

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 335 OF 2016**

M/s Diana Buildwell Limited, a Company incorporated under the Indian Companies Act, 1956, having its registered office at F-60, Malhotra Building, Second Floor, Connaught Palace, New Delhi 110 001, represented in this Act, by its authorized signatory, Mr. Kewal Singh Virk.

.... Petitioner

Versus

1. Goa Coastal Zone Management Authority, Through its Member Secretary, C/o Department of Science, Technology & Environment, Government of Goa, 3rd Floor, Dempo Towers, Patto, Panaji-Goa.
2. National Green Tribunal, Western Zone Bench, with its office at Bund Garden Road, Opp. Council Hall, Pune-Maharashtra.
3. Union of India, through the Secretary, Ministry of Environment and Forest, Indira Paryavaran Bhawan, 3rd Floor, Jor-Bagh, Prithvi-Wingh, New-Delhi, 110 003.

.... Respondents

Mr. J. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar, Advocate for the Petitioner.

Mr. Pradosh Dangui, Additional Government Advocate for the Respondents.

CORAM:- C. V. BHADANG &

NUTAN D. SARDESSAI, JJ.

RESERVED ON:- 11th APRIL, 2016

PRONOUNCED ON:- 20th APRIL, 2016

ORDER:

By this petition, the petitioner is challenging the revocation of the provisional permission dated 16.02.2016 by the respondent no. 1, Goa Coastal Zone Management Authority (GCZMA). By virtue of an amendment, the petitioner has incorporated a challenge to the order dated 09.02.2016 passed by the National Green Tribunal (NGT) in M.A. No. 186/2014 in Application No. 03/2014 (WZ).

2. The brief facts are that the petitioner had applied to respondent no. 1 for grant of permission to erect shacks/temporary structures in his property Survey No. 356/7-A, 355 and 354/2 of village Anjuna, Bardez, Goa. The respondent no. 1 had granted provisional permission on 05.01.2016 *inter-alia* with the the following stipulation.

"The provisional permission 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. Hence this recommendation/clearance does not give immunity to the project proponent in the case filed against him/her, if any or action initiated under the Environment Protection Act."

3. It appears that one Aleixo Pereira had filed Application No. 3/2014 (WZ) before the NGT, which was disposed of on 17.12.2014, giving certain directions to respondent no. 1. For the present purpose the direction nos. (iii) and (v), which are relevant may be reproduced 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.

4. On disposal of Application No. 03/2014, the matter was kept for compliance. The NGT after noticing that there was non-compliance of the aforesaid directions at clauses (iii) and (v), had directed the respondent no. 1 to revoke all the permissions issued by it, for erection of the shacks/temporary structures. In consequence thereof, the respondent no. 1 by communication dated 16.02.2016 has revoked the permission granted to the petitioner. That is how the petitioner is before this Court.

5. We have heard the learned Senior Counsel for the

petitioner and the learned Additional Government appearing for the respondents.

6. It is submitted by the learned Senior Counsel for the petitioner that the revocation of the permission by the respondent no. 1 is in breach of principles of natural justice, as the petitioner was not heard in the matter. The learned Senior Counsel would submit that the petitioner was not a party to the proceedings before the NGT and as such, the said order cannot bind the petitioner or act to his prejudice. It is submitted that the respondent no. 1 could not have revoked the permission, acting on the order passed by the NGT. It is submitted that the order dated 09.02.2016 passed by the NGT is *non-est* on account of violation of principles of natural justice. It is also submitted that the order dated 17.12.2014, issuing directions to the respondent no. 1 for carrying out the mapping of the sand dunes and further directing study on the carrying capacity of the beaches, is without jurisdiction. It is contended that the NGT which derives its jurisdiction under the provisions of the National Green Tribunal Act (the NGT Act, for short) cannot travel beyond the scope of the

jurisdiction as conferred. It is contended that the NGT could not be equated and does not derive jurisdiction of available to Constitutional Courts for issuing any such directions, It is contended that the permission granted to the petitioner was in compliance with the relevant provisions and observance of precautionary principles as contained in the said Act and in the absence of any breach of the conditions, the respondent no. 1 could not have revoked the permission.

7. The learned Senior Counsel submits that there are no sand dunes in the property of the petitioner, where the permission for erection of the shacks is granted and as such, there was no occasion for violation of the permission, for causing any damages to the sand dunes. It is submitted that the revocation of the permission as also the order dated 09.02.2016, which is the basis for such revocation, being passed in flagrant breach of principles of natural justice, need' to be quashed and set aside the availability of the statutory remedy notwithstanding.

The learned Senior Counsel in support of his submissions has placed reliance on the decisions of the Hon'ble

Supreme Court, namely (i) *R. Viswanathan and Others Vs. R. Gajambal Ammal and Others*, AIR 1963 SC 1 (V 50 C 1); (ii) *Ram and Shyam Company Vs. State of Haryana and Others*, (1985) 3 SCC 267; (iii) *Jaswant Singh and Others Vs. State of M.P. and Others*, (2002) 9 SCC 700 and (iv) *State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another*, (2005) 6 SCC 499.

8. On the contrary, it is submitted on behalf of respondent no. 1 that the directions as contained in the order dated 09.12.2016 passed by the NGT are binding on it. It is submitted that a provisional permission was granted to the petitioner on 05.02.2016, inter-alia with a stipulation that it will be subject to any pending cases or order passed by a competent Authority of law/NGT.

9. It is submitted that the rapid survey of the sand dunes is already carried out and the report is placed on the record of the NGT. Thus, the directions at clause (iii) of the order dated 17.12.2014 is already complied with. Insofar as directions in clause (v) are concerned, it is contended that respondent no. 1 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. It is submitted that 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.

10. It is also submitted that the petitioner has an alternate remedy, both against the revocation of the permission as also against the order dated 09.02.2016. It is submitted that the petitioner could not justifiably question the order dated 09.02.2016 in this petition, in view of the availability of the statutory remedy of an appeal to the Hon'ble Supreme Court under Section 22 of the Act. He submits that even otherwise the permission is operative only upto 31st May and as such, no prejudice and/or manifest injustice is demonstrated.

11. We have considered the rival circumstances and the submissions made. At the outset, it is necessary to mention that the petitioner has a remedy of an appeal against the order dated 09.02.2016, before the Hon'ble Supreme Court. The Hon'ble Apex Court in paragraph 3 of the judgment in the case of **Cicily Kallarackal Vs. Vehicle Factory, (2012) 8 SCC 524** has held thus:

"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."

12. We may also note the following observations in paragraph 11 of the judgment in the case of **Nivedita Sharma Vs. Cellular Operators Association of India and Others, (2011) 14 SCC 337**, which 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."

13. It is true that the availability of an alternate remedy is not an absolute bar to entertain a writ petition, as the reluctance to entertain a petition in the wake of availability of an alternate remedy is a rule of self restraint. Normally, in a case where the order is passed in breach of principles of natural justice, this Court would entertain the writ petition. The petitioner was admittedly not a party to the proceedings before the NGT. Nonetheless, the petitioner being aggrieved by the said order can always maintain an appeal against the same. The phraseology used in Section 22 of the Act is significant in this respect. It authorises "any person aggrieved by any award, decision or order of the Tribunal" to file an appeal to the Hon'ble Supreme Court. We find that admittedly, the respondent no. 1 has not complied with the directions as contained in clauses (iii) and (v) of the order dated 17.12.2014. The said order was not challenged and had attained finality. The respondent no. 1 was further bound by the order dated 09.02.2016 and was even granted opportunity of hearing by the NGT. We find that the petitioner at the highest is a beneficiary of the permission granted by the respondent no. 1, which itself could

not have been granted in view of the binding directions as contained in the order dated 17.12.2014. We are of the considered view that setting aside of the order of revocation would tend to restore the permission granted in breach of the binding directions of the NGT, which had attained finality. In that view of the matter, we are not inclined to entertain the petition.

14. The cases cited on behalf of the petitioner turned on their own facts. In the case of **Jaswant Singh** (supra), the Collector had come to the conclusion that while making an appointment, prescribed procedure was not followed and the appointment was cancelled without affording any opportunity. It was found that the powers under Section 83(1) of the M.P. Panchayat Adhiniyam, 1981, can be exercised only after affording opportunity to the parties under Section 83(2) of the said Act.

The decision of this Court passed in Writ Petition No. 807/2015 dated 21.10.2015 in the case of **Goa Glass Fibre Ltd. Vs. State of Goa and Others**, also turns on its own facts, in which there was a concession recorded on behalf of the respondents and the order was passed on such concession.

In the case of **Gujarat Ambuja Cement Ltd.** (supra), the question was whether the royalty paid by the holder of the mining lease under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957, would attract purchase tax. It was held that such royalty paid was not the price for removal of the minerals, so as to attract purchase tax.

In the case of **Ram and Shyam Company** (supra), the Hon'ble Apex Court has restated the principles, when a writ petition can be entertained, without exhausting the alternate remedy. The following observations in paragraph 9 of the judgment would be apposite.

"Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise Vs. Jainson Hosiery Industries rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him'. We remain

unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in the State of Uttar Pradesh Vs. Mohammad Nooh it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy

keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ? The clutch of appeal from Ceasar to Ceasar wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

(Emphasis supplied)

It can thus be seen that in the peculiar facts of the said case, it was found that the remedy of an appeal would not be efficacious.

15. The case of **R. Viswanathan** (*supra*) *inter-alia* involved a question whether the foreign judgments would be conclusive in view of the provisions of Section 13 of the Civil Procedure Code. It is difficult to envisage as to how the said case helps the cause of the petitioner. It is trite that a person not being a party as such, if aggrieved by the order passed thereon, can maintain a challenge by way of a statutory appeal.

16. In such circumstances, 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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