

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.1094 of 2016**

Triumph Realty Pvt. Ltd.
a Company having office at
Vasvaddo, Benaulim, Salcete,
Goa through its Authorized Signatory
Shri Rohit Saxena, aged 34 years,
Indian National, r/o Varca, Salcete,
Goa. .. Petitioner.

Vs.

1. State of Goa
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. GCZMA
through its Member Secretary,
having office at Patto Plaza,
Panaji, Goa.
3. Dy. Collector & SDO,
Salcete, Margao, Goa.
4. Village Panchayat of Cana-
Benaulim,
through its Secretary,
having office at Benaulim, Goa.
5. Benaulim Civil & Social Forum
a Society registered under
the Societies Registration Act,
1860 under Registration No.268/Goa/
2011 having office at H.No.119/1,
Rysen Enterprises, Opp. Shop N
Save Supermarket, Mazilwaddo,
Benaulim, Goa represented herein
by its Vice President Mr. Jose
Rodrigues, having office as above,

6. Union of India
Ministry of Environment Forests
& Climate Change,
Through its Joint Secretary,
Having office at Indira
Paryavaran Bhavan,
Jor Bhag, New Delhi 110 003. .. Respondents.

Mr. S. S. Kantak, Senior Advocate with Mr. P. Rao, Advocate for the petitioner.

Mr. S. D. Lotlikar, Advocate General with Mr. D. Shirodkar, Additional Government Advocate for respondent nos.1 to 3.

Mr. Nigel D'Costa Frias, Advocate for respondent no.5.

Mr. D. Lawande, Assistant Solicitor General of India for respondent no.6.

Coram :- SMT. R. P. SONDURBALDOTA &

C. V. BHADANG, JJ.

Reserved on : 14th December, 2016.

Pronounced on : - 3rd March, 2017

(Signed Order is pronounced by C. V. Bhadang J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules as R. P. Sondurbaldota, J. is sitting at Mumbai.)

ORDER : (Per C. V. Bhadang, J.)

This is the third round of litigation between the parties before this Court.

2. Land bearing Survey No.336/1-A of village Benaullim, Salcete, Goa, along with Hotel 'The Beach' (comprising of 23

Independent Beach Resort Villas) is the subject matter of present dispute and is hereinafter referred to as the “Hotel Beach.”

3. M/s. Hotel Siddhi Pvt Ltd. were the erstwhile owners of Hotel Beach. The said property was mortgaged in favour of the State Bank of India. On account of a default in payment of loan by M/s. Hotel Siddhi Pvt. Ltd., the said property was auctioned and was purchased by M/s. Oberoi Realty Ltd, the Holding Company of the petitioner for a consideration of Rs.61.40 Crore. On 18/03/2011, a certificate of sale came to be issued in favour of M/s. Oberoi Realty Ltd. Eventually, the said property was assigned in favour of the petitioner.

4. The present dispute pertains to an order of demolition of the beach Villas, issued by the second respondent- Goa Coastal Zone Management Authority (GCZMA, for short). According to second respondent, the Beach Villas fall within Coastal Regulation Zone (CRZ) and are liable to be demolished. It is also claimed that under the garb of a repair permission, the petitioner is attempting to reconstruct the Villas, which is in breach of the Coastal Zone Regulations, 2006/ 2011.

5. According to the petitioner, 21 out of 23 Villas are beyond 200 metres from High Tide Line (HTL), while two Villas fall within 200 metres i.e. the No Development Zone (NDZ) and that too, on account of

shifting of the High Tide Land landwards.

6. According to the petitioner, on enquiry with the Authorities, it was informed that the existing structures are very old, the records of which are not available. In such circumstances, the petitioner got a plan prepared of all the existing structures at the location and applied for permission for repairs from the fourth respondent, Village Panchayat, Benaulim. The application was forwarded to the Block Development Officer (BDO), who conducted an inspection of the property through Extension Officer on 2nd December, 2011. The Extension Officer noted that the plinth area of the existing structures was 7978.91 square metres and the area of the structures in the plan submitted by the petitioner “fairly matched” with the structures on site.

7. On the basis of the inspection report, the Village Panchayat issued repair licence/ permission on 18/02/2012, subject to the condition that the existing plinth area shall not be altered/ exceeded.

8. Some time in January, 2013, some local residents lodged complaint about repair/renovation of the disputed structures with the Village Panchayat, on account of which, a stop work order was issued and ultimately, the permission/licence was revoked on 18/02/2012. The Village Panchayat also addressed letters to the Electricity and Public

Works Departments for disconnection of electricity and water supply. This was challenged by the petitioner before the Additional Director of Panchayat. On 12/03/2013, the Additional Director of Panchayat set aside the orders passed by the Village Panchayat.

9. In the meantime, fifth respondent filed a PILWP No.23/2013 before this Court, complaining that the Authorities were not acting against the illegal construction undertaken by the petitioner and sought demolition of the said structures. It was contended that the GCZMA was not acting in the matter although the construction was in violation of the CRZ Notification. On 23/04/2014, this Court disposed of the PIL on the basis of a statement on behalf of the State, that action is already initiated and shall be completed as expeditiously as possible. This Court also recorded a statement on behalf of the present petitioner that no construction activity would be started without obtaining requisite permissions from the concerned authorities. In that view of the matter, the PIL came to be disposed of on 23/04/2014.

10. On 01/04/2014, the second respondent issued a show cause notice to the petitioner as to why the structures falling within 500 metres of HTL, should not be demolished. On 04/04/2014, the petitioner brought it to the notice of the second respondent that unless applications dated 17/01/2014 and 27/01/2014 filed by the petitioner were decided,

the show cause notice itself was premature. It was reiterated that all that the petitioner was doing was carrying out repairs to the existing structures situated within 200 to 500 metres from HTL. It was contended that for such repairs, No Objection Certificate (NOC) is not required as carrying out of repairs of said structures, was a permissible activity under the CRZ Notification. On 28/04/2014, the petitioner filed an additional reply to the show cause notice, claiming that from the old records, the petitioner was able to obtain a copy of the letter dated 02/12/1991, whereby the project was approved in the 6th Goa State Committee of Environment (GSCE) meeting held on 28/11/1991 and the necessary approvals for the project were obtained more than 20 years back.

11. It appears that on 22/05/2014, the second respondent issued another show cause notice to the petitioner as to why structures within 200 metres from HTL, should not be demolished. The petitioner replied to the same, claiming that the two structures, which were now falling in the NDZ, were earlier beyond the said area and it was on account of the shifting of the HTL landwards that the two structures fall within the NDZ area.

12. On 19/09/2014, the second respondent rejected the applications dated 17/01/2014 and 27/01/2014, for issuance of NOC for

repairs. The petitioner sought review of the order dated 19/09/2014, which was rejected by the second respondent in its 115th meeting on 04/05/2015.

13. On 13/05/2015, the petitioner sought clarifications from Ministry of Environment and Forest and Climate Change (MOEF), the sixth respondent, as to whether any approvals or NOC from the second respondent, is necessary for effecting repairs. On 31/07/2015, the MOEF clarified that in view of the CRZ Notifications, 1991/2011, the petitioner could complete repair, maintenance, renovation work in 19 approved structure and there were no requirement of permission for such repairs under the CRZ Notification. In so far as the four structures, which required reconstruction, the petitioner was directed to apply for permission for construction from the competent authority under the CRZ Notification, 2011.

14. On 30/09/1995, Benaulim Civic and Social Forum filed a Contempt Petition to initiate action against the second respondent for not deciding the show cause notices in terms of the statement that the proceedings initiated would be taken to their logical conclusion. The petitioner was not made a party to the Contempt Petition. The petitioner claims that the clarification issued by MOEF on 31/07/2015, was neither placed on record nor brought to the notice of this Court in the

Contempt Petition. According to the petitioner, the clarification from MOEF renders the show cause notices infructuous/ ineffective.

15. On 20/10/2015, the second respondent sought clarification from MOEF in the light of communication dated 31/07/2015 and ultimately, on 17/11/2015, directed demolition of all the structures in the said property. The said order is passed under Section 5 of the Environment Protection Act, 1986 (the Act of 1986, for short).

16. The petitioner challenged the said order before this Court in W.P.No.951/2015, which was disposed of as withdrawn on 08/06/2016 in the following terms :

“After hearing the matter for sometime, Shri S. S. Kantak, learned Senior Advocate appearing for the Petitioners, upon instructions of Mr. Rajesh Rustagi, an authorised representative of the Petitioners, who is present in Court, seeks leave to withdraw the above Petition with liberty to pursue appropriate proceedings challenging the subject Orders. The learned Senior Advocate further points out that there is an interim Order in operation dated 18.04.2016 which may be continued for a period of eight weeks to enable the Petitioners to initiate such necessary proceedings.

2. Learned Addl. Government Advocate, appearing for the Respondents and Shri Nigel Da Costa Frias, learned Counsel appearing for the Intervenor, have no objection.

3. Hence, the Petition stands dismissed as withdrawn. All contentions of the parties are left open.

4. The ad-interim Orders in operation in the above Petition including the Order dated 18.04.2016, shall continue by consent, for a period of eight weeks from today”.

17. On 08/07/2016, National Centre for Sustainable Coastal Management (NCSCM) conducted inspection of the said property through its Expert Committee, pursuant to directions from MOEF. However, on 04/08/2016, the second respondent again directed the third respondent, Deputy Collector and Sub-Divisional Officer to execute the order of demolition dated 17/11/2015. The petitioner again applied for review of the order dated 17/11/2015. However, in the meantime, on 22/09/2016, the demolition squad carried out the demolition of the creeper wall in the property.

18. The petitioner again approached this Court in W.P.No.972/2016, seeking direction to MOEF and the second respondent GCZMA, to dispose off the pending proceedings of Review Application in a time bound manner. The said writ petition was disposed of on 13/10/2016 on the statement made on behalf of the Central Government that the pending proceedings before MOEF, would be disposed of within 20 days. A statement was made on behalf of the

GCZMA that the Review Application shall be decided expeditiously.

19. On 07/11/2016, the MOEF called upon the second respondent GCZMA to examine the proposal of the petitioner afresh in the context of the report of the NCSCM and to make recommendations, for further action.

20. It appears that the Benaulim Civil and Social Forum approached the National Green Tribunal, Bench at Pune (NGT) by filing OA No.150/2016 (WZ), purportedly under Sections 14 and 15 of the National Green Tribunal Act, 2010 (NGT Act, for short) with the following prayers :

“(A) That the respondent nos.2 and 4 may be directed to take immediate action for implementation and execution of the orders/ directions issued by the respondent no.3 dated 17/11/2015 and 04/08/2016 by demolishing the illegal construction done in survey no.336/1-A of village Benaulim, Salcete, Goa, to have the land restored to its original condition and thereafter file a compliance report before the Tribunal.

(B) That the respondent no.1 be directed to pay the costs incurred towards the restitution of the environment to the concerned authorities.”

21. The petitioner entered appearance before the NGT and raised an objection to the maintainability of the proceedings on the

ground that the application for execution of the order by GCZMA does not lie before the NGT. The NGT, however, declined to entertain the objection and fixed the matter on 29/11/2016 for filing reply of the petitioner. According to the petitioner, on 29/11/2016, the petitioner was not granted 'adequate opportunity' to file reply. On that date, the NGT recorded a statement on behalf of the GCZMA that the demolition order would be executed "soon after expiry of one week" and hence, the matter was fixed for compliance report. It is, in these circumstances, that the petitioner has approached this Court, for following substantive reliefs :

“(a) This Court be pleased to grant a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for records and proceedings from the National Green Tribunal (WZ) in O.A.No.150/2016 and quashing the proceedings;

(b) This Court be pleased to grant a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction, restraining the National Green Tribunal from conducting further proceeding in O.A.No.150/2016;

(bb) This Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction commanding respondent no.2 to implement the order/ communication/ direction of the Ministry of Environment and Forest and

Climate Change within such time bound manner as may be directed by this Court.

(bbb) This Court be pleased to issue a declaration/ order to the effect that the order dated 07/11/2015 issued by the respondent no.2 is nonest and stands superseded and/ or suspended in view of specific order/ communication/ directions dated 07/11/2016, issued by Ministry of Environment and Forest and Climate Change.

(bbbb) This Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for records and proceedings from the National Green Tribunal (WZ) in O.A.No.150/2016 and quash and set aside the impugned order dated 29/11/2016;

(c) This Court be pleased to restrain the respondent no.2 from executing, implementing the order dated 17/11/2015 during the pendency and disposal of the present petition.”

22. We have heard Shri Kantak, the learned Senior Counsel for the petitioner and Shri Lotlikar, the learned Advocate General for respondent nos.1 to 3. We have also heard Shri Lawande, the learned Assistant Solicitor General of India for respondent no.6 and Advocate Shri Costa Frias, for respondent no.5.

23. It is contended on behalf of the petitioner that the GCZMA acts as a delegate of the Ministry of Environment and Forest. It is

submitted that it is the MOEF, which is principally concerned with the enforcement of the provisions of the Act of 1986, which it does through its delegate at the State level being the various State Coastal Zone Management Authorities. It is, thus, submitted that the GCZMA cannot act in violation of the directions from the MOEF. The learned Senior Counsel has pointed out clause 2(ii)(a), clause 22 and 25 of the Government Order dated 22/07/2013, in order to submit that the GCZMA is subject to supervision and control of the Central Government and cannot act in derogation of any direction, clarification or guidelines issued by the MOEF. It is submitted that the GCZMA acted in breach of the communication dated 07/11/2016, issued by the MOEF and the earlier clarification dated 31/07/2015. It is submitted that after the disposal of the Writ Petition No.972/2016, the petitioner had made a representation to the MOEF and filed an application for review before the GCZMA, both of which are pending. It is submitted that the GCZMA could not have directed demolition pending the decision on the application for review filed on 11/08/2016 and particularly, when the representation before the MOEF is also pending and MOEF having called certain information from the GCZMA.

24. It is next contended that the proceedings before the NGT are thoroughly misconceived, in as much as there is no jurisdiction

vested in the NGT under the Act of 1986, to execute the order of GCZMA. It is submitted that in any case, the NGT cannot act merely on the basis of the order of GCZMA unless there is an independent adjudication of the matter before the NGT. It is, in this view of the matter, that the petitioner is claiming the relief of quashing the proceedings before the NGT and/or to set aside the order dated 29/11/2016, passed by the NGT and for a direction to the MOEF and GCZMA, to decide the representation and the application for review, pending before these authorities. It is pointed out that the communication dated 02/12/1991 from the Chief Town Planner and Member Secretary, GSCE, addressed to the Silver Arc. Developers, the predecessor of the petitioner and the NOC issued by Margao Planning and Development Authority (MPDA) on the basis of Occupancy Certificate issued by the Village Panchayat of Benaullim, are important documents, which have a bearing on the merits of the application for review, which needs to be considered by the GCZMA. The learned Senior Counsel was at pains to point out that the petitioner is a bonafide purchaser of the property at a public auction for a valuable consideration in excess of 65 Crores and is seriously prejudiced by the action of GCZMA, directing demolition.

25. The learned Advocate General has supported the impugned

order. It is submitted that the petitioner has an alternate remedy of approaching the NGT under Section 16 of the NGT Act. It is submitted that the petitioner instead of availing the said remedy, is repeatedly approaching this Court, seeking intervention. It is submitted that the earlier review application filed by the petitioner has already been dismissed by the GCZMA and as such, there is no acceptable ground made out for entertaining the petition. The learned Advocate General has pointed out that in the face of the availability of the alternate remedy, this Court would not interfere unless and until there is want of jurisdiction or jurisdictional error in passing the impugned order and/ or where the principles of natural justice are violated, none of which is either claimed or demonstrated in this case. The learned Advocate General has submitted that it is not necessary, in these circumstances of the case, to go into the maintainability of the proceedings before the NGT in as much as the GCZMA can independently enforce its orders through the Revenue Authorities. The learned Advocate General submits that if any question relating to environment is involved, the NGT has original jurisdiction under Sections 14 and 15 of the NGT Act and in such a case, the NGT can act on the basis of an order passed by any Statutory Authority, which is concerned with the enforcement of the Act of 1986. He, however, alternatively submits that if this Court directs, the GCZMA will decide the review application in a time bound

manner.

26. Shri Lawande, the learned Assistant Solicitor General of India for the sixth respondent has similar submissions to make. It is submitted that the MOEF shall decide the representation in accordance with law.

27. Shri Costa Frias, the learned Counsel for the fifth respondent has strenuously urged that the petition is entirely misconceived and is an abuse of the process of the Court. The learned Counsel has extensively taken us through the record of the GCZMA, in order to demonstrate that enough opportunity was granted to the petitioner to show cause against the proposed demolition and after considering the objections raised, the GCZMA has taken a decision for demolition of the subject structures and the earlier application for review is also rejected. It is submitted that the petitioner, under the garb of carrying out repairs, is carrying out extensive reconstruction, which is not permissible. It is submitted that there is no material produced to show that the said structures are 'existing structures', prior to 1991, so as to avail protection under the CRZ Notification.

28. With reference to NOC dated 17/01/2005, issued by the MPDA, it is submitted that mere production of NOC would not be

sufficient, in the absence of the approved plans and Occupation certificate. It is submitted that MPDA is not the Licensing Authority to grant construction/ repairs licence or to approve the plan. It is submitted that the Occupation Certificate from Village Panchayat is not produced. It is submitted that the letter dated 02/12/1991 also cannot come to the aid of the petitioner in the absence of any approved plans. It is submitted that the said letter is subject to development/ construction licence from the concerned Panchayat and also the development permission and the conversion sanad from the South Goa Planning and Development Authority (SGPDA) and the Deputy Collector, Margao.

29. It is submitted that the petition before the NGT is filed under Sections 14 and 15 of NGT Act and the NGT Act can act wherever a 'substantial question relating to environment', within the meaning of Section 2(m) of the NGT Act, is involved. It is submitted that none of the reliefs claimed by the petitioner, can be granted, in view of availability of the alternate remedy, both against the order of GCZMA, which lies before the NGT and the remedy before the Hon'ble Supreme Court against the order passed by the NGT. He, therefore, submits that the petition be dismissed.

30. We have carefully considered the rival circumstances and the submissions made and we do not find that any case for interference

is made out. Here are the reasons.

31. The dispute involved in the present petition is short, notwithstanding the extent of narration of facts. At the outset, it is necessary to note that there is no challenge and there could not have been any challenge, in the present petition, to the order dated 17/11/2015, passed by the GCZMA. We say so, because W.P.No.951/2015, challenging the said order, was withdrawn by the petitioner on 08/06/2016, with liberty to pursue appropriate proceedings. Shri Kantak, the learned Senior Counsel for the petitioner, in all fairness, did not dispute that there could not be any challenge to the order dated 17/11/2015, in the face of withdrawal of W.P.No.951/2015. The contention on behalf of the petitioner, in the present petition, is short. In the first place, it is contended that the proceedings before the NGT, for the purported execution of the order passed by the GCZMA, are not competent and maintainable and consequently, the order dated 29/11/2016, is bad in law. Secondly, it is contended that the GCZMA cannot proceed with the demolition in view of the pendency of a review application before it and the representation before MOEF. This is the only dispute involved in the present writ petition.

32. We first propose to consider the challenge to the proceedings before the NGT and the order dated 29/11/2016, passed therein. Chapter III of the NGT Act pertains to jurisdiction, powers and proceedings of the Tribunal. Under Section 14 of the said Act, original jurisdiction is conferred on the NGT in respect of cases, where 'a substantial question relating to environment' (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactment specified in Schedule I. Under Section 15 the NGT can grant relief as to compensation and restitution to the victims of pollution and in respect of other environmental damage, for restitution of property damaged and for restitution of the environment in such area or areas as the Tribunal may think fit. The application filed by the fifth respondent before the NGT is under Sections 14 and 15 of the NGT Act. Thus, it can be said that by filing the said application, the fifth respondent has sought to invoke the original jurisdiction, vesting in the NGT under the aforesaid provisions. The contention on behalf of the petitioner is that the NGT under the aforesaid provisions, cannot enforce an order passed by the GCZMA and certainly not in the absence of an independent adjudication. There was some debate during the course of the arguments at bar as to the distinction between the jurisdiction exercised by the NGT under Section 14 vis-a-vis Section 15 of the NGT Act. In the circumstances of the

present case, we find it unnecessary to go into this aspect for more reasons than one. Firstly, the GCZMA can independently execute its orders through the Revenue Authorities and merely because a party approaches the NGT for execution of the order passed by the GCZMA, the authority of the GCZMA to execute its own order in a manner prescribed by law, cannot be whittled down. Secondly, the Tribunal does not appear to have recorded any finding as such on the jurisdiction of the NGT to execute the order passed by the Statutory Authority, namely the GCZMA. There are two orders passed by the NGT as of now, namely dated 23/11/2016 and 29/11/2016. The order dated 23/11/2016 merely records a submission on behalf of the petitioner that, on account of pendency of Review Application before the GCZMA, the petition before the NGT would not survive. The NGT, after recording this, has granted time to the petitioner (respondent no.1 before the NGT) to file reply, with a direction to the petitioner not to carry out any "civil structure activity", until further orders. The order dated 29/11/2016 records that the order of the GCZMA is not stayed by any Court and as such the order is executable. It, thereafter, proceeds to record a statement on behalf of the GCZMA that the demolition order would be executed "soon after a period of one week". Thus, at this stage, there is no independent direction by the NGT to carry out the demolition in accordance with the order passed by the GCZMA. To put it otherwise,

as of now, there is no order passed by the NGT in the nature of the execution of the order of GCZMA. Thirdly, even assuming that there is any such finding and/or direction, the petitioner has a statutory remedy of an appeal to the Hon'ble Supreme Court. The Hon'ble Apex Court in the case of ***Nivedita Sharma Vs. Cellular Operators Association of India and others***, (2011) 14 SCC 337, has held thus in para 11 of the judgment :

“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.”

(Emphasis supplied)

33. In a later decision in the case of **Cicily Kallarackal Vs. Vehicle Factory**, (2012)8 SCC 524, the Hon'ble Apex Court has made reference to its earlier decision in the case of **Mohammed Swalleh Vs. Additional District Judge, Meerut**; (1988)1 SCC 40. The Hon'ble Apex Court in para 3 of the judgment in the case of **Cicily Kallarackal** (supra) 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.”

(Emphasis Supplied)”

34. At this stage, it would be necessary to refer to the oft quoted decision of the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others;** (1998)8 SCC 1, in which the Hon'ble Apex Court has culled out at least three exceptions to the rule (albeit self-imposed) against the exercise of extraordinary jurisdiction, in the wake of the availability of an alternate

remedy. The exceptions are (i) where the writ petition has been filed for enforcement of any of the fundamental rights; (ii) where there is violation of the principles of natural justice and; (iii) where the order or the proceedings are "wholly without jurisdiction" or the Vires of the Act are challenged.

Thus the question may not always be about the existence of the jurisdiction, but its exercise. The question would essentially depend on the facts and circumstances of each case. However, it needs to be emphasized that, as held by the Hon'ble Supreme Court in the cases of **Nivedita Sharma** and **Cicily Kallarackal** (supra), this Court would be slow in invoking the extraordinary jurisdiction in the wake of availability of a statutory remedy of an appeal to the Supreme Court.

35. Coming back to the present case, we are *prima facie* of the view that the provisions of Sections 14 and 15 of the NGT Act and the definition of "substantial question relating to environment", as contained in Section 2(m) of the NGT Act are couched in a broad language. Thus, *prima facie* we are unable to hold that the proceedings before the NGT would be "wholly without jurisdiction", so as to fall under an exception as carved out in the case of **Whirlpool Corporation** (supra). In such circumstances, we are not inclined to entertain the challenge to the proceedings initiated before the NGT or the order dated

29/11/2016 is as much as all that it records is a statement on behalf of the GCZMA that the demolition order will be taken to its logical end. We make it clear that we have not expressed any final and binding opinion on the maintainability of the proceedings before the NGT.

36. This takes us to the contentions based on the pendency of the representation before MOEF and an application for review before the GCZMA. As noticed earlier, the petitioner had approached this Court twice before filing the present petition, which includes the challenge in W.P.No. 951/2015 against the order dated 17/11/2015, which was withdrawn on 08/06/2016, with liberty to pursue appropriate proceedings, challenging the said order. Second W.P.No.972/2016 was disposed of on 13/10/2016 on the statement made on behalf of the Central Government that the pending proceedings before the NGT would be disposed of within 20 days and on the basis of the statement made on behalf of the GCZMA that the Review Application would be decided expeditiously. It may not be out of place to mention here that the petitioner had not taken any recourse to the remedy of filing an appeal under Section 16(g) of the NGT Act. The petitioner has a statutory remedy of approaching the NGT against the order passed by the GCZMA. Although it is neither necessary nor appropriate for this Court to suggest or advice as to what remedy the petitioner should

adopt, the fact remains that the petitioner instead of availing of the said statutory remedy, for reasons best known to it, has been repeatedly approaching this Court. In the wake of the alternate remedy available to the petitioner of raising a substantive challenge to the order passed by the GCZMA before the NGT, we are not inclined to entertain the present petition. It is a matter of record that the petitioner was given a show cause notice and the petitioner has been heard and the earlier application for review has also been dismissed by the GCZMA. Thus, the present case cannot fall in any of the exceptions as carved out in the case of ***Whirlpool Corporation*** (supra). A brief reference, at this stage, to the representation made before the MOEF and the communication dated 07/11/2016 would be necessary. This will have to be done in the context of the order passed by this Court in W.P. No.972/2016. A perusal of the order dated 13/10/2016 passed in the said writ petition would show that the petitioner had requested for a limited relief of a direction to the MOEF and GCZMA, to dispose of the petitions pending before them expeditiously within a time frame. This Court, after recording the statement on behalf of the MOEF and GCZMA, has observed in para 8 of the judgment that apparently the petitioner did not take any steps to obtain any interim relief against the demolition order passed by the GCZMA. Thereafter, this Court has observed in para 9 of the judgment that it would not be appropriate for this Court to pass an

ad interim order as the petitioner, if so advised, are at liberty to pursue "appropriate remedy in law" and obtain reliefs in connection with the demolition order passed against the petitioner. The petitioner, thereafter, has filed a representation to the MOEF in pursuance of which, the MOEF has addressed a letter dated 07/11/2016 to the Member Secretary of the GCZMA. In para 5 of the letter dated 07/11/2016, the MOEF has made it clear that the redressal of the grievances of the petitioner is the 'jurisdiction of the GCZMA only' and GCZMA is requested to examine the proposal afresh duly considering the report sent by the NCSCM and recommendations being communicated to the Ministry, for further action. Thus, it can be seen that the MOEF has also taken a stand that the redressal of the grievances of the petitioner is within the jurisdiction of the GCZMA. We are of the considered view that the petitioner instead of adopting the statutory remedy against the order of the GCZMA, has filed yet another Review Application before the GCZMA, (though the earlier application has been dismissed). In such circumstances, we are not inclined to entertain the petition, which is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.
SMA

SMT R. P. SONDURBALDOTA