

IN THE COURT OF SUB JUDGE GANDERBAL

Case No. 13/2024
CNR No:JKGB020000092024
D.O.I. 20.01.2024
D.O.D. 23.07.2024

In the case of:-

1. Noor Mohammad Gojar Chichi
S/o Alf Din Gojar Chichi
2. Ghulam Hassan Gojar Chichi
S/o Noor Din Gojar Chichi
Both Residents of Chountwar Lar Ganderbal

....Decree Holders

...Through; Mr. Iqbal Ahmad Reshie, Advocate

Versus.

1. State through Commissioner Secretary
Revenue Civil Secretariat Srinagar
2. Commissioner Secretary R & B Department
Civil Secretariat Srinagar/Jammu
3. Collector Land Acquisition Ganderbal/
Deputy Commissioner Ganderbal.
4. Tehsildar Lar.
5. Chief Engineer R& B Rajbagh Srinagar
6. Executive Engineer R&B Division Ganderbal
(Mini Secretariat Ganderbal.)

....Judgment Debtors

...Through; Mr. Mudasir Afzal, Ld. Standing Counsel

In the matter of :

1. **Execution Petition**

And

2. **Suo Moto Contempt against Deputy
Commissioner-Shyambir**

CORAM: Fayaz Ahmad Qureshi J.O. Code: JK00169

ORDER

1. This case has been taken up in which Ld. Counsel for the decree-holders is present.Ld. Standing Counsel for the judgment-debtors

is also present. Ld. Standing Counsel for the judgment-debtors submitted that order dated 06.07.2024 has been extended till 13.08.2024 by hon'ble Court of Principal District Judge and as such, he prays that order dated 09.07.2024 passed by this court may also be extended.

2. Considered the submission of Ld. Counsel. Since Ld. Standing Counsel for the judgment-debtors submits at bar that the order has been extended till 13-08-2024, therefore, order dated 09.07.2024 passed by this court is also extended till next date before hon'ble appellate court or till further orders.
3. Since the Hon'ble Appellate Court has stayed the basic judgment and decree vide order dated 06.07.2024, this court cannot proceed with the execution of the matter and accordingly, this court kept the orders dated 21.06.2024 in abeyance till next date.

Suo Moto Contempt

4. This court has been constrained in the given circumstances which are narrated herein below to pass the following order, to uphold the Majesty of Law and maintain dignity and independence of the Court.
5. No country can flourish and progress unless it has strong institutions particularly a strong, robust, independent and impartial judiciary. In our country, the framers of the constitution, in view of the lesson learnt from Britishers' rule and various historical developments, made provisions for establishing an independent and impartial judiciary and as per the constitutional provisions such as Article 50 of the Constitution of India judiciary has been separated from the executive to keep it away from any interference by the executive. Various other constitutional provisions have been incorporated in the

constitution to give protection to Judges of the Constitutional Courts to ensure independence of the judiciary. While the country is progressing to make the judiciary strong and Hon'ble the Supreme court of India and High Courts of the country are taking every possible step to augment strength to the judicial institution, ensure its impartiality, integrity and dignity of the institution to maintain trust, confidence and faith of the people in the institution of judiciary, still there are certain risks from within which are against such national efforts and the provisions of the constitution as well as other statutory provisions.

6. Every responsible officer, and every citizen has to ponder over what will happen if judicial functions are not allowed to be performed independently and impartially. Lord Marshall has observed that the biggest power of judiciary is not only to punish people, decide cases, award death penalties but to maintain trust, confidence and faith of the people. Rule of Law, in this country, is the hallmark and bedrock of democracy and if this is not protected it will adversely compromise the independence of the judiciary. Independent judiciary is the crown jewel of constitutional republic. No erosion of its independence can be allowed either from the forces operating within or outside.
7. As a part of independent judicial system, Courts decide cases as per law within the sphere of duties assigned to them. Role of interpretation of laws has also been given to judiciary in this country. Undoubtedly, the courts are not run by robotic judges but by human judges and only qualified persons from the same domicile/country are eligible for being appointed as judges to conduct such courts. A mechanism of dispensation of justice is an adversarial setup where the courts act as independent and neutral person/umpire to consider the merit after hearing both the sides

and then adjudicate upon rights and duties of the parties. In a strict adversarial system, there is a possibility that in every single case a judge, heading the court who decides the matter, begets at least one enemy against himself. If a judge doesn't decide he does not have any enemy but if a judge decides it is quite inherent in the duties and functions bestowed upon him that animosity and adverse reactions are inevitable. Taking cognizance of all these existing and foreseen repercussions, lawmakers have kept the judiciary away from any other interference including from the interference of the executive and there is inbuilt in-house check and balance system in order to maintain the judicial standards in the judiciary.

8. Since state is one of the parties in most of the civil cases and in all the criminal cases where proceedings are initiated by the state, there is a possibility that if an order goes against the executive, it may annoy some functionaries and may invite uncalled for trouble and problem for the presiding officer. It may lower the morale of a Judge and give a feeling not to decide cases against state to avoid any venom or revenge. But this can happen only in lawless country and such acts cannot be tolerated in India. There is no potential threat from those who follow the Rule of Law and respect the Constitution and statutory law of this country but this threat is persistent and more dreadful in case an officer, who does not follow the Rule of Law, takes law in his hand and instead of following or complying with the judgment passed by a court of law uses his entire machinery at his disposal to target the court and tarnish the image of a Judge who passed an order against him.
9. In such a scenario, the courts cannot afford to look for any external support from the executive or other authorities but has to eliminate such mis-adventurous and illegal acts by exercising its powers of

contempt to maintain its dignity, impartiality and independence. The main purpose and object of the contempt of court in India is to maintain the sanctity of judicial process and ensure that the judicial authority is respected and upheld.

10. These opening observations have a reason which is unfolded hereafter. This court while dealing with the above titled execution petition executing a judgment and decree dated 31.10.2022, passed an order dated 21.06.2024 whereby this court attached the salary of the judgment-debtors including Deputy Commissioner Ganderbal-Mr. Shyambir and also issued process against them for non-compliance with the judgment and decree which was neither stayed as on the date nor the same was complied with, by the judgment-debtors. The decree-holders, despite having the decree in their hands and waiting for fruits of the decree for about 18 months could not harvest the crops of such decree. Constrained by such circumstances, the decree-holders moved an execution petition in terms of law on 20.01.2024 in which after proper service of the judgment-debtors they appeared through standing counsel and contested the execution petition.
11. Considering the merits of the execution petition, this court passed order dated 21.06.2024. Aggrieved by the order, the judgment-debtors sought review of the same by moving an application before this court on 24.06.2024 which came to be dismissed by this court by order dated 25.06.2024. This court again directed the judgment-debtors to comply with the order dated 21.06.2024 whereby execution of the basic judgment and decree was ordered. Later on, the judgment debtors could obtain an order of stay dated 06.07.2024 staying the basic judgment and decree dated 31.10.2022.

- 12.Ld. Standing Counsel brought to the notice of this court that the basic judgment and decree has been stayed by Hon'ble Principal District Court Ganderbal and so, this court also kept the order dated 21.06.2024 in abeyance till **20-07-2022**(Order of keeping judgment and decree in abeyance was only upto 20-07-2024 passed by Hon'ble Principal District Judge Ganderbal) and thereby detaching the salary of the judgment-debtors and keeping the process issued against them in abeyance by order dated 09.07.2024 passed by this court.
13. There was no problem as long as the proceedings were properly initiated by filing an appeal or challenging the order passed by this court including the basic judgment and decree as law provides such remedies to the aggrieved persons. However, there is something very grave which constrained this court to maintain the sanctity and dignity of the court by taking steps for initiating proceedings for criminal contempt in terms of The Contempt of Courts Act, 1971.
14. As stated above, after passing of the order it didn't go well with the Deputy Commissioner Ganderbal namely Mr. Shyambir who attempted to personally attack the Presiding Officer by scandalizing him and weakening him by manipulation and fabrication and for this purpose, he called a meeting immediately after the order and conspired with some other officers/officials of the district to implicate the Presiding Officer of the court for passing a lawful order against the judgment-debtors. Out of the steps decided to be taken by the contemnor Deputy Commissioner against the Presiding Officer, one step was to frame the presiding officer in any fabricated incident and if this is not possible, to trace out if there is any property in the name of the Judge anywhere. After putting in efforts, the contemnor Mr. Shyambir, Deputy Commissioner

Ganderbal, could find out that there is one property measuring 02 Kanals of land in the name of the Presiding Officer purchased by the Judge before his appointment which is located in Kogund, Tullamula, Ganderbal.

15. The contemnor immediately after the order passed by this court misused his official machinery and devoted time in tracing out the documents of the property, which the Presiding Officer lawfully holds, having been purchased. Finding no fault with the mode of purchase of the property, the contemnor constituted a team headed by Naib Tehsildar and other members including three Patwaris by order dated **23-07-2024** issued by ACR Ganderbal. Copy of the order is placed on the file. The order has been passed by Assistant Commissioner Revenue, Ganderbal on the direction of the contemnor-Deputy Commissioner. It is to be noted that on 20-07-2024, hon'ble Court of Principal District Judge extended the order and immediately two days after obtaining the order, the contemnor constituted the committee on 23-07-2024 though preliminary work was done prior to the order of extension passed in appeal. However, immediately after the order dated 21-06-2024 passed by this court in execution, preliminary illegal exercise started under the direction of the Deputy Commissioner Ganderbal.
16. As a first attack on the Presiding officer, one Patwari visited the land of the Presiding Officer thrice under the direction of the Deputy Commissioner which is clear from the report of the Patwari. The caretaker of the property was taken to the site by the Patwari for identification of the land belonging to the Judge who passed a judicial order dated 21.06.2024 against Deputy Commissioner and others. On being questioned by the Patwari by the caretaker to know about the reason of sudden identification of the land belonging to the Judge, the Patwari concerned stated that the

Judge has passed the order against the Deputy Commissioner and other higher officers and therefore, the Deputy Commissioner has constituted a team for demarcation of the land of the Judge. However, the Patwari had no knowledge whether there was any application moved by the owner of the property/Judge for identification or demarcation so as to give reason to Deputy Commissioner to send a team on the spot. This sudden visit of the Patwari on the land belonging to and in lawful possession of the presiding officer for about last fifteen years, much before his appointment from the year 2009, actually amounted to harassment to the Presiding Officer.

17. The committee constituted for demarcation is clear abuse of the official position as neither the Presiding Officer moved any application for demarcation nor any notice was ever given to the presiding officer for any intended so-called demarcation of land in his possession for the last more than 15 years. In fact, there does not exist any dispute at all regarding the land. The Committee was called to submit report within two days and most of the members of the committee are from different jurisdiction having no authority to demarcate the land outside their jurisdiction. In fact, this committee was constituted by contemnor to manipulate the spot position to demonstrate the land purchased and in possession of the Presiding officer as *Khascharai*, against the recorded and settled spot position. The committee has been constituted by the Deputy Commissioner-Shyambir with oblique and *malefide* motives and evil intention in reaction to a lawful order passed by the Presiding Officer. Till the time order was passed, there was no problem with the contemnor as regards the land of the Presiding Officer but after passing of the judicial order in execution petition, the salary of the contemnor was not drawn and the contemnor

started misusing his position rendering him liable not only for contempt but criminal proceedings under Prevention of Corruption Act for abuse of the official position for ulterior motives.

18. The suspicious and sudden moves of members of the committee under the control of Deputy Commissioner at a time when this court headed by the same Presiding Officer, who is holding the lawful possession of land (*Shamlat deh/Jaiz*) of such property, passed a judicial order and without any proceedings filed by the Presiding officer for demarcation and without any notice, the Deputy Commissioner/Contemnor deployed the revenue team which is aimed at lowering the image of the Judge by manipulation of facts and reality.
19. Such an act on the part of the Deputy Commissioner/Contemnor, on the face of it, amounts to criminal contempt as the same is aimed at scandalizing the Judge who passed a judicial order and it has the potential to lower down the authority of this court as the Deputy Commissioner, by abuse of official position, wants to demonstrate the mighty powers he enjoys to lower the authority of the Court. Therefore, in the larger interest of the institution and to maintain the public trust, faith and confidence of the people in the independence and sanctity of the judicial institution, this court deems it appropriate to proceed in accordance with The Contempt of Courts Act, 1971.
20. It is apposite to quote Section 2 of The Contempt of Courts Act, 1971, which is reproduced here as under:

Section 2 of The Contempt Of Courts Act, 1971
2. Definitions.—

In this Act, unless the context otherwise requires,—

(a) “contempt of court” means civil contempt or criminal contempt;

(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;

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.*

21. Because of such disturbing and un-precedented circumstances created by Deputy Commissioner and his revengeful acts as a reaction to judicial order, a continuous harassment is being caused to the Presiding Officer who has sufficient reason to apprehend that by use or mis-use of the official machinery, the Deputy Commissioner, if he continues in District Ganderbal, may try to implicate the Presiding Officer in some false or frivolous matter which can be manipulated or concocted by misuse of the legal machinery under the control of Deputy Commissioner as the same person acts in many responsibilities such as Deputy Commissioner, District Magistrate, District Development Commissioner etc. This court feels that a bond is required to be obtained from Deputy Commissioner by the competent authorities for his good behavior as a public servant and further, he is required to be transferred from District Ganderbal to any other place at least till the time the criminal contempt proceedings are decided by Hon’ble High Court of J&K so that neither he is able to create any further evidence nor he destroys the existing evidence.

22. The acts of contemnor are a constant potential threat to the presiding officer of this court and as such, an urgent action is required to be taken to ensure that judicial functions are not interfered with either by virtue of any attempt to cause any harm to person, reputation or property of the presiding officer or any other person in whom the presiding officer is interested. It is apt to mention that execution petition is pending before this court which is listed on 13.08.2024 and this threat, as described above, seems to have been extended to judicial officer so that no adverse order is passed in the execution petition against the Deputy Commissioner. It is also deemed to be appropriate to place the matter before Ld. Chief Secretary, UT of J&K for administrative action in accordance with law and appropriate proceedings in accordance with Government Conduct Rules, 1971. It is expected that in the interest of good and responsible governance, Learned Chief Secretary may ensure that there is zero tolerance to corrupt and illegal practices of the officers howsoever high they may be placed.

23. Since the acts of the Deputy Commissioner/Contemnor *prima facie* squarely amount to criminal contempt, therefore, this court thought it appropriate to proceed against him for initiating criminal contempt in accordance with The Contempt of Courts Act, 1971 r/w Notification No. 34 dated 25.04.2018 issued by Hon'ble High Court of J&K and Ladakh. As per Rule 7(b) of the abovementioned Rules for regulating the proceedings of contempt of courts subordinate to Hon'ble High Court, it is pre-requisite to hold a preliminary inquiry by issuing a show-cause notice to the contemnor before making a reference to Hon'ble High Court for initiating proceedings against the contemnor and punishing him for criminal contempt.

24. As such, a preliminary enquiry is initiated against the contemnor Mr. Shyambir and in the first instance, it is ordered that a show-cause notice be issued to the contemnor Deputy Commissioner Mr. Shyambir calling upon him to remain present before the court to show-cause as to why a *Reference* be not made to Hon'ble High Court of J&K and Ladakh for initiating contempt proceedings in terms of Contempt of Courts Act. The Deputy Commissioner Ganderbal shall furnish his detailed personal particulars as well for submitting the same to Hon'ble High Court of J&K and Ladakh. A show-cause notice be sent to the contemnor immediately which shall be served upon him forthwith. The contemnor shall submit his reply by or before next date positively failing which he shall forfeit his opportunity of being heard before making a reference for criminal contempt. Put up the instant execution petition on 14.08.2024.

25. Office shall separately diarize contempt part of the instant petition as *Suo Moto Contempt* against Deputy Commissioner- Shyambir and list the same on **29-07-2024**. A copy of this order be sent to the contemnor for his reply before making reference of the criminal contempt to hon'ble High court of J&K and Ladakh.

26. Office shall send one copy of the same to Learned Chief Secretary, Ut of J&K for his information and appropriate action at his end.

Announced
23.07.2024

Sub Judge
Ganderbal