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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12343 OF 2017

Jasjeet Singh & Anr.	...Petitioners
V/s.	
State of Maharashtra & Ors.	...Respondents

Mr.Deepak Gupte for the Petitioners.
Mr.R.P. Kadam, A.G.P. for the State - Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 18TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 10th August, 2017 and 17th August, 2017 passed below Exhibit – 1 and 135 respectively by the learned Trial Judge under Order VII Rule 10A(1) and under Order VII Rule 10A(2) of the Code of Civil Procedure, 1908 thereby returning the plaint to the plaintiff and to present before the National Green Tribunal on 18th August, 2017.

2. The petitioners (original plaintiffs) filed a suit *inter-alia* challenging the notice dated 13th April, 2006 issued by the learned Tahsildar, Alibag under section 45 of the Maharashtra Land Revenue Code, 1966. The defendants therein had filed the written statements in the said suit. Both the parties led oral evidence before the Trial Judge. The matter was fixed for judgment by the learned Trial Judge.

However, instead of pronouncing the judgment, the learned Trial Judge considered one of the issue i.e. issue no.3 i.e. “whether this Court is having the jurisdiction to try the suit” and rendered a finding thereon holding that the learned Trial Court had no jurisdiction to entertain the plaint and ordered the return of plaint to the plaintiffs with a direction to present before the National Green Tribunal.

3. Pursuant to the said order passed by the learned Trial Judge, the National Green Tribunal numbered the said proceedings as M.A. No.288 of 2017 (WZ). By an order dated 9th July, 2018, the National Green Tribunal, Western Zone, Branch Pune disposed of the said application with a direction to the parties to take appropriate steps before the Competent Court. The National Green Tribunal held that neither the Civil Judge nor any other Court except the Hon'ble Supreme Court has the authority to issue any order of transfer and by the Hon'ble High Court in the spirit of the directions passed in Bhopal Gas Peedith Mahila Udyog Sangathan & Ors.

4. A perusal of the plaint filed by the petitioners clearly indicates that only prayer in the plaint was impugning the notice issued by the learned Tahsildar under section 45 of the Maharashtra Land Revenue Code, 1966. The parties have already led oral evidence. The arguments were advanced by both the parties. The matter was fixed for judgment. However, without deciding all the

issues under Order XIV Rule 2 of the Code of Civil Procedure, 1908, learned Trial Judge passed an order on 10th August, 2017 ordering returning of the plaint filed by the petitioners and issued further order on 17th August, 2017 that the said plaint shall be presented before the National Green Tribunal on 18th September, 2017.

5. Learned A.G.P. could not point out before this Court as to how the challenge to the impugned notice under section 45 of the Maharashtra Land Revenue Code, 1966 would fall within the jurisdiction of the National Green Tribunal under the provisions of the National Green Tribunal Act, 2010.

6. In my view, even otherwise the learned Trial Court could not have rendered a finding only on the issue of jurisdiction and that also at the stage of pronouncement of judgment when both the parties led oral evidence on all the issues and had made their rival contentions on all the issues. The impugned order passed by the learned Civil Judge, Senior Division, Alibag on 10th August, 2017 and on 17th August, 2017 are accordingly quashed and set aside.

7. The Suit bearing Regular Civil Suit No.60 of 2006 filed by the plaintiffs is restored to file. Learned Trial Judge shall decide all the issues framed under Order XIV Rule 2 of the Code of Civil Procedure, 1908 including the issue of jurisdiction without being influenced by the observations made and the conclusion drawn in the order dated 10th

August, 2017 and 17th August, 2017. The National Green Tribunal, Western Zone, Branch Pune is directed to return the papers and proceedings which were filed by the petitioners within two weeks from the date of communication of the order to the petitioners for lodging those papers and proceedings before the learned 2nd Joint Civil Judge, Senior Division, Alibag, Raigad within two weeks from collection of papers and proceedings from the National Green Tribunal, Western Zone, Branch Pune.

8. *Ad-interim* protection which was granted by the learned Trial Judge in favour of the petitioners to continue during the pendency of the said suit. Since the evidence is already concluded by the parties and the arguments were also advanced, if the learned Judge who passed an order is still presiding in the same Court, the matter can be heard by the learned Judge expeditiously. If any other Judge is presiding over the said Court, the matter shall be heard by the concerned Judge expeditiously.

9. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

10. All the parties as well as the National Green Tribunal and the learned 2nd Joint Civil Judge, Senior Division, Alibag-Raigad to act on the authenticated copy of this order.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.09.25 15:20:18 +0530

(R.D. DHANUKA, J.)