

Court No. - 10

Case :- Contempt Application (Civil) No. - 5601 of 2017

Applicant :- Ishan International Educational Society Through its Director

Opposite Party :- Shri Mukul Singhal Principal Secretary And 4 Others

Counsel for Applicant :- Sri Chandan Sharma, Sri Anuj Srivastava, Sri Ashutosh Srivastava, Sri Devaang Savla, Sri Namit Srivastava, Ms.Parul Srivastava

Counsel for Opposite Party :- Sri Kartikeya Saran, Sri Anoop Trivedi, Sri Nabab Singh Chauhan

Hon'ble Rohit Ranjan Agarwal,J.

1. This is a second contempt application, the earlier Contempt Application (Civil) No. 3847 of 2017 having been disposed of on 05.09.2017 for complying the order of writ Court by the opposite party, the same having not been complied with, the present contempt proceedings have been initiated at the behest of the applicant.

2. This case has a chequered history, according to the applicant he purchased lands of khasra Nos. 314, 329, 332, 333, 334, 335, 330 and 331 situated at Village Mahiuddin Kanawani, Pargana Loni, Tehsil Dadri, District Ghaziabad through registered sale-deed on 24.09.2002. Mutation was carried out over the said land. The State Government on 16.10.2004 issued a notification under Section 4 (1) and Section 17 (4) of the Land Acquisition Act 1894. By the said notification a total of 367-0-5 Bighas or 229.5390 Acres or 92.893 Hectare of land of Village Mahiuddin Kanawani, Pargana Loni, Tehsil Dadri, District Ghaziabad was to be acquired for residential scheme of Ghaziabad Development Authority (hereinafter referred as the 'Authority').

3. The said notification included the land of the applicant of khasra No. 314-M, 329-M, 330, 331-M, 332-M, 353-M, 334-M and 335-M total area 8 Bigha i.e. 2.0240 Hectare. Notification under Section 6 of the Act of 1894 was published on 28.11.2005. The said notification was challenged by the applicant through Civil Misc. Writ Petition No. 7775 of 2005 and the Division Bench of this Court on 22.12.2005 granted interim order as to the dispossession of the applicant from the land in dispute. The said writ petition was disposed of on 07.12.2007 with a direction to the Authority to implement its Board Resolution dated 20.02.2003 so far as it relates to the release of the applicant's land.

4. Against the said order, the Authority filed special leave to appeal being Special Leave to Appeal (Civil) No. 18828 of 2008 wherein the Apex Court on 17.04.2009 granted interim order. On 21.04.2012 the State authorities made award under Section 11 read with Section 17 but the land of the applicant was not included. On 08.05.2015 an award was declared in respect of the applicant's land. The Apex Court allowed the appeal of the Authority on 09.09.2015 and set-aside the order passed by Division Bench of this Court dated 07.12.2007 and directed the Authority to consider the request of the applicant. On 06.10.2015 the Authority rejected the request of the applicant for release of the land.

5. The said order was challenged through Civil Misc. Writ Petition No. 60276 of 2015. The said writ petition was finally decided on 09.05.2017 and the Special Land Acquisition Officer was directed to redetermine the award by determining the market value of land as on 01.01.2014. The Court further directed that the redetermination of the amount of compensation shall be done under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as the 'Act of 2013') by treating 1st January 2014 as the date on which the market value of land should be determined. The said exercise was to be completed within three months. Post remand, the Special Land Acquisition Officer calculated the

amount of compensation at circle rate prevalent on 01.01.2014 i.e. at the rate of Rs. 70,000/- per square meter and requested the Authority to deposit the amount so that the award may be declared.

6. In the meantime, the Authority filed a Special Leave Petition (Civil) No. 17660 of 2017 before the Apex Court. The said SLP was dismissed on 19.07.2017. After dismissal of SLP, applicant filed Contempt Application (Civil) No. 3874 of 2017 against the opposite parties for not complying the order dated 09.05.2017 passed by this Court. The Contempt Court on 05.09.2017 disposed off the contempt application granting two months time for complying the order of writ Court. Thereafter, the Authority filed the Review Petition No. 2765 of 2017 in SLP No. 17660 of 2017 before the Apex Court for reviewing its order dated 19.07.2017. The said review petition was dismissed on 05.12.2017. In the meantime, the contempt proceedings were initiated against the opposite party for not complying the order of writ Court despite the dismissal of SLP and review petition.

7. On 29.05.2019 the proposed award was prepared at the rate of Rs. 23317.84/- per square meter and the total amount calculated was Rs. 1,27,81,16,673/-. As the amount involved was more than Rs. 10 crores approval of the Divisional Commissioner was required before the declaration/publication of award and the matter was sent to the Commissioner for approval. On 05.07.2019 the Commissioner, Meerut Division granted the approval to the modified compensation subject to the condition that after deposit of compensation amount and acquisition expenses by the acquiring body the proposed award may be declared/published under the relevant provisions of the Act and Rules. The order of Commissioner was communicated to the District Magistrate Ghaziabad on 10.07.2019. On 16.07.2019 a letter was sent by Special Land Acquisition Officer to the Authority to deposit the compensation amount. In the meantime, the Authority filed a Curative Petition No. 12 of 2019 before the Apex Court which was rejected on 28.08.2019.

8. The district authorities on 13.11.2020, 19.11.2020, 27.11.2020, 16.12.2020, 27.10.2021, 29.10.2021 and 07.03.2022 wrote letters to the Authority to deposit the compensation amount so that the modified award as prepared on 29.05.2019 could be declared and published.

9. Earlier, on 09.11.2020 the Court had directed to disburse an amount of Rs. 10 crore which was already deposited by the Authority on 27.03.2019 against the estimated compensation, as there was no award. A modification application was filed to modify the order dated 09.11.2020, but the same was rejected on 05.02.2021, however, on another modification application the Court directed for payment of Rs. 10 crore to the applicant and the same was paid on 12.03.2021.

10. In the meantime, the State approached the Supreme Court through Special Leave Petition No. 20025 of 2019 challenging the order dated 09.05.2017 passed by this Court in Writ-C No. 60276 of 2015. The said SLP was dismissed on 02.09.2021. Thereafter, review petitions were filed being Review Petition Nos. 359 of 2021 and 349 of 2021 in Writ-C No. 60276 of 2015 against the judgment dated 09.05.2017, which were dismissed on 02.02.2022.

11. Against the dismissal of review petition, the Authority filed SLP before the Apex Court which was dismissed on 01.04.2022. On 20.04.2022 the Authority has filed an objection before the district authorities to determine the rate of compensation on the basis of prevailing rate on agricultural land on 01.01.2014 adjoining to the land of Village Mahiuddin Kanawani after affording opportunity of hearing to the Authority. On 23.04.2022 considering the objection raised by the Authority, the District Magistrate requested the Commissioner to give permission for making amendment in determining the rate of compensation and to constitute a High Level Committee, to redetermine the rate of compensation. On 26.04.2022 the Commissioner, Meerut Division, Meerut had constituted a six member committee for

redetermining the rate of compensation. A detailed report was submitted by the said committee on 04.05.2022.

12. The authorities considering the recommendation of the committee redetermined the compensation at the rate of Rs. 2626.25 per square meter and total compensation has been determined as Rs. 23,01,16,360/- on 04.05.2022, and the approval has been granted by the Divisional Commissioner. On the same day, the Special Land Acquisition Officer made a demand for deposit of amount of compensation from the Authority alongwith administrative expenses. After the amount was deposited by the Authority an award to the tune of Rs. 23,01,16,360/- has been declared and published by the Special Land Acquisition Officer on 06.05.2022 following the provision of Section 26 (1) (b) of the Act of 2013.

13. Sri Chandan Sharma, learned counsel for the applicant, submitted that the opposite parties are clearly in contempt of the order of writ Court dated 09.05.2017 as the Special Land Acquisition Officer was required to redetermine the award and calculate the compensation payable to the applicant under the provisions of the Act of 2013 by treating 01.01.2014, as the date on which market value of the land was to be calculated. According to him, once the exercise was taken by the Special Land Acquisition Officer on 29.05.2019 and the proposed award was made calculating the compensation at the rate of Rs. 23317.84/- per square meter no occasion arose to modify the award subsequently, on the application of Authority, and to redetermine at the rate of Rs. 2626.25/- per square meter in the year 2022.

14. According to Sri Sharma the award once proposed cannot be changed subsequently by the State authorities and the order of writ Court having been not complied, the officers are liable to be punished under Section 12 of the Contempt of Courts Act. He also emphasized upon the fact that the order dated 09.05.2017 having been challenged by both the State and the Authority before the Apex Court, and having failed there, no occasion

arose to withhold the proposed award and, then redetermine it again in the year 2022.

15. Sri Ravi Kant, learned Senior Counsel appearing for the Authority, submitted that the award dated 06.05.2022 is according to the provisions of the Act of 2013 and the market value of the nearby villages as on 01.01.2014 has been taken into consideration by the authorities. He further submits that the fair value of the land i.e. Rs. 2626.25/- per square meter has been awarded to the applicant and the order of writ Court has been complied with in entirety. According to him, the order of writ Court was to the Special Land Acquisition Officer to redetermine the award by determining the market value of the land as on 01.01.2014, which the authorities have done while declaring the award.

16. Learned Senior Counsel also submitted that the remedy available to the applicant under the law is by making reference under Section 64 of the Act of 2013 and not the contempt proceedings. Once the order of writ Court has been complied with, in case the applicant is not satisfied by the award he may avail the legal remedy provided under the law and present contempt proceedings are not maintainable.

17. Sri M.C. Chaturvedi, learned Additional Advocate General appearing for the officers of the State, submitted that the order of writ Court was specific to the extent that the Special Land Acquisition Officer was to redetermine the award by determining the market value of the land as on 01.01.2014 which has been done after six member committee was constituted by the Commissioner, who submitted its report and the award was declared on 06.05.2022. He further emphasized that after declaration of the award the sole remedy left to the applicant is under Section 64 of the Act of 2013 and the present contempt proceedings have become infructuous.

18. I have heard learned counsel for the parties and perused the material on record.

19. Before adverting to decide the issue in hand, as to whether any deliberate or wilful disobedience of the order of writ Court has been made by the opposite party or not, a glance of Section 2 (b) of the Contempt of Courts Act 1971 (hereinafter referred as the 'Act of 1971') is necessary for better appreciation of the case, which is extracted hereasunder;

“2. (b) “civil contempt” 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;”

20. From the reading of the above provisions, it is crystal clear that a civil contempt would be attracted only when there is wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court.

21. In order to punish a contemnor for the alleged wilful disobedience, it has to be established that disobedience of the order is “wilful”. The Supreme Court had occasion to consider the term “wilful” in its judgment rendered in the case of **Ram Kishan Vs. Tarun Bajaj and others 2014 (16) SCC 204**, the Court held that the word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one’s state of mind. According to the Court, the word “wilful” means knowingly, intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The relevant paragraph nos. 11 and 12 of the judgment are extracted hereasunder:-

“11. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are

quasi- criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct"

22. In **Sushila Raje Holkar Vs. Anil Kak (Retd.) 2008 (14) SCC 392**, the Apex Court held that the proceedings under the Act of 1971 has a serious consequence. The proceedings for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The Apex Court relied upon its earlier judgment in **P.C. Sen (1969) 2 SCR 649** and **Jhareswar Prasad Paul and Another v. Tarak Nath Ganguly & Ors. (2002) 5 SCC 352**. *The relevant Paragraph no. 23 of the judgment is extracted hereasunder:-*

"A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has willfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefor require strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration. Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor. A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature (See Re: P.C. Sen [(1969) 2 SCR 649] and Jhareswar Prasad Paul and Another v. Tarak Nath Ganguly & Ors. [(2002) 5 SCC 352].

A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.”

23. It is well settled that Court dealing with application for Contempt of Courts cannot traverse beyond the order. It cannot test correctness, or otherwise of the order or give additional direction or delete any direction, as it would amount to be exercising review jurisdiction with an application for initiation of contempt proceedings. It is impermissible. The Apex Court had occasion to hold such view in case of **Prithawi Nath Ram Vs. State of Jharkhand and others, AIR 2004 SC 4277**.

24. In **Three Cheers Entertainment Private Limited and others Vs. CESC Limited, 2008 (16) SCC 592**, the Apex Court had the occasion to consider whether a contempt proceedings can be drawn by a roving enquiry. The Court held, a roving enquiry is not permissible. Relevant paragraph nos. 25, 29, 30 are extracted hereunder:-

“25. Indisputably, the majesty of the Court is required to be upheld. The Court must see that its orders are complied with. But for the said purpose, a roving enquiry is not permissible. Several proceedings which seek to achieve the same purpose are unknown to the process of law. If the trial was to be held on the issues framed by the learned Single Judge, it should have been allowed to be brought to its logical conclusion. When the trial was incomplete, we fail to see any reason why the contempt proceeding was heard on affidavits. Even if that was done, reliance was sought to be placed on the depositions of the witnesses in the said enquiry, which was admittedly incomplete. Witnesses affirming affidavits before the learned Single Judge were not being cross-examined so as to enable the counsel for the parties to draw their attention to the earlier statement made by them in terms of Section 145 of the Evidence Act.

*29. Contempt of court is a matter which deserves to be dealt with all seriousness. In **Mrityunjoy Das & Anr. v. Sayed Hasibur Rahman & Ors.** [(2001) 3 SCC 739], this Court held :*

*“13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (*vide Murray & Co. v. Ashok Kr. Newatia*). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction the majesty of law.”*

30. In Chhotu Ram v. Urvashi Gulati & Anr. [(2001) 7 SCC 530], this Court held that a contempt of court proceeding being quasi criminal in nature, the burden to prove would be upon the person who made such an allegation. A person cannot be sentenced on mere probability. Willful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on ipse dixit of the court. It must be arrived at on the materials brought on record by the parties.

Yet again in Anil Ratan Sarkar & Ors. v. Hiral Ghosh & Ors. [(2002) (4) SCC 21], it was opined :

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a ‘civil contempt’ within the meaning of Section 2(b) of the Act of 1971 – the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation – the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise.”

25. Recently the Apex Court in case of **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101**, held that wilful disobedience will arise only where the action is deliberate, conscious and intentional. The Court further held that a roving inquiry is not expected by the contempt Court and it cannot go beyond the very judgment which is alleged to be violated. The relevant paragraph no. 8 is extracted hereasunder:-

“8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the “willful” disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding.

While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigor when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.”

26. Thus, it is clear that unless and until the disobedience is wilful on the part of the contemnor, the contempt Court cannot punish for deliberate and wilful disobedience of the order alleged.

27. In the present case the order of the writ Court was specific to the extent that the Special Land Acquisition Officer was required to redetermine the award by awarding the market value of the land as on 01.01.2014, under the provisions of the Act of 2013. The said exercise was completed by the officer concerned on 06.05.2022 and the award was passed.

28. The entire case of the applicant hinges around the action of the State and the Authority that they have lingered on the matter by litigating before the Apex Court on various occasions and despite the dismissal of their petitions by the Apex Court, award was not being made. Moreover, the applicant has come up with the case that earlier proposed award was made by the Special Land Acquisition Officer on 29.05.2019 at the rate of Rs. 23317.84/- per square meter but the same was not declared and after a long gap it was declared on 06.05.2022 at the rate of Rs. 2626.25/- per square meter which was in violation of the order of writ Court.

29. This Court feels that the argument raised at the behest of the applicant's counsel does not have any legs to stand, as it was only a proposed award which was later on modified on the application of the Authority and a six member committee was constituted wherein the recommendation was made for making the award at the rate of Rs. 2626.25/- per square meter and final award was declared and passed on 06.05.2022.

30. Whether the rate of compensation in the award is acceptable to the applicant or not is a disputed question of fact which cannot be raised and looked into by this Court exercising power under the Act of 1971. Moreover, once the final award has been made pursuant to the directions of the Division Bench of this Court under the Act of 2013, the applicants have a statutory remedy of filing reference before the concerned authority under Section 64 of the Act of 2013.

31. The Apex Court had cleared the air so far as the indulgence of contempt Court is concerned, and in case of **Prithawi Nath Ram (Supra)** and **Dr. U.N. Bora (Supra)** had held that no roving inquiry can be done while exercising jurisdiction under Section 12 of the Act of 1971.

32. The judgment of the writ Court dated 09.05.2017 was only to the extent of redetermining the award by Special Land Acquisition Officer on the basis of the market value of the land as on 01.01.2014 under the Act of 2013, which the authorities have complied with and have declared the award on 06.05.2022. Any grievance against the said award can be redressed by way of approaching the forum provided under the Act of 2013 by the applicants.

33. Disputed question of fact, such as the rate of compensation to be payable to the applicant for the land acquired cannot be gone into by a contempt Court and it is for the authority as provided under Section 64 of the Act of 2013 to deal and decide once a reference is made by affording an opportunity to the applicants by placing material proof substantiating their claim. The role of the contempt Court comes to an end once the order of writ Court stands complied by the authorities.

34. Considering the facts and circumstances of the case, this Court finds that no case for contempt having been made out once the final award was made and published on 06.05.2022, the order of writ Court dated 09.05.2017 stands complied.

35. Contempt application having been rendered infructuous, stands dismissed.

36. Before parting with the matter, the Court wants to record its displeasure to the conduct of Additional Advocate General Sri M.C. Chaturvedi who made a request when the judgment was reserved for recording his appearance not only for the State of U.P. but also for the Authority.

37. Once Sri Ravi Kant, learned Senior Counsel, has appeared and argued on behalf of the Authority, no question arose for recording the name of Additional Advocate General for his appearance on behalf of the Authority also.

38. This Court is pained to take note of the fact that the State is having six Additional Advocate General in the Allahabad High Court and six Additional Advocate General at the Lucknow Bench of this Court. Moreover, there are eight Chief Standing Counsel at Allahabad High Court and 10 Chief Standing Counsel at the Lucknow Bench, apart from number of Additional Chief Standing Counsel, Standing Counsel and Brief Holders.

39. It has become a routine feature in this Court that Additional Advocate General and the Chief Standing Counsel who are appointed by the State Government to represent their case in the Allahabad High Court are also holding brief of various development authorities and the corporations. Though, there is no bar for the same, but these counsel are raising bills from the State as well as the development authorities.

40. This Court also finds that in important matters most of these Additional Advocate Generals and Chief Standing Counsel are not appearing and the cases are going unrepresented on behalf of the State, and their only interest is in appearing in the matters of development authorities and corporations. There are huge number of cases where the assistance from the State side is needed but the assistance is not available to the Court. If the Additional Advocate Generals and Chief Standing Counsel have sufficient time to represent the development authorities and

corporations, then there is no need for the State to have such large panels of lawyers and incur huge financial liability. After all it is the tax payers money which is being used in the payment of State counsel. This Court also wants to bring to the notice of the Government that there is lot of outsourcing of the lawyers on behalf of State and its various authorities and corporations and a big amount of tax payers money is being used.

41. It is expected from the State to have a balance and competent panel of lawyers without any need of assistance from outsiders. The appearance of lawyers not from the panel of the State shows that the lawyers empanelled with the State don't have much competence to defend the State and its authorities and corporations.

42. In the present case if two bills are raised by the one counsel, one from the State side and other from the development authority, it shows his misconduct. How a counsel can raise two bills one for representing the State as Additional Advocate General and other from the development authority i.e. Ghaziabad Development Authority. In case, any such bills have been raised by any Additional Advocate General or Chief Standing Counsel from the State and development authority or corporation of the State in one case, the said amount should be recovered from him as it is tax payers money which cannot be misused.

43. A letter of the Special Secretary, Law Department, Government of U.P. dated 21.02.2022 has been brought to the notice of the Court wherein two Additional Advocate Generals of the State have been granted the power to receive the notices in contempt matters. The said letter dated 21.02.2022 issued by the officer concerned is extracted hereasunder;

"उत्तर प्रदेश शासन

न्याय अनुभाग-3 (नियुक्तियाँ)

संख्या-डी- 148/सात-न्याय-3-2022-17/03 टीसी

लखनऊ: दिनांक 21 फरवरी, 2022

कार्यालय ज्ञाप

मा० उच्च न्यायालय, इलाहाबाद में विचाराधीन तथा भविष्य में योजित होने वाली समस्त विभागों से सम्बन्धित अवमानना याचिकाओं में प्रभावी पैरवी करने हेतु श्री महेश चन्द्र चतुर्वेदी, अपर महाधिवक्ता, मा० उच्च न्यायालय, इलाहाबाद तथा मा० उच्च न्यायालय, खण्डपीठ लखनऊ में विचाराधीन एव भविष्य में योजित होने वाली समस्त विभागों से सम्बन्धित अवमानना याचिकाओं में प्रभावी पैरवी करने हेतु श्री कुलदीप पति त्रिपाठी, अपर महाधिवक्तागण, मा० उच्च न्यायालय, खण्डपीठ लखनऊ को नामित किया जाता है। उक्त अपर महाधिवक्तागण द्वारा ही अवमानना याचिकाओं की नोटिस प्राप्त की जायेगी तथा वे आवश्यकतानुसार किसी स्थायी अधिवक्ता/ अपर शासकीय अधिवक्ता को अपने साथ पैरवी करने हेतु रख सकेंगे। यह आदेश अग्रिम आदेशों तक प्रभावी रहेगा।

(प्रफुल्ल कमल)

विशेष सचिव

संख्या-डी-148(1)/ सात-न्याय-3-2022 तददिनांक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- (1) महानिबन्धक/ निबन्धक, मा० उच्च न्यायालय, इलाहाबाद/खण्डपीठ लखनऊ।
- (2) मा० महाधिवक्ता, उत्तर प्रदेश इलाहाबाद।
- (3) श्री महेश चन्द्र चतुर्वेदी, अपर महाधिवक्ता, मा० उच्च न्यायालय, इलाहाबाद।
- (4) श्री कुलदीप पति त्रिपाठी, अपर महाधिवक्ता, खण्डपीठ लखनऊ।
- (5) मुख्य स्थायी अधिवक्ता /शासकीय अधिवक्ता, मा० उच्च न्यायालय, इलाहाबाद / खण्डपीठ लखनऊ।

आज्ञा से

(प्रफुल्ल कमल)

विशेष सचिव"

44. This Court is stunned to read the above quoted letter, how a Special Secretary of the State can issue such order. In contempt matters the notices are issued directly by the Court to the contemnor and there is no provision of service of notice upon the State counsel and only after the service of notice upon the contemnor, Chief Standing Counsel allots the file either to any Additional Chief Standing Counsel or the Standing Counsel to represent on behalf of such contemnor. Chief Standing Counsel is the only State officer who is empowered to receive the notice in civil matters and the Government Advocate in criminal matters.

Allocation of work and file is to be done by the office of Chief Standing Counsel and Government Advocate.

45. Moreover, a designated Senior Advocate cannot receive a notice. No such power of accepting notice can be assigned to any State Law Officer by name. Notice is given and accepted by the office of Chief Standing Counsel and Government Advocate, it is by designation.

46. The Chief Secretary, Government of U.P. is directed to apprise the working of the State Law Department in Allahabad High Court and place the matter/order before the Cabinet for taking appropriate action and make a draft plan as to how the working is to be improved regarding the State counsel in the Allahabad High Court as well as its Lucknow Bench. The Chief Secretary shall further apprise the Cabinet as to whether there is any requirement of having so many Additional Advocate Generals and Chief Standing Counsel at Allahabad High Court and its Lucknow Bench to defend the State when there are more than 400 State lawyers already empanelled.

47. Thereafter, the Cabinet may take decision, as required, in the best interest of the State.

48. The Chief Secretary, Government of U.P. shall intimate the progress made in the aforesaid matter to the Registrar General of this Court within two months.

49. Registrar (Compliance), Allahabad High Court, shall communicate this order to the Chief Secretary, Government of U.P. at Lucknow within 48 hours.

Order Date :- 31.5.2022

Shekhar

[Rohit Ranjan Agarwal,J.]