

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.403 OF 2018

IN

WRIT PETITION NO.2529 OF 2016

WITH

CIVIL APPLICATION NO.317 OF 2019

IN

WRIT PETITION NO.2529 OF 2016

WITH

CIVIL APPLICATION NO.1608 OF 2016

IN

WRIT PETITION NO.2529 OF 2016

WITH

CIVIL APPLICATION NO.2407 OF 2018

IN

WRIT PETITION NO.2529 OF 2016

SGS Infratech Limited

.... Applicant

In the matter between

SGS Infratech Limited

.... Petitioner

Vs.

Union of India & Others

.... Respondents

WITH

WRIT PETITION NO.2529 OF 2016

[NoB]

SGS Infratech Limited

.... Petitioner

Vs.

Union of India & Others

.... Respondents

Mr. Milind Sathe, Senior Advocate, with Mr. Bhushan Deshmukh, Mr. Abinash Pradhan & Mr. Deepu Jojo i/by Wadia Ghandy & Co. for the Petitioner/Applicant.

Mr. K.J. Presswalla with Mr. Sandeep Goyal i/by Mulla & Mulla & Craigie Blunt & Caroe for Respondent Nos.2 & 3.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : MARCH 12, 2019

P.C:

1. When the writ petition itself was heard in the morning session at great length and we indicated to the parties that at the end of today's supplementary board we will dictate the order in open Court, post recess Mr. Milind Sathe, learned Senior Counsel appearing for the petitioner/civil applicant, mentioned these matters. He says, after having spoken to the client and taken detailed instructions, the petitioner requests this Court to grant leave to withdraw not only the civil applications but also the writ petition with liberty to avail of the statutory remedies.

2. Before this request could be considered, Mr. Presswalla invited our attention to The Cantonments Act, 2006 to urge that, once there is complete statutory remedy not only to impugn the past but the future actions as well and when that cause of action arises, the petitioner must be informed and by appropriate clarifications by this Court, that such an exercise, as is impugned in this petition and the civil applications, if carried out in future, the liberty granted by this Court shall not be misused to bring in fresh writ petition but when the liberty is granted to adopt appropriate proceedings that should be confined or restricted only to statutory remedies and not a writ petition in this Court.

3. Both are heard on this limited point and we find that Mr. Presswalla's objection is indeed valid. If the Cantonment Board has been vexed in the past by two writ petitions even when there is a complete alternate remedy, then, while we grant leave to withdraw this writ petition and the civil applications with liberty to adopt statutory remedies, we clarify that the remedies that would be adopted are Appeal against the

assessment under Section 93 and thereafter all the proceedings governing the right of both, appearing in the statute and particularly Sections 93 to 97 shall operate with their rigour. The petitioner shall not be permitted to institute any writ petition nor it will be entertained given this liberty and the clarification by us.

4. We put it to Mr. Sathe again and he says that the petitioner is ready and he would withdraw this writ petition with liberty to avail statutory remedies on the full understanding that the remedies would be under the statute in question, namely, The Cantonments Act, 2006 and the right of appeal conferred thereby in terms of Section 93 and conditioned by Section 96. However, we clarify that insofar as merits of the levy are concerned and equally the measures of recovery, though we have heard the rival contentions in extenso, we have not expressed any opinion thereon. All contentions of both sides are kept open.

5. Needless to clarify that even if a statute like The

Cantonments Act, 2006 gives a finality to the order passed in appeal and in terms of Section 97 that would never take away the remedy of the aggrieved petitioner, in the event it is really aggrieved to file a writ petition against the appellate order.

6. With the above observations, the petition and the civil applications stand disposed of as withdrawn with the liberty as prayed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)