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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 1000 OF 2018

Joao Luis Fernandes, major in age)
Indian National, businessman,)
Resident of H. No. 238, Souza Waddo)
Candolim, Bardez-Goa ... **Petitioner**

Vs.

1. State of Goa,)
through its Chief Secretary,)
having office at New Secretariat)
Complex, Porvorim, Bardez – Goa)
2. Member Secretary,)
Goa Coastal Zone Management)
Authority, Porvorim, Bardez – Goa)
3. The Dy. Collector & SDO Bardez,)
Office of the Dy. Collector, Mapusa)
Bardez – Goa)
4. Mr. Pedrito Misquitta, major of age,)
married, Indian national, Resident of)
H. No. 234 – B, Souza Vaddo,)
Candolim, Bardez – Goa ... **Respondents**

Mr. Shivam Desai, for the Petitioner.

Mr. Deep D. Shirodkar, Additional Government Advocate, for the
Respondent Nos. 1 to 3.

Mr. Ressano Hector Noronha, for Respondent No. 4

CORAM : C. V. BHADANG, J.

RESERVED FOR ORDER ON : JULY 31, 2019

ORDER PRONOUNCED ON : JUNE 2, 2020
(Pronounced via Video Conferencing)

PC :

1. The challenge in this petition is to the order dated 28.9.2018 passed by the National Green Tribunal (NGT for short) in Appeal No. 68/2018. By the impugned order the NGT has dismissed the appeal filed by the petitioner, thereby confirming order dated 7.8.2018 passed by the first respondent, Goa coastal Management Authority (GCZMA), directing the demolition of the structures belonging to the Petitioner, standing in Survey No. 44/2 of village Candolim Bardez Goa.

2. The brief facts necessary for the disposal of the petition may be stated thus:

. The petitioner is the owner of land Survey No. 44/2 of village Candolim, wherein he is having his residential house and five shops used for commercial purposes. According to the petitioner the said house and the shops are in existence since prior to 1990 and the petitioner is having all the relevant permissions/ NOCs from the competent authorities.

3. The fourth respondent Mr. Pedrito Misquitta, filed a complaint with the first respondent, claiming that the said structures are constructed after 1991 in violation of the Coastal Zone Management Regulations (CRZ 1991/2011). The fourth respondent

sought demolition of the said structures.

4. On 17.11.2014 a show cause notice was issued to the petitioner. The petitioner filed his reply on 24.11.2014 claiming that the construction is done prior to 1989. It appears that on 13.5.2015 the petitioner applied to the North Goa Planning and Development Authority (NGPDA) seeking regularization of the said shops. The NGPDA sought an affidavit and certain documents from the petitioner. In the meanwhile, the first respondent carried out inspection of the said shops on 25.10.2016. It appears that the first respondent heard the petitioner on 8.8.2017 in which the petitioner *inter alia* pointed out that, the matter is pending before the NGPDA, for regularization.

5. On 22.9.2017 the petitioner received an order of demolition of the shops from the first respondent claiming that the structures were constructed after 1994-95 and were in violation of the CRZ 1991/2011.

6. On 10.10.2017, the petitioner filed an application for review before the first respondent. According to the petitioner, in spite of pendency of the review application, a part of the structure was demolished on 11.1.2018 in pursuance of the order dated 22.9.2017. The petitioner therefore approached this court in Writ Petition No. 77/2018. The petition was disposed on 16.1.2018, directing the first

respondent to decide the review application expeditiously. After this the first respondent rejected the review application on 7.8.2018. That was challenged by the petitioner before the NGT in Appeal No. 68/2018 which has been dismissed by the NGT on 28.9.2018. Hence this petition.

7. I have heard Mr. Desai the learned counsel for the petitioner and Mr. Faldessai the learned AGP for the respondent Nos. 1 to 3 and Mr. Noronha for the respondent No. 4.

8. Mr. Faldessai the learned counsel for the petitioner, has submitted that the NGT has misapplied and / or wrongly invoked clause 6(d) of the CRZ 2011, while holding that the structure used for commercial purposes cannot be regularized under CRZ 2011. It is submitted that clause 6(d) is limited to the dwelling houses of the fisherfolk communities and cannot be applied generally. It is submitted that there is no restriction/prohibition in CRZ III areas in respect of commercial user, except to the extent covered by clause 6(d) of CRZ 2011. It is submitted that the case of the petitioner has to be tested on the basis of CRZ 1991 and not CRZ 2011. It is submitted that the NGT failed to consider the effect of an electricity bill produced before it on the ground that the same was not produced before the first

respondent. It is submitted that this amounts to denial of the principles of natural justice. It is submitted that there is documentary evidence to show that the construction is prior to 1991 and thus the order directing demolition is *ex-facie* bad and is without jurisdiction. It is therefore submitted that this court may entertain the petition, notwithstanding the availability of the remedy of an appeal under section 22 of the National Green Tribunal Act, 2010 (“Act” for short). For this purpose reliance is placed on the decision of the Supreme Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.***¹

9. Mr. Faldessai, the learned AGP for the respondent nos 1 to 3 and Mr. Norhonha the learned counsel for the respondent No. 4 have supported the impugned order. It is submitted that the petitioner has a remedy of an appeal under section 22 of the said Act. It is submitted that there are disputed questions of facts involved in the matter and therefore this court should decline to entertain the petition. It is submitted that even otherwise on facts the First respondent and the NGT have held that there is no evidence to show that the construction is prior to the year 1991. It is submitted that the petitioner on his own saying has applied for regularization which shows that the structures

1 (1998) 8 SCC 1

are illegal. It is submitted that the reliance placed on clause 6(d) of the CRZ 2011 is justified in the circumstances. It is submitted that although the NGT has observed about non production of the electricity bill before the first respondent, in the later part of the order, the effect of the same has been considered, inasmuch as the NGT has rightly found that the mere production of the electricity bill, does not establish that the structure was built prior to 1991. It is pointed out that the NGT has rightly found that even if the electricity bill pertains to the same plot, the electricity connection is often taken much before the construction. It is therefore submitted that the petition be dismissed.

10. I have considered the rival circumstances and the submissions made. It is not in dispute that the petitioner has a remedy of an appeal under section 22 of the Act before the Hon'ble Supreme Court. In a similar petition being Writ Petition No. 942/2018 decided today this court has refused to entertain the petition in view of the availability of the remedy of an appeal under section 22 of the said Act and in view of the law laid down by the Supreme Court in the case of ***Cicily Kallarackal Vs. Vehicle Factory***². In that view of the matter, it is not possible to dwell on the rival contentions on merits. Thus for the reasons mentioned in the judgment dated 2nd June, 2020, in Writ

2 (2012) 8 SCC 524

Petition No. 942/2018, I decline to entertain the petition which is accordingly dismissed, with no order as to costs.

11. At this stage, the learned counsel for the applicant states that the interim relief was operating in the matter and the same may be extended for a period of eight weeks. On hearing the learned counsel for the parties, and having regard to the fact that the interim relief was already operating in the matter, the interim relief is continued for a period of eight weeks from today.

Sd/-
C. V. BHADANG, J.

Vinayak
P.
Halemath
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signed by
Vinayak P.
Halemath
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