

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 433/2015**

1) M/s. Leading Hotels,
a company registered under the
Indian Companies Act, 1956,
having office at 573, Road 4, La Campal,
Miramar, Panaji, Goa represented herein
by its Mr. P. Ravi, major of age,
Indian National, having office at 573, Road 4,
La Campal, Miramar, Panaji, Goa.

..... **Petitioner.**

V/s.

- 1) Shri. Anthony Mendes, r/o
Tiracol village, Tiracol,
Pednem, Goa.
- 2) Agnel Godinho, r/o
Tiracol Village, Tiracol,
Pednem, Goa.
- 3) Juze Godinho, r/o
Tiracol Village, Tiracol,
Pednem, Goa.
- 4) Goa Foundation, a society registered
under the Societies Registration Act,
1960 through its Secretary Dr. Claude
Alvares, having office at Room No.7,
Above Mapusa Clinic, Mapusa, Goa.
- 5) Ministry of Environment & Forests,
through its Secretary with address at
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi 110 003
- 6) Goa Coastal Zone Management Authority,
3rd Floor, Dempo Towers, Patto, Panaji,
Goa 403 001.

- 7) Goa State Environment Impact assessment Authority (SEIAA),
through its Member Secretary, c/o Goa State Pollution Control Board, Dempo Towers,
Patto, Panjai, Goa.
- 8) Goa State Expert Appraisal Committee (SEAC),
through its Secretary, c/o Goa State Pollution Control Board, Dempo Towers, Patto,
Panaji-Goa.
- 9) Biodiversity Management Committee (BMC),
through its Chairperson, village Querim,
Pednem, Goa.
- 10) State of Goa through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
- 11) National Green Tribunal,
West Zone, Pune through the Registrar,
Western Zonal Bench, New Administrative Bldg.,
'D' Wing, Pune, Maharashtra.

..... **Respondents**

Shri V. Dhond, Senior Advocate with Shri Shivan Desai, Shri Sanket More and Shri J. Supekar, Advocates for the petitioner.

Shri Sanjay Upadhya, Advocate for the respondents No.1 to 3.

Smt. Norma Alvares, Advocate for the respondent No.4.

Shri D. Lawande, Assistant Solicitor General for the respondent No.5.

Shri P. Dangui, Additional Govt. Advocate for the respondents No.6 to 10.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 30 June 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri V. Dhond, learned Senior Counsel appearing for the petitioner, Shri Sanjay Upadhya, learned Counsel appearing for the respondents No.1 to 3, Smt. Norma Alvares, learned Counsel appearing for the respondent No.4, Shri D. Lawande, learned Assistant Solicitor General appearing for the respondent No.5 and Shri P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.6 to 10.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive notice.

3. We have heard extensively Shri V. Dhond, learned Senior Counsel appearing for the petitioners, Smt. Norma Alvares, learned Counsel appearing for the respondent No. 4 and Shri S. Updhya, learned Counsel appearing for the respondents No.1 to 3. The main grievance of the learned Senior Counsel appearing for the petitioner is

that the petitioner had raised a specific ground that the appeal preferred by the respondents No.1 to 4 is barred by limitation in terms of Section 16 of the National Green Tribunal Act, 2010 (for short “Act of 2010”) and that the Tribunal has no jurisdiction to decide the challenge to an order passed under the CRZ Notification of 1991. The learned Senior Counsel has taken us through the provisions of the Act of 2010 to point out that as there is material on record to suggest that the said respondents had knowledge of the subject environment clearance the appeal was time barred. The learned Senior Counsel further points out that it is the case of the petitioner that the challenge to the environment clearance and the challenge to the CRZ clearance, are separate and independent and, consequently, the periods of limitation to challenge such orders are on different fields. The learned Senior Counsel, however, points out that it is the case of the respondents that the orders under the CRZ Notification have merged with the environment clearance and consequently, the appeal itself is within time. The learned Senior Counsel further points out that according to the petitioner, the order granting the CRZ clearance is not appealable before the National Green Tribunal in terms of Section 16 of the Act of 2010 as, according to him, such orders do not come within the scope specified therein. The learned Senior Counsel, as such, submits that

the Tribunal has failed to examine these aspects, nor the Tribunal has rendered any cogent reasons in the impugned order to suggest that these contentions have been duly considered whilst passing the impugned order. The learned Senior Counsel as such, submits that there is a jurisdictional error committed by the Tribunal in not dealing with the contentions raised by the petitioners and the impugned order has been passed in breach of the principles of natural justice and, as such, deserves to be quashed and set aside.

4. On the other hand, Smt. Norma Alvares, learned Counsel appearing for the respondent No.4 has pointed out that it is the case of the respondents that there was a fraud committed by the petitioner whilst obtaining the environment clearance, as well as the CRZ permissions. Smt. Alvares further points out that the Tribunal has not examined the merits of the matter, but only held that the case would have to be kept open to examine the contentions of the respondents that the impugned orders are not in accordance with law. Mrs. Alvares further points out that as fraud vitiates all actions and orders, reliance on the provisions of Section 16 of the Act of 2010 by the petitioners would not at all be justified. The learned Counsel further points out that as such, as the Tribunal has not taken a specific decision with

regard to the contentions raised by the petitioner and has kept the issues open, to be examined at the time of final hearing of the main appeal, and, as such, no interference is called for in the impugned order.

5. Shri S. Upadhyaya, learned Counsel appearing for the respondents No.1 to 3 has pointed out that the main contention of the learned Senior Counsel appearing for the petitioner is that there is an error apparent on the face of the record and that the Tribunal has not applied its mind to the contentions raised by the petitioner which are matters which can be examined in terms of the Section 19 of the Act of 2010. The learned Counsel, as such, submits that no interference is called for in the impugned order.

6. We have considered the submissions of the learned Counsel and we have also gone through the record. We are only examining the rival contentions in the context of ascertaining whether the procedure followed by the Tribunal whilst passing the impugned order is in breach of the principles of natural justice. It is not disputed by the respondents No.1 to 4 that the petitioner had advanced submissions in support of their contention that the appeal itself is barred

by limitation, on different counts as noted hereinabove in the submissions advanced by the learned Senior Counsel appearing for the petitioner. But, however, the decision on this aspect has not been rendered by the learned Tribunal whilst passing the impugned order. Besides that, the contention of Ms. Alvares, learned Counsel appearing for the respondent No.4 that the permissions issued under the CRZ Notification merge with the environment clearance, has also not been decided by the Tribunal. These aspects would be material to decide whether there is merit in the contention of the petitioner that the appeal itself is barred by limitation. The Apex Court, in the Judgment reported in (2012) 12 SCC 170, in the case of ***Real Estate Agencies vs. State of Goa and others***, has, *inter alia*, observed at para 15 that “Time and again this Court has emphasised that such a course of action by a court cannot lead to a legally acceptable conclusion inasmuch as the manner of reaching the decision and the reasons therefor are sacrosanct to the judicial process”. As such, not examining the said contention and rendering reasons on those counts would result in a breach of the principles of natural justice.

7. Without going into the merits of the rival contentions and leaving all the contentions of both the parties open, we find it proper

to quash and set aside the impugned order dated 24th April, 2015 passed by the learned Tribunal in Misc. Application No.15/2015 in Appeal No.2/2015, and remand the matter to the learned Tribunal to decide the application filed by the petitioner afresh, after hearing the parties, in accordance with law. We make it clear that we have not taken a decision on any of the contentions raised by the learned Counsel appearing for the parties and the learned Tribunal would have to decide such contentions afresh, on its own merits and in accordance with law.

8. At this stage, Mrs. Alvares, learned Counsel appearing for the respondent No.4 points out that an ad interim relief sought by the respondent is being delayed on account of the decision on such application filed by the petitioner. In such circumstances, the learned Tribunal is at liberty to examine the application for ad interim relief in case the respondents are so advised, after hearing the petitioner, in accordance with law.

9. Subject to the above, we pass the following :

O R D E R

(I) The impugned order dated 24th April, 2015, passed by the

learned Tribunal in Misc. Application No.15/2015 in Appeal No.2/2015, is quashed and set aside;

(II) Misc. Application No.15/2015 is restored to the file of the learned Tribunal to decide such application, afresh in the light of the observations made herein above, after hearing the parties, in accordance with law.

(III) All contentions of both the parties, on merits, are left open.

(IV) Rule stands disposed of in the above terms, with no order as to costs.

K.L. WADANE, J.

F.M. REIS, J.

ssm.