
(2007) 09 AP CK 0048

In the Andhra Pradesh High Court

Case No : Contempt Case No. 1370 of 2005

N. Venkata Swamy Naidu

APPELLANT

Vs

Sri Surya Teja Constructions Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Companies Act, 1956 — Section 10(E), 10(E)(6), 10(F), 111, 113(2)
Company Law Board Regulations, 1991 — Regulation 14, 16, 19(1), 22, 23
Constitution of India, 1950 — Article 215, 227, 235
Contempt of Courts Act, 1971 — Section 10, 12(1), 12(3), 15, 19
Contempt of Courts Rules, 1980 — Rule 31, 32(1), 32(3), 34(1), 4
Criminal Procedure Code, 1973 (CrPC) — Section 195, 196, 482
Penal Code, 1860 (IPC) — Section 193, 228
Special Courts Act, 1979 — Section 9A

Citation : (2007) 6 ALT 439 : (2008) CriLJ 227

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : K. Vasudeva Reddy, for the Appellant; K. Satyanarayana Murthy, for Respondents 5 and 7, Dantu Srinivas and B. Chandrasen Reddy, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—Seeking to have respondents 1, 2, 4 to 9, punished under the Contempt of Courts Act, for wilful disobedience and gross violation of the orders of the Company Law Board, Additional Principal Bench, Chennai dated 18.07.2005, this contempt case is filed.

2. Facts, to the extent relevant, are that C.P. No. 24 of 2004 was filed by the petitioner herein, before the Company Law Board, under Sections 397, 398 and 402 read with Section 111 of the Companies Act, 1956. Among the interim reliefs sought for included an order to prevent the sale or dispossession of the land of

the company and to prevent injury being caused to persons who were allotted flats in the project. Petitioner would submit that, when the Company Petition was pending consideration before the Company Law Board, respondents 1, 2, 4 to 9 had demolished the superstructure of the building necessitating his filing an application, in C.A. No. 84 of 2005, requesting the Company Law Board to interfere and grant status quo with regards the existing structure. The Company Law Board, by order dated 18.07.2005, granted status quo. According to the petitioner, the respondents continued to demolish the building, in violation of the order of "status quo", and when he brought these violations to its notice, the Company Law Board, by order in C.A.No.87 of 2005 dated 22.07.2005, appointed an Advocate Commissioner to verify and submit a report on the status of the superstructure and the physical features of the disputed property.

3. The Advocate Commissioner, in his report dated 31.07.2005, informed that he had visited/inspected the disputed site on 24.07.2005 and was assisted by the Counsel for the petitioner Mr. Dhanaraj and Mr. Rajnish Garje, the Company Secretary representing the respondents, that at the disputed site a group of twenty persons had met him and had represented that, though they had spent large sums of money for buying flats/houses, they were cheated, that the flats/houses were never constructed/delivered, that Sri K. Umamaheswara Rao, who was present at the site, was introduced to him by Mr. Rajnish Garje as one of the respondents, that Mr. Reddy, who was also present along with the respondent, had introduced himself as the builder, that he had issued memos to both the representatives of the petitioner and the respondents and had obtained attendance memos from them, that he had shot several photographs of the disputed site/structure, that the site consisted of two structures, one finished and the other partially demolished, that at the entrance of the site there were remains of a completely damaged structure, that demolition was in progress and it appeared that almost 70% of demolition had just been completed, that even the debris was not removed from the site, that steel rods were still found lying, that the structure, located at the entrance of the disputed site adjoining the main road, had already been demolished, that only some pillars were visible and it appeared as if the entire debris had just been shifted, that he found tyre/wheel marks of some heavy vehicles on the ground, that he had taken photographs of persons present at the site including Mr. Reddy and Mr. Umamaheswara Rao, that his overall observation was that demolition was in progress, that one structure was completely and the other partially demolished and that the debris was being removed.

4. The Company Law Board, in its order dated 04.10.2005, noted the respondents contention that 90% of the structures were demolished prior to the filing of the application in C.A. No. 84 of 2005 i.e. before 18.07.2005 and that, on receipt of written complaints, and to save the lives of children and others living in the vicinity, the remaining structures, with slabs which had become weak on account of continuous rains, were demolished on 29.07.2005. After referring to its order sheets the Company Law Board observed that the

respondents had not chosen to mention before the Bench these serious developments having a bearing on the Contempt Application, that when the matter was heard on 01.08.2005, 09.08.2005 and 17.08.2005 Counsel for the respondent never made any statement regarding demolition of 90% of the structure before 18.07.2005 or that the remaining structures were demolished on 29.07.2005 on receipt of complaints from residents of the locality, that nothing prevented the respondents from seeking leave of the Bench to dismantle the structures in existence for the past nine years for whatever reason but they had, in violation of the orders of the Bench, gone ahead and completed the demolition process. The Company Law Board noted that, without furnishing details of demolition of the structures, a memo was filed on behalf of the respondent company on 31.08.2005 that "they had demolished the entire structures", that no reference was made therein to the dilapidated condition of the structures on account of continuous rains, that the complaints dated 21.01.2005, 20.07.2005 and 26.07.2005 reportedly made by the Secretary of the Rayala Avenue Flat Owners Welfare Society to the Board of Directors of the respondent company, for removal of the structures, ought to have been under the custody of the Company, yet these complaints were not referred to by the respondents during the course of hearing held on 01.08.2005, 09.08.2005 and 17.08.2005, but were produced only on 02.09.2005, that the complaints did not indicate that the structures had become weak on account of continuous rains, that the report of the Advocate Commissioner did not speak about the dilapidated condition of the structures on account of continuous rains, that it was beyond doubt that demolition of the disputed structures was in progress on 24.07.2005 at the time of inspection by the Advocate-Commissioner, that the facts stated in the Advocate Commissioner's report remained uncontroverted, that the respondents did not choose to file any objection on this part of the report of the Advocate Commissioner, that the contention of the respondents that, on receipt of the order, they had stopped demolition of the remaining 10% ran parallel to the conclusions of the Advocate Commissioner and that, against this backdrop, the assertion of the respondents that the photographs produced by the Commissioner represented 10% of the disputed structure was not based on concrete evidence. The Bench held that it was evident from their own statements that the respondents had demolished a part of the disputed structure inspite of the restraint orders of the Bench, that though the respondents had adequate time at their disposal between 18.07.2005 and 29.07.2005 to seek leave of the Bench they had failed to take the initiative and that the respondents must, therefore, be held to have acted in gross violation of the orders in demolishing the entire disputed structures.

5. The Company Law Board held that, by virtue of Regulation 44, every Bench of the Company Law Board had the inherent power to make such orders as may be necessary to meet the ends of justice or to prevent abuse of process of Court, that by demolishing the structures the respondents had violated the orders of the Court and had abused the process of the Bench, that there could not be any

embargo on exercise of inherent powers to secure the ends of justice and that, under Regulation 47, a bench shall be deemed to be a "Court" for the purpose of prosecution or punishment of a person who willfully disobeyed any of its directions or orders.

6. While recognizing that there was no specific provision in the Companies Act to punish for willful disobedience of the orders of the Bench, the Company Law Board observed that it did not mean that a contemnor could escape from punishment for contempt, that the Bench could not be a silent spectator to the willful disobedience of any of its directions, that an order of a Judicial or Quasi-judicial Authority, being sacrosanct, must be obeyed unless and until set aside in a manner known to law, that the purpose of punishment for Contempt was to uphold effective administration of justice in larger public interest and that the Bench of the Company Law Board must be deemed to be a "Court" under Regulation 47 for the purpose of prosecution of a person disobeying its orders.

7. The Company Law Board relied on *Sk. Mohammedbhikhan Hussainbhai v. The Manager, Chandrabhanu Cinema* AIR 1987 Gujarat 209 and *Canara Bank v. Nuclear Power Corporation of India Limited* (1995) 84 CC 70 to hold that, in exercising its functions, the Company Law Board must, and does, act judicially, that its orders are appealable, that it is a permanent body constituted under a Statute, and that it was a "Court" within the meaning of Section 10 of the Contempt of Courts Act. The Bench observed that the High Court, being the appellate authority of the Company Law Board, the latter must be deemed to be a Subordinate Court within the ambit of the Contempt of Courts Act and, therefore, the High Court could exercise powers of dealing with Contempt of the Company Law Board provided such Contempt was not punishable for offences under the Indian Penal Code. The Bench observed that the Company Law Board, in exercise of its inherent powers under Regulation 44, was empowered to invoke Section 10 of the Contempt of Courts Act to punish the respondents for willful disobedience of the orders of the Bench, in demolishing the disputed structures and that such a power could be exercised even in the absence of an enabling provision in the Companies Act for initiating action for violation of the orders of the Company Law Board, more so, when such Contempt was not an offence punishable under the Indian Penal Code.

8. While noting that an unconditional apology was made, in the counter statement of the first respondent, the Company Law Board observed that the other respondents had neither adopted the counter statement filed by the first respondent company nor had they tendered any apology, that the apology tendered by the Company was only an afterthought with a view to avoid punishment for willful disobedience of the orders of the Bench and could not be accepted. The Company Law Board observed that, in view of these conclusions, the petitioner was at liberty to move the High Court invoking its jurisdiction u/s 10 of the Contempt of Courts Act so as to prosecute the respondents for having willfully disobeyed the orders of the Bench dated 18.07.2005.

9. In his counter affidavit filed before this Court, while referring in detail to the merits of the Company Petition filed before the Company Law Board, and on the conduct of the petitioner, the fifth respondent would state that, in C.A.No.84 of 2005 filed before the Company Law Board, allegations were made only against the Managing Director and not against any of the other Directors of the company. He would state that the orders passed by the Company Law Board would itself reveal that the counter affidavit, in C.A. No. 87 of 2005, was filed by the then Managing Director Sri Y. Subbarayudu and, since the Managing Director is the authority to look after the company affairs, the other Directors were only formal parties. He would also state that the then Managing Director Sri Y. Subbaraidu passed away recently, that the contempt case was not maintainable and that he be discharged from the contempt proceedings.

10. In her counter affidavit filed before this Court the 6th respondent would submit that she is not a necessary party either to the petition before the Company Law Board or to the Contempt Case, that she had been unnecessarily added as a party to the proceedings, that she had filed C.A.No.99 of 2006 in C.P. No. 24 of 2004 to delete her name from the array of respondents, that she had resigned as a Director on 10th February 2004, that her resignation was accepted by the Board of Directors, that all the allegations made in the company petition relate to the affairs of the company prior to her appointment as a Director, that the company petition was filed subsequently without verifying who were the existing Directors and, since she ceased to be a Director even before the company petition was filed, she was not in a position to offer her reply to the allegations made therein. She also states that she did not receive any pecuniary benefits from the company in any form, that she had invested her money for revival of the company, that she had attended only a few board meetings and that, even when she was a Director, she never took active part in the day to day administration of the Company nor in its decision making. She would contend that, since Order 39 Rule 2-A C.P.C provides an adequate alternate remedy for violation of the orders of injunction, the High Court would not exercise its powers u/s 10 of the Contempts of Courts Act. She would contend that Regulation 47, of the Company Law Board Regulations, gives ample powers to the Board to prosecute and punish those who violate its orders and that the Contempt Case was liable to be dismissed.

11. The counter affidavit, filed before this Court by the 7th respondent, is more or less identical to the counter affidavit filed by the 5th respondent. The 8th respondent, in his counter affidavit filed before this Court, would state that he was appointed as an Additional Director by the Board of the Directors, in their meeting held on 23.9.2002, to that effect Form-32 was filed with the Registrar of Companies on 4.10.2002, thereafter certain disputes arose between him and the other Directors and that he, with three others, was removed on 23.4.2004 and in their place respondents 2, 5 and 6 and Sri T. Satya Ravi Raju were appointed as Directors. According to the 8th respondent he ceased to be a Director with effect from 29.09.2003 much prior to the order of status-quo dated 18.7.2005 and as

such the question of his willful disobedience, or of having acted in gross violation, of the order of the Company Law Board did not arise.

12. The averments in the counter affidavit filed before this Court by the 9th respondent are similar to that of the 8th respondent. The 9th respondent would contend that he ceased to be a Director with effect from 30.12.1995, that he was re-appointed as a Director on 23.9.2002, that he again ceased to be a Director of the 1st respondent with effect from 23.4.2004 and to this effect Form- 32 was also filed before the competent authority. According to the ninth respondent, from 29.09.2003 onwards, he had no connection with the affairs of the 1st respondent company. He would further state that, on account of old age and ill-health, he is not able to move out of his residence, that he was not in touch with any of the activities of the 1st respondent and, since his grown up son died recently, he could not file the counter affidavit earlier. The 9th respondent expresses his sincere apology for the delay in filing the counter affidavit. He would state that he ceased to be a Director of the 1st respondent as long back as on 29.9.2003 and that he cannot be said to have disobeyed the orders of the Company Law Board dated 18.7.2005. He expresses his unconditional apology for any inadvertent acts which may have been made on his behalf and would submit that he has great respect for orders of judicial and quasi judicial forums. He further states that he would not be a party to any acts of contempt and, if the Court was of the view that he was in any way responsible for contempt, he may kindly be pardoned keeping in view his health and that all further proceedings against him be dropped.

13. Sri K. Vasudeva Reddy, learned Counsel for the petitioner, would submit that, in view of the categorical finding that the respondents had willfully and deliberately violated its orders, the Company Law Board being a Court subordinate to it, the High Court could punish the respondents for Contempt of Court. Learned Counsel would submit that the report of the Advocate-Commissioner, and the tacit admission of the respondent company, in its counter- affidavit before the Company Law Board, would itself establish that the orders of status quo had been deliberately violated and, since all the respondents herein were arrayed as respondents in C.A.No.84 of 2005, the said order dated 18.07.2005 was binding on them and, except for respondent No. 3, all the other respondents were liable to be punished for Contempt. Learned Counsel would submit that the present Contempt Case was filed before this Court on 21.11.2005, well within one year from 18.07.2007 when the order of status quo was passed, and was, therefore, not barred by limitation. Learned Counsel would submit that, while the Company Law Board had the power to take action for abuse of process under Regulation 47, this Court was not barred from taking action against the respondents u/s 10 of the Contempt of Courts Act. Learned Counsel would submit that, if such flagrant violation of orders of Courts/Tribunals went unpunished, it would embolden others to violate Court orders with impunity and that a deterrent punishment should be imposed to uphold the majesty of law. Learned Counsel would place reliance on Advocate-General, Andhra Pradesh,

Hyderabad Vs. V. Ramana Rao, , Pallav Sheth Vs. Custodian and Others, , Advocate-general of Andhra Pradesh Vs. Chennamsetty Chakrapani C.I. of Police C.C.S. Guntur and Another, and Daroga Singh and Others Vs. B.K. Pandey, .

14. Sri D. Srinivas, learned Counsel appearing on behalf of respondents 5 and 6, would submit that the Contempt Case as filed was barred by limitation. Learned Counsel would submit that, while this Court had ordered notice before admission on 13.07.2006, it had not taken cognizance of contempt till date and, since more than one year has elapsed from 18.07.2005 when the order of "status quo" was passed by the C.L.B, the Contempt Case as filed is barred by limitation. Learned Counsel would submit that the sixth respondent had resigned as a Director of the first Respondent Company in February, 2004, that except for investing some money she did not partake in its business and that she had filed C.A. No. 94 of 2006 before the Company Law Board in March, 2006 requesting that her name be deleted as a respondent in the proceedings before the Company Law Board. Learned Counsel would submit that, since Regulation 47 confers powers on the Company Law Board to punish for contempt, this Court would refrain from exercising its jurisdiction u/s 10 of the Contempt of Courts Act. He would rely on Rule 5 of the "Rules to regulate proceedings of subordinate Courts and High Court under the contempt of Courts Act", more particularly to Clause (d) thereof, to submit that it is only on a reference made to it, by the Subordinate Court, would the High Court take cognizance of Contempt and since, in the present case, the Company Law Board had merely left it open to the petitioner to approach the High Court, and had not made a reference, this Court would not take cognizance of Contempt. Learned Counsel would submit that the fifth and sixth respondents were innocent by-standers and cannot be said to have violated the orders of the Company Law Board. Learned Counsel would place reliance on The Advocate-General of A.P. v. A.V. Koteswara Rao 1984(1) A.L.T.69, S.J.G.M. High School v. Director of School Education (1996(1) ALD 299 (DB), Rudraiah v. State of Karnataka AIR 1982 Kar 182, Bimal Chandra Sen v. Kamla Mathur 1983 CrL.L.J. 495, S.V. Surendra Rao v. Bharat Chandra 2001(1) ALD (CrL.) 522 (AP), K. Menakenathana Reddy, Deputy Director of Mines and Geology and Another Vs. Chippagiri Minerals and Chemicals and Others, .

15. Sri K. Satyanarayana Murthy, learned Counsel appearing on behalf of the 7th respondent, would submit that the 7th respondent was a resident of East Godavari District and merely a sleeping partner, that he did not participate in the day to day affairs of the first respondent company and that, in any event, he cannot be said to have participated in the demolition of the building or to have violated the orders of the Company Law Board. Learned Counsel would place reliance on G. Vijayalakshmi v. Securities and Exchange Board of India, Mumbai 2000(1) ALD 480.

16. Sri B. Chandrasen Reddy, learned Counsel appearing on behalf of the 8th respondent, would submit that the eighth respondent was appointed as an Additional Director on 22.09.2002, that he was removed as a Director on

29.09.2003 and that Form-32 was filed before the Registrar of Companies, Hyderabad on 23.04.2004 vide document No. 32. Learned Counsel would place reliance on the certified true copy of Form-32 issued by the Registrar of Companies, Andhra Pradesh, Hyderabad, in support of his contention that the eighth respondent was removed as a Director much prior to 18.07.2005 the date on which the order of status quo was passed by the Company Law Board.

17. Sri S.A. Razaq, learned Counsel appearing on behalf of ninth respondent, would submit that, like the eighth respondent, the ninth respondent was also removed as a Director on 29.09.2003 and that the very same Form-32, placed before this Court on behalf of the eighth respondent, would also reflect the name of the ninth respondent. Learned Counsel would submit that, since he had resigned as a Director of the company, much prior to the order of "status quo" passed by the Company Law Board, the ninth respondent cannot be said to have violated the orders of the Company Law Board, much less willfully and deliberately.

IS THE COMPANY LAW BOARD A "COURT" UNDER THE CONTEMPT OF COURTS ACT?

18. The Contempt of Courts Act does not define what a "Court" under the Act is. u/s 10(E), of the Companies Act, 1956, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration. Under Sub-section (1)(A), the Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under the Companies Act or any other law. Under Sub-Section 4(C), every Bench of the Company Law Board shall have the powers vested in a "Court" under the Code of Civil Procedure, 1908, while trying a suit, in respect of discovery and inspection of documents, enforcing attendance of witnesses, compelling production of documents, examining witnesses on oath, granting adjournments and reception of evidence on affidavits. Under Sub-section (4D), every Bench of the Company Law Board shall be deemed to be a "Civil Court" for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, and for the purpose of Section 196 of that code. Under Sub-section (5), the Company Law Board shall, in exercise of its powers and the discharge of its functions, be guided by principles of natural justice and shall act in its discretion. Under Sub-section (6) the Company Law Board shall have the power to regulate its own procedure.

19. In exercise of the powers conferred under Sub-section (6) of Section 10(E), the Company Law Board Regulations were made. Under Regulation 19(1), every party may appear before the Bench in person or through an authorized representative and under Sub-regulation (2) a party may, in writing, authorize an Advocate to function as his representative. Regulation 14 prescribes the procedure for filing petitions and Regulation 16 its contents. Regulation 22

relates to filing of reply and other documents by the respondents and Regulation 23 to the filing of counter-reply by the petitioner. Regulation 29 relates to orders of the Bench and under Sub-regulation (1) every order of the Bench shall be in writing. Under Sub-regulation (6), the Bench may make such order or give such directions, as may be necessary or expedient, to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Regulation 44, which relates to Saving of inherent power of the Bench, and Regulation 47, under which the Bench is deemed to be a "Court" for certain purposes, read as under:

44. Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

47. A Bench shall be deemed to be a Court or lawful authority for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of such Bench.

20. In order to constitute a "Court", in the strict sense of the term, an essential condition is that the Court should have, apart from some of the trappings of a judicial tribunal, the power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. *Brajnandan Sinha Vs. Jyoti Narain*, . To decide in a judicial manner involves that the parties are entitled, as a matter of right, to be heard in support of their claim and to adduce evidence in proof of it. It also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question arises whether an authority created by an Act is a "Court", as distinguished from a quasi-judicial tribunal, what has to be decided is whether, having regard to the provisions of the Act, it possesses all the attributes of a "Court". (V. Ramana Rao³).

21. While examining the question whether the Company Law Board was a "Court" the Supreme Court, in *Nuclear Power Corporation of India Ltd.*², observed:

...In exercising its function u/s 111 the Company Law Board must, and does, act judicially. Its orders are appealable. The Company Law Board, further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything other than a court, particularly for the purposes of Section 9A of the Special Court Act...." (emphasis supplied) "Any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice party litigants or their witnesses during their litigation" amounts to contempt of court.

(Oswald on Contempts).

22. In order that courts should be able to dispense justice without fear or favour, affection or ill-will, it is essential that litigants who resort to courts should so

conduct themselves as not to bring the authority and the administration of law into disrespect or disregard. It is in the interest of justice, and administration of law, that litigants should show the same respect to a court no matter whether it is the highest in the land or is one of inferior jurisdiction. In the interest of justice any contumacious conduct towards any person who can be called a "court" should be amenable to the jurisdiction under the Contempt of Courts Act. Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, .

23. In Sk. Mohammedbhikhan Hussainbhai¹, the Gujarat High Court held that, to fall within the ambit of the word "Court", for the purposes of Section 10 of the Contempt of Courts Act, the authority must be enjoined to adjudicate upon the disputes between the parties, the authority's source of power must emanate from the Statute and must not be based merely on agreement between the parties, the authority should have the power to ascertain disputed question of fact and law on consideration of the legal arguments both oral and written and the evidence adduced by the contesting parties, that the authority should have the power to enforce attendance of witnesses, production of documents, to decide disputes in a judicial manner, the end result or product of the exercise of such power by the authority must result in a binding decision between the contesting parties concluding the lis between them and that the decision of such authority disposing the whole matter, both on questions of fact and law, must be definitive and must have finality and authoritativeness.

24. Since all the aforesaid tests are satisfied, the Company Law Board rightly held, in its order in C.A.No.87/2005 dated 4.10.2005, that it was a "Court" within the meaning of Section 10 of the Contempt of Courts Act.

IS THE COMPANY LAW BOARD A SUBORDINATE COURT u/s 10 OF THE CONTEMPT OF COURTS ACT?

25. u/s 2 of the Contempt of Courts Act, 1926 High Courts of Judicature were empowered to exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice in respect of contempt of courts subordinate to them as they had and exercised in respect of contempt of themselves. This Act was replaced by the Contempt of Courts Act, 1952. Section 3 of the 1952 Act, apart from conferring a new jurisdiction assumed, as did the 1926 Act, the existence of a right to punish for contempt in every High Court and further assumed the existence of a special practice and procedure for it said that every High Court shall exercise the same jurisdiction, power and authority "in accordance with the same procedure and practice". The High Court has the power and jurisdiction to punish summarily contempt of courts subordinate to it in the same manner as it is entitled to punish contempt of itself. (V. Ramana Rao³).

26. High Courts, being Superior Courts of Record, enjoy inherent powers of contempt to protect Subordinate Courts even in the absence of any express

provision in any Act. Article 227 confers supervisory jurisdiction on the High Court and, in exercise of that power, the High Court may correct judicial orders of subordinate courts. In addition, the High Court has administrative control over subordinate courts. The jurisdiction and power of a Superior Court of Record to punish contempt of subordinate courts is not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction is conceded to Superior Courts of Record on the premise of its judicial power to correct errors of subordinate courts.

27. The Inherent powers of a Superior Court of Record have remained unaffected even after codification of the Contempt Law. The Contempt of Courts Act, 1971 was enacted to define and limit the powers of courts in punishing contempt of courts and to regulate their procedure in relation thereto. Section 10 relates to the power of the High Court to punish for contempt of subordinate courts. Section 10, like Section 2 of the 1926 Act and Section 3 of the 1952 Act, does not confer any new jurisdiction instead it reiterates and reaffirms the jurisdiction and power of a High Court in respect of its own contempt and of subordinate courts. *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*, . The phrase "courts subordinate to it", used in Section 10, is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them, under Article 235 of the Constitution of India, does not vest in the High Court. *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, .

28. u/s 10F of the Companies Act 1956, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court, within sixty days from the date of communication of the decision or order of the Company Law Board, on any question of law arising out of such an order. The Company Law Board is thus judicially subordinate to the High Court and, even if its administrative control is held not to vest in the High Court under Article 235 of the Constitution of India, it would nonetheless be a Court subordinate to the High Court u/s 10 of the Contempt of Courts Act.

CAN THE HIGH COURT EXERCISE ITS JURISDICTION u/s 10 OF THE CONTEMPT OF COURTS ACT EVEN IN THE ABSENCE OF A REFERENCE TO IT BY THE COMPANY LAW BOARD?

29. It is true that the Company Law Board, while holding that the respondents were guilty of gross violation of its restraint order dated 18.07.2005 in demolishing the entire structure in dispute, that the apologies offered were with the hope and object of avoiding punishment for wilful disobedience of the orders of the Bench and were not acceptable, held that the petitioner was at liberty to move the High Court invoking its jurisdiction u/s 10 of the Contempt of Courts Act. Short of making a reference, the Company Law Board has, in no unmistakable terms, held that the respondents had willfully and deliberately violated its orders and had committed contempt.

30. Section 2(a) of the Contempt of Courts, Act, 1971 defines "contempt of court" to mean civil contempt or criminal contempt. Section 2(b) defines "Civil Contempt" to mean willful disobedience to, among others, decrees, orders, or other process of a Court. Section 10 relates to the power of the High Court to punish for contempt of subordinate courts and, thereunder, every High Court shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Under the proviso to Section 10, no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. The "Contempt of Court Rules, 1980" regulate proceedings for contempt of Subordinate Courts and of the High Court under the Contempt of Courts Act, 1971. Under Rule 5, in case of contempt, other than the contempt referred to in Rule 4, the High Court may take cognizance of Contempt and take action (a) *Suo motu* or (b) on a petition made by the Advocate General of the State of Andhra Pradesh or (c) on a petition made by any person and, in case of Criminal Contempt, with the consent in writing of the Advocate General of the State of Andhra Pradesh or (d) on a reference made to it by a Court Subordinate to it in the case of contempt of such Subordinate Court or on a motion made by the Advocate General of the State of Andhra Pradesh in that behalf. The modes prescribed in Rule 5, for the High Court to take cognizance of contempt and take action, are in the alternative. While the subordinate court may make a reference in the case of a contempt of such Court or the Advocate General may make a motion in that behalf, Rule 5 does not bar the High Court from taking cognizance of contempt, or in taking action, either *suo motu* or on a petition made by any person.

31. A case of contempt of court is not *stricto sensu* a cause or a matter between parties *inter-se*. It is a matter between the court and the contemnor. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemnor to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant in the contempt of court case. *Supreme Court Bar Association Vs. Union of India* and *Another, , Jaipur Municipal Corporation Vs. C.L. Mishra, .* Section 10 of the Contempt of Courts Act makes the powers of the High Court, to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for contempt of itself not only in regard to the quantum or prerequisites for punishment, but also in the matter of procedure and practice. If the High Court is *prima facie* satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act *suo motu* and commence the proceedings against the contemnor. However, this mode of taking *suo motu* cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is grave

and serious in nature. (S.K. Sarkar¹⁹).

32. The power of the High Court u/s 10, to punish for contempt of subordinate Courts, is in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself. It is not, and cannot be, in dispute that the High Court can either suo motu or on a petition made by any person exercise jurisdiction in respect of contempt of itself. In view of Section 10 of the Contempt of Courts Act, the very same procedure and practice would apply even in respect of contempt of subordinate courts. Accepting the submission of Sri D. Srinivas, learned Counsel appearing on behalf of respondents 5 and 6, that the High Court can take cognizance of contempt of subordinate Courts only on a reference made to it by the subordinate Court itself or on a motion made by the Advocate General would render Rule 5 of the Contempt of Courts Rules, 1980 ultravires Section 10 of the Contempt of Courts Act. It would also fall foul of the inherent power of the High Court under Article 215 of the Constitution of India. The mode of exercise of jurisdiction, as prescribed under Rule 5, can only be in the alternative and, as a result, the High Court can take action for contempt of subordinate Courts u/s 10 of the Contempt of Courts Act either suo motu or on a petition made by a party.

WOULD EXISTENCE OF AN ALTERNATIVE REMEDY BAR EXERCISE OF JURISDICTION BY THE HIGH COURT UNDER THE CONTEMPT OF COURTS ACT, 1971?

33. Curiously, while the respondents had contended before the Company Law Board that there was no provision in the Companies Act, 1956 conferring power on the Company Law Board to punish for contempt, that since Section 10E of the Companies Act did not empower the Company Law Board to initiate contempt proceedings, Regulations 44 and 47 could not be called in aid by the Company Law Board to take action for contempt and that these Regulations were ultravires the Companies Act, it is contended to the contrary in the present contempt case before this Court that, since the Company Law Board has the power to take action for contempt, under Regulation 44 and 47 of the Company Law Board Regulations, this Court is barred from taking action for contempt of the orders of the Company Law Board, u/s 10 of the Contempt of Courts Act, 1971. In Rudraiah¹¹, on which reliance is placed by the respondents, the Karnataka High Court observed:

...In cases of disobedience or breach of injunction order issued temporarily during the pendency of a suit, either under Rule 1 or 2 of Order 39, C.P.C. action is contemplated by the very court which issues the injunction order under Rule 2A of Order 39 C.P.C. It contemplates the forfeiture of property as also putting of the person who commits breach into civil prison for a period not exceeding three months. The provision thereunder is obviously based on the principle of contempt of Court. That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder, for forcing the party to obey the injunction order. It is a well settled principle of law that when

there is special law and general law, the provisions of the special law prevail over the general law and when special procedure and special provision are contained in the C.P.C. itself under Order 39 Rule 2A for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked. If such a course encouraged holding that it amounts to contempt of court, when an order of subordinate court is not obeyed, it is sure to throw open a floodgate of litigation under contempt jurisdiction. Every decree-holder can rush to this Court stating that the decree passed by a subordinate court is not obeyed. That is not the purpose of Contempt of Courts Act...

34. In *Bimal Chandra Sen*¹², on which also reliance is placed by the respondents, the Delhi High Court held:

...A disobedience of an order of injunction is a contempt of court. Sub-rule (1) confers on courts the power to punish such contempt and, further, prescribes the punishment to be awarded therefore. *M. Amritlal Vs. P. Srinivas Rao, and Ram Saran v. Chatar Singh* The sub-rule provides for the punishment not only of disobedience of the temporary injunction but also of breach of any of the terms subject to which the injunction may have been granted. *Yenikokalva Gorla Narappa Vs. Yenikokalva Chinnareppa and Others*, . While the High Courts as courts of record have inherent jurisdiction to commit for contempt. Other courts have no such power apart from the provisions of Rule 2-A *Dulhin Janak Nandini Kunwari Vs. Kedar Narain Singh*, . So in the case of wife it is plain that for the disobedience of the injunction order or breach of any of its terms the court of Subordinate Judge granting the injunction has jurisdiction to punish a person guilty of such disobedience or breach. The High Court has power u/s 10 of the Act but the exercise of that power is discretionary. (See *Ram Rup Pandey Vs. R.K. Bhargava and Others*, .

From the above rulings two propositions emerge. Firstly, a person not a party to the suit cannot be proceeded against for contempt for aiding and abetting the breach. Secondly, the jurisdiction to punish for disobedience of the injunction order vests in the court which granted the injunction.... All that is at stake in the present case is the private rights of the parties. For defiance of the court's order the remedy is provided in the Code. It is attachment and detention in civil prison. For deliberate defiance of interim injunctions the court can send the contemner to prison. If the Subordinate Courts cannot enforce their injunction the order virtually would be worthless. It is the deterrent effect of an injunction plus the liability to imprisonment for its breach which is the remedy. The Subordinate Judge can punish the defendant if he finds her to be guilty in flagrantly defying the order which he had made. Contumacious disregard and contemptuous disobedience of the orders of the court have always been visited with committal to prison and attachment....

35. u/s 2(b) of the Contempt of Courts Act, willful disobedience of a decree, order or other process of a Court would also constitute "civil contempt" and, in exercise of its jurisdiction u/s 10 of the Contempt of Courts Act, the High Court

can punish for willful disobedience of a decree or order or other process issued by a subordinate Court. The inherent jurisdiction to punish for contempt, under Article 215 of the Constitution of India, is inalienable and cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971 are in addition to, and not in derogation of, Article 215 of the Constitution, and cannot be used to limit exercise of such inherent jurisdiction. (T. Sudhakar Prasad v. Govt. of A.P. (2001) 1 SCC 516). Existence of an alternative remedy does not bar exercise of jurisdiction by the High Court, under Article 215 of the Constitution of India, to punish for Contempt of itself, and that of Courts subordinate to it. Further, as emphasized u/s 22, the provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of any other law on Contempt of Courts. Even if Regulations 44 and 47 of the Company Law Board Regulations and Order 39 Rule 2-A C.P.C, are held to be a law relating to Contempt of Courts, these provisions would not preclude the High Court, in an appropriate case, from taking action for contempt of the orders of the Company Law Board.

36. The respondents would however place reliance on S.V. Surendra Rao¹³, wherein this Court observed:

...In a service matter, when the order of A.P. Administrative Tribunal was not complied with the successful party and initiated contempt proceedings against the Governmental authorities for punishing them for the wilful non-compliance of the said orders of the Tribunal. Against the said initiation of proceedings and contending that the Administrative Tribunal had no jurisdiction to initiate the contempt proceedings in view of the recognition of the power of judicial review of this Court by the Supreme Court in L. Chandra Kumar Vs. Union of India and others, , the State Government filed a writ petition and this Court acceded to the said contention in Government of Andhra Pradesh Vs. K. Anantha Reddy and Others, , that the Contempt of Courts Act, 1971 vests the power of contempt only in two Courts i.e., Supreme Court and the High Courts and in view of the constitution amendment and taking away the jurisdiction of the High Court in service matters, the Administrative Tribunal was vested with the power of contempt by referential Legislation u/s 17 of the Administrative Tribunals Act, 1985 and such reference to the word "Tribunal" wherever occurred in Section 17 of the Administrative Tribunals Act, 1985 had disappeared in view of the judgment of the Supreme Court in L. Chandra Kumar's case (supra). But the said judgment has been reversed by the Supreme Court of R. Keshava Vs. M.B. Prakash and Others, , holding that regardless of the recognition of the power of judicial review of the High Court over the judicial decisions of the Administrative Tribunals, the power to punish for contempt still rests with the Administrative Tribunals and that it has not been divested and that the High Courts are not entitled for initiation of contempt proceedings for violation of the orders passed by the Administrative Tribunals and that the Administrative Tribunals alone have jurisdiction to entertain the contempt cases and any decision only appealable to Supreme Court....

37. The observations of the Division Bench, in S.V. Surendra Rao¹³, are with reference to the powers of Administrative Tribunals to punish for contempt. u/s 17 of the Administrative Tribunals Act, 1985, which relates to the power to punish for contempt, the Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise. In T. Sudhakar Prasad²², the Supreme Court, while holding that an appeal lay to the Supreme Court against an order passed by the Administrative Tribunal punishing for contempt u/s 17 of the Administrative Tribunals Act read with Section 19 of the Contempt of Courts Act, set aside the order of the Division Bench of this Court in Government of Andhra Pradesh Vs. K. Anantha Reddy and Others, , in holding that the Administrative Tribunal no longer had the power to punish for contempt. The Division Bench of this Court, in S.V. Surendra Rao¹³, held that the power to punish for contempt still vested with, and was not divested from, the Administrative Tribunals under the Administrative Tribunals Act, 1985. The Company Law Board cannot be equated to an Administrative Tribunal under the Administrative Tribunals Act and, since the Company Law Board is a Court subordinate to it, the High Court, in exercise of its jurisdiction u/s 10 of the Contempt of Courts Act, can punish for contempt any willful disobedience of the orders of the Company Law Board.

LIMITATION FOR TAKING ACTION FOR CONTEMPT:

38. u/s 20 of the Contempt of Courts Act, no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The order, violation of which is said to be in contempt, is that of the Company Law Board dated 18.07.2005. While the contempt application, in C.A. No. 87 of 2005, was filed before the Company Law Board on 20.07.2005, the Advocate Commissioner, in compliance with the directions of the Company Law Board, visited the site and submitted his report on 31.07.2005. Thereafter, by order dated 04.10.2005, the Company Law Board, while holding that the respondents had willfully disobeyed its orders, gave liberty to the petitioner to approach the High Court and invoke its jurisdiction u/s 10 of the Contempt of Courts Act. The present contempt case was filed on 21.11.2005 within two months of the orders of the Company Law Board dated 04.10.2005. That the application in the present contempt case was filed within a period of one year even from 18.07.2005, when the order of status quo was passed by the Company Law Board, is not in dispute. The contention, however, is that since this Court has not taking cognizance of contempt till date, and more than two years has elapsed from the date on which the order of status quo was passed, no proceedings for contempt can now be initiated as the contempt case is barred by limitation. The judgments of this Court, in A.V. Koteswara Rao⁹, and S.J.G.M. High School¹⁰, on which the respondents place reliance on, are no longer good law, in view of the subsequent judgment, in Pallav Sheth⁴, wherein the Supreme Court observed:

.... The decision in Om Prakash Jaiswal case AIR 2000 SC 1136 to the effect that initiation of proceedings u/s 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action u/s 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution....

39. In view of the authoritative pronouncement of the Supreme Court in Pallav Sheth⁴ it must be held that if an application to initiate contempt proceedings is filed within one year, from the date on which contempt is committed, it would amount to initiation of contempt proceedings within limitation u/s 20 of the Contempt of Courts Act. The limitation u/s 20 has to be computed with reference to the date of filing of the application for initiation of contempt and, since in the present case, such an application was filed on 21.11.2005, well within the period of one year from the order of status quo dated 18.07.2005, violation of which is said to be in contempt, the contempt case as filed cannot be said to be barred by limitation.

PRINCIPLES GOVERNING EXERCISE OF JURISDICTION TO PUNISH FOR CONTEMPT:

Contempt of Court" is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of the judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. The public at large, no less the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty, of the individual shall perish. (Jennison v. Baker 1972(1) All.

E.R 997).

40. There are certain well recognized principles which govern the exercise of power and jurisdiction to punish for contempt. A High Court will not exercise the summary jurisdiction except in a case beyond reasonable doubt. The power to commit for contempt will not also be used for the vindication of a Judge as a person but only with a view to protect the interests of the public for whose benefit and for the protection of whose rights and liberties the courts exist and function. Another factor which a High Court will take into consideration, in exercising its contempt jurisdiction, is to ascertain whether the Contempt is merely technical, slight or trifling in character. If it is so the Court will be satisfied with an expression of genuine regret and will not proceed to inflict punishment on the contemnor. (V. Ramana Rao³).

41. The word "Wilful", u/s 2(b) of the Contempt of Courts Act, means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. (Ashok Paper Kamgar Union v. Dharam Godha²⁰⁰³) 11 SCC 1). Mere disobedience of an order may not be sufficient to amount to a "civil contempt" - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. In the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct, if raised, the question of success in a contempt petition would not arise. Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, .

42. In K. Menakenathana Reddy, a Division Bench of this Court observed:

...In that view of the matter, we do not think that it is a fit case where the appellants herein should be punished. It is not that the Court should punish each and every one who has violated the Court's order. In order to punish in contempt proceedings, the persons against whom complaint is made should not only disobey the Courts order but such disobedience is shown to be deliberate and wanton.

Looking from that angle, we are satisfied that the disobedience of the appellants herein of the Court order could not be regarded as deliberate and intentional....

43. Where there has been willful disobedience of an order of the Court, and a measure of contumacy on the part of the defendants, then "civil contempt", what is called "contempt in procedure" bears a two fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest. (Jennison²⁴). To establish a contempt of court, it is sufficient to prove that the conduct was intentional and that the contemnor knew of all the facts

which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (St. Helen's Ltd. v. Transport & General Workers' Union (1972) 3 All ER 101; Adam Phones Ltd. v. Goldschmidt (1999) 4 All ER 486).

44. The Court exercising contempt jurisdiction cannot take upon itself the task of deciding the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. The Court cannot test the correctness or otherwise of the order or give additional directions or delete any direction. Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, , Union of India (UOI) and Others Vs. Subedar Devassy PV, , Prithawi Nath Ram Vs. State of Jharkhand and Others, .

45. Proceedings under the Contempt of Courts Act are quasi-criminal and, as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt. Chhotu Ram Vs. Urvashi Gulati and Another, . Powers of Contempt should be exercised with utmost care and caution, sparingly, in the larger interest of society and for proper administration of justice. (Anil Ratan Sarkar²⁶).

46. In its order dated 4.10.2005, the Company Law Board observed that its earlier order dated 18.07.2005, directing maintenance of status quo, had been deliberately violated and it was evident from the Advocate Commissioner's report that the subject structure was demolished even after the order of status quo was passed by it. That respondents 1 to 9, in the Contempt Case before this Court, were respondents in C.A. No. 84 of 2005 wherein the order of status quo was passed on 18.07.2005, and in C.A. No. 87 of 2005 filed by the petitioner herein to punish the respondents for willfully disobeying the orders passed in C.A. No. 84 of 2005 dated 18.07.2005, is not in dispute. This Court, in contempt proceedings, is not concerned with the merits of the order of the Company Law Board dated 18.07.2005 directing maintenance of status quo. The only question which would arise for consideration is whether the order has been flouted and, if so, whether such violation is willful and deliberate. The conclusion of the Company Law Board, that there has been wilful and deliberate violation of its orders dated 18.07.2005, has, rightly, not been disputed by the respondents. Some of them would contend that they were neither the Directors nor were they associated with the first respondent company when the order of status quo was passed. Some others that, while they were Directors, they did not participate in the day to day affairs of the company, that, in law, it is only the Managing Director who can be held responsible for the day to day affairs of the company and it is he alone who can be said to have violated the orders of the Company Law Board.

47. In G. Vijayalakshmi¹⁵, a judgment of this Court on which the respondents place reliance, a petition was filed, u/s 482 Cr.P.C, to quash the criminal proceedings pending on the file of the Special Judge for Economic Offences,

Hyderabad wherein the petitioners were sought to be prosecuted for having contravened Sections 73(2)(B) and 113(2) of the Companies Act. u/s 73(2)(B), if default is made in complying with the provisions of Sub-section (2)(A), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees, and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to one year. u/s 113(2), if default is made in complying with Sub-section(1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues. Section 5 of the Companies Act defines the expression "Officer who is in default" and, among the categories mentioned therein, is the Managing Director, the Whole Time Director, the Manager, the Secretary, etc. It is in this context that this Court, in G. Vijayalakshmi, observed that u/s 5 of the Companies Act, criminal liability of ordinary directors would arise only in respect of a company which has no Managing Director or a Whole-Time Director or a Manager and where particular directors are not specified to be liable by the company and, since the second accused was the Managing Director of the first accused company, the petitioners, who were merely the Directors, could not be fastened with criminal liability. The said judgment, in G.Vijayalakshmi¹⁵, has no application to the case on hand. A person, who has willfully and deliberately disobeyed or violated the orders of Court, cannot be heard to say that, while he may well be guilty thereof, he would, nonetheless, not be liable to be punished for contempt as he is merely a Director of the Company and that it is only the Managing Director against whom action can be taken for contempt.

48. The first respondent is the Company. The second respondent, its Managing Director, is no more. The petitioner has himself stated that the third respondent is not a necessary party in the contempt case. Neither is the whereabouts of Respondent No. 4 known nor has notice in this contempt case been served on him.

49. u/s 303(2) of the Companies Act, 1956, the Company shall, within the period mentioned, send to the Registrar, a return in duplicate, in the prescribed Form, containing the particulars specified in the Register and a notification in duplicate in the prescribed form of any change among its Directors, Managing Director, Manager, Secretaries etc., specifying the date of change. Form-32 of the Companies (Central Government) General Rules and Forms, 1956 is the notice giving particulars of appointment of Directors, Managing Directors, Managers, Secretaries etc., and changes among them. Thereunder, the name of the person, the date of change and the particulars of change are specifically provided for.

50. A certified copy of Form-32, as recorded by the Registrar of Companies on 23.04.2004, which is placed before this Court, would show that Sri R. Nageswara Rao (respondent No. 3), Sri T. Nageswara Rao, (respondent No. 7), Sri G. Suryachandra Rao (respondent No. 8) and Sri P. Ramakrishna Rao (respondent

No. 9) had ceased to be the directors of the first respondent company as early as on 29.09.2003 much prior to the status quo order passed by the Company Law Board on 18.07.2005. Since Respondents 3, 7, 8 and 9 were not even the Directors of, and were not associated with, the first respondent company when the order of status quo was passed, they cannot be said to have violated the orders of the Company Law Board, much less willfully and deliberately.

51. The very same Form No. 32, placed before this Court, would show that the sixth respondent was reappointed in the General Meeting as a Director on 29.09.2003. While the sixth respondent, in her counter affidavit, would contend that she had resigned from the Company on 10.02.2004 and that her resignation was approved by the Board of Directors, no evidence has been placed in support of such a plea. It is her case that she filed C.A. No. 99 of 2006 before the Company Law Board to delete her name from the array of respondents in C.P. No. 24 of 2004. Sri D. Srinivas, learned Counsel for the sixth respondent, would submit that the application, in C.A. No. 99 of 2006, was made in March, 2006. The application made to the Company Law Board in March, 2006, several months after the status-quo order dated 18.7.2005 was passed, is of no assistance to the sixth respondent. Her self-serving plea, in the absence of any evidence in support thereof, does not merit acceptance. What is, however, of relevance is that the Advocate Commissioner's report makes no mention of her presence at the site of the demolished structure, when he made his visit. Since the degree of proof required, to establish Contempt of Court, is proof beyond reasonable doubt, giving her the benefit of doubt, the sixth respondent is also held not guilty of contempt.

52. The Advocate Commissioner's report dated 31.7.2005 specifically refers to the fact that, when he visited the site, demolition was in progress and that Sri K. Umamaheswara Rao, (respondent No. 5), was present at the site. Except to raise several pleas on the merits of the dispute in C.P. No. 24 of 2004 and to contend that it is only the Managing Director who is responsible for the affairs of the Company, and that he was only a formal Director, the fifth respondent has neither rebutted the contention of the Advocate Commissioner that he was present at the site nor has he denied his presence at the site, when the Advocate Commissioner visited and found demolition to be in progress. It is established, beyond reasonable doubt, that Sri K. Umamaheswara Rao, the fifth respondent, has willfully disobeyed and deliberately violated the order of status-quo passed by the Company Law Board dated 18.07.2005, and has committed contempt of court. Now the sentence to be imposed on the fifth respondent. While awarding sentence on a contemnor the Court does so to uphold the majesty of law and to ensure that the unflinching faith of the people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, how so high the person may be. *J. Vasudevan Vs. T.R. Dhananjaya*, . There cannot be any laxity, as otherwise law courts would render their orders to utter mockery. Tolerance of law courts there

is, but not without limits and only upto a point and not beyond. (Anil Ratan Sarkar). "The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope". (Jennison).

53. The fifth respondent has not even chosen to apologize for his having willfully disobeyed and deliberately violated the status-quo order of the Company Law Board dated 18.7.2005. u/s 12(1), of the Contempt of Courts Act, 1971, the contemnor may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Under Sub-section (3), notwithstanding anything contained in Section 12, where a person is found guilty of civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in civil prison for such period not exceeding six months as it may think fit. u/s 13(a), notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence for contempt, under the Contempt of Courts Act, unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere, with the due course of justice. Under Rule 31 of the Contempt of Courts Rules, 1980, where a person charged with contempt is adjudged guilty and is sentenced to suffer imprisonment, a warrant of commitment and detention shall be made out in Form IV. Rule 32(1) requires the Court to fix the subsistence allowance, in accordance with the status of the contemnor, when he is committed to civil prison. Under Sub-rule (3), where the petitioner is a private party, the contemnor shall not be arrested, when committed to civil prison, unless and until the subsistence allowance, as fixed by the Court, is deposited into the Court. Rule 34(1) enables the Court to award such costs as it deems fit in the circumstances of the case.

54. The fifth respondent by his contumacious act of demolishing the structure, despite the order of status quo dated 18.7.2005, has willfully disobeyed the order of the Company Law Board and has committed contempt. Let alone purging himself of contempt, the fifth respondent has not even tendered an apology for his contumacious conduct in having willfully disobeyed the orders of the Company Law Board. Such open defiance of the order of the Company Law Board, in continuing demolition of the superstructures even till 29.07.2005 more than ten days after the restraint order of status quo dated 18.07.2005, is a contempt of such a nature as to have substantially interfered with the due course of justice for which imposition of the sentence of fine alone would not meet the ends of justice. Such flagrant violation of the orders of the Company Law Board must be dealt with sternly. The fifth respondent is sentenced, u/s 12(1) of the Contempt of Courts Act, to undergo simple imprisonment for a term of two months and with fine of Rs. 2000/-. In accordance with Section 12(3), read with Rule 32(1) and (3) of the Contempt of Courts Rules, 1980, the fifth respondent shall be detained in civil prison for a period of two months. His subsistence allowance is fixed at Rs. 2500/- per month. The petitioner herein shall deposit a

sum of Rs. 5000/- in the High Court Registry, within one month from the date of receipt of a copy of this order, towards subsistence allowance for the two month period the fifth respondent is required to be kept in civil prison. The amount so deposited shall be defrayed towards the subsistence allowance payable to the fifth respondent.

55. The contempt case is allowed with costs quantified at Rs. 3500/- to be paid by the fifth respondent to the petitioner herein.