

**Court No. - 21**

**Case :-** CONTEMPT No. - 788 of 2021

**Applicant :-** Wasif Hasan & Anr.

**Opposite Party :-** Divyanshu Patel S.D.M. Barabanki & Anr.

**Counsel for Applicant :-** Furkan, Arif Ali, Sharim Naved

**Hon'ble Ravi Nath Tilhari, J.**

1. Heard Shri Kapil Sibbal, learned Senior Advocate, assisted by Shri Sharim Naved, learned Counsel for the petitioner applicants.

2. The applicants have filed supplementary affidavit dated 16.06.2021, which is on the record and have also filed another supplementary affidavit dated 25.06.2021 annexing therein the copy of the judgment/ order of this Court dated 22.06.2021 in Writ Petition No. 11879 (MB) of 2021, U.P. Sunni Central Waqf Board Vs. State of U.P., by which the opposite parties therein have been granted time to file counter affidavit.

3. This contempt petition has been filed alleging deliberate disobedience of the order dated 24.04.2021 passed by the Division Bench of this Court in P.I.L. no. 564 of 2020, (In Re Vs. State of U.P.).

4. Shri Kapil Sibbal, learned Senior Advocate submits that in P.I.L. no. 564 of 2020, a Division Bench of this Court issued certain directions which are as follows:-

*"Therefore, in the present scenario we deem it appropriate and in larger interest of public, to recall the order dated 05.01.2021 and restore this present public interest litigation. And while invoking extra ordinary power under Article 226 of the Constitution and inherent power of superintendence under Article 227 of the Constitution and the inherent of powers of superintendence over criminal matter under section 482 of the Code of Criminal Procedure, 1973 and inherent power in civil matters under Section 151 of the Code of Civil Procedure, 1908, we issue the following directions:-*

*1) That all interim orders passed by the High Court Judicature at Allahabad as well as at Lucknow, all the District Courts, Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and all other Tribunals or Quasi-Judicial forums in the State of Uttar Pradesh over which this Court has power of superintendence which were subsisting on 15.03.2021 shall stand extended till 31.05.2021.*

2) That the interim orders or directions of this Court or any Court subordinate to this Court in the State of Uttar Pradesh which are meant to operate till further orders shall continue to remain in force until modified by specific order of the Court concerned.

3) It is further directed that the criminal courts in the State of Uttar Pradesh which granted bail orders or anticipatory bail for a limited period, which are likely to expire, on or before 31.05.2021 shall be extended for a period till that date i.e. 31.05.2021.

4) That any orders of eviction, dispossession or demolition, already passed by the High Court, District Court or Civil Court, if not executed till the date of passing of this order shall remain in abeyance for the period till 31.05.2021.

5) That the State Government, Municipal Authorities, other Local Bodies and agencies and instrumentalities of the State Government shall be slow in taking action of demolition and eviction of persons till 31.05.2021.

6) It is further directed that any Bank or Financial Institution shall not take any action for auction in respect of any property or an institute or person or party or any body corporate till 31.05.2021.

It is however made clear that in case of extension of interim orders as per the present order, any undue hardship and prejudice of any extreme nature is caused to any of the party to such proceedings the said party/parties would be at liberty to seek appropriate relief by moving appropriate application before the competent court, tribunal, judicial or quasi-judicial forum and the general direction issued by this order shall not be an embargo in considering such application and deciding the same after affording an opportunity of hearing to all the parties to said case. Needless to say, the State and its functionaries will also be at liberty to file appropriate application in respect of particular case for necessary directions.

The Registry is directed to upload this order on official website of the Court and District Courts, Tribunals, Judicial and Quasi-Judicial Authorities of State of Uttar Pradesh over which this Court has power of superintendence, office of the learned Additional Solicitor General, learned Advocate General, Chairman of the Uttar Pradesh State Bar Council, all the respective Bar Associations and Special Public Prosecutor.

*The Registry is also directed to give wide publicity to this order through Print and electronic media having wide circulation in the State so that the litigants may know about the order and do not rush to court for different relief (covered by these directions).*

*List the matter on 31.05.2021"*

5. Shri Kapil Sibbal, learned Senior Advocate submits that as per the direction No. 4, any orders of eviction, dispossession or demolition already passed by the High Courts, District Courts or the Civil Courts, if not executed till the date of passing of that order were kept in abeyance for the period till 31.05.2021 and as per the direction No. 5 the State Government, Municipal Authorities, other local bodies and agencies and instrumentalities of the State Government were directed to be slow in taking action of demolition till 31.05.2021. He submits that the Division Bench also directed to upload that order on the official website of the Court and District Courts, Tribunals, Judicial and Quasi-Judicial Authorities of the State of Uttar Pradesh over which the Court has power of superintendence, office of Additional Solicitor General, learned Advocate General, Chairman of Uttar Pradesh State Bar Council, all the respective Bar Associations and Special Public Prosecutor, and as the Registry was also directed to give wide publicity to the order through Print and Electronic media having wide circulation in the State so that the litigants do not rush to Court for different relief, the order dated 24.04.2021 was in due notice of the opposite parties, but in spite thereof, deliberately and wilfully, the Mosque known as Masjid Tahsil Wali, Barabanki was demolished on 17.05.2021, in execution of the order dated 03.04.2021 of the Sub Divisional Magistrate, Ram Sanehi Ghat-respondent no. 1, by the Station House Officer, Ram Sanehi Ghat, Barabanki-respondent No. 2, in grave violation of the above directions.

6. Shri Kapil Sibbal, learned Senior Advocate, submits that the proceedings under Section 133 Cr.P.C. are of a civil nature as has been held in **State of M.P. Vs. Kedia Leather & Liquor Ltd. and others; (2003) 7 SCC 389**; and in the case of **Ganga Singh & others Vs. State of U.P. & others; (2017) 6 All. LJ 529**. The interim order dated 24.04.2021 was applicable to the order passed by the Sub Divisional Magistrate as it would be a Court while exercising the power under Section 133 Cr.P.C. Placing reliance on the judgment in the case of **Priya Gupta and another Vs. Additional Secretary, Ministry of Health & Family Welfare and others, (2013) 11 SCC 404**, he submits that where directions are of general nature, violation thereof would attract the rigors of the Contempt of Courts Act. Placing

further reliance on the judgment in the case of **Girish Mittal Vs. Parvati V. Sundaram and another, (2019) 20 SCC 747**, he submits that where directions are general in nature, any violation thereof would enable an aggrieved party to file contempt petition and the applicant No. 1 who is Co-Mutawalli of Teelewali Masjid, Lucknow and the applicant No. 2 who is worshipper at Ghareeb Nawaz Mosque, are aggrieved from the act of demolition of the Mosque.

7. From the averments made in the contempt petition as also the submissions advanced, prima facie, it appears that the demolition of the mosque in question on 17.05.2021 by the respondent No. 2-Station House Officer, Ram Snehi Ghat, Tehsil and District Barabanki, as stated, is in violation of the directions No. 4 and 5 of the order dated 22.04.2021 passed in P.I.L. No. 564 of 2020.

8. So far as the respondent No. 1-Sub Divisional Magistrate, Ram Snehi Ghat, Tehsil Barabanki, District Barabanki is concerned, it has been stated in para-4 of the affidavit in support of the contempt petition, that "the contemnor-respondent No. 1 is the Sub Divisional Magistrate, Ram Snehi Ghat, Tehsil Barabanki, who passed the orders for demolition during pendency of the orders passed by this Court staying demolition and advising against dispossession and evictions. The respondent No. 2 is the Station House Officer, who gave effect to such orders".

9. Paragraph-4 of the affidavit filed in support of the contempt petition, prima facie appears not to be correct with respect to the respondent No. 1 in as much as the date of the order passed by the Sub Divisional Magistrate, Ram Snehi Ghat, Tehsil Barabanki is 03.04.2021, whereas in the P.I.L. No. 564 of 2020 the order in which the directions were issued is dated 24.04.2021. There is nothing on record of the contempt petition to show that the Sub Divisional Magistrate, Ram Snehi Ghat, Tehsil Barabanki, passed any order for demolition or advising dispossession and evictions during the pendency of the order dated 24.04.2021 passed by this Court in the P.I.L. As such from the averments of the contempt petition, prima face, no case for issuance of notice is made out against the respondent No. 1.

10. Accordingly, issue notices to respondent no. 2 to file response and to show cause as to why the proceedings for contempt be not initiated against him. Appearance is through counsel.

11. The copy of supplementary affidavits shall also be served on

respondent No. 2 along with the copy of the contempt petition.

12. Let the steps be taken within ten days.

13. List/Put up this case on **22.07.2021**.

**Order Date :- 30.6.2021**

Lokesh Kumar