

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CONTEMPT PETITION NO.204 OF 2011**  
**IN**  
**WRIT PETITION NO.10341 of 2004**

Thaksen Waman Davale & ors .. Petitioners  
Versus  
Subhas D. Sonawane & ors .. Respondents

...

Ms. Gauri Godse for the petitioners.  
Mr. B.V. Samant, AGP for the State.

**CORAM: S.C. DHARMADHIKARI &  
SMT. BHARATI H.DANGRE, JJ.**

**DATED : 23<sup>rd</sup> FEBRUARY 2018**

**ORAL JUDGMENT: (Per S.C. Dharmadhikari, J.)**

1           By this petition which alleges civil contempt, the petitioners pray that this Court should after holding that the respondent nos.1 to 3 are guilty of civil contempt take further action against them in exercise of the powers conferred on this Court by Article 215 of the Constitution of India and the Contempt of Courts Act, 1971.

2           The allegation is that the said respondents have willfully disobeyed the order, writ, direction of this Court dated 24<sup>th</sup> March 2005 in Writ Petition No.10341 of 2004.

3           For appreciating the rival contentions and particularly that of the petitioners, we must refer to some background facts.

4           The order passed on 24<sup>th</sup> March 2005, copy of which is at page 22 of the petition, is the order of which contempt is alleged. That order reads as under :-

*“1     We have heard the learned counsel for the parties.*

*2     In the facts and circumstances of this case, we deem it appropriate to direct the Collector, Raigad to treat this Writ Petition as a comprehensive representation of the petitioners, and decide the same, in accordance with law, within four weeks from the date of receipt of a copy of this order, after affording hearing to the petitioners. To avoid any further delay in the matter, we direct the petitioners and other affected parties, viz. respondent nos.1 to 11, 14 and 15, to appear before the Collector, Raigad, on 4.4.2005 at 11 a.m. The Collector shall decide the matter, except the land which is covered by Civil Suit No.57 of 2002 pending before the Civil Judge, Junior Division,*

*Mangaon. We direct the parties to maintain status quo as on today till the order is passed by the Collector, Raigad.*

*3 No further directions are necessary. This Writ Petition is, accordingly disposed of.”*

5 That order was passed in the Writ Petition which had a chequered history. The earlier petition was filed in this Court way back in 1998. The petitioners in Writ Petition No.10341 of 2004 impleaded the petitioners before us as respondents to that petition. There were, in all, 15 private parties as respondents to the petition. The respondent no.16 was the Tahsildar, Mangaon, District Raigad, respondent no.17 was the Sub-Divisional officer, District Raigad, respondent no.18 was the Collector District Raigad and respondent no.19 was the State.

6 Pertinently, only the original private respondents to above writ petition are alleging that there is civil contempt.

7 The petitioners in that petition claim that they are residing in village Potner, Gangewadi, Post Talashet, Taluka

Mangaon, District Raigad. The petition was filed in public interest and in representative capacity on behalf of all the villagers of the subject village.

8           The subject matter of that petition was land admeasuring 51 Ares out of Gat No.369, Hissa No.69, Village Potner, Gangewadi, Talashet, Taluka Mangaon, District Raigad. In paragraph no.3 of this petition, it is stated that the land is open and mainly used by the villagers for performing some functions on the occasion of Holi, for storing fish and as a playground. The petitioners in that petition relied upon a report prepared by the Talathi Circle Inspector in 1927. Thereafter, they make a reference to the area of the land and allege that the respondent nos.1 to 15 to that petition and some others, which included the present petitioners, made construction on this land. These structures have been constructed without obtaining any permission from the competent authorities. Though these structures were existing at site and complaints were made to the statutory Authorities, no steps have been taken for removal of these unauthorized

and illegal structures. The specific allegation is that an open land belonging to the village and used by the villagers is in peril of being taken away permanently. Upon such allegations and after hearing all parties, this Court made the above order.

9 Pertinently, in that petition, the petitioners relied upon some documents and some of which emanate even from the respondents to that petition, namely, the present petitioners. There is a reference made to earlier petition and an affidavit therein i.e. Writ Petition No.4886 of 1998. That petition also prayed for an identical direction to the statutory Authorities to remove this encroachment. In that petition, an affidavit was filed on 14<sup>th</sup> January 2001 mentioning that the area or the land earlier had a school, temple, but the land is used for different purposes by the villagers i.e. on the occasion of Holi, storing fodder and maach and a playground. In paragraph no.10 of this affidavit, there is a reference made to an appointment of Court Commissioner who submitted his report and referred to the encroachments on land. On such a petition, an order was passed on 28<sup>th</sup> February 2001 directing

the Sub-Divisional Magistrate to take such action as may be deemed proper in accordance with law. Despite this order and direction, the inaction continued and that is why the complaint was made to several authorities, including the Lok Ayukta. It is in these circumstances that this Court on the PIL and relying upon these materials made the above reproduced order.

10           The petitioners in the present petition allege that after this order was passed, the authorities i.e. the statutory Authorities should have taken note of a representation made by the petitioners on 24<sup>th</sup> December 2005. In that, it was stated that the land bearing Old Survey No.94 Hissa No.69 originally belonged to some Daji Malu, Sadhu Ramji Davale and Dhondu Baji Davale. A reference was made to the 7/12 extracts wherein these names appeared and it is stated that with the permission from the Gram Panchayat and way back on or about 30 years, the construction of the houses was made and these structures were allotted Gram Panchayat Survey numbers. Thus, this is a land belonging to private parties and a Civil Suit No.57 of 2002 is pending in the Civil Court. It was stated that

in the said land bearing Gat No.369, there is a temple of Hanuman and there is an open space in front thereof. That is used by the villagers and that is how Mutation Entry No. 230 is made. Apart from that area, in about 8 to 10 Ares of land, there is construction of old houses belonging to the petitioners. Even the non-agricultural assessment was levied and penalty imposed for such non-agricultural user, but the authorities did not take any action. Thus, the family of the petitioners and others were residing in these structures. Upon such a representation, the petitioners expected that the authorities would hear them and others affected, and pass the requisite orders. Another application was also filed on 3<sup>rd</sup> April 2006 praying for non-agricultural use of the land beneath the structures. However, the first respondent to this Contempt Petition without conducting any inquiry, only recorded the submissions of the parties and held that there were directions issued by this Court which are now adhered to. He also made reference to an application of 4<sup>th</sup> April 2006 for regularization made by the petitioners, but there was no order of regularization. Thus, in the final order which was eventually

passed by the third respondent on 20<sup>th</sup> April 2007 and not by the first respondent, the direction was issued for demolition or removal of these structures. The petitioner and others were aggrieved and dissatisfied with this order and preferred the Appeal to the second respondent to this petition on 14<sup>th</sup> May 2007. The second respondent did not decide the Appeal, but avoided deciding the same. A notice was served on the petitioners dated 27<sup>th</sup> January 2009 and which notice was issued by the third respondent calling upon them to remove the unauthorized construction immediately.

11           However, no action was taken pursuant to this notice and one Malu Mahadu Jadhav and others filed Writ Petition No.8689 of 2009 in this Court seeking directions to the respondent nos.1 to 3 to the present petition to forthwith implement their orders and particularly the order dated 20<sup>th</sup> April 2007 and demolish the alleged unauthorized constructions.

12           However, the statutory Authorities were parties to all the petitions. They suppressed from this Court material and relevant facts about the petitioners' use, occupation and possession of the land, construction of the structures thereon for past three decades and more. An impression was given to this Court and deliberately that there are final orders which are made for demolition of the structures, but which were not acted upon or implemented. On account of such impression given to this Court that the order, copy of which is Annexure-J to this petition, came to be passed. Since heavy reliance is also placed on this order by both the sides, we reproduce it as under :-

*“The learned Additional Government Pleader appearing for respondent nos.15 to 17 states that the authorities could not implement their order earlier because the police force was not available on time. He, however, states after taking instructions from Nayab Tahsildar, who is present in Court today, that now all necessary steps will be taken and the orders which have been made and copies of which are on record will be implemented as expeditiously as possible and in any case within a period of four weeks from today. Statement is accepted. In view of this statement, no orders are necessary. Petition is disposed of.*

*Parties to act on the copy of this order duly authenticated by the Sheristedar/Private Secretary of this Court.*

*Certified copy expedited.”*

13           The allegations in the contempt petition then are that the respondent nos.1 to 3 high handedly and illegally demolished the structures belonging to the petitioners on 31<sup>st</sup> March 2010. It is this demolition which contravenes the order passed on 24<sup>th</sup> March 2005, copy of which is at page no.22 of the petition. The contempt petition proceeds on the footing that none of the orders of this Court any time directed demolition of the structures, but the third respondent proceeded to carry out such a demolition in the garb of implementing the orders of this Court. In the process, the third respondent and also the other respondents in this petition completely brushed aside the request of the petitioners to regularize the use and occupation of the structures, so also the construction thereon. This inquiry was deliberately kept in abeyance and the demolition was carried out. It is in these circumstances it is alleged that these acts amount to a civil contempt within the meaning of Section 2 Clause (b) of Contempt of Courts Act, 1971.

14           The petitioners also rely upon certain further letters which have been addressed during the process of seeking a regularization of the structures, including the reference to a representation dated 30<sup>th</sup> January 2004.

15           These and other averments in the Contempt Petition are derived from paragraph nos.13 and 21 of the petition.

16           In reply to this Contempt Petition, several affidavits have been filed. The first affidavit filed by one Suresh Sakharam Kadam, Taluka Mangaon says that the present petitioners have moved an action in contempt complaining of disobedience of an order dated 24<sup>th</sup> March 2005, but this Contempt Petition has been filed after considerable delay and on 22<sup>nd</sup> February 2011. Thus, more than six years have elapsed from the date of this order, and therefore, the Contempt Petition is barred by limitation. Then, it is stated that upon receipt of an order dated 11<sup>th</sup> January 2010 passed in Writ Petition No.8689 of 2009 by this Court, the Talathi issued notice dated 1<sup>st</sup> February 2010 to all persons who have carried out the construction to remove the same, otherwise the action

in accordance with law will be taken. Annexure-1 is a copy of this notice. Thereafter, on 6<sup>th</sup> February 2010, the Tahsildar Mangaon requested the Police Inspector, Mangaon to grant necessary police protection to remove these structures. He refused to provide the protection on the ground that the construction is of 40 to 50 years and there will be a law and order problem. Thereafter, the District Head Quarters were approached and the police staff was provided. After the necessary compliances were made, including obtaining assistance from the Chief Officer, Municipal Council, Medical Superintendent Sub-Divisional Hospital Mangaon, the structures were removed. Prior to that, the electricity supply was disconnected. The structures were demolished/removed with the help of local police and a panchnama was drawn. Thus, this Court's order was complied with.

17           It is stated that the authorities were bound by the order passed by this Court on 11<sup>th</sup> January 2010 which we have reproduced above – Annexure J to the petition. There is thus no case of civil contempt.

18           From the record, it appears that another affidavit came to be filed in reply to this petition presumably to deal with an allegation that the earlier affidavit does not answer the charge or allegation. That allegation is that the order dated 24<sup>th</sup> March 2005 continues to bind the authorities. That is why the second affidavit came to be filed stating that the order passed on 24<sup>th</sup> March 2005 has not been continued beyond a certain stage. That was to continue only till such time as the authority passes the order. It is stated that on 30<sup>th</sup> April 2005, the Tahsildar Mangaon was directed to take necessary action. That was because prior thereto, in terms of the directions of this Court, and in due compliance therewith, an order was passed by the Collector. Thus, the direction to maintain status quo did not continue beyond this order of the Collector. It is fairly stated that the petitioners made application dated 3<sup>rd</sup> April 2006 and which application was duly forwarded to the Tahsildar Mangaon for further action. It is denied that the inquiry was not conducted in accordance with law. In fact, after hearing both sides, the Tahsildar Mangaon made a report

dated 20<sup>th</sup> April 2005 relying on which the Collector made an order on 30<sup>th</sup> April 2005. It is in these circumstances that this affidavit says that any surviving grievance of the petitioners should have then be made subject matter of further legal proceedings by challenging this order of the Collector and the report of the Tahsildar Mangaon. Once no such steps were taken beyond making a representation in April 2006, seeking regularization of the occupation, then, there was no impediment in demolishing these structures or otherwise removing them. There is enough power in the law to remove such structures or unauthorized construction from the subject land. Since that was not done, the second petition by Malu Mahadu was filed. There, the authorities bonafide gave an undertaking to this Court that they would remove this construction from the site. Once that statement was made, it was an undertaking given to this Court and all that has transpired is that the authorities duly complied with this undertaking and the order of this Court based thereon. In the circumstances, there is no case of civil contempt. Further, the request for regularization made by the petitioners has also been

considered by the Tahsildar Mangaon and he passed an order on 20<sup>th</sup> April 2007. The petitioners being aggrieved and dissatisfied with this order filed Appeal No.2 of 2010 before the Sub-Divisional Officer, Division Mangaon. However, there was no stay obtained or granted by the Sub-Divisional Officer particularly against removal or demolition of the structures at site. Pertinently, the order of this Court passed in the earlier petition No.10341 of 2004 dated 24<sup>th</sup> March 2005, was not continued. Thus, there was no status quo or maintenance of such status quo as was directed by this Court on the earlier occasion. Thereafter, this Appeal No.2 of 2010 was also rejected on 30<sup>th</sup> March 2010.

19           It is in these circumstances that the action of demolition of the structures is justified. It is prayed that there is no substance in the present Contempt Petition and it deserves to be dismissed. This affidavit is filed on 27<sup>th</sup> March 2012.

20           There is another affidavit which has been placed on record of this Contempt Petition and that is by the Tahsildar

(Revenue) at the Office of the Collector, District Raigad. He meets the contention and particularly that no hearing was given to the aggrieved parties like the petitioners. That is said to be given by referring to the record and particularly in paragraph nos.4 and 5 of this affidavit. Thus, it is stated that there is no substance in the Contempt Petition.

21           It is on the above materials that we have heard Ms.Godse appearing for the petitioners. She submitted that there was no final order passed in pursuance of the order dated 24<sup>th</sup> March 2005. The matter was deliberately kept pending and eventually the Tahsildar proceeded to pass a demolition order. That demolition order could not have been acted upon as the petitioners had filed an Appeal. That Appeal was admittedly pending. During the pendency of that Appeal, neither any undertaking could have been given to this Court, nor the legal proceedings of the petitioners frustrated by acting on the order passed by this Court, copy of which is at pages 81 and 82 of the paper book. Thus, taking advantage of the institution of the second petition and the order dated 11<sup>th</sup>

January 2010, but by misrepresenting the facts, the demolition was carried out. It is in these circumstances that she would submit that once statutory Authorities act in this manner, then, their deliberate act cannot be condoned or overlooked lightly. It is pertinent to note, according to her, that the petitioners and other respondents who were respondents and parties to the earlier petition no.10341 of 2004 were not made parties in a petition in which the subsequent order, copy of which is at Annexure-J page 81 and 82 of the paper book, was passed. Therefore, the authority ought to have acted cautiously and carefully. They should not have proceeded hastily to demolish the structures, but by fairly bringing to this Court's notice the entire record and filing of the earlier petitions should have obtained a clarification from this Court. That having not been done, the demolition is high-handed and contrary to the order of this Court. Respondent nos.1 to 3 therefore, have acted contumaciously, all the more when the owner of the land, who is a private party, had given his No Objection to the petitioners using and occupying the land and never opposed or questioned the construction at site. Further, the Tahsildar

Mangaon himself on 13<sup>th</sup> October 2006 had recommended the regularization of the construction carried out at site. The order of the Collector dated 30<sup>th</sup> April 2005 passed in pursuance of the order of this Court dated 24<sup>th</sup> March 2005 also does not direct immediate demolition of the construction, but due consideration of the request made by the petitioners and others, so also, verification and scrutiny of all documents and a prior hearing to the affected parties. This would show as to how the order of this Court and particularly direction of maintaining status quo was understood throughout. Now, as an after-thought, the explanation of respondent nos.1 to 3 should not be accepted by us.

22           On a specific query raised by this Court on the earlier occasion, Ms.Godse would submit that this is not a case where more than one interpretation is possible of the order of this Court. The order is clear, plain and unambiguous. Such an order ought to be obeyed as it is and as it stands and there is no scope for reading into it something which is clearly not there. In these circumstances, she would rely upon the

judgment of the Hon'ble Supreme Court reported in ***Maninderjit Singh Bitta Vs. Union of India & Ors***<sup>1</sup>.

23           She would submit that statutory Authorities ought not be encouraged to flout the orders and direction of this Court so brazenly. In the circumstances, the judgment of the Hon'ble Supreme Court in the case of ***Anil Ratan Sarkar & Ors Vs. Hirak Ghosh & ors***<sup>2</sup> is distinguishable.

24           On the other hand, Mr.Samant, learned AGP appearing for respondent nos.1 to 3 relies upon the affidavits filed in reply and submits that pertinently there is no rejoinder thereto. Every single factual aspect from the records has been brought to this Court's notice. If the Officers act bonafide and faced with two orders of this Court proceed in terms of the subsequent order by holding that the earlier order will not hold the field any longer, then, this is not a case of civil contempt. The ingredients of civil contempt are absent and the Contempt Petition is but a pressure tactic and should be dismissed.

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1 (2012) 1 SCC 273

2 (2002) 4 SCC 21

25           With the assistance of both the counsel, we have perused the entire petition, the Annexures thereto and the affidavits on record. The Contempt of Courts Act, 1971 is an Act to define and limit the powers of certain courts in punishing Contempt of Court and to regulate the procedure in relation thereto. The term “Civil Contempt” is defined in Section 2(b) to mean “willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court”. Pertinently, in the present case, the first part of this definition comes into play. There, “willful disobedience” to any judgment, decree etc. is a pre-requisite. Unless that is satisfied, a case of civil contempt is not made out. The Contempt Act itself is so clear inasmuch as contempts which are not of a nature substantially interfering or tending substantially to interfere with the due course of justice are said to be such which though committed, a sentence need not be imposed. However, in the facts of the present case, we have to first determine whether a civil contempt is at all committed.

26           The Hon'ble Supreme Court on more occasions than one, has clarified that when an allegation is made of willful disobedience of an order of a Court, then, the Court has to be very careful for the order must not be ambiguous or reasonably capable of more than one interpretation. The Hon'ble Supreme Court in the earliest decision in the case of *State of Bihar Vs. Rani Sonabati Kumari*<sup>3</sup> held that an order of injunction passed in that case cannot be held to have been willfully disobeyed because the two conditions were not satisfied. The two conditions are that the order should be unambiguous and not reasonably capable of more than one interpretation. Secondly, the party proceeded against, in fact, did not intend to disobey the order, but conducted himself in accordance with the interpretation of the order.

27           The question whether a party acts in a peculiar manner or has conducted himself in accordance with such a construction, is primarily one of fact. This test was further

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3 AIR 1961 SC 221

relied upon in a decision in *Mritunjoy Das & Anr Vs. Sayed Hasibur Rahaman & ors*<sup>4</sup> . If an order is susceptible of two interpretation, one in favour of contemnor and another in favour of complainant, then, the contemnor is entitled to benefit of doubt. That is because contempt jurisdiction itself is to be exercised sparingly and with due care and caution. The burden of proof is on one who alleges contempt and the standard of proof required is that in a criminal proceeding, namely, proof beyond reasonable doubt.

28           We have applied strictly not these tests but what we find from the record of this petition that not once but twice this Court was approached in larger public interest by the villagers.

29           The villagers alleged and with specific materials that the subject land belongs to the village and to the community as a whole. It is being used by the community for various purposes such as celebration of Holi festival, storage of

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4 AIR 2001 SC 1293

fish and playground. The villagers relied upon a record as old as 1927 to buttress their arguments not once, but twice in two Writ Petitions. They made the present petitioners and others as party respondents to the second Writ Petition No.10341 of 2004. Pertinently, it is 19 interested parties from that petition who allege civil contempt. The others do not feel that their structures were removed illegally or without due process of law. We must, therefore, be very cautious and extremely careful in accepting the allegations of a party like the petitioners before us. He alleges that there was a direction in the above mentioned petition to the parties to maintain status quo. However, this argument conveniently overlooks the whole order. The order must be read in its entirety. The order passed on 24<sup>th</sup> March 2005 directs the Collector, the highest revenue official of the district, to treat the petition of the villagers as a comprehensive representation and to decide that representation of the villagers within four weeks from the date of receipt of a copy of the order of this Court and after affording hearing to the petitioners. Thus, the villagers who were complaining of an unauthorized and illegal construction at site and that too a

village site or a village land should be heard, was the primary direction. To avoid any further delay, this Court directed the affected parties i.e. including the petitioners before us to appear before the Collector, Raigad on 4<sup>th</sup> April 2005 at 11.00 a.m and the Collector was to decide the case and till the Collector decides it, there was a direction to all the parties to maintain status quo at the site. It is an order primarily directed at the statutory Authorities that no further construction at site should come up. Equally, those who have already constructed structures on the land should not make any addition or alteration to the same nor should they further make any construction on the subject land. Thus, this Court was conscious of the fact that it is the villagers who have come not once, but on the second occasion complaining about the unauthorized construction. From the earlier petition which was filed in the year 1998 on which an order was passed in the year 2001 till the date of this order of 24<sup>th</sup> March 2005, none of the occupants or persons responsible for the construction, including the present petitioners, obtained any protection, against demolition nor obtained any order or direction of

regularization of their structures from any competent authorities. Thus, the allegation that their structures were illegal and unauthorized, stood established and proved. Such persons are resisting the PIL, mindful of the fact that some day or the other, the demolition squad would come and demolish the construction. They are also aware of the fact that even the Collector was directed to hear them. The affected persons are obliged to produce such record as would enable the Collector to hold that the construction is not unauthorized and illegal. None produces any record of this kind at all. They rely upon the fact that the Collector makes an order not directly of demolition, but authorizing the Tahsildar to take the necessary steps as set out in law and on verification of the papers. This is, however, an operative order. This order precedes the reasons which the Collector himself assigns in his order of 20<sup>th</sup> April 2005 which is an order passed pursuant to the directions of this Court. That order refers to the report of Tahsildar Mangaon in which it is clearly mentioned that the construction carried out by the petitioners is unauthorized and illegal and no permission has been ever taken by them before the same was

carried out. All that remained thereafter was a consequential order of the Tahsildar. That order was passed on 20<sup>th</sup> April 2007, but when he passed that order he has clearly referred to the record. He has also referred to the notice of hearing. After that notice of hearing was issued, the petitioner pointed out that there was an application made on 4<sup>th</sup> April 2006 to the Collector seeking regularization, but there is no order of regularization. How then the Tahsildar can be blamed if he waits for a year and more to direct demolition of the construction, has not been clarified to us at all. If an unauthorized and illegal construction has to be removed and that is equally a duty and obligation flowing from the law and particularly section 50 of the Maharashtra Land Revenue Code, 1966, then, we do not expect the authorities to remain a silent spectator. They are not supposed to wait indefinitely, enabling the wrong doer to derive benefit or advantage of his wrongful and illegal act. It is so clear in law to require reference to any judgment that none can take advantage of his or her own wrong. The petitioners ought to blame themselves for they failed to obtain any order of regularization and not only prior

or after the order and direction of this Court dated 24<sup>th</sup> March 2005, but for 2 years till the Tahsildar directs the demolition. The record of this case shows that as to even how thereafter the petitioners manage to resist the demolition for nothing was done till another group of villagers again approached this Court by filing Writ Petition No.8689 of 2009. The same complaint about inaction of the authorities and their avoidance of statutory duty was an allegation made in this Civil Writ Petition by the villagers. The petitioners may not be made parties to this petition, but we cannot fault this Court for it made an order on 11<sup>th</sup> January 2010 recording the statement of the statutory Authorities that the demolition could not be carried out earlier for want of police protection. Once that is made available, they will promptly carry out such demolition was the assurance and undertaking given to this Court. We do not think that such an assurance being given and to the highest Court in the State, that could have been disobeyed or the order based thereon then could have been allowed to remain without implementation. The authorities were obliged to act upon this undertaking and assurance given to this Court and the order

based thereon. They could have been held guilty of civil contempt had they intentionally and willfully disobeyed this order. The petitioners do not move this Court and seek either a variation, clarification or a review of this order. The petitioners rest content by approaching the statutory Authorities and placing before them conveniently one or other but solitary document so as to forestall a demolition. We find that the petitioners went as far as issuing a notice to the statutory Authorities through their Advocate and alleging that if such a demolition is carried out, that would be contrary to law. That notice is dated 5<sup>th</sup> May 2008. Thus, the petitioners knew the inevitable and obvious. After this notice at least, a civil suit or other legal proceedings should have been filed. That was not filed, but merely an application for regularization was made and even that was not pressed. We do not find any reason for accepting the case of civil contempt of such petitioners. It is evident that Shri Kishore Tembe, appeared as an Advocate for the present petitioners – original respondents in Writ Petition No.10341 of 2004. In that, the order was passed on 24<sup>th</sup> March 2005 of which contempt is complained of. Advocate Shri Tembe

issued another notice on 5<sup>th</sup> February 2010. In that notice, after setting out all the grievances of the petitioners, it was stated that these parties filed a civil suit being Regular Civil Suit No.81 of 2007 against the State of Maharashtra, the Collector and Tahsildar Mangaon challenging the order dated 20<sup>th</sup> April 2007 as illegal and for a permanent injunction restraining them from demolishing or damaging their construction. That suit is pending. Pertinently, if this notice is perused in its entirety, it is evident that the petitioners were aware of the order dated 11<sup>th</sup> January 2010 in the subsequent Writ Petition. However, no injunction or prohibitory direction was obtained in their pending civil suit. We do not see how despite stating that the petitioners are moving to obtain a stay from the civil court, but not obtaining it, can they now complain of a civil contempt. Absent any restraint or prohibition against demolition that was inevitable. The petitioners saw it coming particularly after the later order of this Court, copy of which is at pages 81 and 82 of the paperbook. It is therefore, evident that the authorities did not commit any act contrary to law much less of the nature amounting to civil contempt. We are all the more disinclined to

accept the version of the present petitioners when they acted in the above manner. We do not think that on 13<sup>th</sup> March 2010, the Sub-Divisional Officer was obliged to wait till the petitioners obtain any relief in their favour. He has rightly held that once the Tahsildar has passed the order of demolition, but that has not been acted upon, leaving the villagers to complain again and again, then the demolition should be carried out. It was indeed carried out on 13<sup>th</sup> March 2010. He, therefore, could not have entertained any application or request in writing from the petitioners in the teeth of the binding orders of this Court. He, therefore, rightly dismissed the petitioner's Appeal No.2 of 2010 and the request for regularization therein. The same Advocate Mr.Rajesh Joshi appeared before the Sub-Divisional Officer who had issued prior notices on behalf of the petitioners to the statutory Authorities. The earlier Advocate, who appeared on behalf of the petitioners herein in this Court, gave a notice on their behalf subsequently on 5<sup>th</sup> February 2010. It is fairly admitted that there was no order of the nature required by law in the Regular Civil Suit No.81 of 2007. For all these reasons, we do not think that the understanding of this

Court's orders by the statutory Authorities can be faulted. Their conduct cannot be termed as contumacious. They cannot be held to be guilty of civil contempt. The dictum of the Hon'ble Supreme Court cautioning public bodies and officials of their duty and particularly reminding them that they should not either sit over the court orders or refuse to implement them for untenable reasons and grounds which cannot be sustained in law, is applicable to this case. The principles laid down therein are salutary in nature. However, their application would depend upon the facts and circumstances of each case. Once we have already held that the understanding of the authorities of the order of a Court, which binds them, is a question primarily of fact, then, in the present case, we feel that we should not proceed in contempt jurisdiction any further.

30            This Contempt Petition is entirely misconceived. It is dismissed but without any order as to costs.

**(SMT. BHARATI H. DANGRE, J.)      (S.C. DHARMADHIKARI, J.)**