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IN THE HIGH COURT OF JUDICATURE OF MADRAS

ORDERS RESERVED ON : 18.11.2021

ORDERS PRONOUNCED ON : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.No.24543 of 2021
and
W.M.P.No.25848 of 2021

Shraddha Dairy Farms
Represented by its Partner,
Badri Kasturi

...Petitioner

Vs

1.Tamilnadu Pollution Control Board,
Represented by Chairman,
No.76, Mount Salai
Guindy,
Chennai-600 032

2.The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Chengalpattu District-603 20

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 1st respondent relating to its proceedings No. TNPCB/T2/F.15048/MMN/OS/Closure/W&A/2021, dated 17.08.2021 and quash the same.

For Petitioner : Mr.K.Ravi
for M/s.Reegan and Arya

For Respondents : Mrs.Shanmugavalli Sekar
Standing Counsel

O R D E R

V.SIVAGNANAM, J.

The petitioner is challenging the proceedings No. TNPCB/T2/F.15048/MMN/OS/Closure/W&A/2021 dated 17.08.2021 under Section 33A of Water (Prevention and Control of Pollution) Act 1974, as amended and under Section 31A of Air



(Prevention and Control of Pollution) Act, 1981, issued by the first respondent/Tamilnadu Pollution Control Act represented by the Chairman.

2.The learned counsel for the petitioner submitted that the petitioner/Dairy Farm is functioning in the present place from July 1999. It has presently 72 cows. On 23.06.2021, the petitioner received two show cause notices from the second respondent. One notice under the Water (Prevention and Control of Pollution) Act, 1974 and the other notice under Air (Prevention and Control of Pollution) Act, 1981. Notice was issued on a complaint made by Thiru. Mukund Ramesh alleging that cattle shed in the residential area is causing health hazard to near-by public. In the notice issued under Water (Prevention and Control of Pollution) Act, 1974 the following allegations were made:

'1.The petitioner farm is running in a residential area.

2.The wastewater generated from the unit is discharged into the storm water drain.

3.The unit was operating without the consent of the Tamil Nadu Pollution Control Board.'

In another notice issued under the Air (Prevention and Control of Pollution) Act, 1981 the following allegations are made:

'1.The unit is running in a residential area.

2.The unit is operating without the consent of the board.'

For the above said two notices, the petitioner issued reply on 13.07.2021. The first respondent, without any further enquiry or personal hearing, passed the impugned order directing closure of the Farm and also for disconnection of power supply, pursuant to above said proceedings. The learned counsel for the petitioner/Dairy Farm contended that the petitioner invoked this Court's jurisdiction under Article 226 of the Constitution of India on the ground that the impugned order was passed by the first respondent without any jurisdiction. The respondents have no jurisdiction over the allegations made against the petitioner. The first respondent has jurisdiction relating to Water Pollution and he had no jurisdiction with regard to the location of Farm in the residential area. The restriction under Section 25 of Water (Prevention and Control of Pollution) Act, 1974 and under Section 31(A) of Air (Prevention and Control of Pollution) Act, 1981, cannot include the petitioner's case. The petitioner did not discharge sewage in any water body. The Dairy Farm was established in July 1999 before the



issuance of guidelines for environmental management of Dairy Farms and Gaushalas. It was formed and notified by the Central Pollution Control Board in July 2020 and revised guidelines at July 2021.

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3.The petitioner maintained the house as prescribed by the guidelines of the Government for disposal and treatment of cow dung. They had an arrangement with M/s.Srinivas Waste Management Services Private Limited, situated at Saligramam, Chennai. They collected cow dung in a proper and safer manner without causing any health and environmental hazard, besides the cow urine also was duly treated for various purposes, like natural pesticides and Horticulture projects. As per the guidelines for environmental management of Dairy Farms and Gaushala, the siting criteria is applicable for a new establishment, after the publication of the guidelines not for the petitioner. Further, the petitioner already submitted letter on 27.01.2021 seeking consent from the Pollution Board and is pending before the Pollution Board.

4.We have considered the matter in the light of the submission made by the learned counsel for the parties and the materials on record.

5.A perusal of the materials on record, indicates that complaint was received from Thiru.Mukundh Ramesh, dated 16.06.2021. Based on the complaint the sight in question was investigated by the Officials of the second respondent/TNPCB, MM Nagar on 23.06.2021. During inspection, it was noticed that the functioning of Dairy Farm and manufacturing of Dairy products and the Unit are situated in the residential areas as on date and the Board had not granted its consent and this fact is not disputed.

6.The impugned proceedings was issued on 17.08.2021 after the investigation by the officials of the second respondent/TNPCB, MM Nagar on 23.06.2021. The impugned order and proceedings were issued with direction under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 and under Section 31-A of Air (Prevention and Pollution Control) Act, 1981.

7.Under Section 33-B of Water (Prevention and Control of Pollution) Act, 1974 and under Section 31-B of Air (Prevention and Pollution Control) Act, 1981, remedy is provided to any aggrieved person. The provision read as follows:



33-B of Water (Prevention and Control of Pollution) Act, 1974

''33-B. Appeal to National Green Tribunal--Any person Aggrieved by,--(a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010); or

(b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010); or

(c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010), may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010 (19 of 2010), in accordance with the provisions of that Act.

31-B of Air (Prevention and Pollution Control) Act, 1981

31-B. Appeal to National Green Tribunal---Any person aggrieved by an order or decision of the Appellate Authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, (19 of 2010), may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010 (19 of 2010), in accordance with the provisions of that Act.''

8. The Hon'ble Supreme Court in M.C.Mehta v. Union of India (1987 1 SCC 395) observed that ''environment courts'' must be established for expeditious disposal of environmental cases and ultimately, the Indian Parliament passed the National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues.

9.The Hon'ble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India (2012 8 SCC 326) has directed that the environmental issues and matters covered under the National Green Tribunal Act, 2010 should be instituted and litigated before the National Green Tribunal and it was further, observed that matters instituted after coming into force of this Act, are covered under the provisions of this Act which shall stand transferred and be heard only by National Green Tribunal. It was also observed by the Apex Court that this will help in rendering expeditious and specialized justice in the field of environment to all



concerned. The Bhopal case was transferred to the Madhya Pradesh High Court and not to the National Green Tribunal as it involved administrative supervision for the proper execution of the orders of the Hon'ble Supreme Court.

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10. At this juncture, we have considered the object of formation of National Green Tribunal and while enacting the law, the Parliament states its object and reasons as follows:

"The rapid expansion in industrial, infrastructure and transportation sectors and increasing urbanization in recent years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in environment related litigation pending in various Courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern.

2. India is a party to the decisions taken at the United Nations conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment



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Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher Courts and the involvement of multi disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental Courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental Courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multi disciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

7. Accordingly, it has been decided to introduce the National Green Tribunal Bill, 2009 which inter alia provide:-

(a) for establishment of a the National Green Tribunal which shall consist of a Chairperson and such number of Judicial and Expert Members as the Central Government may notify;

(b) that a person who is or has been a judge of the Supreme Court or a Chief Justice of a High Court shall be eligible for appointment as the Chairperson or judicial Member of the Tribunal;



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(c) that a person who is or has been a Judge of a High Court shall also be eligible for appointment as a Judicial Magistrate.

(d) that a person who is either an expert in physical sciences or life sciences or engineering, or who has administrative experience in dealing with environmental matters shall be qualified for appointment as an Expert Member;

(e) that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in the Schedule I to the Bill and to grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I to the Bill and to hear appeals under certain enactments specified in the Schedule III to the Bill;

(f) the repeat of the 'National Environmental Tribunal Act, 1995' and the 'National Environment Appellate Authority Act, 1997'.

8.The Bill seeks to achieve the aforesaid objectives''

11. The Hon'ble Supreme Court deprecated the practice of entertaining writ petitions under Article 226, of the Constitution of India though suitable alternative remedy is available in law. We ourselves take the guidance of the Hon'ble Supreme Court in the case of Thitaghur paper Mills v. State of Orrissa (AIR 1983 2 SCC 433) wherein the Supreme Court held as follows:

'' where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies



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are entirely ill-suited to meet the demands of extraordinary situation, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.''

12. The Hon'ble Apex Court in Premier Automobiles Limited v. Kamlekar Shantaram Wadke, [1976 1 SCC 496], The Rajasthan State Road Transport Corporation v. Krishna Kant, [AIR 1995 SC 1715], Whirlpool Corporation v. Registrar of Trade Marks, [1998 (8) SCC 1], and U.P.State Bridge Corporation Ltd. & Others v. U.P.Rajya Setu Nigam S.Karmachari Sangh, [(2004) 4 SCC 268.], and this Court in 'Indian Additives Limited v. Indian Additives Employees Union, 2005 Writ L.R.22 and in Madura Sugars Staff Union & Others v. Madura Sugar Mills, 2005 Writ L.R.25, have consistently held that when alternative remedy is available ordinarily it must be availed of.

13. In the instant case, it is an admitted fact that the petitioner is having an alternative remedy of filing an appeal under Section 33-B of Water (Prevention and Control of Pollution) Act, 1974 and under Section 31-B of Air (Prevention and Pollution Control) Act, 1981. So, we cannot approve the practice of filing this Writ Petition before this Court, when the petitioner has a statutory and effective alternative remedy.

14. It must be mentioned that in extraordinary and exceptional circumstances, a Writ Petition can be entertained even though an alternative remedy is not exhausted by the parties. In the present case, no such extraordinary or exceptional circumstances have been shown to entertain this Writ Petition.

15. In such view of the matter, the Writ Petition is dismissed, granting liberty to the petitioner to prefer an Appeal. Consequently, connected miscellaneous petition is closed. No costs.



After pronouncement of the order, the learned counsel for the petitioner represented that the order impugned in this Writ Petition was suspended by the Pollution Control Board for a period of three months. The learned counsel seeks further suspension for three weeks to enable the petitioner to file an Appeal.

2. In view of the above, the order shall be kept in abeyance for a period of three weeks.

vsn / p v s

03.12.2021

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

To

- 1.The Chairman
Tamilnadu Pollution Control Board,
No.76, Mount Salai
Guindy,
Chennai-600 032
- 2.The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Chengalpattu District.

Copy To

The Section Officer,
ER Section, High Court, Madras.

+2ccs to M/s.Rogan Arya, Advocate SR.No.63297

+1cc to M/s.Shanmugavalli, Advocate SR.No.63429

W.P.No.24543 of 2021

and

W.M.P.No.25848 of 2021

RP (CO)
GMY (13/12/2021)