

(2008) 04 MAD CK 0117

In the Madras High Court

Case No : Contempt Petition No. 162 of 2004

Mahaveer Metal Industries

APPELLANT

Vs

Thiru S. Chandramohan I.A.S., The Competent Authority
District Revenue Officer District Collector, Mr. S. Jawahar
Shanthakumar, The Competent Authority District Revenue
Officer, The Senior Manager, Canara Bank, Karanodai Branch
and Mr. Shanthilal

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 20
National Highways Act, 1956 — Section 3, 3C(2), 3G, 3H

Citation : (2008) 5 MLJ 14

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Thyagarajan and P.K. Sivasubramanian, for the Appellant; K. Sridhar, for R1, N. Nithyanandham, for R2 and T.V. Ramanujam, Senior Advocate for A. Muthukumar, for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This contempt petition has been filed praying that this Court may be pleased to punish the respondents for acting in contempt of the order of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003.

2. It has been stated by the petitioner that the lands situated in No. 34 Madhavaram village, bearing Nanja survey No. 1280/1A, measuring 0.05.0 Hares and Survey No. 1318/1A measuring 0.14.5 Hares, belonging to the petitioner had been acquired by the Highways Authority of India, through the respondent Competent Authority, on the basis of the paper publication made, on 3.12.2002. The petitioner had preferred a claim for compensation, on 17.2.2003, and the said claim had not been taken up for enquiry, as required under law and

therefore, the petitioner had filed a writ petition before this Court in W.P. No. 6438 of 2003, praying for a writ of Mandamus to direct the respondent to consider the claim of the petitioner, dated 17.2.2003. This Court had directed the respondent to hold an enquiry on the representation of the petitioner, dated 17.2.2003, and to pass appropriate orders thereon, within 60 days from the date of receipt of a copy of the said order, after giving due notice to the petitioner as well as the third respondent.

3. It is further stated by the petitioner that on the basis of the order passed by this Court, the petitioner had sent a notice, dated 22.10.2003, along with a copy of the order of this Court, dated 24.9.2003, and the same had been received by the respondent, on 25.10.2003. There was no response from the respondent, except the letter, dated 17.12.2003, sent by the District Collector, Tiruvallur District, stating that the notice sent by the petitioner, along with a copy of the order of this Court, dated 24.9.2003, had been sent to the Special Tahsildar, (LA), National Highways, Tiruvallur. Since there was no further response thereafter, either from the respondent or from the Special Tahsildar, (LA), National Highways, Tiruvallur, the petitioner had sent another notice, dated 19.12.2003, and the same had been acknowledged by the Special Tahsildar, (LA), National Highways, Tiruvallur, on 22.12.2003.

4. It is further stated that in spite of the time granted by this Court to hold an enquiry on the representation of the petitioner, dated 17.2.2003, having expired on 17.4.2003, the respondent had not complied with the order of this Court, dated 24.9.2003. Thus, the respondent had deliberately committed an act of contempt of the order of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003. In such circumstances, the petitioner has preferred the present contempt petition.

5. By a Sub Application No. 145 of 2004, the petitioner had prayed for impleading one Jawahar Shanthakumar, competent authority and District Revenue Officer, National Highways, as a respondent in the contempt petition and to punish him for acting in contempt of the order of this Court, dated 27.2.2003, made in W.P.M.P. No. 8281 of 2003 in W.P. No. 6438 of 2003.

6. Another Sub Application had been filed in Sub Application No. 146 of 2004, for issuing of notice to Shanthilal at Flat No. 8, Second Floor, Shiv Smruti Buildings, Mahesh Park, Gokul Nagar, Bhiwandi District, Thane, for acting in contempt of the order of this Court made in W.P.M.P. No. 8281 of 2003 in W.P. No. 6438 of 2003, dated 27.2.2003 and W.P.M.P. No. 8952 of 2003, in W.P. No. 6438 of 2003, dated 3.3.2003.

7. The petitioner had also filed another Sub Application in Sub Application No. 147 of 2004, praying that this Court may be pleased to direct the freezing of the funds in the bank account of Shanthilal with Syndicate Bank, Gokul Nagar Branch, Gokul Nagar, Bhiwandi District, Thane.

8. The Sub Application No. 148 of 2004, had also been filed by the petitioner to

issue notice to the Senior Manager, Canara Bank, Karonodai Branch, Red Hills, and punish him for acting in contempt of the order of this Court, dated 3.3.2003, in W.P.M.P. No. 8281 of 2003, in W.P. No. 6438 of 2003. All the above petitions had been ordered by this Court, on 30.4.2004.

9. In the counter affidavit filed on behalf of the first respondent in the above contempt petition, it has been stated that he had not disobeyed the orders of this Court, dated 27.2.2003, made in W.P.M.P. No. 8282 of 2003 in W.P. No. 6438 of 2003.

10. It has also been stated that he has the greatest regard for this Court and that if this Court comes to the conclusion that he had, in some way, disobeyed the order, he may be purged of contempt as he was tendering an unconditional apology. In the writ petition W.P. No. 6438 of 2003, the petitioner had prayed for the issuance of a writ of Mandamus to direct the first respondent to consider the claim of the petitioner by their letter, dated 17.2.2003, and to pass orders with regard to the person, who was entitled to the payment of compensation for the land acquired pursuant to the notification published in the Tamil Daily, dated 2.12.2002 and for an order of interim injunction restraining the first respondent from making payment of compensation for the land acquired situated at No. 34, Madhavaram village, bearing Nanja land S. No. 1280/1A, measuring 0.05.0 hectares and S. No. 1318/1A, measuring 0.14.5 hectares to the third respondent till the passing of the order in the claim made by the petitioner in their letter, dated 17.2.2003.

11. When the said writ petition came up for admission, on 27.2.2003, this Court was pleased to pass orders as follows:

The matter shall be listed, on 19.3.2003, to enable the counsel for the respondents to obtain instructions. In the meantime, there shall be an order of interim direction directing the first respondent not to make any payment to any person

12. In the said writ petition, the first respondent was shown as the competent authority, District Revenue Officer, District Collector, Tiruvallur District, Tiruvallur. The order passed by this Court was communicated to the District Collector, Tiruvallur, as indicated in the cause title. The said order was received by the office of the District Collector, on 3.3.2003, and thereafter, it was communicated to the present respondent only on 13.3.2003.

13. It is also stated that Mr.Jawahar Shantha Kumar, the first respondent herein, had been transferred from his station as District Revenue Officer, Tiruvallur, on 31.3.2003, and he was relieved from the post on the same day and he had joined in the post of Programme Director, Anna Institute of Management, Chennai.

14. It has also been stated that he had served as the District Revenue Officer, Competent Authority, under the National Highways Act, from 27.3.2002 to

31.3.2003, and therefore, he had no role to play in the matter. The contempt petition has been filed after the dismissal of the main writ petition W.P. No. 6438 of 2003, on 24.9.2003. He had not received any notice, nor was he shown as a party in the contempt petition at the stage of the initial filing.

15. It has been further stated that the award u/s 3(d) of The National Highways Act, 1956, had been passed, on 5.12.2002, and the order for payments to the owners was made by proceedings R.C. No. 7/2001, dated 14.1.2003. Thereafter, necessary cheques were prepared and the land owners concerned had been informed about the payment to be made. The letter of objection from the petitioner had been received only on 21.2.2003, more than two months after the award had been passed. Even though there was no legal provision to hear any objection at that stage, as the order made by the competent authority was final as per Sub Section (2) of 3C of The National Highways Act, 1956, a legal opinion had been obtained from the City Government Pleader before the cheques had been issued to Mr. Shanthilal. The cheques had been handed over to Mr. Shanthilal, on 27.2.2003. The competent authority and the Special Tahsildar, (NH), had been informed of the stay order passed by this Court only on 13.3.2003, nearly two weeks after the cheques had been issued to Mr. Shanthilal.

16. It has also been stated that only on 13.3.2003, the respondent had received a notice from the petitioner's counsel, dated 1.3.2003. It was served on the office of the District Collector, Tiruvallur, who had received it on 3.3.2003. Even before the notice was communicated, the cheques had been issued to the third respondent, on 27.2.2003.

17. It has also been submitted that this Court had passed an order, dated 24.9.2003, directing the first respondent therein, to hold an enquiry on the representation of the petitioner, dated 17.2.2003, after giving due notice to the petitioner as well as to the third respondent and to pass appropriate orders thereon, within 60 days from the date of receipt of a copy of the said order. After receiving the order, the competent authority, had considered the representation of the petitioner, dated 17.2.2003 and had passed a final order, on 29.3.2004.

18. In the counter affidavit filed on behalf of the impleaded third respondent, it has been stated that he has utmost respect for the orders of this Court and therefore, he had never disobeyed the orders passed by this Court. He has stated that the contempt petition has been filed stating that he had disobeyed the order of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003.

19. He has also stated that he had not been served with the copy of the order, dated 24.9.2003. In fact, he had come to know about the order, on 16.6.2004, after he had received the notice in the Sub Application No. 146 of 2004, for the hearing, on 18.6.2004. He had appeared before this Court and requested for time for filing a counter. On 18.6.2004, an order had been passed which is as follows:

Pending further order the 3rd respondent impleaded is directed to reimburse Rs.

1 crore, which he had drawn from Syndicate Bank, Sowcarpet Branch within 2 weeks from today.

That apart Regional Manager of Canara Bank is directed to refer the matter to the Vigilance Cell to enquire into the entire transaction relating to the disbursement of 1 crore in spite of passing of the order, which was communicated by the contempt petitioner by telegram dated 27.2.2003 and as to the lapses and irregularity or illegality committed in this regard and report the matter into this Court within 2 weeks

Post after 2 weeks.

20. Even though the third respondent was not a party in the contempt petition, he was subsequently impleaded. This Court had not passed any order against the third respondent in W.P. No. 6438 of 2003 since the order, dated 24.9.2003, was only against the competent authority, namely, the first respondent in the said writ petition. In such circumstances, the third respondent in the above petition is neither a necessary authority nor a proper party in the contempt petition. As per the orders of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003, the competent authority, namely, the District Revenue Officer, had passed an order, dated 29.3.2004, holding that the third respondent is the owner of the property which had been acquired and that he is entitled to the compensation. The said order had been produced by the petitioner when C.M.P. No. 12010 of 2003, in Contempt Appeal No. 6 of 2004, had come up for hearing before the First Bench of this Court. Since the order of this Court, dated 24.9.2003, had been complied with, the contempt petition is liable to be dismissed. The Sub Application No. 146 of 2004, dated 15.4.2004, is not maintainable in law, since it has been filed beyond the period of limitation of one year, as provided u/s 20 of The Contempt of Courts Act, 1971. The Sub Application had been filed, on 15.4.2004, for the alleged violation of the orders passed by this Court, on 27.2.2003 and 3.3.2003, made in W.P.M.P. No. 8281 of 2003 and W.P.M.P. No. 8952 of 2003, respectively. Since the main writ petition W.P. No. 6438 of 2003, had been disposed of on 24.9.2003, the interim orders passed in W.P.M.P. No. 8281 of 2003 and W.P.M.P. No. 8952 of 2003, have merged with the final orders. In fact, on the date of the filing of the sub applications, the interim orders were not in force.

21. It has also been stated by the third respondent that he is the absolute owner of the property in question which he had purchased by a registered sale deed, dated 25.10.1966. Since the said land had been acquired by the High Ways Department, under the National Highways Act, 1956, he was entitled to the compensation. The competent authority, after pursuing all the necessary documents and after conducting an enquiry, had passed an award, dated 14.1.2003, in favour of the third respondent.

22. It has also been stated that prior to the passing of the award, it had been notified, on 3.12.2002, and an enquiry had been conducted. In pursuance of the award, the competent authority had issued a cheque, dated 17.2.2003, for a

sum of Rs. 37,43,167/- for the acquisition of 17 cents. The said cheque was presented by the third respondent to be deposited in his account with the Syndicate Bank, Mint Street, Chennai, and it was credited in his account in the regular course. The third respondent was not aware of the order, dated 27.2.2003, passed in W.P.M.P. No. 8281 of 2003, in W.P. No. 6438 f 2003. A second cheque, for Rs. 1,08,55,186/- had been issued, on 27.2.2003, as the compensation for acquiring 40 cents of land belonging to the third respondent. Since there was no order against the third respondent or against the Syndicate Bank and since it was not communicated, either to the third respondent or to the said Bank, the cheque issued to the third respondent by the competent authority had been credited to the account of the third respondent in due course. In such circumstances, the allegations made by the petitioner are without merit or substance. However, the third respondent had stated that he is tendering an unconditional apology if, for some reason, this Court finds that he had committed contempt of Court.

23. The main contention of the petitioner is that in spite of the knowledge of the order passed by this Court, on 24.9.2003, in W.P. No. 6438 of 2003, the competent authority, the first respondent in the contempt petition had conspired to issue two cheques to the third respondent as the compensation amount for the land acquired by the Special Tahsildar (LA), National Highways.

24. The learned Counsel appearing for the petitioner had further submitted that the malafide intention of the competent authority is quite clear from the undue haste in which the said authority had acted in its attempt to disburse the compensation amount to the third respondent, instead of following the procedures provided in the relevant provisions of the National Highways Act, 1956. It was pointed out that the competent authority had failed to follow the procedures prescribed, under Sections 3G and 3H of the National Highways Act, 1956, in determination of the amount payable as compensation and to decide the question as to who would be the persons interested in the land acquired to be eligible to receive the compensation amount.

25. It is further contended that since there was a dispute as to who would be the person who would be eligible for the compensation amount it was necessary for the competent authority, the first respondent in the present contempt petition, to conduct an enquiry and to find out as to who was the person interested in the land acquired and whether he would be eligible for the compensation amount.

26. Considering the fact that such an enquiry was necessary before the competent authority came to a conclusion, this Court had passed the order, dated 24.9.2003, in W.P. No. 6438 of 2003, stating as follows:

The petitioner seeks a writ of Mandamus to direct the first respondent to consider its letter dated 17.2.2003 claiming compensation for the land situated at No. 34, Madhavaram Village bearing Nanja Survey Nos. 1280/1A and 1318/1A measuring 0.05.0 and 1.14.5 hectare respectively after due notice to it.

2. It is not in dispute that the lands located in survey Nos. 1280/1A and 1318/1A Madhavaram Village, measuring an extent of 0.05.0 and 0.14.5 hectare respectively were acquired by the first respondent. However, the dispute is with respect to the payment of compensation either to the petitioner or to the third respondent.

3. Concededly, the representation of the petitioner for payment of compensation dated 17.2.2003 is pending before the first respondent. Therefore, suffice it to direct the first respondent to hold an enquiry on the said representation of the petitioner, dated 17.2.2003, after giving due notice to the petitioner as well as to the third respondent and pass appropriate orders within sixty days from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs. Consequently, WPMP Nos. 8281, 8952 and 25914 of 2003 are closed.

27. However, without adhering to the directions issued by this Court, by its order, dated 24.9.2003, the competent authority had gone ahead to issue two cheques, on 28.2.2003 and 3.3.2003, to the third respondent, for a sum of Rs. 37,43,167/- and Rs. 1,08,55,186/-, respectively. The compensation amount had been fixed without any notice being given to the petitioner, in spite of a claim letter, dated 17.2.2003, having been sent stating that the petitioner firm is the owner of the land acquired.

28. It was also pointed out by the petitioner that the patta and the original sale deed, dated 25.10.1966, relating to the lands acquired were with the petitioner. It was also stated that the petitioner had obtained an order of interim injunction in W.P.M.P. No. 8281 of 2003 in W.P. No. 6438 of 2003, restraining the competent authority, namely, the District Revenue Officer, Tiruvallur, from making payment of the compensation to the third respondent and the petitioner had also obtained another order, dated 3.3.2003 in W.P.M.P. No. 8952 of 2003 in W.P. No. 6438 of 2003, wherein, an interim direction had been issued to the Senior Manager, the Canara Bank, Karanodai Branch, restraining him from payment of compensation to the third respondent.

29. It was also stated that the third respondent, having come down to Chennai from Bombay, had made arrangements, fraudulently, to get the compensation amount from the competent authority in collusion with S.Jawahar Shanthakumar, the District Revenue Officer, Tiruvallur, stating before the competent authority that he had lost the original sale deed, dated 25.10.1966 and the original patta, on 23.2.2003 at Ponneri Taluk office in a Tea stall. He had given a police complaint, on 23.2.2003, and had obtained a certified copy of the sale deed from the Sub Registrar, on 23.2.2003. A legal opinion had also been obtained from the Government Pleader, on 27.2.2003, on which date an order of interim injunction was granted by this Court. A copy of the claim for compensation, dated 17.2.2003, preferred by the petitioner had also been sent to the Highways Authorities. On 28.2.2003, in spite of the order of interim injunction granted by

this Court, a cheque for Rs. 37,43,167/- had been handed over to the third respondent. Further, The Senior Manager, Karanodai Branch, Chennai, who was impleaded as the respondent in the above contempt petition, as per the order of this Court, dated 30.4.2004, had also committed contempt of Court as he had wilfully disobeyed the order passed by this Court, on 3.3.2003, made in W.P.M.P. No. 8952 of 2003 in W.P. No. 6438 of 2003, which is as follows:

The Canara Bank, Karanodai Branch is directed not to make payment to Mr. Shanthilal, S/o. Aydanji, No. 121, NSC Bose Road, Chennai-79, third respondent in respect of the cheque relating to land acquisition issued by (1) The Competent Authority, District Revenue Officer, District Collector, Tiruvallur District and (2) State of Tamil Nadu rep by its Secretary, Transport and Highways Department, New Delhi/respondents 1 and 2. The matter shall be listed on 10.3.2003 for further orders.

30. In spite of the order passed by this Court, on 3.3.2003, the second respondent had acted contrary to the said order and permitted the third respondent to encash the cheque issued by the competent authority for a sum of Rs. 1,08,55,186/-. The third respondent, who had received total compensation amount of Rs. 1,45,98,353/- by way of two cheques by fraudulent means, contrary to the orders passed by this Court, is also liable to be punished for contempt of Court. In such circumstances, the petitioner had filed a Sub Application No. 146 of 2004, for an order of direction to freeze the funds in the bank account of the third respondent with the Syndicate Bank, shown as the garnishee and to punish the contemnor for acting in contempt of the orders of this Court, made in W.P.M.P. No. 8281 of 2003, dated 27.2.2003 and W.P.M.P. No. 8952 of 2003, dated 3.3.2003.

31. The petitioner had filed a Sub Application No. 145 of 2007, praying that this Court may be pleased to implead S. Jawahar Shanthakumar, the Competent Authority, District Revenue Officer, National Highways, as a respondent in the contempt petition and to punish him for acting in contempt of the order of this Court, dated 27.2.2003, made in W.P.M.P. No. 8281 of 2003 in W.P. No. 6438 of 2003 and another sub application in Sub Application No. 147 of 2004, praying that this Court may be pleased to freeze the funds in the bank account of Shanthilal with the Syndicate Bank, Gokul Nagar Branch, Gokul Nagar, Bhiwandi District, Thane. Both the petitions have been ordered by this Court, on 30.4.2004. Further, in Contempt Petition No. 162 of 2004, dated 18.6.2004, this Court had made the following order:

Pending further orders, third respondent impleaded is directed to reimburse Rupees One Crore, which he had drawn from Syndicate Bank, Sowcarpet Branch, within two weeks from today.

That apart, Regional Manager of Canara Bank is directed to refer the matter to the Vigilance Cell to enquire into the entire transaction relating to the disbursement of one crore, in spite of passing of the order, which was

communicated by the contempt petitioner by telegram dated 27.2.2003 and as to the lapses and irregularity or illegality committed in this regard and report the matter to this Court within two weeks.

Post after two weeks.

32. In contempt appeal No. 6 of 2004, filed against the order passed by this Court, on 18.6.2004, in contempt petition No. 162 of 2004, the First Bench of this Court had passed an order, on 9.7.2004, stating as follows:

The matter is adjourned by three weeks. Meanwhile, the contempt case shall go on before the learned Single Judge. Paragraph 1 of the order, relating to reimbursement by the appellant, is kept in abeyance for three weeks. In so far as the enquiry by the vigilance cell of the canara Bank is concerned, that shall go on, as ordered by the learned Single Judge. This contempt appeal shall not preclude the learned single Judge from proceeding with the contempt case and even to pass final orders.

33. Subsequently, in the said appeal filed against the order passed by this Court, on 18.6.2004, in Contempt Petition No. 162 of 2004, this Court had passed the following order, on 27.9.2004:

Interim order granted on 9.7.2004 is made absolute on condition that the appellant furnishes Bank Guarantee to the tune of Rs. 50,00,000/- (Rupees Fifty lakhs only) in favour of the Registrar General, Madras High Court, within a period of four weeks from the date of receipt of this order, which shall be kept alive pending disposal of this Contempt Appeal. Failing compliance of the condition imposed the interim order shall stand automatically vacated.

34. Mr.K.Sridhar, the learned Counsel appearing for the first respondent had submitted that the first respondent had not committed contempt of Court and in case he is found to have committed contempt of Court, by any act or omission, he may be purged of contempt as he was tendering his unconditional apology for the same.

35. It was further submitted that the petitioner had filed a writ petition in W.P. No. 6438 of 2003 for a writ of mandamus to direct the first respondent therein to consider the claims of the petitioner in his representation, dated 17.2.2003. In the said writ petition the first respondent had been arrayed as the competent authority, the District Revenue Officer, the District Collector, Tiruvallur District, Tiruvallur. The order passed by this Court, on 27.2.2003, in W.P.M.P. No. 8281 of 2003 in W.P. No. 6438 of 2003 had been communicated to the District Collector, Tiruvallur, as indicated in the cause title. It was received by the Office of the District Collector, on 3.3.2003, and thereafter, it was communicated to the competent authority, namely, The District Revenue Officer, Tiruvallur, only on 13.3.2003. Since the first respondent had been transferred from Tiruvallur to Chennai as programme director in the Anna Institute of Management, he had no role to play thereafter.

36. It was further submitted that an award u/s 3(d) of the National Highways Act, 1956, was passed, on 5.12.2002 and the order for payment of compensation amount to the owners was made in proceedings R.C. No. 7/2001, dated 14.1.2003. The entire procedure as per the provisions of the Act was over and the proceedings of the award was issued, on 14.1.2003, vide R.C. No. 7 of 2001. Thereafter, the necessary cheques for the award amount were made ready and the land owners were informed of the same. The letter of objection from the petitioner was received only on 21.2.2003, more than two months after the award was passed.

37. Even though the entire award proceedings were over, on 5.12.2002, a legal opinion had been obtained from the Special Government Pleader. According to the said opinion it was found that the third respondent was entitled to be given the compensation amount, after observing all the formalities. The cheques for the compensation amount were handed over to the third respondent, on 27.2.2003. The competent authority and the Special Tahsildar (NH) National Highways, were informed of the stay order passed by this Court only on 13.3.2003. Pursuant to the order passed by this Court on 24.9.2003, in W.P. No. 6438 of 2003, the competent authority had considered the representation of the petitioner and final orders were passed on 29.3.2004. Even though it was known on 27.2.2003 that the cheques were in favour of the third respondent, he had kept quiet for more than 14 months, falsely stating that he knew about the issuing of the cheques only on 25.3.2004.

38. The learned Counsel appearing on behalf of the second respondent had submitted that pursuant to the order passed by this Court, on 18.6.2004, in contempt petition No. 162 of 2004, an enquiry had been conducted against the petitioner and no irregularities were found to have been committed in permitting the third respondent to encash the cheque issued to him by the competent authority as compensation amount for the land acquired. It is only in the usual course of the business, the cheques had been deposited and credited to the third respondent account.

39. It was also contended that since the interim orders passed by this Court on 27.2.2003 in W.P.M.P. No. 8281 of 2003, and on 3.3.2003 in W.P.M.P. No. 8952 of 2003, had merged with the final order passed in the writ petition No. 6438 of 2003 on 24.9.2003, an action for contempt of Court could not arise as contended by the petitioner.

40. It was also submitted that the Sub Application No. 146 of 2004, has been filed attempting to introduce the new plea against the respondents for contempt of Court beyond the period of limitation of one year prescribed u/s 20 of The Contempt of Courts Act, 1971. Further, at the time of the passing of the order, on 24.9.2003, the second respondent bank was not a party to the writ petition in W.P. No. 6438 of 2003. The order passed by this Court, on 18.6.2004, in contempt petition No. 162 of 2004, directing the Regional Manager of Canara Bank to refer the matter to the Vigilance Cell to enquire into the entire

transaction relating to the disbursement of 1 crore as compensation amount to the third respondent was complied with and it was found from the enquiry report that no irregularity had been committed by the Bank or the authority or its officers with regard to such payment.

41. Mr.T.V.Ramanujam, the learned Senior Advocate for Mr.A.Muthukumar, the learned Counsel appearing for the third respondent, had submitted that no contempt has been committed by the third respondent, as alleged by the petitioner.

42. The main contentions of the learned Counsel appearing for the third respondent were that the third respondent was impleaded in the above contempt petition only as per the order of this Court, dated 18.6.2004. The directions issued by this Court, on 24.9.2004, is not against the third respondent. Further, the said order had not been communicated to him.

43. It was submitted that when the order, dated 24.9.2003, had been passed, the third respondent was not represented by a counsel and therefore, he was not served with the copy of the order. He came to know about the order only after he had received the notice in the Sub Application No. 146 of 2004, on 16.6.2004. After impleading the third respondent in the contempt petition, an order had been passed, on 18.6.2004, directing him to deposit Rs. 1 crore, which he had drawn from the Syndicate Bank, Sowcarpet Branch. The said order had been modified subsequently by an order of a Division Bench of this Court, dated 27.9.2004, made in Contempt Appeal No. 6 of 2004, requiring the third respondent to furnish a Bank Guarantee to the tune of Rs. 50,00,000/- (Rupees Fifty lakhs only) in favour of the Registrar General, Madras High Court, within the period specified therein. Since the third respondent was not a party in the contempt application No. 162 of 2004 and since the order, dated 24.9.2003, in W.P. No. 6438 of 2003, is only against the competent authority, the third respondent is neither a necessary party nor a proper party in the said contempt petition.

44. It was further stated on behalf of the third respondent that as per the orders of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003, the competent authority, namely, the District Revenue Officer, had passed an order, dated 29.3.2004, in Rc.7/2001 A/NH-5/TVR holding that he is the owner of the property, which had been acquired and therefore, he is entitled to the compensation amount. The Sub Application in Sub Application No. 146 of 2004 had been filed subsequently on 15.4.2004 and it had come up for hearing, on 18.6.2004. The said sub application had been filed alleging violation of the orders passed by this Court, on 27.2.2003 and 3.3.2003 made in W.P.M.P. No. 8281 of 2003 and W.P.M.P. No. 8952 of 2003, respectively. When the final order has been passed in W.P. No. 6438 of 2003, on 24.9.2003, the miscellaneous petitions cannot survive. Further, u/s 20 of The Contempt of Courts Act, 1971, a contempt petition ought to be filed within one year from the commission of the act amounting to contempt of Court. However, in the present case, the said

application had been filed, on 15.4.2004, beyond one year from the date of passing of the order, even though the main contempt petition had been filed within the limitation period.

45. The prayer in the contempt petition was only with regard to the order of this Court, dated 24.9.2003, made in W.P. No. 6438 of 2003, directing the first respondent, competent authority, to hold an enquiry on the representation of the petitioner, dated 17.2.2003, after giving due notice to the petitioner as well as the third respondent and to pass appropriate orders thereon, within 60 days from the date of receipt of the said order.

46. The learned Counsel appearing for the petitioner had relied on the following decisions in support of his contentions:

46.1. In *M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others*, , the Supreme Court has held that there cannot be both justification and an apology. The two things are incompatible. Again, an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.

46.2. In *Subodh Gopal Bose Vs. State of Bihar*, , it was held that even the state can be guilty of contempt, the fact that wrong legal advice had resulted in disobedience does not affect the liability. Where an apology is offered the question is as to whether the apology offered in a particular case is a genuine one, has to be considered on the circumstances of each particular case and there can be no hard and fast rule about it.

46.3. In *Mulakh Raj Vs. State of Punjab*, , the Supreme Court had held that an apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence and hence, is liable to be rejected. If apology is offered at a time when the contemnor finds that the Court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward.

46.4. In *Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others*, , it was held that where the plaintiff has been dispossessed by the defendants by wilfully disobeying the interim injunction order restraining them from dispossessing the plaintiff the Court which issued the order can in exercise of its inherent power, after considering the circumstances of the case and the conduct of the parties, pass such order in the ends of justice as would undo the wrong done to the plaintiff in whose favour the injunction order had been issued.

46.5. In *Century Flour Mills Ltd. Vs. S. Suppiah and Others*, , it was held that where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power will not only be available in such a case, but it is bound to be exercised in

that manner in the interest of justice.

46.6. In Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others, , it was held that if there is a breach of undertaking given by a party, the Court is justified in giving appropriate directions to close the breach, in addition to punishing the party for contempt of Court.

46.7. In Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, , it was held that wilful breach of an undertaking given before the Court would amount to contempt of Court. Apart from passing an order to punish the contemnor, the Court can also direct the person to purge the contempt by issuing necessary directions as the Court finds fit in the circumstances of the case.

46.8. In Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another, , it was held that even a third party or a stranger to the case can be held guilty of contempt if he had aided or abetted the violation with notice or knowledge of the order passed by the Court. It was also held that the concerned Court can also determine whether instead of any action or committal for contempt the Court should make any such order which should be in the interest of the administration of justice.

46.9. In Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, , it was held that a contemnor ought not be permitted to enjoy and/or keep the fruits of his contempt. The said principle could be applied and given effect to by overruling any procedural or other technical objections.

46.10. In V. Veronickammal v. The Director of School Education and Ors. 1997 2 L.W.538, it was held that it is well settled that the inherent powers of the Court, u/s 151 of the Code of Civil Procedure, are wide and are not subject to any limitation. Where something has been done in violation of any order passed by the Court, it will be the duty of the Court to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power will not only be available to the Court but it is also bound to be exercised in the interest of justice.

46.11. In Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , it was held that the power of the Supreme Court and the High Courts being Courts of Record, as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act. Their inherent power is elastic, unfettered and not subjected to any limit. The power conferred upon the Supreme Court and the High Court, being Courts of Record under Arts.129 and 215 of the Constitution respectively is an inherent power and the jurisdiction vested is a special one not derived from any other statute but derived only from Arts.129 and 215 of the Constitution of India and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should

be used sparingly, that the procedure to be followed should be fair and that the contemnor should be made aware of the charge against him and given a reasonable opportunity to defend himself.

46.12. In *Pallav Sheth Vs. Custodian and Others*, , it was held that the power to punish for contempt vested in the Supreme Court as well as the High Courts, under Article 129 and 215 of the Constitution of India cannot be abrogated or stultified by any provision of law. However, it must be exercised in consonance with validly enacted provisions of law and the procedure provided therein, including Section 20 of the Contempt of Courts Act, 1971.

47. The learned Counsel appearing for the third respondent had relied on the following decisions in support of his contentions:

47.1. In *Suresh and Ors. v. Imran Khan and Ors.* 1995 SUPP (3) 306, it was held that in a case of disobedience of an injunction order, when the injunction order was not served on the litigant but served on his lawyer and when there was no evidence showing that the lawyer had communicated the order to the litigant, it cannot be concluded that the said litigant had committed wilful breach of the order or acted contrary to or showed disrespect by wilful disobedience of the order.

47.2. IN 1995 CriLJ 3622 (SC) , it was held that the interim injunction had been issued by the High Court limiting it to a period of three weeks and when no extension of the period has been granted, it cannot be held that there was a violation of the Court order, if an act contrary to the injunction order had been committed, after the expiry of three weeks prescribed in the said order.

47.3. In *N.C. Das Vs. M.A. Mohsin and another*, , it was held that the contempt jurisdiction is not to be invoked or allowed to be invoked to enable the petitioner to wreck personal vengeance against the alleged contemnors.

47.4. In *Welfare Association of Absorbed Central Government Employees in Public Enterprises and Another Vs. Arvind Verma and Others*, , it was held that in a civil contempt, if there is a genuine doubt in construing and giving effect to the judgment, the alleged contemnor cannot be held liable for contempt of Court.

47.5. In *R.N. Dey and Others Vs. Bhagyabati Pramanik and Others*, , it was held that the weapon of contempt cannot be used for the purpose of executing a decree or for implementing the order for which the law provides appropriate procedure. The purpose of the power granted to the Court to punish for contempt of Court is to maintain the dignity and the majesty of the Court. The issue relating to contempt is a matter between the Court and the contemnor and the party who is the petitioner has no right to insist that the Court should exercise its jurisdiction.

47.6. In *Suresh Chndra Podda v. Dhani Ram and Ors.* 2002 (1) CTC 565, it was held that the power to punish for contempt is not to be exercised in a casual manner but should be exercised only sparingly and in very deserving cases. The

Courts of law should not feel unduly touchy, even if it is alleged that its orders are not implemented. The Court should show judicial grace and magnanimity if its directions or orders have been complied with subsequently, although it may be after the receipt of the contempt notice.

47.7. In *Jharaeswar Prasad Paul v. Tarak Nath Ganguly* 2002 (3) CTC 122, it was held as follows:

11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. Since the respect and authority commanded by the Courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the state. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of Court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute "in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceedings and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceedings which is intended to

maintain the majesty and image of Courts.

48. In view of the decisions referred to by the learned Counsels appearing on behalf of the parties concerned, it is clear that the power to punish a person or authority has to be exercised with sufficient care and caution. The power to punish for contempt of Court is vested with the Court in order to maintain its dignity and its majesty. If the power is exercised without sufficient cause or reason, it would result in Tyranny of law, instead of rule of law. No doubt, blatant and wilful disobedience of the orders passed by this Court ought to be punished without any sympathy being shown towards those who are guilty of such violation. When it is seen that there is a genuine doubt with regard to the actual meaning and scope of an order or if the order had been substantially complied with, or complied with belatedly with some explainable delay, this Court may not choose to punish such acts or omissions. The power to punish for contempt of Court is to be tempered with judicial grace and magnanimity and it would not be proper to exercise such power in a casual condescending manner.

49. Considering the averments made by the learned Counsel appearing for the parties concerned and on a perusal of the records placed before this Court, it is clear that the respondents have not committed contempt of Court, as alleged by the petitioner in the above contempt petition.

50. The order passed by this Court on 24.9.2003, in W.P. No. 6438 of 2003, is only a direction issued by this Court to the first respondent competent authority to hold an enquiry on the representation of the petitioner, dated 17.2.2003 and to pass appropriate orders thereon, within the time specified. The said order had been received by the competent authority only on 13.3.2003. However, after following the necessary procedures prescribed by the provisions of the National Highways Act, 1956, an award, u/s 3(d) of The National Highways Act, 1956, had been passed on 5.12.2002 and the order for payment of compensation amount was made in proceedings R.C. No. 7/2001, dated 14.1.2003. Thereafter, the cheques for the award amount had been issued to the parties concerned. There is no proof shown by the petitioner and there is nothing on record for this Court to come to the conclusion that the first respondent had acted in wilful disobedience of the order by issuing the cheques as compensation amount to the third respondent, in spite of the order having been brought to his knowledge. It is clear that the order of this Court, dated 24.9.2003, is only a direction issued to the first respondent to hold an enquiry on the representation of the petitioner, dated 17.2.2003 and to pass appropriate orders, within 60 days from the date of receipt of a copy of the order after giving due notice to the petitioner as well as the third respondent. From the records available, it is seen that the enquiry had been completed and an award had been passed with regard to the payment of compensation amount, even before the passing of the said order on 24.9.2003.

51. With regard to the second respondent, there is nothing on record to show that the second respondent has violated any of the orders passed by this Court, as alleged by the petitioner. Pursuant to the order passed by this Court, on

18.6.2004, an enquiry had been conducted and no irregularities had been found to have been committed by the second respondent. If the cheques had been handed over to the second respondent by the competent authority as compensation amount for the land acquired, it cannot be said that the third respondent had committed contempt of Court in violation of the order passed by this Court, in 24.9.2003 or of the orders passed thereafter in W.P.M.P. No. 8281 of 2003 in W.P. No. 6038 of 2003, dated 27.2.2003 and W.P.M.P. No. 8952 of 2003, in W.P. No. 6438 of 2003, dated 3.3.2003.

52. Thus, there is nothing available from the records placed before this Court to show that the respondents had wilfully disobeyed the order of this Court, dated 24.9.2003, in W.P. No. 6438 of 2003, as alleged by the petitioner. Hence, the contempt petition stands dismissed.