
(2012) 02 KL CK 0042

In the High Court Of Kerala

Case No : Con. Case (C) No.1484 of 2005

Sreedhara Menon, O. P. and Others

APPELLANT

Vs

Amarnath Shetty, K. and Others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Contempt of Courts Act, 1971 — Section 2, 2(a), 2(b), 20

Citation : (2013) CriLJ 1684 : (2012) 2 ILR (Ker) 315 : (2012) 2 KLJ 23

Hon'ble Judges : P. R. Ramachandra Menon, J;Manjula Chellur, J

Bench : Division Bench

Advocate : Mathai M. Paikaday, Sri Alex Jose Paikada and Sri Saji Varghese, for the Appellant; K. P. Dandapani (Advocate General), for the Respondent

Final Decision : Dismissed

Judgement

P. R. Ramachandra Menon, J.—Whether dismissal of an appeal preferred by the State against the declaration given by the Forest Tribunal, that the property is not a "private forest" vested with the Government and the failure, if any, on the part of the Government/Department to restore possession, will by itself give rise to a cause of action to proceed against the respondent(s)/State by way of Contempt of Court, is the primary point to be considered in these cases.

Whether non-implementation of the "Undertaking" given before the Court will constitute an offence of contempt always, irrespective of the circumstances under which such Undertaking was given, is the next point to be answered.

Will the non-compliance with the "Undertaking" give rise to any "Criminal contempt" is the further point to be considered in COC (Crl.) 2/2011--Suo motu.

Whether initiation of such Suo Motu contempt as per the order dated "30-3-2011" in respect of the alleged breach of Undertaking dated "3-4-2006" is permissible to be pursued further, in view of statutory bar of limitation u/s 20 of the Contempt of Courts Act, is the fourth question to be dealt with.

If the non-compliance is by virtue of the subsequent developments or by virtue of the operation of law, will it attract the offence of contempt, is the last point to be clarified. COC (C)No.1484 of 2005 has been filed by the petitioners alleging wilful disobedience in respect of non-implementation of the judgment dated 9-4-2003 passed by this Court in MFA.120 of 1998, whereas COC (Crl.) No. 2/2011 is in respect of the violation of the Undertaking given on 3-4-2006.

2. When COC (C) No. 1484 of 2005 came up for consideration before "this Court on 3-4-2006, the submission made on behalf of the respondent/s that steps were being pursued to handover the actual physical possession of the property which required four months" time, was recorded and the matter was closed on that day. Alleging violation of the said undertaking, I.A. No. 3515 of 2006 was filed by the beneficiaries, which was closed on 18-9-2006, on the basis of the contents of the letter dated 15-9-2006 issued by the Secretary to the Government addressed to the Custodian of Vested Forests, Olavakkod, Palakkad and the submission made by the learned Government Pleader reporting compliance. Later, I.A. 3573 of 2006 was filed by the beneficiaries pointing out that the compliance reported on 18-9-2006 (referring to the letter dated 15-9-2006) was not actually correct, as the property intended to be restored was only an abysmally low extent, thus seeking to reopen the contempt proceedings.

3. A detailed affidavit was filed from the part of the respondent/s in the said I.A., pointing out that a substantial extent of the property had been subsequently notified by the Government under the relevant provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (hereinafter referred to as "EFL" Act), whereby such extent came to be vested with the Government by virtue of Section 3(1) of the said Act. The balance available was only 4.7603 hectares, which was already restored, as per the order dated 15-9-2006; but the same was refused to be accepted by the beneficiaries, for which the respondent/s cannot be found fault with.

4. Observing that the notification under the EFL Act was only in respect of 25 hectares out of the total 40.737 hectares (equivalent to about 100.06 acres) to be restored, the Bench observed that, even if the said extent of 25 hectares was excluded, the balance of about 15 hectares (approximately about 40 acres) had actually to be restored, as against the proposed extent of 4.7603 hectares. Accordingly, the Bench arrived at a prima facie finding on 7-12-2006, that the respondent/s had committed an act of contempt and ordered personal presence of the respondent/s on the next date, i.e. on 10-1-2007.

5. On 10-1-2007, an order was passed by the Bench, in continuation of the order dated 7-12-2006, observing that charge had to be framed against the respondent/s; for which the case was adjourned to 30-1-2007. The said order was challenged by the respondent/s by filing SLP 456 of 2007 before the Supreme Court, which came to be dismissed as per the order dated 14-1-2011. Referring to the said order (produced along with I.A. No. 136 of 2011), the beneficiaries filed I.A. No. 137 of 2011, seeking to proceed with the contempt

matter. Despite granting adjournments twice, since the respondent/s was absent even on 23-3-2011, non bailable warrant was ordered against the respondent/s for proceeding with further steps and the case was adjourned to 1-4-2011.

6. On filing I.A. No. 236 of 2011 by the respondent/s/contemnor, the personal presence was dispensed with, as per the order dated 30-3-2011 passed in the said I.A. and the case was ordered to be listed on 7-4-2011. On the same day, another order was passed by the Bench, reopening the contempt petition and directing the Registry to implead the subsequent incumbents as well, who came to occupy the concerned posts/office of the Custodian and Conservator of vested forests and that of the District Forest Officer, as additional respondents 2 and 3. While passing the said order, the Bench also observed that, apart from non-implementation of the judgment of this Court in MFA 120 of 1998, there was a breach of "Undertaking" as recorded in the order dated 3-4-2006 and hence directed the Registry to initiate "suo motu" Contempt for breach of the said Undertaking as well, against all the three officers as aforesaid, which led to registration of the Contempt of Court Case (Crl.)No. 2/2011 (Suo Motu).

7. The respondent/s have entered appearance and filed affidavits, additional affidavits and such other proceedings in the relevant I.As., specifically contending that no judgment or order passed by this Court has been violated in any manner and no offence of contempt has been committed by them; simultaneously producing various documents in support thereof. In view of the complicated questions of fact and law stated as involved, the matter was heard at length on different dates including the final hearing held on 29-11-2011.

8. Mr. Mathai M. Paikadey, the learned Sr. Counsel appearing for the petitioners in COC (C) No. 1484 of 2005 referred to the relevant facts and figures, the various orders/judgments passed by the different Courts/Tribunals and sought to establish that the respondent/s are liable to be proceeded against, for Contempt in view of the violation of the judgment and the "Undertaking" given before this Court; more so since the respondent/s have not taken any positive steps to purge the Contempt by obeying the order. Reliance was also sought to be placed in *Kanta Gupta v. VIII Additional District Judge, Meerut and others* 1991 Suppl. (1) S.C.C. 219 (para 10) and *Pravin C. Shah v. K.A. Mohd. Ali and another* (2001) 8 S.C.C. 650 (para 26).

9. The learned Advocate General appearing on behalf of the respondent/s sought to rebut the averments and allegations with reference to the specific pleadings and materials on record, stating that there is no violation of the judgment or Undertaking in any manner and that, out of the total extent of about 40 hectares of the property to be restored to the petitioners, an extent of "35 hectares" came to be vested upon the Government in view of the Notification issued under the EFL Act. The remaining extent of about 4.7603 hectares was ordered to be restored as per the relevant order passed in this regard, which however was refused to be accepted by the beneficiaries as borne by the endorsement given by them on the Mahazar, in view of the dispute as to the actual extent to be

restored.

10. It is pointed out that the actual extent of land vested with the Government by virtue of the Notification under the EFL Act was not 25 hectares as mentioned before the Court earlier; but it was "35 hectares", as covered by the Erratum Notification issued in this regard dated 15-9-2006 and published in the Kerala Gazette dated 26-9-2006, which fact however could not be brought to the notice of the Court, when the order was passed on 7-12-2006 ordering personal presence for proceeding further. The learned Advocate General also submits that the correctness and sustainability of said Notification issued under the EFL Act was challenged by the petitioners by approaching this Court, where they could not succeed and that they have already approached the Apex Court by filing an SLP in this regard, where it is still pending. It is also contended that, non-restoration of the land covered by said EFL Notification is by virtue of operation of law, which cannot constitute any offence of Contempt in view of the law declared by the Apex Court and the judgment passed by a Division Bench of this Court in *Niyamavedi v. Union of India and others* 2004 (1) K.L.J. 68. Reliance was sought to be placed also on the decisions rendered by the Apex Court in *Bakhtawar Trust and others v. M.D. Narayan and others* (2003) 5 S.C.C. 298 . *State of Orissa and another v. Gaura Chandra Panda and others* 1999 S.C.C. (L & S) 784 , *Ashok Paper Kamgar Union v. Dharam God ha and others* (2003) 11 S.C.C. 1, *Niaz Mohammad and others v. State of Haryana and others* (1994) 6 S.C.C. 332 with regard to the scope for proceeding further, in respect of the offence of contempt, asserting that there is no wilful disobedience on the part of any of the respondent/s in this regard.

11. In response to the submission made by the learned Counsel for the petitioners that the subsequent notification issued by the Government under the EFL Act itself is bad in law, having issued after the finalisation of the proceedings under the "Vesting Act" in view of the decision rendered by a Division Bench of this Court reported in *State of Kerala v. Kumari Varma* 2011 (1) K.L.L. 1008 [to which one of us--PRRM (J) was also a member], it is stated that the said decision has already been subjected to challenge by approaching the Supreme Court, where the SLP has been admitted and an order of "status quo" has been ordered and is still pending. The learned Advocate General added that the Undertaking given before this Court was only to finalise the "restoration proposal" as clearly stated in paragraph "6" of the affidavit dated 24-3-2006 and not to have the entire 100 acres (40 hectares approximately) restored within 4 months. It is also pointed out that, the balance land not covered by the above notification under the EFL Act, despite being offered, was refused to be accepted by the beneficiaries who, hence, cannot press the contempt matter further, under any circumstance. It is also asserted that the further proceedings can be pursued and punishment can be imposed, only if the disobedience, is wilful and that it is not an execution proceeding. Even in a case where compliance is not possible because of compelling circumstances, no punishment can be awarded, in view of the law declared by the Apex Court. Reference is made to the decisions rendered

by the Supreme Court in Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, , State of Orissa and another v. Aswini Kumar Baliar Singh (2006) 6 S.C.C. 759 and Municipal Corpn., Jabalpur v. Om Prakash Dubey (2007) 1 S.C.C. 373 as well.

12. Before proceeding to answer the legal questions, it is necessary to understand the factual background and the order passed by the Forest Tribunal in favour of the petitioners/beneficiaries and the scope of the judgment passed by this Court in MFA 120 of 1998, which gave rise to the alleged Contempt.

13. Petitioners 1 and 2 in COC (C) No. 1484 of 2005 were parties to the proceedings before the Forest Tribunal and also in the MFA filed before this Court. Petitioners 4 to 10 are stated as subsequent transferees of the property who claim through the former. The parties before this Court in the MFA had originally filed O.As. 445 and 446 of 1976 before the Forest Tribunal, Kozhikode seeking a declaration that the land in question was not a Private Forest. The said applications were partly allowed and in respect of the disputed extent, the applicants approached this Court by filing MFA 16 and 17 of 1980, whereby the impugned orders were set aside and the matters were remanded as per the judgment dated 7-1-1986, for fresh consideration as specified. Thereafter, the cases were re-numbered as O.As. 9 and 10 of 1990 before the Tribunal.

14. In spite of adducing further evidence by the claimants, the same however happened to be ignored and the Tribunal declined to grant the relief, which was challenged again by the applicants by filing MFA 809 of 1990. This appeal was disposed of on 2-9-1994, directing the Tribunal to re-consider the matter in the light of the additional evidence and other aspects specifically referred to. It was pursuant to the said verdict, that the matter was re-considered by the Tribunal, who passed Annexure A-1 order dated 30-7-1996 in the following terms:

Hence in the light of what is stated above, the applicants are granted a declaration that 200 acres of plantation (120 acres of cardamom plantation and 80 acres of coffee plantation) are not vested Forests. The applicants are granted exemption of 4.80 acres of land (exempted towards ancillary purposes etc.) and that extent shall be demarcated from the area adjacent to the cardamom estate of the applicants.

Being aggrieved of the said declaration given by the Forest Tribunal, the State and the Custodian approached this Court by filing MFA 120 of 1998. After considering the merits, interference was declined and the appeal was dismissed as per Annexure A-2 judgment dated 9-4-2003 in the following terms:

When there is such strong evidence, in the absence of better evidence, the Tribunal could not have found that the land in question was not a plantation. Necessarily that much land cannot be private forest in terms of section 2(f)(B) and consequently the respondent was entitled for a declaration in terms of section 8(1)(A) of 1971 Act. Necessarily the Forest Tribunal could not have come to a different finding, as contended by the appellant/State.

The appeal therefore fails and it is dismissed.

Though the State took up the matter by filing SLP before the Apex Court, the same did not turn to be fruitful and it was dismissed as per Annexure A-3 order dated 12-7-2004. In view of the turn of events as above, the applicants approached this Court by filing COC (C) No. 1484 of 2005 alleging non-compliance of the direction contained in Annexure A-2 judgment dated 9-4-2003 in MFA 120 of 1998, stating that Annexures A-4 and A-5 representations preferred in this regard did not yield any positive result. The further sequence of events has been narrated already.

15. In order to appreciate the rival contentions and also to decide whether further steps are to be taken to frame the charge followed by trial, it is necessary to examine, what was the actual direction given by this Court in Annexure A-2 judgment dated 9-4-2003, with regard to which non-compliance is alleged. The operative portion of the said judgment (already extracted) only holds that the appeal preferred by the State against Annexure A-1 order passed by the Forest Tribunal was devoid of any merit and hence it was dismissed. No positive direction has been given by this Court while passing the said judgment to restore the possession of the property covered by Annexure A-1 order passed by the Tribunal or otherwise. The learned Sr. Counsel appearing for the petitioners, on being confronted with this basic/crucial factual aspect, fairly conceded that there was no such positive direction, but there was a duty cast upon the Custodian u/s 8(3) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 to restore the possession as the proceedings had become final. It is also stated that Annexure A-1 order passed by the Tribunal has got merged with Annexure A-2 verdict passed by this Court and hence it is liable to be acted upon.

16. Coming to Annexure A-1 order passed by the Tribunal, it has to be borne in mind that the O.As. were filed by the applicants for a declaration that the property involved was not vested forest. Accordingly, the relief to the said extent was ordered by the Forest Tribunal, granting the declaration as sought for, as contained in the concluding paragraph of Annexure A-1 order which has also been reproduced hereinbefore. True, the State lost the battle when the SLP preferred against Annexure A-2 judgment of this Court happened to be dismissed as per Annexure A-3 order and the matter has become final. On dismissal of the appeal preferred by the State before this Court and the SLP before the Supreme Court, the net result is that, Annexure A-1 order passed by the Forest Tribunal stands as it is, which only grants a declaration as to the right of the beneficiaries to have the property concerned therein to be restored. If the request made by the beneficiaries vide Annexures A-4 and A-5 representations was not acted upon by the concerned authorities, it was always open for them to have approached this Court seeking for issuance of a writ of mandamus for granting restoration in view of finalisation of the proceedings, which course has not been admittedly pursued and no such direction has been obtained from this Court. In the absence of any such positive direction, this Court finds it difficult to accept the proposition

mooted on behalf of the petitioners that the matter is liable to be dealt with invoking the provisions of the Contempt of Courts Act. To put it more clear, in view of conspicuous absence of any such direction either in the Annexure A-1 order passed by the Forest Tribunal, in Annexure A-2 judgment passed by this Court in MFA 120 of 1998 or in Annexure A-3 order passed by the Apex Court while dismissing the SLP, it cannot be said that the respondent/s have violated the judgment with regard to restoration of the property having an extent of 40 hectares (approximately 100 acres). As such, this Court holds that COC (C) No. 1484 of 2005 itself is not maintainable, for the obvious reason that this Court is not an executing Court of Annexure A-1 order passed by the Forest Tribunal and the scope of jurisdiction under the Contempt of Courts Act stands well-defined as per the judgment passed by the Apex Court in Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, .

17. Now, coming to the violation of "Undertaking", it is to be noted that when no Contempt proceedings are maintainable in respect of the judgment dated 9-4-2003 in MFA. 120 of 1998, it cannot be said that any such proceedings will still lie in respect of violation of the "Undertaking" for the obvious reason that there was no need, necessity or occasion for the respondent/s/contemnors to have given any such Undertaking. No doubt, violation of Undertaking given before this Court is as bad as violation of any order or direction and it clearly comes within "Civil Contempt" as defined u/s 2(b) of the Contempt of Courts Act, 1971. But before proceeding further, as to whether such violation of the Undertaking would amount to an offence under the Contempt of Courts Act, it has to be ascertained whether, but for giving such Undertaking, the position would have been something else, resulting in any adverse order or direction by the Court.

18. The Undertaking given by the respondent/s in the contempt matter as recorded by this Court on 3-4-2006 is in the following terms:

Counsel for the respondent, on instructions, states that the process of handing over possession of the property in question is already on and actual physical possession should be handed over within four months from today. This statement is recorded as the Undertaking given by the respondent. With the direction, based upon the Undertaking, that the possession would definitely be handed over within four months from today, this contempt petition is closed.

The above Undertaking is with reference to the contents of paragraph "6" of the affidavit dated 24-3-2006 filed by the respondent/s in the Contempt matter which reads as follows:

6. In the above circumstances, it is most humbly prayed that this Hon"ble Court may be pleased to grant me four months time to complete the restoration proposal in respect of the land liable to be restored to the applicants in the above contempt of court case. It is humbly prayed that all further proceedings may be dropped and the above contempt of court case may be dismissed.

From the above, it is clear that the period of "four months" sought for by the respondent/s was to complete the "restoration proposal" in respect of the land liable to be restored to the applicants, which even by the farthest stretch of imagination can never be regarded or understood as an Undertaking to restore 100 acres (40 hectares) of the property in question.

19. The specific case of the respondent/s is that, out of 100 acres (40 hectares) of land declared as not private forest as per Annexure A-1 order passed by the Forest Tribunal, a further extent of "35 hectares" came to be vested with the Government pursuant to the Notification issued u/s 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. Originally, the said extent was wrongly mentioned as "25 hectares", which necessitated issuance of an Erratum Notification dated 15-9-2006, wherein the actual extent is clearly mentioned as 35 9770 hectares. The said Erratum Notification has been published in the Kerala Gazette dated 26-9-2006, a true copy of which has been produced as Annexure A-1 along with the affidavit dated 9-1-2007 preferred by the concerned respondent/s. It has been specifically pleaded in paragraph "6" of the said affidavit that the actual extent as above could not be brought to the notice of this Court earlier, when it was mentioned as "25 hectares", in place of "35 9770 hectares" and the factum of notification already issued in the Gazette also could not be brought to the notice of this Court, which omission is stated as regretted, having resulted because of the transfer of the concerned respondent who took charge as Managing Director, Oushadi--a State Government Undertaking. The respondent has also tendered "unconditional apology" with regard to the said mistake, seeking to drop all further proceedings in the matter. There is no dispute as to the factual position, in respect of Annexure A-1 notification dated 15-9-2006 published in the Kerala Gazette showing the actual extent as 35 9770 hectares.

20. Had the position as above, been brought to the notice of this Court, what would have been the fate of the proceedings when the order dated 7-12-2006 was passed ordering personal presence of the respondent/s, is the next question. On 7-12-2006, after considering the materials and the submission as to the vesting of the land with the Government as per the Notification issued under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, this Court observed that, even if such an extent of "25 hectares" (which should have been 35 9770 hectares) was excluded, a balance of about "40 acres" was still available to be restored, which made the Court to pass the order observing that there was prima facie contempt, ordering personal presence, to proceed with the matter. In other words, if Annexure A-1 Gazette Notification dated 15-9-2006 (published on 26-9-2006) had been brought to the notice of this Court, in view of compliance reported as to the steps for restoration of possession of 4 7603 hectares covered by Annexure R-1 (f) (which however was admittedly, refused to be accepted as endorsed by the beneficiaries on the Mahazar), this Court would not have entered a finding that there was prima facie an element of contempt. The mistake committed by the respondent/s in failing to

bring the actual fact to the notice of this Court cannot bring any advantage to the petitioners/beneficiaries, that too, in a contempt matter, where the issue is actually between the Court and the contemnor. Since the mistake is regretted and the relevant materials have been produced including Annexure A-1 Gazette Notification dated 15-9-2006 explaining the position, offering unconditional apology in respect of the omission to point out the actual extent covered by the EFL Notification and as to the Gazette Notification already issued, this Court finds that the order dated 7-12-2006 and the further proceedings including as per the order dated 10-1-2007 to frame the charge do not require to be proceeded with any further.

21. The learned Sr. Counsel for the petitioners submits that this Court has already found that there was prima facie contempt and has decided to frame the charge, as per the order dated 10-1-2007 and as since that stage is over, it cannot be re-examined by this Court now and hence has necessarily to proceed with further steps to frame the charge. The said submission does not appear to be attractive in any manner. As mentioned herein before, the earlier proceedings were initiated and pursued by this Court, without actually examining the scope of the Judgment dated 9-4-2003 in MFA 120 of 1998 and as to the actual extent of the land covered by the Notification under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 issued as per Annexure A-1 dated 15-9-2006. It was also without considering the necessity to have given any "Undertaking" by the respondent/s on 3-4-2006, when the contempt matter was closed earlier, recording the said Undertaking. If the proceeding by way of contempt are not capable of being taken to a logical conclusion, there is no point in proceeding with the matter any further, merely wasting the precious time of this Court. This Court has already held that the petitioners have failed to establish violation of any direction or "legally reckonable Undertaking" to proceed with any act of contempt involving wilful disobedience. As such, the alleged violation of the "Undertaking" is of no consequence; more so when the Undertaking given before this Court on 3-4-2006 was not to restore 40 hectares of land covered by Annexure A-1 order, but to finalise the restoration proposal, as specifically pleaded in paragraph "6" of the affidavit dated 24-3-2006 filed before this Court. "Suo Motu" Contempt [Contempt of Court Case (Crl.) 2/2011] in respect of violation of the said "Undertaking" is also not maintainable, on this score alone.

22. Incidentally it has to be noted that the very same Bench who passed the orders dated 7-12-2006 and 10-1-2007 finding existence of prima facie contempt and the necessity to frame charge, had occasion to consider the position in detail and passed the final verdict (produced as Annexure R-1(c) along with the affidavit dated 17-10-2006 of the respondent) holding that non-compliance with the earlier direction given by this Court by allowing O.P. 2159 of 1998, 2187 of 1998 and 2225 of 1998 ordering restoration of land, could not be proceeded further by way of contempt, in view of subsequent vesting of land on the Government, pursuant to the notification issued under the "EFL Act". In the

instant case, there is no positive direction for restoration of the property as well. As it stands so, if the proper facts were brought to the notice of the learned Judges, there was absolutely no chance for passing the adverse orders on 7-12-2006 and 10-1-2007.

23. By the way, the "Suo Motu" contempt case was initiated as per the order dated 30-3-2011 in respect of the breach of "Undertaking" dated 34-2006 (apart from non-implementation of the judgment in MFA 120 of 1998 forming the subject-matter of consideration in COC (C) (No. 1484 of 2005). The basic issue to be considered is, whether the "Suo Motu" contempt registered as COC (Crl.) 2/2011 is maintainable as such and whether the "breach of the Undertaking" given before this Court could be regarded as "Criminal Contempt". Even if it amounts to Criminal Contempt, if such initiation of the proceedings in March. 2011 is justified, in respect of the breach of the Undertaking given on 3-4-2006, is another point to be answered, with reference to the bar of limitation placed u/s 20 of the Contempt of Courts Act.

24. Section 2(a) of the Contempt of Courts Act, 1971 makes it clear that, Contempt of Court means "Civil contempt" or "Criminal contempt". The terms "Civil contempt" and "Criminal contempt" are separately defined under clauses (b) and (c) respectively of Section 2, which are extracted below:

2. Definitions.-- In this Act, unless the context otherwise requires

(a) "Contempt of Court" means civil contempt or criminal contempt;

(b) "Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an Undertaking given to a court;

(c) "Criminal contempt" means the publication (whether by words spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which--

(i) scandalises or tends to scandalise or lowers or tends to lower the authority of any court; or tend

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct; the administration of justice in any other manner.

From the definition of the term "Civil contempt" itself, it is clear that the same includes wilful breach of an Undertaking given to a Court as well. As such, if at all there was any violation of the undertaking given by the respondent/s before this Court on 3-4-2006, it would only constitute a "Civil contempt" and not a "Criminal contempt". Further, there is no direction in the order dated 30-3-2011 passed by this Court for registering Suo Motu contempt in view of violation of the Undertaking given on 3-4-2006, that it shall be by way of "Criminal contempt".

As it stands so, it is nothing but a mistake on the part of the Registry, in having registered the "Suo Motu" contempt case as "COC (Crl.) 2/2011", which is not correct or maintainable.

25. Section 20 of the Contempt of Courts Act clearly stipulates, that no Court shall initiate any proceedings of 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. Obviously, initiation of the "Suo motu" contempt as per the order dated 30-3-2011, is in respect of violation of the "Undertaking" given on 3-4-2006 (to the effect that the judgment in MFA 120 of 1998 dated 9-4-2003 would be implemented within four months). The said period expired way back in the year 2006 itself, giving rise to the cause of action, if any. Obviously, the "Suo motu" contempt has been registered only in March, 2011, i.e., after nearly 4 1/2 years. A Full Bench of this Court had earlier held as per the decision reported in *Mayilswamy v. State of Kerala*(11) that the period of one year u/s 20 of the Contempt of Courts Act cannot be made applicable to a case of contempt of High Court. But subsequently, another Full Bench of this Court observed, as per the decision in *Damodaran v. Cherkalam Abdulla*(12) that the earlier decision rendered by the Full Bench in 1995 (2) KLT 178 (F.B.) (cited supra) was no more good law in view of the judgment of the Apex Court in *Om Prakash Jaiswal v. D. K. Mittal and another*(13). The above dicta, with regard to the application of Sec. 20 was affirmed by the "three-member" Bench decision of the Apex Court in *Pallav Sheth v. Custodian and others*(14), even though the "three member" Bench had differed with the view in *Om Prakash Jaiswals*" case (cited supra), with regard to the question of starting point of limitation and the meaning of the word "initiate" appearing in Sec.20 of the Act. Since there is no ambiguity in the provision as to the bar of limitation as explained by the Apex Court and by the Full Bench of this Court in 2007 (2) KLT 171 (F.B.) (cited supra), no "Suo motu" proceedings could have been initiated by this Court on 30-3-2011, in respect of the alleged violation of the "Undertaking" given on 3-4-2006. The case fails on this score as well. Coming to the factual position, what emerges from the discussion made above is that, after the declaration made by the Forest Tribunal in Annexure A-1 order and the dismissal of the appeal preferred by the State vide Annexure A-2 judgment in MFA 120 of 1998, a portion of the restorable land having an extent of "35-9770" hectares covered by Annexure A-1 Gazette Notification dated 15-9-2006 happened to be vested with the Government u/s 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. Correctness and sustainability of the said notification is pending consideration before the Apex Court. The remaining extent of land (of 4 7603 hectares) has already been ordered to be restored as per Annexure R-1(f) order dated 15-9-2006, though the said extent was refused to be accepted by the petitioners (beneficiaries) who disputed the actual extent of land to be restored endorsing such refusal on the Mahazar prepared in this regard. This being the position, there is no violation of any Judgment or Undertaking; much less anything "wilful" and contumacious, to be proceeded

against the respondent/s. This Court finds that both the above proceedings are ill-conceived and are dismissed accordingly.