

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 178 OF 2017

VITHAL BALKRISHNA THAKUR (DEC)	
THR. HIS LRS.,	... Petitioner
Versus	
THE STATE OF GOA, THR. ITS CHIEF	
SECRETARY AND 5 ORS.,	... Respondents

Shri Shivan Desai, Advocate for the petitioner.
Shri D. Shirodkar, Addl. Govt. Advocate for the respondent
nos.1 to 4.

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

Date:- 14th February, 2017

P.C.

Heard Shri Shivan Desai, learned Advocate for the petitioner and Shri D. Shirodkar, learned Addl. Govt. Advocate for the respondent nos.1 to 4.

2. The challenge in the above petition is to an order passed by the National Green Tribunal ("NGT" for short) dated 12.1.2017 whereby an application filed by the petitioners to dismiss the complaint filed by the respondent no.5 against the petitioners and some others parties came to be dismissed.

3. Shri S. Desai, learned Counsel for the petitioner has vehemently pointed out that as far as the petitioners are concerned the issue whether the land belongs to the petitioners comes within the meaning of forest stands concluded in view of

the judgment passed by this Court dated 4.12.2013 passed in Writ Petition No.534/2013. The learned counsel further points out that the learned NGT cannot take a contrary view as the issue stands concluded by the said judgment. The learned Counsel further points out that as such the question of proceeding with the complaint filed by the respondent no.5 would not at all arise. The learned counsel has taken us through the observations in the said judgment passed by this Court as well as in the impugned order passed by the NGT to contend that the impugned order has been passed without any jurisdiction. The learned Counsel as such points out that the impugned order be quashed and set aside.

4. Shri D. Shirodkar, learned Addl. Govt. Advocate for the respondent nos.1 to 4 submits that pursuant to the directions issued by this Court an inspection was carried out by the concerned officer of the Forest department and after submitting the report a decision was taken to the effect that the land belonging to the petitioner was not coming within the parametres of a Forest. It is further pointed out as such the question of re-opening the issue would not arise.

5. We have given our thoughtful consideration to the submission advanced on behalf of the respective parties and we have also gone through the records.

6. On perusal of the impugned order passed by the learned Tribunal, we find that the learned Tribunal has found that as the issue is pending consideration, the question of discharging the

petitioners at this stage would not arise at all. We find that the contention raised by the petitioners would have to be examined at the time of hearing of the main petition filed by the petitioner, before the learned NGT.

7. On perusal of the impugned order, we find that the matter is already posted for hearing and as such the petitioners are at liberty to raise all the contentions before the learned NGT by defending to the complaint filed by the respondent no.5. In such circumstances, we find that there is no failure of justice to the petitioner which would call for interference of this Court in the present Writ jurisdiction. In any event the petitioner has an alternate remedy. Keeping all the contentions of the petitioner open, the petition stands disposed off.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.