

**(2012) 01 MAD CK 0148**

**In the Madras High Court**

**Case No : L.P.A. No. 3 of 2011 and M.P. No. 1 of 2011**

Gowrappan and Others

APPELLANT

Vs

Santhosh Babu, District Collector, Krishnagiri, Elvarasan The  
Special Tahsildar Adi Dravidar and Tribal Welfare Department  
Krishnagiri, Dharmapuri District, Jayanthimala Block  
Development Officer Krishnagiri and A. Deivani President,  
Venkatapuram Panchayat Krishnagiri District

RESPONDENT

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**Date of Decision : 10-01-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 136  
Contempt of Courts Act, 1971 — Section 19  
Land Acquisition Act, 1894 — Section 4(1), 5A

**Citation : (2012) 01 MAD CK 0148**

**Hon'ble Judges : R. Mala, J;R. Banumathi, J**

**Bench : Division Bench**

**Advocate : V. Raghavachari, for the Appellant; Navaneetha Krishnan, Advocate General for RR1 and 2 and Mr. M. Venugopal, Addl. Govt. Pleader for R. 3, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R. Banumathi, J.—Being aggrieved by the dismissal of the Contempt Petition in C.P. No. 921 of 2009 dated 11.7.2011, appellants have

preferred this Letters Patent Appeal.

2. Brief facts are as follows:

The dry land situated at No. 124, Kothapetta village, Krishnagiri Taluk, Krishnagiri District in Survey No. 1/1 etc., measuring 8.77 acres was

acquired for construction of houses to Adi Dravidars under the provisions of Land Acquisition Act. Section 4(1) notification was approved on

22.3.1994 and after approval published in G.O.3D No. 385 Adi Dravidar & Tribal

Welfare Department on 10.6.1994. Section 5-A enquiry was conducted on 31.7.1984 and award was passed by the 2nd respondent in Award No. 4/1994-95 dated 24.3.1995.

3. Layout prepared was approved on 31.3.1995. Compensation amount was paid to the land owners/appellants, who in turn passed stamped receipts on 3.4.1995. Appellants/land owners handed over the possession on 4.4.1995 and evidencing possession, the appellants have also signed in the possession certificate. Possession Certificate reads as under:

#### POSSESSION CERTIFICATE

We have this day 4.4.95 handed over and taken over possession of under mentioned lands, acquired for the provision of house sites to the Adi

Dravidars of Kothapettah village, Krishnagiri Taluk.

#### SCHEDULE

Name of the village : Kothepettah village.

Survey Number Total Extent acquired Structures if any

1/1A 1.35.0 Hec. ..

1/1C 2.20.0 ½ ..

3.55.0 Hec.

HANDED OVER:

TAKEN OVER

Spl. Officer, Land Acquisition Officer (ADW)

Sd/- R. Krishnan

Sd/- P. Gowrappan

Sd/- Kullappan

Sd/- C. Mayakannan

Sd/- S. Vasu

Sd/- M. Mohammed John

Sd/- S.A. Mustafa

Sd/- N. Mohan

Sd/- S. Mahendran

Sd/- P. Raghavan

Sd/- P. Chinnaraj

4. After taking over possession, the land was also transferred as ""Adi Dravidars village sites for provision of house sites"". Patta was issued on

26.9.1995 to as many as 224 beneficiaries. The land was acquired under the Central Enactment/Land Acquisition Act, 1894.

5. The constitutional validity of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act No. 31 of 1978)

was challenged in the Madras High Court by various land owners and the Madras High Court declared Act No. 31 of 1978 as unconstitutional

and struck down the said Act. Aggrieved by the same, Government preferred SLP before the Supreme Court of India and the said SLP was

allowed on 22.11.1994. While passing the final orders, the Honourable Supreme Court held that the proceedings taken under the Central

Enactment - Land Acquisition Act, 1894 for acquisition of land for Harijan Welfare Schemes, where award has been passed, cannot be reopened

and in all other cases the proceedings initiated under the Central Enactment will be void.

6. Nearly after 1 1/2 years of handing over possession and issuance of pattas to the beneficiaries, the appellants have filed W.P.No. 15790 of

1996 on 4.10.1996 challenging 4(1) notification in G.O.3D/385 dated 10.6.1994 and G.O. 3 D/888 dated 9.11.1994 and also the award No.

4/94-95 dated 31.3.1995. In this case, award was passed on 31.3.1995. The acquisition was under the Central Enactment after 22.11.1994 i.e.,

the date of judgment of the Supreme Court. As the award was passed on 31.3.1995 after the judgment of the Supreme Court, by the order dated

17.7.2003, impugned notification was quashed and Writ Petition was allowed holding as under:

..... The special enactment, for that purpose being the Tamil Nadu Acquisition of Lands for Harijan Welfare Act (Tamil Nadu Act 31 of 1978),

was questioned by way of writ petition before this Court. Though the State Act had been struck down by this Court, that judgment of this High

Court was reversed by the Supreme Court. While so doing the Supreme Court, in the case of State of Tamil Nadu vs. Ananthi Ammal ((1995) (2)

L.W. 819), held that in cases where award had not been passed till the date of the judgment of the Supreme Court viz., 22.11.94, the proceedings

taken under the Central enactment will not be valid and that only the State enactment has to be resorted to. In this case the award was admittedly

passed on 31.03.1995 long after the judgment of the Supreme Court. Proceedings under the Central enactment, therefore, cannot be sustained.

The impugned notifications are quashed.....

7. Being aggrieved by quashing of impugned notifications and allowing the writ petition, Government preferred Writ Appeal in W.A. No. 1306 of

2006. By the judgment dated 16.10.2006 the First Bench dismissed the Writ Appeal - W.A. No. 1306 of 2006 holding as under:

... 3. According to the learned Government Pleader, the administrative instruction to follow the decision of the Supreme Court was issued by the

Government in G.O.Ms. No. 143 Adi Dravidar and Tribal Welfare Department dated 01.8.1995. The judgment of the Supreme Court was dated

22.11.1994 and necessary administrative order to implement the order of the Supreme Court was issued by the Government vide the above said

G.O.

4..... The Supreme Court, while upholding the validity of the Tamil Nadu Act 31 of 1978, has categorically stated that any Award passed before

the judgment need not be reopened whereas in proceedings initiated under the Central enactment will not be valid if they are still pending on the

date of judgment. Admittedly, in this case, the Award was passed only on 31.3.1995, i.e., long after the judgment of the Supreme Court was

passed and, therefore, the relief granted in the judgment will not ensure to the benefit of the State....

8. On behalf of the appellants/land owners, legal notice was issued to the respondents on 23.11.2006 calling upon the revenue authorities to cancel

the pattas issued to the Adi Dravidars and that the issuance of pattas to Adi Dravidars amounts to contempt. After issuance of Contempt Petition,

there had been report of Tahsildar (3.9.2007) and also report of the District Collector to the Government (5.11.2007), which we would refer to a

little later. Alleging wilful disobedience of the order of the Court, Contempt Petition in C.P. No. 921 of 2009 was filed on 5.9.2007. In the

Contempt Petition, it was alleged that revenue officials are forcibly attempting to take possession and even after the orders of the Court, the

appellants are not in a position to peacefully enjoy the property and the officials

are deliberately disobeying the orders of the Court. In the

Contempt Petition, the appellants filed a detailed counter affidavit pointing out the taking of possession of the acquired land long ago and also

referring to the receipt of compensation by the appellants/land owners. In paragraph No. 13 of the counter, the Government also referred to the

construction of houses for poor houseless Adi Dravidars under SGRY Scheme. The learned single judge extracted para 13 of the counter affidavit,

which we also feel appropriate to be extracted:

13....Possession of the acquired land was taken over long ago by the Government. The land owners have also received the compensation amount.

The 3rd and 4th respondents have constructed free houses for poor houseless Adi Dravidars under SGRY Scheme. Further basic amenities like

provision of Road, Street Lights, Drinking Water etc to the beneficiaries have been provided. Demolition of constructed group houses will cause

heavy loss to Government and the beneficiaries. There is no alternative land available for the provision of free house sites to the beneficiaries.

Eviction of beneficiaries from the constructed houses will also cause great hardship to the beneficiaries as well as to Government. Further if the

beneficiaries are evicted the welfare scheme of the Government will be defeated....

(underlining added)

9. While hearing the contempt petition, the learned single judge called for records in W.P. No. 15790 of 1996 and perused the affidavit filed by

S.A. Mustafa (6th appellant), wherein the fact that the appellants have received compensation was not referred. Observing that if only the

appellants have mentioned the factum of receiving the compensation and passing of the stamped receipt, the Court would have taken a different

stand and further observing that the appellants have not come to the Court with clean hands, learned single judge held that the Court is satisfied

with the explanation offered by the officials and not proceeded with the contempt and dismissed the Contempt Petition. Being aggrieved by the

dismissal of the Contempt Petition, the appellants have preferred this Letters Patent Appeal.

10. On behalf of the respondents, the learned Advocate General Mr. Navaneetha Krishnan has raised a preliminary objection regarding

maintainability of the appeal. It was submitted that u/s 19 of the Contempt of Courts Act, an appeal can be filed against the order

convicting/punishing a person under Contempt of Courts Act and since in the present case, the appellant has neither been convicted nor had been

punished, the appeal u/s 19 read with Clause 15 of the Letters Patent is not maintainable. Placing reliance upon the First Bench Judgment of this

Court in the case of T. Marappan vs. The Executive Engineer and Administrative Officer, Salem Housing Unit, Salem and Another (1996-2-L.W.

117), the learned Advocate General submitted that single judge had recorded a categorical finding that there is no wilful disobedience and the said

order is not appealable in terms of Section 19 and no such appeal can be filed invoking Clause 15 of the Letters Patent.

11. Mr. V. Raghavachari, learned counsel for respondent would submit that even though the learned single judge held that no contempt has been

made out, the learned single judge made certain observations regarding the conduct of the appellant and therefore the appeal is well maintainable.

In support of his contention, the learned counsel placed reliance upon a Division Bench judgment of this Court in the case of S. Arumuganainar

Senior Manager Transport (South) and Bharath Petroleum Corporation Ltd. Vs. Jeenath Roadways, .

12. In S. Arumuganainar Senior Manager Transport (South) and Bharath Petroleum Corporation Ltd. Vs. Jeenath Roadways, , single judge issued

certain directions, which clearly prejudicially affected the rights of the appellant. In the said case, appellant therein was directed by the single judge

to give contract work i.e., transportation of petroleum products to M/s. Jeenath Roadways for a period of five months. The Division Bench

observed that the said direction directing the appellant -Bharat Petroleum Corporation to give contract to the respondent thereon for a further

period of five months was not incidental or clarificatory, but the said direction was beyond the scope of the contempt petition and on those factual

matrix of the case, held that the Letters Patent Appeal is maintainable under Clause 15 of the Letters Patent. The said case S. Arumuganainar

Senior Manager Transport (South) and Bharath Petroleum Corporation Ltd. Vs. Jeenath Roadways, is distinguishable on facts.

13. The question of maintainability of appeal u/s 19 of the Contempt of Courts Act against order passed in Contempt Proceedings has been the

subject matter in number of decisions. After referring to various decisions in Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal

Nanda and Others, , the Honourable Supreme Court summarised the position thus:

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt,

that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the

proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they

may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the

punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the

dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of

"jurisdiction to punish for contempt" and therefore, not appealable u/s 19 of CC Act. The only exception is where such direction or decision is

incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the

incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a

contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of

a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the

Constitution of India (in other cases).

(underlining added)

14. The case on hand falls within Para II of the above proposition laid down by the Supreme Court. After perusing the records in W.P. No.

15790 of 1996, the learned single judge observed that if the factum of receipt of compensation has been averred in the writ petition, the court

would have taken a different stand and finding that there was no wilful disobedience of the order of the Court and saying that the Court is not

inclined to proceed with the contempt, the learned single Judge dismissed the Contempt Petition. When the learned single judge has recorded

factual findings that the appellants have failed to prove that the respondents have committed any contempt, in our considered view, the order is not

appealable u/s 19 of the Contempt of Courts Act and such an order is not open to challenge in an Intra Court Appeal.

15. The learned counsel for appellants contended that the learned single judge suo motu called for the records in W.P. No. 15790 of 1996 and

perused the same and no opportunity was given to the appellants and certain observations made against the appellants that they have not come to

the Court with clean hands prejudicially affect the appellants and therefore the appeal is maintainable. It was further submitted that the learned

single judge referring to the counter and expressing opinion on the merits of the matter and before so referring to the records in the Writ Petition,

no opportunity was given to the appellants and while so the learned single judge was not justified in making observations against the appellants and

therefore the appeal is maintainable.

16. Even though we have held that the impugned order is not appealable, for the sake of completion, assuming that the order is appealable, we

proceed to consider the submissions of the appellants. By careful reading of the impugned order, we find that only to find out whether there was

any wilful disobedience the learned single judge referred to the counter filed by the respondents, which referred to the payment of compensation to

the appellants for the lands acquired and also passing of stamped receipts by the appellants. Only after verifying the same, and to ascertain whether

the appellants have actually referred to the receipt of compensation, the learned single judge seems to have called for the records in W.P. No.

15790 of 1996 and perused the same. By perusal of the records in W.P. No. 15790 of 1996, it cannot be said that the learned single judge



exceeded the jurisdiction.

17. While dismissing the contempt petition, the learned single judge observed that "... It must also be noted that both the learned Judge as well as

the division bench had disposed of the matter without benefit of counter affidavit by the respondents...." Mr. V. Raghavachari, learned counsel for

appellants contended that the observation of the learned judge that in the writ petition - W.P. No. 15790 of 1996 as well as in the writ appeal -

W.A. No. 1306 of 1996, the courts did not have the benefit of the counter affidavit by the respondents and the learned single judge was not right

in going into the merits of the matter and also expressing opinion on the correctness or otherwise of the order made in W.P. No. 15790 of 1996 as

well as W.A. No. 1306 of 2006.

18. Contending that in the contempt proceedings the Court is concerned only with the question whether the earlier decision has been complied with

or not and Court cannot examine correctness of the earlier decision, the learned counsel for appellant placed reliance upon decisions of Supreme

Court, in the case of Union of India (UOI) and Others Vs. Subedar Devassy PV, and Director of Education, Uttaranchal and Others Vs. Ved

Prakash Joshi and Others, . In Union of India (UOI) and Others Vs. Subedar Devassy PV, ), referring to the earlier decisions, the Supreme Court

held as under:

2. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its

finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been

assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Another Vs.

Union of India (UOI) and Others, . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of

the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or

indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a

question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide

the original proceedings in a manner not dealt with by the court passing the judgment or order.

19. In the earlier decision in *Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others*, ), the Supreme Court held as

under:

7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received

its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not

been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari and Another Vs.*

*Union of India (UOI) and Others*, . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of

the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or

indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a

question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide

the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting

an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond

the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It

cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That

would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible

and indefensible. In that view of the matter, the order of the High Court is set aside.

20. There is no quarrel over the proposition that in a contempt proceedings it would not be permissible for a Court to examine the correctness of

the earlier decision and to take a different view. But in the case on hand, the learned single judge had only made an observation regarding the order

by stating that the single judge who dealt with W.P. No. 15790 of 1996 and also the Division Bench did not have the benefit of the counter

affidavit. By saying so, the learned single judge cannot be said to have gone into the correctness or otherwise of the order.

21. In the contempt proceedings, the learned single judge was considering the question about the possibility or impossibility to obey the order. It

was the stand of the respondents that the possession was already taken and that compensation was also already paid to the appellants. When that

was the stand of the respondents, the learned judge was well within the right, to examine the correctness of the said averments. We are of the

considered view that the learned single judge cannot be said to have traversed beyond the order complained.

22. We do not find any merit in the contention that before so referring, an opportunity should have been given to the appellants. It is after all the

affidavit of the appellants which the learned single judge thought fit to refer. The payment of compensation to the appellants and passing of stamped

receipts for receiving the compensation are vouchsafed by the documents. The High Court, being a Court of Records, in a contempt proceedings,

the Court is empowered to look into the documents.

23. We have also perused the Writ Petition. It is pertinent to note that the Writ Petition has been filed on 4.10.1996 much long after the

beneficiaries taken possession of the land, which is evident from the following dates in respect of acquisition of the subject lands:

Issuance of 4(1) notification : 10.06.1994

Award : 31.03.1995

Approval of Layout prepared : 31.03.1995

Payment of compensation amount and issuance of stamped : 03.04.1995

receipt to land owners

Handing over of possession : 04.04.1995

Issuance of pattas to 224 beneficiaries. : 26.09.1995

Filing of Writ Petition : 4.10.1996

24. It is seen that even before filing of Writ Petition, Government had taken over possession and pattas were also issued to the beneficiaries. When

the appellants have received the compensation, the appellants have not chosen

to disclose the same in the Writ Petition. When beneficiaries were already issued pattas, in the absence of any specific direction, it cannot be contended that the possession ought to have been restored to the appellants. More so, when the appellants have received the compensation amount and enjoyed the benefit of the compensation amount over the years.

25. The learned counsel for the appellants mainly contended that once the acquisition was quashed Government has no further right to enter upon the property. Contention of appellants is that only after dismissal of the Writ Appeal the beneficiaries were asked to enter upon the property and there are no pucca constructions and there are only few thatched huts. It was further submitted that once the acquisition proceedings has been quashed, the receipt of compensation would not take away the right of the appellants to enjoy the property and while so, the appellants are not in a position to enjoy their property.

26. In support of his contention, the learned counsel placed reliance upon the report of the Tahsildar dated 24.11.2006 and also the report of the District Collector to the Adi Dravidar Welfare Department dated 5.10.2007. In the report of the Tahsildar dated 24.11.2006, and also in the report dated 5.10.2007 of the 1st respondent to the Adi Dravidar Welfare Department it was suggested that the land owners be directed to pay back the compensation and the land could be delivered back to them. Reliance was also placed upon the report of Additional District Development Officer, Panchayat Union, Krishnagiri in O.MU 5782/98/C6 dated 20.10.1998, wherein was stated that ""no houses were constructed by the Government in the property"". Learned counsel for appellants contended that the said report makes it clear that pursuant to the acquisition proceedings no steps had been taken by the Government to put the beneficiaries in possession of the property.

27. It is pertinent to note that the said report of the Tahsildar dated 24.11.2006 and the report of the District Collector dated 5.10.2007 are after the issuance of the contempt notice by the appellants on 23.11.2006. When possession was already taken and pattas were also issued to the beneficiaries way back in 1995, much credence cannot be attached to the suggestion made by the Tahsildar as well as the District Collector. Even

though in the proceedings of Additional District Development Officer, Panchayat Union, it was stated that no houses were constructed by the

Government in the property, the said report is not in consonance with the materials on record viz., issuance of pattas to the beneficiaries and also

the site inspection report of Special Tahsildar ADW, Krishnagiri in Na.Na. No. 1076/1994/A dated 12.11.2011. While so, the reports relied

upon by the appellants cannot go to the advantage of the appellants to hold that the appellants have committed wilful disobedience of the order of

the Court.

28. As pointed out by the learned judge, both in the writ petition as well as in the writ appeal, even though the acquisition proceedings was

quashed, there was no specific direction to hand over the possession back to the land owners. As pointed out by the learned judge, single judge as

well as the Division Bench have only quashed the acquisition proceedings and there is no bar for proceeding with fresh acquisition. As pointed out

earlier, possession was already taken over and pattas were also granted to the beneficiaries. By perusal of the latest reports of the respondents, it

is seen that row houses were constructed for Adi Dravidars and that apart 35 huts were put up by the beneficiaries. The report dated 20.10.2008

also indicates as to the present value of the land for fresh acquisition.

29. As pointed out by the learned judge, the appellants have suppressed the receipt of compensation and passing of stamped receipts. It is

pertinent to note that after dismissal of the Contempt Petition on 11.7.2011, all the appellants seemed to have remitted the compensation amount

of Rs. 42,350/- each on 26.7.2011. Such remittance of the compensation amount at this distant point of time is of no advantage to the appellants,

more so, to hold that the respondents are guilty of wilful disobedience of the order of the Court.

30. Upon consideration of the evidence and material the learned single judge rightly declined to proceed with the contempt proceedings. We do

not find any reason warranting interference with the well considered order of the learned judge.

31. In the result, the Letters Patent Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous

petition is also dismissed.