

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

MISC. CIVIL APPLICATION (STAMP) NO.12909 OF 2015

In

WRIT PETITION (STAMP) NO.1432 OF 2015

M/s.Leading Hotels : Applicant

V/s.

Shri Anthony Mendes & Ors. : Respondents

...

Mr.Venkatesh Dhond, Senior Advocate, with Mr.Saket Mone and Mr.Vishesh Kara i/b. Vidhi Partners for the applicant.

Ms Norma Alvares for respondent nos.1 to 4.

Mr.A.N.S.Nadkarni, Advocate General of Goa with Mr.D. Lawande, Govt. Advocate (Goa) for respondent nos.6 to 10.

....

CORAM : MOHIT S. SHAH, CJ.

DATE : JUNE 19, 2015.

P.C.:

Today in view of heavy rains and stoppage of local trains, holiday was declared for the High Court at the principal seat. However, the learned Advocates for the parties and the parties who have come from Goa requested to take up the matter for hearing. The request is granted.

2. This is an application filed by M/s. Leading Hotels -- petitioner in Writ Petition (Stamp) No.1432 of 2015 filed before the High Court of Bombay at Goa, for its transfer to the principal seat at Bombay.

3. The ground urged in support of the transfer application is that there are 4 writ petitions pending before the principal seat wherein the issue is the same as involved in Writ Petition (St) No.1432 of 2015 namely:

- “a. The issue involved in all the writ petitions is the same, namely, that of the date for reckoning of the limitation u/s 14(3) of the NGT Act, 2010, i.e. whether it is the date when the cause of action first arose as provided in the statute or when the litigant learnt of all the illegalities upon a completion of all his inquiries, as held by the NGT in the orders impugned in the aforesaid writ petitions.
- b. It would save time and avoid multiplicity of proceedings.”

It is submitted in the transfer application that the transfer of the above numbered writ petition from Goa to the principal seat at Bombay would avoid multiplicity of proceedings and time.

4. It is submitted that respondents nos.1 to 4 herein filed an appeal before the National Green Tribunal, Pune Bench, challenging CRZ clearance dated 9.12.2014 granted by the Ministry of Environment and the environmental clearance dated 12.04.2013 granted by the State Environment Impact Assessment Authority. The present applicant (opponent in the appeal) has raised a preliminary contention that the appeal is time-barred insofar as the challenge to the environmental clearance dated 12.04.2013 is concerned. This contention is raised on the basis of provisions of section 16 of the National Green Tribunal Act, 2010 (for short, “Act”), which provides that an appeal shall be filed to the National Green Tribunal within a period of 30 days from the date on which the impugned decision is communicated. However, proviso to section 16 of the Act confers power on the Tribunal to allow an aggrieved person to file an appeal within the extended period of 60 days i.e. over and above 30 days.

The applicant submits that the other writ petitions (including two such writ petitions transferred from Goa to the principal seat) involving interpretation of similar provisions of section 14(3) of the Act are pending before the principal seat at Bombay.

5. The learned Counsel for the contesting respondents submit that the appeal of the respondents pending before the National Green Tribunal does not involve the same issue, because they have challenged the environmental clearance dated 12.04.2013 on the ground of fraud apparent on the face of record and, therefore, the respondents are not seeking extension of period of limitation. It is submitted that the respondents are invoking the settled legal principle that fraud vitiates all transactions and orders of any authority. It is further submitted that the applicant has obtained ex parte ad-interim stay of the proceedings before the National Green Tribunal, which also prevents the respondents from seeking other reliefs and at the same time, the applicant goes on making development on the land in question which, according to the respondents herein, is contrary to law.

6. Having heard the learned Counsel for the parties, it appears to me that while the writ petitions involving interpretation of section 14(3) of the Act are pending before the principal seat, it would be premature at this stage to hold that the above writ petition at Goa necessarily needs to decide the question of limitation as framed by the

applicant or as submitted by the respondents herein i.e. the appellants before the Tribunal. It will be open to the applicant herein (writ petitioner) to submit before the High Court of Bombay at Goa that the Tribunal may first decide the question of limitation as a preliminary issue and if this Court at Goa accepts that submission and directs the Tribunal to decide the said question of limitation as a preliminary issue, it may not be necessary for this Court at Goa to interpret the provisions of section 14(3) or section 16 of the Act. In case, this Court at Goa considers it necessary that the question of limitation in the context of allegation of fraud needs to be decided by this Court itself, then this Court at Goa may consider whether the said writ petition needs to be heard along with the writ petitions pending at the principal seat.

7. In my view, therefore, it is not necessary to transfer the writ petition to the principal seat at this stage, as it would be open to this Court at Goa to pass appropriate orders without deciding the question of interpretation of sections 14(3) and 16 of the Act. It is clarified that this observation may not be treated as an expression of opinion on the merits of controversy between the parties or even on the question of preliminary issue raised by the applicant before the Tribunal. The Division Bench

hearing the writ petition at Goa would be at liberty to pass appropriate order, in accordance with law, without being influenced by any observation in this order.

8. The transfer application is accordingly disposed of in the above terms. The ex parte ad-interim stay stands vacated.

9. So far as costs of this litigation is concerned, while issuing notice on this application for transfer of the above writ petition on 5 May 2015, it was made clear that the question of calling upon the applicant to deposit some amount towards costs of this litigation will be considered on the next date of hearing. Since the transfer application is disposed of, no orders are required to be passed for making such deposit. However, the applicant shall pay Rs.25,000/- to respondents nos.1 to 4 herein as costs of this transfer application within 2 weeks.

CHIEF JUSTICE