IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 915 OF 2018

SYLVESTER D' SOUZA ... PETITIONER

Versus

GOA COASTAL ZONE MANAGEMENT AUTHORITY, THR. ITS MEMBER SECRETARY & 5 ORS. ... RESPONDENTS

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Shri S.D. Lotlikar, Senior Advocate with Shri Prasheen Lotlikar, Advocate for the Petitioner.

Shri Sagar Dhargalkar, Additional Government Advocate for the Respondent Nos. 1, 3, 4 and 5.

Shri Kapil Kerkar, Advocate for the Respondent No. 2.

Shri Nitin Sardessai, Senior Advocate with Shri Neelesh Takkekar, Advocate for the Respondent No. 6.

CORAM : C.V. BHADANG, J.

Reserved on : 28th November, 2018

Pronounced on : 29th November, 2018

ORDER:

By this petition, the petitioner is challenging the order dated 24.08.2018, passed by the respondent no. 1-Goa Coastal Zone Management Authority (GCZMA), directing demolition of 18 structures existing in Survey No. 242/1 (part) of village Calangute, as resolved by the Authority in its 180th meeting held on 31.07.2018. The said order is passed in exercise of the powers under Section 5 of the Environment (Protection) Act,

1986 (Act, for short). The respondent no. 1 and the respondent no. 6 have raised a preliminary objection about the maintainability of the petition, in view of an alternate remedy to approach the National Green Tribunal (NGT) against the said order.

2. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioner, Shri Dhargalkar, the learned Additional Government Advocate appearing for the respondent nos. 1, 3, 4 and 5, Shri Kerkar, the learned Counsel for the respondent no. 2 and Shri Sardessai, the learned Senior Counsel for the respondent no. 6. Perused record.

3. It is not disputed that the petitioner has a statutory remedy to approach the NGT against the impugned order passed by the respondent no. 1-GCZMA. The contention, however, on behalf of the petitioner is that the said remedy is not an effective or an efficacious remedy. It is submitted that at present, the Pune Bench of NGT is non-functional and the matters filed before the Pune Bench are heard via video conference by the Members sitting at New Delhi. It is submitted that the hearing given via video conference is not effective hearing. The learned Senior Counsel for the petitioner therefore, submits that in the absence

of the Pune Bench being functional, the remedy before the Pune Bench cannot be said to be an effective remedy. Secondly, it is submitted that the matter had earlier come before this Court in Writ Petition No. 195/2012 in which, an earlier order passed by the GCZMA, to the similar effect on 15.02.2012, was subject matter of challenge. It is submitted that the said petition was decided by this Court on 22.03.2018, holding that there is alternate efficacious remedy. It is pointed out that in para 24 onwards, this Court also gave findings on merits of the earlier order passed.

It may be mentioned that the petitioner made an unsuccessful attempt to get the said order reviewed and the Civil Application (Review) No. 8/2018 was dismissed on 13.04.2018. The petitioner challenged both these orders before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 13457-13458 of 2018, in which, the Hon'ble Supreme Court has passed the following order on 25.05.2018.

> *"Heard learned counsel for the parties.*
>
> *We are not inclined to interfere with the judgment of the High Court which is impugned in these special leave petitions.*
>
> *We make it clear that in view of the order dated 15th February, 2012 passed by the Goa Coastal Zone Management Authority (Annexure P-26) holding that no prior permission has been taken in regard to the*

subject structures having become final, it will be open to the authorities to proceed on the basis of the said order in accordance with law.

While doing so, the authority may take into account the efficacy of Resolution dated 20th February, 2012 (Annexure P-27) passed by the Village Panchayat purporting to regularize the subject structure. The effect of that Resolution may be taken note of as per law.

Needless to observe that the authorities may give opportunity to both the parties, if necessary, as permissible in law.

The special leave petitions stand dismissed in the above terms."

4. It is submitted that after this, the respondent no. 1 has passed the impugned order dated 24.08.2018. In the submission of the learned Senior Counsel for the petitioner, the matter has arisen as an off shoot of the earlier Writ Petition No. 195/2012. It is submitted that this Court can entertain the petition and the petitioner be not relegated to the remedy before the NGT. Lastly, it is submitted that access to justice at the door step is a part of the fundamental right and the same stands violated, as the petitioner cannot approach the Pune Bench of NGT, as it is non-functional. On account of this, in the submission of the learned Senior Counsel, this Court should entertain the petition.

5. On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of **J and K National Panthers Party Vs. The Union of India (UOI) & Others, (2011) 1 SCC 228** and **Anita Kushwaha & Others Vs. Pushap Sudan & Others, (2016) 8 SCC 509** and the decision of this Court in the case of **The Goa Foundation & Others Vs. Ministry of Environment, Forest and Climate Change & Others, 2018 (1) BOM.C.R. 232**.

6. The learned Counsel for the respondents have contended that there is an alternate statutory and efficacious remedy available to the petitioner and therefore, this Court may not entertain the petition. It is submitted that the respondent no. 1, as per the order of the Hon'ble Supreme Court has considered the efficacy of the resolution dated 20.02.2012, passed by the Village Panchayat, purportedly to regularize the subject structures and has then passed the impugned order dated 24.08.2018. In the event, the petitioners are aggrieved by the said order, they have the remedy to approach the NGT. It is contended that an opportunity of hearing is granted via video conference and at the option of the parties, they can also appear before the principal seat of the NGT at New Delhi and on this account the petitioner cannot contend that the remedy available

is not efficacious.

7. I have carefully considered the circumstances and the submissions made. As noticed earlier, the availability of an alternate remedy is not in dispute. In an appropriate case, inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act are challenged (see **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Others, (1998) 8 SCC 1**). The present case does not fall under any of the three categories, which are culled out above.

8. It is a matter of record that there was an earlier order passed in the year 2012 by the respondent no. 1, directing demolition of the subject structures, which was challenged by the petitioner in Writ Petition No. 195/2012, which has been dismissed on 22.03.2018. The review application also came to be dismissed on 13.04.2018, which orders have not been interfered with by the Supreme Court. All that has been ordered

is directing the respondent no. 1 to consider the effect of the resolution passed by the Village Panchayat, purportedly to regularize the subject structures. The respondent no. 1 has indeed considered the effect of the resolution and has then passed the impugned order. If at all, the petitioner is aggrieved by the same, he has got the statutory remedy of approaching the NGT. The contention that the said remedy is not effective as the Pune Bench at present is non-functional, to my mind cannot be accepted. It transpired during the course of the arguments at bar that the hearing is given via video conference or the party has an option to attend the hearing at Delhi.

9. The decision of the Supreme Court in the case of **J and K National Panthers Party** (supra) and in the case of **Anita Kushwaha** (supra) turned on their own facts.

In the case of **J and K National Panthers Party** (supra), the question was about delimitation of territorial constituencies of State pertaining to the legislative assembly. It was found that as per the mandate of Article 329A, any law relating to the delimitation of the constituencies or allotment of seat to such constituencies, cannot be called into question in any Court and there was express constitutional bar in that regard.

10. In the case of **Anita Kushwaha** (supra), a Constitution Bench of the Supreme Court has held that access to justice is and has been recognised as a part and parcel of right to life. It has been held that the absence of any adjudicatory mechanism or inadequacy of any such mechanism, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws. In that case, the three Judge Bench had referred a question as to whether, the Supreme Court has the power to transfer a civil or criminal case pending in any Court in the State of Jammu and Kashmir, to a Court outside that State and vice versa.

11. In the case of **Goa Foundation** (supra), the Division Bench of this Court had commended, both to the State Government and the Ministry of Environment and Forests to take up with all seriousness, a proposal to establish a Circuit Bench in Goa of NGT. The decision cannot be relied upon to hold that the remedy available to the petitioner is not an efficacious or an effective remedy.

12. In the present case, I find that the petitioner has an efficacious statutory remedy before the NGT. In that view of the matter, I decline to entertain the petition on the ground of

availability of an alternate remedy.

The petition is dismissed, with no order as to costs. Needless to mention that this Court has not expressed any opinion on the merits of the challenge.

13. Shri Lotlikar, the learned Senior Counsel for the petitioner has requested for continuance of the ad-interim relief, already operating, in the petition, for a period of six weeks, in order enable the petitioner to take recourse to such remedy as available in law. The respondent no. 6 has opposed the same. However, considering the fact that the ad-interim relief was already operating from 10.09.2018, the same is extended for a period of six weeks.

C.V. BHADANG, J.

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