt to read it at the outset:—

“R. 7. No powers may be exercised or delegated under these rules except after consultation with the Ministry of Finance. It shall be open to that Ministry to prescribe, by general or special order, cases in which its consent may be presumed to have been given. This takes effect from 6th February, 1971”.

Before the learned Single Judge it was strenuously urged that because there was no consultation with the Ministry of Finance before passing the order of compulsory retirement the aforesaid rule was infringed and consequently the impugned order of compulsory retirement was vitiated. In categorically rejecting this contention the learned Single Judge rightly noticed that the aforesaid rule 7 was intended to safeguard the interest of the State against financial commitments which may be made without due realisation of financial implications and consequent monetary losses precipitated by improper and hasty action. Therefore, he rightly found it difficult to see how the compulsory retirement of a public servant under rule 56(j) could have any financial implications so as to attract Fundamental Rule 7 and the resultant consultation with the Ministry of Finance. It was further noticed that the rule entrusted the Ministry of Finance with the task of weighing the financial advantages and disadvantages of actions to be taken by other Departments and to advise them but was not even remotely intended to confer any right on any individual citizen. After closely analysing *Haridwar Singh v. Bagum Sumbri and others*, (2), upon which reliance had been placed on

(1) A.I.R. 1940 Madras 483.

(2) (1973)3 S.C. cases 889.

S. S. Marwah v. The Union of India and others
(S. S. Sandhawalia, C.J.)

behalf of the writ petitioner the learned Single Judge distinguished the same and found that it had not the least application in the present case. Similarly it was found that there was not the least analogy with the cases of consultation with the High Court in the context of appointment of District Judges as laid down in Article 233 of the Constitution, because the position of the Finance Department under the Fundamental Rules bore no comparison with that of the High Court under the Constitution.

4. Faced with the uphill task of assailing the very lucid and impeccable reasoning of the learned Single Judge on the aforesaid point, Mr. J. L. Gupta, the learned counsel for the appellant was rather half-hearted in pressing his challenge. Indeed no meaningful argument worth the name could be advanced against the said finding. We deem it wasteful to examine the matter afresh as we find ourselves entirely in agreement with this reasoning in the judgment under appeal which we affirm. It is held that rule 7 has no application in the context of a compulsory retirement under rule 56(j) of the Fundamental Rules.

5. Learned counsel for the appellant had then attempted to assail the clear and categorical finding of the learned Single Judge that the impugned order of compulsory retirement had been passed by the appropriate authority. It was sought to be contended that the appointing authority of the appellant was indeed the Board and not the Collector, Central Excise and Customs, and therefore, the order of compulsory retirement passed by the latter was invalid. Basic reliance for this submission was on annexure P/2 to contend that it indicated that the petitioner was appointed to officiate as Superintendent of Central Excise by the Board itself.

6. We are unable to find the least infirmity in the reasoning or the finding of the learned Single Judge on this point. It is significant that the firm stand on behalf of the respondent-Union of India, both in the pleadings and the stage of argument, at the writ stage was and also before us, is that the appointing authority of the appellant was the Collector, Central Excise and Customs and no other. This is amply and indeed conclusively borne out by the statutory rules on the point. Reference in this connection may be

made to The Central Civil Services (Classification) Control and Appeals Rules, 1965. Reading rules 5 and 9 thereof with the relevant entries in the Schedule would leave no manner of doubt that the appointing authority of the appellant would be the Collector, Central Excise and Customs and not the Board. Serial No. 12 of the Schedule Part-II Central Civil Services, Group-B in express terms prescribes that the appointing authority of Superintendents, Group-B, is the Collector of Central Excise and Customs. Also it appears that the position was identical under the earlier Rules of 1957 as indicated by annexure D/1 of the Return.

7. Apart from the above, annexure P/2, on which reliance was placed on behalf of the appellant itself indicates that the Collector alone could issue the appointment orders of the Superintendents. Para No. 3 of annexure P/2, in terms stated that the formal orders of appointment of the appellant as also others would be issued by the Collectors concerned. It is not in dispute that in pursuance thereto the Collector of Central Excise,—vide annexure D/2 had appointed the appellant to officiate until further orders as Superintendent of Central Excise, Class-II. Consequently, there is no escape from the conclusion that the appointing authority of the appellant was the Collector of Central Excise and Customs and therefore, the impugned order of compulsory retirement had been passed by the appropriate authority.

8. In fairness to Mr. H. S. Brar, the learned counsel for the respondent-Union of India, we must notice his firm reliance as well on *Union of India v. M. E. Reddy and another*, (3), *Baldev Raj Chadha v. Union of India & others*, (4) and *Union of India v. S. A. Razak*, (5). Undoubtedly the observations in these judgments further buttress the stand of the respondents.

9. No other contention was raised.

10. Affirming the judgment of the learned Single Judge, we dismiss this appeal with costs.

S. C. Mital, J.—I agree.

(3) 1979(2) S.L.R. 792.

(4) 1980(4) S.C.C. 321.

(5) A.I.R. 1981 S.C. 360.