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IN THE HIGH COURT OF KARNATAKA, CIRCUIT BENCH AT  
GULBARGA

DATED THIS THE 15<sup>TH</sup> DAY OF DECEMBER 2009

**PRESENT**

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

**AND**

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

**C.C.C.NO.339/2008(CIVIL)**

**BETWEEN:**

SHANKAR @ SHANKAR RAO,  
S/O. VEERBHADRAPPA  
AGE:72 YEARS, OCC: AGRICULTURE,  
R/O. KODLI ALLAPUR  
TQ:CHINCHOLLI, DIST:GULBARGA.

...

COMPLAINANT

(By Sri S.M. CHANDRASHEKHAR, ADV. FOR SRI S S  
SAJJANSHETTY, ADV. AND FOR COMPLAINANT )

**AND**

1. MR. R.N. SHASTRY,  
THE STATE OF KARNATAKA,  
BY ITS SECRETARY,  
IRRIGATION DEPARTMENT,  
(MINOR IRRIGATION),  
BANGALORE.
2. MR. C. MOHAN,  
THE CHIEF ENGINEER,

MINOR IRRIGATION,  
DEPARTMENT, NORTH ZONE,  
BIJAPUR.

3. MR. JAGANNATH HALING  
THE SUPERINTENDING ENGINEER,  
MINOR IRRIGATION DEPARTMENT,  
GULBARGA CIRCLE,  
GULBARGA.
4. MR. SHIVAPUTRAPPA KALAGI,  
THE EXECUTIVE ENGINEER,  
MINOR IRRIGATION DEPARTMENT,  
BIDAR.
5. MR. SHRINIVAS POTDAR,  
THE ASSISTANT EXECUTIVE ENGINEER,  
MINOR IRRIGATION DEPARTMENT,  
CHINCHOLI,  
DIST:GULBARGA.
6. MR. SATYAMURTY,  
THE DEPUTY COMMISSIONER,  
GULBARGA DISTRICT,  
GULBARGA.
7. MR. RAVIKIRANA ONTI,  
THE SPECIAL LAND ACQUISITION  
OFFICER, MINOR AND MEDIUM  
IRRIGATION PROJECT,  
GULBARGA.

. . RESPONDENTS/ACCUSED

(By Sri S.S. KUMMAN, ADDL. GOVT. ADV.)

THIS CCC IS FILED U/S 11&12 OF THE  
CONTEMPT OF COURT ACT PRAYING TO TAKE NOTE  
THE ACT OF CONTEMPT OF COURT ORDER DTD.6-2-

2006 PASSED IN WP.21091/2005 [LA-RES],  
COMMITTED BY THE RESPONDENTS.

THIS CCC COMING ON FOR ORDERS THIS DAY,  
**SRI. D.V. SHYLENDRA KUMAR, J.** MADE THE  
FOLLOWING:

ORDER


This contempt petition is presented on the premise that the respondents – accused as many as seven in number [persons starting from Mr. R.N. Shastry, Secretary, Mr. C. Mohan, Chief Engineer, Mr. Jagannath Halinge, Superintending Department, Shivaputrappa Kalagi, Executive Engineer, Mr. Shriniwas Potdar, Asst. Executive Engineer, Mr. Satyamurty, Deputy Commissioner, Mr. Ravikiran Onti, Special Land Acquisition Officer,] have dis-obeyed and dis-regarded the direction contained in this court's order dated 6.2.2006, copy produced at Annexure-A. Such dis-obedience and dis-regarding of the order is a deliberate act and in violation of the writ of Mandamus issued by this Court and tantamount to an act of Contempt of Court on the part of the respondents –



accused and therefore, they have rendered themselves liable for punishment in accordance with the provisions of the Contempt of Courts Act, 1971.

2. When the matter had come up for preliminary hearing on 6.1.2009, this Court ordered issue of Emergent Notices to the respondents – accused.

3. The learned Government Advocate appearing for the respondents - accused persons has placed an affidavit along with Annexures before this Court as indicated in the order sheet dated 16.3.2009 in this case. This Court by order dated 16.7.2009 had directed the learned Government Advocate to secure the entire original records and accordingly when the records were placed before the court, this Court examined the record with reference to the counter affidavit filed by and on behalf of the respondents and the Annexures produced along with the counter affidavit and being not satisfied with the correctness of the assertions made in the



counter affidavit passed the following order on  
20.7.2009.

**VGGJ & LNSJ:**

20<sup>th</sup> July 2009

CCC:339/2008

We have heard both the complainant counsel and the learned Additional Government Advocate with reference to the documents in the original records made available for our perusal.

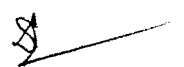
2. The grievance of the complainant is that the writ petition was disposed of at the preliminary hearing stage on the basis of the oral submission of the learned Government Advocate which is extracted hereunder:

“If the State has taken over the lands as early as the year 1998, it has no justification for not paying the amount for 8 long years. Hence, a writ of mandamus is issued to the respondents to pay the compensation to the petitioner as per their entitlement according to law within three months from the date of receipt of the order”.

The grievance of the complainant is that the above said directions issued in the aforesaid Writ Petition is not complied with. Therefore, the present complaint is filed against the respondents.

3. The respondents have filed a counter statement along with R1 – the village map of Allapur showing the survey numbers. The blue pencil marked survey numbers are submerged and acquired for the construction of Kodli Allapur Water Tank. The yellow pencil marked portion of land bearing survey numbers 65/3 and 62 of the complainant are not submerged and not required for the acquisition of the land for the aforesaid tank for minor irrigation.

4. We have perused the survey map of the village marked as Ex.R1 along with the village map available in the original file.



In the said map, the lands bearing survey numbers 62, 63 and 65 along with other survey numbers to an extent of 45.39 guntas of land marked in blue pencil in the said village map proposing the said survey numbers for acquisition of land for minor irrigation as per the village peasants request. The village map available in the original record and Annexure R1 produced in this case do not tally. Therefore, we feel that it would be just and proper for us to direct the Assistant Commissioner of Sedam Sub-division to visit the village, conduct the spot inspection of the survey numbers of the said village and find out which are the survey numbers of lands which are submerged in the tank of the village constructed by the Minor Irrigation Department and further indicate as to whether Survey numbers 62, 63 and 65/3 of the complainant lands are in fact submerged with the tank or will be submerged with the tank, if the tank will be filled up to optimum level during rainy season with reference to the original records of the Minor Irrigation Department by taking the assistance of the Taluka Surveyor. The Assistant Commissioner is also required to examine the total estimation of the tank for the purpose of acquisition of the land and what is the proposed area of the survey numbers of the village proposed for acquisition and he shall submit a report within ten days from the date of receipt of a copy of this order. The complainant and The Assistant Executive Engineer, Minor Irrigation Department, Chincholi, Gulbarga District - respondent no.5 shall appear before the Assistant Commissioner on 23.7.2009 at 11.00 AM for fixing the date for conducting the spot inspection.

5. Registry is directed to issue carbon copy of this order to both the parties.

6. Learned Government Advocate is directed to communicate this Order to the Assistant Commissioner for compliance of the directions issued by us. "

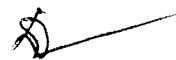


That is how the contempt petition began assuming greater importance and as a positive compliable direction had been issued by this Court and if there is inaction it would suffice to take further action against the respondents/accused dis-regarding the court orders and deliberate conduct to disobey the court order will definitely result in punishing the contemnor in terms of the provisions of the Contempt of Courts Act. Thereafter, the Assistant Commissioner, Sedam, placed affidavit before this Court along with Annexures R1 and R2 as on 12.10.2009 and a further additional counter affidavit was filed in court on 1.12.2009. The developments as on 1.12.2009 is recorded in our order of this court as under:

**"DVSKJ & KNKJ:**  
01.12.2009

**ORDER**

1. Sri S.S.Kumman, Addl. Government Advocate places before the court additional counter affidavit sworn to by 4<sup>th</sup> accused-respondent in the above contempt petition. The 4<sup>th</sup> accused/respondent Shivaputrappa Kallagi is present before the court.



2. One Sri Manjunath, Sheristedar, on behalf of the Special Land Acquisition Officer who figures as 7<sup>th</sup> accused, is present before the court.

3. The additional counter affidavit sworn to by Shivaputrappa Kallagi, seeks to indicate that the respondents had issued a notification dated 23.12.2008 under Section 4(1) of the Land Acquisition Act proposing to acquire land to an extent of 1 acre 17 guntas in Survey No.65/3 at serial no.10 of the notification. It is further stated in the affidavit that mentioning of Survey No.65/3 at serial no.10 is by mistake and it should actually be read as Survey No.63/1, and on realisation of this mistake, the letter dated 12.1.2009 has been sent by the Special Land Acquisition Officer to the Deputy Commissioner for correction of the survey number and proceedings for issue of corrigendum is now in progress, and therefore, prays for dropping of contempt proceedings.

4. The earlier counter affidavit filed by the very deponent seeks to clarify that the land belonging to the complainant is not within the submersible area of the tank even when the tank attains its maximum capacity and reaches spillage point, and there was never any proposal to acquire nor the land had in fact been acquired, as had been contended by the writ petitioner-complainant, therefore there was no question of considering the representation for paying any compensation in respect of a land which is neither acquired nor used, nor at any point of time deprived from the owner.

5. Sri Sajjan Shetty, learned counsel for the complainant, asserted that the action taken by the respondents for issue of the notification under Section 4(1) while was the proper action, the present proposal to issue corrigendum is contrary to their own earlier admission. In this regard, he drew our attention to the entries in the revenue records to assert and submit that the land



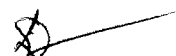


in Survey No.65/3 had also been proposed for acquisition long back and in fact, it is now in the possession of the Land Acquisition Officer, as revenue entries stand in the name of the Government, and therefore, the complainant-writ petitioner was definitely entitled to compensation in respect of the land he has lost, and the respondents are dragging their feet in not paying compensation, notwithstanding a clear direction issued to them by this court in the writ petition to pass orders taking into consideration the representation that was made by the complainant-writ petitioner.

6. When we questioned the 4<sup>th</sup> accused-Executive Engineer, he stated that the subject land is about 5 to 8 metres above the maximum water level (FTL) and this fact has been observed during the recent heavy rains when the tank reached its optimum level, and the Assistant Commissioner of the Sub-division made a personal visit of the tank in compliance of the directions of this court on 28.7.2009, and had satisfied herself about the factum of complainant's land not within the submersible area, and that the land is in no way required for the purpose of construction of the tank and this is borne out by the earlier affidavit sworn to by the Assistant Commissioner on 12.10.2009, copy of which was placed before this court on the very day by annexing the spot panchanama and sketch as R-1 and R-2.

7. We are satisfied that at no point of time the subject land was notified for acquisition nor was in any way taken over by the State or by its officers, and the complainant had not been deprived/denied possession and enjoyment of the land.

8. In a situation of this nature, we would have, in the normal course, dropped the proceedings. But we find the facts in the present case rather strange and, to say the least, the complainant has virtually taken this court for a ride and come up with a false case by misrepresenting the facts before this court. The learned



single Judge who examined the writ petition and heard the matter at the stage of preliminary hearing, thought it fit to pass the following order:

**PREAMBLE:** This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents to release the initial compensation of Rs.60,000/- per acre in favour of the petitioner towards the compensation payable to the petitioner under the Land Acquisition Act 1894, within reasonable time.

This petition coming on for preliminary hearing this day, the court made the following

### **ORDER**

More than 26 acres of land belonging to the writ petition was submerged in Allapur Water Tank which also came to be acquired in the year 1998 by the State Government. The State has issued a circular dated 8.10.2001 in No. fixing a sum of Rs.60,000/- per acre as initial compensation to be paid to the land owners. According to the petitioner in pursuance to the said circular, the Engineering Department has written letter to the first respondent/State of Karnataka requesting to release the said amount for payment to the petitioner. So far the State has not reacted nor the respondents have made any payment. Hence, they have sought for issuance of a writ of mandamus.

2. Facts stated by the petitioner are not disputed by the learned Govt. Advocate. If the State has taken over the lands as early as the year 1998, it has no justification for not paying the amount for 8 long years. Hence, a writ of mandamus is issued to the respondents to pay compensation to the petitioner as per their entitlement according to law within three months from the date of receipt of the order.

9. We notice that the basis for allowing the writ petition was:

- i) the assertion on the part of the writ petitioner that more than 26 acres of land belonging to him was submerged in Allapur Water Tank which was acquired in the year 1998 by the State

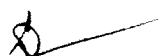


Government and ii) notwithstanding the circular issued by the State itself on 8.10.2001 in No....., fixing Rs.60,000/- per acre as initial compensation to be paid to the land owners, no amount had been paid to the writ petitioner in spite of the Engineering Department having written to the Government to release the said amount in favour of the petitioner.

10. In this state of uncertainty, speculation and surmises, even when the respondents had not received any notice, the writ petition was allowed based on the learned Govt. Advocate appearing for the State not disputing this position and a writ of mandamus is issued on the premise that 'if the State has taken over the land as early as 1998, it is no justification for not paying any amount for eight long years, etc.'

11. It is complaining that this direction of the court has not been obeyed, the present contempt petition has been filed. Very strangely, we notice that in the contempt petition, all the seven respondents in the writ petition are arrayed as respondents/accused, and the contemptuous act is not specifically attributed to any particular person(s).

12. We had come across similar contempt petitions earlier and we were constrained to dismiss it after making certain observations. Unfortunately, this court is coming across more and more instances of gross abuse of the contempt jurisdiction of this court by litigants without any bona fides who come up before this court and utter falsehood and lies and get away, who are also reaping the benefits, and negligent/colluding Government officials playing to their hands and equally negligent Government Pleaders, conceding cases on behalf of the Government, resulting in writ petitions being allowed, contempt jurisdiction being invoked on the basis of the direction issued by this court, and hapless officials of the Government being hauled up for contempt,



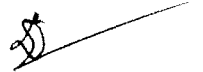
apart from being made to leave their work and to run around the courts and persons who have no connection with the subject matter, being arrayed as accused persons in contempt jurisdiction.

13. The factual situation is that the subject land is not below the submersible level of the tank and is above it and therefore, there being no possibility of the land being submerged, obviously there was no obligation on the part of the officials of the Engineering Department to send a report proposing for acquisition nor there was any obligation on the part of revenue officials in turn to send the proposal for acquisition.

13. Even when the fact situation is this, the writ petitioner had managed to elicit a writ of mandamus on incorrect and wrong information placed before the court and has rendered himself liable for contempt.

14. Though some of the respondents appear to have succumbed to the pressure initially by showing the subject land in the notification issued under Section 4(1) of the Land Acquisition Act, later they appear to have become wise by proposing to issue the corrigendum to delete the extent of 1 acre 17 guntas of land in Survey No.65/3 for acquisition in terms of the recent notification under Section 4(1) of the Land Acquisition Act.

15. The overall view of the entire facts and circumstances while reveal there is absolutely no contemptuous conduct on the part of the respondents, it is only the complainant who appears to have acted in a manner misleading these facts. Learned counsel in the writ petition has also positively assisted the complainant-writ petitioner in achieving this result and we are rather shocked to see that the learned members of the Bar should become privy to such frivolous, contangarious litigation, particularly to



hoodwink this court to grab funds from the public exchequer to the detriment of the larger public interest.

16. While we strongly deprecate such action, we cannot but help taking the proceedings to a logical end, and to pass appropriate orders against the complainant who has indulged in all such atrocious acts. However, Sri Sajjan Shetty, learned counsel for the complainant, seeks permission of this court to withdraw the contempt petition and for such purpose files a memo signed by him for withdrawing the complaint, when the matter is taken up in the afternoon session, as it was inconclusive in the morning session, and submits that in the wake of developments before the court in the morning session, he had contacted his client and his client has instructed him to withdraw the complaint.

17. We find that withdrawal is only a device to take the matter out of the hands of this court, particularly in the wake of our strong reaction and rebuke in the manner in which court proceedings have been misused and abused by litigants without any bona fides, and even the counsel playing into their hands and becoming a party to such errant behaviour of clients and virtually misrepresenting before this court and trying to snatch orders at any and every cost.

18. If there should have been any bona fides, whether earlier or now, perhaps we would have readily permitted, but we do not find any such bona fides. Unless and until the complainant comes up with the truth and states the truth before this court and make amends of his follies, if any committed, and so also the learned advocate for the complainant making a prayer before this court for passing orders in the exercise of contempt jurisdiction, we are not inclined to permit the present contempt proceedings to be withdrawn at this stage.



19. It is open to the complainant and his counsel to make amends and for such purpose, list this matter on 2.12.2009 at 2.30 p.m.

Further development of 2.12.2009 is as follows:

**"DVSKJ & KNKJ:**  
**2-12-2009**

**C.C.C.No.339/2008**

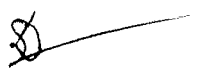
Sri S M Chandrashekar, learned Counsel appearing on behalf of Sri S S Sajjanshetty, Counsel for the Complainant requests the matter to be taken up on 8.12.2009. The complainant though present before the Court, is unable to answer coherently our questions. He appears to be totally deaf and cannot hear what we speak.

2. There is no further need of the Complainant to appear before the Court in person, having regard to his present condition.

3. In the light of the detailed order passed on 1.12.2009 the matter is listed is today. It is at this stage, Sri S M Chandrashekar, learned Counsel appearing for the Complainant has made the request.

4. Mr.Shivaputrappa Kalagi-4<sup>th</sup> respondent, Executive Engineer, Minor Irrigation Department, Bidar and Mr. Ravikiran Onti-7<sup>th</sup> respondent-the Special Land Acquisition Officer, Minor & Medium Irrigation Project, Gulbargas are present before the Court.

5. In the wake of the order that we have passed on 1.12.2009, we dispense with the presence of any of the



accused persons henceforth in the contempt proceedings until and unless they are directed to be present again.

6. It will be sufficient, if the Learned AGA secures and keeps the relevant records at the office of the Advocate General for production before this Court during the further proceedings in the contempt petition.

List this matter on 8.12.2009 as requested by Sri S M Chandrashekar, learned Counsel appearing on behalf of Sri S S Sajjanshetty, Counsel for the Complainant. "

Again when the matter had come up on 8.12.2009 at the request of Mr. S.M. Chandrashekar, the developments of 8.12.2009 is noted as under:

"DVSKJ & KKKJ:  
8.12.2009

Mr. S.M. Chandrashekar, learned counsel now appearing for the complainant and incidentally representing the counsel for the complainant also, has placed before the court two affidavits one by the complainant's son and the other of the counsel Sri S.S. Sajjan shetty.

Copies is said to have been furnished to Sri Kumman, learned Addl. Government Advocate.

Sri Kumman, seeks short accommodation to respond to the affidavits and requests the matter to be called on 15.12.2009.

List on 15.12.2009."

It is in such circumstances, the matter is again before us today.



4. Mr. S.M. Chandrashekar appearing for the complainant and also deploy of the counsel Mr. S.S. Sajjanshetty, Advocate who was on record for the complainant, and on behalf of the complainant, his son Mr. Shivanand Shankar Rao are present. Respondents are represented by Mr. Kumman, learned Additional Government Advocate. The 4<sup>th</sup> respondent/accused Mr. Shivaputrappa Kalagi is before court and he had also appeared on earlier five occasions. So also, the 5<sup>th</sup> respondent - Mr. S. Srinivas Potdar, Asst. Executive Engineer, —Dastagir, who had appeared before this Court on two earlier occasions. While the 7<sup>th</sup> respondent - accused Mr. Ravikiran has appeared once before the court is not before the court today. Except these officials no other officials have appeared in person. However all of them are represented by Sri Kumman, learned Government Advocate.





5. We have heard Sri S.M. Chandrashekar for the complainant and also for Mr.S.S. Sajjan Shetty, and Sri Kumman, learned Addl. Government Advocate, for all the respondents.

6. Sri S.M. Chandrashekar, learned counsel appearing for the complainant and Sri S.S. Sajjanshetty after making elaborate submissions took us through many annexures produced before the court on behalf of the complainant which was annexed to the further affidavit of the son of the complainant Mr. Shivashankar sworn to on 8.12.2009. He made particular reference to Annexure-D dated 28.12.1998, and Annexure-F dated 1.7.2006 which are further proposals from the office of the Asst. Executive Engineer, Minor Irrigation, Sub-Division, Chincholi to the Executive Engineer, Minor Irrigation Circle, Gulbarga proposing to acquire an additional extent of 45 acres 9 guntas of land at Kodli Allapur village in survey Nos.1, 64, 63, 62, 65/3, 23/1,



24, 25, 28/1, 2, 3, 4. After perusing the aerial map of the tank, produced as per Annexure-J as is available on the web site of Google down loaded on 7.12.2009, we are not at all convinced that there was at the first instance any justification for the complainant to invoke the writ jurisdiction of this court seeking for issue of a writ of mandamus to compel the Government to acquire the lands which the petitioner had claimed that it has been submerged in water ever since 1998. While we notice that the proposal from the office of the Asst. Executive Engineer to the Executive Engineer dated 28.12.1998 and 1.7.2006, were all short down as per Annexure R-7 communication dated 20.9.2006 from the very office and the Asst. Executive Engineer addressed to Executive Engineer, clarifying that the earlier proposal was on the pressure of the land owners. In this letter dated 20.9.2006 it has been clearly stated that except for 5 acres 14 guntas in survey No.61/2, no other lands proposed for additional acquisition as per earlier proposals made under Annexure - 'D' and 'F'



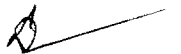
were getting sub-merged even when the water reached full tank and therefore, there was no need for pursuing the acquisition proceedings for such other lands. Even as per the Google map we notice that a part of survey No.65/1 is visible and has not submerged in water. Survey No. 65/2 is totally out of water and survey No.65/3 is very safe and is nearer to the village rather than to the tank, is the factual state of affair as could be inferred from the very material placed before us by the complainant. Whereas, the assertion in the writ petition for seeking writ of mandamus that too for compelling the State Government to initiate acquisition proceedings in respect of such lands was that these lands remain submerged in water ever since 1998.

7. In our considered view, the averment in the writ petition is nothing short of a blatant lie, misrepresentation of fact and virtually playing trickery on this court for getting relief from this court which the petitioner was otherwise not entitled to in law. This

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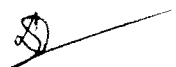
factual position apart, we cannot help noticing that this court will not issue a writ of mandamus to compel the Government to acquire any land belonging to the citizens. A writ of mandamus does not lie to compel the Government to initiate acquisition proceedings. On the other hand, this Court scrutinizes the act of Government in acquiring private lands in exercise of its power of eminent domain, as and when such actions are questioned.

8. While a writ of mandamus does not lie for compelling the Government to acquire land, the land owner, if he suffers loss due to any act of the Government, he is at liberty to work out the remedies in accordance with law by invoking appropriate jurisdiction. A writ of mandamus is no answer for a situation of this nature. But in the Writ Petition, the complainant has invoked Article 14 of the Constitution of India by contending that when the adjacent lands have been acquired and since his lands have also been



submerged, direction should be given to the Government to acquire his lands also. The complainant had also invoked Article 19 contending that failure to pay due compensation in respect of a land which he has lost and which was the only source of livelihood to him amounts to violation of Article 19 of the Constitution of India. He had further contended that the land having been taken over without adequate compensation also amounted to violation of the right guaranteed to the complainant to the petitioner under Article 21 of the Constitution of India. Such high sounding constitutional rights have been invoked to seek relief in writ jurisdiction from this Court, while in fact none of the situation which could give relief to the writ petitioner had in fact occurred at all.

9. We are quite aware that while exercising contempt jurisdiction, we do not look into the correctness or otherwise of an order passed by this Court earlier. Nevertheless when we had to exercise

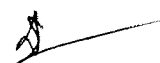


contempt jurisdiction for the purpose of punishing the respondent – accused on the ground of dis-regarding the Court's orders, directions, it is inevitable for us to examine as to whether the respondent – accused are guilty of not performing the act which they should have otherwise required to perform in law and which they in fact also could have performed. Even if a mandamus had been issued to the respondent – accused to perform a particular act, and if it is impossible to perform, the respondent accused persons cannot be holed up for committing contempt and cannot be punished for having dis-regarded the court order though technically he might have dis-obeyed court orders/directions. In such circumstances, it cannot be attributed to his lack of willingness or diligence but only due to impossibility of the performance. No one is expected to perform the impossibility and definitely such a person is not committing contempt nor will be exposing to punishment in contempt jurisdiction. It is because of this reason, we are examining the further reports,



affidavits placed before this Court by the officials as also the report of the Assistant Commissioner of the Sub-Division who had conducted spot inspection when the tank was to its brim and virtually found that the lands of the complainant in fact were not sub-merged. From these facts, it is inevitable to infer the writ petition averments were false, incorrect, even lies and a mandamus obtained on such false averments cannot be enure to the benefit of the writ petitioners. Therefore, it is impossible to proceed in contempt jurisdiction against the respondent – accused person when they were not required to perform any act in law but it was otherwise to compel the respondents to perform which they are not capable of performing.

10. Be that as it may, we find that the respondent – accused have not committed any contempt in the present situation and they have only been harassed and even humiliated as they were compelled to give up all the work time and again and run to this court for



placing necessary materials, affidavits, reports and what not only because an undeserving writ petitioner managed to obtain writ of mandamus from this court and to compound the matter has invoked our contempt jurisdiction praying for punishing the respondent - accused for committing contempt of court orders.

11. We feel very disturbed and sorry that the writ jurisdiction of this court time and again is abused by litigants without bonafide and it is further compounded by invoking contempt jurisdiction to punish an hapless and helpless government officials. Such tendencies we have noticed earlier and have strongly deprecated the same. Unfortunately, it is repeating in this contempt petition also.

12. The 4<sup>th</sup> respondent Executive Engineer had been compelled to attend this court not less than six times including the present appearance. The 5<sup>th</sup> respondent Mr.Sriniwas Potdar, Assistant Executive

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Engineer had appeared before this court on three occasions including the present appearance. 7<sup>th</sup> respondent Mr. Ravikirana Onti had appeared before this Court once though he was not present before this Court today. Therefore, they all have to inevitably compensated for their appearances. We quantify the cost payable to these three accused at Rs.2,000/- for each of their appearance and this amount is to be paid by the complainant by depositing the same before this Court within four weeks from today.

13. Though we are inclined to award cost against other respondents - accused also, as they have not appeared in person, we are not awarding any cost to any of them.

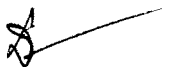
14. Contempt petition has to inevitably dismissed and accordingly is dismissed with exemplary cost to be levied on the complainant as indicated above. On deposit of the cost, the respondents are entitled to draw the same through Government Advocate and the

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Registry is directed to issue cheque to the concerned officials as per this order.

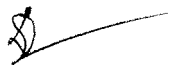
15. When the question of indicating commensurate action to be initiated against the counsel Mr. S.S. Sajjanshetty who in our opinion and as indicated in our earlier order dated 2.12.2009 had been a passive player for the complainant mis-representing this court in the writ petition and seeking relief for which he is otherwise not entitled to.

16. Sri S.M. Chandrashekar who pleaded for Mr. S.S. Sajjan Shetty, submitted that the counsel had only acted bonafide on the instructions received from his client and has discharged his professional duty, therefore, there is no reason or occasion to initiate any further action against the counsel, and that the adverse remarks made against the counsel in our earlier order also to be expunged. However, we find no occasion to accede to this. We do not find that we have passed any



adverse remarks requiring to be expunged. In the earlier order we have only noticed the state of affair as they prevailed. As it is not the domain or function of this court to initiate appropriate action for the professional mis-conduct of the counsel and since in our considered opinion, in the present case, an element of professional misconduct is very much present in the manner in which the learned counsel has conducted the case for the complainant virtually becoming part of the complainant's greed or urge to get relief from the court which he was otherwise not entitled to in law, we are inclined to refer this matter to the Bar counsel which is the professional body to examine the matter and take a decision as to whether the situation warrants any action against the counsel Mr. S.S. Sajjanshetty, who had conducted the case for the complainant.

17. The Additional Registrar General is directed to forward a copy of this order to the Secretary Bar Council, Karnataka along with available necessary



papers to enable the Bar Council to proceed in  
accordance with law.

Contempt Petition is dismissed.

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Sd/-  
JUDGE

Sd/-  
JUDGE

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