

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.195 OF 2012

Shri Sylvestre D'Souza
47 years of age, Married,
son of Late Simon D'Souza
H. No.2225,
r/o. Saunta Vaddo
Calangute, Bardez, Goa. ... Petitioner

versus

- 1 The Goa Coastal Zone Management Authority,
through its Member Secretary,
having its office at Opposite Saligao Seminary,
Saligao, Bardez-Goa.
- 2 The Additional Collector,
North Goa, Office of the Collector
Bldg., North Goa District, Revenue
Branch, Panaji – Goa.
- 3 State of Goa through its Chief
Secretary, Secretariat, Porvorim -Goa ... Respondents

Shri V.A. Lawande with Ms. A. Kamat, Advocates for the petitioner.

Shri A. Gomes Pereira, Additional Government Advocate for the respondent No.1.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V . Braganza, Advocate for the Intervenors.

CORAM : Nutan D. Sardessai, JJ.

RESERVED ON : 27th February,2018.

PRONOUNCED ON : 22nd March,2018

JUDGMENT:

1. This petition under Articles 226 and 227 of the Constitution of India takes exception to the order dated 15/02/2012 passed by the respondent no.1 directing the petitioner to remove all the 18 rooms. It was his case that the action of the respondent No.1 and the impugned order passed was arbitrary, perverse, unreasonable, illegal, without jurisdiction and in violation of principles of natural justice. It had been passed by the 4 members of the respondent No.1 in total contravention of the order 19/05/2011 which prescribes that at least 5 members should be present for any of the meetings of the sub-Committee in the matter pertaining to cases where the directions have been given by the Hon'ble High Court. There were various structures existing in the property surveyed under No.242/1 apart from the property earlier belonging to Luis Santo Pires who gave possession of the property to him on 13/11/1984 and permitted him to build structures in the area of 1550 sq.mts. for residing and development apart from permitting him to draw water from the well and to carry out necessary repairs. The said Luis Santo Pires had given his no objection to rebuild the store room in the said property and by his declaration dated 27/12/1986, gave his no objection to build the

room and water tank in the said property. He had also given his no objection to transfer the store room No.122 in his name and to transfer the house tax of the house No.2225 in the name of the petitioner. The Panel had granted permission in the name of the owner to renovate and repair the existing structures and which he had carried out. The owner had given letter and also declarations and no objections including the transfer of the house tax, water and electricity connection in favour of the petitioner.

2. A Show Cause Notice dated 17/07/2001 was issued to him by the respondent no.1 alleging unauthorised construction in an area of 800 sq.mts. of the Survey No.242/1(part), within the No Development Zone of 200 sq.mts. from the High Tide Line followed by another Show Cause Notice dated 01/05/2002 when he replied claiming that he had not violated any provisions of the Coastal Zone Regulations and not done any illegal constructions in an area of 800 sq.mts. within 200mts. from the High Tide Line. The structures were in existence prior to 1991 and renovated by the petitioner. The Order dated 29/09/2005 issued by the respondent no.1 directing him to demolish the hotel had precipitated a Writ Petition at his instance No.24/2007 pursuant to which the said order was stayed. In the course of the matter being taken for final hearing the respondent No.1 submitted that

the impugned order and all other consequential orders would be withdrawn and inspection of documents and fresh hearing would be given to the petitioner and thereupon the order dated 29/09/2005 and the consequential orders were withdrawn.

3. The respondent No.1 had issued a notice dated 20/11/2007 for a personal hearing before the respondent no.1 followed by another notice dated 01/02/2008. His request for site inspection and verification was rejected. A fresh notice dated 18/07/2011 came to be issued to the petitioner where a detailed reply was filed followed by a hearing. Though a hearing was fixed on 20/09/2011, it was not held as the four members committee was busy with finalising the shack policy. He had produced the file containing the original documents on 20/09/2011 when he was directed to produce the original file but no hearing took place. He had otherwise produced the Decree dated 11/11/2005 passed in Civil Suit No.188 of 2004, the execution proceedings bearing No.11 of 2007, the resolution dated 08/07/2011 and the report dated 06/01/2010 of the Village Panchayat. Pursuant to the execution proceedings, whatever was illegal and construction after 1981 was demolished by the District Court. The Panchayat had passed the resolution dated 18/07/2011 specifically stating that the structure belonging to the petitioner standing in the property

bearing Survey No.242/1 was existing before 1991 even before the CRZ Notification came into force and not applicable to his structure. It was incumbent on the respondent no.1 to thoroughly investigate whether the structures were existing prior to 1991.

4. However, vide the impugned order dated 15/02/2012 passed by the respondent No.1 he was directed to remove all the 18 rooms. The approach of the respondent no.1 was pedantic and unwarranted and the impugned order was illegal, arbitrary and perverse apart from being in violation of the settled principles of law and in breach of the principles of the natural justice. The Coastal Zone Management Authority was established on 26/11/1998 which was initially for three years and replaced by the Notification dated 06/01/2011. It was the case of the petitioner that the constitution of the respondent No.1 comprised of the Secretary Environment as the Chair person, Joint Secretary of the Department of Science, Technology and the Environment as the member Secretary and other 10 members being the ordinary members. The respondent no.1 its by order dated 19/05/2011 appointed a sub-Committee. In all the four hearings which had taken place and attended personally by the petitioner, only four members of the Committee were present and being so without the proper quorum and therefore the entire proceedings

were illegal and without jurisdiction. The impugned order was passed only by the Member Secretary and Joint Secretary without there being a decision on the Show Cause Notice dated 20/09/2005. Whatever transcribed in the meeting relating to the subject matter of the petition had not been put up in the 64th meeting of GCZMA for deliberation. The impugned order also did not disclosed in which meeting, the matter of the petitioner was taken up for consideration. The decision of four members was never put up in the subsequent 64th meeting for approval and as such the impugned order was vitiated apart from being passed in breach of the guidelines. There was no material on record to show that there were 20 rooms constructed by the petitioner or to come to the conclusion that there was an extension. Since the structures were in existence much prior to the CRZ Notification, the petitioner was entitled to have the structures regularised and applied before the Panchayat accordingly. The impugned order passed by the respondent no.1 was therefore arbitrary, illegal, without jurisdiction, contrary to the records, in breach of the principles of law and in violation of the principles of natural justice and hence had to be quashed and set aside.

5. Heard Shri V.A. Lawande, learned Advocate for the petitioner who submitted that Luis Santo Pires, the owner of the land had

given consent to construct the structures as early as 13/11/1984 in an area of 1550 sq.mts. of the Survey No. 242/1 which was much prior to the coming into force of the CRZ Regulations, 1991. There was a permission for renovation issued to the owner and to the petitioner and the Panchayat had issued a licence to the petitioner to run a restaurant in the house No.222/5. There was water connection provided to the said structures as early as April 1989 and the petitioner had electricity connection thereto prior to 1991. He also held the registration under the Tourist Trade Act. All these documents established that the structures were in existence prior to 1991 yet a Show Cause Notice was issued to the petitioner on 01/04/2002 by the respondent no.1 under Section 5 of the Environment (Protection) Act, 1986. The Panchayat had also drawn a panchanama on 23/08/2001 alongwith the sketch showing that he was carrying out the construction on the existing house in an area of 115 sq.mts. without any roofing. A sketch accompanying the panchanama did not show whether the construction was within 200 mts. of the High Tide Line or where it started or ended. He referred to the order dated 13/07/2007 passed in the Writ Petition No.24 of 2007 pursuant to which the impugned order dated 29/09/2005 had been withdrawn. The respondent No.1 had issued a notice dated 18/07/2011 whereby he was given an opportunity of personal hearing.

6. Shri Lawande, learned Advocate next referred to the Decree in the Civil Suit filed by the owner Luis Santo Pires for permanent and mandatory injunction in which a Consent Decree was drawn alongwith the plan showing the structures which were constructed by him. All the structures erected by him were regularised by the Panchayat pursuant to its resolution dated 20/02/2012. He adverted to order passed by the respondent no.1 dated 15/02/2012 and submitted that there was no basis for the respondent no.1 to take a view that there were 20 rooms, no approvals for 18 rooms and that extensions had been done without obtaining any approvals. In any event, the order so passed was in breach of the principles of natural justice and fair play and that the order came to be passed contrary to the constitution of the GCZMA. He relied in **State of Maharashtra and others v/s. Ravi Prakash Babulalsingh Parmar and another** [(2007)1 SCC 80] and **Karnal Improvement Trust, Karnal v/s. Parkash Wanti (Smt. Dead) and another** [(1995) 5 SCC 159] qua the inadequacy of the quorum and State of **Andhra Pradesh and another v/s. Dr. Mohanjit Singh, and another** [1988 (supp) SCC 562] to buttress a plea that there was no jurisdiction for the member Secretary to pass the order. He further referred to the judgment in **M/s. Sardesai Engineering Works and another v/s. The Goa Coastal Zone**

Management Authority [Application No.62/2012 (THC)], that in **Gurudas Amerkar and another v/s. Goa Coastal Zone Management Authority and others** [Appeal No. 75 of 2012] passed by the National Green Tribunal, the Notification issued by Goa Coastal Zone Management Authority dated 19/05/2011 and placed further reliance in **Tarlochan Dev Sharma v/s. State of Punjab and others** [(2001)6 SCC 260], **Diwakar Pundlikrao Satpute v/s. Zilla Parishad, Wardha and others** [2004(3) Mh.L.J. 151], **Shri B.D. Gupta v/s. State of Haryana** [(1973) 3 SCC 149], **Gangadhar Narsingdas Agrawal & others v/s. Ministry of Environment and Forests Through its Secretary (I.A. Division) & Others** [2014 1 AllMR 847].

7. Shri J.E. Coelho Pereira, learned Senior Counsel appearing on behalf of the Intervenor submitted at the outset that the National Green Tribunal Act, 2010 came into force w.e.f. **18/10/2010** while the National Green Tribunal was set up on **10/04/2011** unlike the petition which was filed on **09/04/2012**. Section 16(g) of the said Act reads thus :

“(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986)”

The order impugned was of the respondent No.1 dated 15/02/2012 i.e. after the National Green Tribunal came into existence and therefore the petition before this Court under Article 226 and 227 of the Constitution of India would not lie. The petition proceeded on an assessment of the disputed question of facts which was not permitted in a petition under Article 226 of the Constitution of India. The case of the petitioner was under the Environment (Protection) Act, 1986. Therefore, the jurisdiction to pursue the remedy lay before the National Green Tribunal and not before this Court. He relied in **Bhopal Gas Peedith Mahila Udyog Sangathan and others v/s. Union of India and others** [(2012) 8 SCC 326] and that in **M/s. Diana Buildwell Limited v/s. Goa Coastal Zone Management Authority and others** [Writ Petition No.335 of 2016. The petitioner had carved a case of the breach of the principles of natural justice which was without any basis. The impugned order was passed by the GCZMA in full compliance with the principles of natural justice. It was not the case of the petitioner nor borne out from the order that there was no quorum. The petitioner was invoking the jurisdiction of this Court in terms of Articles 226 and 227 of the Constitution of India which was a veiled appeal in disguise. The fact that the petitioner had submitted his application for regularisation in 2011 which was inwards under date 27/01/2012 and the resolution adopted by

the Panchayat regularising the said structures clearly indicated that all the constructions carried out by the petitioner were illegal.

8. It was incumbent on the Panchayat to forward the file for regularisation once the structures were found in Coastal Regulation Zone area. He referred to the panchanama and plan relied upon by the petitioner and otherwise submitted that the learned Single Judge of this Court in **Fr. Mario Pires v/s. Village Panchayat of Calangute and others** (Writ Petition 749 of 2014) had clearly held that once the application for regularisation was submitted it presupposed that the existing structure was unauthorised and was constructed without the necessary permission from the GCZMA or the Village Panchayat. In any event, there was no reference to the Panchayat resolution on regularisation referred to in the petition filed on 07/03/2012. The petitioner was guilty of suppression of material fact in the petition which was moved under Article 226 of the Constitution of India and therefore on all these grounds the petition was not maintainable and liable for dismissal.

9. Shri A. Gomes Pereira, learned Additional Government Advocate on behalf of the respondent No.1 referred to the reliefs claimed in the petition, the impugned order passed by the respondent No.1 and invited attention to Section 5 and 5(a) of the

Environment (Protection) Act being in force w.e.f. 18/10/2010. A remedy was available to the petitioner before the National Green Tribunal. The petition was prima facie not maintainable. In view of Section 5 of the National Green Tribunal Act, the petition had to be filed before the National Green Tribunal and as challenge to the action under Section 5 of the Environment (Protection) Act had to be taken before the National Green Tribunal. The National Green Tribunal had been created by the Parliament to deal with the environmental issues and incidental matters and there was no escape for the petitioner by seeking recourse to the powers of this Court under Articles 226 and 227 of the Constitution of India. He too referred to Section 16 of the National Green Tribunal Act alongwith the schedule and submitted that in terms of Section 16 (g) any person aggrieved by any directions issued on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 would be entitled to invoke the jurisdiction of National Green Tribunal alone. Schedule I of the Act clearly provides for the inclusion of the Environment (Protection) Act, 1986 and therefore any challenge under the said statute would have to be made before the National Green Tribunal. There was an explicit provision in the National Green Tribunal Act under Section 29 – barring the jurisdiction of the Civil Court. It was not to mean that the

jurisdiction of this Court was barred which otherwise had plenary powers being a constitutional Court but when an alternate efficacious remedy was available to the petitioner, he could not invoke the jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

10. Shri A. Gomes Pereira, learned Additional Government Advocate too relied in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra), and submitted that when there was an alternate, efficacious remedy available to the petitioner before the National Green Tribunal, he could not seek the intervention of this Court by recourse to Articles 226 and 227 of the Constitution of India. He relied in **Vellore Citizens Welfare Forums v/s. Union of India** [2016-3 L.W. 11], **Latha Ramesh v/s. Union of India and others** [2016 SCC OnLine Kar 6239], **Canara Plastics Manufacturers and Trades Association and others v/s. The State of Karnataka** [Writ Petition Nos. 14314-14402 of 2016] and **Abdul Jabbar v/s. State of Kerala** [WP(C) No. 30809 of 2015(A)], **Authorised officer of State Bank of Travancore and Another v/s. Mathew K.C.** (Civil Appeal No. 1281 of 2018) to buttress his contention that there was no jurisdiction in the High Court to deal with the matters which lay explicitly before the National Green Tribunal.

11. Shri V.A. Lawande, learned Advocate for the petitioner in reply submitted that there were no averments by the petitioner on the existence of ten rooms and therefore there was no basis to urge so. He did not seriously dispute the jurisdiction of the National Green Tribunal but contended that the remedy was still available to him to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution when there was violation of the principles of natural justice, violation of the fundamental rights and where there was no jurisdiction to pass the order. In that context he relied in **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and others** [1999 0 AIR (SC) 22]. None of the judgements relied upon by Shri A. Gomes Pereira, learned Additional Government Advocate was applicable to the case at hand. It was not open to the respondents or the Intervenor to raise any objection to the maintainability of the petition at the stage of final hearing and who ought to have raised this preliminary objection before the admission of the petition. He placed reliance in **J.G. Glass Industries v/s. Union of India** [1992 (62) ELT 291 Bom] as also in **State of Telangana v/s. Md. Hayath Uddin and others** [2017 SCC OnLine Hyderabad 356]. There was no challenge to the petition even after admission though the judgment in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra), was available. The declaration issued by the

owner in his favour of 1984 clearly supported his case that the structures were not restricted to the mundkarrial area alone and there was no basis to disbelieve his case. Moreover, the decree passed by the Civil Court also showed that he had his structures in existence which were prior to 1981 and hence the notice issued by the respondent no.1 was illegal and liable to be quashed and set aside. He placed reliance in **Sylvester D'Souza v/s. The Village Panchayat of Calangute and others** [Writ Petition No. 764 of 2015] and concluded his arguments that there was no suppression of facts by him qua the regularisation which was evident from a reading of the pleadings in the petition.

12. Shri J. E. Coelho Pereira, learned Senior Counsel for the Intervenor submitted that although it was vociferously argued by the petitioner that all the structures were constructed in the year 1984, no permission from Panchayat pre 1991 was produced on record to support of such contention. In any event, the petitioner ought to have filed the petition before the National Green Tribunal. The constructions carried out by him were ex facie illegal and last but not the least the judgment in **J.G. Glass Industries** (supra), was clearly distinguishable.

13. Shri A. Gomes Pereira, learned Additional Government Advocate for the respondent No.1 submitted that the **Bhopal Gas**

Peedith Mahila Udyog Sangathan (supra), the judgment was delivered on 09/08/2012 giving effect to the National Green Tribunal Act. The petitioner had made a false statement despite being under legal advise and had suppressed the fact that an alternate remedy was available to him under National Green Tribunal Act. Last but not the least he relied in **Panjab National Bank v/s. O.C. Krishnan and others** [(2001) 6 SCC 569] on the issue of jurisdiction going to the root of the matter and once again pressed for the dismissal of the petition.

14. i would consider their contentions in the light of the voluminous material brought on record, including the various judgments and mainly confine myself to the maintainability of the petition before this Court in view of the alternate remedy available before the National Green Tribunal and whether in the facts and circumstances of the case, the petitioner did make out a case to bring his case within the fold of this Court by invoking Article 226 and 227 of the Constitution of India. The National Green Tribunal Act has been enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and

for matters connected therewith or incidental thereto and which Act came into force on 18/10/2010. It provides for the establishment of a Tribunal, its composition and more particularly in terms of Section 16 that it shall have appellate jurisdiction in respect of any direction issued on or after the commencement of the said Act under Section 5 of the Environment (Protection) Act, 1986 in terms of clause (g) thereof. This read with the Schedule I and Section 29 would clearly indicate that it is the National Green Tribunal alone which would have the jurisdiction to deal with and decide the matters in connection with any order or direction passed under Section 5 of the Environment (Protection) Act, 1986.

15. In Bhopal Gas Peedith Mahila Udyog Sangathan (supra), the Hon'ble Apex Court held at paragraphs no. 40 and 41 as below:

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in

unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

16. In **M/s. Diana Buildwell Limited** (supra), the petitioner challenged the revocation of the provisional permission granted by the Goa Coastal Zone Management Authority. The Division Bench of this Court considered the submissions that the petitioner had an alternate remedy, both against the revocation of the permission as also against the order dated 09/02/2016 and that he could not justifiably question the order dated 09/02/2016 in the Writ Petition, in view of the availability of a statutory remedy of an

appeal to the Hon'ble Supreme Court under Section 22 of the Act. In that context the Division Bench of this Court considered the Judgment of the Apex Court in **Cicily Kallarackal v/s Vehicle Factory** [(2012) 8 SCC 524] where it was held at paragraph 3 that 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. The Division Bench further considered the observations in **Nivedita Sharma Vs. Cellular Operators Association of India and Others**[(2011) 14 SCC 337] which reads thus:

“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.”

The Division Bench also considered the Judgment in **Ram and Shyam Company Vs. State of Haryana and Others** [(1985) 3 SCC 267] where the Hon'ble Apex Court has restated the principles, when a writ petition can be entertained, without exhausting the alternate remedy and finally held that the petition was not tenable and dismissed the same.

17. In **Vellore Citizens Welfare Forums** (supra), the Madras High Court had considered the directions issued by the Apex Court in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra), which came to be stayed in **Adarsh Co-operative Housing Society Limited V/s. Union of India** (SLP No.27327/2013) and which was subsequently withdrawn giving effect to the said directions. **Latha Ramesh** (supra), was a petition under Article 226 of the Constitution of India seeking a writ of mandamus. However, in view of the enactment of National Green Tribunal Act, 2010 empowering the Tribunal with the jurisdiction over all civil cases, where a substantial question relating to environment is involved, the Division Bench of the Karnataka High Court deemed it appropriate that the petitioner had an alternative and efficacious remedy and in that view of the matter disposed off the petition reserving the right of the petitioner to approach the National Green Tribunal for necessary orders. **Canara Plastics** (supra),

challenged the notification issued by the Government of Karnataka in exercise of the power conferred under Section 5 of the Environment (Protection) Act, 1986 imposing a ban on the manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table etc. in the State. A plea was taken by the learned Advocate General that the Writ Petitions were not maintainable as an alternative and efficacious remedy was available under Section 5 of the Act, while it was submitted to the contrary on behalf of the petitioners. The Division Bench observed that when there was an alternative and efficacious remedy before the Competent Tribunal constituted under a Statute, i.e., National Green Tribunal Act, 2010, it was desirable that these matter be placed before the National Green Tribunal for consideration and accepting the preliminary objection of the learned Advocate General, dismissed the Writ Petition on the ground that there exists an alternative and efficacious remedy before the National Green Tribunal.

18. Abdul Jabbar (supra), challenged the environmental clearance and various permits issued to the respondents No.7 to 9 for extracting sand/ ordinary earth/ minerals from the area

referred in the environmental clearance, permit, licence etc. situated in Kunnathunadu Village of Arackapady Taluk of Ernakulam District. An interim order was initially granted which was later on modified permitting the respondents No.7 to 9 to extract minerals, strictly following environmental clearance and which was challenged in the Writ Petition. Here again a plea was taken on behalf of the respondents that the petitioners were having an alternative remedy to challenge environmental clearance before the National Green Tribunal and that the petition was filed without any bonafides. The Kerala High Court held that if there is any substantial issue related to the environment, it is a matter to be taken up before the National Green Tribunal and therefore the Court was of the view that the petitioners were free to approach the National Green Tribunal challenging environmental clearance. Since there was an efficacious alternative remedy for the petitioners, there was no scope for interference in the matter and dismissed the petition.

19. In *Authorised Officer, State Bank of Travancore* (supra), the Hon'ble Apex Court observed that it was the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by the party, especially when the law stands well settled. It earlier observed that the discretionary jurisdiction

under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance of law. The normal rule is that the Writ Petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in Commissioner of Income Tax and others v/s. Chhabil Dass Agarwal [2014(1) SCC 603]. The appeal assailed an interim order passed in a writ petition under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). In that context, the Apex Court observed that the SARFAESI Act was a complete Code in itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent and that the writ petition ought to have been dismissed at the threshold on the ground of maintainability but the Division Bench erred in declining to interfere with the same. The Two Judge Bench considered the

judgment of Whirlpool Corporation (*supra*), and held that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

20. In Punjab National Bank (*supra*), the Hon'ble Apex Court held that where the order passed by the Debt Recovery Tribunal, Calcutta was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993, the High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision of alternative remedy contained in the Act. Even though the provision under the Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227, nevertheless, when there is the alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions.

21. In J.G. Glass Industries Ltd. (*supra*), it was contended on behalf of the respondents that the order of the Collector should not be disturbed in exercise of the writ jurisdiction as the petitioners had an efficacious alternate remedy of filing an appeal. The Division Bench of this Court did not find favour with the

submission that the petitioners should be driven to commence a fresh round of litigation for more than one reason. In the first instance, the present petition was pending in this Court for the last over seven years and it would be extremely harsh and unjust to compel the petitioners to adopt remedy of filing an appeal by incurring large expenses. Secondly, the decision of the Collector was entirely unsustainable on the facts and circumstances of the case and there was no dispute whatsoever about the facts on which the decision was to be resisted and in view of the matter the preliminary objections were dismissed. This judgment is clearly distinguishable in the facts of the case and the petitioner cannot seek to draw any parity therewith.

22. State of Telangana (supra), invoked the jurisdiction of the High Court under Article 226 of the Constitution of India, to declare the order passed by the Principal Bench of the National Green Tribunal, New Delhi dated 05/10/2017 as illegal, arbitrary, contrary to Section 4 of the National Green Tribunal Act, 2010 and Rules 3 and 5 of the National Green Tribunal (Practices and Procedures) Rules, 2011 and to set aside the same. A plea was taken on behalf of the first respondent that in view of Section 22 of the 2010 Act, the Writ Petition filed before the High Court was not maintainable. On the other hand, the learned Advocate

General for the State of Telangana submitted that since Article 226 formed a part of the basic structures of the Constitution of India, the power conferred on the High Court thereby cannot be curtailed or negated by Section 22 of the 2010 Act. The High Court of Hyderabad observed that the 2010 Act does not expressly exclude the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, though it excluded the jurisdiction of the normal Civil Courts under Section 29. However, though Section 29 of the 2010 Act explicitly bars the jurisdiction of the Civil Courts, the jurisdiction of the High Court under Articles 226 and 227 cannot be excluded even by implication for, even if the 2010 Act itself had contained a specific provision excluding the jurisdiction of the High Court under Articles 226 and 227, it would have been invalid in view of the specific declaration made in *L. Chandra kumar v/s. Union of India* [(1997)3 SCC 261] that Articles 226 and 227 form a part of the Constitution's basic structure. In any event, this judgment relied upon by Shri Lawande, learned Advocate for the petitioner does not buttress a plea that he is entitled to maintain a Writ Petition under Article 226 and 227 of the Constitution of India despite the availability of an alternative efficacious remedy under the Act.

23. Whirlpool Corporation (*supra*), held that the power to issue

prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain the restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to

usurp jurisdiction without any legal foundation. From a discussion of the Judgments in Bhopal Gas Peedith Mahila Udyog Sangathan, M/s. Diana Buildwell Limited, Vellore Citizens Welfare Forums, Latha Ramesh, Canara Plastics Manufacturers and Trades Association, Abdul Jabbar and Authorised officer of State Bank of Travancore (supra), it is borne out that where a issue pertains to an order or direction under Section 5 of the Environment (Protection) Act, the jurisdiction of the National Green Tribunal which has to be invoked as a matter of course. However, the judgment in Whirlpool (supra), holds that even in instances where an alternative efficacious remedy is available, the writ jurisdiction of this Court can be invoke in the three contingencies. It is therefore to be seen that whether in the circumstances of the case whether the petitioner has been able to show that his case falls within the ambit of any of these three predicates/ contingencies culled out in the **Whirlpool** (Supra) or conversely whether the petition would stand barred in view of the alternative efficacious remedy available before the NGT.

24. Although the petitioner referred to several documents namely the declaration of consent as early as 13/11/1984, the permission for renovation and all the panchanama, the licences to carry on the trade, water connection, electricity bills and the

registration under the Tourist Trade Act to advance a plea that the structures were in existence prior to 1991, nonetheless no permissions of the Village Panchayat were produced on record pre 1991 to show that the construction of these structures which was spread over an area of not less than 1554 sq.mts. as specified in the declaration of consent dated 13/11/1984 were enacted pre 1991. Therefore the contention of Shri Lawande, learned Advocate for the petitioner that all these structures were in existence prior to 1991 becomes academic and otherwise a question of fact requiring determination but positively not before this Court. Even a reference to the consent decree would not buttress his plea that the structures were constructed prior to 1991. It had otherwise been his contention that the impugned order was an outcome of violation of his rights and that the element of fairness was inherently missing apart from the fact that the petitioner was not given any opportunity to lead evidence. The judgment however relied upon by him in the **State of Maharashtra** (supra), which was in the context of the Caste Scrutiny Committee allowing documentary and oral evidence to be adduced wherever necessary would not substantiate his case even on that premise. The respondent no.1 had perused the documents produced on record by the petitioner as recorded in the impugned order, afforded a personal hearing to the petitioner

and to produce all the relevant documents and only thereafter come to a clear finding that 18 of the 20 structures used for tourist purposes had no approvals and that whatever structure did exist prior to 1991, there were extension to it from time to time for which no approvals were obtained and besides it fell within the No Development Zone. In that context by invoking Section 5, the respondent No.1 had directed the petitioner to remove the structures for which the remedy lay for the petitioner before the National Green Tribunal and not before this Court.

25. Karnal (supra), was primarily relied upon to buttress his contention that the impugned order was passed by the Member Secretary alone and that on account of the deficient quorum, the impugned order was vitiated. A perusal of the impugned order would reveal that there was a consistent reference to the matter being placed at the meeting of the GCZMA on different occasions, that **its members** had taken due cognizance at each stage and thereafter i.e. after the matter was taken up in the hearing of the respondent no.1 – body in its 62nd and 63rd meeting of its members that the decision was taken to called upon the petitioner to remove the structures in exercise of the powers under Section 5 of the Environment (Protection) Act, 1986. The contention therefore that there was no quorum does not stand the test of

scrutiny. **State of Andhra Pradesh** (supra) also on the aspect of the quorum of the select committee not being adequate rendering the selection invalid does not substantiate his case and hence the respectful departure. His contention therefore to project that the impugned order was passed solely by the Member Secretary and without the involvement of the Members of the GCZMA is therefore found to be without any basis.

26. M/s. Sardessai Engineering Works (supra) on the aspect of the impugned order being rendered illegal for want of the required quorum as also that in Gurudas Amerkar (supra) do not support his case in view of the earlier discussion.

27. A perusal of the impugned order reveals that sufficient opportunity was given to the petitioner to put forth his case and it is not as if there was no adherence to the principles of natural justice in the matter and hearing granted to him from time to time. The contention of Shri Lawande, learned Advocate for the petitioner therefore that the impugned order being passed in violation of the principles of natural justice and there being a violation of fundamental rights of the petitioner does not advance his case.

28. In Gangaghar Agrawal (supra), the Division Bench of this

Court held that the impugned orders being in clear breach of the principles of natural justice and, therefore, the petition deserved to be admitted notwithstanding the judgment of the Apex Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) which had culled out that the existence of alternative statutory remedies would not operate as a bar in at least any three contingencies. From the discussion of the judgments and factual matrix, it is clearly borne out that the petitioner had failed to bring his case within all the three of the contingencies namely that there was a breach of principles of natural justice or that there was a violation of fundamental rights or that the order under challenge was without jurisdiction for this Court to entertain this petition particularly when he had an equally efficacious, alternative remedy before the NGT. The fact that no objections were raised on behalf of the respondents would not ipso facto advance the case of the petitioner that this Court had to deal with the issue which was clearly within the domain of the National Green Tribunal when the impugned order was passed under Section 5 of the Environment (Protection) Act, 1986 and the jurisdiction lay clearly before the National Green Tribunal. In view thereof, the petition would not be tenable and accordingly the same is dismissed. Rule is discharged. Since the petitioner was secured with interim relief pursuant to the statement made

by the then Additional Government Advocate, the same shall continue for four weeks to enable the petitioner to pursue his remedies.

NUTAN D. SARDESSAI,J.