

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.O. NO. 353 OF 2015 IN PUBLIC INTEREST LITIGATION NO. 88 OF 2013.
The Court on its own motion .vs. National Highway Authority of India, Nagpur &
others

Applicant : Srushti Paryavaran Mandal, a registered NGO

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Mr. Tushar Mandlekar, Advocate for applicant/intervenor.
Mr. N.A. Padhye, Advocate (Amicus Curiae) for petitioner,
Mr. A.A. Kathane, Advocate for respondent nos. 1 & 2,
Mrs. B.H. Dangre, G.P. for respondent nos. 4,5, 7 to 10 &
12.
Mr. Rohit Deo, A.S.G.I. for respondent no.6,
Mr. M.P. Khajanchi, Advocate for intervenor,
Mr. S.M. Puranik, Advocate for intervenor.

CORAM : B.R. GAVAI & INDIRA K. JAIN, JJ.

DATED : JULY 29, 2015.

This is an application for recalling the order passed
by this Court dated 14.11.2014.

Undisputedly, Petitions for Special Leave to Appeal
challenging the said orders being Special Leave to Appeal CC
Nos. 6315-6316/2015 were filed before the Hon'ble Apex Court.
The Hon'ble Apex Court has passed the following order on
10.4.2015 :

“Learned counsel appearing for the
applicants/petitioners seeks leave to withdraw the
application for permission to file special leave
petitions with liberty to move appropriate forum.

Permission sought for is granted.

The applications for permission to file special leave petitions are disposed of as withdrawn with liberty to the applicants/petitioners to move appropriate forum by making appropriate application for appropriate relief(s).”

Mr. Tushar Mandlekar, learned Counsel for applicant, fairly states that pursuant to the liberty granted by the Hon'ble Apex Court to approach appropriate forum, the applicant considering the appropriate forum to be the National Green Tribunal has filed an application under Section 16 of the National Green Tribunal Act, 2010. The learned Counsel for applicant, however, submits that merely because the applicant has approached the learned National Green Tribunal, does not prevent the applicant from pursuing present application for recalling the orders simultaneously.

Undisputedly, the order passed by this Court of which the recall is sought was challenged before the Apex Court and applicant has not pressed into service the said S.L.P. and liberty to withdraw with liberty to approach appropriate forum was granted. In the opinion of the applicant, the National Green Tribunal is the appropriate forum.

As per the arguments advanced by Mr. Mandlekar, learned Counsel for applicant, the word “appropriate forum” as used by the Hon'ble Apex Court can be construed to be the National Green Tribunal as well as this Court. It is, therefore, submitted that though an application is already filed before the learned National Green Tribunal, the applicant is very much

entitled to pursue the present application also simultaneously.

We cannot go into the question as to what forum was construed to be an appropriate forum by Their Lordships of the Hon'ble Apex Court. Undisputedly, the present applicants have already filed an application before the National Green Tribunal. By now, it is a settled principle of law that a party cannot be permitted to prosecute two remedies for the same cause simultaneously.

On a pertinent query as to which forum the applicant decides to approach and which remedy he wants to pursue, the learned Counsel for the applicant makes a categorical statement that he wants to pursue both the remedies. We had given an option to the applicant that we would consider the present application provided the applicant makes a statement that he would not pursue the remedy before the other forum. To the said query, Shri Mandlekar has flatly denied.

In that view of the matter, in view of the settled position of law that party cannot be permitted to prosecute both the remedies simultaneously, the present application is rejected.

List the P.I.L. on 30.7.2015.

Judge

Judge

J.