

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021

PRONOUNCED ON : 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CONTEMPT APPEAL NOS.7 OF 2019 AND 4, 5 & 10 OF 2020
AND

C.M.P.NO.26639 OF 2019 AND 5145, 5147 & 7552 OF 2020

Contempt Appeal No.7 of 2019

N.Sathyannarayanan
Sub-Collector, Ariyalur District ... Appellant

Vs.

1.Kalaiselvi
2.Velusamy
3.Vinothkumar
4.Dhanavel
5.Valarmathi
6.Saravanan
7.Lakshmi Devi

8.Dr.Atulya Misra, I.A.S.
Principal Secretary to Government
Revenue Department, Fort St.George,
Chennai-9

9.M.Vijayalakshmi, I.A.S.
District Collector
Ariyalur District

.. Respondents

Contempt Appeal preferred under Section 19 of the Contempt of Courts Act, 1971 to set aside the interim order dated 03.12.2019 passed in Contempt Petition No.634 of 2019.

Cont.P.No.634 of 2019
in WP.No.4779 of 2015:-

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 praying that this Court be pleased to punish the Respondents for wilful disobeying the orders in WP.No.4779 of 2015, dated 13.08.2018.

WP.No.4779 of 2015:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records of the 2nd respondent comprised in impugned proceeding dated 10.02.2015 bearing No.Na.Ka.A5/1849/2014 and quash the same as illegal, arbitrary, and unconstitutional for having passed the same without jurisdiction.

Contempt Appeal No.4 of 2020

Dr.Atulya Misra, I.A.S.
Principal Secretary to Government
Revenue Department, Fort St. George
Chennai-9

.. Appellant

Vs.

1.Kalaiselvi
2.Velusamy
3.Vinothkumar
4.Dhanavel
5.Valarmathi
6.Saravanan
7.Lakshmi Devi

8.N.Sathyanarayanan
Sub-Collector
Ariyalur District

9.M.Vijayalakshmi, I.A.S.
District Collector
Ariyalur District

10.Gagandeep Singh Bedi, I.A.S.
Agricultural Production Commissioner &
Principal Secretary to Government (FAC)
Secretariat, Chennai-9
(Impleaded as R10 vide order dated 28.1.2020)

.. Respondents

Contempt Appeal preferred under Section 19(1) of the Contempt of Courts Act, 1971 to set aside the interim order dated 31.01.2020 passed in Contempt Petition No.634 of 2019
Contempt Appeal No.5 of 2020

Gagandeep Singh Bedi, I.A.S.
Agricultural Production Commissioner &
Principal Secretary to Government (FAC)
Secretariat, Chennai-9

.. Appellant

Vs.

1.Kalaiselvi
2.Velusamy
3.Vinothkumar
4.Dhanavel
5.Valarmathi
6.Saravanan
7.Lakshmi Devi

8.N.Sathyanarayanan
Sub-Collector
Ariyalur District

9.M.Vijayalakshmi, I.A.S.
District Collector
Ariyalur District

10.Dr.Atulya Misra, I.A.S.
Principal Secretary to Government
Revenue Department
Fort St. George
Chennai-9

.. Respondents

Contempt Appeal preferred under Section 19(1) of the Contempt of Courts Act, 1971 to set aside the interim order dated 31.01.2020 passed in Contempt Petition No.634 of 2019
Contempt Appeal No.10 of 2020

Chettinad Cement Corporation Limited
Ariyalur 621 707
Rep.by its Company Secretary
S.Hariharan, Having its registered office at
Rani Seethai Hall Building
No.603, Anna Salai, Chennai-6

.. Appellant

Vs.

1.Kalaiselvi
2.Velusamy
3.Vinothkumar
4.Dhanavel
5.Valarmathi
6.Saravanan
7.Lakshmi Devi

8.Dr.Atulya Misra, I.A.S.
Principal Secretary to Government
Revenue Department
Fort St. George, Chennai-9

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9.N.Sathyanarayanan
Sub-Collector
Ariyalur District

10.M.Vijayalakshmi, I.A.S.
District Collector
Ariyalur District

.. Respondents

Contempt Appeal preferred under Clause 15 of Letter Patent read with Section 19 of the Contempt of Courts Act, 1971 to keep all further proceedings and hearings in Contempt Petition No.634 of 2019 in abeyance till the Government of Tamil Nadu decides on the representation dated 22.08.2019 made by the appellant pursuant to the liberty granted by the Hon'ble Supreme Court of India to the appellant in its order dated 25.02.2019 in SLP (Civil) Nos.5443 & 5444 of 2019

For Appellant in Cont. Appeal : Mr.P.H.Aravind Pandian,
Nos.7 of 2019 & 4, 5 of 2020 Addl.Advocate General
Assisted by Mr.A.N.Thambidurai
Special Government Pleader

For Appellant in Cont. Appeal : Mr.M.Suresh Kumar
No.10 of 2020

For Respondents 1 to 7 in all : Mr.S.Kamadevan
Cont.Appeals

C O M M O N J U D G M E N T

P.N.PRAKASH, J.

The facts that are necessary to decide these Contempt Appeals are as under :

a. Chettinad Cement Corporation Ltd. (for brevity "Chettinad Cement"), a business giant, gave a letter dated 05.05.2009 to the State Government, seeking permission to utilise Government poramboke lands in S.F.No.4/2011 and thereafter, it appears that they were in occupation of the said lands, even without obtaining any permission. This made the Sub Collector, Ariyalur to pass an order dated 10.02.2015, directing the Chettinad Cement to vacate the Government poramboke land in their possession and enjoyment, challenging which, Chettinad Cement filed W.P.No.4779 of 2015. During the pendency of the said Writ Petition, Chettinad Cement was in occupation of the lands, perhaps on account of a stay that was granted by this Court. W.P.No.4779 of 2015 came up for final disposal before a learned

Single Judge, who, by order dated 13.08.2018, not only upheld the order dated 10.02.2015 passed by the Sub Collector, Ariyalur, but, also issued the following positive directions :

"23.This being the view taken by this Court, there is no infirmity as such in respect of the impugned order passed by the 2nd respondent/The Sub-Collector, Ariyalur, in proceedings dated 10.02.2015 and accordingly, the writ petition is devoid of merits. However, taking note of the internal correspondences between the Government officials and the manner in which the Government lands including the water bodies are systematically allowed to be encroached by the corporates like the petitioner, this Court is inclined to pass the following orders:

(i) The writ petitioner, admittedly, an encroacher of the Government land, has not established even a semblance of right to grant the relief as such sought for in the present writ petition. Accordingly, the claim of the writ petitioner is rejected.

(ii) The respondents 2 and 3 are directed to evict all the encroachments of the "Government Poramboke lands", "Vari Poramboke lands", "Pond Poramboke lands" and all other public lands in that locality within a period of Two Weeks from the date of receipt of a copy of this order.

(iii) The Superintendent of Police, Ariyalur, is directed to provide necessary Police protection to the respondents 2 and 3 to evict the encroachers from the public lands in all respects.

(iv) The first respondent is directed to order for an enquiry or investigation to be conducted by an I.A.S. level officer in respect of the conduct of the officials of the District Administration and the officials of the Public Works Department in respect of their conduct, negligence, dereliction of duty, corrupt activities, illegalities and to submit a enquiry report within a period of two Months from the date of receipt of a copy of this order.

(v) On receipt of an Investigation/Enquiry report, the first respondent is directed to initiate all appropriate actions against all the

public servants and all other persons concerned under the penal provisions of law and under the Discipline and Appeal Rules.

24. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Post this matter "For Reporting Compliance" after two months. Registry is directed to communicate the copy of this order also to the Superintendent of Police, Ariyalur District."

b. Aggrieved by the said order, Chettinad Cement filed Writ Appeal No. 1960 of 2018 and also filed a fresh Writ Petition in W.P.No.27234 of 2018, for issuance of the Writ of Mandamus directing the Government to consider the proposal of exchange/permission as sought by them with respect to Government poramboke lands. The said Writ Appeal and the Writ Petition were heard by a Division Bench and by a detailed order dated 25.01.2019, the Writ Appeal and the Writ Petition were dismissed with the following observation :

"31. A perusal of the Standing Orders of the Board of Revenue, extracted supra, does not give any right to the petitioner, to justify the action, of laying a railway line, without any permission. There is no right to ask for exchange of properties. In fact, the Government cannot even entertain such an application, for exchange of poramboke lands and especially water bodies with patta lands. Learned Senior Counsel for the petitioner has not shown that the State Government is vested with any such power to exchange water porambokes with patta land belonging to private persons. There is no infirmity in the order of the learned Single Judge and there is no right in favour of the petitioner, to ask for exchange of poramboke land, more specifically in water bodies, with their patta lands.

32. The Sub-Collector, Ariyalur has categorically found that the railway line has been laid on water way poramboke and vari poramboke. It is well settled that water bodies cannot be encroached and constructions cannot be raised on water bodies. The Sub-Collector has found that natural water bodies is destroyed because of the pit 60" x 30" dug by the appellant and all this has been done, without obtaining any permission.

33. In the result, Writ Appeal and Writ Petition

fails and the same are dismissed. Impleading Petition in W.M.P.No.34570 of 2018 is dismissed. No costs. Consequently, the connected Miscellaneous Petition Nos.15665 and 31683 of 2018 are closed."

c. Chettinad Cement took the matter to the Supreme Court in S.L.P. Civil Nos.5443 to 5444 of 2019, but, the petitions were dismissed on 25.02.2019. The order of the Supreme Court reads thus :

"Heard learned senior counsel appearing on behalf of the petitioner.

We are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India. The special leave petitions are, accordingly, dismissed.

However, the dismissal of these special leave petitions will not be an impediment for the petitioner to work out the remedy in accordance with law by approaching the concerned authority.

Pending application(s), if any, shall also stand disposed of."

d. In the meanwhile, a group of residents of Ariyalur District filed Contempt Petition No.634 of 2019 before the learned Single Judge, alleging that the District administration has not taken any action to remove the encroachments as directed by the Court. The learned Single Judge issued notice to the respondents therein and they filed their counter saying that, they are initiating action to evict the encroachments. The learned Single Judge was repeatedly adjourning the Contempt Petition, so as to give sufficient time to the District administration to remove the encroachments.

e. During the pendency of the Contempt Petition, the Government passed an order in G.O.(Ms.) No.418 Revenue & Disaster Management Department, Land Disposal Wing, [LD-2(2)] Section, dated 08.11.2019, "for leasing of Government land measuring an extent of 9.96.5 hectares out of 46.23.5 hectares classified as 'Vari, Kuttai and Odai' in S.No.37 etc. of Kilapazhuvur, Kizhayur and Parpanacheri Villages, Ariyalur Taluk & District in favour of M/s.Chettinad Cement Corporation Private Limited for a period of 30 years from 16.07.2009" (emphasis supplied). Be it noted that, 'Vari, Kuttai and Odai' are waterbodies. When this was brought to the notice of the learned Single Judge in the Contempt Petition, he passed several orders subsequently calling for explanations from the Government and ultimately, by an order dated 31.01.2020, framed charges against

Atulya Misra, I.A.S. and Gagandeep Singh Bedi, I.A.S. Aggrieved by the order dated 31.01.2020, the alleged contemnors have filed these Contempt Appeals.

2. Heard Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by Mr.A.N.Thambidurai, learned Special Government Pleader for the appellants in Contempt Appeal Nos.7 of 2019 & 4, 5 of 2020; Mr.M.Suresh Kumar, learned counsel for the appellant in Contempt Appeal No.10 of 2020 and Mr.S.Kamadevan, learned counsel for Respondents 1 to 7 in all Contempt Appeals.

3. Before advertng to the submissions made across the Bar, it may be relevant to extract Section 19 of the Contempt of Courts Act, 1971 (for brevity "the Act"):

"19. APPEALS

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt --

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that --

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed

(a) in the case of an appeal to a Bench of the

High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

4. Mr.P.H.Aravind Pandian placed very strong reliance on the judgment of the Supreme Court in Purshotam Dass Goel Vs. Hon'ble Mr.Justice B.S.Dhillon and Others [(1978) 2 SCC 370] and contended that, it is not necessary that an appeal can be filed only after a final order is passed in the contempt proceedings and that, an appeal can be maintained even against interlocutory orders.

5. In our considered opinion, P.D.Goel (supra) does not support the case of Mr.P.H.Aravind Pandian at all, as could be seen from a reading of paragraph No.3, which requires to be extracted:

"3. In our opinion, the preliminary objection raised on behalf of the respondents is well-founded and must be accepted as correct. Section 19(1) says :

'An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court :

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.'

It would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a Bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under Section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be

such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. This Court, for the first time, cannot be asked in such an appeal to decide whether the person proceeded against has committed contempt of the High Court or not. The matter has to be decided either finally or, may be, even at an earlier stage an order is made, which does decide a contention raised by the alleged contemner asking the High Court to drop the proceeding. It is neither possible, nor advisable, to make an exhaustive list of the type of orders which may be appealable to this Court under Section 19. A final order, surely, will be appealable. Our attention was drawn by Mr Mohan Behari Lal, to Section 20 of the Act which provides :

'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.'

He submitted that initiation of the proceeding by the High Court will be without jurisdiction if it is in violation of Section 20. It may be so. If the alleged contemner in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an order, but we merely mention this type of order by way of an example to show that even orders made at some intermediate stage in the proceeding may be appealable under Section 19. In our considered judgement, an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right under Section 19. In a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceeding. But that is entirely a different matter. What we are deciding in this case is that the present appeal filed under Section 19(1) of the Act does not lie and is incompetent."

(emphasis supplied)

In the above judgment, the Supreme Court has held categorically that mere initiation of contempt proceedings by issuance of notice on the prima facie view that the case is a fit one for drawing up the proceedings, does not decide any question. Again, the Supreme Court, in paragraph 5 has held thus :

"... .. We may repeat that it may be a different matter if the order does decide some disputes raised before it by the contemner asking it to drop the proceeding on one ground or the other. But unless and until there is some order or decision of the High Court adjudicating upon any matter raised before it by the parties, affecting their right, the mere order issuing the notice is not appealable. "

6. Mr.S.Kamadevan placed reliance on the judgment in B.N.Taneja (IFS) Vs. Bhajan Lal [(1988) 3 SCC 26], wherein, the Supreme Court in paragraph 8, held as follows :

"8.The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

7. When the law being so, mere framing of charges will not be a ground for challenge under Section 19 of the Act, inasmuch as the learned Single Judge may even accept the explanation and exonerate the alleged contemnor. Therefore, we hold that the present Contempt Appeals are not maintainable.

8. Mr.P.H.Aravind Pandian made an alternative submission. He stated that the order of the learned Single Judge got merged in the order of the Division Bench and therefore, the contempt proceedings should have been initiated by the Division Bench. In support of this contention, he placed strong reliance on the judgment of the Supreme Court in Dineshan K.K. Vs. R.K.Singh and Another [(2014) 16 SCC 88]. In that case, the Gauhati High Court had issued certain directions in a Writ Petition, which was questioned in the Supreme Court. The Special Leave Petition was converted to Civil Appeal and after hearing the parties, the Supreme Court dismissed the Civil Appeal and upheld the order passed by the Gauhati High Court. For non-compliance with the order, the aggrieved party therein moved the Supreme Court for initiating contempt action against certain alleged contemnors. The Supreme Court requested Shri.K.K.Venugopal and Dr.Rajeev Dhavan, Senior Advocates, to assist them. Paragraph 12 of the said judgment reads as under :

"12.We requested Shri K.K.Venugopal and Dr Rajeev Dhavan, learned Senior Counsel to assist us in the matter. Their view on the second question is that undoubtedly the order passed by this Court, while accepting the judgment and order passed by the courts below, would merge with the judgment and order passed by the courts below. However, this Court in exercise of its powers under Articles 129, 136 and 142 of the Constitution of India could direct the petitioner complainant to approach the High Court and bring to its notice and knowledge that their orders and directions have been disobeyed by the respondent contemnors."

Placing reliance on this judgment, Mr.P.H.Aravind Pandian attempted to draw an analogy by contending that the contempt petition should have been filed before the Division Bench and thereafter, it would have been open to the Division Bench to send the contempt petition to a learned Single Judge for disposal.

9. We are unable to subscribe to this argument for the simple reason that, the High Court does not derive powers from

Articles 129, 136 and 142 of the Constitution of India.

10. Nextly, the Act is a self-contained Code enacted to regulate the contempt of Court proceedings. Though the High Court, as a Court of record, has powers under Article 215 of the Constitution of India to punish for contempt of itself, under the Act and the Rules framed therein, the matter should go first to the learned Single Judge, whose directions have been disobeyed and if he punishes the contemnor, then, the remedy for the latter is to approach the Division Bench under Section 19 of the Act. In the case at hand, the Supreme Court has dismissed the S.L.P. at the threshold and therefore, it cannot be stated that the order of the Division Bench got merged with the order of the Supreme Court. Therefore, no contempt petition could have been maintained in the Supreme Court. Had the Division Bench of the High Court taken the Contempt Petition at the first instance, then, the alleged contemnor would have legitimately cried foul by contending that his statutory right under Section 19 of the Act is being extinguished. The High Court cannot extinguish any statutory right, especially, in such matters and cause prejudice to litigants.

In the result, these Contempt Appeals are dismissed as not maintainable. Connected Miscellaneous Petitions are closed.

Before parting with this appeal, this Court is constrained to record its anguish, in that, by passing G.O.(Ms.) No.418 Revenue & Disaster Management Department, Land Disposal Wing, [LD-2(2)] Section, dated 08.11.2019 and handing over prime waterbodies to a private entrepreneur for exploitation, whom does the Government want to spite: the Single Judge or the Division Bench or the Supreme Court or its own conscience ? It is tantamount to saying, we are the Zamindars of India and we can lease out the Himalayas and the Western Ghats ! We also add that the learned Single Judge may proceed with the Contempt Petition without in any manner, being influenced by, what is stated above.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

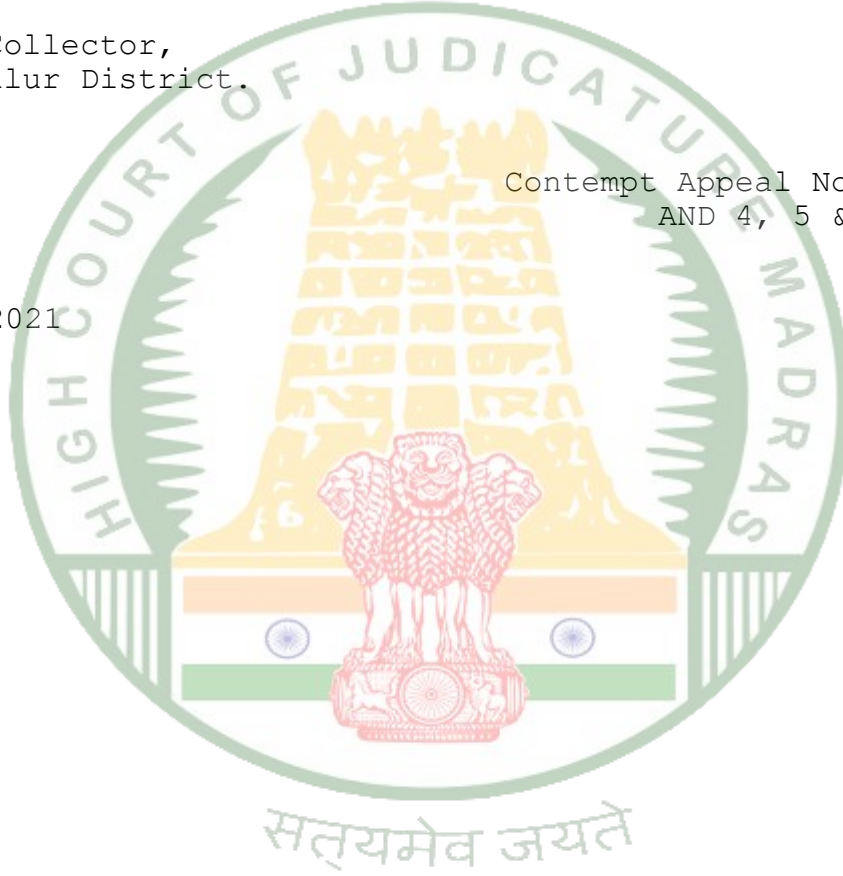
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To

1. Principal Secretary to Government,
Revenue Department, Fort St.George,
Chennai-9
2. The District Collector,
Ariyalur District.
3. Agricultural Production Commissioner and
Principal Secretariat to Government (FAC),
Secretariat, Chennai-9.
4. Sub Collector,
Ariyalur District.

Contempt Appeal Nos.7 of 2019
AND 4, 5 & 10 of 2020

SR-II (CO)
CS/29/04/2021



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