

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.300/2022

MAHENDRA P. GAUNEKAR

... Petitioner

Versus

STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 4 ORS.

... Respondents

Mr. S. D. Padiyar with Mr. P. Shirodkar, Advocates *for the
Petitioner.*

Ms. Maria Correia, Additional Government Advocate *for the
Respondent-State.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 23rd JANUARY 2023

P.C.:

1. Heard Mr Padiyar for the petitioner and Ms. Maria Correia, learned Additional Government Advocate for the State.
2. The main challenge in this petition is to the Judgment and Order dated 18.08.2020 made by the National Green Tribunal (NGT) in O.A. No.479/2018. As against this Judgment and Order the petitioner has alternate and efficacious remedy under

the NGT Act. Therefore, it would not be appropriate for us to entertain this petition.

3. Mr. Padiyar then points out that the notification dated 13.09.2022 includes petitioner's certain lands which were not even directed to be included as private forest lands by the order by the NGT. Again, we refer to our order in *Pedro Januario Carlosbarreto & Anr. vs. State of Goa & Ors. - 2021 SCC OnLine Bom 1261* in which we noted how the NGT was monitoring the issue on demarcation of private forest in the State of Goa for quite some time. Based upon this we relegated the parties to the NGT.

4. Mr Padiyar states that jurisdiction under Article 226 is a part of the basic structure which cannot be taken away even by a constitutional amendment. He relies on *Madhya Pradesh High Court Advocates Bar Association vs. Union of India – AIR 2022 SC 2713*. There can obviously be no dispute about this proposition. However, existence of jurisdiction is one thing and its exercise is quite another. Now that the petitioner has alternate and efficacious remedy available to him, no case is made out for exercise of extraordinary jurisdiction

5. The discussion in paragraph 12 of our order in Pedro Barreto (supra) is relevant and the same reads as follows:-

“12. According to us, the NGT was monitoring the issue of the demarcation of private forests in the State of Goa for quite some time. It is in pursuance of the orders made by the NGT that the Committee came to be appointed. Ultimately, the NGT has accepted the report of the Committee. Therefore, if any party, has any grievance against the orders made by the NGT on this issue, then, it is only appropriate that such parties, avail of the statutory remedy of appeal provided under the NGT Act. Even Radha Krishan Industries (supra)¹ holds that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This Rule of exhaustion of statutory remedies is a rule of policy, convenience, and discretion. In this case, the issue as to whether the Committee had to grant an individual hearing, the issue as to whether such hearing was sufficiently granted or not, whether the lands in question fulfilled the prescribed criteria for its determination as private forest, etc. are all matters which cannot be conveniently gone into by this Court in the exercise of its extraordinary jurisdiction. This is more so because the petitioners have an alternate remedy available to them. Even parties, at least prima facie, having similar grievances have already resorted to the alternative remedy provided under the NGT Act itself as was pointed out by both, the Learned Advocate General and Ms. Alvares, learned Advocate for respondent No. 4.”

¹ Radha Krishan Industries v. State of H.P. - 2021 SCC OnLine SC 334

6. For the above reasons we leave it open to the petitioner to agitate the issue now raised before the appropriate forum.

7. Thus, we dismiss this petition with liberty as aforesaid. All contentions of all parties are expressly left open.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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