KRISHNADEVI MALCHAND KAMATHIA & ORS. A

v.

BOMBAY ENVIRONMENTAL ACTION GROUP & ORS.

I.A. No. 23 of 2010

In

Civil Appeal No. 4421 of 2010 B

JANUARY 31, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Contempt of Court – Allegation of damage to Mangroves and other vegetation of wet land in CRZ-I area, in willful disobedience of court order – Held: Under the garb of repairing the old bund, the appellants constructed a sort of pukka bund using boulders and debris alongwith a huge platform, violating the norms of environmental law and in flagrant violation and utter disregard of orders passed by the courts and the District Collector – The appellants knowingly and purposely damaged the mangroves and other vegetation, which could not have been disturbed – Mangrove forests are of great ecological importance and are also ecologically sensitive – No court can validate an action which is not lawful at its inception – Appellants directed to restore the height and width of the bund as it was existing prior to the order passed by the District Collector – Maharashtra Private Forest (Acquisition) Act, 1975 – s.21 – Forest (Conservation) Act, 1980 – Coastal Regulatory Zone Regulations, 1991. C D E F

Order – Void order – Effect of – Held: Even if an order is void, it is required to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. G

The High Court while disposing of a Writ Petition filed by the Bombay Environmental Action Group issued certain directions, in pursuance of which the Divisional

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A Commissioner issued a Notification dated 18.2.2009 on account of which the appellants were restrained from restarting manufacture of salt on the land in issue. Aggrieved, the appellants filed an appeal before this Court. During pendency of the appeal, the appellants B also filed an application seeking permission to repair the damaged bund alongwith the land in issue. This Court disposed of the application granting liberty to the appellants to approach the District Collector for such relief. The appellants approached the District Collector, C who after holding inquiry passed a speaking and reasoned order dated 27-1-2010, allowing the appellants to repair the bund subject to the condition that the appellants would repair the bund without destroying the mangroves/vegetation on the said land. This Court D ultimately disposed of the appeal filed by the appellants vide order dated 7-5-2010. The parties in the appeal filed contempt applications alleging various violations of the orders passed by this Court, as well as by the District Collector.

E The District Collector and the Action Group filed contempt applications making allegations that under the garb of repairing the bund, the appellants raised the height and expanded the width of the bund and thus destroyed the mangroves to a great extent.

F The appellants, on the other hand, filed a Contempt application alleging that the Collector's order dated 27.1.2010 was being unnecessarily interfered with by the statutory authorities. The appellants submitted that in G pursuance of the order of this Court dated 7.5.2010, they had instituted a civil suit before the High Court, wherein notices had been issued to the respondents/defendants and which is still pending consideration and further that the validity of the Notification dated 18.2.2009 is also H under challenge therein to the extent that the said

Notification is void *ab initio* for the reason that the procedure prescribed in law was not followed. A

Disposing of the applications, the Court

HELD:1. Even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. Even if the order/ notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such a declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or due to the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person. In any event, the matter regarding validity of the Notification dated 18.2.2009 is still pending consideration in a suit before the High Court on its original side and thus it is not desirable on the part of this Court to consider any submission in regard thereto. [Paras 17, 21] [303-G; 305-A-C] B C D E

State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) & Ors., **AIR 1996 SC 906**; *Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc*, **AIR 1997 SC 1240**; *M. Meenakshi & Ors. v. Metadin Agarwal (dead) by L.Rs. & Ors.* **(2006) 7 SCC 470**; *Sneh Gupta v. Devi Sarup & Ors.*, **(2009) 6 SCC 194**; *State of Punjab & Ors. v. Gurdev Singh, Ashok Kumar*, **AIR 1991 SC 2219** and *Sultan Sadik v. Sanjay Raj Subba & Ors.*, **AIR 2004 SC 1377 – relied on.** F G

Smith v. East Ellore Rural District Council, **1956 1 All ER 855 – referred to.** H

A 2. The Coastal Regulatory Zone Regulations, 1991 allow for salt harvesting by solar evaporation of sea water in CRZ-I areas only where such area is not ecologically sensitive and important. Mangroves fall squarely within the ambit of CRZ-I. In the instant case, it has been B established that mangrove forests are of great ecological importance and are also ecologically sensitive. Thus, salt harvesting by solar evaporation of sea water cannot be permitted in an area that is home to mangrove forests. [Para 29] [312-G-H; 313-A]

C 3. The following conclusions are inescapable in the instant case:

(1) The land in dispute has not been used for manufacturing of salt for more than two decades.

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(2) The land in dispute stands notified as a reserve forest, though it may be a private land and requires to be protected.

(3) The direction issued by the High Court while E disposing of the writ petition filed by the Action Group has issued several directions including the direction to identify mangrove area and declare/notify it as a forest.

F (4) The Central Regulatory Zone Regulations 1991 impose certain restrictions on the land in dispute.

(5) The District Collector while deciding the application of the applicants for according permission to repair the bund has explicitly G incorporated the conditions that the appellants would only repair the old bund without raising its height and ensure full protection of the mangroves.

(6) This Court while disposing of the appeal filed by H the appellants has directed to ensure compliance of

the order of the District Collector and in case of any kind of violation to bring the matter to the notice of the court.

(7) In respect of the repairing of the bund, a large number of complaints had been made to the authorities concerned, by the public, representatives of the people and various officials and statutory authorities alleging that the appellants have violated the conditional order passed by the District Collector for permitting the appellants to repair the bund.

(8) Various reports submitted to the authorities concerned make it clear that there have been flagrant violations of the conditional order and that included:

(i) Closing the natural flow of water which has an adverse effect on existing mangroves;

(ii) A large number of mangroves had been cut/ destroyed while repairing the bund and a large number of mangroves were found cut manually;

(iii) Height and width of the bund had been increased to an unwarranted extent. The reports reveal that width of the bund had been extended by 12 ft. to 15 ft. while the old bund was not beyond 6 ft width.

(iv) Instead of mud, big boulders, concrete, debris had been used. Several platforms of 25 to 30 mtrs with the width of 16 to 20 mtrs. have been constructed;

(v) Debris was being dumped beyond the area of platform in the land in dispute making an

A attempt to increase the width of the platform;

(vi) The cut mangroves have been used to increase the height of the bund;

B (vii) Breathing roots and branches of mangroves were found stucking out of the muddy area of the bund; and

(viii) A large number of mangroves died because of removal of mud and stagnation of water. [Para C 30] [313-B-H; 314-A-G]

4. In view of the above, it is clear that the appellants are guilty of willful defiance of the orders passed by this Court as well as by the District Collector and they have D filed the contempt petitions using it as a legal thumb screw to enforce their claims though, totally unwarranted and unfounded on facts. It is a crystal clear case of contumacious conduct, as the conduct of the appellants is not explainable otherwise, for the reason that disobedience is deliberate. The appellants cannot be E permitted to make allegations against the authorities and drag them to the court alleging disobedience of the orders of this court without realising that contempt proceedings are quasi-criminal in nature. They have knowingly and purposely damaged the mangroves and F other vegetation of the wet land of the CRZ-I area, which could not have been disturbed. Under the garb of repairing the old bund, a sort of pukka bund using boulders, and debris has been constructed along with a huge platform, violating the norms of environmental law G and in flagrant violation and utter disregard of orders passed by the courts and the District Collector. No court can validate an action which is not lawful at its inception. [Para 31] [314-H; 315-A-D]

H 5. The contempt proceedings filed by the District

Collector and the Action Group are allowed and the contempt petition filed by the appellants is hereby dismissed with directions. The appellants are directed to restore the height and width of the bund as it was existing prior to the order passed by the District Collector dated 27.1.2010 within a period of 60 days by removing all debris, *grit,* boulders etc., dismantling of platforms and reducing the height and width of the bund. All culverts, drains which existed prior to 27.1.2010 which could facilitate the natural flow of sea water into the land, shall be restored. In case the appellants fail to carry out the aforesaid directions within the stipulated period, the District Collector, shall carry out the aforesaid directions and recover the cost from the appellants as arrears of land revenue and shall ensure in future that the appellants would not act in a manner detrimental to the ecology of the area and ensure the preservation of mangroves and other vegetation. [Para 32] [315-E-H; 316-A-B]

Case Law Reference:

AIR 1996 SC 906	relied on	Para 18
AIR 1997 SC 1240	relied on	Para 18
(2006) 7 SCC 470	relied on	Para 18
(2009) 6 SCC 194	relied on	Para 18
AIR 1991 SC 2219	relied on	Para 19
1956 1 All ER 855	referred to	Para 19
AIR 2004 SC 1377	relied on	Para 20

CIVIL APPELLATE JURISDICTION : I.A. No. 23 of 2010.

IN

Civil Appeal No. 4421 of 2010

From the Judgment & Order dated 6.10.2005 of the High Court of Judicature at Bombay in Writ Petition (Lodging) No. 3246 of 2004.

WITH

Cont.P.(C) No. 169 of 2010 in 4421 of 2010

Cont.P.(C) No. 266 of 2010 in 4421 of 2010

Ram Jethmalani, Pramod Swarup, Dushyant A. Dave, A.Y. Chitale, Shekhar Naphade, Parena Swarup, Vijay Kumar, Abhindra Maheshwari, Vishwajit Singh, Madhvi Divan, D. Bharat Kumar, M. Indrani, Abhijit Sengupta, Sunaina Dutta, Snigdha Pandey, Suchitra Atul Chitale, Nishantha Kumar, Sanjay V. Kharde, Asha Gopalan Nair, Anagha S. Desai, Ahmade Abadi, Sangeeta Kumar for the appearing parties.

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. Civil Appeal No. 4421 of 2010 was disposed of by this Court vide judgment and order dated 7.5.2010 giving liberty to the appellants therein to approach the Bombay High Court to seek appropriate relief. During the pendency of the appeal, the appellants were given liberty to approach the District Collector concerned to seek permission to repair the bund. The Collector allowed the appellants to repair the bund subject to certain conditions. The parties in the appeal have filed three applications alleging various violations of the orders passed by this Court, as well as by the District Collector.

I.A.No. 23/2010

2. This application has been filed by the District Collector, Mumbai Suburban District, to initiate the contempt proceedings against the appellants Krishnadevi Malchand Kamathia & Ors. for violating the order of this court dated 7.5.2010 in Civil Appeal No.4421 of 2010 and his own order dated 27.1.2010

in respect of Survey No. 344 CTS No. 1 of Village Dahisar, Taluka Borivali, Mumbai Suburban District and, to issue directions to remove the newly constructed bund and allow sea water to come in so as to save the mangrove forest. Further direction has been sought against the appellants to remove the debris, soil, stones which were used to construct the bund, from the said survey No.344 to outside the area, within the stipulated period and further to restore the bund to its original position as seen in the Maharashtra Remote Sensing Application Centre map (hereinafter called MRSAC) and further to restrain the appellants from indulging in any activity which may result in the destruction of mangrove forest henceforth.

Cont. Pet. No. 169 of 2010

3. This contempt petition has been filed by the appellants to initiate contempt proceedings against the statutory authorities i.e. District Collector of Mumbai Suburban District for passing the order dated 20.5.2010 appointing the Committee to examine whether the appellants had violated the conditional order dated 27.1.2010 permitting the appellants to repair the bund in such a way that the mangroves may not die and order dated 26.5.2010 to ensure the compliance of the order dated 27.1.2010 and to remove the debris and reduce the height of the bund etc., being in violation of orders passed by this Court in the appeal.

Cont. Pet. No. 266 of 2010

4. This contempt petition has been filed by the original writ petitioner before the Bombay High Court i.e. Bombay Environmental Action Group and Anr., (hereinafter called 'Action Group') to initiate contempt proceedings against the appellants for willful dis-obedience of the order of this Court dated 22.3.2010 passed in SLP (C) No. 29031/2009 and order dated 7.5.2010 passed in Civil Appeal No.4421 of 2010 and further to recall the permission granted by this Court vide order dated 22.3.2010 in the said case and order dated 7.5.2010 in

Civil Appeal No. 4421 of 2010. Further, to give directions to open the culverts, closed channels of water and to ensure removal of debris on the subject site at the cost of the appellants i.e. contemnors Nos. 1 to 10.

5. As all the aforesaid three applications have been filed alleging violation of the same orders, the applications were heard together and all being disposed of by the common order.

FACTS:

6. The Bombay High Court while disposing of the Writ Petition filed by the Action Group vide order dated 6.10.2005 issued several directions including:

> "XI. From the list of "Mangrove Areas" so identified Government owned lands will automatically be declared/ notified as "Protected Forest". Likewise, privately owned lands from the list of Mangrove Areas so identified, the same will be declared/notified as "Forest".

7. In pursuance of the aforesaid direction issued by the High Court, the Divisional Commissioner, issued Notification being No. RB/Desk-II/Forest/CR-2211/Pvt./A-1 dated 18.2.2009, which included the land of the appellants Krishnadevi Malchand Kamathia and Ors. In view of the said Notification, the appellants could not restart the salt manufacturing, though the appellants had been manufacturing salt on the said land since 1959. It continued upto 1990 and their license for manufacturing salt was valid upto 1993. The Coastal Area Classification and Development Regulations, 1991 (hereinafter called CRZ Regulations) came which provide for classification of coastal regulatory zone, according to which it did not prohibit the manufacturing of salt.

8. Being aggrieved, appellants filed Special Leave Petition along with an application for condonation of delay of 1368 days challenging the Bombay High Court Judgment and order dated

6.10.2005. However, in view of the fact that the appellants had not been heard by the High Court at the time of passing the order in pursuance of which the Notification has been issued, the delay was condoned and the petition was entertained.

9. An application was filed by the appellants on 15.12.2009 seeking permission to repair the damaged bund along with the land in issue. The application was opposed by the respondents. However, this Court disposed of the said application vide order dated 5.2.2010 permitting the appellants to approach the District Collector for the said relief. It was clarified that pendency of the proceedings before this Court or any interim order passed therein would not stand in the way of the District Collector to pass an appropriate order so far as the repair of the bund was concerned.

10. In pursuance of the said directions the appellants approached the District Collector, who after holding inquiry passed a speaking and reasoned order dated 27.1.2010 giving full details and the case history of the dispute over the title of the land between the appellants and the Government, and the application of the provisions of Coastal Regulatory Zone Regulations 1991; and the Indian Forest Act 1927; and Forest (Conservation) Act, 1980. According to the order, the appellants would repair the bund without destroying the mangroves or vegetation on the said land.

11. This Court disposed of the appeal vide order dated 7.5.2010 wherein the parties were given liberty to agitate the issue before the High Court raising all factual and legal issues. So far as the repair of Bund was concerned, this Court directed as under:

> "By an interim order passed by this court on 22.3.2010, permitted the petitioners to repair the Bund. This interim order is made absolute and petitioners are permitted to maintain and upkeep the Bund till final adjudication regarding Notifications dated 18.2.2009 and 15.6.2009 is

A made and violation of these orders by parties or other authorities could be brought to the notice of this Court for appropriate directions."

12. The contempt petitions have been filed by the District Collector and the Action Group making allegations that under B the garb of repairing the bund, the appellants have raised the height and expanded the width of the bund in such a manner that mangrove would die a natural death without any attempt on the part of the appellants, and further that appellants have destroyed the mangroves to the great extent. Appellants filed C a Contempt Petition alleging that Collector's order dated 27.1.2010 is being unnecessarily interfered with by the statutory authorities.

13. We have heard Shri Ram Jethmalani, Shri Sekhar D Naphade, Shri Dushyant Dave, Shri Atul Yashwant Chitale, learned senior counsel appearing for the parties and perused the record.

14. It may be pertinent to mention here that all the learned counsel appearing for the parties have suggested that the E applications be heard without giving strict adherence to the procedure for contempt proceedings i.e. framing of charges etc., as pleadings are complete and parties are fully aware as what is the case against which of the parties. More so, all the documentary evidence, required to decide the case is on F record.

15. Shri Ram Jethmalani, learned senior counsel appearing for the appellants, submitted that in pursuance of the order of this Court dated 7.5.2010, the appellants have instituted G a civil suit before the Bombay High Court, wherein notices had been issued to the respondents/defendants and which is still pending consideration of all factual and legal issues had been raised therein. The validity of the Notification dated 18.2.2009 is also under challenge therein to the extent that the said

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Notification is void *ab initio* for the reason that the procedure prescribed in law has not been followed. More so, the Notification does not disclose what are the statutory provisions which conferred the power/competence to issue the said Notification.

16. Shri Sekhar Naphade, and Shri Dushyant Dave, learned senior counsel, submitted that undoubtedly, the Notification does not disclose the source of power/competence under which it has been issued, however, the Notification does not become invalid merely for want of such a statement. Further, it cannot be urged that the Authority was denude of power to issue such notification as such powers are available under Section 21 of the Maharashtra Private Forest (Acquisition) Act, 1975. The said provisions provide that whenever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declared, in public interest and for furtherance of the objects of the said Act, to be a private forest. The State Government would publish a Notification in the Official Gazette to declare that it was a forest land after following the procedure prescribed therein. In fact records of the Statutory Authority reveal that the said Notification has been published in view of the order passed by this Court on 12.12.1996 in *T.N. Godavarman,* wherein it has been held that Forest (Conservation) Act, 1980, would apply to lands being forests, irrespective of who owned the land. For that purpose, Shri Naphade, has drawn our attention to para 4.2 of the Report of the Committee, dated 19.5.2010 (Annexure R-5A) to I.A. No. 23 of 2010.

17. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.

18. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) & Ors.,* AIR 1996 SC 906;

A *Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc,* AIR 1997 SC 1240; *M. Meenakshi & Ors. v. Metadin Agarwal (dead) by L.Rs. & Ors.* (2006) 7 SCC 470; and *Sneh Gupta v. Devi Sarup & Ors.,* (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be B determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

19. In *State of Punjab & Ors. v. Gurdev Singh, Ashok Kumar,* AIR 1991 SC 2219, this Court held that a party aggrieved by the invalidity of an order has to approach the court C for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Ellore Rural District Council,* [1956] 1 All ER 855 wherein *Lord Radcliffe* observed:-

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> "An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of E invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

20. In *Sultan Sadik v. Sanjay Raj Subba & Ors.,* AIR 2004 SC 1377, this Court took a similar view observing that once F an order is declared *non-est* by the Court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the G conclusion that the order suffers from patent and latent invalidity.

21. Thus, from the above it emerges that even if the order/ notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon H it. It has to approach the court for seeking such declaration.

The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.

22. Be, that as it may, the matter regarding the validity of the said Notification is still pending consideration in a suit before the Bombay High Court on its original side, it is not desirable on our part to consider the said submission raised on behalf of the appellants.

23. The relevant part of the conditional order of the District Collector dated 27.1.2010 provides as under:

(i) The Applicants will only carry out the repairs of the Bund and shall not carry out any other construction activities on the said land.

(ii) The Applicants will not destroy mangroves and/or vegetation on the said land.

(iii) The Applicants shall not raise the height of the Bund above as in existence at present.

On receiving numerous complaints from the public at large and officials, the District Collector passed the order dated 20.5.2010:

"xx xx xx

The earlier order passed by this authority giving permission to repair the bund is hereby stayed and all the concerned parties should maintain status quo.

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A This committee will visit and check minutely the following important points in the matter:-

(a) The permission given by the District Collector for the repair of the bund No.C/Desk-21 Mangrove/ WS-610/2009 dated 27.1.2010, which was rendered by the Supreme court in its orders dated 22.3.2010 and 7.5.2010 whether terms and conditions mentioned in the Collectors order are followed by the Applicant land owner or not?

C (b) Whether the Applicant has committed any violation?

(c) Whether the land owner has kept water culverts open or not? If the committee finds that the water is stopped which may ultimately cause destroying of mangroves, the committee i.e. Area Officers should make the owner to open the culverts immediately.

The committee should make detailed enquiry and the E consolidated report should be sent to the District Collector within 15 days."

After receiving the report from the Committee duly constituted by the District Collector on 20.5.2010, the District F Collector passed the order on 26.5.2010 directing the appellants as under:

(1) All the material used for filling to increase the height be removed, maintain the earlier position of the bund as expected in the permission order dated G 27.1.2010.

(2) Remove the rubble dumped in the open land in question.

H (3) Remove the rubble and filling and let the natural flow

of sea water, which is at present obstructed, entering inside the S.No. in question.

(4) Remove filling used for increasing the height of bund to the height as expected in the permission order dated 27.1.2010.

24. The aforesaid order has been passed by the Collector after considering various reports of experts/officers.

(A) The report submitted by the Sub Divisional Officer, Mumbai Suburban District dated 18.5.2010 (Annexure A-20 of Con. Pet. 266/2010) makes it clear that the Tahsildar Borivali and Additional Chitnis had visited the spot and found that a new bund had been made having the width of 10 ft. and height of bund 4 ft. and running to 1 to 1½ KMs. There had been culverts in the old bund which were filled up. The natural flow of water existing earlier had been closed. The closure of the water supply had adverse effect on the existing mangroves. The direction issued by the District Collector in his order permitting the construction of bund that adequate arrangement to ensure that mangroves are not damaged, has not been complied with and there has been a breach of the said condition.

(B) Report dated 19.5.2010 from the Committee appointed for inspection reveal that after having inspection of the site, the Committee reached the conclusion that the appellants have grossly violated the conditions incorporated in the order of the District Collector dated 27.1.2010, permitting them to repair the bund. They have not only raised height of the bund but widened it so as to obstruct the flow of water in the creek which may cause damage to mangroves. There has been a violation of the order of the Collector; the order of the Bombay High Court, and the order of this Court. The mangroves at places were destroyed during the construction of the new roads and the new bunds. Debris, garbage, mud and stones have been dumped along the new road. Large quantities of mud have been excavated from the site itself and

A used for construction of the bund. The Committee made the following recommendations:

(1) That all illegal work should be immediately stopped by the revenue authority.

B (2) The Bund and the Road that have blocked the smaller creeks should be immediately removed to prevent the destruction of the mangroves.

(3) Proper action as per the law may be taken by the C revenue authority. It is brought to the notice that in writ petition no. 3246 of 2004 the Maharashtra Govt. vide circular dated 21.10.2005 clarified that the Collector should take care of the mangroves of the private land and Government lands till the area is handed over to forest D department.

(C) There is another report of the Tahsildar Borivali Mumbai, Suburban district dated 22.5.2010 which reveals that earlier some culverts were in existence, the same had been closed and a new mud bund erected thereon. By E making a huge filling, the width of the bund had been expanded by 12 to 15 ft. At the end of bund again filling of debris had been done. Branches of the adjacent mangroves had been cut. The report further reveals that a crime had been registered on 22.5.2010 in MHB Police F Station under Section 15(i)(ii) of Environment Protection Act, 1986 against the owner of the land on account of the cutting of branches of mangroves, causing damage to mangroves and stoppage of the natural water flow of nalla.

G (D) Another report dated 14.6.2010 of a Committee consisting of six State officials is on record. According to it, there have been flagrant violations of the order passed by the District Collector and the courts. The relevant part reads as under:

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CONCLUSIONS:

	Conditions in order dated 27.1.2010	Factual position observed by the Committee on the spot
i)	The applicants will only carry out the repairs of the Bund and shall not carry out any other construction activities on the said land.	No structural construction activities carried out on the site, but it is observed that the permission holder has done massive filling work by dumping debris and garbage on the said land. Bund has been widened by mud and debris filling. Now the permission holder converted existing bund into new road. The permission was only to repair the existing bund. But the land holder has constructed a new bund.
ii)	The applicants will not destroy mangroves and/ or vegetation on the said land.	Destruction of mangroves and vegetation done in a large scale.
iii)	The Applicants shall not raise the height of the Bund above as in existence at present.	Permission holder has raised height of the existing bund by 1.5 Mtrs. as well as width of the bund.
iv)	Upon completion of the repairs, the Applicant shall file a Completion Report in the office of the Collector.	Compliance report of work has been submitted by the applicant. Despite that work still going on the site.

v)	The Applicant will abide by the final orders that may be passed by the Hon'ble Supreme Court in the SLP to Appeal No.29031 of 2009 in respect of the user of the land.	Applicant violated the conditions of the order dated 22.3.2010 passed by the Hon. Supreme Court in S.L.P. No.29031 of 2009.

25. The issue has been agitated from time to time before this Court and there have been various claims and counter claims in respect of the activities of the appellants. This Court vide order dated 24.11.2010 requested the learned Principal Judge, City Civil Court, Mumbai to inspect the area i.e. the bund in the lands i.e. SL. No.344 measuring 175 Hectares, situated in village Dahisar and submit a report to this Court about the status and present position. It was further requested that he would ascertain and report whether any damage has been caused to mangroves/vegetation that existed on the said land.

26. In pursuance of the said order, the learned Principal Judge, City Civil Court submitted the report dated 10.12.2010 along with a large number of photographs to substantiate the contents of the report. Relevant part thereof reads as under:

> "At the outset it may be briefly stated that during the course of visit it was noticed that the debris and boulders including big broken pieces of RCC slabs were found lying at various places on the bund. The debris and boulders were found used for pitching or reinforcement of the bund because of the dumping of debris and boulders on a large scale....Apart from dumping of debris and boulders in large quantities, what was noticed was that there were about 12 to 13 places where big platforms were found made of debris and boulders. The length of those platforms was something between 25 to 35 metres each and width

was on an average 16 to 20 metres each.....That debris was being dumped beyond the area of the platform in property survey No.344 and there was an attempt to increase the width of the platforms. In the process the mangroves obviously were being destroyed.

..... the mangroves were destroyed at a considerable length from the bund in survey no.344..... the destruction was at considerably a large scale.

....a large number of mangroves were found cut manually. It was possible that the mangroves were cut to increase width of the bund. The cut mangroves were found to have been used in increasing the height of the bund. Breathing roots and branches of mangroves were found stuck in the muddy area of the bund.

..... The said bund appeared to have been erected after excavation of mud from both sides of the bund..... Mangroves were found cut at many places. The mangroves were found to have died because of removal of mud and stagnation of water.....

.... *There were 3-4 patches where mangroves appeared to have been destroyed manually."*(Emphasis added)

27. The CRZ Regulations define for regulating developmental activities, coastal stretches within 500 metres of the landward side of the High Tide Line into 4 categories. Category I (CRZ-I) is defined as under:

"(i) Areas that are ecologically sensitive and important, such as, national parks/marine parks, sanctuaries, ***reserved forests****, wildlife habitats,* ***mangroves****, corals/ coral reefs, areas closed to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical/heritage areas,*

A *areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and other such areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time."*
B (emphasis added)

28. The regulation of *development or construction* activities in CRZ-I areas is to be in accordance with the following norms:

C "CRZ-I

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Between LTL and HTL in areas which are not ecologically sensitive and important, the following may
D *be permitted : (a) Exploration and extraction of Natural Gas; (b) activities as specified under proviso of sub-paragraph (i) and (ii) of paragraph 2; (c) Construction of dispensaries, schools, public rain shelters, community toilets bridges, roads, jetties, water supply, drainage,*
E *sewerage which are required for traditional inhabitants of the Sunderbans Biosphere Reserve area, West Bengal, on a case to case basis, by the West Bengal State Coastal Zone Management Authority; (d) salt harvesting by solar evaporation of sea water; (e) desalination plants;*
F *(f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports; (g) construction of trans-harbour sea links."*

(emphasis added)

G 29. From the above, it is evident that mangroves fall squarely within the ambit of CRZ-I. The regulations allow for salt harvesting by solar evaporation of sea water in CRZ-I areas **only** where such area is not ecologically sensitive and important. In the instant case it has been established that
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mangrove forests are of great ecological importance and are also ecologically sensitive. Thus, salt harvesting by solar evaporation of sea water cannot be permitted in an area that is home to mangrove forests.

30. In view of the aforesaid discussion, we reach the following inescapable conclusions:

(1) The land in dispute has not been used for manufacturing of salt for more than two decades.

(2) The land in dispute stands notified as a reserve forest, though it may be a private land and requires to be protected.

(3) The direction issued by the High Court while disposing of the writ petition filed by the Action Group has issued several directions including the direction to identify mangrove area and declare/notify it as a forest.

(4) The Central Regulatory Zone Regulations 1991 imposes certain restrictions on the land in dispute.

(5) The District Collector while deciding the application of the applicants for according permission to repair the bund has explicitly incorporated the conditions that the appellants would only repair the old bund without raising its height and ensure full protection of mangroves.

(6) This Court while disposing of the appeal filed by the appellants has directed to ensure compliance of the order of the District Collector and in case of any kind of violation to bring the matter to the notice of the court.

(7) In respect of the repairing of the bund, a large number of complaints had been made to the authorities concerned, by the public, representatives of the people and various officials and statutory authorities alleging that the appellants have violated the conditional order passed by

A the District Collector for permitting the appellants to repair the bund.

(8) Various reports submitted to the authorities concerned make it clear that there have been flagrant violations of the B conditional order and that included :

(i) Closing the natural flow of water which has adverse effect on existing mangroves;

(ii) A large number of mangroves had been cut/ C destroyed while repairing the bund and a large number of mangroves were found cut manually;

(iii) Height and width of the bund had been increased to an unwarranted extent. The reports reveal that width of the bund had been extended by 12 ft. to D 15 ft. while the old bund was not beyond 6 ft width.

(iv) Instead of mud, big boulders, concrete, debris had been used. Several platforms of 25 to 30 mtrs with the width of 16 to 20 mtrs. have been constructed;

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(v) Debris was being dumped beyond the area of platform in the land in dispute making an attempt to increase the width of the platform;

(vi) The cut mangroves have been used to increase F the height of the bund;

(vii) Breathing roots and branches of mangroves were found stucking out of the muddy area of the bund; and

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(viii) A large number of mangroves died because of removal of mud and stagnation of water.

31. In view of the above, we have no hesitation to hold that the appellants are guilty of willful defiance of the orders passed H by this Court as well as by the District Collector and they have

filed the contempt petitions using it as a legal thumb screw to enforce their claims though, totally unwarranted and unfounded on facts. It is a crystal clear case of contumacious conduct, as the conduct of the appellants not explainable otherwise, for the reason that disobedience is deliberate. The appellants cannot be permitted to make allegations against the authorities and drag them to the court alleging disobedience of the orders of this court without realising that contempt proceedings are quasi criminal in nature. They have knowingly and purposely damaged the mangroves and other vegetation of the wet land of the CRZ-I area, which could not have been disturbed. Under the garb of repairing the old bund, a sort of pukka bund using boulders, and debris has been constructed along with a huge platform, violating the norms of environmental law and in flagrant violation and utter disregard of orders passed by the courts and the District Collector. No court can validate an action which is not lawful at its inception.

It is often re-iterated that justice is only blind or blindfolded to the extent necessary to hold its scales evenly. It is not, and must never be allowed, to become blind to the reality of the situation, lamentable though that situation may be.

32. In view of the above, the contempt proceedings filed by the District Collector and the Action Group are allowed and the contempt petition filed by the appellants i.e. Cont. Pet. 169/2010 is hereby dismissed with the following directions:

(1) The appellants are directed to restore the height and width of the bund as it was existing prior to the order passed by the District Collector dated 27.1.2010 within a period of 60 days from today by removing all debris, *grit,* boulders etc., dismantling of platforms and reducing the height and width of the bund.

(2) All culverts, drains which existed prior to 27.1.2010 which could facilitate the natural flow of sea water into the land, shall be restored

(3) In case the appellants fail to carry out the aforesaid directions within the stipulated period, the District Collector, Suburban District shall carry out the aforesaid directions and recover the cost from the appellants as arrears of land revenue and shall ensure in future that the appellants would not act in a manner detrimental to the ecology of the area and ensure the preservation of mangroves and other vegetation.

33. In the facts and circumstances of the case, we request the Bombay High Court to expedite the trial of the suit filed by the appellants. In view of the above, the contempt petitions and interlocutory application stand disposed of.

B.B.B. Applications disposed of.