

(1984) 01 BOM CK 0014
In the Bombay High Court
Case No : Contempt Petition No. 83 of 1983

Dr. Vivekanand Atmaram Chitale and another	APPELLANT
Vs	
Vidya Vardhini Sabha and others	RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(4), 41A, 41B, 41C, 41D
Constitution of India, 1950 — Article 227, 235
Contempt of Courts Act, 1971 — Section 10, 12, 2, 3
Income Tax Act, 1961 — Section 254, 254(1)

Citation : (1984) MhLj 520

Hon'ble Judges : S.P. Kurdukar, J; M.S. Jamdar, J

Bench : Division Bench

Judgement

Jamdar, J.—Writ Petition No. 3680 of 1983 filed by the Petitioners for seeking various reliefs against the Respondents was by an order passed on 21-10-1983 treated as a contempt petition under S. 10 of the Contempt of Courts Act, 1971. By the same order notices were issued only to Respondents Nos. 2, 4, 5, 6 and 12 and the writ petition filed by the Petitioners was rejected in limine, restricting the charge of contempt only against the said Respondents.

2. Contempt complained of is of the order dated 3rd October, 1983 passed by the President, Maharashtra Revenue Tribunal in an appeal preferred by Petitioners, being aggrieved by the order of the Assistant Charity Commissioner, Jalgaon, refusing to grant interim injunction during the pendency of the application filed by the Petitioners under S. 51 of the Bombay Public Trusts Act, 1950.

3. Petitioners Nos. 1 and 2 were the members of the governing council of Vidya Vardhini Sabha, a public trust registered under the Bombay Public Trusts Act and the Societies Registration Act. The governing council consisted of 12 members, whose term, as per the constitution of the Sabha, expired in March 1983. However, as per the provisions of the said constitution the erstwhile governing council continued to function. In August 1983, 9 members of the governing

council including the President tendered their resignations. However, on 26th August, 1983 some members of the governing council held a meeting and resolved unanimously to hold fresh elections of the governing council. This meeting was attended by both the petitioners and Respondents Nos. 7, 10, 13, and 14. Accordingly respondent No. 2, Vice-President of the Sabha, who was acting as President after the President submitted his resignation, directed Respondent No. 14, the Secretary of the Sabha, to issue a notice for convening a special general meeting of the general body of Vidyavardhini Sabha, for the purpose of electing the office bearers and other members of the governing council. Accordingly, respondent No. 4 issued a notice dt. 5th September, 1983, convening a special general meeting of the Vidyavardhini Sabha at 9 a.m. on Sunday, 9th October, 1983 for election of the President, the Vice-President, Secretary and 11 members of the governing council. But before the date of the meeting the petitioner sent by post an application dt. 14-9-83 (sic) to the Assistant Charity Commissioner, Jalgaon, praying for his consent to the suit, which they proposed to file. They also submitted an application for interim injunction restraining the present respondents Nos. 2 and 4 (respondents Nos. 3 and 4 in the said proceeding), from exercising any assumed power, qua the President and Secretary of Vidyavardhini Sabha. The Assistant Charity Commissioner, after hearing Petitioner No. 1 rejected the application for interim injunction on the ground that there was no provision in the Bombay Public Trusts Act or rules made thereunder to grant the relief.

4. Being aggrieved by the aforesaid order, the petitioners filed an appeal to the Maharashtra Revenue Tribunal under S. 71 read with S. 51 of the Bombay Public Trusts Act. To the said appeal, which was filed on 3rd October, 1983, all the present respondents were joined as parties. On the same day by a separate application, the petitioners prayed for the following interim relief :-

"Pending the hearing and final disposal of the appeal ad interim relief restraining the respondents from implementing or taking further action in pursuance of the circulars dated 16-8-83 and 5-9-83 be granted and/or interim injunction restraining the respondents 4 and 5 from exercising any assumed powers qua President and Secretary be granted."

The learned President of the Maharashtra Revenue Tribunal granted ex parte injunction restraining all the respondents up to 7-10-1983 from implementing or taking any action pursuant to the letter Ref. No. 3483/83-84 dt. 16-8-1983 of the Vice-President, acting President, Vidyavardhini Sabha and a notice of special general meeting Ref. 849-83-84 dt. 5-9-83 issued by Dr. Dolatkumar S. Shah, Secretary, Vidyavardhini Sabha, Dhule. This order of injunction was served on all the respondents except respondent No. 12 by 7th October, 1983, i.e. the date on which the general body meeting of Vidyavardhini Sabha was scheduled to be held.

5. At the meeting Respondents Nos. 2 and 4 informed the members present, of the order passed by the Maharashtra Revenue Tribunal and sought mandate of the meeting as to whether the meeting should be proceeded with or not. It

appears that legal opinion was sought about the validity of the order passed by the Maharashtra Revenue Tribunal and on the basis of the said opinion, majority of the members decided to proceed further to transact the business of the meeting. Before that respondent No. 1 and three other members expressed their dissent and staged a walk-out. Thereafter the subject of electing office-bearers of the members of the governing council was taken up and the panel suggested by respondent No. 2 was unanimously elected. According to the petitioners this action of holding the election in breach of the said order passed by the Maharashtra Revenue Tribunal constituted contempt of the said Authority and is punishable under S. 12 of the Contempt of Courts Act.

6. Respondents Nos. 2, 4, 5, 6 and 12, contemners admitted the position that before the meeting was held, they were fully aware of the order passed by the Maharashtra Revenue Tribunal and did not dispute that they wilfully decided to disregard that order after understanding the implication of their action. According to them, however, Maharashtra Revenue Tribunal in exercise of the jurisdiction conferred by S. 71 of the Bombay Public Trusts Act has no jurisdiction to issue any interim injunction and they were not bound to obey the order, which was honest. It is also their contention that the Maharashtra Revenue Tribunal while exercising the jurisdiction conferred by S. 71 is not a "court" within the meaning of S. 10 of the Contempt of Courts Act, 1971.

7. Shri Mahendra Shah, learned Counsel for respondents Nos. 2, 4, 5 and 12 also contended that the Maharashtra Revenue Tribunal vide the order dt. 3rd October, 1983 granted a prayer, which was not prayed for before the Assistant Charity Commissioner and hence was not the subject matter of the appeal. The substance of the contention is that by the order dt. 3rd October, 1983 the Maharashtra Revenue Tribunal granted by way of an interim relief, something which was beyond the relief which could have been claimed in the appeal preferred by the petitioners. As mentioned above in their application for interim injunction submitted to the Assistant Charity Commissioner the Petitioners only sought to restrain the present respondent Nos. 2 and 4 from exercising assumed powers qua President and Secretary of Respondent No. 1 Sabha. By this application no relief for restraining the office-bearers and other members of the governing council from holding the meeting scheduled for 9th October, 1983 for electing the office-bearer was sought. Obviously, therefore, neither the petitioners could ask, nor the Maharashtra Revenue Tribunal, could grant in the appeal preferred by the petitioners, any relief which went beyond the relief sought in the original application. The relief for interim injunction which was granted by the President of the Maharashtra Revenue Tribunal Vide his order dt. 13th October, 1983 was not sought before the Assistant Charity Commissioner. This, however, would not render non est the aforesaid order. It can only be said that the order was erroneous. It is well settled that even an erroneous order must be obeyed until it is set aside. Hence the fact that some relief which could not be asked for was granted cannot justify defiance of the said order, provided however, that the Maharashtra Revenue Tribunal was competent to grant the

interim relief.

8. It was next urged by Shri Mahendra Shah that jurisdiction conferred on the Charity Commissioner by S. 51 of the Bombay Public Trusts Act is a limited jurisdiction and the order granting or refusing to grant consent to the suit proposed to be filed, is an administrative order. As a logical extension of this proposition it is further urged that the Maharashtra Revenue Tribunal while hearing an appeal against the order under sub-section (2) of S. 51 of the Bombay Public Trusts Act also acts administratively, because jurisdiction of the Tribunal could not be wider than that conferred on the Charity Commissioner by S. 51. According to him, neither the Charity Commissioner exercising powers under S. 51, nor the Maharashtra Revenue Tribunal exercising powers under S. 71 of the Bombay Public Trusts Act acted as a Court and hence disobedience if their orders would not amount to contempt of which the High Court can take cognizance. In support of his submission, he also placed emphasis on the fact that no appeal is provided against the order of the Charity Commissioner giving consent to file the suit and that the remedy of appeal under S. 71 is available only to the applicant, whose application for consent is rejected. In support of this contention, the learned Counsel placed reliance on the decision of Gujarat High Court in *Ratandasji Sevadasji v. Babubhai Krishnashankar* AIR 1972 Guj 216. In that case, the question that fell for consideration was whether the notice to the Charity Commissioner was necessary in an appeal arising out of an order passed by the Charity Commissioner under S. 51(2) of the Bombay Public Trusts Act. It was held that while deciding the question whether sanction to prosecute a particular suit under S. 50 of the Bombay Public Trusts Act should or should not be granted, the Charity Commissioner does not adjudicate upon a dispute and that the said function is purely administrative. It was further held that in an appeal under S. 51(2), powers of the Revenue Tribunal cannot be wider in scope than the powers of the Charity authority of the first instance i.e. the Charity Commissioner and hence the Tribunal cannot be said to be a Court much less a Court of competent jurisdiction.

9. Obviously, neither the Charity Commissioner nor the Maharashtra Revenue Tribunal is a Court within the meaning of the Bombay Public Trusts Act. As per the definition given in S. 2(4) in the said enactment "Court" means in Greater Bombay "City Civil Court" and elsewhere "District Court".

10. So far as the character of the decision of the Charity Commissioner under S. 51 of the Bombay Public Trusts Act is concerned, in an unreported decision in *Ankush Tukaram v. Jagannath* (Special CA No. 1699 of 1964) decided on 7/11th April, 1967 the Division Bench of this Court consisting of Tarkunde and Ball JJ.) has taken a view, which is different from the one taken by the Gujarat High Court in the above referred case. In that case, the order passed by the Assistant Charity Commissioner granting permission under S. 51 was sought to be challenged on various grounds. The grounds which are relevant for our purpose were that the petition under Art. 227 of the Constitution was incompetent

because the impugned order of the learned Assistant Charity Commissioner was not judicial or quasi-judicial order and that the Charity Commissioner, or Assistant or Deputy Charity Commissioner is not a tribunal and, therefore, is not subject to the superintendence of this Court under Art. 227 of the Constitution of India. On the first question the learned Judges after analysing the relevant provisions of the Bombay Public Trusts Act came to the following conclusion, the relevant observations appearing on Pp. 32-33 of the Judgment :-

"There can, thus be no doubt that the Charity Commissioner is required to adopt a judicial procedure in deciding to grant or refuse consent to a proposed suit under S. 51 of the Act. It is also clear that in granting or refusing consent to a proposed suit under S. 50 the Charity Commissioner determines questions affecting the rights of the parties to the proposed litigation. A suit which is based upon allegations of breach of a public trust, and which seeks any of the reliefs specified in S. 50 of the Bombay Public Trusts Act, is a representative suit. The decision of the Charity Commissioner under S. 51 of the Act directly affects the rights of the applicants before him to file representative suit against the trustees of the public trust. It also affects the rights of the trust and the trustees of not being involved in expensive, vexatious and sometimes ruinous litigation at the instance of persons who have no genuine interest in the objects of the grant and who are actuated by personal motives. Many public trusts thrive on public support and the mere fact that the trustees are involved in litigation based on allegations of breaches of trust may result in public support being withdrawn from the trust. Since the Charity Commissioner, while acting under S. 51, determines questions affecting the rights of subjects and is required to act judicially, his decision is clearly judicial or quasi-judicial in character."

11. Refuting the second contention, it was held that the Charity Commissioner or Deputy or Assistant Charity Commissioner performing their judicial or quasi-judicial functions under the Bombay Public Trusts Act are tribunals because they have trappings of a Court and also because they have been empowered to exercise some of the inherent judicial powers of the State. We are in respectful agreement with these observations and accordingly hold that the Charity Commissioner or Deputy or Assistant Charity Commissioner, while acting under S. 51 of the Bombay Public Trusts Act performs judicial functions, his decision is judicial or quasi-judicial in character and that these authorities while exercising powers under S. 51 are tribunals within the meaning of Art. 227 of the Constitution of India.

12. It is true that the Charity Commissioner or Deputy Charity Commissioner or Assistant Charity Commissioner or the Maharashtra Revenue Tribunal is not a Court within the meaning of S. 2(4) of the Bombay Public Trusts Act. But the relevant question is whether the Charity Commissioner or the Assistant Charity Commissioner while exercising powers under S. 51 of the Bombay Public Trusts Act and the Maharashtra Revenue Tribunal hearing an appeal under S. 71 of the Bombay Public Trusts Act are Courts within the meaning of S. 10 of the Contempt

of Courts Act, 1971. The Contempt of Court Act does not define what a Court is. Section 10 of the Contempt of Courts Act, however, lays down that every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of Courts subordinate to it, as it has, in exercise of contempt of itself. The question, therefore, is whether the authority referred to above and the Maharashtra Revenue Tribunal are Courts within the meaning of S. 10, contempt in respect of which, can be taken cognizance of, by the High Court under S. 10.

13. In support of his contention that the Maharashtra Revenue Tribunal, hearing an appeal under S. 71 of the Bombay Public Trusts Act, is a Court within the meaning of the Contempt of Courts Act, Shri Singhvi placed reliance on the decisions in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, , *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, and *Nitin Chakravarti Vs. V.S.C. Bonarjee and Another*, . In the case of *Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar*, the question that fell for consideration of their Lordships of the Supreme Court was whether the Assistant Registrar, functioning under the Bihar and Orissa Co-operative Societies Act, is a Court, subordinate to the High Court, for the purpose of S. 3 of the Contempt of Courts, Act, 1952. Answering the question in the affirmative, their Lordships held that subordination for the purpose of S. 3 of the Contempt of Courts Act, 1952 means judicial subordination and not subordination under the hierarchy of Courts under the CPC or Criminal Procedure Code. In *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, the Supreme Court interpreted the phrase "Courts subordinate to it." appearing in S. 10 of the Contempt of Courts Act, 1971 and observed as follows (at p. 286) :

"The phrase "Courts Subordinate to it" as used in S. 10 is wide enough to include all Courts which are judicially subordinate to the High Court even though administrative control over them under Art. 235 of the Constitution does not vest in the High Court. Under Art. 227 of the Constitution the High Court has the power of Superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction".

In *Nitin Chakravarti Vs. V.S.C. Bonarjee and Another*, the Calcutta High Court, following the decision of the Supreme Court in *Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar*, (Citation supra) held that the additional Member, Board of Revenue, though not a Court either under the CPC or Criminal Procedure Code is a tribunal and is under superintendence and the judicial subordination of High Court under Art. 227 of the Constitution of India and for the purpose of S. 3 of the Contempt of Courts Act, 1952 the High Court has power to deal with contempt in respect of tribunals which came within the purview of the judicial superintendence of High Court. We have already held that the Charity Commissioner, the Deputy Charity Commissioner and the Assistant Charity Commissioner, exercising powers conferred by S. 51 and the Maharashtra

Revenue Tribunal, hearing an appeal under S. 71 of the Bombay Public Trusts Act, exercise judicial powers and are tribunals under judicial subordination of the High Court, within the meaning of Art. 227 of the Constitution of India. These authorities, therefore, are Courts within the meaning of the Contempt of Courts Act and the contempts in respect of them can be taken cognizance of by the High Court under S. 10 of the Contempt of Courts Act, 1971.

14. In the present case, the order, which the contemnors flouted, was passed by the Maharashtra Revenue Tribunal in an appeal preferred by the Petitioners under S. 71 of the Bombay Public Trusts Act. According to the petitioners, this wilful disregard of the order, amounts to civil contempt within the meaning of S. 2(b) of the Contempt of Courts Act, 1971. Section 2(b) defines "civil contempt" to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. Shri Mahendra, Shah, learned Advocate for respondents Nos. 2, 4, 5 and 12 urged that S. 2(b) contemplates wilful disobedience of a valid judgment, decree, direction, order, writ or other process of a Court. According to him the Maharashtra Revenue Tribunal in exercising the appellate jurisdiction conferred by S. 71 of the Bombay Public Trusts Act, had no jurisdiction to pass an order of interim injunction and hence the order was non est and breach of it cannot amount to contempt within the meaning of S. 2(b) of the Contempt of Courts Act. Shri Singhvi, learned Counsel for the petitioners, tried to urge that while exercising the appellate jurisdiction under S. 71, the Maharashtra Revenue Tribunal has all the powers, including the power to grant interim relief, which the appellate Court can exercise ordinarily. It was also contended that the Charity Commissioner, while dealing with an application under S. 51 has power to grant interim relief in respect of the subject matter of the proposed suit in order to ensure that the suit is not rendered infructuous.

15. In support of the contention that the Maharashtra Revenue Tribunal, while exercising jurisdiction under S. 71 of the Bombay Public Trusts Act, has all the powers of an appellate Court, Shri Singhvi placed reliance on the decision of the Supreme Court in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, . The question, that fell for consideration in that case, was whether the Income Tax Tribunal, while exercising its appellate jurisdiction has power to stay the recovery of penalty pending the disposal of the appeal, filed by the Assessee under S. 254 of the Income Tax Act. It was emphasised in support of the argument that the Tribunal has no such power, that there was no provision in the Income Tax Act or the Income Tax Appellate Tribunal Rules, granting expressly such a power to the Tribunal. It was held that the Tribunal has such a power. It was so held not on the footing that every appellate Tribunal has such a power ordinarily. Their Lordships came to that conclusion because S. 254 of the Income Tax Act conferred judicial powers of an appellate Court of the widest possible amplitude. Section 254(1) of the Income Tax Act 1961 lays down that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. It is because of the wide power

conferred on the Appellate Tribunal that their Lordships came to the conclusion that the Appellate Tribunal was competent to stay the impugned order, even though power to grant stay was not expressly conferred on the Appellate Tribunal by any of the provisions of the Income Tax Act or Income Tax Appellate Tribunal Rules. Ratio of this decision, therefore, cannot be availed of by the Petitioners in support of their proposition that being an appellate Court, the Maharashtra Revenue Tribunal has all the powers to pass any order, which it deems fit, looking to the subject matter of the appeal.

16. An appeal under S. 71 of the Bombay Public Trusts Act lies only at the instance of the applicant, whose application for permission is rejected by the Charity Commissioner and the only thing, the Maharashtra Revenue Tribunal can do, while exercising appellate jurisdiction conferred by S. 71, is to confirm, revoke or modify the decision of the Charity Commissioner, refusing consent to the institution of the suit. Looking to the power conferred on the Maharashtra Revenue Tribunal by S. 71, it is clear that the Tribunal cannot grant any interim relief. As a matter of fact, looking to the very nature of the appeal, conclusion is inescapable that no interim relief is contemplated in an appeal under S. 71.

17. Equally unacceptable is the contention that the Charity Commissioner, while exercising jurisdiction under S. 51 of the Bombay Public Trusts Act can grant interim relief in respect of the subject matter of the proposed suit and hence the Maharashtra Revenue Tribunal, while exercising appellate jurisdiction under S. 71 will also have the same power. The Charity Commissioner himself has no such power, because the only thing, he can do while exercising jurisdiction conferred by S. 51, is either to grant or to refuse his consent to the institution of the proposed suit. He is not expected to, nor is he competent to, grant any interim relief in respect of the subject matter of the proposed suit. It was sought to be urged that such a power must be implied, otherwise looking to the time required for completing the inquiry by the Charity Commissioner for deciding the application, the entire suit may be rendered infructuous. It was contended that the Charity Commissioner must have power to protect the interest, which is sought to be safeguarded by the proposed suit and, therefore, power to grant relief in respect of the subject matter of the suit must necessarily be deemed to be included in the power to grant or refuse consent to the institution of the suit. It is difficult to accept this submission because not only S. 51(1) cannot be interpreted in the manner, in which it is sought to be done, but also enough powers are conferred on the Charity Commissioner by other provisions of the Bombay Public Trusts Act to protect interests of the trust. These powers are contained in Ss. 41A to 41E of the Bombay Public Trusts Act. Hence, during the pendency of the application under S. 51 the applicant can simultaneously invoke these powers, if need be.

18. It is also significant to note that in cases, in which need is felt to confer powers on the Charity Commissioner to grant interim relief, such powers have been specifically conferred on the Charity Commissioner by specific provisions in

the Act itself. Section 41D confers power on the Charity Commissioner to suspend, remove or dismiss any trustee of a public trust for the misconducts enumerated in Cls. (a) to (f) of the said section. Sub-section (3) of S. 41D empowers the Charity Commissioner to place trustees under suspension pending disposal of the charges against them. Section 41E lays down that where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least ten persons, having interest supported by affidavit, (a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or (b) that the trustee or such person threatens or intends to remove or dispose of that property, the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit. No power to grant an interim relief is conferred on the Charity Commissioner, while exercising jurisdiction under S. 51. Hence, neither the Assistant Charity Commissioner could have issued the interim injunction sought by the petitioner in this case, nor the Maharashtra Revenue Tribunal had any such power, because apart from the fact that there was no question of granting any interim relief under S. 51, an appeal under S. 71 is restricted only to an order, refusing consent to the institution of the suit. The order passed by the Maharashtra Revenue Tribunal in this case granting injunction therefore was completely without jurisdiction and hence a nullity.

19. Shri Singhvi next urged that even assuming that the Maharashtra Revenue Tribunal had no jurisdiction to pass the impugned order, it was binding on the respondents, who are parties to the appeal and that they were obliged to obey the said order, unless it was set aside by the Court, having competent jurisdiction to do so. In support of this wide proposition, Shri Singhvi sought to place reliance on the decisions in *State of Uttar Pradesh Vs. Ratan Shukla*, *Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others*, and *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, . In *State of Uttar Pradesh Vs. Ratan Shukla*, one of the questions that fell for consideration of the Division Bench of Allahabad High Court was whether appearing in a drunken state in a Court, hearing an appeal, which the learned Judge had no jurisdiction to hear, amounted to contempt. The appeal, which the Additional District Magistrate was hearing at the material time was transferred to his file by the District Magistrate without any statutory provisions authorising him to do so. One of the contentions, that was raised was that, as the Additional District Magistrate was acting without jurisdiction, the action of the contemner did not amount to contempt of Court. The contention that the Additional District Magistrate had no jurisdiction to hear the appeal was upheld, but it was held that the action of the contemner amounted to contempt. We would like to quote the relevant observations in this behalf, because these observations have been wrongly relied

upon by the learned Judges of the Madras High Court in the case Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others,

"The fact that Shri S. M. Ibrahim had no jurisdiction to hear the appeals, however, does not mean that no contempt could be committed of him. So long as he was seized of the appeals, no contempt could be committed to him.

It is not the law that a Court dealing with a matter which is beyond its jurisdiction can be contemned with impunity or that the liability of a person to be punished for contempt of a Court depends upon whether the Court was acting within the jurisdiction at the time when it is alleged to have been contemned."

No doubt, the learned Judges have stated the proposition in wide terms giving an impression that these observations are applicable to every case of contempt. But the said observations must be considered in the context in which they were made and the circumstances, in which the learned Judges were required to consider the question of contempt. It is significant to note that the contempt in that case was not of the type contemplated by S. 2(b) of the Contempt of Courts Act, 1971, in the sense it was not wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. It was criminal contempt of the type contemplated by S. 2(c) of the Contempt of Courts Act. The contempt in that case had nothing to do with the validity of the order passed by the Court. Ratio of this decision cannot be availed of by the petitioners to contend that even an order passed without jurisdiction must be obeyed and disobedience thereof amounts to civil contempt.

20. In Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others, the Division Bench of the Madras High Court held that mere absence of territorial or pecuniary jurisdiction does not go to the root of the matter of jurisdiction and that flouting an order of Court lacking in territorial or pecuniary jurisdiction, with the knowledge of the order and deliberately, would render the party flouting the order, liable for contempt. In arriving at this conclusion the learned Judges placed reliance on the decision of Allahabad High Court in State of Uttar Pradesh Vs. Ratan Shukla, and quoted with approval the above-quoted observations. It will be seen from the earlier observations, that the learned Judges were under an impression that contempt in State of Uttar Pradesh Vs. Ratan Shukla, was committed as a consequence of flouting of the order of a Court lacking in pecuniary jurisdiction. With great respect to the learned Judges, we are constrained to observe that the facts of Ratan Shukla's case and the nature of contempt in that case were ignored by the learned Judges. It is also pertinent to note that the learned Judges left unanswered the question whether flouting of an order passed without even primary jurisdiction can amount to contempt of Court. As observed above, in the present case, we are dealing with a case in which the concerned tribunal did not possess even primary jurisdiction to pass the impugned order.

21. In Gokaraju Rangaraju's case 1981 Cri LJ 8760 the relevant question was whether the judgments pronounced by the Sessions Judge before his appointment was declared invalid, were void. Applying the de facto doctrine, their Lordships held that the said doctrine saved the judgments. Their Lordships stated the doctrine in the following words (Para 4) :-

"The acts of the officers de facto performed by them within the scope of their assumed official authority in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of the officers de jure".

Their Lordships also quoted their earlier decision, explaining the principle on which this doctrine is founded. The relevant observations are (at P. 879) :-

"The doctrine is founded on good sense, sound policy and practical experience. It is aimed at the preservation of public and private mischief and the protection of public and private interest. It avoids needless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not easily undone and may have lasting repercussions and confusing sequels, if attempted to be undone. Hence, the de facto doctrine".

These observations were pressed into service by Shri Singhvi to contend that no person should be allowed to flout an order of the Court, even though the order is without jurisdiction. Their Lordships quoted some decisions of British Courts as well as American Courts for coming to the above-mentioned conclusion. They also referred to the observations made by Lord Denning M.R. in *Re : James (insolvent)* (1977) 2 WLR 1. One of the significant observations to which a reference was made was, it is the office that matters and not the incumbent. It is therefore clear that the de facto doctrine has no application, when the office itself has no jurisdiction to pass the impugned order. A distinction is drawn between the office and the person who holds that office. In the case before the Supreme Court, the cases in which the judgments were pronounced were triable by a Sessions Judge. The only infirmity was that the person who held the office of the Sessions Judge while deciding those cases was not validly appointed. It was not a case, in which the Judge had passed an order, which a Judge was not competent to pass. The de facto doctrine, which saved the judgments in that case, cannot save the order in this case because as observed above the Maharashtra Revenue Tribunal had absolutely no jurisdiction to pass the interim order in an appeal under S. 71.

22. It is well settled that an order without jurisdiction is a nullity, which can be ignored with impunity. This is the ratio of the decision of this Court in *Abdullamiyan Abdulrehman Vs. The Government of Bombay*, In that case, relying on the decisions (1) in *Surannanna v. Secretary of State* (1900) 2 Bom LR 261 *Malkajeppa Madivalappa Bulla Vs. The Secretary of State*, *Rasulkhan Hamadkhan and Gulab Chhitu Vs. The Secretary of State*, , (4) *Dhanji v. Secretary of State*

23 Bom LR 279 : AIR 1921 Bom 381, (5) Padaya v. Secretary of State 25 Bom LR 1160 : AIR 1924 Bom 273 (6) Suleman v. Secretary of State 30 Bom LR 431 : AIR 1928 Bom 180 (7) Shivaji Sayaji Gaokar Vs. Vithal Narayan Mirashi and Others, , the learned Judges held that where an authority which purports to pass an order is acting without jurisdiction, the purported order is a nullity and it is not necessary for a party, who objects to that order, to apply to set it aside. He can rely on its invalidity when it is set up against him although he has not taken steps to set it aside.

23. Another decision, which is pressed into service by Shri Mahendra Shah in support of the above mentioned proposition is Sultan Ali v. Nur Hussain AIR 1949 Lah 131 : 1949 50 Cri LJ 598. In that case Election Petition Commission was sought to be indicted for contempt of Court for disregarding the order of stay passed by a single Judge of the Lahore High Court. It was found that the order was without jurisdiction and the Full Bench by majority held that the order was void and bound nobody and disobedience of that order not amount to contempt of Court.

24. Reliance was also placed on behalf of the contemnors on the decision of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, In that case their Lordships held that it is the fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. It was further held that a defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. It would be worthwhile to observe that this decision was ignored by the Madras High Court while deciding Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others, . The same proposition was reiterated by their Lordships of the Supreme Court in Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan and Another,

25. In Dwarkadas Mulji v. Shantilal Laxmidas 1980 Mah LJ 404 Sawant J. elaborately considered the question whether the breach of an undertaking given by a party in a proceeding, which is ab initio void for lack of jurisdiction, amounts to contempt. While answering the question in the negative, the learned Judge rightly distinguished the decision of the Allahabad High Court in State of Uttar Pradesh Vs. Ratan Shukla, and placed reliance upon the decision of the Punjab High Court in Narain Singh Vs. S. Hardayal Singh Harika, Executive Officer, Municipal Committee, Patiala, He also quoted American Law on the subject as found in Corpus Juris Second Vol. XVII para 19. The relevant quotation is as follows :-

"Disobedience of, or resistance to, a void mandate, order, judgment or decree or one issued by a Court without jurisdiction of the subject matter and parties litigant, is not contempt, and where the Court has no jurisdiction to make the

order, no waiver can cut off the rights of the party to attack its validity".

In support of the proposition, which the learned Judge laid down, he also placed reliance on the decisions of the Supreme Court of the United States in *Ex Parte Rowland* (1881) 26 Law 861, *Ex Parte Fisk* (1884) 28 Law. 117, *Ex Parte Sawyer* (1887) 31 Law. 402 *United States of America v. United Mine Workers of America* (1946) 91 Law ed. 884 and *Joseph F. Maggio v. Raymond Zeitz* (1947) 92 Law 476, in which unanimous view was taken that there is no contempt when breach is of the order passed in the proceedings, which are ab initio void for lack of jurisdiction from their very inception.

26. As we have already held that the Maharashtra Revenue Tribunal, while exercising power under S. 71 of the Bombay Public Trusts Act, has no jurisdiction to grant interim relief, the order of which contempt is alleged to have been committed was without jurisdiction and hence the contemnors and the other members of the governing council, who attended and proceeded with the meeting did not commit any contempt, when they ignored the order of injunction passed by the Maharashtra Revenue Tribunal.

27. In the result, the contempt petition must fail and is hereby dismissed, with no order as to costs.

Notices to Respondents Nos. 2, 4, 5, 6, and 12 are discharged.

28. Order accordingly.