

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS.942 & 958 OF 2018.

WRIT PETITION NO.942 OF 2018.

Mr. Prasad Naik,
age – 41 years, son of Nanda S. Naik
R/o. H. No. 552, Malim, Betim)
Penha de Franca, Bardez Goa ... Petitioner

Vs.

1. The Goa Coastal Zone Management
Authority, through its
Member Secretary, C/o. Department
of Science, Technology and
Environment, Government of Goa,
1st floor, Pt. Deendayal Upadhyay
Bhawan, Pundalik Nagar Alto
Porvorim, Bardez – Goa 403 521
2. Mr. Kashinath Shetye,
Major of age, R/o. 102 Raj Excellency
Ribandar – Goa.
3. The State of Goa,
through its Chief Secretary,
Porvorim Goa ... Respondents.

Shri Nigel Costa Frias, Advocate for the petitioner.

Shri D. Shirodkar, Addl. Govt Advocate for the respondent nos. 1 and 3.
Respondent no.2 present in person.

**WITH
WP No.958 of 2018**

Mrs. Rosalina de Souza,
age – 54 years, wife of Mr. Constancio
Rodrigues, Resident of H. No. 80,
Katem, Baina, Mormugao Goa,
Through her Power of Attorney
Mr. Yallapa Harijan, Major, son of
late Mr. Moreappa Harijan,

R/o. H. No. 137/1A, Katem Baina,
Mormugao, Goa

... Petitioner

Vs.

1. The Goa Coastal Zone Management Authority, through its Member Secretary, C/o. Department of Science, Technology and Environment, Government of Goa, 1st floor, Pt. Deendayal Upadhyay Bhawan, Pundalik Nagar Alto Porvorim
2. The State of Goa, through its Chief Secretary, Porvorim Goa
3. The Dy. Collector & S. D. O. Mormugao Taluka, Vasco da Gama, Goa

... Respondents

Shri Nigel Costa Frias, Advocate for the petitioner.

Ms. S. Mordekar, Addl. Govt Advocate for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 30 July 2020

JUDGMENT

Introduction:

Two persons have structures on their property, and that property stands covered by Coastal Zone Regulations. They both are using the structures commercially. Complained against and put on notice, they have contended before the authorities that the structures, erected before 1991, offend no Regulation. But the authorities held otherwise. Aggrieved, they filed writ petitions, withdrew them, and went before the National Green Tribunal but lost. Now, they have filed these writ petitions.

2. Given the alternative remedy under Section 22 of the National Green Tribunals Act 2010, can these two persons sustain their writ petitions?

Facts:

3. Petitioner Prasad Naik owns properties in his village, Penha de Franca. That property has structures, said to have been raised before 1991. In one part of the building, Prasad runs a general store; in the other part, his sister-in-law, Mrs Sonal S. Naik, runs a wine shop. To run those businesses, both have the required licenses, including the trade license. During his lifetime, before 1991, Prasad's father also had a small store in the property.

4. In July 2015, Kashinath Shetye, that is the second respondent, along with others, complained to Goa Coastal Zone Management Authority ("Goa CZM Authority") that Prasad and his sister-in-law have carried out illegal construction "by hill cutting" in the property. Responding to that complaint, the CZM Authority, in the first week of August 2015, wanted Prasad to show cause why it should not act against him. Besides asking Prasad to show cause, the authorities also issued "a stop-work order" to him. As both Prasad and his sister-in-law faced identical allegations, went through similar proceedings, and faced the same consequences, we will confine our narrative to Prasad.

5. Over time, Kashinath filed Application No.181 of 2016 before the National Green Tribunal ("the Tribunal"), Western Zone Bench, Pune, alleging that the CZM Authority had not acted against Prasad despite his complaint. Then, the Tribunal directed the CZM Authority to take appropriate action on Kashinath's complaint. After site inspection and personal hearing in March 2018, the CZM Authority passed an order in July 2018. Through that order, the authorities required Prasad to stop all commercial activities in his property. They have also required the Deputy

Collector and SDO to ensure that Prasad has not used the structures for any commercial purpose. It was based on CRZ Notification 2009.

6. Aggrieved, Prasad filed Writ Petition No.781 of 2018 before this Court. But in July 2018 he withdrew that writ petition, with the liberty to approach the Tribunal. It was in the face of the respondents' objection that he had an alternative remedy available. Accordingly, Prasad filed Appeal No.64 of 2018 before the Tribunal, which dismissed Prasad's appeal through Order, dated 7 September 2018. The Tribunal has held that in terms of Regulation 6 (d) of Coastal Zone Regulations, "a structure being used for commercial purposes whether prior to 1991 or subsequent to it cannot be allowed to be regularised or allowed to be continued to run".

7. Further aggrieved, Prasad has filed this writ petition. This Court, through its judgment, dated 2 June 2020, dismissed the writ petition on the premise that Prasad has an efficacious alternative remedy—that is an appeal under Section 22 of the Act to the Supreme Court. But Prasad filed a review petition contending that this Court should revisit the matter. One of the grounds for review was this: the Court heard the case at two stages. At the initial stage, the Court allowed the parties to argue on the question of writ maintainability. Later, on another day, it heard the parties on the merits. So Prasad believed that the Court had waived the objection on maintainability and entertained the case on the merits. But, eventually, the Court ruled only on the maintainability, without considering Prasad's arguments or decisions he cited on the maintainability, at that.

8. Despite their initial objection, the respondents have not seriously joined the issue about whether the review petition should be entertained; instead, they have agreed to argue the matter, once again, exclusively on the preliminary question of maintainability. So I have heard the parties extensively—only on the preliminary question.

WP No. 958 of 2018:

9. Rosalina belongs to the fishermen community. Traditionally, Rosalina and her ancestors, as she pleads, have been carrying on the fishing activity in the village. In 1984 the Municipal Council of the area permitted Rosalina's husband to set up a soda factory in their property. When Rosalina's husband was alive, the CZM Authority issued a show-cause notice in 2016. The notice was in his mother's name and concerned the structures on the property. Despite the explanation given by Rosalina's husband and despite voluminous documentary evidence he produced, on 12 July 2018 the CZM Authority "in complete disregard of the principles of natural justice", ordered the demolition of structures.

Submissions:

10. Shri Nigel da Costa Frias, the learned counsel for the petitioner, to begin with, has submitted that the Tribunal has not dealt with the matter on the merits; instead, it has simply been carried away by the interpretation the CZM Authority has put on Regulation 6(d) of the CRZ Regulations 2009. Therefore, according to him, the approach Tribunal adopted in adjudicating the matter is not only perverse but also erroneous of law and of fact. To elaborate, Shri Frias has submitted that the Tribunal interpreted Regulation 6(d) contrary to the established principles of statutory interpretation.

11. Shri Frias has also argued that even the primary authority's order, dated 12 July 2018, is irrational and unreasoned. At any rate, he has stressed that no party to the proceedings dispute that the structures had been existing even before 1991. And that admitted fact makes the CRZ Regulations inapplicable to Prasad's structures. Of course, Shri Frias has taken me through the record and argued extensively on the merits. He has also submitted that the Regulations are prospective and apply to structures constructed only after 19 February 1991, when the CRZ Regulations were notified.

12. As I have already noted, the counsel on either side have agreed that the adjudication must be confined only to the preliminary issue—the maintainability of the writ petition in the face of an alternative remedy. Therefore, I do not desire to extract those arguments that touch on the merits.

13. In the end, Shri Frias has argued that this Court has time and again held that the Court's judicial review under Articles 226 and 227 of the Constitution suffers no statutory limitations. In other words, Shri Frias articulates that the High Court's power of judicial review is a basic feature of the Constitution and survives Section 22 of the NGT Act, unimpaired. Finally, Shri Frias would have the Court conclude that the Tribunal's impugned order also suffers from the vice of violating the principles of natural justice, besides being grossly “perverse and illegal”. To support his contentions, Shri Frias has cited these decisions:

(1) *S. N. Aggarwal v. State (NCT of Delhi)*^[1]; (2) *South West Port Ltd. v. State of Goa*^[2]; (3) *Windsor Realty Pvt. Ltd. v. Secretary, Ministry of Environment and Forest*^[3]; (4) *Sham Resort & Hotels Pvt. Ltd. v Mrs Maria Christine Rebillet*^[4]; (5) *M/s. Leading Hotels Ltd. v. Mr. Anthony Mendis*^[5]; (6) *Kashinath Jairam Shetye v. State of Goa*^[6]; (7) *Committee of Management v Vice*

1(2005) 81 DRJ 287

2(2018) 4 Mah LJ 678

3 MANU/MH/2214/2016

43rd July 2015 (WP No.5754 of 2015)

5(2016) 2 Bom CR 213

6(2017) 3 Mah LJ 254

Chancellor^[7]; (8) *Cosme Romaldo Silverira v V. P. Chicalim*^[8]; and (9) *Harbanslal Sahnia v Indian Oil Corpn. Ltd*^[9].

Respondents:

14. Shri Kashinath Shetye, arguing the case *pro se*, has submitted that Prasad should not, once again, challenge in this writ petition the correctness of the order passed by the primary authority. According to him, that order stands merged in that of the Tribunal. Besides, he also reminds me that Prasad initially challenged that order before this Court in a writ petition but withdrew it. Therefore, he is now estopped.

15. Shri Shetye has also argued that the Tribunal has heard the parties and decided the matter on the merits; therefore, Prasad has established no exceptional grounds for this Court to invoke its powers of judicial review, in the face of an efficacious alternative remedy he has.

16. On his part, the learned Additional Government Advocate has submitted that the CZM Authority has decided the dispute strictly in statutory terms. ~~And the Tribunal has correctly interpreted the Regulation to uphold the CZM Authority's order.~~ But the Tribunal has, according to the learned Additional Government Advocate, erred in interpreting the Regulation 6 (d).

Discussion:

17. First, Prasad challenged the Goa CZM Authority's orders before this Court in a writ petition. Faced with opposition, he withdrew it and went to the Tribunal. So, as rightly contended by Kashinath, Prasad is estopped from reagitating the primary authority's order. That apart, though he argued about the correctness of primary order, I reckon that order stood merged with that of the Tribunal. So Prasad cannot ask the Court to turn the clock back.

⁷AIR 2009 SC 1159

⁸ (2012) 114 (1) Bom LR 132

⁹AIR 2003 SC 2120

18. Now, we will move on to the next stage—about the Tribunal’s order. From the precedential checklist, let us see on what count this order suffers. Does the Tribunal have inherent jurisdiction to deal with the matter? Yes, it has. In fact, it is Prasad that went before the Tribunal and invited the impugned order. Has the Tribunal heard the parties before its deciding the appeal? Yes, it has. So no principles of natural justice have been violated.

19. If we continue in the same vein, the next question is, does the Tribunal’s order affect Prasad’s fundamental rights? In fact, he argues that it does. According to him, his right to carry on business stands affected or abridged. Is it so? In the first blush, it appears as if it were the case. But on a scrutiny, it turns out otherwise. The issue is about the legality of structures, not about Prasad’s right to carry on his business.

20. Under Article 19(1) (g) of the Constitution, all citizens do have the right to practise any profession or to carry on any occupation, trade, or business. That said, Clause (6) of Article 19 hedges in this right with conditions. This right shall not deter the State to impose, in the public interest, reasonable restrictions on that right. The right to carry on business is one thing, and the right to carry on that business at a particular place—say, in a lawfully erected building—is another. The existence or the non-existence of structures in a coastal zone, certainly, has an element of public interest, for it affects the environment. And that restriction as to the legality of structure is unexceptional. So the question of fundamental rights must fail, and it has failed.

What are the Petitioner’s Objections?

21. The technical hurdles cleared, now we will put in perspective what Prasad’s objections are and whether they qualify for the Court to disregard the alternative remedy—an appellate remedy to a superior forum of adjudication, at that. The objections are these:

(a) The order is perverse and erroneous, both of fact and of law; (b) the Regulations are prospective and do not apply to structures existing by 19 February 1991, when they came into force; (c) the Tribunal has wrongly interpreted Regulation 6 (d) of the CRZ Regulations 2009; (d) the adjudication is summary; (e) the Tribunal has exceeded its jurisdiction; (f) the Tribunal has disregarded binding precedents; and (g) the impugned order “will have broad implications and the matter is of substantial public importance”.

The Statutory Provision:

22. Section 22 of the NGT Act provides for an appeal to the Supreme Court against “any award, decision or order of the Tribunal”. The provision reads:

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 the 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.

(italics supplied)

23. Before we examine the profusion of precedents Prasad has cited, we must note that the appeal to the highest court of the land lies against any award, decision, or order passed by the Tribunal. The jurisdictional sweep of this provision is unmistakable and the powers of the adjudicatory forum—the Supreme Court of India—are plenary, period!

24. The Constitutional Courts’ power of judicial review is the shield every suitor uses against the arrows of alternative remedy shot at him. On countless occasions, the Courts have ruled, are ruling, and will continue to rule on this issue. As the Kerala High Court has observed in *Indus Logistics v*

Commissioner of Central Excise and Customs^[10], the issue of alternative remedy is every High Court's Sisyphean task. Borrowing from the Greek mythology, I may say the Court labours on a slippery slope, trying to carry that issue to the precedential pinnacle. Every time the Court rules on the issue, it hopes it has the last word on the matter. But in the very next case, the issue is seen rolled down to the bottom. And it requires the Court to toil once again up the slippery decisional slope, all over. As the precedents proliferate, so do the contradictions. Now, let us examine the decisions Prasad has cited.

ALTERNATIVE REMEDY:

(a) *S. N. Aggarwal*:

25. In *S. N. Aggarwal*, the Bank sued the borrower for recovering the debt. The Civil Court decreed the suit. It directed the Bank to recover the suit amount from a bank officer who is said to have colluded with the borrower. But the Civil Court gave no opportunity of hearing to the bank officer concerned. The High Court of Delhi, per Mukul Mudgal J, has noticed the violation of the principles of natural justice and, so, interfered with the decree. It was despite the petitioner's having an alternative remedy. In the process, *S. N. Aggarwal* has examined a few precedents.

26. In *Syed Yakoob v. K.S. Radhkrishnan*^[11], the Supreme Court has held that when a Court decided a question without giving an opportunity of hearing to the party affected, a writ of *certiorari* can be granted at that party's behest. Similarly, in *Harbans Lal v. Jagmohan Saran*^[12], the Court has held that *certiorari* shall issue if principles of natural justice are breached.

27. After quoting from the *Corpus Juris Secundum* and Wade and Forsyth's *Administrative Law*, the High Court of Delhi in *S. N. Aggarwal* has

102018 SCC OnLine Ker 8622

11AIR 1964 SC 477

12(1985) 4 SCC 333

also referred to De Smith, Woolf and Jowell's *Judicial Review of Administrative Action* to hold that a *certiorari* will issue where a judicial forum has failed to act judicially, despite the necessity to do so. *S. N. Aggarwal* has also followed the Supreme Court's judgment in *T.C. Basappa v. T. Nagappa*^[13], for the proposition that "a tribunal may be competent to enter upon an enquiry, but in making the enquiry it may act in flagrant disregard of the rules of procedure." Or, if no particular procedure is prescribed, the Court may violate the principles of natural justice. Then, a writ of *certiorari* may lie. It has, finally, referred to *Ram & Shyam Co. v. State of Haryana*^[14].

28. In *Ram & Shyam Co.*, the Supreme Court has held that the rule that requires the parties to exhaust alternative remedies is a rule of convenience and discretion, rather than the rule of law. At any rate, that rule does not oust the Court's jurisdiction. *Ram & Shyam*, in turn, approves of the decision in *State of U.P. v. Mohammad Nooh*^[15]. According to *Mohammad Nooh*, "there is no rule with regard to *certiorari*, as there is with *mandamus*, that it will lie only where there is no other equally effective remedy". An appeal in all cases, stresses *Mohammad Nooh*, cannot be said to provide in all situations an efficacious alternative remedy keeping aside the fine distinction between jurisdiction and merits.

29. That said, in *Mohammad Nooh*, "effectively and for all practical purposes" the Chief Minister of the State exercised power and took a decision. And an appeal, in fact, lies to the very Chief Minister. In that context, the Supreme Court has observed that the "appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself."

(b) *South West Port Ltd.*

13AIR 1955 SC 440

14(1985) 3 SCC 267

15AIR 1958 SC 86

30. In *South West Port Ltd.*, a Division Bench of this Court has stressed that the Writ Court is not a Court of Appeal and that a prerogative remedy is not granted as a matter of course. A party requesting such intervention, according to it, must give the Court a complete picture for the Court to satisfy its conscience. Underlining the fact that the writ remedy is equitable, *South West Port* holds that Article 226 of the Constitution of India not only confers a discretion but also casts a duty to be cautious in its exercising the writ jurisdiction. So, it has to keep in mind the conduct of the party who invokes the Court's jurisdiction.

(c) *Windsor Realty Pvt. Ltd.*:

31. In *Windsor Realty*, a Division Bench of this Court has dealt with the jurisdictional bar of the alternative remedy. In fact, *Windsor Realty* comprises five writ petitions, disposed of through a common judgment. The Court referred to the facts in one case; so we will confine to them.

32. In this case, the petitioner invoked Article 226 of the Constitution of India to challenge the National Green Tribunals' judgment. The 2nd respondent complained to the Tribunal, but the petitioner objected to the 2nd respondent's standing to approach the Tribunal. Eventually, the Tribunal overruled that objection. Aggrieved, the petitioner has filed a WP. This time, the 2nd respondent objected to the WP's maintainability against the Tribunal's orders. Yet, during the argument, he did not press that point. Despite that, the Court took up the issue on the premise that the issue raised in the WPs "is of considerable importance and the same is likely to affect a large number of cases which may be filed before NGT". As the record reveals, the petitioners use *Windsor Realty's* quoted observation as one of their grounds as an answer to alternative remedy.

33. In fact, *Windsor Realty* founded its decision on this Court's earlier judgments in *The Court on its Own Motion v. National Highway Authority of*

India, Nagpur^[16], *Sham Resorts and Hotels Pvt. Ltd.*, and in *M/s. Leading Hotels Ltd.* After referring to these judgments, besides the Supreme Court's *L. Chandrakumar v. Union of India*^[17], *Windsor Realty* has held that "in view of this settled position in law, we have no manner of doubt that this Court has jurisdiction to entertain Writ Petitions challenging the orders passed by NGT."

34. Then, *Windsor Realty* has considered the issue of the alternative remedy: a statutory appeal against the Tribunal's orders to the Supreme Court of India. This objection, according to *Windsor Realty*, is without any substance. To support this proposition, it has invoked *Whirlpool Corporation v. Register of Trade Marks*^[18]. In this celebrated judgment, the Supreme Court has highlighted the contingencies under which a writ remedy remains intact despite the alternative remedy. Four of those contingencies are these: (i) where the petitioner seeks the enforcement of fundamental rights, (ii) where the petitioner complains of the natural-justice violation, (iii) where the petitioner asserts that the Court or the Tribunal concerned lacked the jurisdiction, and (iv) where the petitioner challenges the *vires* of an Act.

35. On facts, as noted by *Windsor Realty*, the petitioner filed the WP against the Tribunal's order on the grounds that the 2nd respondent lacked the standing and that the application before the Tribunal was barred by limitation. Beyond this, on the question of maintainability of the writ petition, *Windsor Realty*, I may note with humility, has not spelt out which ground mentioned in *Whirlpool Corporation* this case attracts. As I understand, the petitioner invoked Article 226 of this Court against an interlocutory order of the Tribunal. So we ought to examine this Court's other decisions on which *Windsor Realty* has based itself.

162015 (6) ABR 524

17(1997) 3 SCC 261

18(1998) 8 SCC 1

36. But before that, we should refer to a collateral development. One of the parties in the batch of *Windsor Realty* (in CWP No.6754 of 2015) approached the Supreme Court. In *Cavelossim Villagers Forum v. M/s. Shree Balaji Concepts*, through its order, dt.26.10.2018, the Supreme Court refused to rule on the correctness of *Windsor Realty* on the premise that the matter had reached the Tribunal and any adjudication at that stage would delay the proceedings further. So *Cavelossim Villagers Forum* left open the question of law—Has the High Court been justified in entertaining the Writ Petition? Besides that, *Cavelossim Villagers Forum* has permitted “the parties to take all available contentions before the Tribunal”.

(d) *National Highway Authority of India*:

37. *National Highway Authority of India*, a public interest litigation petition, is one of the decisions *Windsor Realty* has followed. This Court’s Division Bench, per Bhushan Gavai J (as his Lordship then was), has examined these questions: (i) Has a statutory Tribunal (say, NGT) the power “to pass an order contrary to the orders passed by the Constitutional Court of this country?” (ii) If the orders of a statutory Tribunal and a Constitutional Court conflict, which order binds the authorities tasked with compliance? These are some of the unfortunate and unwarranted questions, as the Division Bench puts it, the Court was called upon to answer.

38. To begin with, *National Highway Authority of India* is a peculiar case—almost an outlier. A statutory Tribunal, as the facts reveal, sat in appeal over the orders of the High Court. It issued contrary directions and compelled the officials to comply, lest they should face contempt proceedings, contempt for their complying with the High Court’s directive rather than the Tribunal’s.

39. In *National Highway Authority of India*, this Court responded to a news report about the deplorable road conditions on a particular stretch of the Highway. It took up the matter *suo moto*, appointed an *amicus curiae*,

issued directions from time to time, and monitored the progress of repairs. An NGO wanted to intervene; it wanted the High Court to recall some of its orders for road widening and so on. The Court refused. The NGO first filed an SLP but withdrew it with leave to “approach appropriate forum”. That appropriate forum was turned out to be the NGT, at Delhi.

40. In the ‘appeal’ the NGO filed under Section 16 of the National Green Tribunal Act 2010, the learned Tribunal issued directions from time to time, contradicting the High Court’s directions. Insisting on compliance, it put the state officials on a show-cause, when the NGO had complained to it of non-compliance. So there came about a situation, unsavoury though, for a potential institutional conflict. “In that view of the matter”, this Court observed, “though we were reluctant and avoided for considerable time, we are compelled to answer the aforesaid questions.” Then, it went on to resolve the issue.

41. As articulated in *National Highway Authority of India*, we will consider the decisional impact of *L. Chandrakumar*. A seven-Judge Constitution Bench of the Supreme Court had to deal with “the constitutional validity of Article 323-A of the Constitution as also the provisions of the [Administrative Tribunal] Act; the principal violation complained of being the exclusion of the jurisdiction of [the Supreme] Court under Article 32 of the Constitution and that of the High Courts under Article 226 of the Constitution.”

42. After elaborately discussing the constitutional contours of the issues raised, *L. Chandrakumar* has held (in para 78) that “the power of judicial review over legislative action vested in the High Courts under Article 226 and [the Supreme] Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure.” Those adjudicatory powers can never be “ousted or excluded.”

43. In paragraph 91, *L. Chandrakumar* has held that “all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.” As a corollary to this observation, *L. Chandrakumar* has also observed that “no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Article 226/227 of the Constitution and from the decision of the Division Bench of the High Court, the aggrieved party could move this Court under Article 136 of the Constitution.”

44. According to *L. Chandrakumar*, all tribunals will continue to act as only the forums of the first instance in areas of law for which they have been constituted. So it will not be open for a litigant to directly approach the High Courts even in cases where the questions of legislative *vires* are involved.

45. To conclude, *National Highway Authority of India* has held that the High Court exercises the power of judicial review over all tribunals located in its jurisdiction. But the converse is impermissible.

(d1) *The Case-holding of National Highway Authority of India:*

46. In my respectful view, *National Highway Authority of India* is an authority for the proposition that the High Court continues to exercise its powers of judicial review under Article 226 and superintendence under Article 227 of the Constitution over the decisions of the tribunals in its jurisdiction. It has rejected the converse proposition: that a statutory Tribunal will have any sort of adjudicatory power, including appellate powers, over any High Court's decisions.

47. I may further note that *National Highway Authority of India* had no occasion to consider whether a High Court can invoke Article 226 or 227 in

the face of an alternative remedy statutorily provided. Nor had it any occasion to trace the constitutional contours of the High Court's power of judicial review in the face of the Supreme Court's appellate powers under Section 22 of the NGT Act.

(e) *Leading Hotels*:

48. In *Leading Hotels*, the petitioner secured, among other things, CRZ clearance for its project. The respondents 1 to 4 appealed to the National Green Tribunal. Then, the petitioner applied to the Tribunal for the dismissal of that appeal, but it refused. Questioning Tribunal's refusal to reject the appeal, the petitioner filed a writ petition. The writ petition, in fact, questioned the Tribunal's jurisdiction to entertain the appeal. So the challenge concerns the jurisdictional issue.

49. Indeed, this Court has aptly stressed on the justification for the judicial intervention: "We have examined a challenge to the impugned order passed by the learned Tribunal only because both the Counsel submitted that the challenge to the said order was not on merits, but only to examine whether the learned Tribunal has jurisdiction to deal with an appeal under Section 16 of the N.G.T. Act." I reckon, respectfully, *Leading Hotels* quintessentially reflects the scope of judicial review in the face of an alternative statutory remedy.

(f) *Sham Resorts & Hotels*:

50. Now, we may examine *Sham Resorts & Hotels Pvt. Ltd.* In that case, the respondents complained to the Goa CZM Authority about the alleged illegal structures raised by the petitioner. But CZM Authority refused to interfere. Aggrieved, the respondents appealed to the National Green Tribunal. Put on notice, the petitioner appeared before the Tribunal and objected to its entertaining the appeal. The objection was on the grounds of limitation. The petitioner asserted that the alleged cause of action for the respondents arose even before the NGT Act 2010 was passed.

51. On the petitioner's jurisdictional objection, the Tribunal framed a preliminary issue and heard the parties. It posted the matter to a particular date for ruling on that issue. But the Tribunal disposed of the very appeal, instead of ruling on the preliminary objection. And it was without hearing the parties, at that. The Tribunal directed the petitioner to pay Rs.5 crore to the Government of Goa, lest it should face demolition. So the petitioner filed a writ petition before this Court under Articles 226 and 227 of the Constitution of India.

52. In the writ petition, it was the respondents' turn to object. According to them, the petitioner must have gone to the Supreme Court under Section 22 of the NGT Act. In that context, a Division Bench of this Court has examined the issue.

53. Prefatorily, *Sham Resorts & Hotels*, per Mohit S. Shah, C.J., has observed that normally the High Court should not entertain a petition under Article 226 if an efficacious alternative remedy is available to the aggrieved person. Then, stressing on the element of discretion involved in this regard, *Sham Resorts & Hotels* has pointed out that the High Court may entertain a writ petition if the petitioner has challenged the impugned order "on violation of the principles of natural justice." On facts, *Sham Resorts & Hotels* has held that the Tribunal had not put the petitioner on notice about the hearing on the merits and that it passed the order *ex parte*. In other words, *Sham Resorts & Hotels* has accepted the petitioner's contention that the Tribunal's impugned order suffered from the vice of violating the principles of natural justice.

(g) *Kashinath Jairam Shetye*:

54. In *Kashinath Jairam Shetye*, a Division Bench of this Court, per Anoop V. Mohta, has once again considered the propriety of the High Court's entertaining a writ petition in the face of an efficacious alternative remedy available to the suitors.

55. Before the Tribunal, the petitioner, *pro se*, raised a grievance and sought many reliefs. One day, he could not appear before the Tribunal; he instructed an advocate to secure an adjournment on his behalf. But the Tribunal treated the advocate's presence as sufficient representation and disposed of the petition. It actually dismissed it. Aggrieved, the petitioner has filed the writ petition. The respondent, of course, pointed out Section 22 of the NGT Act (the appeal remedy) as the bar. In that context, *Kashinath Jairam Shetye* has essentially found that the Tribunal's order did not adhere to the principles of natural justice.

(h) *Harbanslal Sahnia*:

56. In *Harbanslal Sahnia*, the petitioner filed the writ petition against the cancellation of his petroleum dealership. In answer to the plea of alternative remedy, the Supreme Court has observed that the case attracts two exceptions to the rule of alternative remedy: (a) enforcement of fundamental rights and (b) the authority's failure to follow the principles of natural justice. In that context, the Court has observed that the petitioner's "dealership, which was their bread and butter, came to be terminated for an irrelevant and non-existent cause". I respectfully reckon *Harbanslal Sahnia* case-holding does not help the petitioners.

(i) *Committee of Management*:

57. In *Committee of Management*, the third respondent was the principal of a college run by the appellant. On an allegation of misconduct, the Management removed the third respondent from service. When the Vice-Chancellor's approval was sought, it was refused. Challenging the Vice-Chancellor's order, the Management filed a writ petition. The High Court, however, dismissed the writ petition on the premise that the Management had an alternative remedy. When the matter was taken to the Supreme Court, it has noted that the challenge was on two grounds: (a) the jurisdictional

error and (2) the validity of the provisions under which the Vice-Chancellor had acted.

58. In that context, *Committee of Management*, per S. B. Sinha J, has observed that if an order of Vice-Chancellor was challenged not only on the question of jurisdictional error but also on the question of *vires*, the High Court ought not to have dismissed the writ petition on the grounds of alternative remedy. For a statutory authority cannot consider the validity of a Statute.

(j) *Cosme Romaldo*:

59. *Cosme Romaldo* is somewhat an interesting case. The petitioner owned some land. He secured permissions from all civic authorities and raised structures. I used the expression “structures” for the dispute hinges on the nature of the structure—residential or commercial. Construction completed, the petitioner applied for occupation certificate, but it was rejected. So he filed a writ petition before this Court. The respondents objected to it on the grounds that the petitioner had an efficacious alternative remedy.

60. Prefatorily, a Division Bench of this Court (per Smt. R. P. Sondurbaldota J) noticed the difficulties the petitioner faced in the hands of the officials during the construction: “[T]he petitioner ran a race of hurdles in completing the construction.” *Cosme Romaldo* has noted that Section 201-A of the Goa Panchayat Raj Act, 1994, provided for an appellate remedy. In the same breath, it has observed that the remedy under Section 201-A read with explanation is unavailable in the matters regulated by Section 66. With this, the respondents’ objection failed. Nevertheless, *Cosme Romaldo* has gone onto observe:

“[A]vailability of alternate remedy is never a complete answer to the petition. It is possible that in a given set of facts and circumstances the alternate remedy available may not be sufficient and appropriate *to meet the ends of justice*. As has been pointed out

by Mrs. Agni, the petitioner has been sufficiently harassed by respondent no. 1 and has been taking rounds of different authorities for a period of about two years. *She points out that the facts of the case shows that respondent no. 1 is bent upon refusing occupancy certificate to the petitioner. In that circumstance, it would be a travesty of justice if the petitioner is asked to seek remedy under Section 201-A of the Goa Panchayat Raj Act, 1994.* Considering the facts and circumstances of the case, we find some substance in this submission of Mrs. Agni.”

(italics supplied)

61. In *Cosme Romaldo*, this Court has, first, ruled on the unavailability of the alternative remedy because of Section 66 of the Goa Panchayat Raj Act. Second, the alternative forum is a quasi-judicial authority, on whose decision the aggrieved party, again, may knock the High Court’s doors. And third, the High Court has, indeed, adopted an equitable approach; it has pointed out “the travesty of justice” in ritual adherence to the alternative remedy and also the ultimate objective of “meet [ing] ends of justice”.

62. I am afraid *Cosme Romaldo*, too, cannot be a precedential proposition to disregard Section 22 of the NGT Act.

The Scope of Section 22 of the NGT Act:

63. Now, we will examine whether Section 22 of the NGT Act provides for an efficacious alternative remedy to the petitioners.

64. Under the Customs Act 1962, an appeal lies to the Supreme Court under Section 130 (E) (a) against the Hight Court judgments; similarly under Section 130 (E) (b), an appeal lies against the Appellate Tribunal’s orders relating to the questions of duty or classification of goods. In *Steel Authority of India Limited v. Directorate General of Anti-Dumping & Allied Duties*^[19] (*“Anti-Dumping and Allied Duties Case”*), the Supreme Court has analysed the scope of a direct statutory appeal to it. In that process, it has also considered

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the analogous appellate provisions in other enactments, including the NGT Act.

65. To begin with, *Anti-Dumping and Allied Duties* Case has noted that Chapter IV of Part V of the Constitution “contains the provisions in Articles 132, 133, 134 and 134A, which contemplate appeals to the Supreme Court from any judgment or decree or final order of the High Court”. Chapter IV of Part V of the Constitution, as is observed, expressly limits the Supreme Court’s appellate jurisdiction. Then, it mentions about the exceptional nature of Article 136.

66. With a specific reference to Article 138 of the Constitution, *Anti-Dumping and Allied Duties* Case says that the Supreme Court’s power of appeal under different statutory regimes stems from this Article. Thus, in the context of this statutory appellate power, *Anti-Dumping and Allied Duties* Case stresses that “while construing the extent of the appellate jurisdiction to be exercised by the Supreme Court under a statutory enactment, the role of the Supreme Court as envisaged by the Constitution cannot altogether be lost sight of”. According to it,

“statutes like the Electricity Act, 2003; Companies Act 2013, *National Green Tribunal Act, 2010*, Telecom Regulatory Authority of India Act, 1997, by way of illustration, expressly limit the appellate power of the Supreme Court to determination of substantial questions of law (Section 100 Code of Civil Procedure). To our minds the position should be no different in construing the provisions of Section 130E(b) of the Act though it omits to specifically mention any such limitation.”

(Italics supplied)

67. Eventually, *Anti-Dumping and Allied Duties* Case enumerates the conditions an appellant should satisfy before he seeks the Supreme Court to exercise its statutory appellate power. Those conditions (in the context of Section 30(E)(b) of the Customs Act) are these:

(i) The question raised or arising must have a direct and/or proximate nexus to the question of determining the rate of duty or the value of the goods for assessing the duty. This is a sine qua non for the admission of the appeal before this Court under Section 130-E(b) of the Act.

(ii) The issue raised must involve a substantial question of law which has not been answered or about which there are conflicting decisions requiring resolution.

(iii) If the Tribunal, after considering the material and relevant facts, has reasonably concluded, that conclusion must be allowed to rest even if the Court is inclined to take another view.

(iv) *The Tribunal had acted in gross violation of the procedure or principles of natural justice occasioning failure of justice.*

(italics supplied)

68. Of course, in the very next paragraph, *Anti-Dumping and Allied Duties* Case enters a caveat holding that the above parameters by no means should be considered to be exhaustive. I reckon whatever the Apex Court has observed in the context of Section 30E(b) of the Customs Act will also apply to Section 22 of the NGT Act, both being the provisions of appeal to the Supreme Court.

Summary:

69. From the decisions discussed above, we may safely hold that the NGT Act 2010 does not suffer from any constitutional constraints as the Administrative Tribunals Act 1985 initially did. So *L. Chandrakumar's* judicial assertions, in the context of the then-existing Section 28 of that Act, play no role in our understanding or interpreting the NGT Act. True, Section 22 of the NGT Act provides for an appeal and Section 29 bars the jurisdiction of the civil courts—not that of the Constitutional Courts. Thus, no provision in the NGT Act bars the High Court's jurisdiction either under Article 226 or Article 227 of the Constitution vis-à-vis the Tribunal's orders.

70. So, essentially, the question boils down to one singular aspect: Has the petitioner established any ground that compels this Court to exercise its

extraordinarily equitable or supervisory jurisdiction over the Tribunal's decision despite the alternative appellate remedy.

The Way Forward:

71. Once we have accepted that despite Section 22 of the NGT Act, this Court has its power of judicial review preserved, then the next question is, under what circumstances can this Court use that power? What readily comes to our mind is *Whirlpool Corporation*, the *locus classicus*. It has set out the recognized rules of exception to the alternative remedy. Those exceptions are these: (i) when the petitioner's fundamental rights are affected; (ii) when the principles of natural justice are violated; or (iii) when the impugned proceedings are *ultra vires*. The rule excluding the writ jurisdiction on the grounds of an alternative remedy is a rule of discretion and not one of compulsion.

72. Similarly, in *Union of India v. Shri Kant Sharma*^[20] the Supreme Court has once again encapsulated what it has earlier laid down in *Whirlpool Corporation*. In that process, it has examined over three scores of judgments on the issue. Finally, it has summarized in paragraph 36 of the judgment:

- (i) The power of judicial review vested in the High Court under Article 226 is one of the basic features of the Constitution, and any legislation cannot override or curtail the High Court's jurisdiction under Article 226 of the Constitution of India.
- (ii) The High Court's jurisdiction under Article 226 and the Supreme Court's under Article 32 though cannot be circumscribed by any enactment, they will have due regard to the legislative intent evidenced by the Acts and would exercise their jurisdiction consistent with that legislative intent.
- (iii) When the law creates a statutory forum for redressal of grievances, the High Court should not entertain a writ petition, ignoring the statutory dispensation.
- (iv) *The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.*

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(internal references omitted; italics supplied)

73. As we have already noticed, the Supreme Court has in *Anti-Dumping and Allied Duties* Case has set out the scope of Section 22 of the NGT Act and its own adjudicatory sweep under that provision. Though the provision has been likened to Section 100 of the CPC, the Apex Court has held that the appellate adjudication encompasses even the procedural violations, including that of natural justice.

What has the Tribunal held?

74. The Tribunal has, undeniably, heard the parties and has, evidently, examined the record, too. It has in the end held that “a structure is exempted and permission can be granted under CRZ Notification 1991, as amended in 2011, only if it is a dwelling unit.” It has also observed that “[a]part from the fact that the premises in question [were] being used for commercial activity even prior to 1991, the learned counsel for the appellant has failed to show that the premise[s] in question were ever a dwelling unit.”

On Facts:

75. Let us accept that interpreting the CRZ Notification is a question of law; let us also accept that determining whether the property is a dwelling unit or a commercial establishment is a question of fact. To decide on both, the Tribunal has ample power within its jurisdictional limits. And it has, in fact, exercised that power. The order is cryptic—agreed. But the length of a judgment is no sure sign of its legitimacy or legality, much less correctness.

76. Now, let us assume that the impugned order, if ever, was erroneous. To correct that error, the highest court of the land has the appellate power. It needs no supplementary adjudication, especially, on the merits from the High Court. I hasten to add, though, the exceptions to the alternative remedy as carved out in *Whirlpool Corporation* and *Shri Kant Sharma* do remain intact. That said, here not one exception is present.

Adjudication in WP No.958 of 2018:

77. Though the facts slightly differ, the question of law is identical in this writ petition, too. The only question is about the maintainability of the writ petition in the face of an efficacious alternative remedy. So the same reasoning as given in WP No.942 of 2018 applies. And, thus, both the writ petitions stand disposed of.

Result:

78. I therefore dismiss both the writ petitions. The dismissal, to repeat, is only on the grounds of alternative remedy. No observation in this judgment affects the merits, nor does it prejudice the cause of either party to the dispute.

No order on costs.

DAMA SESHADRI NAIDU, J.

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79. Shri Nigel Da Costa Frias, the learned counsel for the petitioners has requested the Court to suspend the operation of the judgment for six weeks, to enable the petitioners to exhaust the alternative remedy that is appeal to the Hon'ble Supreme Court. So, the respondents will keep on hold all consequential measures to this Judgment for six weeks from today.

DAMA SESHADRI NAIDU, J.

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