

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 400/2015**

Shri Anil Hoble,
aged 59 years, Indian National
r/o. H. No.345, 'Mandar Niwas'
Merces Wadi, P.O. St. Cruz,
Tiswadi, Goa.

..... Petitioner.

Versus

1. Kashinath Jairam Shetye,
r/o A-102, Raj Excellency Patto,
Ribandar, Goa Pin- 403 006.
2. Dr. Ketan Govekar,
r/o 3rd Floor, Wadji Building,
St. Inez, Panaji, Goa Pin 403 001.
3. Desmond Alvares, r/o H. No. 470,
Dossoxir, Assagao, Bardez, Goa
Pin 403 507.
4. Sanjay Sarmalkar,
r/o F-2, Madhuban 2, Opp. St. Inez,
Church, Panaji Goa Pin 403 001.
5. Srinet Kotwale,
Member Secretary, GCZMA
c/o Science, Technology &
Environment, Dempo Towers,
Panaji, Goa Pin- 403 001.
6. The Chief Secretary,
Secretariat, State of Goa,
Porvorim, Goa Pin 403521.
7. National Green Tribunal,
Western Zone Bench, Pune.

..... Respondents.

Shri Aires Rodrigues,
Advocate, r/o. T-1-B-30,
Ribandar Retreat,
Ribandar, Ilhas, Goa.

..... Intervenor.

Shri Nitin Sardessai, Senior Advocate with Shri V. Amonkar,
Advocate for the petitioner.

Respondent No.1 in person.

Shri A. N. S. Nadkarni, Advocate General with Shri D. Lawande,
Government Advocate for the respondents No. 5 and 6.

Shri Aires Rodrigues, Intervenor in person.

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

Date :- 1st July, 2015.

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

Heard Shri Nitin Sardessai, learned Senior Counsel
appearing for the petitioner, Shri Kashinath Shetye, respondent No.1
in person, Shri A.N.S. Nadkarni, learned Advocate General appearing
for the respondents No.5 and 6 and Shri Aires Rodrigues, intervenor in
person.

2. The above petition, *inter alia*, takes exception to the

Judgment and Order dated 29th May, 2015 passed by the learned National Green Tribunal, (Western Zone) Bench, Pune - respondent No.7 in Application No.51/2014.

3. Briefly, the facts of the case in the above writ petition as pointed out by the petitioner, are that the respondents No.1 to 4 filed an application before the respondent No.7 under Section 18(1), read with Sections 14, 15, 16, and 17 of the National Green Tribunal Act, 2010. It is further the contention of the petitioner that it is the case of the said respondents that the petitioner has done an illegal construction and is running a bar and restaurant therein. The petitioner filed his affidavit-in-reply, disputing the claim of the said respondents, relying upon a number of permissions obtained by him. It is the case of the petitioner that the disputed structure was existing since 1967 and produced documentary evidence to that effect. It is further the contention of the petitioner that the respondent No.7, by the impugned Judgment and Order dated 29th May, 2015, ordered demolition of the petitioner's structure. Being aggrieved by the impugned Judgment and Order, the petitioner has preferred the above writ petition.

4. Shri Nitin Sardesai, learned Senior Counsel appearing for

the petitioner in a persuasive and articulate manner has taken us through the various provisions of the National Green Tribunal Act, 2010 (“the said Act” for short) and pointed out that Section 22 of the said Act does not exclude the jurisdiction of this Court under Article 226 of the Constitution of India. The learned Senior Counsel further points out that the powers of this Court, conferred under Article 226 of the Constitution, cannot be curtailed or taken away by any provision of the said Act. The learned Senior Counsel further pointed out that it has been well settled by a Judgment of the Constitution Bench that powers under Article 226 cannot, in any way, be taken away by a legislative Act. The learned Senior Counsel, in support of his submissions, has relied upon a Judgment of the Apex Court which we shall deal with while examining the said contentions. The learned Senior Counsel has, thereafter, taken us through the provisions of Section 22 of the said Act to point out that an appeal thereof can be filed only if it satisfies the requirements of Section 100 of the Code of Civil Procedure which, inter alia, requires a substantial question of law to arise. The learned Senior Counsel, as such, submits that filing an appeal is not an efficacious remedy and consequently, this Court ought to entertain the above writ petition. The learned Senior Counsel

further points out that in a similar matter before the Principal Seat at Mumbai, the Court has granted an interim relief, staying proceedings before the Tribunal. The learned Senior Counsel has, thereafter, taken us through the impugned Judgment to point out self contradictions and erroneous reading of the material on record to arrive at perverse findings. The learned Senior Counsel further submits that the learned Tribunal has erroneously found that the construction is illegal by misreading the sale deed and other material produced on record. The learned Senior Counsel further points out that as per the averments of the petitioner and the material on record itself suggests that the respondents No.1 to 4 were very well aware about the disputed construction in the year 2011 and, as such, the Petition before the Tribunal itself was barred by limitation. The learned Senior Counsel further points out that in terms of the provisions of law, the cause of action has arisen as on the date when a person came to know about the impugned construction. The learned Senior Counsel has, thereafter, pointed out that as per the chronology filed by the said respondents, itself suggests that the complaint itself was time-barred. The learned Senior Counsel also pointed out that the petition filed before the Tribunal being time-barred, the learned Tribunal had no

jurisdiction to entertain the said petition. The learned Senior Counsel, as such, submits that as there is a jurisdictional error committed by the Tribunal, interference of this Court under Article 226 of the Constitution would be justified. The learned Senior Counsel further submits that the disputed construction falls within the CRZ II and consequently, the finding of the learned Tribunal that there is infringement of such provisions, is totally erroneous, as there is an existing road between the subject-structure and the concerned river. The learned Senior Counsel, as such, submits that the writ petition deserves to be entertained and an interim relief be granted in favour of the petitioner considering the nature of the relief granted by the impugned Judgment and Order.

5. On the other hand, the respondent No.1, in person, has pointed out that this writ petition is not maintainable and this Court has no jurisdiction to entertain the petition as, according to him, the petitioner has a statutory remedy in terms of the said Act. The respondent No.1, further pointed out that a Division Bench of this Court sitting at the Principal Seat at Mumbai has also dismissed a petition summarily as such petitioner had an alternate remedy to challenge such order before the Appellate Court. The respondent No.1

further points out that there is no jurisdictional error committed by the Tribunal as, according to him, the Tribunal has rightly exercised its jurisdiction. The respondent no.1 further points out that the disputed area comes within the CRZ III and, as such, it is located within the No Development Zone. The respondent No.1 further submits that the learned Tribunal has rightly appreciated the material produced on record and come to the conclusion that the construction is illegal and directed demolition of such structure. He further submitted that initially the structure was very small, which has been subsequently expanded and extended from time to time as late as even in the year 2013-14. He has also pointed out that the report of the Goa Coastal Zone Management Authority, on the basis of the complaint lodged by the respondents, has also been challenged in terms of Section 16 of the said Act and, as such, the contention of Shri Sardesai, learned Senior Counsel appearing for the petitioner that the petition before the Tribunal is time barred, is totally erroneous. The party in person further points out that the said petition, before the Tribunal, is within time as, according to him, the cause of action has arisen only after the respondents learnt about the environmental degradation at the site. The party in person, as such, submits that the writ petition be

dismissed.

6. Shri Aires Rodrigues, Intervenor in person also supported the submissions of the respondent No.1 and further pointed out that this Court cannot entertain the above writ petition, as according to him, it would amount to perpetuating an illegality. The Intervenor further submitted that commercial activities are going on in full swing at the site, though the construction itself is illegal and in violation of the CRZ Notification of 1991. The Intervenor further submits that there is no reason for interference and the judicial discretion may not be exercised by this Court in favour of the petitioner who wants to protect an illegal structure. The Intervenor has also relied upon a Judgment of the Apex Court reported in (2014) 10 SCC 1, in the case of *Madras Bar Association vs. Union of India and another*.

7. We have considered the submissions of the learned Senior Counsel appearing for the petitioner, the respondents, as well as the Intervenor, and also examined the records only for the purpose of considering whether the above petition deserves to be entertained.

8. We shall first deal with the objections raised by the

respondent No.1 and the Intervenor to the effect that the above writ petition is not maintainable and that this Court has no jurisdiction to entertain such a petition. In this connection, we may note that the National Green Tribunal was constituted in terms of the provisions of the said Act, with the object of providing the establishment of a Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources, etc.. In terms of the said Act, the Tribunal can also enforce legal rights relating to environment. The Tribunal is conferred with both, Original, as well as Appellate jurisdiction. Under Section 14(1), the Tribunal has original jurisdiction over all civil cases where a substantial question relating to environment is involved and such questions which arise in the implementation of the enactments specified in Schedule I. Section 16 of the said Act also confers appellate jurisdiction over the orders passed either by the Board or by the Appellate Authority, or by the State Government under the provisions of different Acts, dealing with environmental issues.

Section 22 of the said Act provides for a remedy of an appeal to the Supreme Court as against any order or judgment passed by the Tribunal. The said provision reads thus :

“**22.** Any person aggrieved by any Award, Decision or Order of the Tribunal, may file an Appeal to the Supreme Court, within ninety days from the date of communication of the Award, Decision or Order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

Provided that the Supreme Court may entertain any Appeal after the expiry of ninety days, if it is satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal.”

9. Section 29 of the said Act, inter alia, deals with creation of bar of jurisdiction by the Civil Court. The said provision reads thus :

“29(1) With effect from the date of establishment of the Tribunal under this Act, no Civil Court shall have jurisdiction to entertain any Appeal in respect of any matter, which the Tribunal is empowered to determine under its Appellate jurisdiction.

(2) No Civil Court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in

respect of the settlement of such dispute over any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the Civil Court.”

10. As can be seen from the above, the National Green Tribunal has been constituted in terms of the said Act to decide specific disputes, as specified therein with the exclusion of jurisdiction of the Civil Court. That situation has created a complex question about the extent of ouster of jurisdiction. Normally, the bar of jurisdiction of the normal Courts would not assume large effects, but, however, when it is contended that such a bar would also extend to the constitutional Courts, the question assumes significance.

11. In 1993 (4) SCC 119, in the case of ***R.K. Jain vs. Union of India***, relied upon by Shri Sardesai, learned Senior Counsel appearing for the petitioner, the Apex Court has observed at paras 67 and 76 thus :

“ 67. The tribunals set up under Articles 323-A and 323-B of the Constitution or under an Act of legislature are creatures of the statute and in no case can claim the status as Judges of the High Court or parity or as substitutes. However, the personnel

appointed to hold those offices under the State are called upon to discharge judicial or quasi-judicial powers. So they must have judicial approach and also knowledge and expertise in that particular branch of constitutional, administrative and tax laws. The legal input would undeniably be more important and sacrificing the legal input and not giving it sufficient weightage and teeth would definitely impair the efficacy and effectiveness of the judicial adjudication. It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training as on many an occasion different and complex questions of law which baffle the minds of even trained judges in the High Court and Supreme Court would arise for discussion and decision.

76. Before parting with the case it is necessary to express our anguish over the ineffectivity of the alternative mechanism devised for judicial reviews. The judicial review and remedy are fundamental rights of the citizens. The dispensation of justice by the tribunals is much to be desired. We are not doubting the ability of the members or Vice-Chairman (non-Judges) who may be experts in their regular service. But judicial adjudication is a special process and would efficiently be administered by

advocate Judges. The remedy of appeal by special leave under Article 136 to this Court also proves to be costly and prohibitive and far-flung distance too is working as constant constraint to litigant public who could ill afford to reach this Court. An appeal to a Bench of two Judges of the respective High Courts over the orders of the tribunals within its territorial jurisdiction on questions of law would assuage a growing feeling of injustice of those who can ill afford to approach the Supreme Court. Equally the need for recruitment of members of the Bar to man the tribunals as well as the working system of the tribunals need fresh look and regular monitoring is necessary. An expert body like the Law Commission of India would make an in-depth study in this behalf including the desirability to bring CEGAT under the control of Law and Justice Department in line with Income Tax Appellate Tribunal and to make appropriate urgent recommendations to the Government of India who should take remedial steps by an appropriate legislation to overcome the handicaps and difficulties and make the tribunals effective and efficient instruments for making judicial review efficacious, inexpensive and satisfactory.”

12. In another Judgment of the Apex Court, reported in 1997

(3) SCC 261 in the case of *L. Chandrakumar vs. Union of India*, it has been observed at paras 91 and 92 thus :

“**91.** It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain case*, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard

to both the aforestated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.”

13. No doubt, the observations referred to herein above, were in the context of the scope of the judicial review of an order passed by the Administrative Tribunal wherein the Apex Court declared the provisions curtailing the jurisdiction under Article 226 of the

Constitution as unconstitutional, thereby holding that all similar circumstances are also unconstitutional. But, however, Section 22 of the said Act referred to hereinabove does not specifically exclude the jurisdiction under Article 226 of the Constitution. The Apex Court, in the Judgment reported in (2003) 2 SCC 412, in the case of *State of Karnataka vs. Vishwabharathi House Building Coop. Society and others*, has observed at para 53 thus :

“53. The provisions relating to power to approach the Appellate Court by a party aggrieved by a decision of the Forums/State Commissions, as also the power of the High Court and this Court under Articles 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards”

14. As already pointed out herein above, the National Green Tribunal exercises both, original as well as appellate jurisdiction. Irrespective whether the orders passed by the NGT were in all such proceedings. Section 22 of the said Act provides that an appeal is available to the Supreme Court. The said Act contains two provisions, one is Section 22 and another at Section 29 while the former providing for a remedy of an appeal and the latter bars the

jurisdiction of the Civil Court and not Constitutional Court. What the respondents in person want us to hold is to read into Section 22 the exclusion of jurisdiction of this Court under Articles 226 and 227 of the Constitution. If the said Act itself has contained a specific provision excluding the jurisdiction of this Court under Articles 226 and 227, the same would have been obviously invalid in view of the specific declaration in *L. Chandrakumar* (supra) .

15. In view of the above, we reject the objection of the respondents to the maintainability of the writ petition based on the provisions of Section 22 of the said Act.

16. Considering the view that we have taken with regard to the contention of the respondent No.1 in connection with the maintainability of the above writ petition, we shall now proceed to examine whether, any case is made out by the petitioner for interference of this Court under Articles 226 and 227 of the Constitution. As already pointed out herein above, the order impugned in the present writ petition is appealable in terms of Section 22 of the said Act. In such circumstances, we will have to examine in what circumstances the jurisdiction of this Court under Articles 226 and 227

can be exercised when an effective alternate remedy is provided under the Statute. It is well settled that a Writ Court would be slow in entertaining a writ petition when a remedy of statutory appeal is available to the petitioner. The discretion is to be exercised in the cases such as when there is a gross breach of the principles of natural justice or a jurisdictional issue is raised. In the present case, the main contention of Shri Sardessai, learned Senior Counsel appearing for the petitioner is that there is a jurisdictional error committed by the Tribunal in entertaining the petition filed by the respondents No.1 to 4 in terms of Section 14 of the said Act. The respondent No.1, who appears in person, submits that the petition filed by the said respondents is not only under Section 14 of the said Act, but also under Section 16 of the said Act. It is the contention of the respondent No.1 that the said respondents have also challenged the report prepared by the GCZMA with regard to the construction in question. The contention of Shri Sardessai, learned Senior Counsel appearing for the petitioner that the submissions advanced have not been considered in the impugned Judgment, are seriously disputed by the respondent No.1 in the present petition and, as such, it would not be proper to examine whether there is any gross breach of the principles of natural justice when a statutory appeal is available in terms of Section 22 of the said Act.

17. The Apex Court, in the Judgment reported in 2010 (8) SCC 110, in the case of *United Bank of India v. Satyawati Tondon*, has

observed at paras 43 and 55 thus :

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory

remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

18. On perusal of the said observations of the Apex Court, a serious concern has been shown by the Apex Court with regard to the matters which the High Court has entertained under Articles 226 and 227 when a statutory appeal is provided under the relevant Statute. Dealing with the aspect that merely because jurisdictional issue is involved, the Court may not necessarily exercise jurisdiction under Articles 226 and 227, the Andhra Pradesh High Court in a Judgment reported in AIR 1991 AP 326, in the case of *Tulasi Enterprises vs. Andhra Pradesh State Consumer Commission, Hyderabad and another*, has observed at paras 10 and 11 thus :

“10. It is true that whenever the Legislature creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under Art. 226 of the Constitution of India to deal with the orders passed

by the said Tribunals is not and cannot be ousted. It is also true that whenever questions of jurisdiction are raised, the High Court normally permits such questions to be raised under Art. 226 of the Constitution and examines whether the applications or the other proceedings filed before the Tribunal are within the jurisdiction of the said Tribunal or not. But the High Court has a discretion to entertain the writ petitions and, in particular, to decide, for example, any questions of jurisdiction unless they involve serious or disputed questions of fact. It is not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal.

11. In relation to the Consumer Protection Act, 1986, it is to be noted that apart from creating a hierarchy of tribunals, there is a specific provision made in S. 23 for a further appeal against the final orders of the National Commission. The intention of Parliament appears to be that final orders of the National Commission should not be questioned in the High Courts under Art. 226 of the Constitution of India. The District Forums are presided over by the Principal District Judge, while the State Commissions are presided over by no less a person than one who has been a Judge of the High Court or is a sitting Judge of the High Court. Surely, a litigant

cannot be permitted to say that a District Judge at the level of the District Forums, or a retired or sitting Judge of the High Court at the level of the State Commission, is not competent to decide the question of jurisdiction. The entire intention of the Parliament was to give a speedy and effective remedy before these authorities. This intention will be defeated if parallel proceedings are permitted before the High Court under Art. 226 of the Constitution of India in respect of matters pending before the bodies under the Consumer Act. We are saying that merely because a question of jurisdiction is raised, the High Court should not feel it imperative to admit the writ petition. If a writ petition is permitted on the question of jurisdiction or other similar grounds, the parties would naturally have a remedy of Letters Patent Appeal and then a further appeal to the Supreme Court under Art. 133 of the Constitution of India. After the question of jurisdiction or other preliminary question is decided in proceedings arising in a writ petition and are carried to the highest court should it be held that the matter is within the jurisdiction of the District Forum or the State Commission - then the main case has to be then taken up by the District Forum or the State Commission, as the case may be. This would obviously entail extraordinary delay and would

defeat the very purposes of the Act. We have already noticed that the rules provide for speedy disposal of the complaints normally within ninety days or in cases where any analysis or tests have to be conducted, within 150 days. The High Court is already burdened with heavy arrears and that is the precise reason why a separate heirarchy of tribunals has been created. It would therefore, be not wise for the High Court to take upon itself the burden of deciding disputes even if they relate to the jurisdiction which could be decided by the District Forums, presided over by District Judges or by the State Commissions, presided over by sitting or retired High Court Judges.”

19 Taking note of the said observations, we will now have to examine whether the contention with regard to error of jurisdiction raised by Shri Sardessai, learned Senior Counsel appearing for the petitioner, is based on undisputed questions of fact in the present petition.

20. The Apex Court, in the Judgment reported in (2012) 8 SCC 524 in the case of *Cicily Kallarackal v. Vehicle Factory*, has observed at para 4, thus :

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

21. Keeping in mind the said observations and the ratio laid down therein, we find that the only aspect to be examined in such circumstances is whether, the petitioner herein has made out a case to exercise any discretion to entertain the above writ petition. It was contended by Shri Sardesai, learned Senior Counsel appearing for the petitioner that the petition filed before the Tribunal by the respondents

No.1 to 4 was barred by limitation which is self evident on the basis of the synopsis of relevant facts and dates, as also the pleadings in the petition of such respondents, before the learned Tribunal. But, however, this contention is seriously disputed by the respondents No.1 to 4, as also the Intervenor herein. There are also allegations raised by the respondent No.1 that the suit structures were being extended from time to time. It is also contended that the petition filed by the respondents No.1 to 4 was also under Section 16 of the said Act. These facts have been seriously disputed by Shri Sardesai, learned Senior Counsel appearing for the petitioner. In such circumstances, we find that the issue of jurisdiction, which is mix question of law and facts, cannot be examined in the peculiar facts of this case in the petition under Articles 226 and 227 of the Constitution. It would also not be justified even to examine the correctness of the contention of Shri Sardesai, learned Senior Counsel appearing for the petitioner that there are patent errors and misreading of the documents by the learned Tribunal in the impugned Judgment, in the present writ petition, when such contentions can be examined in a statutory appeal provided under Section 22 of the said Act. Even the Division Bench of this Court at the Principal Seat at Mumbai in Wit Petition No. 5563 of 2014

by an order dated 17th June, 2014 rejected the petition when a substantive appeal was available in terms of Section 22 of the said Act. Another Order relied upon by Shri Sardessai, learned Senior Counsel appearing for the petitioner passed in Writ Petition No. 589/2015 dated 26th March, 2015 is only an interim stay order. As such, we find that no case is made out for interference in the impugned Judgment and order based on the ground of jurisdiction, as sought to be contended by the learned Senior Counsel appearing for the petitioner.

22. Apart from the above, it is the contention of Shri Sardessai, learned Counsel appearing for the petitioner that the disputed structures come within the CRZ II zone. But, however, the learned Advocate General has produced the Coastal Zone Management Plan which, prima facie, does not show that the concerned area comes within the CRZ II zone. These aspects which are disputed by the respondents No.1 to 4 cannot be examined in the writ petition when statutory appeal is available under the said Act. We have considered the rival contentions only to examine whether any case is made out for interference by this Court by exercising its extraordinary discretionary jurisdiction under Articles 226 and 227 of the Constitution. All the

contentions of both the parties, on merits, are left open. As the petitioner has effective alternate remedy wherein all the contentions raised by the petitioner can be raised, we find that there is no case made out for interference by this Court under Articles 226 and 227 of the Constitution.

23. Subject to the above, the petition is rejected.

K.L. WADANE, J.

F.M. REIS, J.

ssm.