

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 16TH OF AUGUST, 2024

MISC. CIVIL CASE NO.2352 of 2015

IN REFERENCE

Versus

SHRI R.N. DWIVEDI AND OTHERS

.....
Appearance:

Shri Amit Seth – Additional Advocate General for the respondents.
.....

ORDER

The present proceedings have been drawn on reference received by the Trial Court for proceeding against the respondents for committing contempt of Court by making comments upon the judgment and decree passed by the Lower Appellate Court dated 13.07.2004. As per office order dated 03.08.2015 / 05.08.2015 the present application has been registered and listed before Bench hearing MCC as per roster.

2. The brief facts for the purpose of disposal of present application are that initially a suit was filed by the plaintiffs before the trial Court seeking declaration of title and permanent injunction and the said suit was dismissed by the trial Court. The suit was against the State. Thereafter appeal was filed before the appellate Court by the plaintiffs and the said appeal was allowed vide judgment and decree dated 13.07.2004 and the

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entitled to get their names mutated in the land. The trial Court has initiated reference for proceeding against the respondents for contempt of Court on the anvil of note sheets dated 19.07.2006 and 22.07.2006. It is mentioned in the reference order of the trial Court dated 13.07.2015 that the Tehsildar as well as the Sub-Divisional Officer have made certain comments on the judgment and decree passed by the appellate Court on 13.07.2004 and have criticized the said judgment and decree by commenting on the judgment and decree that the suit before the trial Court was not maintainable. This has been stated to be adverse comment on the judgment passed by the appellate Court and it is mentioned in the reference order by making such comments on a decree passed by the District Court by exercising its authority under the law, the revenue authorities have undermined the process of law and have committed contempt of the appellate Court, which is a Court subordinate to the High Court.

3. Shri Amit Seth, learned Additional Advocate General submits that upon perusal of said note sheets dated 19.07.2006 and 22.07.2006 it is evident that when the matter was placed before the Tehsildar for mutation he noted that the matter relates to Government land and he referred the matter to Sub Divisional Officer whether any appeal has been filed against the said judgment passed by the appellate Court. The SDO thereafter on note sheet sent to him recorded on 22.07.2006 that the suit appears to be non-maintainable before the trial Court and the decree of appellate Court does not seem to be proper, hence, appeal should be filed and directed to prepare a draft appeal memo and seek permission for filing appeal.

4. It is the argument of learned Additional Advocate General that the comments are made only for taking decision to file appeal and such

it is the its recommendation of the authority to file appeal proposing the grounds of challenge against the decree of the appellate Court and such grounds of challenge can be recorded for guidance of subordinate officer and to bring the said grounds to the notice of superior officers because in absence of noting infirmities in the judgment sought to be appeal against, the other authorities will not be able to properly take decision to file appeal and may not be able to properly take grounds of attack in the appeal memo. Thus, it was only a recommendation to file appeal and it is not malicious criticism of the order passed by the appellate Court but only a ground narrated for guidance of Tehsildar so that he can draft appeal properly. It is not an order refusing mutation but it is only a comment given to the Tehsildar in response to guidance sought by the Tehsildar.

5. Heard the learned counsel for the respondents and perused the record.

6. From perusal of the note sheet dated 19.07.2006 it is evident that the Tehsildar has noted that an application for mutation is pending before him relating to Government land and he had sought guidance from the Collector, District Satna but guidance has not yet been received from the Collector and a letter dated 14.07.2006 has been received. Thus, he sought guidance from the SDO that whether appeal has been filed against the judgment and decree of the appellate Court dated 13.07.2004 and if appeal or revision has not been filed then in compliance of letter dated 14.07.2006 sent by the Collector what further action has to be taken. It was further mentioned that by the letter dated 14.07.2006 the Collector has directed to examine the matter on merits and file appeal and revision as per merits of the case. The note-sheet was sent to the SDO thereafter the SDO on 22.07.2006 has taken note of the matter and has recorded that suit before the trial Court seems to be not maintainable and on this ground the

judgment of appellate Court is fit to be appealed against. It was further recorded that it is a valuable land of more than 10 acres within the Municipal limits. Thus, appeal should be filed. The aforesaid notesheets are as under:-

“आवेदक मोहम्मद इस्लाम वगैरह पुत्र मोहम्मद रसूल वक्श सभी निवासी अमरपाटन द्वारा न्यायालय अपर जिला न्यायाधीश (एफ.टी.सी) अमरपाटन के सिविल अपील क्रमांक 139ए/04 निर्णय दिनांक 13.04.04 के अनुसार आवेदकगण के पक्ष में डिक्री दी गई है। उसी आधार पर आवेदकगण अपना नाम डिक्री के आधार पर नामान्तरण का दावा प्रस्तुत किया गया है। उक्त के सम्बन्ध में माननीय कलेक्टर महोदय सतना से मार्गदर्शन भी चाहा गया है किन्तु अभी तक मार्गदर्शन प्राप्त नहीं हुआ। कलेक्टर महोदय सतना के पत्र क्र-832/04/02/06 सतना दिनांक 14.07.2006 के द्वारा अगर पारित डिक्री के विरुद्ध शासन की ओर से अभी तक अपील रिवीजन दायर न किया गया हो तो प्रकरण में गुण-दोष के आधार पर दायर करने की कार्यवाही दिनांक 30.07.2006 तक सम्पन्न कराने के लिये निर्देश दिये गये हैं। अतः प्रकरण श्रीमान् की ओर उचित कार्यवाही हेतु सादर प्रेषित है।

एस.डी.ओ.

हस्ताक्षर

विकास सिंह

तहसीलदार अमरपाटन”

“सिविल न्यायालय ने पहले दावा खारिज किया गया था। अपील में गैरहकदार मानकर दावा स्वीकार किया गया। गैरहकदार 58-59 की खतौनी में दर्ज नहीं है। अतः अपीलीय न्यायालय की व्याख्या तर्कसंगत नहीं है।

धारा 52 (2) (3) के प्रावधानानुसार एस.डी.ओ के न्यायालय से प्रकरण खारिज होने के बाद सिविल न्यायालय में मामला चल सकता है

अन्यथा सिविल न्यायालय प्रतिबंधित है, पर इसे अधीन न्याया ने मान्य नहीं किया जो उचित नहीं है। भूमि का रकवा 10.16 एकड़ है, जो नगर पंचायत की सीमा के अन्तर्गत होने से मूल्यवान भूमि है अतः अपील की जानी चाहिए। अपील में बनाकर अनुज्ञा मांगी जाये।

तहसीलदार

हस्ताक्षर

आर.एन.द्विवेदी
अनुविभागीय अधिकारी (राजस्व)
अमरपाटल जिला सताल म.प्र.”

7. It is evident from the perusal of the note-sheets dated 19.07.2006 and 22.07.2006 that these are not the orders communicated to the litigant refusing to mutate the land and refusing to comply with the decree. These are the internal notings between the Tehsildar and SDO in the course of decision to file appeal against the judgment of appellate Court.

8. The argument of learned Additional Advocate General seems to have force in as much as the authority who has been approached by the subordinate authority to give guidance to file appeal and is giving guidance to subordinate authority to file appeal is expected to record some reason for guidance of the subordinate authority that on what ground the authority has reached to a conclusion that appeal needs to be filed and has guided the subordinate authority to take appropriate grounds in the appeal. Thus it is an internal communication and that too not an malicious criticism of the appellate Court so as to attract action under Contempt of Courts Act but it is a ground noted by the SDO while guiding the subordinate authority in the matter of filing appeal. Unless the authority while in the course of decision to file appeal takes note of the infirmity in the order of which appeal is to be filed as per the wisdom of said authority taking said

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decision, it cannot properly guide the subordinate authority and this cannot be said to be action committing contempt of Court.

9. As per Section 5 of Contempt of Courts Act, fair criticism of judicial act is not contempt. Section 5 is as under:-

“5. Fair criticism of judicial act not contempt- A person shall not be guilty of contempt of court for publishing any fair comment on merits of any case which has been heard and finally decided.”

Official notings of this nature mentioning grounds of appeal can be said to be fair criticism in terms of Section 5. However, there has been no "publication" and thus this Court need not to even consider applicability of Section 5 in the present case.

10. The Government functions in bureaucratic manner and every opinion has to be recorded in writing. The permission for granting appeal has to be in writing. Unless the authority guides the subordinate authority to file appeal on particular grounds, merely mentioning the proposed grounds cannot be said to be a contemptuous act on the part of the authority who is seized of the matter to take decision to file appeal. Even otherwise it is contended that now the order stands complied with and mutation in compliance of the judgment of appellate Court has already been carried out. The respondents have further sought unconditional apology.

11. The notings are only internal communications and it is not the case that authority refused to comply the order stating that the order of Court is not proper in law.

12. However, as mentioned in the reference order and also noted by this Court that in the note sheets the Collector is referred to with greater respect

than the Civil Court or the Appellate Court. Though it cannot be said to be contempt, but it is expected that the respondents shall take care even in official notings to address the Court with proper respect.

13. Consequently, the proceedings are dropped holding that no contempt is made out and reference is closed. MCC is **disposed of**.

nks

(VIVEK JAIN)
JUDGE