

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 26TH DAY OF AUGUST 2020 / 4TH BHADRA, 1942

WA.No.1144 OF 2020

AGAINST THE ORDER IN WP(C) 17983/2019(W) OF HIGH COURT OF KERALA

APPELLANTS:

- 1        STATE OF KERALA  
          REPRESENTED BY THE CHIEF SECRETARY,  
          SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
- 2        THE DISTRICT COLLECTOR  
          COLLECTORATE, IDUKKI, PIN-685 002.
- 3        THE PRINCIPAL SECRETARY TO GOVERNMENT  
          DEPARTMENT OF REVENUE,  
          THIRUVANANTHAPURAM, PIN-695 001.
- 4        REVENUE DIVISIONAL OFFICER  
          DEVIKULAM, IDUKKI, PIN-685 602.
- 5        STATE OF KERALA  
          REPRESENTED BY THE PRINCIPAL SECRETARY TO LSGD,  
          THIRUVANANTHAPURAM-695 001.

BY ADV. SRI.K.V.SOHAN, STATE ATTORNEY

**RESPONDENT:**

LALY GEORGE  
W/O. GEORGE, PALLICKAKUDIYIL HOUSE (H) ,  
BISON VALLEY, MUTTUKADU,  
IDUKKI DISTRICT, PIN-685 565.

SRI. MATHEW A KUZHALANADAN FOR RESPONDENT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
26.08.2020, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Dated this the 26<sup>th</sup> day of August, 2020

**S.Manikumar, CJ**

Instant writ appeal is instituted against a common order passed in W.P.(C).No.17983 of 2019 and connected writ petitions dated 14.08.2020. Perusal of the impugned order shows that on 30.01.2020, a learned single Judge of this Court has passed the following order:

“This Court on 16.08.2019 *suo motu* impleaded the State of Kerala represented by the Principal Secretary to LSGD, Thiruvananthapuram as an additional fifth respondent. The matter pertains to construction on assigned land under the Kerala Land Assignment Act. Noting that there is a lack of coordination among the different departments of the Government in regard to the issuance of permit by the Local Authority for construction, this Court directed the Government to explore the possibility of having a single window clearance for the purpose of granting permission for building, by the Local Authority, on any land other than garden land. This was taking note of the fact that there are several challenges made before this Court by owners of the building, who had constructed on a land which was assigned for the purpose of agriculture, etc. The Government noting the spirit of the direction insisted production of a certificate from the Village Officer showing the purpose for which such land was assigned, issued an order on 25.9.2019. This Court on 16.8.2019 specifically highlighted the constructions in the ecologically sensitive area like Wayanad and Idukki.

3. On behalf of the learned Additional Advocate

General, an adjournment was sought to place the stand of the Government in this regard. I do not find any reason to accede to such request.

**4. This Court, in fact, in W.P.(C) No.9542/2019 directed the Government to amend the Building Rules in tune with the Government Order dated 22.08.2019 within two months. Much time has lapsed after the direction. If the Government is interested in protecting the land assigned for specific purposes, there is no reason for the Government to refrain from applying the Government Order dated 25.9.2019 to the entire State. Accordingly, the additional fifth respondent is directed to issue a Government Order extending its order dated 25.9.2019 to the entire State by directing all Local Self Government Institutions to ensure the production of a certificate from the Village Officer in regard to the purpose for which the land was assigned along with the application for building permit. Needful shall be done within a period of three weeks."** (Emphasis supplied)

2. Subsequently, on 27.05.2020, writ court, in W.P.(C) No.17983 of 2019, has passed the following order:

"Read order dated 30.01.2020 in W.P.(C) No.17983/2019.

2. In spite of the specific directions issued to the 5<sup>th</sup> respondent - Principal Secretary to LSGD, they have not chosen to comply with the directions. This would demand a suo motu contempt proceedings to be initiated against the Principal Secretary to LSGD. Before doing so, it is appropriate that an opportunity should be given whay action shall not be

initiated against the violation of Court order dated 30.01.2020 W.P.(C) No.17983/2019.

3. Several litigations have been initiated before this Court challenging the action of the State against the land holders alleging violations of the patta conditions in the patta issued under the Land Assignment Act. Precisely, the action is based on an allegation that the land was assigned for specific purpose i.e., to say for agricultural activities and, violating this, assignee or transferee, undertook constructions in such land. The Government is, it seems, very earnest in protecting this assigned land to ensure that it shall be used for the agricultural activities in the State. But, at the same time, the Government is not taking any action to prevent such constructions.

4. The Government is only a trustee in managing the land belongs to State. The legislative object of the enactment is to assign land for the specific purpose mentioned therein. That is the reason, the Government initiated action on noting violations of the purpose of this assignment.

5. This Court, by order dated 30.01.2020 in W.P.(C) No.17983/2019, directed the Government to amend the Building Rules so as to prevent undertaking constructions in assigned land. No doubt, the formulation or amending the Rules are within the domain of the Government. But when they discharge its function as trustee, this Court can very well direct amendment to secure objectives under law to protect the land. If the Government is serious and earnest in protecting the Government Land, that should reflect in the Rules so as to prevent such illegal activities.

6. This Court considered several similar writ petitions and observed that many of the holders of the land have obtained building permits from the Local Self Government

Authorities and other requisite permits to undertake constructions. The holders of the land were proceeded only after they made investment in the land. If the Government is genuinely intend to prevent construction, the Government must come out with necessary mechanism to prevent such construction from its initial stage. If the Government is not taking such action, this Court has to assume that Government also wants to countenance such constructions in the assigned land. The tendency of the Government appears to be that for their inaction, the judiciary should settle such issues in whatever manner, through litigation. In fact the Government encourage such litigation.

7. In such circumstance, this Court proposed to take contempt of Court action for non compliance of the order dated 30.01.2020. The Principal Secretary to LSGD shall show cause why he shall not be proceeded for contempt of Court proceedings."

3. When the matter came up for consideration on 29.07.2020, referring to the earlier orders, writ court issued the following directions:

"These cases depict a sorry state of affairs exist in the State where the revenue department refused to comply with the directions of this Court which were issued to sustain the action initiated by State Government itself. These directions were issued in the wake of action initiated by the Government to stop construction in a land assigned for agricultural activities or for other purposes. If the Government is serious in preventing any construction being undertaken in such land, the Government ought to have complied with the order passed by this Court on 25.06.2020.

2. It is to be noted that in the Government order dated

22.08.2019 the Government had decided as follows:-

“9. ഭൂമി പതിവ് ചട്ടങ്ങൾ പ്രകാരം പട്ടയം അനുവദിച്ചിട്ടുള്ള ഭൂമിയിൽ പട്ടയ വ്യവസ്ഥകൾ അനുസരിച്ച് നിർമ്മാണപ്രവർത്തനങ്ങൾ ഭാവിയിൽ നടത്താതിരിക്കുന്നതിനായി ബന്ധപ്പെട്ട കെട്ടിട നിർമ്മാണ ചട്ടങ്ങളിൽ ഏത് ആവശ്യത്തിനാണ് പ്രസ്തുത പട്ടയം അനുവദിച്ചതെന്നവില്ലേജ് ഓഫീസറുടെ സർട്ടിഫിക്കറ്റിന്റെ അടിസ്ഥാനത്തിലേബിൾഡിംഗ് അനുവദിക്കാവുന്ന വ്യവസ്ഥ ഉൾപ്പെടുത്തിബന്ധപ്പെട്ട നിർമ്മാണ ചട്ടങ്ങളെ തീർദ്ദേശീയതയ്ക്കനുയോജ്യമാക്കണം.”

Translation of the above vernacular reads as under:

“The building rules shall be amended incorporating the condition that, if any constructions are to be carried out, in the properties assigned as per the provisions of the Land Assignment Rules, a certificate from the concerned Village Officer shall be produced, certifying as to the purpose for which, the land was assigned.”

This was with an intention to prevent any such illegal construction in the land assigned for agricultural activities.

3. It is to be noted that on 22.08.2019, the Government passed the order in the background of large number of conversion of land assigned for agricultural activities or for other purposes. In that order, the Government had decided to amend the Building Rules to prevent such construction. Taking note of the above decision of the Government, this Court by order, dated 30.01.2020, directed the Government to carry out amendment. However, the Government could not bring an amendment. The Government sought time to comply with the directions in that regard.

4. Taking note of the delay involved, this Court directed the Government by the order dated 25.06.2020 to issue a direction to all the revenue authorities to mention the nature of

the land whether it is assigned for specific purposes or not while issuing possession certificate. This Court was of the view that such an endorsement would enable the authority acting upon such certificate while considering the application to refuse such construction in such assigned land. It is to be noted that this order was preceded by another order dated 27.05.2020 in these writ petitions. In that order, this Court had directed the Government to come out with any mechanism to prevent such construction.

5. In spite of the above two directions, the Government is lethargic in issuing any direction to revenue authorities at least to describe the nature of land in revenue certificate like possession certificate.

6. The land belongs to the State. The Government being the trustee of the land has duty to protect the land. If the land was assigned for public purpose, the Government is bound to ensure that the land is used for public purpose in all circumstances. The Government's inaction clearly spell that the Government is not interested in taking action against the person who have undertaken construction in the land assigned for agricultural purpose. This Court can understand the delay in amending the Building Rules. However, this Court cannot understand the delay for issuing a government order directing all the Revenue Authorities to mention the nature of the land whether it was assigned for agricultural purposes or not.

7. Since the Government failed in its responsibility, there is no other option but to subserve public purpose except by directing the Principal Secretary, Revenue Department, to forward a copy of this order to all the revenue authorities in the State to act upon. The Revenue Authorities in the State, hereafter, shall issue a possession certificate only after verifying the purpose for which the land was assigned. If the land was



assigned for specific purpose, the Revenue Authority shall incorporate the purpose for which the land was assigned under the Kerala Land Assignment Act, 1960. The copy of this order shall be forwarded to all the Revenue authorities within a week from the date of receipt of a copy of this order. Incorporate the time extension petition filed by the Principal Secretary, Revenue Department, along with these writ petitions."

4. Thereafter, on 14.08.2020, when the matter came up for further hearing, learned State Attorney submitted that the Government is considering as to whether restrictions may be imposed throughout the State or confine only to certain areas alone, and requested for three months' time for the above said purpose.

5. Taking note of the decisions of this Court in **Haridas v. State of Kerala** [2016 (4) KLT 707] and **One Earth One Life v. State of Kerala** [2019 (1) KLT 985], wherein it was categorically held that the land assigned specifically for agricultural purpose, cannot be utilized for other purposes, and having regard to the fact that, it is the domain of the State Government to bring an amendment to the existing rule, and till the Government brings out a comprehensive regulatory mechanism in relation to the assigned land *vis-a-vis* the building construction rules or regulations, as the case may be, the writ court, by observing that it is the responsibility of the Government to protect the agricultural lands having no use for construction activities, and further observing that the Government appears to have violated its own regulatory mechanism,

issued notice to the Secretaries to the Government, Revenue Department and the Local Self Government Institutions, to appear in person before the court, for the non-compliance of the orders dated 30.01.2020, 27.05.2020 and 29.07.2020 respectively.

6. By inviting our attention to the directions issued by a Hon'ble Division Bench of this Court, insofar as Munnar KDH (Kannan Devan Hills) is concerned, and consequently, issuance of Exhibit-P3 circular dated 26.05.2016, issued by the Revenue Divisional Officer, Devikulam, respondent No.4, extending the same to eight other villages, Mr. K.V.Sohan, learned State Attorney, submitted that the directions issued by the Hon'ble Division Bench can be confined only to Munnar KDH (Kannan Devan Hills) and that, extension of the restrictions imposed in Exhibit-P3 circular to other areas or to the entire State of Kerala, is purely the executive domain of the State and that, if any suitable legislation has to be made, in the building rules, it is within the legislative domain, and for the abovesaid purpose, when the State Government requested the writ court, to grant three months' time, writ court ought to have considered the said submissions and granted the same, instead of issuing a direction to the Secretaries to the Government, to appear before the Court.

7. We have heard Mr. K.V.Sohan, learned State Attorney, and perused the materials on record.

8. Referring to the prayer made in W.P.(C).No.17983 of 2020 and the directions extracted above, learned State Attorney submitted that the writ court travelled beyond the scope of the main prayer sought for in the writ petition and the directions issued are nothing, but invasion to the executive/legislative domain.

9. Orders periodically passed by the writ court dated 30.01.2020, 27.05.2020 and 29.07.2020, speak for themselves that the writ court, in all *bona fides*, was concerned about the utilization of agricultural lands, for some other purposes and whether the Government had taken any steps, addressing the said aspect. Writ court, only required that the State Government should ensure protection of the agricultural lands and for the said purpose, the State Government should ensure production of a certificate from the Village Officer, showing purpose for which, the land is assigned.

10. When the State Government did not issue any directions to the lower level officers to ensure production of certificate, as stated above, writ court has directed that at least, the order of the writ court be forwarded to the competent authorities in Local Self Government Institutions.

11. Though the correctness of the abovesaid orders are assailed on various grounds in this writ appeal, inter alia, that the directions issued exceed the main prayer sought for in the writ petition, and thus,

interfere with the executive/legislative domain of the Government, it is admitted fact that none of the orders issued periodically from 30.01.2020 and subsequently, have been challenged by way of filing a writ appeal. From the materials on record, it could be deduced that the last direction contained in paragraph No.5 of the interim order in W.P.(C).No.17983 of 2019 dated 14.08.2019, that the Secretaries of the Revenue Department and Local Self Government Institutions respectively, to appear before the writ court, seems to be the cause for testing the correctness of the earlier orders, which, in our view, is nothing, but a collateral challenge to the interim orders stated above. Said a course cannot be permitted in law.

12. Notwithstanding the above, looking into the directions in paragraph No.5 of the interim order dated 14.08.2020 in W.P. (C).No.17983 of 2019, it is only a show cause notice issued by the learned single Judge, as to why contempt shall not be initiated.

13. It is well settled that unless and until, the orders imposing punishment or that it indicates the proposal to inflict penalty, other orders cannot be challenged even by way of appeal under Section 19 of the Contempt of Courts Act, 1971. On the abovesaid aspect, let us consider a few decisions.

(I) In **D.N. Taneja v. Bhajan Lal** reported in (1988) 3 SCC 26, the Hon'ble Supreme Court, at para 8, 10, 11 & 12 held thus:

"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.

10. There can be no doubt that whenever a court, tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a civil court is conferred with the jurisdiction to decide a suit; the civil court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court

cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

11. It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will not be without any remedy. Even though no appeal is maintainable under Section 19(1) of the Act, the petitioner in such a case can move this Court under Article 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under Section 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt. The view which we take finds support from a decision of this Court in *Paradakanta Mishra v. Mr. Justice Gatikrushna Mishra* (1975 CriL.J 1).

12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under Section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."

(II) In **State of Maharashtra v. Mahboob S. Allibhoy and Ors.** reported in (1996) 4 SCC 411, the Hon'ble Supreme Court, at paras 4, 5 & 6 held that:

"3. The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the

proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. S.19 of the Act says:

"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-s.(2).

(4) An appeal under sub-s.(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".

On a plain reading S.19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-s.(1) of S.19 of the Act. As sub-s.(1) of S.19 provides that an appeal shall lie as of right for any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its

jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-s.(1) of S.19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under Sub-section (1) of Section 19 of the Act. As Sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under Sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

5. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of *Baradakanta Mishra v. Mr. Justice Gatikrushna Misra*, C.J. of the Orissa H.C., (1975 CriLJ 1) said:



"... Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, Sub-section (1) and no appeal would lie against it as of right under that provision."

Again in the case of **D.N.Taneja v. Bhajan Lal** [1988] 3 SCC 26, it was said:

"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.

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from Sub-section (1) of Section 19 but also from Sub-section (2) of Section 19 which provides that pending any appeal the appellate Court may order that-

- (a) the execution of the punishment or the 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.

Sub-section (2) of Section 19 indicates that the reliefs provided under Clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.

6. But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases he can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of justice."

(III) In **Midnapore Peoples' Co-op. Bank Ltd. and Ors. v. Chunilal Nanda and Ors.** reported in (2006) 5 SCC 399, the Hon'ble Apex Court framed the following questions for consideration:

"9. On the aforesaid facts and the contentions urged, the following questions arise for consideration:

- (i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under S.19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?
- (ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra court appeal is available under Clause.15 of the Letters Patent?
- (iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that

the enquiry officer shall cease to be the enquiry officer and the employer shall appoint a fresh enquiry officer; and (e) that the suspension shall be deemed to have been revoked?

After considering various decisions, the Hon'ble Apex Court at paragraphs 10 and 11 held thus:

"10. Section 19 of the Contempt of Courts Act, 1971 ['CC Act' for short] provides for appeals. Relevant portion of Sub-section (1) thereof is extracted below:

(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:

The scope of Section 19 has been considered by this Court in *Baradakanta Mishra v. Justice Gatikrushna Misra* (1975 CriLJ 1), *Purushotam Dass Goel v. Justice B.S. Dhillon* (1978 CriLJ 772), *Union of India v. Mario Cabral e Sa* (AIR1982SC691), *D.N. Taneja v. Bhajan Lal* [(1988) 3 SCR 888], *State of Maharashtra v. Mahboob S. Allibhoy* (1996 CriLJ 2879) and *J.S. Parihar v. Ganpat Duggar* (AIR 1997 SC 113). These cases dealt with orders refusing to initiate contempt proceedings or initiating contempt proceedings or acquitting/ exonerating the contemnor or dropping the proceedings for contempt. In all these cases, it was held that an appeal was not maintainable under Section 19 of CC Act as the said Section only provided for an appeal in respect of orders punishing for contempt.

10.1) In ***Baradakanta Mishra*** (supra), a three Judge Bench of this Court held that an order declining to initiate a proceeding for contempt amounts to refusal to assume or exercise jurisdiction to punish for contempt and therefore, such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. The question as to whether an appeal would be maintainable under Section 19 where the court initiates a proceeding for contempt but after due consideration and hearing finds the alleged contemnor not guilty of contempt, or having found him guilty declines to punish him, was left open.

10.2) In ***Purushotam Dass Goel*** (supra), certain aspects of Section 19 were left open. This relevant portion is extracted below:

"The (contempt) 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.... 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.

If the alleged contemnor 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."

10.3) While Baradakanda Mishra and Purushotam Das left open the question whether an appeal under Section 19 would be maintainable in certain areas, in D.N. Taneja (supra), a three-Judge Bench of this Court, categorically held that appeals under Section 19 would lie only against the orders punishing the contemnor for contempt and not any other order passed in contempt proceedings. We extract below the relevant portions from the said decision:

"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.... 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.

It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."

[Emphasis supplied]

10.4) In **Mahboob S. Allibhoy** (supra), this Court reiterated the above position thus:

"On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under Sub-section (1) of Section 19 of the Act. As Sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for

contempt. If the expression 'any order' is read independently of the "decision" then an appeal shall lie under Sub-section (I) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result."

10.5) **J.S. Parihar v. Ganpat Duggar** (supra) is nearest to this case, on facts. A contempt petition was filed alleging that the seniority list drawn pursuant to the order of the High Court was not in conformity with the said order. The High Court found it to be so, but held that the disobedience was not willful and, therefore, did not punish for contempt. But the High Court gave a direction to redraw the seniority list. The State Government challenged the said direction in an intra court appeal. The Division Bench held that the appeal was not maintainable under Section 19 of the CC Act, but was maintainable as an intra-court appeal as the direction issued by the single Judge would be a "judgment" within the meaning of that expression in Section 18 of Rajasthan High Court Ordinance. Accordingly, the Division Bench set aside the direction of the learned Single Judge to re-do the list. The said order was challenged before this Court. This Court confirmed the decision of the Division Bench and held as follows:

"Therefore, an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemnor has been passed. In this case, the finding was that the respondents had not wilfully disobeyed the order. So there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.

The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with-the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of act on to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved

party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible...."

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not

without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

(IV) In **R.N. Dey & others v. Bhagyabati Pramanik & others** (2000) 4 SCC 400 the Hon'ble Apex Court held thus:

"10. In our view the aforesaid contention of the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, concerned officers tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the Rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the Rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable."

(V) In **Sujitendra Nath Singh Roy v. State of West Bengal and Ors.** reported in (2015) 12 SCC 514, the Hon'ble Supreme Court held thus :

"5. There is no caveat to the proposition of law that Under Section 19 of the Contempt of Courts Act, 1971 an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping or refusing to initiate contempt proceedings. This was clearly laid down in the case of *State of Maharashtra v. Mahboob S. Allibhoy* (1996) 4 SCC 411. This view was also followed in several cases including in the case of *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda* (2006) 5 SCC 399."

(VI) In **ECL. Finance Limited v. Harikishan Shankarji Gudipati & others** [(2018) 13 SCC 142], the Hon'ble Apex Court, at para 4 & 7, held as under:

"4. Learned counsel for the respondents has referred to two decisions of this Court in *R.N. Dey and Others v.*



Bhagyabati Pramanik and Others and Tamilnadu Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Others and made a persuasive submission regarding the maintainability of the appeal. We are afraid that the decisions relied upon by the respondents do not further their case, in the given facts and circumstances. R.N.Dey (supra) was a case where the High Court declined to accept the unconditional apology tendered by the contemnor. It was in that context that this Court held that the contemnor could file an appeal since he was otherwise entitled to be discharged in case the unconditional apology had been accepted. In other words, this Court was of the view that the decision to reject the unconditional apology and proceed further was an order or decision to proceed to punish the contemnor. Hence, it was held that such a decision or order was appealable. That is not the situation in the present case. And in any case, at para 13, the Court made it clear that:

"In the present proceedings the question whether appeal under Section 19 is maintainable or not is not required to be decided finally as, in our view, facts of this case are grossly inadequate and the contempt proceedings were not required to be initiated at all."

7. Learned counsel for the respondents submits that before issuing notice, the learned Single Judge had considered the merits of the case and had already made his mind to punish the respondents and, therefore, an appeal would lie, in view of the decisions referred to above. We are afraid the contention made by learned counsel for the respondents cannot be appreciated. The observations made by the learned Single Judge in the Order dated 22<sup>nd</sup> December, 2016, while issuing notice in the contempt petition, is only for the prima facie satisfaction as to whether the contempt petition needs to be considered on merits. Only after such a preliminary stage, notice can be issued. Now, it is open to the respondents to file their reply and after considering the defence, the learned Single Judge will have to take a call as to whether it is a case to be proceeded against for punishing the respondents. In case such a decision is taken by the High Court, it is, at that stage, that the respondents get a right to file an appeal before the Division Bench in terms of Section 19(1)(a) of the Act. Such a stage having not arisen, the impugned order passed by the Division Bench is only to be set aside. Ordered accordingly."

14. Writ appeal is also not permissible under Section 5 of the Kerala High Court Act, 1958. Looking from that angle also, this writ appeal is not maintainable, as against a show cause notice issued directing appearance of respondents 1 to 3 in the writ petition.

For the foregoing reasons, we are not inclined to entertain this writ appeal. Accordingly, the appeal is dismissed.

Sd/-

**S.Manikumar,  
Chief Justice**

Sd/-

**Shaji P.Chaly  
Judge**

DG

APPENDIX

PETITIONERS' EXHIBITS:

ANNEXURE I            TRUE COPY OF THE ORDER DATED 30.1.2020.

ANNEXURE II          TRUE COPY OF THE ORDER DATED 27.5.2020.

ANNEXURE III         TRUE COPY OF THE ORDER DATED 29.7.2020.