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

WRIT PETITION No. 7393 OF 2016

Maharashtra Coastal Zone Management AuthorityPetitioners

Vs.

Vanashakti Public Trust and Ors. ...Respondents

Dr. Sathe, Senior Counsel a/w. Mr. P.K. Shroff a/w. Mr. D.V. Deokar a/w. Mr. Subodh Pandey a/w. Ms. Jasmin Upadhyay i/b. M/s. Parimal K. Shroff & Co. for Petitioners

Ms. Mani Prakash a/w. Ms. Anusha Sundaresan for Respondent No.1

***CORAM : V. M. KANADE &
M.S. SONAK, JJ.***

DATE : JULY 4, 2016

P.C. :

1. Rule. By consent of parties, rule is made returnable forthwith.
2. Heard Shri Sathe, learned Senior Counsel appearing on behalf of the Petitioners and the learned counsel appearing on behalf of Respondent No.1 -Vanashakti Public Trust.
3. The Petitioners are the Maharashtra Coastal Zone Management Authority. They are aggrieved by the orders passed by the Maharashtra National Green Tribunal dated 10th February, 2016 and 26th May, 2016. The

order dated 10th February, 2016 was modified by the subsequent order dated 26th May, 2016 and the NGT has observed that the MCZMA may process the application in accordance with law but shall not take final decision till further orders.

4. Brief facts, which are necessary to decide the petition, are as under:

5. Respondent No.1- Vanashakti had filed an application before the NGT, seeking several reliefs. It is a matter of record that the Notification dated 19th February, 1991 was superseded by a Notification dated 6th January, 2011. In the said Notification, however, time to correct the map was given and the work to correct the map was to be carried out before December, 2012. This date, thereafter, was extended by one year. Clause 5(xii) of the said Notification dated 6.1.2011 in terms authorized MoEF to extend the time by issuing a separate Notification. Clause 5(xii) reads as under :

“5(xii) The CZMPs already approved under CRZ notification, 1991 shall be valid for a period of twenty four months unless the aforesaid period is extended by MoEF by a specific notification subject to such terms and conditions as may be specified therein.”

6. The said clause, therefore, in terms, state that the CZMP has already

approved the CRZ Notification, 1991 and it shall be valid only for a period of twenty four months, unless the same is extended. Thereafter, however by Notification dated 22nd March, 2016, clause 5 (xii) itself was substituted and the term mentioned in paragraph 5, item (xii) was modified and instead of the year 1960, the year 2016 was substituted.

7. Reverting back to the matter which was pending before the NGT, an application for interim relief was filed by Vanashakti – Respondent No.1 herein. Initially the NGT has passed a blanket order, which reads as under:

“ Pending hearing and final disposal of this Application, the Respondent shall not grant permission regarding development and construction activities in CRZ areas and shall not allow any regularization of CRS violations until the CZMP Maps under the 2011 Notification are published.”

MCZMA preferred an application, seeking modification of the said order on various grounds. The said order, therefore, was partly modified by its order dated 26th May, 2016.

8. Shri Sathe, learned Senior Counsel submitted that the existing CZMP Map approved by the Notification of 1991 having been extended till 31st January, 2017, it could not be said that the said CZMP as approved under the

1991 Plan would be illegal. Secondly, it is submitted that by virtue of two OMs dated 1st July, 2011 and 8th August, 2011, wherever there is an error apparent in the map and wherever the existing CZMPs were extended, in these two cases, there was no reason why any order of stay should have been granted.

9. We have perused the impugned order. The only reason why the NGT has granted a blanket stay in terms of prayer clause (c) as prayed by Vanashakti because it came to the conclusion that the exercise of finalization of the plan was going to take some time and there was a possibility of further mischief being committed in the meanwhile.

10. In our view, the NGT obviously has overlooked and ignored the two Oms dated 1st July, 2011 and 8th August, 2011 and also has misconstrued the explanation which has been illegally granted to the existing valid plan of 1991. In these categories of cases, at least, there was no necessity of granting a blanket order of stay. We, therefore, to that extent, modify the said order and we direct that all applications which are made by the individuals falling under these two categories will have to be processed and a decision may be

taken by the MCZMA. The order is accordingly modified.

11. The learned counsel appearing on behalf of Vanashakti – Respondent No.1 herein has further submitted that this Court should not interfere with the order which has been passed by the NGT; firstly, on the ground that the NGT alone has a power to decide the environmental issue. Secondly, on the ground that this petition is not maintainable.

12. We are afraid that we are not in a position to accept the submissions made by the learned counsel appearing on behalf of the Vanashakti. This Court has a jurisdiction to entertain the petitions which are filed for challenging the orders passed by the NGT, which is a Tribunal, constituted under the statute while exercising our writ jurisdiction under Article 226 of the Constitution of India. Secondly, if the interim order, has resulted in practically allowing the application filed before the NGT, this Court can very well interfere with the said order.

13. Shri Sathe, learned Senior Counsel appearing on behalf of the Petitioners has also raised an issue regarding the maintainability of the

application filed by Respondent no.1 – Vanashakti before the NGT.

14. In our view, this issue will have to be processed before the NGT and if any such objection is raised regarding the jurisdiction of NGT to entertain the application filed by the Respondent, then the NGT may frame a preliminary issue and after giving hearing to both the parties, decide the said issue as expeditiously as possible.

15. We direct the Union of India to expeditiously finalize the Coastal Zone Plan under 2011 CRZ Notification and, in any case, within a period of three months. Writ petition is accordingly disposed of in the aforesaid terms. All contentions of all the parties are kept open.

M.S. SONAK, J.

V.M. KANADE, J.