

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

CIVIL WRIT PETITION NO.8181 OF 2018

Anand Gram Society Hansens Disease (Leprosy).. Petitioner

Vs.

1. Ramesh Maloi Arge & orsRespondents

Mr.Telesh Dande with Mr.Bharat Gadhavi I.b M/s Telesh
Dande & Associates for Petitioner

Mr.P.N.Diwan AGP Respondent nos.2 to 7

**CORAM : NARESH H. PATIL, C.J.
& G.S. KULKARNI, J.**

DATE: 30th October, 2018.

ORAL ORDER (Per G.S.Kulkarni, J)

1. The petitioner a charitable trust claims to be the owner of the land situated at Pune, more particularly described in para 3 and 4 of the petition.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution primarily being aggrieved by an order dated 26.5.2017 and 23.1.2018 passed by the National Green Tribunal, Western Zone (for short "NGT.") The petitioner has prayed for the

following substantive reliefs :

“(a) Record and proceedings in respect of Gat No.78 Dudulgaon, Taluka Haveli, District Pune from the file of learned Collector, Pune may kindly be called for;

(b) After considering the legality, validity and propriety of the same, writ of certiorari or any other writ, order or direction in the like nature may kindly be passed thereby quashing and setting aside the impugned notice dated 20.11.2017 issued under Indian Forest Act, 1927 by Forest Zone Officer and order dated 26.05.2017 passed below (Item no.7, Order No.20) in Application No.115 of 2015 (WZ) and order dated 23.01.2018 passed below (item No.3) in Original Application No.120 of 2017 (WZ) with Application No.115 of 2017 (WZ); “

3. Learned counsel for the petitioner has contended that in Original Application No.115 of 2015 in case of **Ramesh Arge vs Conservator of Forests, Pune and ors**, a Division Bench of the NGT has passed an order on 26.5.2017 directing the Chief Conservator of Forests and the Principal Chief Conservator of Forests, as also the Collector of Pune and the Principal Chief Secretary (Forest), to take steps to remove all the encroachments on the forest lands within three (3) weeks in accordance with law and restitute the environment. The said order reads thus :

“This application has been moved by resident of Pune regarding destruction of forest land due to th encroachment, more particularly described herein below :

S. No.	Nme of village	Forest S.No./Gat No.	Area encroach	Of what encroachment
1	Dongargao n	399/67	6	Road made from forest land
2	Burkegaon	20/63	10	Construction of India Precaste Co
3	Lonikand Fulgaon	275/71341/199	6	Road made from forest land (Stones & Murum for transportation
4	Bhavadi	/66	7	From the forest land road for goods transportation & houses
5	Dudulgaon	78 & 190	14	Stones mines for cons. Of RCC for cons.of houses & transportation from forest land
		Total	43	

The parties appeared in response to the notices except respondent no.6-Shivalpana Stone Crusher Co, and has been proceeded ex-parte.

Parties before us do not dispute that the lands described herein above are forest lands. In fact, learned counsel appearing on behalf of respondent no.3 Chief Conservator of Forest confirms that the said lands are part of the reserved forest. The respondent no.5-Pricaste India Infrastructure Pvt.Ltd Company submits that it has nothing to do with the said forest land more particularly Gat No.190 at Dudulgoan. It is also not disputed that the forest lands have been encroached in the aforesaid manner. The parties concede that the activities referred to herein above were not approved as per the provisions of Forest Conservation Act, We therefore, pass the following order :

Order

The Respondent no.1 Chief Conservator of Forest, Respondent no.2-Principal Chief Conservator of Forest, Respondent no.3 Collector of District Pune and respondent no.7-Principal Chief Secretary (Forest) shall take steps to remove all the said encroachment within three (3) weeks in accordance with law and restitute the environment. Other respondents shall co-operate with the authorities for removal of the encroachments.

The respondent no.5 and 6 shall remove the said encroachments if they belong to them.

No order as to costs.

Compliance report shall be furnished before the Tribunal on compliance of the said order on or before 1st July 2017 alongwith said compliance.

N.A.No.115/2015 stands disposed of accordingly.”

4. Learned counsel for the petitioner has drawn our attention to the subsequent order dated 23.1.2018 stated to be passed by the Judicial Member of the Tribunal considering compliance of the earlier order dated 26.5.2017. The relevant extract of this order reads thus:

“ The case taken on Board at the request on behalf of Mr.Gupte who submits that presence of Chief Conservator of Forest may be dispensed with today and he will advice the officer concerned appropriately and come back to the Tribunal with a positive action report taken by the officer concerned. Submission placed on record. However, in view of several other issues being raised now we direct the Chief Conservator of Forest to conduct spot inspection/survey of the area in question along with District Collector and submit a report about the factual aspects of the structures on the land in question. This report shall be filed by the next date of hearing. In purpose of conducting either the survey/inspection or enforcement of the orders, the Forest Department is permitted to approach for required assistance from the Director General of Police in view of failure of the other officers, In case of such a request, the Director General of Police shall be bound to issue appropriate instructions to the officers concerned and ensure such assistance is provided. List it for further proceedings on 1st February 2018.”

5. The principal contention as urged by the learned counsel for the petitioner is that both the orders are passed by the NGT without hearing the petitioner and now the Forest Department is taking action to demolish the petitioner's construction by issuance of the impugned notice dated 20.11.2017 implementing the said orders passed by the NGT.

6. As this petition was urgently moved, the division bench on 30.7.2018 passed an order whereby the respondents were restrained from taking any action in respect of the property in possession of the petitioner and structures thereon, on the basis of the order dated 26.5.2017 and 23.1.2018 passed by the NGT in notice dated 20.11.2017 and a subsequent notice dated 25.7.2018 of the Forest Department.

7. It is the petitioner's contention that the second order dated 23.1.2018 is passed by the single member of

the National Green Tribunal and considering the provisions of Rule 5 of the National Green Tribunal (Practice and Procedure Rules, 2011 (for short 'NGT' Rules) the learned Single member would have no jurisdiction to pass such an order. It is thus, submitted that the said orders passed by the learned single member is required to be set aside. Rule 5 reads thus:

“5. Minimum number of members who shall hear application or appeal--

(1) The Tribunal shall hear an application or appeal, as the case may be, consisting of at least by a Judicial and an Expert Member.

(2) Where the Chairperson considers it necessary that a particular case or cases be heard and decided by the Tribunal consisting of more than two members he may by order in writing direct that such case or cases, be heard by such members of the Tribunal as may be specified in that order. “

8. The contention of the petitioner referring to rule 5 of the NGT Rules, surely has substance considering the rule 5 (1). However, this argument would have a bearing in the context of the second order dated 23.1.2018 passed by the learned single member of the tribunal if the Single learned member of the NGT was considering an

application or appeal, which rule 5 (1) contemplates would be required to be heard by a bench consisting of at least of a Judicial and an Expert member. Although, from a plain reading of the order dated 23.1.2018, it appears that the learned member was considering compliance of the earlier order dated 26.5.2017 passed by the Division Bench of the tribunal, the real cause for the petitioner to be aggrieved, is by the order passed by the Division Bench on 23.1.2018 which is a substantive order.

9. Now coming to the first order dated 26.5.2017 passed by the Division Bench of the NGT, on a query made to the learned counsel for the petitioner, he fairly concedes that although the order dated 26.5.2017 was passed by the division bench of the Tribunal ex-parte to the petitioner, the petitioner has not taken any steps to move the Bench of the NGT by appropriate proceedings for vacating of the said order and the petitioner, straight away has approached this Court by the present proceeding.

10. On behalf of State Government (respondent nos.2,3 and 6) a reply-affidavit of Mr.Madhukar Bapurao Telang Assistant Conservator of Forests, Pune Forest Division, Pune is placed on record disputing the contentions of the petitioner more particularly of the petitioner having no rights on forest land in question. On behalf of the State Government, it is contended that Gat no. 78 (Old survey no.11) is a reserved forest declared to be so by a Government Notification (No.4375A) dated June 26, 1890, issued under section 19 of the Indian Forest Act, 1878. It is stated that since then the said land has been in possession of the State Government as a reserved forest and the petitioner has falsely contended that the petitioner is owner of the said land. It is further stated that the petitioner had earlier filed a civil suit before the Civil Court at Pune and the subject matter of the suit and this writ petition are the same. It is stated that in view of the pendency of the civil suit, the petitioner is not entitled to any relief in this petition. It is stated that on this land which is a reserved forest, the petitioner has not only committed

encroachment but, has raised structures. The contents of para 21, 24 and 29 of the reply affidavit are required to be noted which reads thus :

“21. With reference to the contents of para no.22, I state and submit that the petitioner has already filed a regular civil suit R.C.S.No.138/2015 in the Court of Civil Judge, Senior Division, Pune for permanent injunction in order to restrain the respondents from interfering with its possession over the said land. I state and submit that the petitioner has not been successful in getting any temporary injunction against the respondents and as the subject matter of the civil suit is the same, as that of this writ petition, the petitioner is not entitled to claim any relief in this writ petition. I state and submit that there is no provision for regularization of encroachment over any reserved forest in the Forest Conservation Act, 1980 as claimed by the petitioner and there is no question of deemed regularization of the illegal possession of the petitioner over the said land. I further state and submit that there is no question of protecting illegal possession of the petitioners over the said land only because the possession is longstanding.

24. With reference to the contents of para.26, I state and submit that the impugned notice was issued in view of the provisions of section 26 (1-A) of the Indian Forest Act, 1927 (the Act). AS per section 26 (1-A) of the Act, the Forest Officer is empowered to remove any encroachment over the reserved forest. The petitioner has admitted to have encroached upon the Reserved Forest. Then, the Petitioner has no right to get the encroachment regularized. Therefore the only legal step remained to be taken by the Forest Officer was to give notice of removal of encroachment and to remove the encroachment by exercising the powers given to him as per S.26 (1-A) of the Act and it is not correct to say that no due process of law has been followed. The National Green Tribunal has only asked the respondents to perform their legal duty to remove encroachment on the reserved forest and there was no reason to implead the Petitioner before the National Green Tribunal.

Therefore he cannot raise a grievance that he was not heard by the N.G.T.

29. With reference to the prayer clause in para no.33, I state and submit that as the Forest Officer who issued the impugned notice is empowered to remove the encroachment committed by the Petitioner in the said land and as the petitioner has no right title or interest, in the said land which is reserved forest, the petitioner is not entitled to any relief sought for in this writ petition which deserves to be dismissed with costs and compensatory costs.”

11. As the issue raised in the present petition arises from the orders passed by the NGT, we called upon the learned counsel for the petitioner to address the Court on the maintainability of the petition in view of an alternate remedy available to the petitioner under section 22 of the NGT Act, which provides an appeal to the Supreme Court. Section 22 of the NGT Act reads thus:

“22. Appeal to Supreme Court -Any person aggrieved by any award, decision or order of the tribunal, may file an appeal to the Supreme Court, within ninety days, from the date of communication of the award, decision or order of Tribunal, to him on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.”

12. The learned counsel for the petitioner argued that although an appeal is provided against any order passed by the NGT under section 22 of the NGT Act, the jurisdiction of this Court under Article 226 of the Constitution is sacrosanct and is not ousted to grant relief as prayed by the petitioner. In support of his submission, learned counsel for the petitioner has drawn our attention to the decision of the Division Bench of this Court in **Windsor Realty Pvt.Ltd vs Secretary, Ministry of Environment and Forest**¹ to contend that in this decision, the division bench considering the law laid down by the Supreme Court in **L.Chandra Kumar vs Union of India**² and in **Whirlpool Corporation vs.Registrar of Trade Marks Mumbai**³ the Division Bench has held that the Court can exercise powers of judicial review, even when the petitioner has an alternate remedy to file a statutory appeal. Learned counsel for the petitioner however, would fairly point out that this decision of the Division Bench does

1 2016 SCC Online Bom 5613

2 (1997) 3 SCC 261

3 (1998) 8SCC 1

not find any consideration on the consequence of the specific provision of an appeal to the Supreme Court as provided in section 22 of the Act.

13. In a subsequent judgment in **Anil Hoble vs Kashinath J.Shetye**⁴ a Division Bench of this Court was considering a similar issue, namely challenge to an order dated 29.5.2016 passed by the NGT (Western Zone). An objection was raised on behalf of the respondents, about the maintainability of the petition in view of the statutory remedy provided in terms of NGT Act. Taking a review of the legal position on the issue including the decision of the Supreme Court in **L.Chandrakumar** (supra) the division bench specifically considering the effect of Section 22 of the NGT Act, held that the petition was not maintainable in view of the specific alternate remedy created by the NGT Act.

14. We may note the background of the NGT Act.

15. As India was a party to the decisions taken at the United Nations conference on the 'Human Environment' held at Stockholm in June 1972, calling upon the States to take appropriate steps for the protection and improvement of human environment. A decision was taken in the United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992 in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. In the judicial pronouncements in India, the right to healthy environment was construed as a part of the right to life under Article 21 of the Constitution. It was therefore considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to environment.

16. The Parliament accordingly, considered Bill No.LXIII of 2009 for establishment of the National Green Tribunal for the effective and expeditious disposal of cases relating to environmental and forest protection and protection of other natural resources.

17. We may observe that the NGT Act is thus a special legislation which provides for establishment of the National Green Tribunal for the effective and expeditious decisions in cases relating to environmental protection and conservation of forest and other natural resources, including enforcement of legal rights relating to environment and grant of relief of compensation and damages, to persons and property and for matters connected therewith and incidental thereto, as the Preamble of the Act would stipulate.

18. It would be appropriate to refer to the relevant extract of the statement and objects and reasons which would reflect the intention of the legislature in the

establishment of the tribunal which was to be conferred jurisdiction over all cases where a substantive rights on environment (including enforcement of legal rights relating to environment) are involved. The relevant extract of the Statement and Objects of the NGT Act reads thus :

“5. Taking into account the large number of environmental cases pending in higher Courts and the involvement of multi disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental Courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental Courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multi disciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

7. Accordingly, it has been decided to introduce the National Green Tribunal Bill, 2009 which inter alia provide-

(e) That the Tribunal shall have the jurisdiction over all civil 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 enactments specified in the Schedule I to the Bill and to

grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I to the Bill and to hear appeals under certain enactments specified in the Schedule III to the Bill.”

19. Now as regard to the parameters of service matters and the jurisdiction of the High Court to entertain writ petitions against the orders of the Administrative Tribunals, we may observe that the Administrative Tribunals Act, 1985 provides for the establishment of the Central Administrative Tribunal and the State Administrative Tribunal to deal with service matters arising under the All India Services or State Services. The Administrative Tribunal Act, 1985 does not contain a specific provision conferring a right to appeal to the Supreme Court as provided under section 22 of the NGT Act. In fact there is no provision for a statutory appeal against the orders of the Administrative Tribunal. In *L.Chandrakumar* (supra), the Supreme Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and

Tribunals within their respective jurisdictions is part of the basic structure of the Constitution.

20. It can however be seen that the intention of the legislature in creating a specific remedy of an appeal to the Supreme Court as provided under section 22 of the NGT Act is a specific departure from what the legislature thought appropriate under the Administrative Tribunals Act. It may be important to note that Bill No.LXIII of 2009 as introduced before the Parliament for the establishment of the National Green Tribunal did not contain a clause akin to section 22 of the NGT Act to provide for an appeal to the Supreme Court. However, in the NGT Act, as promulgated, a provision of an appeal in terms of section 22 was incorporated.

21. No doubt, the power of a judicial review as conferred on the High Court under Article 226 and 227 of the Constitution is sacrosanct and remains unaffected despite an appeal being provided under section 22 of the

NGT Act. The Court however would be slow to interfere except in very very exceptional cases. The law in this regard is well settled. (See **Whirlpool Corporation vs Registrar of Trade Marks, Mumbai**⁵ and **Union of India vs Major General Shrikant Sharma & anr**⁶ and **Mahanadi Coalfields & anr vs Dhansar Engineering Company Private Limited** ⁷.)

22. The Division Bench in **Anil Hoble** (supra) has referred to para 43 of the decision of the Supreme Court in **United Bank of India vs Smt.Satyawati Tondon**⁸ The Supreme Court has held that when a remedy is available to the aggrieved person, in all such cases, the High Court must insist that a person must exhaust the remedies available under the relevant statute. The Division Bench in paragraph 17,18 and 20 has observed thus :-

“17. The Apex Court in the judgment reported in the case of **United Bank of India v Satyawati Tondon**, has observed at paras 43 and 55 thus :

5. 1998) 8 SCC page 1

6. (2015) 6 SCC 773

7. (2016)10 SCC 571.

8 (2010) 8SCC 110

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

“18. On perusal of the said observations of the Apex Court, a serious concern has been shown by the Apex Court with regard to the matters which the High Court has entertained under Articles 226 and 227 when a statutory appeal is provided under the relevant statute. Dealing with the aspect that merely because jurisdictional issue is involved, the Court may not necessarily exercise jurisdiction under Articles 226 and 227, the Andhra Pradesh High Court in a judgment reported in AIR 1991 AP 326. In the case of *Tulasi Enterprises v Andhra Pradesh State Consumer Commission*, Hyderabad, has observed at paras 10 and 11 thus:

“10. It is true that whenever the Legislature creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under Art. 226 of the Constitution of India to deal with the orders passed by the said Tribunals is not and cannot be ousted. It is also true that whenever questions of

jurisdiction are raised, the High Court normally permits such questions to be raised under Art. 226 of the Constitution and examines whether the applications or the other proceedings filed before the Tribunal are within the jurisdiction of the said Tribunal or not. But the High Court has a discretion to entertain the writ petitions and in particular to decide, for example, any questions of jurisdiction unless they involve serious or disputed questions of fact. It is not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal.

20. The Apex Court in the judgment reported in (2012) 8 SCC 524 in the case of *Cicily Kallarackal v Vehicle Factory* has observed at para 4 thus :

“4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

23. Adverting to the above principles of law and considering the scope and ambit of section 22 of NGT Act, we are sure that this is not a extra-ordinary case where indulgence can be granted to the petitioner by entertaining this petition under Article 226 of the Constitution. The record reveals that the petitioner had filed a civil suit for the same cause of action and could not succeed in getting any reliefs. Further, it was always open to the petitioner to approach the division bench of the NGT and seek appropriate reliefs in case the petitioner felt that the petitioner was not heard. Apart from this, a statutory remedy of an appeal under section 22 of the NGT Act was also available to the petitioner. We are therefore, certain that the petition deserves to be dismissed as an alternate remedy is available to the petitioner.

24. However, only as a matter of indulgence, we continue the interim protection granted by this Court for a

period of four weeks to enable the petitioner to avail appropriate remedy as available in law.

Dismissed. No costs.

{G.S.KULKARNI, J}

CHIEF JUSTICE