

**COLOMBO INTERNATIONAL NAUTICAL &  
ENGINEERING COLLEGE (PVT.) LIMITED (CINTEC)**  
v  
**KADUWELA PRADESHIYA SABHA, KADUWELA AND  
THREE OTHERS**

SUPREME COURT  
RAJA FERNANDO, J.  
SALEEM MARSOOF, J. AND  
ANDREW SOMAWANSA, J.  
SC APPEAL NO. 37/2007  
31ST JANUARY, 2008

*Civil Procedure Code – Prosecution for Contempt of Court for violation of a Court Order – Sections 792-800.*

The petitioner filed an application in the Court of Appeal to punish the 5th to 23rd respondents for Contempt of Court for the violation of the interim order dated 28th July, 2006 issued by the Court of Appeal.

On the 29th January 2007, the notice returnable date, the 5th to 23rd respondents pleaded not guilty to the contempt charges. Nevertheless, the Court of Appeal, instead of fixing the matter for inquiry had summarily dismissed the application for Contempt of Court on the ground that the 5th to 23rd respondents were not parties to the original application and therefore not bound by the said order dated 28th July, 2006.

The Supreme Court granted Special Leave to Appeal against the order of the Court of Appeal dated 23rd May 2007, dismissing the application of the petitioner on the following grounds -

- (a) Has the Court of Appeal grievously erred in law in failing to fix the matter for inquiry in view of the fact that the same court has duly issued summons against the 5th to 23rd respondents as a matter of law.
- (b) Has the Court of Appeal grievously erred in law in failing to fix the matter for inquiry in view of the fact that the said 5th to 23rd respondents-respondents pleaded not guilty to the charge of Contempt of Court.
- (c) Has His Lordship of the Court of Appeal misdirected himself in law when he held that since the 5th to 23rd respondents-respondents were not parties to the original application and they were not bound by the said order.

**Held:**

An order against a Pradeshiya Sabha is to be complied with by all members who constitute the Pradeshiya Sabha and it makes no sense that the members of the Pradeshiya Sabha can violate the order of Court even though they constitute the Pradeshiya Sabha and they are persons carrying out the duties/obligations/functions of the Sabha.

*Per Fernando, J.*

Any person who knowingly violates a Court order even if such a person was not a party to the original action where the order is made, is liable for contempt of court. If not all that a party has to do is to get the court order violated by a third party and get the other party to plead that such party was not in the original action.

*Per Fernando, J.*

"It will be incorrect to say that as summons/warrant has been issued on a person the Court must necessarily proceed to trial, even it is patently clear that for some reason the prosecution cannot succeed. For instance if the Court finds that it has no jurisdiction or that summons/warrant has been issued on the wrong person. Similarly, it will also be incorrect, that only parties to the action which the order is made are liable for the violations of the Court order."

**APPEAL** from an order of the Court of Appeal.

*M.A. Sumanthiran with Viran Corea and Suresh Fernando* for petitioner.

*A. Kasthuriarachchi* with *A Udeshika Abeysiri* for 5th to 7th and 9th to 23rd respondents.

*Cur.adv.vult.*

11th September, 2008

**RAJA FERNANDO, J.**

The petitioner-petitioner-petitioner (hereinafter called and referred to as the "petitioner") instituted action on 26th June, 2006 against the 1st to 4th respondents-respondents-respondents (hereinafter sometimes referred to as the 1st to 4th respondents) in the Court of Appeal seeking *inter alia* interim relief against the 1st and/or 2nd respondent from taking any action to remove the barricade and security Post the petitioner was erecting on the access road to the petitioner's premises.

On 6th July 2006 the Court of Appeal issued an interim Order directing the 1st and 2nd respondents "...Not to remove the barricade constructed by the petitioner along the access road to the petitioner's premises in the petitioner's land until 27th July 2006.

On 21st July while the interim order was in force two members of the 3rd respondent together with some villagers had entered the petitioner's premises and forcibly removed the barricade put up by the petitioner.

The petitioner had promptly made a complaint to the Police and the Police had summoned the villagers to the Police station and read over and explained the said order issued by court.

Apart from complaining to the Police the petitioner has brought this to the notice of the Court of Appeal by petition on 25th July, 2006.

On 28th July 2006 when the matter came up before the Court of Appeal for extension of the interim order, court had allowed the petitioner to re-erect the barricade at the same place and further granted order which reads as follows: "... Court issues an interim order directing the 1st, 2nd and 3rd respondents not to remove the barricade....."

On 23rd August 2006 when the petitioner commenced to re-erect the said barricade accompanied by the Athurugiriya Police the 5th and 6th respondents both members of the 1st respondents-respondent (Kaduwela Pradeshiya sabha) together with the 7th to 23 respondents had entered the petitioner's premises and forcibly obstructed the re-erection of the barricade.

According to the petitioner the Athurugiriya Police officers who were present at the scene had explained to the respondents who were causing the obstruction including the 5th and 6th respondents the order of court and requested them to comply with the Order of court.

The petitioner has lodged a complaint with the Athurugiriya police about this incident the same day.

The petitioner has on 17th November, 2006 moved Court to punish the 5th to 23rd respondents for contempt of Court for the violation of the interim order dated 28th July, 2006 issued by court.

On 6th December, 2006, having heard counsel for the petitioner in support the court had issued summons on the 5th to 23rd respondents returnable 29th January 2007.

On 29th January 2007, the notice returnable date the 5th to 23rd respondents pleading not guilty the learned Judges of the Court of Appeal had instead of fixing the matter for inquiry have summarily

dismissed the application for Contempt of Court on the basis that the 5th to the 23rd respondents were not parties to the original application and therefore not bound by the said order dated 28th July 2006.

This Court on 23rd May, 2007, has granted Special Leave to Appeal against the order of the Court of Appeal dated 29th January, 2007, dismissing the application of the petitioner on the following questions:-

- (a) Has the Court of Appeal grievously erred in law in failing to fix the matter for inquiry in view of the fact that the same court has duly issued summons against the 5th to 23rd respondents as a matter of law.
- (b) Has the Court of Appeal grievously erred in law in failing to fix the matter for inquiry in view of the fact that the said 5th to 23rd respondents-respondents pleaded not guilty to the charge of contempt of law.
- (c) Has his Lordship the Court of Appeal misdirected himself in law when he held that since the 5th to 23rd respondents-respondents were not parties to the original application they were not bound by the said order.

It is the submission of the petitioner that the procedure governing prosecutions for Contempt of Court is contained in Chapter LXV of the Civil Procedure Code (sections 792-800) and that according to such provisions once summons/warrants issued on an accused for contempt the next step is to fix the matter for hearing and the Court of Appeal was in error when it dismissed the charges on the summons returnable date without proceeding to hearing. The petitioner draws specific attention to section 796 of the Civil Procedure Code which reads "on the day appointed by the court for the hearing of the charge or on any subsequent day to which the hearing may have been adjourned ..... the court shall commence hearing by asking the accused person whether or not he admits the truth of the charge ....."

The respondents argue that the charge of contempt was based on the alleged violation of the directive of the Court of Appeal to which the respondents were not parties and as such the respondents cannot be charged for contempt in this instance as there was no directive on any of the respondents personally by the Court.

It will be incorrect to say that as summons/warrant has been issued on a person the court must necessarily proceed to trial, even when it is patently clear that for some reason the prosecution cannot succeed. For instance if the court finds that it has no jurisdiction or that summons/warrant has been issued on the wrong persons. Similarly it will also be incorrect, that only parties to the action which the order is made are liable for the violation of the court order.

The order of the court was directed at the 1st and 2nd respondents not to remove the barricades constructed by the petitioner along the access road to the petitioner's premises in the petitioner's land until 27.7.2006.

The 1st respondent was the Kaduwela Pradeshiya Sabha and the 2nd respondent was A.F. Buddhadasa, Chairman, Kaduwela Pradeshiya Sabha.

The Kaduwela Pradeshiya Sabha being an inanimate person, the direction is necessarily on the persons working in the Pradeshiya Sabha. If not the order against the Pradeshiya Sabha will have no meaning.

It is the position of the petitioner that on 21.7.2006 while the interim order was in force 2 members of the 1st respondent – the Kaduwela Pradeshiya Sabha – together with some villagers have come and forcibly removed the barricade erected by the petitioner.

On the 25th of July 2006 the petitioner has brought the violation to the notice of court and the court has again issued an interim order directing the 1st, 2nd and 3rd respondents not to remove the barricade. While the said interim order was in force on 23rd August, 2006, the 5th and 6th respondents both members of the 1st respondent Kaduwela Pradeshiya Sabha together with several villagers (7th-23rd respondents) have forcibly obstructed the re-erection of the barricade.

The first matter for consideration is whether the 5th and 6th respondents being members of the Pradeshiya Sabha are liable for Contempt of Court as they were not parties to the original application where order was made.

As stated earlier in this judgment an order against the Pradeshiya Sabha is to be complied with by all members who constitute the Pradeshiya Sabha and it makes no sense that the members of the

Pradeshiya Sabha can violate the order of court even though they constitute the Pradeshiya Sabha and they are persons, carrying out the duties/obligations/functions of the Sabha.

Therefore, the argument of the 5th and 6th respondents that they are not parties to the order of the court which was against the 3rd respondent Kaduwela Pradeshiya Sabha is untenable.

The next matter to be considered is whether the 5th and 6th respondents were in fact aware of an order of the Court.

This is a matter that will have to be decided on the evidence at the hearing.

Let me next consider the case against the 6th to 28th respondents villagers who along with the 5th and 6th respondents were involved in the obstruction.

It may be possible that all the villagers who participated in the obstruction were aware of an order of court until they were informed by the Police unlike the 5th and 6th respondents who were in fact members of the Kaduwela Pradeshiya Sabha against whom the order was in operation.

Therefore it is the view of this Court that, *prima facie* the charge against the 6th to 23rd respondents who were the villagers who may not have knowledge of a court order could be prosecuted for Contempt of Court.

The basis of the order of the Court of Appeal in discharging all respondents that only persons who are parties to the order of the court that is violated is wrong. If any person who knowingly violates a court order even if such a person was not a party to the original action where the order is made is liable for Contempt of Court. If not all that a party has to do is get the court order violated by a third party and get the other party to plead that such party was not in the original action. This would lead to a mockery of Justice.

For the above reasons we set aside the order of the Court of Appeal dated 29/01/2007 where all respondents-respondents were discharged from the Contempt of Court proceedings.

Having considered all the circumstances of this case and giving the benefit of the doubt to the 7th to 23rd respondents who were the villagers who may not have been aware of the order of the Court we discharge the 7th to 23rd respondents from the Contempt of Court

proceedings and send back the record to the Court of Appeal to proceed to trial against the 5th and 6th respondents who were members of the 1st respondent Kaduwela Pradeshiya Sabha on the charge of Contempt of Court for the violation of the Court Order of 28/7/2006.

Registrar is directed to send a copy of this order with the original record to the Court of Appeal to proceed with the Contempt of Court inquiry against the 5th and 6th respondents.

**SALEEM MARSOOF, J.** - I agree.

**SOMAWANSA, J.** - I agree.