

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 325 OF 2016**

All Goa Private Property Shacks and Huts Owners Association, a Society registered under the Societies Registration Act, 1860, having its office at Cuba Head Office, C/o Old Atul Soda Factory, Patnem Beach, Canacona, Goa, through its Authorized Representative Shri Dharmesh Saglani, major of age, Indian National, r/o H. No. 850, Gokulwadi, Sankhali, Goa.

.... Petitioner

Versus

1. State of Goa, through Director of Tourism, Department of Tourism, Government of Goa, Patto, Panaji, Goa.
2. Ministry of Environment and Forests, through its Secretary, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, New Delhi 110 003.
3. The Member Secretary, The Goa Coastal Zone Management Authority (GCZMA), 3rd Floor, Dempo Towers, Patto Plaza, Panaji-Goa.
4. Aleixo Arnolfo Pereira, Indian Citizen, major of age, address: H. No. 150, Utorda, P/o, Majorda-Salcete, Goa.

.... Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Deep Shirodkar, Advocate for the Petitioner.

Ms. Neha Kholkar, Additional Government Advocate for Respondent Nos. 1 and 3.

Mr. Mahesh Amonkar, Central Government Standing Counsel for Respondent No. 2.

Respondent No. 4, in person.

CORAM:- C. V. BHADANG &

NUTAN D. SARDESSAI, JJ.

RESERVED ON:- 11th APRIL, 2016

PRONOUNCED ON:- 20th APRIL, 2016

ORDER:

By this petition, the petitioner-Association is challenging the order dated 09.02.2016 passed by the National Green Tribunal, Western Zone Bench at Pune (NGT) in M.A. No. 186/2014 in Application No. 03/2014 (WZ).

2. The facts necessary for disposal of the petition may be stated thus:

That the petitioner is a Society registered under the Societies Registration Act, 1860, formed with the object of protecting the interests and espouse the cause of persons owning

shacks and huts in private properties. The respondent no. 4 had filed Application No. 03/2014, before the NGT challenging certain clauses in the Shack Policy introduced by the respondent no. 1, for the years 2013-2016. The petitioner was not initially made party in the petition before the NGT, however, the petitioner was subsequently impleaded as respondent no. 5. On 17.12.2014, the Application No. 03/2014 came to be partly allowed by the NGT, issuing certain directions for regulation of erection of temporary structures in villages with CRZ-I areas. For the present purpose, the direction nos. (iii) and (v) are relevant, which are re-produced as under:-

(iii) GCZMA, shall immediately carry out a rapid survey to tentatively identify the sand dunes present in the villages with CRZ-I areas in the coastal areas of Goa and locate them on map, within a period of four (4) weeks and shall not issue any permission in such areas until detail survey conducted by NIO, is completed.

(v) GCZMA, shall carry out study to assess the carrying capacity of different beaches in state of Goa, for providing such shacks and other temporary structures, in environmentally

sustainable manner to protect the coastal environment, based on the 'precautionary principle' in next six (6) months and based on findings of this study, the permissions for the year 2015-2016, only shall be granted.

3. It can thus, be seen that in terms of clause (iii) above, the Goa Coastal Zone Management Authority (GCZMA) i.e. respondent no. 3 herein, was directed to carry out a rapid survey to tentatively identify the sand dunes present in the villages within CRZ-I areas in the coastal areas of State of Goa and locate them on maps, within a period of four weeks. The GCZMA was further directed not to issue permission in such areas, until detailed survey by the National Institute of Oceanography (NIO), is completed.

As per clause (v), the GCZMA was directed to carry out the study to assess the "carrying capacity of different beaches in the State of Goa", for providing such shacks and other temporary structures, in environmentally sustainable manner to protect the coastal environment based on the precautionary principle, within six months and only on the basis of the findings of such a study that the permissions for the year 2015-2016, could be granted.

4. Undisputedly, the order dated 17.12.2014 was not challenged and the same has attained finality.

5. The members of the petitioner submitted their applications for erection of shacks/temporary structures in their respective private properties for the tourist season 2015-2016, which has been granted by the GCZMA, with respect to 116 applications. It is contended on behalf of the petitioner that the members have invested huge amounts in erection of the shacks/temporary structures.

6. On 14.02.2016, the members of the petitioners learnt from the press reports about an order of the NGT directing revocation of all permissions/licenses issued by the GCZMA. On enquiry they learnt that such an order was passed on the basis of an application, which was filed in the year 2014, in a disposed of Application no. 03/2014. It is the material contention that the petitioner or the individual members were never served with such application on the basis of which, the impugned order dated 09.02.2016 has been passed by the NGT. Feeling aggrieved, the

petitioners are before this Court.

7. The respondent no. 3 has filed an affidavit in reply stating that on 12.01.2016, the respondent no. 3 had issued work order to the NIO for preparation of the new Coastal Zone Management Plan (CZMP) as mandated in CRZ notification 2011, which *inter-alia* includes mapping of sand dunes. Insofar as the rapid survey report to tentatively identify and locate the sand dunes present in villages in CRZ-I areas, is concerned the same is complete. It is further contended that on 29.03.2016, the GCZMA has issued a work order to the National Central for Sustainable Coastal Management (NCSCM), Ministry of Environment, Government of India, Chennai, for mapping of sand dunes, land use/land cover at cadastral level for the State of Goa.

8. It is further contended that on 12.03.2016, a detailed schedule for executing the study as to carrying capacity of the coastal beaches in the State of Goa, for the purpose of shacks and other purposes were placed before the NGT, which has been taken on record. The GCZMA has also placed on record a communication

dated 03.03.2016 from the NCSCM, setting out the schedule for completing the said study, which comprises of the total duration, which is said to be approximately 184 calendar days.

9. It is further contended that in view of the order dated 09.02.2016 passed by the NGT, the GCZMA has revoked all the provisional permissions to various project proponents, in private properties on 16.02.2016. It is contended that GCZMA has no intention to flout the orders of the NGT. A contention about availability of alternate remedy under Section 22 of the National Green Tribunal Act, 2010 (the Act, for short), is also raised.

10. The respondent no. 4 has filed M.C.A. No. 250/2016, for vacation of the stay granted by this Court on 18.02.2016, which is heard at the stage of admission of the petition and is being disposed of accordingly.

11. We have heard the learned Senior Counsel for the petitioner and the respondent no. 4 in person. We have also heard the learned Additional Government Advocate for respondent nos. 1

and 3 and learned Central Government Standing Counsel for respondent no. 2.

12. The learned Senior Counsel for the petitioner has challenged the impugned order mainly on the ground of breach of principles of natural justice and error as to jurisdiction. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **P. Malaichami Vs. M. Andi Ambalam and Others, 1973 (2) SCC 170.**

13. The learned Senior Counsel has pointed out paragraph 18 of the judgment and the order dated 17.12.2014 passed by the NGT, in order to submit that while deciding the Application No. 03/2014, all other miscellaneous applications (which would include M.A. No. 186/2014, on which the order dated 09.02.2016 is passed), were disposed of. It is contended that thus, the NGT could not have passed the impugned order on an application, which was already disposed of and that too without affording opportunity of hearing to the petitioner-Association. Reliance in this regard is placed on the decisions of the Hon'ble Supreme

Court in the case of **State of Uttar Pradesh Vs. Brahma Dutt Sharma and Another, 1987 (2) SCC 179** and in the case of **Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others, (2001) 1 SCC 169**. The learned Senior Counsel would submit that thus, the impugned order is passed in flagrant disregard of the principles of natural justice as also, would demonstrate a jurisdictional error. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Sahib Singh Vs. State of Haryana, 1997 (7) SCC 231**.

14. The learned Senior Counsel has pointed out the provisions of Section 19 of the Act, which provides for the procedure and the powers of the Tribunal. The learned Senior Counsel was at pains to point out that the jurisdiction and the powers of the Tribunal, unlike a Court of plenary jurisdiction or a constitutional Court, would be circumscribed by the provisions of the Act, under which the Tribunal is created and established. It is thus, submitted that the Tribunal could not have exercised the jurisdiction or power, in excess of what is permissible under the provisions of the Act. He therefore, submitted that the availability

of the statutory remedy of an appeal under Section 22 of the Act, would not come in the way of this Court in exercising its extraordinary jurisdiction .

Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Whirpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1**, in order to contend that the bar of alternate remedy is held not to be applicable at least in three contingencies, namely (1) where the Writ Petition has been filed for the enforcement of any of the fundamental rights (2) where there is violation of the principles of natural justice (3) where the order or proceedings are "wholly without jurisdiction" or the vires of an Act is challenged. It is submitted that apart from the fact that the order exhibits a jurisdictional error and is in breach of principle of natural justice, it has also adversely affected the fundamental rights of the members of the petitioner under Article 19(1)(g) of the Constitution of India, to carry on any occupation, trade or business. It is thus submitted that the statutory remedy of an appeal may not come in the way. Reliance is placed on the decision of this Court in the case, **the Court on its own Motion Vs. National Highway Authority of**

India, Nagpur and Others passed in C.A.O. Nos. 1671/15, 1683/15 & 1684/15 in Public Interest Litigation No. 88/2013 dated 11.09.2015, to submit that this Court, in appropriate cases can exercise jurisdiction under Article 226/227 of the Constitution of India against the order passed by the NGT.

15. Insofar as the compliance with clause (iii) of the order dated 17.12.2014 is concerned, it is submitted that the rapid survey report has already been placed on record and thus the only compliance which remains, if any, is as regards clause (v) with regard to study as to carrying capacity of the beaches. The learned Senior Counsel strenuously urged that the carrying capacity of the beaches has no relevance to the permissions granted for erection of the shacks on private properties. It is submitted that there are instances where the shacks on the beaches (unlike shacks on private properties), are strewn alongwith a number of deck beds, which affects the beach stretch. It is submitted that as compared to the beach stretch, the areas of the private owners may be quite large, which may be at times more than 90,000 square metres. In short, it is contended that

the issue of carrying capacity can arise only in respect of beach areas and has nothing to do with the permission granted to erect shacks on the private properties. It is thus, submitted that for alleged non-compliance of the directions contained in clause (v), the NGT could not have directed revocation of the permissions insofar as the shacks on private properties are concerned. The learned Senior Counsel was at pains to point out that, had an opportunity of hearing been granted to the petitioner, this aspect could have been pointed out to the NGT. This submission was made in order to demonstrate that sending back the matter to the NGT would not be a futile exercise and it could not be said in this case that, no other conclusion except, as reached by the NGT was competent on the facts of the case. It is also submitted that the relief granted is beyond the prayer clause in M.A. No. 186/2014.

16. On behalf of the petitioner, it was urged that this Court may grant a declaration that the judgment dated 17.12.2014 does not apply to shacks/temporary structures put up in private properties. It was contended that this Court may consider directing the respondent nos. 1 and 3 to complete the study, on or before 15.09.2016.

17. The learned Senior Counsel has also placed reliance on the decisions of the Hon'ble Supreme Court, in support of various submissions, namely (i) *State of Himachal Pradesh and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597; (ii) *Press Council of India Vs. Union of India*, (2012) 12 SCC 329 and (iii) *State of Himachal Pradesh and Another Vs. Kailash Chand Mahajan and Others*, 1992 Supp (2) SCC 351.

18. On the contrary, it is submitted by the respondent no. 4, appearing in person, that the petitioner has an efficacious remedy of a statutory appeal to the Supreme Court of India under Section 22 of the Act. He has placed reliance on several decisions including the decision in the case of **Nivedita Sharma Vs. Cellular Operators Association of India and Others**, (2011) 14 SCC 337 and **Cicily Kallarackal Vs. Vehicle Factory**, (2012) 8 SCC 524, in order to submit that this Court may not exercise the extra ordinary jurisdiction in this case.

19. The respondent no. 4 has pointed out the cause list of

the NGT dated 13.02.2015 (which is subsequent to the passing of the impugned order) to show that M.A. No. 24/2013 and M.A. No. 165/2014 in Application No. 3/2014 were fixed for directions. He further points out the cause list dated 09.02.2016 to show that the M.A. No. 186/2014 was listed for non-compliance/contempt on that date. He submits that thus, it cannot be said that the proceedings before the NGT were concluded and no orders could have been passed.

20. The respondent no. 4 states that there are instances where the shacks are constructed in concrete and steel and there is discharge of untreated waste and effluents in the land. He has also referred to the observations in the inspection conducted showing certain violations as to number of shacks/huts permissible. He submits that there is inordinate delay on the part of the GCZMA in implementing the directions as to the rapid survey of the sand dunes, as also the carrying capacity of the beaches and thus, the GCZMA could not have granted permissions in breach of the order dated 17.12.2014. It is submitted that the petitioner cannot be benefited out of an action, which is in breach

of the directions of the competent Tribunal and which has attained finality.

The respondent no. 4 has also referred to the various orders passed by the NGT (which are annexed to his affidavit in reply), to demonstrate that the NGT has passed repeated orders noticing the lackadaisical approach of the GCZMA in implementing the directions.

21. The learned Additional Government Advocate for respondent nos. 1 and 3 has stated that already work order has been issued for conduction of the study as to beach carrying capacity and the permissions granted to the members of the petitioner have been revoked as per the directions of the NGT.

22. The learned Central Government Standing Counsel appearing for the respondent no. 2 had nothing much to add.

23. In reply, the learned Senior Counsel for the petitioner submits that the GCZMA has not brought to the notice of this Court, prior to filing of the reply on 05.04.2016 that the

permissions have been revoked. The learned Senior Counsel submits that in any case, revocation being purely on the basis of the impugned order, (which is the subject matter of challenge), would not be decisive.

24. We have considered the rival circumstances and the submissions made.

25. At the outset, it is necessary to state that under Section 22 of the Act, the petitioner has a statutory remedy of an appeal to the Hon'ble Supreme Court against the impugned order. In the case of **Nivedita Sharma** (supra), the question was whether in the face of an alternative remedy of an appeal available under Section 19 of the Consumer Protection Act, 1986 against the order of the State Consumer Commission and in view of the rule of self restraint in entertaining the writ petition, on the availability of the alternative remedy, the High Court was justified in entertaining the petition. It was *inter-alia* held in that case that the High Court should not have entertained the petition and instead directed the party to avail the statutory remedy.

26. The following observations in paragraph 11 of the judgment in the case of **Nivedita Sharma** (supra) are apposite:-

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation- L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective

alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

27. In the case of **Cicily Kallarackal** (supra), the Hon'ble Apex Court had noticed its earlier decision in the case of **Mohd. Swalleh Vs. Additional District Judge, Meerut, (1988) 1 SCC 40**, to hold that once it was found that in the facts and circumstances of the case, justice was done (although technically the appellant had a point that the order of the District Judge was illegal and improper), no interference is called for. It was observed that it was not always necessary to set aside the order, if it is found to have been passed by an authority/Court having no jurisdiction. It is held thus in paragraph 3 of the judgment in the case of **Cicily Kallarackal** (supra):-

"3. So far as the issue of jurisdiction is concerned, the learned counsel for the petitioner is right that the High Court had no jurisdiction to deal with the matter against the order of the Commission. However, while dealing with a similar issue this Court in Mohd.

Swalleh Vs. Addl. District Judge, Meerut,
(1988) 1 SCC 40 observed:

"7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. (sic no appeal lay)... On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

In view of the above, it is not always necessary to set aside an order if it is found to have been passed by an authority/court having no jurisdiction."

(Emphasis Supplied)

28. At this stage, it would be necessary to refer to the oft quoted decision of the Hon'ble Supreme Court in the case of **Whirpool Corporation** (supra), in which the Hon'ble Apex Court has culled out, atleast three exceptions to the rule, (albeit self imposed) against exercise of extra ordinary jurisdiction, in the wake of the availability of an alternate remedy. It is now well settled that the availability of an alternate remedy is not an absolute bar. The exceptions are, (1) where the Writ Petition has been filed for the enforcement of any of the fundamental rights (2) where there is violation of the principles of natural justice (3) where the order or proceedings are "wholly without jurisdiction" or the vires of an Act is challenged.

Thus, the question may not always be about existence of the jurisdiction, but its exercise. The question would essentially depend upon facts and circumstances of each case. However, it needs to be emphasized as held by the Hon'ble Supreme Court in

the cases of **Nivedita Sharma** and **Cicily Kallarackal** (supra) that this Court would be slow in invoking the extra ordinary jurisdiction in the wake of availability of the statutory remedy of an appeal to the Hon'ble Supreme Court. With this we now propose to examine the challenge, broadly on the grounds as may be permissible in view of decision in the case of **Whirlpool Corporation** (supra).

29. The impugned order is challenged mainly on two grounds namely, breach of principles of natural justice and jurisdictional error in passing the impugned order, in as such much as the main Application No. 03/14 alongwith all the miscellaneous applications having disposed of, no order could have been passed in M.A. No. 186/2014.

30. The NGT in the impugned order has found that the directions as contained in order dated 17.12.2012 had attained finality. The NGT has further found that database material regarding sand dunes was in the hands of the GCZMA and inspite of that, an excuse was raised to justify the non-compliance of the

study/survey in various coastal zones in coastal areas of State of Goa. The NGT has thereafter noticed from the affidavit in reply dated 12.01.2016 filed by GCZMA about a stand being taken that the comprehensive carrying capacity study of different beaches (for the purposes of shacks) in the State of Goa was being undertaken by the Department of Tourism as a part of new Tourism/Tourism Master Plan. The NGT has therefore found that the GCZMA "has chosen to move in circles instead of directing its efforts to achieve discharge from its obligations under such direction conclusively". According to the NGT, the answer to the said question can be found in the reply dated 12.01.2016, which *inter-alia* reads as under:

"I say that this respondent has considered around 335 applications pertaining to erection of temporary seasonal structures from various proponents in its 123rd GCZMA meeting held on 21-05-2015. I say that this respondent shall comply with the directions in the judgment once such permissions are issued."

(Emphasis Supplied)

31. It can thus be seen that after hearing the GCZMA, which

was the competent Authority to issue the permissions/NOC and after noticing that the earlier directions in the order dated 17.12.2014, were not complied with and on the contrary, stand was taken that the GCZMA shall comply with the directions, once such permissions are issued, that the NGT had directed the GCZMA to revoke such permissions. While doing so, the NGT has also noticed the conditions under which the "provisional permissions" were issued, which reads as under:

"The recommendation/clearance from CRZ point of view is being issued without prejudice to the action initiated under the Environment Protection Act or any Court case/matter pending in the Court of law/NGT and it does not mean that the project proponent/ applicant has not violated any environmental laws/ CRZ notification, 1991/2011 in the past and whatever decision under Environment Protection Act or of the Hon'ble Court/ NGT will be binding on the project proponent/ applicant."

32. It would now be necessary to examine the challenge based on the breach of principles of natural justice. In this regard,

we find that the petitioner was a party-respondent to the Application No. 3/2014, in which the order dated 17.12.2014 was passed, which *inter-alia* directed the GCZMA to conduct the rapid survey to tentatively identify the sand dunes in CRZ-I coastal areas, within a period of four weeks and not to issue any such permission, until detail survey by the NIO is completed. The order further directs to carry out the study of carrying capacity of different beaches in the State of Goa, for providing such shacks and other temporary structures, in environmentally sustainable manner to protect the coastal environment, in six months and the permissions for the year 2015-2016, were to be subject to, the findings of such a study. Thus, both the GCZMA and the petitioner were aware that no permission could be issued in the specified areas, until the detailed survey is conducted by the NIO and the beach carrying capacity is ascertained. Neither the GCZMA nor the petitioner has chosen to challenge the said order, which has attained finality. We further find that it is basically the action of the GCZMA in granting permission in the wake of the non-compliance of the directions, which is the subject matter of consideration before the NGT. The members of the petitioner at

the highest are beneficiaries of the grant of the NOC/permission by the GCZMA, which act of the GCZMA is in breach of directions of the NGT, which have attained finality. The GCZMA was very much heard while passing the impugned order.

The submission on behalf of the petitioner that had an opportunity been granted, it could have pointed out to the NGT that the study regarding the beach carrying capacity has no relevance to the permission for erection of the shacks on the private properties, cannot be accepted. This is because the members of the petitioner were aware that by virtue of order dated 17.12.2014, there was a cloud on the powers of the GCZMA to process and grant the permissions without first complying with the directions in clause (iii) and (v) of the said order. Thus, the petitioner could have challenged the said order to demonstrate that the study as to beach carrying capacity has no relevance to the permissions or erection of the shacks on the private properties. That, in our considered opinion, not having been done, the petitioner cannot possibly raise the said contention, at this stage. Thus, we are not inclined to accept the ground based on non-compliance of principles of natural justice.

33. It would now be necessary to briefly refer to the submissions based on the disposal of all the miscellaneous applications. In Application No. 03/2014, the copy of the cause list dated 13.02.2015 and 09.02.2016 were showing that the M.A. Nos. 24/2014, 165/14 and 186/14 were respectively listed for non-compliance/contempt. Thus, assuming that all the miscellaneous applications stood disposed of, the same were continued to be listed for compliance. It would be significant to note that clause 19 of the order dated 17.12.2014 specifically stipulates that in view of the time bound directions, the application was to be listed for compliance/directions. Thus, the petitioner being party to the order dated 17.12.2014 was aware of the fact that the applications were to be listed for compliance.

34. Section 19(1) of the Act provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice. Section 19(2) of the Act further provides that subject to the provisions of the Act, the Tribunal shall have power to regulate its own procedure. It is true that the powers to regulate its own

procedure, cannot be held to mean that there is power to do away with the necessity for observance of principles of natural justice. However, the fact remains that subject to Section 19(1) and the other provisions of the Act, the Tribunal is not bound by the rigor of the strict provisions under the Civil Procedure Code and would have power to regulate its own procedure.

35. There cannot be any manner of dispute that the Tribunal being a creature of the statute, the jurisdiction of the Tribunal would be circumscribed (unlike the Court of the plenary jurisdiction or a constitutional Court), by the provisions of the Act and therefore, we do not find it necessary to make a detailed reference to the decision in the case of **P. Malaichami** (supra), in which it has been *inter-alia* held that while trying an election petition, the High Court merely acts as a Tribunal.

36. In the case of **Brahma Dutt Sharma** (supra), the proceedings stood terminated by final disposal of the writ petition. It was held that the same could not be re-opened on account of subsequent event and a fresh cause of action after a long lapse of

time (two years in the case), and if this principle is not followed there would be confusion and chaos and the finality of the proceedings would cease to have any meaning.

The case of **Hari Singh Mann** (supra) involved an issue whether the High Court can review/alter, its own judgment in the wake of prohibition contained in Section 362 of Cr.P.C. It was held that once a matter is finally disposed of, the Court, becomes *functus officio*. It was found that there was no provision in the Cr.P.C., authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or inherent powers.

37. In the case of **Sahib Singh** (supra), it is *inter-alia* held that High Court is competent to enhance the sentence, however, before such enhancement, notice and opportunity on question of sentence must be afforded to the convict.

38. The case of **Kailash Chand Mahajan** (supra), arose in altogether different factual background. The Hon'ble Supreme Court has emphasized the importance of the observance of principles of natural justice, which have been held to assume great

significance.

39. In the case of **Press Council of India** (supra), it was found that the directions issued were not in consonance with the prayers made in the Writ Petition.

40. It was contended on behalf of the petitioner that the impugned order passed, is at variance with the prayer clause. It is true that in the application M.A. No. 186/2014, although there are certain allegations about breach of directions of the Tribunal, as contained in the order dated 09.02.2016 by the officials of respondent no. 1 and the members of the petitioner, there is no specific prayer for taking action for breach of the order dated 17.12.2014. It can be seen that M.A. No. 186/2014 was filed during the pendency of the main proceedings and as such, could not have contained any averments regarding breach of the final order, which was passed subsequent to filing of the M.A. No. 186/2014. Be that as it may, the fact remains that the Tribunal had posted the main application after its disposal for reporting compliance of the directions (as per clause 19 of the order dated

17.12.2014). We are of the considered view that the circumstances and the submissions made would not be sufficient to hold that the order is “wholly without jurisdiction”, which is the requirement for justifying interference. We may mention that we are examining the matter in the wake of the challenge on the ground of breach of principles of natural justice and jurisdictional error and this exercise cannot partake of the nature of appellate powers, so as to examine the impugned order threadbare.

41. We are of the considered view that this Court cannot exercise the discretionary and equitable jurisdiction under Article 226/227 of Constitution of India to set aside an order, which will have the effect of restoring permissions, which the GCZMA has granted, in breach of the directions of the Tribunal, which directions have attained finality.

For all the reasons above, we decline to entertain the petition, which is accordingly dismissed with no order as to costs.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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