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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION STAMP NO. 2635 OF 2019
(For Transfer from Nagpur Bench)
IN
WRIT PETITION NO. 5184 OF 2018

The State of Maharashtra	..Applicant
Vs.	
Soham Industries and ors.	..Respondents

Mr. M. M. Pabale, AGP for applicant – State.
Mr. R. S. Apte, Senior Advocate a/w Mr. Vedchetan Patil for respondent no.1.
Ms. Sharmila Deshmukh for respondent no. 12 – MPCB.

CORAM: NARESH H. PATIL, C.J.
FEBRUARY 20, 2019
(IN CHAMBER AT 2.45 P.M.)

P.C.

1. Heard the learned counsel appearing for the respective parties.
2. The applicant – State has filed this Misc. Civil Application praying for transferring the papers and proceeding of the Writ Petition No. 5184 of 2018, pending before the Hon'ble High Court of Bombay at Nagpur Bench to the Principal Seat of this Court and be heard along with Writ Petition (st) Nos. 4391 of 2018, 1061/2018, 1098/2018 and 1129/2018.

3. The learned Senior Counsel appearing for the respondent opposed the Misc. Civil Application.

4. The prayers in Writ Petition No. 5184 of 2018 filed at Nagpur Bench, read as under :-

- I] Hold and declare that the containers and plastic trays of more than 300 microns used for packing food by the hotels/restaurants are not single use disposable product and therefore not covered by the notification dated 23.03.2018 (ANNEXURE-2)
- II] Quash and set aside the impugned notification dated 23.03.2018 (ANNEXURE-2) in so far as it bans manufacture, transport, store, sale, import etc. of plastic containers and plastic trays being beyond the powers of respondent no.1 conferred under Section 4 of the Garbage Act of 2006 and also violative of Art. 14, 19(1)(g), 21 of the Constitution of India.
- III] Hold and declare the action of respondent no.3 of search, seizure and imposing penalty on persons on the spot and not referring the matters for adjudication as contemplated by the Garbage Act of 2006 is illegal, invalid,

impermissible and without authority of law and be further pleased to direct the respondent no.3 to refund the penalties imposed by it and return the seized goods forthwith to all persons including the petitioners.

- IV] Direct the respondent No.3 to act in accordance with the provisions of Garbage Act of 2006 which require that any person found in breach of the Act has to be tried and prosecuted before the Court of Law and not by the officers of respondent no.3 and also that no search and seizure should be undertaken without recording reasons for the same and without a search warrant from the competent authority.
- V] During pendency of the writ petition the respondents be restrained from taking any coercive action against manufacture, transport, use, etc of the plastic containers and plastic trays for the purpose of packing food in hotel/restaurants.

5. The learned AGP submits that in the petitions filed in Bombay High Court, the competency of the State legislature to issue notification dated 23/3/2018 is raised, which according to the respondents is beyond the powers conferred under Section 4 of the Maharashtra Non-Biodegradable Garbage (Control) Act, 2006. The challenge is also based on violation of Articles 14, 19(1)(g), 21 of the Constitution of India.

6. Mr. Apte, the learned Senior Counsel appearing for the respondent no.1 submits that the petitions placed before the Division Bench at Nagpur are being heard on merits and during the hearing, the learned AGP made a statement that an application for clubbing the said petitions with the one pending at the Principal Seat of this Court will be presented and accordingly hearing of those petitions was deferred.

7. Mr. Apte, the learned Senior Counsel appearing for the respondent no.1, on instructions, states that the original petitioners are primarily concerned regarding the relief at prayer clause (I) of the petition, which is quoted in para 4 above. The learned Senior Counsel for respondent no.1, on instructions, further states that the original petitioners are not pressing for the relief in prayer clause (II) of the petition relating to validity of the notification at this stage. The learned counsel submits that as and when occasion arises, the petitioners would take appropriate steps for making appropriate application in the pending petitions before the Division Bench at Bombay raising challenge to the validity of the notification dated 23.03.2018.

8. Perused the record and considered the submissions advanced.
9. In view of the statements made above by the learned Senior Counsel for the respondent no.1, Misc. Civil Application stands disposed of.

CHIEF JUSTICE