

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5754 OF 2015

M/s. Sham Resorts & Hotels Pvt. Ltd. .. Petitioner.
Vs.
Mrs. Maria Christine Rebillet
Perdriau & Ors. .. Respondents.

Mr. T. N. Subramanian, Mr. Prasad Dani, Senior Advocates a/w Mr. Shivam Desai, Mr. Saket Mane i/b Vidhi Partners for the Petitioner.

Ms. Anarkali A. Agni, Senior Advocate a/w Ms. Ashwini Agni for the Respondents.

**CORAM : MOHIT S. SHAH, C.J. &
A.K. MENON, J.**

DATED : 3 JULY 2015

JUDGMENT (PER CHIEF JUSTICE)

By this petition under Article 226 and 227 of the Constitution, the petitioner company has challenged the order dated 29 May 2015 of the National Green Tribunal (Western Zone) Bench, Pune, in Appeal No.18 of 2014 filed by the respondents herein. By the said appeal, the appellants have

challenged the order dated 25 April 2014 and 29 May 2014 passed by the Goa Coastal Zone Management Authority (GCZMA) in the matter of their complaint for demolition of structure of the writ petitioner.

2. After the Tribunal issued a notice to the present writ petitioner (respondent in appeal before the Tribunal), the writ petitioner filed an application challenging maintainability of the appeal and pleaded that repairs and renovation of the premises in question commenced and was completed pursuant to the permission dated 5 September 2005 issued by GCZMA and approval dated 21 August 2006 issued by the Deputy Town Planner and permission of the Village Panchayat of Candolim dated 24 January 2007. In the writ petition it is also pleaded that the repairs and renovations were completed by 2009 prior to coming into force of the National Green Tribunal on 18 October 2010. The writ petitioner, therefore, contended that the complaint filed by the appellant in the year 2011 was not maintainable and the appellant could not be allowed to circumvent rigours of limitation provided under provisions of the National Green

Tribunal Act. The writ petitioner also contended that the proceedings were initiated by the appellant maliciously and with malafide intention of threatening the writ petitioner into withdrawing Special Civil Suit No.7 of 2007 filed by the petitioner against the appellants.

3. When the appeal was listed before the tribunal on 22 August 2014 the following order was passed :

“Heard Mr. Asim Sarode.

Leave granted to file reply affidavit. Reply affidavit may be given well in advance. The Application regarding maintainability of the Appeal, will be heard on the scheduled date of hearing i.e. on 25th September 2014.

By consent of learned counsel for the parties, stand over to 25 September 2014.”

4. Thereafter on 8 December 2014 the tribunal passed the following order :

“Heard learned Counsel for the Applicant on preliminary objection as regards maintainability of the Appeal/Application.

We have also heard learned Counsel for the

Respondents.

Be treated as part heard.

Stand over to 19 December 2014”.

5. On 19 December 2014 the applicant placed on record the written submissions and the tribunal passed the following order :

“Heard.

The Applicant has placed on record written submissions.

M. A. No. 138 of 2014. Reserved for Order, which will be passed after the vacation.”

6. According to the writ petitioner, thereafter the writ petitioner did not receive any notice from the tribunal but all of sudden the writ petitioner received the impugned order dated 29 May 2015 allowing the appeal holding that the writ petitioner caused environmental degradation due to illegal construction of resort/hotel within CRZ area and thereafter made the following observations :

“20. It remains to be seen whether due to allowing the Appeal, it is essentially required to

direct demolition of the structure in dispute. We cannot be oblivious to the fact that there is business rivalry between the parties. The structure exists since years together. The Appellants also run a Guest House in the proximity. The delay and latches on part of the Appellants, the earlier civil litigations, writ petition and the background facts of the instant case, go to show that the Appellants are overzealous in demolition of the structure in question, than the cause of environment. Hence we direct that :

(a) The Respondent No.2, shall pay Rs. Five (5) Crores to the State of Goa on account of the environmental degradation, within period of six (6) months which be deposited with the office of the Secretary Environment Department. The amount, if so deposited, shall be utilized for remediation of the degraded beaches/environment, afforestation and like activities.

(b) If the above amount is not deposited in the given period of six months from today the structure in question standing on Survey No.139/1 (part) of Respondent No.2's Hotel shall be demolished by the GCZMA, without any

further orders.

(c) If the amount is deposited as above then the construction in question be deemed as *fait accompli*.

(d) The Appeal is accordingly disposed of. No costs.”

7. Aggrieved by the above order, the writ petitioner has filed present petition making serious grievance that the tribunal had heard present writ petitioner (respondent in the appeal before the tribunal) in the appeal only on the writ petitioner's application challenging maintainability of the appeal and reserved the matter for orders on 19 December 2014. Thereafter the tribunal did not issue any notice to the writ petitioner but took up the matter suo motu on 29 January 2015 and passed the order issuing summons to the Sub-Registrar as a witness to bring the conveyance deed dated 16 March 1981. Thereafter the hearing was adjourned to 13 February 2015 on which date the tribunal passed the order that the report of the Sub-Registrar was received and took the report alongwith map on record. The tribunal passed the following order on 13 February 2015 which is as under :

“The report by Mr. Arjun Shetye, Sub-Registrar, is filed. The report is accompanied by copy of the coloured map, which is stated to be the part of the original document of transfer. The Sub-Registrar reported that the original document is returned to the concerned party and entry in the relevant register is taken. The report is taken on record.
Reserved for Judgment.”

8. Thereafter, the tribunal delivered the impugned judgment dated 29 May 2015. The learned counsel for the writ petitioner, therefore, makes a serious grievance that the tribunal heard the appeal on merits without issuing any notice to the writ petitioner (respondent in the appeal before the tribunal) and violated settled principles of natural justice that no party should be condemned unheard. It is also submitted that the writ petitioner has not received any order or judgment of the tribunal on the application challenging maintainability of the appeal for which the order was reserved on 19 December 2014.

9. The learned counsel for the writ petitioner submits that

in the impugned judgment, the tribunal has not at all considered the petitioner's challenge to maintainability of the appeal, but the tribunal has made the following observations regarding the Petitioners' plea regarding limitation :

“7. At the outset we make it clear that there is no grain of merit in technical objection raised by Respondent No.2, as regards bar of limitation. The contention of Respondent No.2, is that so called repairs and renovations work was completed by 2009. The NGT Act, 2010 came into force w.e.f. From 2 June 2010. The Writ Petition No.872 of 2012, was entertained by the Hon'ble High Court at Bombay at Goa and thereafter the complaint was directed to be enquired and decided by the GCZMA. The impugned order was passed as a result of such direction given by the Hon'ble High Court. In the meanwhile, the Writ Petition came to be transferred to the NGT (WZ) Bench, Pune.”

The learned counsel for the petitioners submits that what was challenged in the appeal was the orders of CRZ authority of Goa by the Respondents herein before the GCZMA. It is, therefore, submitted that when the National Green Tribunal

imposes bar of limitation of 90 days what was really under challenge was permission granted by the authorities before 2010 and in respect of construction which was completed in the year 2009.

10. In reply, the learned counsel for Respondent Nos.1 and 2 has opposed the writ petition and submitted that the petitioners have efficacious alternative remedy of filing an appeal before the Supreme Court under section 22 of the National Green Tribunal Act. Relying upon decisions of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India¹ and General Manager, Sri Siddeshwara Cooperative Bank Ltd. & Anr. Vs. Iqbal and Others² the learned counsel for the Respondent submitted that as per settled legal position this Court would not exercise its discretionary writ jurisdiction under Article 226 when the statutory alternative remedy is available.

11. We are conscious of the legal position that the High Court should not entertain petition under Article 226 if equally

¹ (2012) 8 SCC 326

² (2013) 10 SCC 83

alternative remedy is available to the aggrieved person and that too by way of statutory appeal. However, the law is equally well settled that this is a matter of discretion and that the High Court may entertain a writ petition if the petitioner has challenged the impugned order on violation of the principles of natural justice. In the facts and circumstances of the present case the learned counsel for Respondent Nos.1 and 2 does not dispute the facts narrated by the learned counsel for the petitioners. The orders of the tribunal speak for themselves. The tribunal had heard the application of writ petitioner challenging maintainability of the appeal on 19 December 2014 and reserved the application for orders which will be passed after vacation. The tribunal has not passed any order on the said application which was heard on 19 December 2014 but without issuing any notice to the petitioner (Respondent in appeal before the tribunal), the tribunal took the matter suo motu on the cause list on 29 January 2015 when only the advocate for the appellant was present. The summons were issued to the Sub-Registrar of documents, Goa and the report submitted by the Sub-Registrar dated 13 February 2015 was taken on record. It appears that the tribunal heard the advocates for the Appellants on 29

January 2015 and 13 February 2015 and reserved the appeal for judgment. Admittedly, no notice was issued to the petitioner herein (Respondent in appeal before the tribunal) and the tribunal has then rendered the impugned judgment allowing the appeal on merits and holding that the permission granted in favour of the petitioner pursuant to which the construction was completed was illegal and the structures in question were liable to be demolished but on account of delay and laches on the part of the appellant and business rivalry between the parties, the tribunal thought it fit to pass an order on account of alleged environmental degradation failing which the structures would be demolished by GCZMA without any further orders.

12. We may also note the submission of the writ petitioner that the disputed structure is not a hotel or resort as presumed by the tribunal because the petitioner (Respondent in appeal before the tribunal) is M/s. Sham Resort and Hotels Pvt. Ltd. and that it is a residential structure constructed in the year 2009.

13. The learned counsel for the respondents herein

disputed the above assertion but we not propose to go into this controversy as we are inclined to set aside the impugned judgment dated 29 May 2015 on the ground that the tribunal committed grave error of violating settled principles of natural justice by deciding the appeal on merits without giving an opportunity of hearing whatsoever to the writ petitioner on the merits of appeal. We are of the view that the tribunal having heard the parties on the application challenging maintainability of the appeal and having reserved the matter for orders on 19 December 2014, the tribunal ought to have decided the said application before proceeding further and could not have taken up appeal for hearing on merits without issuing notice to the Appellants or their advocates. To say the least the procedure adopted by the tribunal is shocking and cannot be countenanced. We hope and trust that there will not be another occasion for us to make any observation in future.

14. In the result the writ petition is allowed. The impugned judgment and order dated 29 May 2015 of the National Green Tribunal (Western Zone) Bench, Pune in Appeal No.18 of 2014 is

set aside. The said appeal is restored to the file of the tribunal and having considered passage of time when the application challenging maintainability of the appeal was heard, we direct the tribunal to hear the parties/their advocates on Miscellaneous Application No.138 of 2014 afresh and thereafter the tribunal shall decide the said Miscellaneous application. The petition is disposed in the above terms.

(CHIEF JUSTICE)

(A.K.MENON, J.)