

(1992) 03 BOM CK 0030

In the Bombay High Court

Case No : Contempt Appeal No. 1 of 1991 in C.A. No. 53, 2, 54, 3 and 4 of 1991

Amiruddin and other

APPELLANT

Vs

Mukhtar Jafarbhay Maulana Hasanali Saheb Chimthanwala
and others

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Contempt of Courts Act, 1971 — Section 13, 2

Citation : (1992) CriLJ 3898

Hon'ble Judges : H.W. Dhabe, J;B.V. Chavan, J

Bench : Division Bench

Advocate : Shri S.G. Aney, Mohan Sudame and V.C. Daga, for the Appellant;
Shri R. Agrawal, A.G.P., Shri P.G. Palshikar, S.P. Palshikar and G.D. Sule, for the
Respondent

Judgement

Dhabe, J.—These four Contempt Appeals which arise out of the common judgment of the learned single Judge of this Court rendered on 9th April, 1991 in two contempt petitions registered as Contempt Petition No. 53 of 1991 and 54 of 1991 can be conveniently disposed of by this common judgment. For the sake of convenience unless the context otherwise requires, the petitioners in these contempt petitions who are respondents in these appeals are commonly referred to as the "contempt petitioners" and the two contemnors in these contempt petitions who are committed for contempt and sentenced to pay a fine by the learned single Judge and who have preferred these four contempt appeal because there are two contempt petitions against each of them are commonly referred to as "contemnors" in this common judgment.

2. The litigation out of which the instant contempt appeals arise has a chequered history. Parties to the principal litigation belong to Shia Ismailia Yababai Dawoodi Bohra community (for short the Dawoodi Bohra community). The dispute between them mainly centres round the question whether by the deed of settlement dated 9-6-1894 (Exh. 554) a public trust was created by Maulana

Malak Saheb for the benefit of the members of the Sect known as Atba-E-Malak Sect of which he was the then head and the founder and, if so, what the property of the said trust was. Incidentally, the defendant in the suit i.e. the head of the above Atba-E-Malak, Sect. also contended that the subject-matter of the suit and the legal proceedings arising out of the same were restricted to the Mehdibagh property at Nagpur only and the Jabalpur property regarding which the contempt proceedings have arisen was not the subject matter of the suit, apart from his contention that it was private property belonging to him and other co-owners. Keeping this dispute in mind, we shall, as far as possible, in chronological sequence refer to the legal proceedings relevant to the decision of the instant contempt appeals.

3. One of the contempt petitioners by name Mukhtar Jafarbai filed an application before the Registrar of Public Trust, Nagpur 7-10-1953 u/s 4 of the M.P. Public Trust Act, 1951 (for short the M.P. Act) for inquiry and for registration of the trust created by the deed of settlement (Exh. 554) dated 9-6-1894 as a public trust under the said Act. According to him, Maulana Malak Saheb repudiated the claim of the then Head of the Dawoodi Bohra community as the rightful spiritual leader of the community validly appointed by his predecessor according to the cardinal principles of the faith. Further, according to him, he established his claim to be the proper claimant and his followers came to Nagpur with him being persecuted by the bigoted section of the Dawoodi Bohras of Bombay and elsewhere. It is his case that by the year 1894, his followers had donated properties, movable and immovable, for carrying out the objects of his mission. He, therefore, appointed four persons to be the custodians and trustees to hold such properties as then existed and the properties that would come to the mission thereafter and to control and administer the same for the objects of the mission. It is his case that as per the above deed of settlement dated 9-6-1894 (Exh. 554) a declaration of the trust was executed by the said four persons which trust was religious and charitable in character and was for the benefit of the members of the Atba-E-Malak Sect founded by Maulana Malak Saheb.

4. Maulana Malak Saheb expired in 1899. According to the aforesaid contempt petitioner M. Jafarbai, he was followed as the head of the Sect by Gulam Husain Badruddin who was appointed as such by Maulana Malak Saheb and was known as H. M. Malak. The said H. M. Malak also died in 1923 and was succeeded as head of the Sect by his son Mohammad Ebrahim Riza who also styled himself as Malak.

5. The above contempt petitioner M. Jafarbai has alleged in his aforesaid application u/s 4 of the M.P. Act that from 1923 to 1931 the said Khan Bahadur Mohammad Ebrahim Riza carried out the objects of the trust as per the document of the trust dated 9-6-1894 (Ex. 554). However, in the year 1931 he sought to give a go-bye to the above document of trust (Ex. 554) with a view to usurp the entire trust property to himself for which reason he got executed from

all the members of the Atba-E-Malak trust a document relinquishing their rights as beneficiaries in the trust property in favour for the aforesaid head of the Sect. The said deed of relinquishment (Ex. 249) is dated 5-11-1931. The said contempt petitioner M. Jafarbai therefore, filed the aforesaid application u/s 4 of the M.P. Act for inquiry and for registration of the above trust created by the deed of settlement dated 9-6-1894 (Ex. 554) as a public trust and its properties as trust properties.

6. After the receipt of the said application the Registrar of Public Trust, Nagpur, issued a public notice for inquiry as provided under S. 5(1) of the M.P. Act which was published in the M.P. Gazette. Part III(I) dated 4-6-1954. The said notice contained the description of the trust property as the property situated in Mehdiabaugh, Nagpur which is known as the Mehdi Baugh property. The Registrar of Public Trust, Nagpur after making an inquiry, passed an order on 11-11-1955 by which he held that the Mehdi Baugh is not a public trust and therefore, requires no registration. He thus rejected the application filed by M. Jafarbai under S. 4 of the M.P. Act.

7. After the above order was passed by the Registrar on 11-11-1955 rejecting the application of the above referred M. Jafarbai for registration of the public trust, an important even took place in the country viz. there was reorganisation of States w.e.f. 1-11-1956 as a result of which the Vidarbha region which was till then a part of the old State of M.P. became a part of the then State of Bombay w.e.f. the said date i.e. 1-11-1956 and thereafter a part of the present State of Maharashtra when the bilingual State of Bombay was bifurcated w.e.f. 1-5-1960 into the State of Maharashtra and the State of Gujrat. However, in this Vidarbha region the M.P. Act continued to apply till it was repealed and was replaced by the Bombay Public Trust Act, 1950 (for short the Bombay Act) which was extended and was made applicable to it w.e.f. 1-1-1961.

8. After the Bombay Act was made applicable in the Vidarbha region an application was filed on 2-3-1962 by one Aziz and others u/s 17 of the said Act before the Assistant Charity Commissioner, Nagpur, appointed under the said Act for determining the question whether the Deed of Settlement dated 9-6-1894 (Exh. 554) constituted a Public Trust within the meaning of the said Act or not. In the said proceedings on 6-9-1962 Moulana H. N. Malak Saheb i.e. the then Head of the Atba-E-Malak sect made an application requesting the Assistant Charity Commissioner, Nagpur, that the aforesaid application dated 2-3-1962 should be dismissed because the whole matter had been already enquired into and finally closed under the M.P. Act as referred to above. The Assistant Charity Commissioner, Nagpur, by his order rejected the above preliminary objection raised by Moulana H. N. Malak Saheb who, feeling aggrieved challenged the above order of the Assistant Charity Commissioner, Nagpur by way of a writ petition in this Court which writ petition was dismissed by this Court on 12-8-1963.

9. The said Maulana H. N. Malak Saheb then carried the matter to the Supreme

Court by way of an appeal by special leave registered as C.A. No. 498/1964. The Supreme Court by its judgment in the said appeal reported in *Hasan Nurani Malak Vs. Assistant Charity Commissioner, Nagpur and Others*, Nagpur set aside the judgment of this Court as well as of the Assistant Charity Commissioner holding that it was incumbent upon the Registrar under the M.P. Act, to take a negative entry in the register of public trust as provided in Section 7 of the said Act pursuant to his finding recorded by him on 11-11-1955 u/s 6 of the said Act in the inquiry made by him in the same matter u/s 5 of the said Act. It further held that in the absence of such an entry being recorded in the register of public trust the enquiry was incomplete and the proceedings remained pending under the M.P. Act. As such the Supreme Court held that the application of one Aziz and others u/s 19 of the Bombay Act for registration of the trust alleged to be created under the deed of settlement dated 9-6-1894 (Ex. 554) as a public trust under the Bombay Act was not maintainable and hence it dismissed the said application. It is material to see that in view of the above judgment of the Supreme Court such a negative entry was taken in the register of public trust as per the order of the Collector dated 27-3-67, passed in R.C. No. 7/B-109/66-67.

10. After the above negative entry was taken in the register of public trust on 27-3-67, the respondents 1 to 4 Contempt Appeal No. 1 of 1991 filed a civil suit u/s 8 of the M.P. Act registered as Special Civil Suit No. 143 of 1967. The plaintiffs in the said suit have claimed the following reliefs :-

"(a) that the finding dated 11th Nov. 1955 of the Registrar constituted under the M.P. Public Trust Act, 1951 that the said Trust comprised in the said Deed of Settlement dated 9th June 1894 is not a public trust be set aside and the Registrar be directed to correct accordingly u/s 8(3) the said entry dated 27th March 1967.

(b) that the defendant be ordered to pay to the plaintiff the costs of the suit.

(c) that the plaintiffs may have such further and other relief or reliefs as the nature of the case may require."

11. The then head of the Atba-E-Malak sect viz. H. N. Malak Saheb was joined as a defendant in the aforesaid suit. He filed his written statement denying the fact there was any public trust created under the deed of settlement dated 9-6-1894 (Exh. 554). He also inter alia raised the question of the competency of the plaintiffs to file the aforesaid suit. After the written statement was filed, the learned trial Court framed as many as 34 issues. The plaintiff also filed an application for appointment of receiver for management of the trust properties. However, as there was no schedule of properties accompanying the plaint, in view of an objection raised in that regard by the defendant, the plaintiffs in the aforesaid suit filed an application for amendment of the plaint to enclose a schedule therewith which inter alia included the property at Jabalpur which meant that according to the plaintiffs the property at Jabalpur was also the trust property. The learned trial Court by its order dated 17-9-1971 allowed the

amendment to the plaint as proposed by the plaintiffs. Feeling aggrieved, the defendant in the said suit i.e. H. N. Malak Saheb filed revision in this Court registered Civil Revision Application No. 455 of 1971. Since the trial Court had declined to call the plaintiff No. 3 for cross-examination in the application for receiver filed by the plaintiffs, the defendant in the said suit also challenged the said order of the trial Court by preferring revision application No. 456 of 1971 in this Court. There was a third revision in this Court preferred by the defendant and registered as C.R.A. No. 457 of 1971 which was preferred against the order of the learned trial Court rejecting his application for framing additional three issues and for trying them as preliminary issues. There were also two other revisions viz. C.R.A. No. 458 of 1971 and C.R.A. No. 459 of 1971 preferred by the defendant against the order of the learned trial Court dismissing his applications for trying certain issues as preliminary issues.

12. The learned single Judge of this Court decided all the above civil revisions by his common judgment rendered on 23-11-1972. What we are principally concern with in the instant case is the order of the learned single Judge in C.R.A. No. 455 of 1971. Perusal of his judgment in C.R.A. No. 455 of 1971 shows that according to him the subject matter of the suit filed u/s 8 of the M.P. Act was restricted to the Mehdiabagh property and, therefore, the proposed amendment which sought to include Jabalpur and other property in the suit claim was without jurisdiction. He, therefore, set aside the impugned order of the learned trial Court allowing the amendment to the plaint proposing to attach a schedule of property as part of the plaint which schedule included the property in question at Jabalpur. A petition for special leave to appeal against the above judgment of the learned single Judge dismissing the application for amendment was preferred in the Supreme Court registered as SLP No. 711 of 1973 which was dismissed by the Supreme Court in February 1973.

13. In view of the above judgment of the learned single Judge in C.R.A. No. 455 of 1971, the defendant Shri H. N. Malak Saheb filed an application for deletion of issues 5, 12 and 14 which application was allowed by the learned trial Court by its order dated 23-6-1977. The plaintiffs in the suit preferred a revision against the said order registered as Civil Revision Application No. 539 of 1977 which was allowed by the learned single Judge of this Court by his order dated 17-2-1982. The learned single Judge of this Court hearing the instant revisions while allowing the aforesaid revisions, distinguished the above judgment of this Court in Revision No. 455 of 1971 which was heavily relied upon by the learned trial Court in deleting the issues 5, 12 and 14. Perusal of the judgment of the learned single Judge of this Court in the instant C.R.A. No. 539 of 1977 would show that, according to him, for determination of the question whether the alleged trust was a public trust within the meaning of the M.P. Act, the above issues Nos. 5, 12 and 14 were relevant.

14. It is, however, pertinent to see that although the learned single Judge of this Court in the aforesaid C.R.A. No. 539 of 1977 allowed the above issues Nos. 5,

12 and 14 to be tried, the parties in the suit themselves decided by consent to recast the issues and accordingly with the consent of parties the learned trial Court had framed only nine issues in the suit as is clear from its order dated 24-9-86 below Ext. 70. It will appear from the perusal of the said issues that in relation to the subject matter of the property in the suit, only two issues viz. issues Nos. 2 and 3 were framed by the learned trial Court. It appears that the issues were recast at the stage of argument because immediately thereafter on 30-9-1986 the learned trial Court had decided the suit itself by its judgment. The learned trial Court dismissed the suit on the ground that the plaintiffs were not the persons having interest in the trust and were, therefore, not competent to maintain the suit. However, in its judgment the learned trial Court had recorded certain findings on merits against the defendant.

15. The plaintiffs challenged the judgment of the learned trial Court dated 30-9-1986 in the above referred Special C.S. No. 143 of 1967 by filing Regular Civil Appeal No. 16 of 1987 in the District Court at Nagpur. Since there were certain findings against the defendant, the defendant preferred cross-objection in the said appeal. During the pendency of the appeal, the then defendant H. N. Malak Saheb had died because of which the appellants filed an application in the aforesaid appeal to bring his legal representatives 1(a) to 1(c) on record. On notice, the proposed legal representatives filed their reply to the above application for bringing the legal representatives 1(a) to 1(c) on record, in which an objection was raised that the legal representatives at S. No. 1(a) to 1(c) were not necessary to be joined as parties to the suit since they did not claim any right, title or interest in the suit property as successors of late Shri H. N. Malak Saheb. A pursis (Exh. 30) was, therefore, filed on behalf of the appellants on 24-9-1987 in view of the above objection raised by the legal representatives 1(a) and 1(c) to the effect that they would have no objection to bring only the name of the proposed legal representatives at Sr. No. 1(b) on record. Accordingly the learned lower appellate Court by its order dated 24-9-1987 allowed the name of the proposed legal representatives at Sr. No. 1(b) to be brought on record as the respondent in the appeal. The aforesaid proposed legal representative of the deceased respondent at Sr. No. 1(b) is Amiruddin s/o Hasan Nurani Malak Saheb. It is he who is the contemnor and the appellant in two of the instant contempt appeals i.e. Contempt Appeal Nos. 1 and 2 of 1991.

16. The appellants-plaintiffs filed an application for temporary injunction (Ex. 51) before the learned lower appellate Court on 1-4-1989 under Order 39, Rules 1 and 2 r/w Section 151 of the C.P. Code, 1908 to restrain the respondent in the said appeal (i.e. Amiruddin, the legal representative of the deceased respondent) or his agents from selling, alienating, transferring or dealing with the trust property in any manner whatsoever till the disposal of the said appeal. The respondent in the said appeal opposed the said application for temporary injunction (Ex. 51). The learned Additional District Judge, Nagpur thereafter heard the submissions of the parties upon the said application for temporary injunctions (Ex. 51) and by his order dated 16-11-1989 dismissed it.

17. At this stage it is necessary to notice certain other proceedings which were initiated in Jabalpur in relation to the Jabalpur property in question on 15-3-1989. Mr. Padamsingh and Mr. Dineshkumar, who are the contempt petitioners in complaint Petition No. 54/91 and are the respondents 1 and 2 in the instant Contempt Appeals Nos. 2 and 4 of 91 claiming that they were the legal tenants in the Jabalpur property belonging to the alleged Mehdibagh Trust i.e. the trust alleged to be created under the deed of settlement dated 9-6-1894 (Ex. 554) filed an application before the Collector, Jabalpur seeking the relief that the property in Jabalpur in which they were tenants was the Trust Property belonging to the above Trust and that any proposed construction upon the said property by Amir Malak who claimed to be one of the co-owners of the said property along with the contemner Amiruddin was illegal and the construction plan submitted by him should not be sanctioned. The said complaint preferred by the aforesaid alleged tenants before the Collector, Jabalpur was forwarded to the Registrar, Public Trusts under the M.P. Act for enquiry and decision. The Registrar after issuing notice to the relevant parties including H. N. Malak Saheb (original respondent in the above referred C.A. No. 16 of 87) held by his order passed on 5-4-1989 that he had no jurisdiction to adjudicate upon the controversy and also that Mehdibagh property was not a public Trust.

18. The aforesaid tenants Padam Seth and Dineshkumar thereupon preferred writ petition before the M.P. High Court whose decision in that Writ Petition is reported in Dinesh Kumar Jaiswal and Another Vs. The Collector, Jabalpur and Others, . The M.P. High Court has held by its judgment in the said writ petition that the M.P. Act has contemplated only one Registrar for a Public Trust having immovable property in more than one district and, therefore, since the matter was first taken cognizance of by the Registrar of Public Trusts, Nagpur, it is that authority alone under the M.P. Act which has jurisdiction to consider the question raised in the complaint preferred by the aforesaid Contempt Petitioners Dineshkumar and Padamseth before the Registrar of Public Trusts, Jabalpur. The M.P. High Court, therefore, declined to examine the merits of the submissions advanced before it i.e. the question whether the trust created under the deed of settlement dated 9-6-1894 (Ex. 554) was a public trust or not.

19. The Contempt petitioners Dineshkumar and Padam Seth then carried the matter to the Supreme Court of India in SLP (Civil) No. 9197 of 1989 in which on 4-8-1989 the Supreme Court passed the following order :-

"Exemption allowed. - Interlocutory application for injunction dated 1st April, 1989 in R.C.A. No. 16 of 1987 pending in the Court of the District Judge be disposed of, on notice to the appellant and all parties concerned, as expeditiously as possible preferably within a period of three months from today. Save and except there will be no order on this Petition. The SLP is disposed of."

20. In view of the above order of the Supreme Court, the appellants/plaintiffs in Reg. C.A. No. 16 of 87 pending in the District Court at Nagpur, filed an application for issuing notices to the parties concerned including the aforesaid

contempt petitioners Dineshkumar and Padamseth who claiming to be tenants, had initiated the proceedings in respect of the property in question at Jabalpur. The respondent in the said appeal i.e. the Contemnor Amiruddin by filing his reply to the said application objected to issuance of notices to the parties mentioned in the said application. The learned lower appellate Court, by its order dated 1-9-1989, directed that in view of the order of the Supreme Court dated 14-8-1989 referred to above, the appellants/plaintiffs should issue notices to the Contempt petitioners Dineshkumar and Padam Seth and the respondents named at Sr. Nos. 1 to 9 in the application for issuing notices filed by them. Accordingly, such notices were issued and it was only after hearing them that the learned lower appellate Court had passed the above referred order dated 16-11-1989 dismissing the application for temporary injunction (Ex. 51) preferred by the appellants/plaintiffs before it in Reg. C.A. No. 16 of 1987. What is material to be seen in the aforesaid order of the learned lower appellate Court Nagpur is that in para 3 of its order, it has rendered a finding that the properties at Jabalpur are not the properties of the Trust.

21. Feeling aggrieved by the above order of the learned lower appellate Court Nagpur refusing to grant temporary injunction the plaintiffs/appellants preferred an appeal against the said order in this Court registered as A.O. No. 76 of 89. The Contempt petitioners and Dineshkumar and Padam Seth who were noticed and heard by the learned lower appellate Court Nagpur in view of the order of the Supreme Court referred to above also preferred an appeal in this Court against its order refusing to grant temporary injunction registered as A.O. No. 77 of 1989. In these appeals against the order, the appellants in both these appeals preferred separate applications for temporary injunction in this Court pending decision of their appeals against order viz. A.O. 76 of 89 and AO 77 of 1989. In the said applications, the appellants in both these appeals claimed temporary injunction pending their appeals in these terms :-

"(a) issue a temporary injunction, pending the final disposal of this appeal, restraining the defendant, the LRs of Hasan Nurani, their agents, servants, employees or any one claiming through them in any capacity whatsoever, or acting in their name and on their behalf from dealing, selling, alienating, transferring, constructing, over the properties covered by Deed Ex. 550 and the Relinquishment Deed, Ex. 249 at Jabalpur and at Nagpur."

22. When these appeals came up for admission before the learned single Judge of this Court on 21-12-1989 he passed the following order in each of the said appeals :-

"Admit. Interim injunction as prayed."

After notice to the respondent in the said appeals viz. the contemner Amiruddin, both the parties were heard on interim relief by the learned single Judge of this Court on 7-2-1990 on which date he passed the following order :-

"Heard both sides on interim relief. The parties to maintain status quo till

decision of the Appeal."

By the above interim order, the parties were directed to maintain status quo till the decision of the appeals against order i.e. A.O. 76/89 and A.O. 77/89.

23. These appeals i.e. A.O. 76/89 and A.O. 77/89 thereafter came up for final hearing before the learned single Judge of this Court who passed the following order in these appeals on 6-2-1991 :-

"Heard counsel for the parties. It is contended that the matter arising out of this litigation is already pending before the Supreme Court of India and the Supreme Court are trying to bring the parties to a settlement. The matter is shortly fixed for orders of the court. It is also contended that the appeal is already fixed for hearing before the lower appellate Court and in case an order of status quo is maintained and a direction to the lower appellate Court is issued to dispose of the appeal within a stipulated time, the ends of justice will be met. In view of the above facts, the parties are directed to maintain the status quo till the final disposal of appeals. The lower appellate Court is directed to dispose of the appeal within a period of the year from the date of this order.

2. With the above direction, both the appeals stand disposed of. However, there is no order as to costs."

Proposal of the above order would show that the parties were directed to maintain status quo till the final disposal of the Reg. Civil Appeal No. 16/87 which was pending in the District Court at Nagpur against the Judgment and decree of the learned trial Court in Spl. Civil Suit No. 143/67.

24. Before we come to the facts in the instant Contempt petitions, it is pertinent to notice certain proceedings in the Supreme Court arising out of the alleged contempt of its own order passed in earlier proceedings before it. It may be seen that after the judgment of the learned trial Court since there was indication in its judgment that the alleged Trust was a Public Trust having Trust properties, some interested persons moved the Deputy Charity Commission Nagpur to make an entry that the Trust in the instant case alleged to be created by the deed of settlement dated 9-6-1894 (Ex. 554) is Public Trust having property. The Deputy Charity Commissioner, Nagpur made such an entry in the Register for Public presumably on the basis of the observations made in the Judgment of the learned trial Court in Special Civil Suit No. 143/67 referred to above. The Contemner Amiruddin made an application before the Deputy Charity Commissioner, Nagpur that the above entry should be deleted. However, the said application was rejected by him on 19-2-1990.

25. The Contemner Amiruddin thereupon filed Contempt Petition in the Supreme Court against the Deputy Charity Commissioner, Nagpur and others which was registered as Contempt Petition No. 178 of 90 in Civil Appeal No. 498 of 1964 decided by the Supreme Court by its Order dated 12-8-1966, AIR 1967 SC 1743 cited supra. The Supreme Court decided the said contempt petition by its

Judgment rendered on 12th February, 1991. Although the Supreme Court held that the said case did not call for any action against the contemnors in the said contempt petition before it under the contempt of courts Act, 1971, it directed that the entry made by the Deputy Charity Commissioner, Nagpur regarding the Trust being a Public Trust should be deleted forthwith not later than the one month from the date of its order. It also directed the District Court at Nagpur before which the Reg. C.A. No. 16 of 1987 was pending to proceed on the footing that there was no such entry in the Register of Public Trusts. As per the said Judgment, the Contemner Amiruddin who is the appellant in the instant contempt appeals 1 and 2 of 1991 and who had consented to act as receiver was appointed as receiver of the properties referred to in para 30 of the Judgment of the learned Trial Court in Sp. C.S. No. 143/67. The Supreme Court observed that if any question of doubt were to arise as to the identification of the properties referred to in para 30 of the Judgment of the learned Trial Court in Sp. C.S. No. 143 of 1967, the parties should seek appropriate directions from the District Court, Nagpur.

26. It is material to notice that the above Judgment of the Supreme Court was rendered on 12-2-1991 i.e. after the order was passed by the learned single Judge of this Court on 6-2-1991 in the appeals against order i.e. A.C. Nos. 76 and 77 of 1989 by which status quo was directed to be maintained till the final disposal of the Regular Civil Appeal No. 16 of 1987 pending in the District Court, Nagpur. The question thus raised on the basis of the above Judgment of the Supreme Court, in Contempt Petition No. 178 of 1990 is whether the said Judgment supersedes and/or substitutes the order of this Court in the above referred A.O. Nos. 76 and 77 of 1989 and therefore, there is no question of any breach of the above referred order of this Court which can give rise to any in contempt of this Court.

27. Turning now to the actual facts giving rise to the instant contempt petitions, it may be seen that after the above Judgment was rendered by the Supreme Court on 12-2-1991 in the Contempt Petition No. 173 of 1990 before it, Shri V. G. Palshikar, Advocate issued a notice purported to be on behalf of the plaintiffs in Sp. C.S. No. 143 of 1967 which was published in the issue of the daily "Hitavada" dated 23-2-1991 and in the issue of the daily "Navbharat" dated 24-2-1991 published from Jabalpur. It is alleged by the contempt petitioners, that, in reply to the above notice issued by Shri V. G. Palshikar, Advocate, the contemnors have published an advertisement-cum-notice in the issue of "Navbharat" dated 13-3-1991 published from Jabalpur, the contents of which according to them, amount to contempt of this Court. The reply notice in purported to be prepared by Shri S. S. Ghate, Advocate, the appellant in Contempt Appeals Nos. 3 and 4 of 1991. It appears to be dated 9-3-1991. The said reply along with an advertisement in Hindi is alleged to be published in the above-referred issue of "Navbharat", Jabalpur dated 13-3-1991 by the contemnors which has given rise to the instant contempt petitions.

28. Perusal of the contents of the aforesaid notice appearing in the issue of "Nav Bharat", Jabalpur dated 13-3-1991 shows that at the top of the said notice, there is an advertisement, in which it is stated that the shops in Akash Ganga Shopping Complex, Sadar Bazar, Main Road, Jabalpur are available on lease and are free from all disputes in view of the Judgment of the Supreme Court. For the said purpose, it is stated in the notice that intending persons should contact Vimal Gupta, Advocate and/or Brijendra Shrivastav a property dealer. Below the bold advertisement in Hindi, there is a reply in English to the notice issued by Shri V. G. Palshikar, Advocate referred to above which, according to the said reply, contains false and misleading propaganda and defamatory statement. The said reply notice is purported to be signed by the contemner Shri S. G. Ghate, Advocate, Nagpur. It may be seen that Shri S. G. Ghate, Advocate Nagpur was representing the contemner Amiruddin in the proceedings hereinbefore referred to. What is material to be seen from paras 5 and 6 of the said reply notice dated 9-3-1991 is that the contemner Amiruddin had as per the order of the Supreme Court dated 12-2-1991, passed in Contempt Petition No. 178 of 1990, consented to act as Receiver only in respect of Mehdiabagh property and no other and that the statement made by him, not to alienate any property was only in respect of the said property. Further, as per para 6 of the said reply notice, the property in question at Jabalpur or anywhere else belonging to the contemner Amiruddin and other co-owners was never a Trust property nor was such property declared as a Trust Property by any Court till then.

29. The contempt petitioners who fell into two categories, viz. (1) the plaintiffs in the Suit Special Civil Suit No. 143/67 and (2) Dineshkumar and Padam Seth who claim to be the tenants in the property in question at Jabalpur and who were noticed and heard on the application for temporary injunction by the learned Lower appellate Court Nagpur, as per the order of the Supreme Court in SLP (civil) No. 9197 of 89 passed on 4-8-1989 and hereinbefore reproduced, have filed two separate contempt petitions in this Court registered as Contempt Petitions No. 53 of 91 and 54 of 1991 respectively alleging that the contents of the notice dated 9-3-91 appearing in the issue of Nav Bharat Jabalpur dated 13-3-1991 are in flagrant breach of the interim injunction granted by this Court on 21-12-1989 pending decision in A.O. Nos. 76 and 77 of 19989 confirmed by the order of Status-quo passed on 7-2-1990 as also the final order passed in the said Appeals against order on 6-2-1991 by which the parties were directed to maintain status-quo pending decision of the Reg. Civil Appeal No. 16/87 pending in the District Court, Nagpur against the Judgment and decree of the learned trial Court in Special Civil Suit No. 143 of 1967. The above contempt petitions are identical and were filed against the contemnors : (1) Amiruddin Malak Saheb (2) Advocate Shri S. G. Ghate, (3) Shri Vimal Gupta, Advocate, Jabalpur and (4) Shri Brajendra Shrivastava who is alleged to be a property dealer.

30. It appears that the notice made returnable within two weeks by the learned single Judge of this Court on 25-3-1991 has been treated as notice before admission in these contempt petitions. The contemnors filed their submissions

styled as preliminary submissions before the learned single Judge of this court. When these petitions were adjourned for hearing on notice before admission to 22-4-1991, they were finally heard on that date and disposed of by the learned single Judge of this Court by his common Judgment rendered on 29-4-1991. The learned single Judge of this Court by his aforesaid Judgment dated 29-4-1991 acquitted Shri Vimal Gupta, Advocate and Shri Shrivastava, the Property Dealer both of Jabalpur, of the contempt alleged against them. He, however, convicted the Contemner Amiruddin and his Advocate Shri S. G. Ghate of contempt of this Court for flouting the order of this Court dated 6-2-1991 passed in A.O. Nos. 76 and 77 of 1989 by publishing the above referred advertisement cum notice dated 9-3-1991 in the issue of "Nav Bharat" Jabalpur dated 13-3-1991. As regards the punishment to be imposed for contempt of Court, instead of imposing jail sentence, he directed that the Contemner Amiruddin should pay a fine of Rs. 100/- within one week from the date of his order and in case of default, he should suffer simple imprisonment for 15 days. In the case of the contemner Shri S. G. Ghate Advocate, considering his guilt more serious, he sentenced him to pay a fine of Rs. 1000/- within one month from the date of his order or in default to suffer simple imprisonment for one month.

31. Feeling aggrieved, the contemner Amiruddin has preferred Contempt Appeal No. 1 of 91 in Contempt Petition No. 53 of 91 and Contempt Appeal No. 2 of 91 in Contempt Petition No. 54 of 91 against the above common Judgment of the learned single Judge of this Court dated 29-4-91. The Contemner Shri S. G. Ghate, Advocate has also preferred Contempt Appeal No. 3 of 91 in Contempt Petition No. 53 of 91 and Contempt Appeal No. 4 of 91 in Contempt Petition No. 54 of 91 against the above common Judgment of the learned single Judge of this Court. As there is common cause of action for contempt viz. the breach by the contemnors of the common order passed by the learned single Judge of this Court in A.O. Nos. 76 and 77 of 1989, and as both the contempt petitions out of which these contempt appeals arise are disposed of by the common judgment by the learned single Judge of this Court, these appeals are also being conveniently disposed of by a common Judgment.

32. The learned counsel appearing for the contemnors have raised the following grounds in these appeals :-

(a) The subject-matter of Jabalpur property is not the subject-matter of Suit i.e. Special Civil Suit No. 143 of 67 and therefore, no temporary injunction could be granted in respect of the Jabalpur property in the Regular Civil appeal in the District Court, Nagpur i.e. Reg. C.A. No. 16 of 1987 arising out of the Judgment in the said Suit.

(b) If any temporary injunction can be said to have been granted in relation to the Jabalpur property pending decision of the above appeal before the District Court, Nagpur, such temporary injunction or status quo order in relation thereto is without jurisdiction and is a nullity the non-compliance of which cannot be complained of as Civil Contempt within the meaning of the said expression under

the Contempt of Courts Act, 1971.

(c) No temporary injunction at all is granted in respect of the Jabalpur property by the common order of this Court dated 6-2-91 in A.Os. 76 and 77 of 1989, the non-compliance of which is alleged as contempt by the contempt petitioners.

(d) Even assuming that the advertisement-cum-notice is issued by the contemnors in the issue "of "Nav Bharat" Jabalpur dated 13-3-91, the said advertisement cum notice is not in breach of the order dated 6-2-91 passed by this Court in A.O. Nos. 76 and 77 of 1989.

(e) The common order of this Court dated 6-2-91 passed in A.O. Nos. 76 and 77 of 89 of which non compliance is claimed stands superceded in view of the subsequent order of the Supreme Court dated 12-2-1991 in contempt petition No. 178 of 1990 in C.A. No. 498 of 1964, and therefore there is no question of any breach of the aforesaid order of this Court dated 6-2-1991 in A.O. Nos. 76 and 77 of 1989.

(f) The contempt petitioners have failed to prove that the advertisement in question appearing in the issue of "Nav Bharat", Jabalpur dated 13-3-1991 is issued by or at the instance of the contemnors.

and

(g) If at all there is any non-compliance of order of this Court dated 6-2-1991, in A.O. Nos. 76 and 77 of 1989, it is not wilful or deliberate particularly when the aforesaid order of this Court is vague and is capable of misinterpretation also.

33. The learned counsel appearing for the two sets of the Contempt petitions have by their separate submissions vehemently opposed the above grounds raised on behalf of the contemnors in the instant appeal. It is then emphatically asserted on behalf of the contempt petitioners and more so on behalf of Dineshkumar and Padam Seth, the contempt petitioners in Contempt petition No. 54 of 91, that there is no manner of doubt that the status-quo order passed on 6-2-91 by this Court in A.O. Nos. 76 and 77 of 1989 was applicable to the Jabalpur property also because A.O. No. 77 of 1989 was preferred by the above contempt petitioners who allege to be tenants in the property in question in Jabalpur and who were heard by the learned Lower appellate Court, Nagpur upon the application for temporary injunction preferred before it is Reg. C.A. No. 16 of 1987 in view of the direction on the Supreme Court in S.P. (Civil) No. 9197 of 1989 passed on 4-8-89 and that there is flagrant breach of the same committed by the contemnors by issuing the aforesaid advertisement-cum-notice in issue of "Nav Bharat", Jabalpur dated 13-3-1991.

34. To appreciate the rival submissions, it is first necessary to understand what according to the contempt petitioners is the contempt committed by the contemnors. Focussing our attention upon the advertisement-cum-notice published in the issue of Nav Bharat, Jabalpur dated 13-3-1991, it appears that the said advertisement-cum-notice is purported to be signed by the contemner

Shri S. G. Ghate, Advocate, Nagpur. The top outlines of the said Advertisement are in Hindi and the remaining portion including the title in bold letters is in English. From the Hindi portion of the said advertisement, it appears that the person who published the advertisement and the person at whose instance it was published wants to convey that there are shops available on lease in Akash Ganga Shopping Complex, Sadar Bazar, Main Road, Jabalpur. The person who had given the said advertisement had asked the interested persons to contact Shri Vimal Gupta, Advocate or Brijendra Shrivastav, Shrivastav Property Dealer, near Sadar Post office during the timings 9.00 in the morning to 7.00 in the evening. What is more material to be seen for our propose is that the said advertisement opens by announcing that the said advertisement opens by announcing that the said property at Jabalpur is rendered free from all disputes by the Supreme Court.

35. The submission on behalf of the Contempt Petitioners is that the aforesaid advertisement to lease out Shops in the property in question at Jabalpur is in violation of the status quo order passed by this Court on 6-2-1991 in A.O. Nos. 76 and 77 of 1989, because the said property is very much the subject matter of the said AOs and is thus subject to the aforesaid interim of Status-quo dated 6-2-1991 and the statement made in the aforesaid advertisement that it is made free from all disputes by the Supreme Court is misleading and untrue.

36. It is clear from perusal of the English portion of the said advertisement that it is an answer to the notice published by Shri V. G. Palshikar, Advocate in the issue of "Hitavada" dated 22-3-1991, issue of "Nagpur Times" dated 22-3-1991 and in the issue of "Nav Bharat", Jabalpur, dated 22-3-1991. The contemner Shri S. G. Ghate, Advocate, Nagpur has not disputed the fact that he had drafted the above reply to the aforesaid Notice issued by Shri V. G. Palshikar Advocate, Nagpur. However, according to him he had not drafted the Hindi portion of the above advertisement published in the issue of "Nav Bharat" Jabalpur dated 13-3-1991. According to the contempt petitioners, the assertion of the contemnors in the aforesaid advertisement-cum-notice that there is no property owned by Atba-E-Malak Trust except MehdiBagh property that the contemner Amiruddin has consented before the Supreme Court in Contempt Petition No. 178 of 1990 hereinbefore referred to, to act as a trustee in respect of the MehdiBagh property only, and that the statement made by him not to alienate any property is only in respect of the above property are not only in breach of the order of the Supreme Court in the aforesaid Contempt Petition No. 178 of 1990 but are in breach of the order of this Court dated 6-2-1991 in A.O. Nos. 76 and 77 of 1989 also. Similarly, according to the contempt petitioners, the statement in para 6 that the property at Jabalpur and elsewhere belonging to the contemner Amiruddin and the co-owners was never trust-property nor was it so declared by any Court - is also contrary to the aforesaid orders of this Court and the Supreme Court.

37. The reasoning advanced on behalf of the contempt petitioners as regards the applicability to the Jabalpur property of the order of status-quo pending decision

in Reg. C.A. No. 16 of 87 by the District Court, Nagpur passed finally on 6-2-91 in A.O. Nos. 76 and 77 of 1989 is that originally by an order dated 21-12-89, passed by the learned Single Judge in the aforesaid appeals against order, an ex parte interim injunction as prayed for was granted in terms of the prayer clause in the application for temporary injunction preferred in the said appeals against order pending their decision. Perusal of the prayer clause in the said application for temporary injunction shows that pending decision of the appeals against order, a temporary injunction was claimed to restrain the defendant i.e. the contemner Amiruddin, his agents, servants, employees or any one claiming through him in any capacity whatsoever, or acting in his name and on his behalf from dealing, selling alienating, transferring, constructing over the properties covered by the Deed of Settlement (Ex. 554) and the Relinquishment Deed (Ex. 249) at Jabalpur and at Nagpur. The submission therefore on behalf of the contempt petitioners is that the temporary injunction granted ex-parte by the learned single Judge of this Court on 21-12-89 in terms of the above prayer clause was applicable in respect of the Jabalpur property also. The further submission on their behalf is that when on hearing both sides on 7th 2nd 1990 the learned single Judge of this Court, directed the parties to maintain status-quo till the decision of the above appeals against order, the said order of status-quo operated in respect of the Jabalpur property too. The reasoning advanced on their behalf thus is that when an order of status-quo pending decision of the Reg. C.A. No. 16 of 87 was passed on 6-2-91 by the learned single Judge of this Court while finally disposing of the above appeals against order, the said order of status quo operated in regard to the Jabalpur property also with the result that dealing with, transferring, alienating, selling or constructing over the said property would be in breach of the said status quo order dated 6-2-1991. It is therefore, urged on behalf of the contempt petitioners that by proceeding to lease out the shops in Akash Ganga shopping complex Sadar Bazar, Jabalpur, there is breach of the above order of status"quo dated 6-2-91 because at any rate it amounts to dealing with the said property, if not alienating or transferring it.

38. At the outset, the contemnners have tendered apology and have expressed that they had no intention to commit any contempt of this Court. On merits, however, they have denied that they have committed any contempt much less wilful or deliberate contempt of this Court. They have denied that the status quo order dated 6-2-91 is applicable to the Jabalpur property principally on the ground that the subject matter of the suit itself is restricted to Mehdibagh property at Nagpur and therefore the order of temporary injunction or status quo could and cannot operate in respect of any property other than Mehdibagh property at Nagpur. Except admitting the fact that the reply as contained in the advertisement in question to the notice published by Shri V. G. Palshikar, Advocate in the newspapers hereinbefore referred to was drafted by the contemner Shri S. G. Ghate Advocate, Nagpur as per the instructions from his client Amiruddin, the contemnners have denied that they had issued the advertisement in question which is published in the issue of "Nav Bharat",

Jabalpur dated 13-3-1991.

39. It is then urged on behalf of the contemnors that even assuming that the Jabalpur property was within the mischief of the order of status-quo passed by the learned single Judge of this Court on 6-2-1991 in A.O. Nos. 76 and 77 of 1989, still there was no breach of the said order because as per the advertisement in question there was neither any alienation, sale or transfer of the property in question at Jabalpur. It is also urged that as the interim order of the Supreme Court dated 12-2-991 in Contempt Petition No. 143 of 1990 hereinbefore referred to was passed after the above interim order dated 6-2-1991 of this Court in the aforesaid appeals against order, the said order of the Supreme Court substitutes and/or replaces the aforesaid interim order of this Court and. The only restriction placed by the above order of the Supreme Court upon the contemnor Amiruddin who was appointed by it as receiver was not to alienate any property referred to in para 30 of the Judgment of the learned trial Court in Special Civil Suit No. 143 of 1967, and therefore, the submission is that when as per the advertisement in question there was an offer made for lease of the shops, there was no question of any alienation of any property at Jabalpur. For these reasons amongst others which we need not refer to, it is urged that the contemnors have not committed any contempt of this Court, much less any wilful or deliberate contempt.

40. Before we proceed to consider the rival contentions it would be useful to notice the law on contempt. It is well settled that the contempt proceedings, even though the contempt may be civil in nature, are quasi criminal in nature and the burden of proof is therefore upon the contempt petitioners to prove the contempt beyond reasonable doubt (See the Judgement of the Madras High Court in Syed Azimudin Vs. Syed Mazharuddin and Another, . In the case of The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others, , the Supreme Court has also applied the principle that the contempt petitioner must prove the charge beyond reasonable doubt and that in case of doubt the benefit ought to go to the contemnor.

41. It is well settled that in case of a civil contempt unless it is wilful, the contemnor cannot be held guilty of contempt of Court. See the definition of the expression "Civil Contempt" given in Section 2(4) of the contempt of Courts Act, 1971. See also the Judgments of the Supreme Court in Jiwani Kumari Parekh Vs. Satyabrata Chakravorty, Managing Director and Chief Executive of the West Bengal Handicraft Development Corpn. Ltd., and Tapan Kumar Mukherjee Vs. Sri Heromoni Mondal and another, . It is clear from the judgment of the Supreme Court in Tapan Kumar's case cited supra that it must be proved beyond doubt that there is wilful contempt committed by the contemnor. Otherwise he is entitled to the benefit of doubt.

42. Perusal of the Judgment of the Supreme Court in the case of Lt. Col. K.D. Gupta Vs. Union of India (UOI) and Another, also shows that unless there is mala fide or deliberate intention to violate the order of the Court, there is no

justification for initiation of contempt proceedings. In the said case, it was held that there was no intention to violate the order of the Supreme Court since in view of the provisions of Chapter XVII of the Income Tax Act, 1961, a part of the amount directed to be paid by the Supreme Court to the Contempt petitioner was withheld for being deducted towards payment of Income Tax at source.

43. It is also necessary to notice the Judgment of the Calcutta High Court in the case of Butalia H. S. v. Subhash Kumar Saksena, 77 CWN 1034 : 1977 Cri LJ 828 in which it is held that every infraction of the Court's order does not amount to contempt of Court and that it is only a wilful and deliberate violation of the Court's order and contumacious conduct on the part of the contemner which is to be condemned in contempt proceedings. In dealing with the allegations of contempt, it is observed in the above Judgment by the Calcutta High Court that the Court should not adopt a vindictive attitude in judging the allegations against the contemner which should be examined dispassionately to see if there is any wilful defiance of the order of the Court so as to attract conviction for contempt of Court. Relying upon Section 13 of the contempt of Courts Act, 1971, it is then observed by the Calcutta High Court in the above case that a wilful and deliberate contempt must be shown to interfere with the course of justice before such conduct can be punished for contempt.

44. The question which now needs consideration is in which cases the Civil contempt cannot be said to be wilful and deliberate. In *The State of Bihar Vs. Rani Sonabati Kumari*, which was a case arising under order 39, Rule 2(3) of the CPC (1908), the Supreme Court has laid down two conditions to determine whether the contempt is not wilful and deliberate, viz (i) that the order was ambiguous and was reasonably capable of more than one interpretation and (2) that the party being proceeded against - in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. It is however held by the Supreme Court in the above case that the question whether a party has understood the order in a particular manner and has conducted himself in accordance with the said construction is a question of fact and unless there is material before the Court to take such a view, the Court cannot attribute such innocent intention based on presumptions for the only reason that the ingenuity of a counsel can create equivocation in the order which is the subject matter of enforcement.

45. It is however, material to notice the recent Judgment of the Supreme Court in the case of *Ashok Kumar Singh v. State of Bihar* 1991 (6) JT 419 in which it is held that if there is misinterpretation of the directions or orders of the Court, it cannot conclusively be said that the contemnors have wilfully or deliberately or contemptuously flouted or disobeyed the orders of the Court. It is material to see that in the aforesaid case before the Supreme Court, the interpretation placed by the Commissioner upon the directions/orders issued by the Supreme Court and the High Court was not correct because according to the view of the Supreme Court even the untrained teachers were eligible for appointment provided the

trained teachers were not available in that particular category and the untrained teachers were otherwise qualified without putting the bar of age against them. Having regard to the facts of the case, it was held that there was no wilful and deliberate contempt committed by the contemner in the said case.

46. It is clear from the conspectus of the above Judgments that unless the contempt is wilful, deliberate and intentional, the contempt proceedings should not be initiated. Keeping in mind the above law on contempt, it is necessary to examine the question whether the contempt in the instant case is wilful, deliberate and intentional even assuming that the contemnors have issued the advertisement-cum-notice in question in the issue of "Nav Bharat" Jabalpur published on 13-3-1991 and assuming further that they have thereby committed breach of the order of status-quo passed on 6-2-91 by the learned single Judge of this Court.

47. In this regard, it is material to see that the principal submissions of the parties revolve round the question of interpretation of the above order of Status-quo dated 6-2-1991. While it is the case of the contemnors that the said status-quo order dated 6-2-1991 operates and can operate only in regard to the subject matter of Sp. C.S. No. 143 of 67 which according to them is only Mehdibagh property at Nagpur, it is the case of the contempt petitioners that the Jabalpur property also forms the subject matter of the above Suit and, alternatively, even though it may not by virtue of the order of the Supreme Court dated 4-8-89 passed in SLP (Civil) No. 9197 of 89 the Jabalpur property is in issue at any rate for the purpose of grant of temporary injunction in Reg. C.A. No. 16/87 pending in the District Court at Nagpur. Even otherwise, according to them, the above order of status-quo dated 6-2-91 is actually passed with respect to the Jabalpur property also.

47A. It is also the case of the contemnors that the order the Supreme Court dated 12-2-1991 passed in contempt Petition No. 178/90 replaces wholly or at any rate modifies the aforesaid order of status quo dated 6-2-91 passed by the learned single Judge of this Court and the only restriction placed by the said order is that the contemner Amiruddin who is appointed as receiver under the said order shall not alienate properties referred to in para 30 of the Judgment of the learned trial Court in Special C.S. No. 143/67. It is made clear by the contemnors that even the above order of the Supreme Court is restricted only to the Mehdibagh property in Nagpur and to no other. The learned counsel for the contempt petitioners have joined issue with the above construction of the above order of the Supreme Court. It is these rival submissions of parties upon the construction of the aforesaid order of status-quo dated 6-2-1991 which we first prefer to consider.

48. The gravamen of the submissions urged on behalf of the contemnors appellants is that the order of status-quo dated 6-2-91 in A.C. Nos. 76 and 77 of 1989 of which violation is complained of relates to the Mehdibagh property at Nagpur only and to no other property because, according to them, the property

which was the subject matter of the Special Civil Suit No. 143 of 1967 was the Mehdibagh property at Nagpur only and not any other property including the Jabalpur property to which the advertisement in question relates. In elaborating the above submission it is urged that the above civil suit, out of the judgment in which the Regular Civil Appeal No. 16 of 1987 in the District Court arises and to which the above order of status-quo directed by the learned single Judge of this Court relates, is a special Suit filed u/s 8 of the M.P. Act. The relief which is and which can be claimed in such a suit is to have the finding of the Registrar of Public Trust recorded u/s 6 of the said Act set aside or modified. Thus in the said suit the relief claimed is that the finding of the Registrar dated 11th November, 1955 holding that the trust comprised in the deed of the Settlement (Ex. 554) dated 9th June, 1894 is not a public trust be set aside and the Registrar be directed to correct accordingly, u/s 8(3) of the said Act the said entry in the register of Public trusts made on 27-3-1967.

49. It is specifically pointed out with reference to the finding of the Registrar dated 11th November, 1955 and the entry taken in the register of public trusts that what is considered and what is not held to be a public trust, is the Mehdibagh property at Nagpur and not any other property. The above submission is sought to be fortified by showing that as per the statutory procedure laid down in clauses (i) & (ii) of Section 5 of the M.P. Act for enquiry into the question whether a trust is a public trust and whether any property is the property of the said public trust, it is obligatory upon the Registrar to give public notice in the prescribed manner of such proposed enquiry by him and that the public notice thus given by him relates only to the Mehdibagh property at Nagpur and to no other property.

50. The submission thus is that if the mandatory public notice given by the Registrar u/s 5(2) of the M.P. Act relates only to the Mehdibagh property at Nagpur and to no other property, the enquiry made by him and finding dated 11-11-55 rendered by him pursuant thereto is only in relation to the Mehdibagh property. The further submission is that if the enquiry and the finding dated 11-11-55 rendered by the Registrar is only with respect to the Mehdibagh property at Nagpur, then in Special Civil Suit No. 143 of 1967 filed u/s 8 of the aforesaid Act to challenge the said finding of the Registrar dated 11-11-55, the scope of the suit is necessarily restricted to the Mehdibagh property only and to no other property.

51. In support of the above submission heavy reliance is placed on behalf of the contemners upon the judgment of the learned single Judge of this Court in Civil Revision Application No. 455 of 1971 *Mqulan A Hasan Nurani Malak Saheb v. Tavebhai Razzak* which is heard and decided along with Civil Revision Application Nos. 456 to 459 of 1991 by a common Judgment rendered on 23-11-72. In CRA No. 455 of 71 decided by the above Judgment of this Court dated 23-11-72, the order of the learned trial Court dated 17-9-71 in Special Civil Suit No. 143 of 67 allowing the application for amendment made by the plaintiffs in the said Suit to

attach the schedule of property to the plaint which included Jabalpur and other property, apart from the Mehdibag property at Nagpur, was set aside. The learned single Judge of this Court, after examining the scheme about the enquiry to be made by the Registrar under S. 5(2) of the M.P. Act and after examining the scope of the Civil Suit filed u/s 8 of the said Act, had upheld the contention raised on behalf of the defendant in the said suit that the scope of the said suit, in view of the enquiry made and the finding dated 11-11-55 recorded by the Registrar pursuant thereto was restricted only to the Mehdibagh property at Nagpur and therefore the above amendment proposed by the plaintiffs to the plaint in the said suit was outside its scope thus the impugned order of the learned trial Court allowing the amendment to include Jabalpur and other property in the suit was held to be without jurisdiction.

51A. The learned single Judge has observed in the said Judgment that the learned counsel for the plaintiffs appearing in the said revision had not disputed that the scope of the said suit was limited to the finding dated 11-11-53 recorded by the Registrar and that according to him the application for amendment to include the above property was necessitated only for the purpose of his application for appointment of receiver. It is material to see that the SLP preferred against the above Judgment of this Court is admittedly dismissed by the Supreme Court.

52. In order to support the contention that the order of status quo dated 6-2-1991 of which breach is complained of is restricted to the Mehdibagh property at Nagpur only, the learned counsel for the contemnors have brought to our notice issue No. 2 of the issues framed by the learned trial Court by consent of parties. According to them the said issue No. 2, which is the only issue in relation to the alleged trust property, shows that it is in respect of the Mehdibagh property only.

53. Reliance is then placed upon the application for bringing the legal representatives on record of the sole deceased respondent-defendant in Reg. C.A. No. 16 of 1987 arising out of the judgment in Special C.S. No. 143 of 1967 filed by the appellants/plaintiffs, the reply filed by the proposed legal representatives of the deceased respondent/defendant, pursis (Exh. 30) filed on behalf of the appellants/plaintiffs, and the order passed upon the said application by the learned lower appellate Court to show that in view of the stand taken by the legal representatives at S. No. 1(a) and 1(c) of the application for bringing the legal representatives on record, that the scope of the aforesaid suit was restricted to the Mehdibagh property at Nagpur in which they had no right, interest or title as heirs of the deceased Malak saheb, the appellants/plaintiffs had brought only the name of the legal representative at S. No. 1(b) i.e. the contemner Amiruddin who had succeeded to the late Moulana H. N. Malak saheb as the head of the Atba-E-Malak Sect. It is, therefore, submitted that even the appellants/plaintiffs in the said appeal i.e. Reg. C.A. No. 16 of 1987 who are the contempt petitioners did not dispute that the subject matter of the aforesaid suit

was restricted only to the Mehdibagh property at Nagpur.

54. The learned counsel for the contemnors has lastly brought to our notice para 23 of the judgment of the learned lower appellate Court upon the application for temporary injunction (Exh. 51) filed by the appellants in the Regular C.A. No. 16 of 1987. The learned lower appellate Court has held in the said para 23 that the Jabalpur properties are not the properties of the trust. In this regard it has also referred to the facts that there are no pleadings that the Jabalpur property is acquired out of the trust funds, that there is no schedule of property attached to the plaint, and that the enquiry conducted by the Registrar under the M.P. Act is in respect of the Mehdibagh property only. It has then observed that although the respondent and the other co-owners claim the Jabalpur property as their exclusive property, the co-owners are not joined as parties. Based upon the above observation about the co-owners being not joined as parties but only the contemner Amiruddin as shown above, the submission is that when his name was brought on record as the LR of the deceased Malak-saheb, it would mean that even according to the appellants/plaintiffs the aforesaid suit was restricted to Mehdibagh property at Nagpur.

55. For all these reasons, it is contended on behalf of the contemnors that since the subject matter of the Special C.S. No. 143/67 is restricted to Mehdibagh property at Nagpur, the order of status quo passed by the learned single Judge of this Court on 6-2-1991 in AO Nos. 76 and 77 of 1989 operates and can operate only in regard to the said property at Nagpur and no other property.

56. The learned counsel appearing for the contempt petitioners in Contempt Petition No. 53 of 1991 i.e. the plaintiffs in the aforesaid suit has, on the other hand contended before us that the Jabalpur property in question was the subject matter of the suit and therefore and even otherwise on its plain reading along with the interim orders passed pending AO Nos. 76 and 77 of 1989, the aforesaid order of status quo dated 6-2-1991 of which violation is claimed, is applicable to Jabalpur property.

57. In support of his submission that the subject matter of the aforesaid suit included the Jabalpur property also, the learned counsel for the contempt petitioners/ plaintiffs has first relied upon the contents of the application dated 7-10-1953 itself filed by the contempt petitioner Jafarbai under S. 4 of the M.P. Act for registration of the trust in question as a public trust. He has brought to our notice that it is stated by him in the said application dated 7-10-1953 that from 1923 to 1931, Khan Bahadur Mohammad Riza carried out the objects of the Trust as per the document of 1894, which reference appears to be to the deed of settlement dated 9-6-1894 (Ex. 554), but in 1931 he desired to give a go-bye to the said document and to usurp the entire trust to himself. It is further stated in the said application dated 7-10-1953 that with that view in mind he got executed document from his 158 followers by which they relinquished whatever rights they had in the properties of the alleged trust. The said document is the deed of relinquishment dated 5-11-1931 (Ex. 249). It is then averred in the said

application dated 7-10-1953 that the list of present buildings including mosque and other properties are given as they stood in 1931 as per the document of 1931 i.e. the deed of relinquishment dated 5-11-1931 (Ex. 249). It is then brought to our notice that the said deed of relinquishment (Ex. 249) is also included in the list of reliance filed along with the plaint in the Special Civil Suit No. 143 of 1967. The purpose of the contempt petitioners in laying emphasis upon the deed of relinquishment dated 5-11-1931 (Ex. 249) is to show that the Jabalpur and other properties are included in the said deed of relinquishment (Ex. 249) and therefore all the properties of the alleged trust whether at Nagpur or Jabalpur or elsewhere are the subject matter of the enquiry under S. 5 of the M.P. Act and consequently the subject matter of the aforesaid suit also. The fact however remains that actually in the public notice issued by the Registrar under the mandatory provisions of S. 5 of the M.P. Act, the trust property shown for enquiry is the Mehdiabagh property at Nagpur.

58. Heavy reliance is then placed on behalf of the above contempt petitioners upon the judgment of the learned single Judge of this Court in CRA No. 539 of 1977, *Mukhtar Jafarbai v. Hasan Nurani*, rendered on 17-2-1982 to show that the learned single Judge in the said revisions has disagreed with the view taken by the learned single Judge of this Court in the aforesaid Civil Revision Application No. 455 of 1971 decided on 23-11-1972 in which he has taken the view that the Jabalpur property other than Mehdiabagh property at Nagpur is outside the scope of the aforesaid suit. Perusal of the Judgment in C.R.A. No. 539 of 1977 rendered on 17-2-1982, however does not bear out the above contention raised on behalf of the contempt petitioners. The facts giving rise to the said revision show that out of 34 issues originally framed, the defendant had asked for deletion of issues 5, 12 and 14 on the basis of the above judgment of the learned single Judge of this Court in C.R.A. No. 455 of 1971. The learned trial Court had allowed deletion of issues 5, 12 and 14. The plaintiff had therefore preferred the said C.R.A. No. 539 of 1977. Perusal of the judgment rendered by the learned single Judge of this Court on 17-2-1982 in the said CRA No. 539 of 1977 on 17-2-1982 shows that according to him the judgment of the learned single Judge in the previous CRA No. 455 of 1971 was distinguishable because the question to be decided in the said previous revision was whether the scope of the suit could be enlarged through the amendment seeking inclusion in the suit of additional properties including the Jabalpur property. However, according to the learned single Judge in C.R.A. No. 539 of 1977, the issues Nos. 5, 12 and 14 were relevant for the purpose of deciding the basic issue whether by the Deed of Settlement Ex. 554, a public trust was created or not.

59. It is also material to see in this regard that even though the learned single Judge of this Court in the above C.R.A. No. 539 of 1977 had allowed the issues Nos. 5, 12 and 14 to remain for trial, after his decision both the parties in the aforesaid suit agreed by consent to have 9 issues only in the suit as is clear from the order of the Court below Ex. 70 in the aforesaid Special Civil Suit No. 143 of 1967. Out of the said issues, it is only issue No. 2 which is in relation to the

property of the alleged trust. The submission on behalf of the contempt petitioners however is that since the Jabalpur and other properties were the subject matter of enquiry before the Registrar as per the contents of the application filed before him for enquiry and registration of the trust as public trust in the instant case as shown hereinbefore particularly in view of the deed of relinquishment (Ex. 249) referred to therein which contains the above properties, the Jabalpur property in question was converted by the issue No. 2 in the above suit which submission is refuted on behalf of the contemnors.

60. The learned counsel for the contempt petitioners has then strongly relied upon para 30 of the judgment of the learned trial Court in the Special Civil Suit No. 143 of 1977, rendered on 13-9-1986 to show that even according to the learned trial Court the property included in the Deed of Relinquishment (Ex. 249) was the subject matter of the suit. He has fortified his above submission on the basis of the order of the Supreme Court in Contempt Petition No. 178 of 1990 rendered on 12-2-1991. While evolving a workable formula to protect the properties of the alleged trust pending decision in appeal before the District Court, Nagpur (i.e. Reg. C.A. No. 16 of 1987), the Supreme Court has observed that although there was controversy between the parties regarding the subject matter of the suit, the learned trial Court, while summing up the conclusions, has referred to in para 30 of its judgement to certain properties as constituting the subject matter of dispute. He has then drawn our attention to the other observations in the said judgment of the Supreme Court to show that the workable arrangement made by the said order of the Supreme Court pending decision of the appeal (i.e. Reg. C.A. No. 16 of 1987) in the District Court, Nagpur is in respect of the properties referred to in the aforesaid para 30 of the trial Court's judgment which as already pointed out, refers to the property included in the deed of relinquishment (Ex. 249) which in turn includes the Jabalpur property. The learned counsel for the contemnors have contested the above construction of para 30 of the trial Court's judgment as well as of the above order of the Supreme Court and have also urged that the trial Court's judgement and its findings were under challenge by way of appeal and cross-objection before the learned lower appellate Court.

61. In order to show that the Jabalpur property is not the private property of the contemner Amiruddin and his alleged co-owners, the learned counsel for the contempt petitioners has relied upon the Deed of Will executed on 30-11-1943 by the then Head of the Atbe-E-Malak Sect - MER Malak Saheb nominating his eldest son H. N. Malak Saheb as his successor in office as Da'ee or religious head of the Atba-E-Malak Badar Community and bequeathing him his properties for the purpose of the said community viz. to preserve, foster and spread the religious faith and at the same time to help the members of the community, in their social, educational and commercial pursuits. He has then brought to our notice that as per Schedule C to the said Will dated 30-11-1943, all the immovable properties at Nagpur and at other places are covered under the said Will dated 30-11-1943. In this regard, he has brought to our notice the

application for substitution of the names of the LRs of the deceased Khan Bahadur MER Malak Saheb in Rev. Case No. 4/A-6 of 1957-58 before the Naib Tahsildar, Nagpur since it is stated by the LRs of the deceased K.B.M.E.R. Malak Saheb that it is only the petitioner No. 1 in the said application, i.e., H. N. Malak Saheb, the eldest son of K. B. MER Malak Saheb, who is nominated in the aforesaid Will dated 30-11-1943 as his successor as Da'ee and trustee of the estate of Atba-E-Malak Badar Community and therefore his name has alone to be substituted as successor of the K. B. MER Malak Saheb in the said proceedings and the other Legal Representatives have no interest in the properties of the said trust.

62. For all these reason, it is urged on behalf of the contempt petitioners in Contempt Petition No. 53 of 1991 who are the plaintiffs in Special C.S. No. 143 of 1967 that all the properties of the alleged trust in the instant case including the properties at Jabalpur are the subject matter of the suit and therefore, the order of the status quo dated 6-2-1991 passed by the learned single Judge of this Court operated in respect of the Jabalpur property in question also.

62A. It is also urged that initially the ex parte order of temporary injunction issued by the learned single Judge of this Court pending decision of AO Nos. 76 and 77 of 1989 passed on 21-12-1989 clearly operated in respect of Jabalpur properties which were expressly included in the prayer clause in the application for temporary injunction in terms of which the ex parte injunction order was issued. It is then brought to our notice that when the rule was heard upon the application for temporary injunction, this Court by its order dated 7-2-1990 directed the parties to maintain status quo pending decision of the above appeals against order which according to the learned counsel for the above contempt petitioners meant that the status quo operated in respect of all the properties in regard to which ex parte temporary injunction operated. Upon the same reasoning it is also urged that it is this status quo pending decision of the above appeals against order which is directed to be continued pending decision of the Reg. C.A. No. 16 of 1987 by the order of the learned single Judge of this Court dated 6-2-1991 which would therefore, cover Jabalpur properties also. The learned counsel for the contemnors have opposed the above reasoning and have urged that when the status quo order is passed, it has been and can be passed in respect of the subject matter of the suit which is Mehdibagh property at Nagpur only.

63. Apart from supporting the above submissions, the learned counsel appearing for the contempt petitioners in Contempt Petition No. 54 of 1991 has urged before us that in view of the fact that the order of status quo dated 6-2-1991 is passed by the learned single Judge of this Court in AO No. 77/89 preferred by the contempt petitioners in the above Contempt Petition No. 54 of 1991, there cannot be any manner of doubt that the said status quo order operated in respect of Jabalpur properties also. He has submitted before us that the said contempt petitioners in Contempt Petition No. 54 of 1991 are the persons who

are tenants in Jabalpur property in question and who were directed to be issued notices by the Supreme Court for the hearing on the interlocutory application for temporary injunction in Reg. C.A. No. 16 of 1987 by its order dated 4-8-1989 passed in SLP (Civil) No. 9197 of 1989 preferred by them against the Judgment of the M.P. High Court dismissing their writ petition i.e. Dinesh Kumar Jaiswal and Another Vs. The Collector, Jabalpur and Others, , cited supra.

64. As hereinbefore stated the above contempt petitioners had made a complaint to the Collector, Jabalpur which was forwarded by him to the Registrar of Public Trust under the M.P. Act for enquiry and decision on the question whether the Jabalpur property belonged to the Public Trust created under the Deed of Settlement dated 9-6-1894 (Ex. 554). The Registrar of Public Trust, Jabalpur by his order dated 5-4-1989 had held that the Registrar of Public Trust, Nagpur was already seized of the matter and therefore he had no jurisdiction to entertain the complaint of the above contempt petitioners. The above order was maintained by the High Court of Madhya Pradesh by its judgment cited supra against which the above SLP was preferred in which the above order was passed by the Supreme Court. It is thus vehemently urged on behalf of the above contempt petitioners that in view of the order of the Supreme Court in SLP (Civil) No. 9197 of 1989 dated 4-8-1989 referred to above, the Jabalpur property is the subject matter of the suit or at any rate the subject matter for the purpose of grant of temporary injunction in the Reg. C.A. No. 36 of 1987 pending in the District Court, Nagpur.

65. It is then submitted on behalf of the above contempt petitioners that because of the above order of the Supreme Court, the learned Lower Appellate Court has considered the question whether the Jabalpur property is the trust property or not in deciding the application for temporary injunction (Ex. 51) in the aforesaid Reg. C.A. No. 36 of 1987. It however held in para 23 of its order dated 16-11-1989 passed upon the above application for temporary injunction that the Jabalpur property is not the trust property, for which reason the above contempt petitioners filed the aforesaid A.O. No. 77 of 1989 in which also the order of status quo pending decision of the above appeal in the District Court i.e. Regular C.A. No. 16 of 1987 is passed by the learned single Judge of this Court on 6-2-1991.

65A. It is further submitted on behalf of the above contempt petitioners, that there was an application filed in the aforesaid AO No. 77 of 1989 by the above contempt petitioners seeking temporary injunction in respect of the Jabalpur property pending decision of the said. A.O. upon which as in A.O. No. 76 of 1989, an ex parte temporary injunction as prayed for was granted on 21-12-1989 by the learned single Judge of this Court who on hearing both sides thereafter directed the parties by his order dated 7-2-1990 to maintain status quo pending decision of the A.O. No. 77 of 1989. It is then pointed out on behalf of the above contempt petitioners that ultimately by the common order passed on 6-2-1991 in this AO No. 77/89 and AO No. 76 of 1989 preferred by the plaintiffs in the suit already referred to, the learned single Judge has directed the parties to maintain

the status quo pending decision of the Reg. C.A. No. 16 of 1987 by the learned lower appellate Court.

66. In the light of the above facts particularly when A.O. No. 77 of 1989 is in respect of the Jabalpur property only with which alone the above contempt petitioners were concerned, it is strenuously urged that the above order of status quo passed on 6-2-1991 pending decision of the above regular appeal in the District Court at Nagpur, the violation of which is complained of operated in respect of the Jabalpur property also. It is also pertinently pointed out that no objection was taken to the competency of the above contempt petitioners to file the above AO No. 77 of 1989 or that the Jabalpur property was not the subject matter of the suit and therefore, no temporary injunction or status quo could be granted in respect thereto.

67. There is no doubt some force in the above submission on behalf of the above contempt petitioners. However, the question with which we are concerned in the instant contempt appeals is whether the status quo order dated 6-2-1991 of which breach is complained of is open to construction sought to be placed upon it by the contemnors or whether it is even capable of being misconstrued so that in the light of the law already discussed, even though there is breach of the said order of status quo it would not amount to wilful, deliberate or intentional contempt of this Court. It is made clear that in these collateral proceedings of Contempt of Court, it is not necessary or desirable that we should firmly construe the said order of status quo dated 6-2-1991 particularly when the substantive appeal i.e. Reg. C.A. No. 36 of 1991 against the judgment of the trial Court in Special C.S. No. 143 of 1967 was pending in the District Court at Nagpur when the said order of status quo was passed. It is however urged by the learned counsel for the above contempt petitioners that after the judgment in the instant contempt appeals was partly dictated, the learned lower appellate Court, Nagpur, has decided the Reg. C.A. No. 16 of 1987 itself on 1-2-1992, in which according to him it has held that the Jabalpur property is also the trust property. He has placed on record in these contempt appeals, a copy of the judgment of the learned lower appellate Court in the above appeal. The submission thus is that the question is finally settled that Jabalpur property being the trust property is the subject matter of dispute in the suit and therefore, there is no room for any doubt that the status quo order dated 6-2-1991 operated in regard thereto.

68. The above submission made on behalf of the above contempt petitioners is strongly opposed on behalf of the contempt petitioners on the ground that after these appeals were closed for judgment, no document or evidence can be taken on record. In support, the learned counsel for the contemnors has relied upon the judgment of the Supreme Court in Arjun Singh Vs. Mohindra Kumar and Others, and the judgment of this Court in Wasudeo Sonone and Another Vs. Jagannath Ramlalji Jugele, . He has also urged that the above judgment of the learned lower appellate Court is not final as the contemnors are challenging the same by preferring a second appeal in this Court.

69. Without going into the question whether it is open to the above contempt petitioners to file in these appeals the judgment of the learned lower appellate Court after the appeals were closed for judgment and rely now upon the same, in our view the question to be considered in regard to the alleged contempt in the instant contempt proceedings is whether on the material available on the date when the advertisement-cum-notice was published in the Jabalpur issue of Nav Bharat, dated 13-3-1991, the order of status quo dated 6-2-1991 could be construed in the manner in which it is construed by the contemnors in issuing the said advertisement in question. It is not, therefore, open to the above contempt petitioners to press into service the above judgment of the learned lower appellate Court in the appeal itself i.e. Reg C.A. No. 36 of 1989.

70. As regards the question of construction of the status quo order dated 6-2-1991, it is pertinent to see that the "status quo" is a word of ambiguity and at times raises doubt and difficulty as held by the Supreme Court in its judgment in the case of Bharat Coking Coal Limited Vs. State of Bihar and Ors, which was also a judgment in the contempt proceedings. As observed by the Supreme Court in its aforesaid judgment, the word "status quo" in its legal connotation implies an existing state of things at any given point of time. In the instant case the order of status quo passed on 6-2-1991 is vague as regards the properties covered by the said order as also the point of time regarding the state of things existing at which time were to continue till the decision of the appeal in the District Court (Reg. C.A. No. 16 of 1987). It may be seen that although the ex parte order of temporary injunction passed on 21-2-1989 pending decision in AO Nos. 76 and 77 of 1989 is specific in relation to the properties in regard to which it operates, the status quo order passed thereafter on 7-2-1991 pending decision in the above appeals against order as well as the final order of status quo passed on 6-2-1991 in the above appeals against order pending decision of the Reg. C.A. No. 16 of 1989 are not specific about the properties in relation to which it should operate.

71. The learned counsel for the contemnors, in reply to the submissions made on behalf of the above contempt petitioners, have urged before us that the above contempt petitioners who allege to be tenants of the Jabalpur property in question were not parties to the original suit i.e. Special Civil Suit No. 143 of 1967 and were merely interveners entitled to be heard upon the interlocutory application for temporary injunction filed by the appellants/plaintiffs in their Regular C.A. No. 16 of 1987 pending in the District Court at Nagpur in view of the order of the Supreme Court dated 4-8-1989 in SPL (Civil) No. 9197 of 1989 hereinbefore reproduced. He has further urged that AO No. 77 of 1989 preferred by the above contempt petitioners was heard along with the AO No. 76 of 1989 and both were disposed of by common order which accordingly would not mean that the property which was not the subject matter of the suit was also intended to be covered by the order of status quo dated 6-2-1991 passed pending decision of the first appeal i.e. Regular C.A. No. 76 of 1987 filed by the plaintiffs in Spl. Civil Suit No. 143 of 1967. He has thus reiterated his submission that

since the subject matter of the dispute is restricted to the Mehdiabagh property at Nagpur which submission, according to him, is fully reinforced by the judgment of the learned single Judge of this Court in CRA No. 455 of 1971 rendered on 23-11-1972 by which the amendment applications of the plaintiffs to include Jabalpur and other properties was rejected on the ground that it was outside the scope of the suit. He has also sought to reinforce his above submission by relying upon para 23 of the judgment of the learned lower appellate Court dated 16-11-1989 upon the application for temporary injunction (Ex. 51) in which it is held that Jabalpur properties are not trust properties. The learned counsel for the above contempt petitioners has however pointed out that the above finding was under challenge in their AO No. 77 of 1989.

72. Be that as it may, what is most material to be seen in the instant proceedings is that the impugned action of the contemnors which is alleged to amount to contempt of this Court for breach of the aforesaid status quo order dated 6-2-1991 really-speaking arises out of the different constructions placed by the rival parties upon the order of the Supreme Court in Contempt Petition No. 178 of 1990 passed on 12-2-1991. It may be seen that the notice was first issued by the learned Advocate Shri V. G. Palshikar purporting to be on behalf of the plaintiffs in Special C.S. No. 143 of 1967 which is published inter alia in the issue of Nav Bharat, Jabalpur dated 24-2-1991. Perusal of the said notice issued by Shri. V. G. Palshikar, Advocate clearly shows that interpreting the above order of the Supreme Court in Contempt Petition No. 178 of 1990, he has cautioned the public that the contemner Amiruddin who is appointed thereunder as Receiver of all the properties of the Trust, Whether at Nagpur or other places, referred to in para 30 of the trial Court's judgment in Special Civil Suit No. 143 of 1967 is, in view of his undertaking before the Supreme Court, prohibited from alienating any of the aforesaid trust properties, wherever they may be situated.

73. It is in answer to the above notice published in the name of Shri V. G. Palshikar, Advocate that the advertisement-cum-notice dated 9-3-1991 is published in the issue of Nav Bharat, Jabalpur dated 13-3-1991 purporting to be in the name of the contemner Shri S. G. Ghate, Advocate, Nagpur. Although there is dispute between the parties about the publication of the said advertisement-cum-notice in "Nav Bharat", Jabalpur, particularly its Hindi Portion, it is clear from the English portion of the said advertisement which is really in reply to the notice issued by Shri V. G. Palshikar, Advocate that the contemner Amiruddin is appointed Receiver of the Mehdiabagh property at Nagpur only and that his undertaking in the Supreme Court not to alienate the property under his management as Receiver relates to the said Mehdiabagh property only. It is further made clear by him in para 6 of the said advertisement-cum-notice that the property at Jabalpur or any where else belonging to him and his co-owners is not trust property not it is so declared by any Court till then.

74. It is thus urged on behalf of the contemnors that the contempt, it at all, really speaking, arises out of the rival interpretations of the order of the

Supreme Court dated 12-2-1991 in Contempt Petition No. 178 of 1990. If that is so, the submission on behalf of the contemnors is that the only restriction placed by the above order of the Supreme Court upon the contemner Amiruddin is that he should not alienate any trust property even assuming that Jabalpur property is trust property. What is urged is that under the Hindi portion of the advertisement-cum-notice in question, offers for lease of the shops in the Jabalpur property in question are only invited and not offers for alienation or sale of the said property. There is thus according to the contemnors no breach of the above order of the Supreme Court.

75. It is then urged on behalf of the contemnors that the interim order of status quo passed by the learned single Judge of this Court on 6-2-1991 must stand superseded by the above interim order passed by the Supreme Court on 12-2-1991, as it is an order later in point of time and seeks to make workable arrangement for protecting the trust properties during the pendency of the first appeal i.e. Regular C.A. No. 16 of 1987 then pending before the District Court, Nagpur to achieve which object the workable arrangement is made by the learned single Judge of this Court by his order dated 6-2-1991 by directing the parties to maintain status quo in relation to the trust properties. The learned counsel for the contemnors has then pointed out to us that under the above order of the Supreme Court dated 12-2-1991, the contemner Amiruddin is free to manage the trust properties as a receiver as appointed by the Supreme Court by its aforesaid order dated 12-2-1991 and the only restriction placed upon him is that he should not alienate the trust properties whereas according to the status quo order of this Court dated 6-2-1991, it is not open to him to interfere in any way with the trust properties. He has thus urged that in view of the order of the Supreme Court dated 12-2-1991, the status quo order of this Court dated 6-2-1991 cannot be held to be or allowed to be operative so far the arrangement regarding the trust properties pending decision of the first appeal in the District Court at Nagpur (i.e. Regular C.A. No. 16 of 1989) is concerned.

76. Although the learned counsel for all the contempt petitioners have sought to controvert the above submission made on behalf of the contemnors that the interim order of status quo of this Court dated 6-2-1991 stands superseded and is not operative in view of the above order of the Supreme Court dated 12-2-1991, it appears to us that the question about the effect of the order of the Supreme Court dated 12-2-1991 upon the status quo order of this Court dated 6-2-1991, to say the least, cannot be said to be free from doubt and hence the above submission on behalf of the petitioners that the status quo order of this Court dated 6-2-1991 stands superseded by the order of the Supreme Court dated 12-2-1991 cannot wholly be brushed aside as devoid of any substance.

77. In the result, taking into consideration all the rival submissions upon the question whether the Jabalpur property is the subject matter of the suit and whether the status quo order of this Court dated 6-2-1991 is applicable to it as also on the question whether the said status quo order of this Court dated

6-2-1991 is superseded and hence not operative in view of the later order of the Supreme Court dated 12-2-1991 in Contempt Petition No. 178 of 1990, it cannot be said that the contemnors have committed wilful, deliberate and intentional breach of the order of status quo dated 6-2-1991 passed by the learned single Judge of this Court because its interpretation in the sense to which properties it is applicable and the effect upon it of the above order of the Supreme Court is not free from doubt and therefore even if it is misinterpreted, its breach would not amount to contempt of this Court.

77A. It is difficult to see why the contempt petitioners did not file the contempt petition in the Supreme Court because as it appears from the rival advertisements and/or notices they are very much in relation to the interpretation and effect of the order of the Supreme Court. At any rate, it would have been desirable, had the parties and in particular the contemner Amiruddin appointed as Receiver by the Supreme Court; before issuing the advertisements and/or notices approached either the Supreme Court or the District Court, Nagpur to whom the parties were directed to approach by the Supreme Court by its order dated 12-2-1991 in the above Contempt Petition No. 178 of 1990, if any question or doubt about the identification of the properties in para 30 of the trial Court's judgment in Special Civil Suit No. 143 of 1967 arose while implementing the aforesaid order of the Supreme Court dated 12-2-1991.

78. Be that as it may, as held by us about the impugned action of the contemnors cannot in the facts and circumstances narrated above constitute wilful, deliberate and intentional contempt of this Court. In this view of the matter, it is not necessary for us to consider other contentions raised on behalf of the contemnors including the contention whether the contempt petitioners have proved that the advertisement-cum-notice in question was published in the issue of "Nav Bharat", Jabalpur dated 13-3-1991 by or at the instance of the contemnors.

79. In the result, the instant contempt appeals are allowed and the impugned order of the learned single Judge committing the appellants-contemnors for contempt of this Court and imposing a sentence of fine upon them is set aside. The contempt proceedings initiated against them by the contempt petitioners are dropped.

80. Appeals allowed.