

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 600/2016**

Shri Anil Hoble,
aged 59 years, Indian National
r/o. H. No.345, 'Mandar Niwas'
Merces Wadi, P.O. St. Cruz,
Tiswadi, Goa.

..... Petitioner.

Versus

1. Kashinath Jairam Shetye,
r/o A-102, Raj Excellency Patto,
Ribandar, Goa Pin- 403 006.
2. Dr. Ketan Govekar,
r/o 3rd Floor, Wadji Building,
St. Inez, Panaji, Goa Pin 403 001.
3. Desmond Alvares, r/o H. No. 470,
Dossoxir, Assagao, Bardez, Goa
Pin 403 507.
4. Sanjay Sarmalkar,
r/o F-2, Madhuban 2, Opp. St. Inez,
Church, Panaji Goa Pin 403 001.
5. Srinet Kotwale,
Member Secretary, GCZMA
c/o Science, Technology &
Environment, Dempo Towers,
Panaji, Goa Pin- 403 001.
6. The Chief Secretary,
Secretariat, State of Goa,
Porvorim, Goa Pin 403521.

..... Respondents.

Shri S. S. Kantak, Senior Advocate with Shri J. Supekar, Advocate for the petitioner.

Respondent No.1 in person.

Mr. Aires Rodrigues, Advocate for the respondent No.3

Mr. D. Lawande, Government Advocate for the respondent No.6.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date :- 29 JUNE 2016.

ORAL ORDER : (PER F.M. REIS, J.)

Heard Shri S. S. Kantak, learned Senior Counsel appearing for the petitioner, Shri Kashinath Shetye, respondent No.1 in person, Shri Aires Rodrigues, learned Counsel appearing for the respondent No.3 and Shri D. Lawande, Government Advocate for the respondent No.6.

2. The above petition takes exception to an order dated 14/12/2015, whereby a review preferred by the petitioner under Section 19 of the National Green Tribunal Act, 2010 ("Act of 2010" for short) came to be rejected.

3. The brief facts relevant for examining the above petition

are that after the proceedings initiated by the respondents no. 1 to 4 under Section 14 of the Act of 2010 came to be disposed of by a Judgment dated 29/05/2015, a writ petition came to be filed before this Court being Writ Petition No.400/2015 which was disposed of by a Division Bench of this Court by an oral order dated 1st July, 2015 wherein one of us (F.M. Reis, J.) is a party, whereby a view was taken that as the petitioner has an alternate efficacious remedy to challenge the judgment passed by the learned Tribunal before the Apex Court under Section 22 of the Act of 2010, there was no room for interference in a writ petition under Articles 226 and 227 of the Constitution of India. The order passed by this Court was carried before the Hon'ble Apex Court, being Petition (s) for Special Leave to Appeal (C) No.19535 of 2015. However, leave was sought by the petitioner to withdraw such petition with liberty to avail of the statutory remedy as provided under the Act of 2010. The Apex Court, by an order dated 20/7/2015 allowed the petitioner to withdraw such petition with liberty as prayed for. Thereafter, a Civil Appeal filed by the petitioner came to be examined by the Hon'ble Apex Court. Such appeal was also allowed to be withdrawn with liberty to the petitioner to file a review petition before the learned National Green Tribunal. Thereafter, the

petitioner sought to review the said Judgment by filing some additional documents which were traced by the petitioner in the meanwhile. The learned Tribunal, by an order dated 14.12.2015, dismissed the said review petition. Being aggrieved by the said order, the petitioner had preferred a writ petition before the Principal Seat of this Court at Mumbai being Writ Petition No.3024/2016 wherein an ad interim order was passed, staying the operation of the impugned order. Ultimately, the learned Division Bench by an order dated 8/6/2016 disposed of the said writ petition before the Principal Seat, inter alia, giving liberty to the petitioner to move this Court, upholding the preliminary objections raised by the respondents. As such, the petitioner has filed the above writ petition.

4. Shri S. S. Kantak, learned Senior Counsel appearing for the petitioner has vehemently argued to point out that the impugned order passed by the learned Tribunal is with material irregularity affecting the jurisdiction of the learned Tribunal in the failure to examine all the contentions raised by the petitioner in the review petition. The learned Senior Counsel points out that the petitioner was permitted to produce the documents before the Apex Court which were

relied upon by the petitioner along with their review petition which were not analysed nor examined by the learned Tribunal whilst passing the impugned order. The learned Senior Counsel further points out that the petitioner has now found voluminous evidence which points out that the subject-structures were in existence much before the coming into force of the CRZ Notification of 1991. The learned Senior Counsel further submits that the petitioner has a number of tax receipts, light tax receipts, as well as the approved plan from the Statutory Authorities in support of his contention that such structures were in existence much before the coming into force of the CRZ Notification of 1991. The learned Senior Counsel has raised strong objections to the observations in the impugned order which, according to him, are neither borne out from the record nor from any submissions advanced before the learned Tribunal. The learned Senior Counsel further points out that there are patent errors in appreciation of the evidence whilst considering the photo copies of the documents filed along with the petition and the original documents. The learned Counsel further points out that there is misreading of the evidence and total non-application of mind by the learned Tribunal which resulted in perverse findings by the learned Tribunal whilst passing such orders.

The learned Counsel further submits that a Division Bench of Madras High Court in Writ Petitions (MD) Nos.7146 to 7157, 7767 to 7772 of 2014 in the case of ***Kollidam Aaru Pathukappu Nala Sangam vs. Union of India***, has taken a view that as there are serious restrictions in filing an appeal in terms of Section 22 of the Act of 2010, such remedy cannot be considered to be an efficacious remedy to disentitle the petitioner approaching this Court under Article 226 and 227 of the Constitution of India. The learned Senior Counsel further points out that as such, it would be appropriate to direct the learned Tribunal to examine the matter afresh, after examining every document produced by the petitioner.

5. On the other hand, Mr. Aires Rodrigues, learned Counsel appearing for the respondent No.3, who has appeared upon a private notice being served by the petitioner has pointed out that this Court has already taken a view in an order passed *inter partes* that the petition has an efficacious remedy to challenge the original Judgment passed by the learned Tribunal by preferring an appeal under Section 22 of the Act of 2010. The learned Counsel further points out that filing of the present petition is an abuse of process of law as, according to him, the

petitioner has been unnecessarily dragging the respondents in litigation by first filing a writ petition before the Principal Seat at Mumbai and thereafter by filing the present petition. The learned Counsel further submits that as filing an appeal is an efficacious remedy, the question of exercising extraordinary jurisdiction under Article 226 and 227 of the Constitution of India would not at all arise. The learned Counsel as such, points out that the petition be accordingly rejected.

6. The respondent No.1, in person, has pointed out that the original judgment passed by the learned Tribunal is not challenged and has become final and as such the order passed by the Tribunal in the petition cannot be independently assailed. The respondent No.1 further points out that it is the contention of the respondents that the petitioner has extended his existing structure without obtaining requisite permissions in terms of the CRZ Regulations. Respondent No.1 further points out that there is a survey report prepared by the DSLR Authority which clearly discloses that the structure as was existing on the date of the complaint was much bigger than the one claimed to be existing. The respondent No.1 has further pointed out that the property was purchased in the year 1992 and according to him,

there is a specific reference that the structure existing in the property admeasured 4X4 metres. The respondent No.1, as such, points out that the petition be rejected.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. It cannot be disputed that the scope of challenge to the original judgment passed by the learned Tribunal is much wider than the scope of challenge to an order dismissing the application for review. It is not disputed that the impugned order dismissing the review petition can also be challenge under Section 22 of the Act of 2010. The contention of the respondents that the petition is not maintainable under Articles 226 and 227 of the Constituting of India has already been dealt with by this Court while disposing of Writ Petition No.400/2015.

8. In such circumstances, the only aspect which remains to be considered is, whether filing an appeal under Section 22 of the Act of 2010 would be an efficacious remedy for the petitioner. There is no challenge to the original Judgment passed by the learned Tribunal in the present petition and, as such, the scope of consideration of an order

dismissing the Review Petition would be limited. The exercise of jurisdiction in disposing of a review petition is circumscribed by definitive limits fixed by the language in law. In the present case, *prima facie* the learned Tribunal found that there is no case made out for review of its Judgment. Though Mr. Kantak, learned Senior Counsel appearing for the petitioner may be justified in his objections to some of the observations by the learned Tribunal while disposing of the Review Petition filed by the petitioner, nevertheless, considering that to examine the challenge to the impugned order would also entail reappreciation of the material produced by the petitioner, which is strongly disputed by the respondents, we find that exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India would not be justified. In an oral order dated 1st July, 2015 passed by this Court in Writ Petition No.400/2015 which is inter partes, this Court has clearly taken a view that filing of an appeal under Section 22 of the Act of 2010, in the facts of the present case, would be an efficacious alternate remedy by observing at paras 18, 19, 20 and 21 thus :

“18. On perusal of the said observations of the Apex Court, a serious concern has been shown by the Apex

Court with regard to the matters which the High Court has entertained under Articles 226 and 227 when a statutory appeal is provided under the relevant Statute. Dealing with the aspect that merely because jurisdictional issue is involved, the Court may not necessarily exercise jurisdiction under Articles 226 and 227, the Andhra Pradesh High Court in a Judgment reported in AIR 1991 AP 326, in the case of ***Tulasi Enterprises vs. Andhra Pradesh State Consumer Commission, Hyderabad and another***, has observed at paras 10 and 11 thus :

“10. It is true that whenever the Legislature creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under Art. 226 of the Constitution of India to deal with the orders passed by the said Tribunals is not and cannot be ousted. It is also true that whenever questions of jurisdiction are raised, the High Court normally permits such questions to be raised under Art. 226 of the Constitution and examines whether the applications or the other proceedings

filed before the Tribunal are within the jurisdiction of the said Tribunal or not. But the High Court has a discretion to entertain the writ petitions and, in particular, to decide, for example, any questions of jurisdiction unless they involve serious or disputed questions of fact. It is not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal.

11. In relation to the Consumer Protection Act, 1986, it is to be noted that apart from creating a hierarchy of tribunals, there is a specific provision made in S. 23 for a further appeal against the final orders of the National Commission. The intention of Parliament appears to be that final orders of the National Commission should not be questioned in the High Courts under Art. 226 of the Constitution of India. The District Forums are presided over by the Principal District Judge, while the State Commissions are presided over by no less a person than one who has

been a Judge of the High Court or is a sitting Judge of the High Court. Surely, a litigant cannot be permitted to say that a District Judge at the level of the District Forums, or a retired or sitting Judge of the High Court at the level of the State Commission, is not competent to decide the question of jurisdiction. The entire intention of the Parliament was to give a speedy and effective remedy before these authorities. This intention will be defeated if parallel proceedings are permitted before the High Court under Art. 226 of the Constitution of India in respect of matters pending before the bodies under the Consumer Act. We are saying that merely because a question of jurisdiction is raised, the High Court should not feel it imperative to admit the writ petition. If a writ petition is permitted on the question of jurisdiction or other similar grounds, the parties would naturally have a remedy of Letters Patent Appeal and then a further appeal to the Supreme Court under Art. 133 of the

Constitution of India. After the question of jurisdiction or other preliminary question is decided in proceedings arising in a writ petition and are carried to the highest court should it be held that the matter is within the jurisdiction of the District Forum or the State Commission - then the main case has to be then taken up by the District Forum or the State Commission, as the case may be. This would obviously entail extraordinary delay and would defeat the very purposes of the Act. We have already noticed that the rules provide for speedy disposal of the complaints normally within ninety days or in cases where any analysis or tests have to be conducted, within 150 days. The High Court is already burdened with heavy arrears and that is the precise reason why a separate hierarchy of tribunals has been created. It would therefore, be not wise for the High Court to take upon itself the burden of deciding disputes even if they relate to the jurisdiction which could be decided by

the District Forums, presided over by District Judges or by the State Commissions, presided over by sitting or retired High Court Judges.”

19. Taking note of the said observations, we will now have to examine whether the contention with regard to error of jurisdiction raised by Shri Sardessai, learned Senior Counsel appearing for the petitioner, is based on undisputed questions of fact in the present petition.

20. The Apex Court, in the Judgment reported in (2012) 8 SCC 524 in the case of ***Cicily Kallarackal v. Vehicle Factory***, has observed at para 4, thus :

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under

the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

21. Keeping in mind the said observations and the ratio laid down therein, we find that the only aspect to be examined in such circumstances is whether, the petitioner herein has made out a case to exercise any discretion to entertain the above writ petition. It was contended by Shri Sardessai, learned

Senior Counsel appearing for the petitioner that the petition filed before the Tribunal by the respondents No.1 to 4 was barred by limitation which is self evident on the basis of the synopsis of relevant facts and dates, as also the pleadings in the petition of such respondents, before the learned Tribunal. But, however, this contention is seriously disputed by the respondents No.1 to 4, as also the Intervenor herein. There are also allegations raised by the respondent No.1 that the suit structures were being extended from time to time. It is also contended that the petition filed by the respondents No.1 to 4 was also under Section 16 of the said Act. These facts have been seriously disputed by Shri Sardesai, learned Senior Counsel appearing for the petitioner. In such circumstances, we find that the issue of jurisdiction, which is mix question of law and facts, cannot be examined in the peculiar facts of this case in the petition under Articles 226 and 227 of the Constitution. It would also not be justified even to examine the correctness

of the contention of Shri Sardesai, learned Senior Counsel appearing for the petitioner that there are patent errors and misreading of the documents by the learned Tribunal in the impugned Judgment, in the present writ petition, when such contentions can be examined in a statutory appeal provided under Section 22 of the said Act. Even the Division Bench of this Court at the Principal Seat at Mumbai in Writ Petition No. 5563 of 2014 by an order dated 17th June, 2014 rejected the petition when a substantive appeal was available in terms of Section 22 of the said Act. Another Order relied upon by Shri Sardesai, learned Senior Counsel appearing for the petitioner passed in Writ Petition No. 589/2015 dated 26th March, 2015 is only an interim stay order. As such, we find that no case is made out for interference in the impugned Judgment and order based on the ground of jurisdiction, as sought to be contended by the learned Senior Counsel appearing for the petitioner.”

9. Taking note of the said observations, we cannot be persuaded to take a contrary view in the present writ petition. Even considering the submissions of Mr. S.S. Kantak, learned Senior Counsel appearing for the petitioner, *prima facie*, we find that the remedy of appeal under Section 22 of the Act of 2010, would be appropriate. There is no jurisdiction issue, nor can it be said that the impugned order was passed in breach of the principles of natural justice, as the petitioner was admittedly heard. In such circumstances, the Judgment of Madras High Court in the case of ***Kollidam Aaru Pathukappu Nala Sangam vs. Union of India*** (supra), relied upon by Mr. Kantak on facts, would not be applicable to the facts of the present case.

10. Reserving all the contentions raised by the learned Senior Counsel appearing for the petitioner on merits open, we dispose of the above petition on the limited ground that no case is made out for interference under Article 226 and 227 of the Constitution of India, in exercise of our extraordinary jurisdiction, as the petitioner has an efficacious alternate remedy to challenge the impugned order.

11. The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

12. At this stage, Shri J. Supekar, learned Counsel appearing for the petitioner states that there is a stay operating in favour of the petitioner with regard to the payment of a sum of Rs.20,00,000/- as directed in the Judgment dated 29th May, 2015. He, therefore, seeks continuation of such stay for a period of six weeks. As such, the stay operating in favour of the petitioner with regard to deposit of the sum of Rs.20,00,000/- in terms of the said Judgment is extended for a period of six weeks from today.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.