

(2023) 05 KAR CK 0039

In the Karnataka High Court

Case No : Civil Contempt Petition No. 430, 429 Of 2021

M. Shashidharan & Others

APPELLANT

Vs

S. Sadashivappa & Others

RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Contempt Of Courts Act, 1971 — Section 2(b), 11, 12, 12(4), 12(5), 19(2)
Karnataka Co-Operative Societies Act, 1959 — Section 12, 12(1), 20, 27, 28, 68, 70
Negotiable Instruments Act, 1881 — Section 138, 141, 141(1), 141(2)
Companies Act, 1956 — Section 2(11)
Kerala Co-operative Societies Act, 1969 — Section 9
Code Of Criminal Procedure, 1973 — Section 389(3)
High Court Of Karnataka (Contempt Of Court Proceedings) Rule, 1981 — Rule 16(1)

Citation : (2023) 05 KAR CK 0039

Hon'ble Judges : B. Veerappa, J; Venkatesh Naik T, J

Bench : Division Bench

Advocate : Kiran Kumar, B. V. Vidyulatha, D.R. Ravishankar, Deepika Joshi, R.A. Devanand

Final Decision : Partly Allowed

Judgement

B. Veerappa, J

1. In both these contempt petitions, as the claimants, accused and the relief sought for are one and the same, by consent of both the parties, they are taken up together and this common order is passed.

I - FACTS OF THE CASES

2. These contempt petitions are filed by the complainants to take action against the accused under the provisions of Sections 11 and 12 of contempt of Courts Act for wilful disobedience of the interim order dated 7.8.2017 made in W.P. Nos.9869-9879/2016 by the learned Single Judge on I.A.2/2016 modifying the earlier order dated 10.3.2016 and restrained the Aircraft Employees House Building Co-operative Society Ltd., (for short, hereinafter referred to as 'the

Society') not to make any allotment or execute sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies.

3. It is alleged in the contempt petitions that after service of notice, the Society-accused appeared through its advocate and in the month of July 2016, filed a detailed statement of objections along with an application - I.A.2/2016 seeking vacation of interim order dated 10.3.2016. After hearing the parties, the learned Single Judge of this Court by the order dated 7.8.2017 modified the earlier order and restrained the respondent-society from making any allotment/execution of sale deed without following the seniority list of its members as approved by the concerned Registrar of Cooperative Societies. It is further alleged that inspite of the said interim order, accused No.1 without obtaining approval of the list of seniority of its members from the Registrar of Co-operative Societies has executed Sale Deed dated 7.3.2020 in favour of one Uma Mahesh M. (Though he was arrayed as accused No.2, later was deleted vide order dated 28.7.2022) and in turn, accused-2 alleged to be the Member of the Society sold the same in favour of accused No.3 (earlier Lokesh H., who was arrayed as accused was subsequently, deleted vide order 28.7.2022) under a registered Sale Deed dated 13.10.2020 as well as site No.1A in favour of Narayanappa under a registered Sale Deed dated 7.3.2020. It is further contended that accused No.1 - Sri S. Sadashivappa had signed as witness to another Sale Deed executed in respect of Layout formed by the Society in favour of a person not being a member of the Aircraft Employees House Building Co-operative Society Ltd., in violation of the interim order, dated 7.8.2017 which was subject matter of the Contempt Petition No. 488/2020.

II - OBJECTIONS FILED BY THE ACCUSED

4. In response to the notice issued, the accused filed separate objections in both the contempt petitions with common averments contending that it was the understanding of the Society as well as accused No.1 that the operation of the interim order dated 7.8.2017 was only limited to the scope of writ petition, which only pertains Kudlu-Singasandra Layout. However, without conceding, even assuming, if due to inadvertence or misconstruing the interim order dated 7.8.2017, if this accused has violated the said interim order, he tenders unconditional and unqualified apology before this Court and undertakes to take corrective steps in accordance with law. Accordingly, he raised the dispute under Section 70 of the Co-operative Societies Act before the concerned Registrar or would approach the Civil Court for declaration of the said sale transaction as void. It is further contended that the contempt petition is barred by limitation since the interim order is passed on 7.8.2017, sale deed is executed on 7.3.2020 and contempt petition is filed after one year and as such, the contempt petitions have to be dismissed as barred by limitation. As accused No.1 was authorised by the Society to execute the sale deed and to do other incidental acts, he cannot be held solely liable in punitive proceedings for undertaking a ministerial act

which is done at the behest of the Society. Admittedly, the interim order is limited to Kudlu-Singasandra Layout and therefore, as accused have not executed any sale deed in the said layout, they also filed an application seeking clarification of the interim order dated 7.8.2017 made in Writ Petition Nos. 9869-9876/2016 and until adjudication of the same, it is contended that the present petitions are not maintainable and the complainants have not come to the court with clean hands. It is further contended that accused No.1 was authorised by the Society to execute the sale deed and he is merely an authorised signatory of the said Co-operative Society. The role and responsibilities of the accused forthcoming from the extracts of the Board of Resolution dated 12.12.2017 are only limited for execution of sale deed and to do other incidental acts. It is further contended that the Society before proceeding with sale of the sites, had sought for legal opinion as to whether the interim order dated 7.8.2017 would come in their way of disbursing the sites in any other layout other than Kudlu - Singasandra Layout and the legal opinion dated 28.2.2020 which they had obtained was that the interim order pertains only to Kudlu - Singasandra layout and would not affect the transaction, etc., and as such, sought for dismissal of contempt petitions.

5. This court by the separate orders, dated 27.7.2022 in both the contempt petitions, after hearing both the parties, held that the complainants have made out a case to frame charge against the accused which has reached finality.

6. In pursuance of the said order, this Court framed the charges on 28th July, 2022 against accused No.1 - Sri S. Sadashivappa and accused No.4 - B.H. Balaji.

7. In order to prove the case of the complainants, complainant No.1 - M. Shashidharan examined himself as C.W.1 in both cases i.e., CCC 430/2021 and 429/2021 and was cross-examined. In order to disprove the case of the complainant, accused No.1 - S. Sadashivappa examined himself as D.W. 1 in both the cases and was cross-examined.

8. We have heard the learned Counsel for the parties.

III - ARGUMENTS ADVANCED BY THE LEARNED HCGP ON

BEHALF OF THE COMPLAINANT

9. Sri Kiran Kumar, learned High Court Government Pleader, who was appointed as Amicus Curiae to assist the Court in view of Rule 11 of Contempt of Court (Contempt Of Court Proceedings) Rules, would contend that accused No.1 has violated the interim order dated 7.8.2017 made in Writ Petition Nos. 9869-9876/2016 where it was specifically made clear that any further allotment to be made by the Society would be only on the basis of the seniority list of its members of the Society approved by the concerned Registrar of Co-operatives and it was further made clear that pending disposal of the writ petitions, respondent No.3/Society shall not make any allotment/execute sale deed without following the seniority list of its members as approved by the concerned

Registrar of Co-operative Societies.

10. The learned Amicus Curiae would further contend that without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies, accused No.1 has alienated site Nos.1 and 1A 'C' Block measuring 30 x 40 feet under the registered Sale Deeds dated 7.3.2020 in favour of accused No.2 and one Narayanappa and the said sites belongs to the Society is not in dispute. It is his specific contention that inspite of having the knowledge of the interim order, the accused have proceeded to alienate the sites and the only defence taken by them is that they have not violated the interim order. He further contended that admission of D.W.1 in his cross-examination that his signatures found at Serial Nos.8 and 11 in the resolutions dated 22.9.2017 and 20.2.2023 respectively are one and the same and it clearly depicts that accused No.1 has participated in the proceedings as admitted by him and as the accused have admitted execution of the said two sale deeds, they are liable to be punished under the provisions of Section 12 of the Contempt of Courts Act. He would further contend that in view of the provisions of Section 2(b) and Section 12(5) explanation-A of the Contempt of Courts Act, the judgments relied upon by the learned Counsel for the accused are not applicable to the present case there is difference in the definition of 'Company' under the provisions of Section 141(2) explanation A of the Negotiable Instruments Act and Section 12(5) Explanation A of the Contempt of Courts Act and as the present cases fall under the provisions of the Co-operative Societies Act, the Co-operatives Societies Act 1959 is applicable.

11. The learned Amicus Curiae would further contend that Section 2(11) of the Companies Act envisages that "body corporate" or "corporation" includes a company incorporated outside India, but does not include a co-operative society registered under any law relating to co-operative societies. Thereby the accused have alienated the property in question in both the contempt proceedings in violation of the interim order and hence, sought to punish the accused in accordance with law.

IV - ARGUMENTS ADVANCED BY THE LEARNED

SENIOR COUNSEL FOR THE ACCUSED

12. Per contra, Sri D.R. Ravishankar, learned Senior Counsel along with learned Counsel Miss. Deepika Joshi for accused No.1 without disputing the interim order passed by the learned Single Judge restraining respondent No.3-Society from making any allotment/execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies, contended that Section 12(4) of the Contempt of Courts Act contemplates that where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person, who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company,

shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person, but until Company or Society or its Directors are not made as party to the contempt petition, the present contempt petitions are not maintainable. He would further contend that not only arraying Co-operative Society as party to the proceedings, but also there must be specific allegations against its Officers/Directors. He would further contend that except arraying accused No.1, who was authorised to execute the sale deed in accordance with law, all the Directors of the Society, who passed the Resolution are not arrayed as parties to the contempt proceedings, and therefore, the very contempt petitions, are not maintainable.

13. The learned Senior Counsel further contended that as admitted by C.W.1 in his cross-examination that as per the provisions of Section 20 of the Karnataka Co-operative Societies Act, the present contempt petitions are not maintainable in view of the fact that interim order was passed on 7.8.2017, Sale Deed executed on 7.3.2020 and after a lapse of 1 year 3 months, the present contempt petitions are filed on 14.6.2021. Further that accused No.1 by producing Exs.D.1, 2, 3, 4 has done only the postman duty on the authorisation of the Society and no contempt is made out against accused. Therefore, he sought to dismiss the contempt petitions.

14. In support of his contentions, learned Senior Counsel for the accused relied upon the dictum of the Hon'ble Supreme Court in the case of The Bengal Secretariat Co-operative Land Mortgage Bank and Housing Society Ltd. -vs- Sri Aloke Kumar and Another in Civil Appeal No.7261/2022 to the effect that "....it is well established position that once a member becomes a member of the Co-operative Society, he loses his individuality in the Society and he has no independent rights except those given to him by the statute or bye-laws. The members have to speak through the Society or rather the Society alone can act and speak for him qua the rights and duties of the Society as a body. He also relied upon the dictum of the Hon'ble Supreme Court in the case of Thalappalam Ser. Co-operative Bank Ltd., and Others -vs- State of Kerala and Others in Civil Appeal 9017/2013 to the effect that Societies which were concerned therein, fell under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Further Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Therefore, as the Society or its Directors are not made as parties to the contempt petitions, the present contempt petitions are liable to be dismissed as they are not maintainable.

15. The learned Senior Counsel for the accused further relied upon the judgment of the Hon'ble Supreme Court in the case of Anil Hada -vs- Indian Acrylic Ltd reported in 2000(1) SCC 1 particularly paragraphs - 12 and 13 wherein it is held as under:

"12. Thus when the drawer of the cheque who falls within the ambit of Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in sub-section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words "shall also" in sub-section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence.

13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

Another judgment in the case of Sunil Bharti Mittal -vs- Central Bureau of Investigation reported in 2015(4) SCC 609, the Hon'ble Supreme Court at paragraphs-40 to 43 has held as under:

"40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment in Iridium India case [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201] is that if the person or group of persons who control the affairs of the company commit an offence

with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

41. In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company are attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a Director of a company can be held liable.

(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

Accordingly, sought to dismiss the present contempt petitions.

V - POINTS FOR CONSIDERATION

16. In view of the rival contentions urged by the learned Counsel for the parties, the points that would arise for our consideration in the present contempt petitions are:

1. Whether inspite of having the knowledge of the interim order, dated 7.8.2017 passed in Writ Petition Nos. 9869- 9876/2016 accused No.1 and 4 proceeded to execute the Sale Deed, dated 7th March, 2020 in favour of accused No.2-Uma Mahesha M and 13.10.2020 in respect of very site No.1, 'C' Block in favour of Sri Lokesha H., in different survey numbers of Begur Village measuring East to West 30 ft., and North to South 40 ft.?

2. Whether the complainants have made out a case to punish the accused under the provisions of Section 12 of the contempt of courts act?

VI - CONSIDERATION

17. We have given our anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record carefully.

18. It is the specific case of the complainants that inspite of the interim order dated 7.8.2017 passed in Writ Petition Nos. 9869-9876/2016 on I.A.2/2016 restraining the 3rd respondent - Co-operative society i.e., Aircraft Employees House Building Co-operative Society Ltd., represented by its Secretary, from making any allotment or execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies, accused No.1 - Sri S. Sadashivappa, Executive Director, executed a Sale Deed, dated 7th March, 2020 as representative of the Aircraft Employees House Building Co-operative Society Ltd., in favour of one Sri Uma Mahesh M., for a valuable sale consideration and in turn, Sri Uma Mahesha M., further executed a Sale Deed dated 13.10.2020 in favour of Sri Lokesha H., (though both Uma Mahesha M and Lokesha, who were arrayed as parties to the contempt proceedings, were deleted by the order, dated 28.7.2022 and one Sri B.H. Balaji, Secretary to the Aircraft Employees House Building Co-operative Society Ltd., was impleaded vide order, dated 21.10.2021).

19. It is also not in dispute that the 3rd respondent - Aircraft Employees House Building Co-operative Society Ltd., represented by its Secretary filed an application - I.A.2/2016 seeking vacation of the interim order earlier granted on 10.3.2016 contending that the Society being under an obligation to take up new project for the formation of layouts for allotment of sites to its members has undertaken the task and though several contentions were urged in the application stating that no illegalities have been committed, but on the submission made by the learned Counsel appearing for the complainants that allotment of sites would be made without considering seniority list of the members would be addressed, if it was made clear that any further allotment to be made by respondent/Society could be only on the basis of seniority list of members approved by the concerned Registrar of Cooperative Societies, considering the contention of the learned senior counsel for the Society that, the Society has undertaken the task of formation of layouts in different areas and if allotment of sites even in those areas is prevented, it would affect the Society and its members seriously, the learned Single Judge after hearing both the parties, keeping in mind the facts and circumstances of the case and also the interest of the petitioners as well as respondent-3-Society and its members, was of the view that the interim order dated 10.3.2016 deserves to be modified. Accordingly, passed the following order:

"it is made clear that pending disposal of these writ petitions, respondent No.3 - Society shall not make any allotment/execution of sale deeds without following seniority list of its members as approved by the concerned Registrar of Co-Operative societies."

Thereby it was made clear that the interim order was granted restraining

respondent No.3-Society i.e., Aircraft Employees House Building Co-operative Society Ltd., from making any allotment/executing sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies. It means it pertains to all the layouts formed by the Society and not for any specific layout. Thereby the contention of the learned Senior Counsel for accused No.1 that alienations made do not pertain to the layout in question in the writ petition, but it is concerned to other layouts, cannot be accepted. If that is the contention raised by the accused, there was no necessity for the 3rd respondent- Aircraft Employees House Building Co-operative Society Ltd., to file an application seeking for modification of the earlier interim order. Infact, in the application, it was specifically averred that Society has undertaken the task of formation of layout in different areas and if allotment of sites even in these areas is prevented, it would affect the Society and its members seriously. Thereby, the interim order dated 7.8.2017 prohibits 3rd respondent-Society from allotting or executing sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies.

20. Even in the objections filed by the accused No.1, he has virtually admitted that without conceding, even assuming if due to inadvertence or mis-construing of the interim order 7.8.2017 made in Writ Petition Nos.9869-9876/2016 by the Society, the accused have violated the said interim order, they are tendering unconditional and un-qualified apology before this Court and undertake to take corrective steps, in accordance with law either under Section 70 of the Co-operative Societies Act, 1959 before the concerned Registrar or approach Civil Court for declaring said sale transaction as void, but no such documents are produced before the Court for taking such corrective steps. Thereby the accused have not disputed the execution of the sale deed as per Ex.C.3 Annexure-H in favour of Uma Mahesha on 7th March, 2020 in respect of site No.1, 'C' Block situated in several survey numbers Beguru Village, Beguru Hobli, Bengaluru South Taluk and subsequent sale deed 13.10.2010 by his vendor as per Annexure-H1 in favour of one Sri Lokesha H., in respect of said site No.1, 'C' Block situated in several survey numbers Beguru Village, Beguru Hobli, Bengaluru South Taluk which belongs to the Aircraft Employees House Building Co-operative Society Ltd. It is also not in dispute that the accused No.1/Sri S. Sadashivappa, who is examined as D.W.1 has admitted that he got the opinion from the advocate marked as Ex.D.6 and as per the said document, he had participated in the proceedings as per the Resolution dated 22.9.2017 and his name is found at Sl.No.8 in the resolution where there is a reference to the interim order 7.8.2017 passed by the learned Single Judge passed in Writ Petition Nos.9869-9876/2016 as well as in the Resolution dated 20.2.2020 at Sl.No.11. Thereby, inspite of knowing the interim order granted, he ought to have opposed the resolutions in order to obey the interim order passed by this Court on 7.8.2017, but no such efforts have been made by the accused.

21. Complainant No.1 examined as C.W.1 specifically deposed about passing of the interim order by this Court on 7.8.2017 and the alienation made by the

accused on 7.3.2020 in respect of site Nos.1 and 1A, 'C' Block, situated in different survey numbers and Villages. Accordingly, he has produced the interim orders dated 7.8.2017 marked as per Ex.C.1 and 10.3.2016 marked as Ex.C.2 and certified copies of the Sale Deed dated 7.3.2020 marked as Ex.C.3, the order sheet in CCC No.488/2020 marked as Ex.C.4 and also the order sheet in Writ Petition Nos.9869-9876/2016 marked as Ex.C.5.

22. In the cross-examination C.W.1 admitted that it is true Aircraft Employees House Building Co-operative Society Ltd., is represented by its Secretary-accused No.3. He also admitted that he has not made the Society or its Office Bearers as parties to the present contempt petition and he was not aware whether the committee had authorised accused No.1 to register the sites. He is also not aware whether in the Board Resolution dated 30.12.2019, the Executive Committee had authorised the accused to execute the sale deeds in favour of accused No.2. Further he was not aware whether accused No.1 received sale consideration in pursuance of the sale deed dated 7.3.2020 and accused No.1 might have done alienation on the decision taken by the Committee. He also admits that he had filed separate contempt proceedings against the office bearers of the Aircraft House Building Co-operative Society Ltd., in CCC No.488/2020 for violation of the interim order dated 7.8.2017 with regard to some other survey numbers. In his cross-examination by the learned Counsel for accused No.4, C.W.1 has specifically stated that he is not aware whether accused-4 was party to the sale transaction between accused No.1 and accused No.2 and also not aware whether accused No.2 re-transferred the property in favour of accused No.3 and whether accused No.3 was a party to the said transaction. He had given instructions to his lawyer to file the present contempt petitions and at the time of filing the same, two sale deeds dated 7.3.2020 and 30.3.2020 were with him and in the said sale deeds, there was no role of accused No.4/Sri B.H. Balaji. In the entire evidence of C.W.1 as well as in contempt petitions, the allegation is only against accused No.1. Therefore, filing of the contempt petitions against accused No.4 cannot be sustained.

23. Though learned Senior Counsel for accused No.1 contended that as the Society is not made as a party in the contempt proceedings, the contempt petitions are barred by limitation and are not maintainable against accused No.1 and in support of his contentions, he placing reliance on the judgments of the Hon'ble Supreme Court in the case of Anil Hada -vs- Indian Acrylic Ltd reported in 2000(1) SCC 1 and also in the case of Sunil Bharti Mittal -vs- Central Bureau of Investigation reported in 2015(4) SCC 609 cannot be accepted, in view of the fact that, the said judgments are arising under the provisions of Sections 138 and 141 of the Negotiable Instruments Act. Admittedly, the interim order passed by the learned Single Judge on 7.8.2017, accused No.1 has executed the Sale Deed dated 7.3.2020 in favour of accused No.2, who in turn sold in favour of accused No.3 under the registered Sale Deed dated 28.7.2022 in respect of the property in dispute. But the present contempt petitions are filed on 9.11.2021 and as there is continuous cause of action arising in the present contempt

proceedings, question of limitation as alleged would not arise.

24. The admitted facts in the present cases are that accused No.1/Sri S.Sadashivappa is the Executive Director representing Aircraft Employees House Building Co-operative Society Ltd., #15, 1st Cross, C.K.C. Garden, Opposite to Bangalore Institute of Oncology Hospital, K.H, Road (Double Road), Bangalore-27 and he is the person, who executed the sale deed, dated 7th March, 2020 as per Ex.C.3 which clearly depicts that the "Aircraft Employees House Building Co-operative Society Ltd.," is the Vendor and the address as has been shown in the cause title to the contempt petitions as well as in the sale deeds are one and the same, and it is represented by accused No.1 as its Executive Director specifically stating that the Vendor has purchased the lands of various survey numbers for valuable sale consideration in the favour of members of the Society and they have received a sum of Rs.86,400/- as sale consideration from the purchaser and the said sale deed is signed by the accused as Aircraft Employees House Building Co-operative Society Ltd., #15, 1st Cross, C.K.C. Garden, Opposite to Bangalore Institute of Oncology Hospital, K.H. Road (Double Road), Bangalore as Executive Director (Vendor). The same is not disputed by accused No.1 either in examination-in-chief or cross-examination. The interim order dated 7.8.2017 passed on I.A.2/2016 in Writ Petition Nos. 9869-9876/2016 alleged to have been violated by accused No.1-Society, had filed an application seeking vacation of the interim order urging that "Society has undertaken task of formation of layouts in different areas and if allotment of sites even in these areas is prevented, it would affect the Society and its members seriously." In spite of such contention, the learned Single Judge proceeded to pass the interim order on 7.8.2017 restraining the Society/respondent No.3 in the writ petitions from making any allotment/execution of sale deed without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies. Admittedly, the said order is binding on the parties to the writ petitions wherein, the Society was a party/respondent No.3 represented by its Secretary. Very strangely, the accused have taken a contention in the present contempt petitions that they have not violated the interim order, and at the same time, are also not disputing the fact of execution of the sale deed dated 7.3.2020 as per Ex.P.3 on behalf of the Aircraft Employees House Building Cooperative Society Ltd., for having sold and violated the interim order, and as such, they cannot now take the hot and cold contention.

25. In the entire contempt proceedings, it is not the case of accused No.1 that he is not aware of the interim order passed by this Court on 7.8.2017 restraining the Society from making any allotment/execution of Sale Deed without following the seniority list of its members as approved by the concerned Registrar of Cooperative Societies. Very strangely, he has taken the specific plea in his examination-in-chief as well as in the statement of objection that he was appointed as Executive Director on 12.12.2017 and the Board of the Aircraft Employees House Building Co-operative Society Ltd., has passed unanimous resolution on the same day to alienate two sites and he was authorised to

execute the sale deed on behalf of the Society as per Ex.D.3., and one of the defence taken is that he has acted as postman. Being the Member and Executive Director of the Aircraft Employees House Building Co-operative Society Ltd., he ought to have opposed such resolution as admitted by him in the objections. It is also stated in the objection that the Society had obtained the legal opinion as per Ex.D.6 and if this Court comes to the conclusion that there is violation of the interim order, the accused would tender unconditional and un-qualified apology and would take necessary corrective steps to obey the interim order passed by this Court. Accused No.1 also admits that he came to know about the interim order passed by this Court in Writ Petition Nos. 9869-9876/2016 dated 7.8.2017 only when he received notice from this Court in CCC No.488/2020 filed against him. Admittedly, he has not produced any document to prove that he has taken corrective steps to get the Sale Deeds set aside before the competent Civil Court. In view of the above, the judgments relied upon by the learned Senior Counsel for the accused is in no way assistance to the accused.

26. The provisions of section 2(b) r/w 12(4) of the Contempt of Courts Act clearly depicts that 'civil contempt' means that wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court. Section 12(4) of the Act clearly depicts where the person found guilty of contempt of court in respect of any undertaking given to a Court is a Company, every person who, at the time the contempt was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of each such person. Sub-section (5) of Section 12 clearly depicts that Notwithstanding anything contained in Sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or it is attributable to any neglect on the part of, any Director, Manager, Secretary, or other Officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of such Director, Manager, Secretary or other Officer. Admittedly, in the present cases, accused No.1 being Executive Director executed the Sale Deed on 7.3.2020 representing the Aircraft Employees House Building Co-operative Society Ltd., and received sale consideration in violation of the interim order dated 7.8.2017 made in Writ Petition Nos.9869-9876/2016, and thereby as he was in-charge, he was responsible in executing the sale deed on behalf of the Society. Therefore, he is liable to be punished.

27. Though the Aircraft Employees House Building Co-operative Society Ltd., consists of President, Secretary, Executive Directors, other Directors and Officer Bearers, who form part of the Society and the some of the aggrieved members of the Society had filed writ petitions before this Court in Writ Petition Nos. 9869-9876/2016 against the Society represented by its Secretary seeking the

relief therein and the learned Single Judge of this Court at the first instance on 10.3.2016 granted an interim order restraining the Society from making any allotment of sites as on that date and subsequently, on the application-I.A.2/2016 filed on behalf of the Society seeking vacation of the said interim order, this Court by the order dated 7.8.2017 modifying the earlier interim order dated 10.3.2016 restrained the accused-Society from making any allotment/execution of sale deed without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies, inspite of contention raised on behalf of the Society that the Society has undertaken task of formation of layouts in different areas and if allotment of sites even in these areas is prevented, it would affect the society and its members seriously. The said order has reached finality. Thereby, the Society was restrained from making any allotment/execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies in respect of layouts formed by the Society in different areas and it is binding on the President, Secretary, Executive Directors, Directors and other Office Bearers of the Society.

28. In spite of knowing the interim order passed by this Court, the President and Directors in order to grab money have adopted dubious method and have executed Sale Deed one by the President of the Society, who was authorised by the other Office Bearers of the Society in respect of Site Nos.355-A and 355-B Chikkanahalli -Kammanahalli village under the registered Sale Deeds dated 3.3.2020 and 7.3.2020 by the other Directors under different Sale deeds by the President, Secretary, Executive Directors and other Directors. It is relevant to state at this stage, that the very complainants filed a contempt case in CCC No. 488/2020 against the President and the Directors of the Society wherein the present accused No.1 was also arrayed as accused No.3 in the said contempt petition and this Court by the order dated 20th April, 2023 convicted the accused persons for wilful disobedience of the interim order dated 7.8.2017 including accused No.1 and others.

29. The office bearers of the Society knowing fully well the interim order dated 7.8.2017 passed by the learned Single Judge of this Court adopted dubious method in passing resolutions to alienate the sites in favour of third parties without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies and have taken the contentions as has been done in the present contempt petitions that the other Office Bearers are not made as a parties, which clearly depicts that, the Office Bearers of the Society had decided to execute the Sale Deeds by alienating the sites formed by the Society in favour of different persons on different occasions by the different Office Bearers of the Society i.e.,

i) President;

ii) Secretary; and

- iii) Executive Director; and
- iv) Other Office Bearers individually.

Thereby the office bearers by using different tactics have alienated the sites of the Society and have made profit at the cost of the other members of the Society and after obtaining legal opinion are stating that they have not violated any interim order passed by this Court. The fact remains that the learned Single Judge after hearing both the parties and considering the material on record, by the interim order dated 7.8.2017 at paragraph-5 has observed that "during the course of the arguments by the learned Senior Counsel that the Society has undertaken the task of formation of layouts in different areas and if allotment of sites even in these areas is prevented, it would affect the society and its members seriously."

Keeping in mind the facts and circumstances of the case and also the interest of the petitioners as well as the Society and its members, learned Single Judge modified the earlier interim order dated 10.3.2016 as under:

"It is made clear that pending disposal of these writ petitions, respondent No.3 Society shall not make any allotment/ execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies. Interim order passed on 10.3.2016 is accordingly, modified".

This Court after hearing the learned Counsel for both parties, by the order dated 21.7.2022 held that the accused/Sri S. Sadashivappa, being Executive Director of the Society, in violation of the interim order proceeded to execute the sale deed dated 7.3.2020 on behalf of the Society in favour of accused No.2 Accordingly, it was held that claimants have made out a case to frame charge against the accused. Accordingly, this Court by the order 28th July 2022 framed the following charges against the accused No.1 as under:

"We,, do hereby charge you, accused No.1,

SRI. S. SADASHIVAPPA
S/O SANNAMARABOVI,
AGED ABOUT 56 YEARS,
EXECUTIVE DIRECTOR,
AIRCRAFT EMPLOYEES HOUSE
BUILDING CO-OPERATIVE SOCIETY
LTD.,NO.15, 1ST CROSS, C.K.C.
GARDEN,OPPOSITE TO BANGALORE
INSTITUTE OF ONCOLOGY HOSPITAL, K.H.

ROAD (DOUBLE ROAD),
BANGALORE – 560 027.

as follows:

That you, in violation of the modified interim Order dated 07.08.2017 in W.P.Nos.9869-9876/2016 directing the respondent No.3-Society not to make any allotment/execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Co-operative Societies, have sold the Site bearing No.1A, 'C' Block, situated at Sy. Nos.148/2, 149/7, 149/8, 151/1, 151/2, 151/2A, 153/1 and 158 of Begur Village, Begur Hobli, Bangalore South Taluk, Bengaluru in favour of accused No.2 – N. Narayanappa under the registered sale deed dated 07/03/2020 (Annexure-H). Thereby you have deliberately violated the modified interim order passed by the learned Single Judge of this Court, within the meaning of the provisions of Section 2(b) of the Contempt of Courts Act, 1971 punishable under Section 12 of the said Act, within the cognizance of this Court.

And we hereby direct that you be tried by this Court on the said charge.

Dated, this the 28th day of July, 2022."

Though a contention was raised by the learned Senior Counsel for the accused that the scope of the writ petition pertains only to Kudlu Singasandra Layout and not for the layout formed in Beguru village and therefore, there is no violation, the said contention cannot be accepted in view of the fact that, there is no dispute that the Society formed four layouts in different villages and the dispute raised under Section 68 of the Co-operative Society Act before the Registrar of Co-operative Societies is in respect of entire Society and interim prayer sought by the complainants in the writ petitions was for a direction to the accused-Society not to allow/transfer any site formed in any layout by the Society to any person including its members until the seniority list of its members seeking allotment of sites from the Society is prepared by the rules.

30. It is also not in dispute that modifying the earlier interim order, this Court granted an interim order on 7.8.2017 and inspite of knowing well about modification of the interim order, the Society passed four resolutions and authorised accused No.1 as the Executive Director of the said Society, who proceeded and executed the sale deed dated 7.3.2020 under Ex.C.3 in the capacity of the Executive Director of the Society and in utter violation of the interim order passed by the learned Single Judge of this Court. It is also not in dispute, that accused No.1 alone has executed the sale deed by signing each and every page as Executive Director on behalf of the Society.

31. In the statement of objections dated 17.9.2021 at paragraph-1, it is stated that if this Court comes to the conclusion that accused No.1 has violated the interim order, he would tender an unconditional and unqualified apology which clearly shows his admission of alienation made by him in violation of the interim

order passed by the learned Single Judge. It is well settled that the litigants approach this Court in contempt proceedings after completion of all other reliefs as a last resort. When a contempt petition is filed alleging disobedience, it is the duty of the Court to verify on the basis of the records after giving an opportunity to the accused persons whether they have violated the order of the Court or not. After careful perusal of the entire record, it clearly depicts that accused No.1 has executed a Sale Deed dated 7.3.2020 as per Ex.C.3 in utter violation of the interim order passed by the learned Single Judge and willfully disobeying the interim order granted by this Court.

32. It is also not in dispute the complainants are members of the Society and like others, they have also become members of the said Society with hope and trust that they would be benefited from the Society and the Society was formed with an intention to protect the interest of the members of the Aircraft Employees House Building Co-operative Society Ltd. Admittedly, both the complainants and the accused are employees of M/S Hindustan Aeronautics Limited (HAL) and Society was formed with an object to ensure protection of all employees of HAL. With a fond hope of getting a site by their hard earned money out of their employment, the complainants and others have enrolled as members of the Society. Though accused No.1 and other Office Bearers of the Society are also employees of the said Society, merely because they become President, Secretary, Executive Directors and Directors of the Society, they cannot cheat other members of the Society by using dubious method and passing inappropriate resolutions against the interest of the members of the Society at large and cannot make money at the cost of other genuine members. That was not the intention of the founding fathers of Aircraft Employees House Building Co-operative Society Ltd. It is well settled that the Society is a trustee of its members. It cannot ditch by the so-called President, Secretary, Executive Director and Other Directors, who are also basic members of the Society. The complainants have come to the Court in the present contempt petition with great expectation treating the Court as Devine and today the Temple of Judiciary is repository of public faith. It is the last hope of the people that after every knock at all the doors failed, people approach judiciary as the last resort. It is the only temple worshipped by every citizen of the nation regardless of religion, caste, sex, or place of birth. Therefore, it is the duty of the Court to protect the interest of the litigants in accordance with law.

VII - CONCLUSION

33. For the reasons stated above, we are of the considered opinion that the charge framed against accused No.1 is proved beyond reasonable doubt and charge made against accused No.4 is not proved. Accordingly, we answer point raised in the present contempt petitions partly in the affirmative holding that the complainants have made out a case that accused No.1 has violated the interim order dated 7.8.2017 passed in Writ Petition Nos. 9869-9876/2016 and inspite of knowing the said interim order dated 7th August, 2017 executed Sale Deed in

favour accused No.2 and further complainants have made out a case to punish the accused No.1 under the provisions of Section 12 of the Contempt of Courts Act.

VIII - RESULT

34. In view of the above, we pass the following:

ORDER

- i) The contempt petitions are hereby allowed in part;
- ii) Accused No.1 is liable to be convicted for contempt of court order punishable under the provision of Section 12(1) of the Contempt of Courts Act and sentenced to undergo simple imprisonment for a period of two months with fine of Rs.2,000/- (Rupees Two Thousand only) and in default of payment of fine, to undergo simple imprisonment for a further period of fifteen days;
- iii) The contempt proceedings initiated against accused No.4 - Sri B.H. Balaji are hereby dropped as being devoid of any merit;
- iv) Registrar Judicial is directed to prepare and issue warrant of commitment and detention in respect of accused No.1 in Form No.3 as contemplated under Rule 16(1) of the High Court of Karnataka (Contempt of Court Proceedings) Rule, 1981 forthwith;
- v) The services rendered by the learned HCGP, who was appointed to assist the Court on behalf of the complainants and to arrive at this conclusion is appreciated and placed on record;
- vi) High Court legal Services Committee is directed to pay an honorarium of Rs.10,000/- (Rupees Ten Thousand Only) to the learned HCGP forthwith.

ORDERS ON I.A.

At this stage, learned Counsel for accused No.1 files an application under Section 19(2) of the Contempt of Courts Act, 1971 r/w Section 389(3) of the Code of Criminal Procedure for suspension of sentence for a period of eight weeks. since this Court has passed an conviction order against accused No.1.

Accepting the cause shown in the affidavit accompanying the application, I.A. is allowed and sentence imposed against accused No.1 is hereby suspended for a period of 8 weeks from today.