



WP (MD) No. 26139 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order reserved on : 02.12.2022

Order pronounced on : 25.01.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

and

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 26139 of 2022

and

W.M.P. (MD) No. 20295 of 2022

1. M. Swaminathan
2. A. Oliraja
3. Maruthasalamurthy
4. Sundarapandian
5. V. Jeyapandi
6. S. Vijayakumar
7. S. Jaheer Hussain
8. K.M. Dharmarajan
9. G. Duraiswamy
10. K.L. Shanmugasundaram
11. Balamurugan
12. Krishnamurthy
13. James
14. S.J. Ithaya
15. O. Murugan
16. S. Srinivasan
17. S. Sathik
18. P. Murugan
19. P. Selvakumar



WP (MD) No. 26139 of 2022

20. P. Kumarapandian

.. Petitioners

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Versus

1. The State of Tamil Nadu
Through its Chief Secretary
Secretariat, Chennai

2. The District Collector
Madurai District
Collectorate
Madurai - 625 020

3. A.M. Vinodh

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order made by the Principal Bench of the National Green Tribunal in O.A. No. 125 of 2021 dated 23.08.2021 and quash the same as illegal.

For Petitioner : Mr. Ajmal Khan, Senior Advocate
for M/s. Ajmal Associates

For Respondents : Mr. Veera Kathiravan, Additional Advocate General
assisted by Mr. P. Thillai Kumar
Government Pleader for RR1 and 2
Mr. R. Rajamohan for R3

ORDER

R. MAHADEVAN, J.

The petitioners have come forward with this writ petition assailing the order dated 23.08.2021 passed by the Principal Bench of the National Green Tribunal, New Delhi, (in short, "the Tribunal") in O.A. No. 125 of 2021.



WP (MD) No. 26139 of 2022

2. The third respondent herein has filed O.A. No. 125 of 2021 before the Tribunal challenging the orders passed by the Government of Tamil Nadu viz., G.O. (Ms). No. 76 and G.O. (Ms). No. 77, Revenue & Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 28.02.2019 and G.O. (Ms). No. 329 dated 02.07.2020 alleging that a water body namely "Pudukulam Kanmoi" has been allotted to certain journalists as house sites. The Tribunal, after hearing the applicant/third respondent therein and the respondents/Government, disposed of the said application, by order dated 23.08.2021, the relevant passage of which is extracted below for ready reference:

"13. In view of the above, no compelling social need has been shown to destroy the water bodies merely on the ground that allotment of housing sites for journalists is required and water body has dried up. On such specious plea, any water body can be allotted for construction, ignoring public trust doctrine and need for protection of such water bodies. Having regard to the ecological significance of water bodies, approach adopted by the State of Tamil Nadu cannot be sustained. The Tribunal, under Section 20 of the NGT Act, has to uphold precautionary and sustainable development principles of Environmental Law by issuing appropriate directions for protection of environment under Section 15 of the said Act. In the course of doing so, the Tribunal can annul a decision of the State as held in Mantri Techzone Pvt Ltd., v. Forward Foundation and others (2019) 18 SCC 494 and The Director General (Road Development) NHAI vs. Aam Aadmi Lok Manch (2020) SCC Online 572.

14. Accordingly, we allow this application and direct the State of Tamil Nadu to restore water body known as Pudukulam Kanmoi in Survey Nos. 134/2 and 134/2A1 in Pudukulam Kanmoi of Thallakulam Village, Madurai North Taluk, Madurai District, Tamil Nadu to its original position removing the construction, if any, raised thereon, within one month.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, Tamil Nadu and

<https://www.mhc.tn.gov.in/judis>



WP (MD) No. 26139 of 2022

District Magistrate, Madurai by e-mail for compliance."

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The aforesaid order of the Tribunal is challenged in this writ petition by the petitioners herein, who are beneficiaries of the orders of allotment issued by the Government of Tamil Nadu.

3.(i) Mr. Ajmal Khan, learned senior counsel appearing for the petitioners would submit that the Tribunal, without hearing the petitioners herein, who are beneficiaries of the allotment of house site, has passed the order dated 23.08.2021 impugned herein, which is in violation of the principles of natural justice. In fact, the petitioners have filed an application to implead themselves as parties to the aforesaid application viz., O.A. No. 125 of 2021, but it was rejected. Therefore, on this ground alone, the learned senior counsel sought to set aside the order impugned in this writ petition.

(ii) Adding further, the learned senior counsel submitted that even in the year 1997, the Government has taken a policy decision and issued G.O. Ms. No.573 Revenue [LD-1(2)] Department dated 18.06.1997 allotting the lands in Old Survey No.134/4 and New Survey No.134/2A1, Thallakulam Village, Madurai measuring an extent of 3.70 acres to 61 members of Madurai Press Club Association. Pursuant to such allotment, the allottees have constructed residential houses and are residing. Subsequently, following the orders of allotment made in the year 1997, representations were made for some



WP (MD) No. 26139 of 2022

more allotment. By considering the said representations, the second respondent, after making an intense study, had written a letter dated 26.12.2006, recommending to make allotment of house sites in the land in Survey No.134/2A1 of Thallakulam Village. The Government, acting upon the recommendation made by the second respondent, issued G.O. Ms. No.365, Revenue [Nee.Mu.1(2)] Department dated 24.06.2008 allotting the land measuring 0.76.5 hectares in favour of the petitioners. However, an order of assignment has not been made for a long time and therefore, the Secretary of the Madurai Press Club Association, filed WP (MD) No. 15221 of 2016 seeking to direct the first respondent to assign the land measuring 0.76.5 hectares in Survey No.134/2A1 of Thallakulam Village, Madurai. The said writ petition was disposed of on 18.08.2016, pursuant to which the Government issued G.O. (Ms). No.329, Revenue and Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 02.07.2020 assigning the said land in favour of the petitioners on payment of the price fixed by the Government. Accordingly, the petitioners have remitted the price and obtained the orders of assignment in their favour. Thereafter, the petitioners have made construction and are living there along with their family. While so, another set of Journalists, who according to the learned Senior counsel, have not been favoured with such assignment, filed WP (MD) Nos. 18208 of 2019, 10244, 10810, 9547 and 8982 of 2020, challenging the orders



WP (MD) No. 26139 of 2022

of assignment made in favour of the petitioners herein. By a common order dated 18.03.2021, the said writ petitions were dismissed by upholding the orders of assignment made in favour of the petitioners.

(iii) Elaborating further, the learned senior counsel submitted that what could not be achieved directly by filing an appeal as against the common order dated 18.03.2021 passed in WP (MD) No.18208 of 2019 etc. batch, the third respondent herein, claiming himself to be a journalist, has filed O.A. No. 125 of 2021 before the Tribunal on the ground that the land originally classified as water body viz., *Pudukulam Kanmoi* was allotted to the petitioners herein by converting it as house site and thereby, the precious water resource was destroyed. However, the petitioners have not been arrayed as parties to the said application. Therefore, the said application ought to have been dismissed by the Tribunal as non-joinder of necessary parties.

(iv) The learned senior counsel appearing for the petitioners further submitted that there was no water inlet or water flow into the land in Survey No.134/2A1 for several decades. A major portion of the so-called water body has been occupied by way of construction of various offices including the staff quarters of this Court, Law College Hostel, office of the Regional Transport Officer, Telecom Department, Audit Department, State Transport Corporation, EWAD Board and building to accommodate the forest department offices.



WP (MD) No. 26139 of 2022

That apart, a sizeable portion of the land in Survey No.134/2A1 has been utilised where crematorium/burial grounds have been established. Thus, there is no possibility for the land to hold water nor can it be regarded as a water body.

(v) The learned senior counsel for the petitioners also submitted that before allotting the land in question in favour of the petitioners, the Additional Chief Secretary/Commissioner of Land Administration had sought the opinion of the learned Advocate General of the State. Thereafter, the classification of the land has been changed by a letter dated 27.06.2019. Thus, at the time of passing the orders of assignment, the classification of the land has been changed to natham residential site from Pudukulam Kanmoi. The third respondent, without challenging the order of classification, has devised a novel idea to file the application before the Tribunal alleging that a precious water body has been encroached upon by the petitioners herein. In any event, taking note of the fact that the land is no longer treated as a water body and that, the Government had taken a policy decision to allot the same in favour of the petitioners, the order passed by the Tribunal directing the respondent officials to restore the water body to its original position, has to be set aside.

(vi) The learned senior counsel for the petitioners has invited the attention of this Court to the order dated 23.06.2022 passed by a Division



WP (MD) No. 26139 of 2022

Bench of this Court in WP (MD) Nos. 13259 and 15335 of 2022, which were filed as Public Interest Litigation restraining the Government from establishing an Electric Hi-tech Gasified crematorium in the very same land in Survey No. 134/2 in Thallakulam Village on the ground that such facility, if established, would cause health hazard to the residents of the locality. By order dated 23.06.2022, the said writ petitions were dismissed.

(vii) The learned senior counsel for the petitioners also placed reliance on the order dated 14.11.2022 passed by us in WP (MD) No. 2078 of 2016, which was filed as a Public Interest Litigation to remove all the constructions put up in the water body - Thallakulam Kanmoi located in Survey No.805/1A (previously Survey No.805) over an extent of 21.19.098 hectares = 52.34 acres. It was stated by the respondent authorities in the said writ petition that for decades, the land has not been utilised as a water body nor was there any flow of water. It was further submitted that several buildings have come up over a period of five decades in the said land and therefore, it is not possible to restore the said land or treat it as a water body. After hearing the counsel on either side, the said writ petition was dismissed.

(viii) By pointing out the aforesaid decisions of this Court, the learned senior counsel for the petitioners submitted that the land in question can no



WP (MD) No. 26139 of 2022

longer be treated as a water body and several residential buildings have come up in the land in question. While so, the order passed by the Tribunal, directing the Government to remove all the encroachments and restore the water body to its original position cannot be feasible for consideration and hence, the same is liable to be set aside.

4.(i) Mr. Veerakathiravan, learned Additional Advocate General appearing for the respondents 1 and 2 would submit that the Government had taken a policy decision to allot certain house sites to the petitioners/journalists. In this regard, three Government Orders came to be passed. By G.O. Ms. No. 76 dated 28.02.2019, the Government ordered to issue house site pattas to 86 journalists by converting the classification of the land in T.S. No.5, Block No. 4, Ward No.16 of Thallakulam Village measuring an extent of 3.10 acres from "Assessed Wet Waste" into "Natham (residential site). In G.O. Ms. No.77, Revenue and Disaster Management Department dated 28.02.2019 relates to the conversion of the land in Survey No.43/2 in Sakkimangalam Bit II Village, Madurai to an extent of 1.50.71 Hectares out of 14.47.5 Hectares in S.No.43/2, which was classified as "Assessed Waste Dry" into "Natham" for house site assignment in favour of 74 persons. In G.O(Ms) No.329 dated 02.07.2020, house site assignment was granted to 25 members of Madurai Press Club, in respect of the land in S.No.134/4 which was classified as Pudukulam Kanmoi



into Natham. Therefore, out of the three Government Orders challenged by the third respondent before the Tribunal, only one pertains to the water body and the other two orders relates to the conversion of land, which was classified as "Assessed waste dry".

(ii) The learned Additional Advocate General appearing for the respondent authorities further submitted that the land in Survey No.134/2 measuring an extent of 47.32 acres was classified as *Pudukkulam Kanmoi*. Even prior to the year 1997, the Government had taken a policy decision and assigned a portion of land measuring 3.70 acres by classifying it from 'Kanmoi' to 'Natham' in favour of Madurai Press Club Association to be divided among 61 beneficiaries of an extent of 4 cents of land each at Rs.25/- per square feet. Based on such assignment, further assignment of the land measuring 0.76.5 hectares was made in favour of the petitioners herein who are members of Madurai Press Club Association after re-classifying the same into Natham lands. The above said lands allotted in favour of the petitioners are surrounded by various Central and State Government offices. Such allotments were made taking note of the fact that there is no water flow in the land in question for several decades. Therefore, after re-classification, due to paucity of lands to be allotted for accommodating various departments of the Government, a major portion of the lands have been sub-divided and transferred to various departments of the Government a couple of decades earlier. Out of the total



WP (MD) No. 26139 of 2022

extent of 47.32 acres, only an extent of 5.58.0 Hectares (13.78 acres) left that too in pieces as T.S. Nos.75, 90 (part), 91, 92 and 103. Out of the available extent of 5.58.0 hectares (13.78 acres), 0.76.5 hectares (1.89 acres) has been assigned to the petitioners who are members of Madurai Press Club Association and the remaining extent of 4.81.5 (11.89 acres) of land has been retained as "Kanmoi" only. The Tribunal, without taking note of the fact that constructions have come up decades earlier, has passed the order dated 23.08.2021 for restoration of the water body. Thus, the learned Additional Advocate General prayed this Court to pass appropriate orders in this writ petition.

5. The learned counsel for the third respondent would at the outset, submit that as against the order dated 23.08.2021 of the Tribunal, the State of Tamil Nadu has filed Civil Appeal No. 6120 of 2021 before the Honourable Supreme Court and the same was dismissed on 12.11.2021. While so, the challenge made to the order dated 23.08.2021 passed by the Tribunal, by the petitioners herein, cannot be countenanced, also in view of Section 22 of the NGT Act. Above all, it is submitted by the learned counsel that by virtue of allotment of land in favour of the petitioners, water body or water source is degraded. There is no special reason assigned by the Government for allotting the land in favour of the petitioners, who are affluent persons. When the land



WP (MD) No. 26139 of 2022

in question is classified as water body, the Government is not justified in re-classifying the nature of land and allotting it to the petitioners, who are members of Madurai Press Club Association. On the other hand, the Tribunal, by applying the principles of public trust doctrine, passed the order impugned herein, by directing the respondents 1 and 2 herein to ensure that the water body is fully protected. In support of the same, the Tribunal placed reliance on various orders passed by the Hon'ble Supreme Court as well as the Division Bench of this Court and concluded that water body has to be restored to its original position by removing the construction, if any, raised thereon, within a period of one month. However, the directions of the Tribunal have not been complied with by the State. Therefore, the learned counsel prayed for dismissal of the writ petition filed by the petitioners and for direction to the official respondents to ensure compliance of the directions issued by the Tribunal.

6. We have heard the learned Senior counsel for the petitioners, the learned Additional Advocate General for the State and the learned counsel for the third respondent and also perused the materials placed on record.

7. Admittedly, the Government of Tamil Nadu passed orders in G.O. (Ms) No. 76, Revenue & Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 28.02.2019, G.O. (Ms) No. 77, Revenue &



WP (MD) No. 26139 of 2022

Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 28.02.2019 and G.O. (Ms) No. 329 Revenue & Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 02.07.2020 allotting certain lands in favour of the petitioners, who are journalists by profession. Pursuant to such allotment, it is stated that the petitioners have constructed houses and some of them are residing thereon. At this stage, the third respondent herein filed Original Application No. 125 of 2021 before the National Green Tribunal, Principal Bench, New Delhi, challenging the orders of assignment to the petitioners, without arraying them as parties to the proceedings. The Tribunal, after hearing the official respondents as well as the applicant/third respondent herein, has passed the order dated 23.08.2021 impugned herein, by applying the precautionary and sustainable development principles of environment law and directed the respondents 1 and 2/Government to restore water body in Survey Nos.134/2 and 134/2A1 in Pudukulam Kanmoi of Thallakulam Village, Madurai North Taluk, Madurai District, Tamil Nadu to its original position by removing the construction, if any, raised thereon, within one month. This Court, even for a moment, has no doubt about the role of the State to preserve the natural resources including the water bodies and for that matter, would not hesitate to extend its arm. However, the judgments relied upon, would have to be juxtaposed to the facts of each case and the omnibus application of the same, without consideration of



all the facts, would undermine the system of justice dispensation. Keeping the same in mind, this court proceeds to deal with the issue involved in this writ petition.

8. At the first instance, we deal with the issue of maintainability. The 3rd respondent has raised an objection as to the maintainability of the writ petition on two counts viz., (a) in view of Section 22 of the NGT Act, only an appeal will lie to the Hon'ble Apex Court and (b) the order of the Tribunal was unsuccessfully challenged by the State. The issue with respect to maintainability of a writ petition under Article 226 of the Constitution of India is no longer *res integra*. In a recent judgment in ***Madhya Pradesh High Court Advocate Bar Association and another v. Union of India & Others [2022 SCC Online SC 639]***, the Hon'ble Apex Court held as follows:

“19. Insofar as the contention of the petitioners that there is ouster of jurisdiction of the High Courts under Article 226 and 227 of the Constitution because of Sections 14 & 22 of the NGT Act, it must be recalled that in L.Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577], it has been categorically declared that the power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. The following pertinent opinion rendered by the 7 Judges' bench of this Court must be remembered on this aspect:—

“78..... We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise



judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

20. *Apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts, the learned Attorney General on behalf of the Union of India has also made submissions consistent with L. Chandra Kumar [supra] and conceded the legal position.*

21. *It can further be noted that in terms of the above ratio in L. Chandra Kumar [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in Whirlpool Corpn. v. Registrar of Trade Marks, Mumbai;*

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

22. *It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular*



case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

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31. The petitioners have also pleaded that instead of appeal to the Supreme Court under Section 22 from the orders passed by the NGT, an appeal mechanism as a matter of right should also be provided before the concerned High Courts. According to them, appeal to the Supreme Court is inadequate and unaffordable and therefore inaccessible. On this aspect it needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict.

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Conclusions

38. In consequence of the above analysis, our conclusions are,

A. The National Green Tribunal under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.....”

9. In *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261] :

1997 SCC (L&S) 577, the Hon'ble Apex Court, while deciding on the maintainability of a petition under Article 226/227 as against the orders of Tribunals, held as follows:

“78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the



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judiciary. [See Chapter VII, “The Judiciary and the Social Revolution” in Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

.....

90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves



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to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain case* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold 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."

10. A Division Bench of the Bombay High Court in ***Windsor Realty***

Pvt Ltd v. Ministry of Environment and Forest and others [2016 SCC Online



Bombay 5613] on the maintainability and limitation, held as follows:

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“20. Though this objection is not pressed, in our view, the said objection is without any substance. This Court in PIL No. 88 of 2013 by Judgment and Order dated 11/09/2015, relying on the judgment of Hon'ble Supreme Court in L. Chandrakumar v. Union of India [(2014) 10 SCC 1] held that Writ Petition challenging the order of NGT is maintainable before Division Bench of the High Court. Division Bench of this Court presided over by Chief Justice Mohit Shah (as he then was) has taken a similar view in Writ Petition No. 5754 of 2015 (Sham Resorts and Hotels Pvt. Ltd. v. Maria Rebillet) and entertained the Petition against the order of NGT. Another Division Bench of this Court also took a similar view in Writ Petition No. 433 of 2015 (Leading Hotels Ltd. v. Mr. Anthony Mendis).

21. The Supreme Court in L. Chandrakumar v. Union of India [(1997) 3 SCC 261] held that all decisions of Tribunals which are created under Articles 323A and 323B of the Constitution of India, would be subject to High Court's writ jurisdiction under Article 226 and 227 of the Constitution of India.

22. 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.

23. The second submission was regarding alternative remedy which was available to the Petitioner of filing an appeal against the order of NGT to the Supreme Court of India. This objection is also without any substance. The Apex Court in Whirpool Corporation v. Register of Trade Marks, Mumbai [(1998) 8 SCC 1] has held that writ court can exercise its discretionary jurisdiction of judicial review in respect of the Petitioner having an alternative remedy available to file an appeal, particularly in three contingencies viz (i) where Writ Petition seeks enforcement of fundamental right, (ii) where there is a violation of principles of natural justice and (iii) where the Order from the proceedings are wholly without jurisdiction or virus of the Act is challenged.”

.....

35. A bare perusal of the said section clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima facie, therefore it cannot be interpreted by any stretch of imagination that it would arise from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part. There appears to be a lot of confusion in the mind of NGT Bench, Pune on various aspects of continuous cause of action. Perusal of the said Section indicates that the concept of continuous cause of action cannot apply to the complaints which are filed before the NGT because had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose. If the interpretation



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which is sought to be given to the provision by the NGT Bench, Pune in the impugned order is accepted, the complaint could be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years. At the same time, if there is any violation of the provisions of the Environment (Protection) Act, 1986, the same have to be addressed and looked into. The only question is by which Authority.”

11. The Telengana High Court in ***State of Telengana v. Md. Hayath Udin and others [2017 SCC OnLine Hyd 356]*** on the maintainability of a writ petition and on the availability of alternative remedy under Section 22 of the NGT Act, held as under:

“19. The power of judicial review over legislative action, and the power to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions, vested in the High Courts under Article 226 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure (L. Chandra Kumar). The power of judicial review vested in the High Courts cannot, therefore, be ousted or abridged even by a Constitutional amendment. No Act of Parliament can exclude or curtail the powers of Constitutional Courts under Article 226/227 of the Constitution. (I.R. Coelho; Kollidam Aaru Pathukappu Nala Sangam).

20. In L. Chandra Kumar, the Supreme Court held that, the exclusion of jurisdiction clauses in all legislations enacted under the aegis of Articles 323-A and 323-B of the Constitution would be unconstitutional; under the existing system, direct appeals were provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution; this situation would also stand modified; no appeal from the decision of a Tribunal would directly lie before the Supreme Court under Article 136 of the Constitution; instead, the aggrieved party would be entitled to move the High Court under Articles 226/227 of the Constitution and, from the decision of the Division Bench of the High Court, the aggrieved party could move the Supreme Court under Article 136 of the Constitution; and the jurisdiction conferred upon the High Courts, under Articles 226/227 of the Constitution, is a part of the inviolable basic structure of our Constitution and cannot be ousted.

21. In State of Karnataka v. Vishwabharathi House Building Cooperative Society, the Supreme Court held that, by reason of the provisions of the Consumer Protection Act, 1986, the power of judicial review of the High



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Court, which is a basic feature of the Constitution, has not been, nor could it be, taken away. In *Union of India v. Delhi High Court Bar Association*, the Supreme Court held that the Recovery of Debts due to Banks and Financial Institutions Act, 1993, provided for a remedy of appeal to an Appellate Tribunal, whose decision was also not final in view of the fact that the same could be subjected to judicial review by the High Court under Articles 226 and 227; and, among the grounds on which the 1993 Act was saved, was that the power of judicial review of the High Court was not taken away by the creation of the Tribunal. (*Kollidam Aaru Pathukappu Nala Sangam*).

22. In *Windsor Realty Pvt. Ltd. v. Secretary, Ministry of Environment and Forest*, a Division Bench of the Bombay High Court held that a Writ Petition, challenging the order of the NGT, is maintainable before the Division Bench. In *Sham Resorts and Hotels Pvt. Ltd. v. Maria Rebillet* another Division Bench of the Bombay High Court had entertained a Writ Petition against the order of NGT. A similar view was taken by yet another Bench of the Bombay High Court, in *Leading Hotels Ltd. v. Mr. Anthony Mendis*, and it was held that the High Court had jurisdiction to entertain Writ Petitions challenging the orders passed by NGT. A Division Bench of the Madras High Court, in *Kollidam Aaru Pathukappu Nala Sangam*, held that the jurisdiction of the High Court under Article 226, to entertain a Writ Petition against the order of the NGT, is not barred by the provisions of the 2010 Act. A similar view was taken by a Division bench of this Court in *G.J. Multiclave (India) Pvt. Ltd. v. State of Telangana, rep., by its Secretary, Environment, Forest, Science & Technology Dept, Secretariat*.

23. The 2010 Act does not expressly exclude the jurisdiction of the High Court under Articles 226/227, though it excludes the jurisdiction of the normal Civil Courts under Section 29. (*KollidamAaruPathukappu Nala Sangam*). While Section 29 of the 2010 Act explicitly bars the jurisdiction of the Civil Courts, the jurisdiction of the High Court under Articles 226 and 227 cannot be excluded even by implication for, even if the 2010 Act itself had contained a specific provision excluding the jurisdiction of the High Court under Articles 226 and 227, it would have been invalid in view of the specific declaration made in *L. Chandrakumar* that Articles 226 and 227 form part of the Constitutions basic structure. If an express exclusion, assuming that it had been provided, cannot be saved, an implied exclusion undoubtedly cannot. (*KollidamAaruPathukappu Nala Sangam*). We see no reason, therefore, to refuse to entertain this Writ Petition, filed questioning the interim order passed by the NGT, on the specious plea that the jurisdiction of this High Court is barred by the provisions of the 2010 Act."

....

26. Section 22 of the 2010 Act stipulates that any person, aggrieved by any award, decision or order of the Tribunal, may file an appeal to the Supreme Court, within 90 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 CPC. The right of appeal, under Section 22 of the National



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Green Tribunal Act, 2010, is subject to the restriction that it should pass the same test as is stipulated in Section 100 of the Civil Procedure Code. (KollidamAaruPathukappu Nala Sangam).

27. Section 100(1) CPC provides for an appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Apart from the fact the jurisdiction under Article 226 of the Constitution of India must be exercised in furtherance of larger public interest, or where substantial injustice would be caused by its non-interference, exercise of judicial review is on grounds not very different from that stipulated under Section 100 CPC. Even if we were to proceed on the premise that an appeal would lie, to the Supreme Court under Section 22 of the 2010 Act, even against the interlocutory order passed by the Principal Bench of the NGT at New Delhi, the question which necessitates examination is whether existence of a statutory remedy of an appeal to the Supreme Court, under Section 22 of the 2010 Act, would require this Court to refrain from exercising its jurisdiction under Article 226 of the Constitution of India.

28. Article 226 of the Constitution confers discretion on the High Court, having regard to the facts and circumstances of the case, either to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that, if an effective and efficacious remedy is available, it would, normally, not exercise its extra-ordinary jurisdiction. The existence of an alternative remedy does not operate as a bar in at least three contingencies. The extraordinary remedy under Article 226 of the Constitution of India can be invoked, despite the availability of an alternate statutory remedy, in cases where (a) the writ petition is filed for enforcement of any of the fundamental rights, (b) where there has been a violation of the principles of natural justice, and (c) where the order or proceedings are wholly without jurisdiction (Whirlpool Corporation v. Registrar of Trademarks). The petitioner contends that the NGT lacks jurisdiction to entertain the O.A, on the ground that the O.A was filed beyond the period prescribed in Section 14(3) of the 2010 Act and its proviso, and the cause of action arose beyond the territorial limits of the NGT Principal bench at New Delhi. Mere existence of an alternate remedy under Section 22 of the 2010 Act would, therefore, not operate as a bar for the Writ Petition to be entertained under Article 226 of the Constitution of India.”

12. In a recent judgment, the Telengana High Court in **Pradeep Reddy Badvelu v. Anumula Revanth Reddy [2022 SCC Online TS 989]** while dealing with an order of NGT passed under similar circumstances regarding constructions in prohibition zone near water bodies, held as under:



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“43. Section 19 (1) & (2) which deals with procedure and powers of Tribunal says that the Tribunal is not bound by procedure laid down by Civil Procedure Code, 1908, but shall be guided by the principles of natural justice. Sub-section (4), the Tribunal for the purpose of discharging its function under the Act, the same powers as are vested in a civil Court under the Civil Procedure Code, 1908, while trying a suit in respect of matters stated under (a) to (k). Sub-section (4) (i) mandates for providing opportunity of being heard to the concerned parties before any interim orders are passed on any application or appeal under the Act. The Legislature intent is very clear and specifically wanted the Tribunal to observe principles of natural justice before passing any interim orders unlike in many other statutes where such contingency is not provided. When the provision of law mandates that principles of natural justice have to be followed even before grant of interim order, observance of such a mandate under the statute cannot be abdicated and has to be followed in its true spirit. But, in the present case, the impugned order is violative of Section 19 (4) (i) of the Act.

44. It is vehemently contended that Section 22 of the NGT Act provides for remedy of appeal against any order passed by the Tribunal and even a non-party before the Tribunal also can avail the said remedy. It is an efficacious remedy. All the pleas urged herein can as well be raised in the appeal. When an effective and efficacious alternative remedy is available, the writ petition is not maintainable.

45. This issue is no longer res-integra. It is settled law that availability of alternate remedy is no bar for exercise of extraordinary jurisdiction under Article 226 of Constitution of India especially when the impugned order is patently in violation of the provisions of the Act and the power of judicial review is declared to be the basic feature of the Constitution. (see WHIRLPOOL CORPORATION v. REGISTRAR OF TRADEMARK & L. CHANDRA KUMAR v. UNION OF INDIA). The Act also does not provide for exclusion of power of judicial review by the High Court under Article 226 of the Constitution of India. The Division Bench in MD. HAYATHUDDIN's case (supra), by relying on various case laws, especially on the ruling in L. CHANDRA KUMAR's case (supra) concluded the issue which arose under the self same statute and held impugned action of the Tribunal is not in accordance with the procedure envisaged under the Act and writ petition is maintainable.

46. In State of HIMACHAL PRADESH v. GUJARAT AMBUJA CEMENT LIMITED, the Hon'ble Supreme Court carved out two exceptions in Court entertaining a writ petition without exhausting statutory remedy.

“22.....There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the



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principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

23.....

24. At this juncture, it would be appropriate to take note of the few expressions in R v. Hillingdon, London Borough Council [[1974] Q.B. 720 : (1974) 2 All ER 643 : [1974] 2 WLR 805] which seems to bring out well the position. Lord Widgery, C.J. stated in this case : (All ER pp. 648f & 648h-649c)

It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy. ...

... the statutory system of appeals is more effective and more convenient than an application for certiorari and the principal reason why it may prove itself to be more convenient and more effective is that an appeal to [say] the Secretary of State can be disposed of at one hearing. Whether the issue between them is a matter of law or fact or policy or opinion or a combination of some or all of these ... whereas of course an application for certiorari is limited to cases where the issue is a matter of law and then only it is a matter of law appearing on the face of the order.

An application for certiorari has however this advantage that it is speedier and cheaper than the other methods and in a proper case therefore it may well be right to allow it to be used.... I would, however, define a proper case as being one where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or in consequence of an error of law.

After all the above discussion, the following observations of Roskill, L.J. in Hanson v. Church Comms. [[1978] Q.B. 823 : (1977) 3 All ER 404 : [1977] 2 WLR 848 (CA)] may not be welcomed but it should not be forgotten also : (All ER p. 414f)

“There are a number of shoals and very little safe water in the uncharted seas which divide the line between prerogative orders and statutory appeals, and I do not propose to plunge into those seas....”

Therefore, the plea that the High Court should not have entertained the writ petition is without any merit and deserves rejection.

47. It is further held that when on the undisputed facts the authority/inferior Tribunal assumed jurisdiction which it does not have a writ of certiorari, can be invoked without compelling the petitioner to long drawn recourse of statutory remedy.



48. *In L.K. VERMA v. HMT LTD. (supra) Hon'ble Supreme Court reiterated the scope of extraordinary jurisdiction of High Court vis-à-vis alternative remedy. It held:*

“20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499])”

49. *Thus, mere existence of alternative forum does not create a legal bar on High Court to exercise jurisdiction under Article 226 of the Constitution of India. As the owner of the property is not made a party and the order of the Tribunal is in violation of principles of natural justice, it is a nullity. The statutory Tribunal does not have jurisdiction to adjudicate a dispute without arraying the owner of the property. As held by the Hon'ble Supreme Court in EMBASSY PROPERTY DEVELOPMENTS PRIVATE LIMITED (supra), when inferior Tribunal passed an order which is a nullity, writ petition is maintainable and the superior Court need not drive the party to the Appellate Forum.”*

13. From the above judgments, it is very clear that the remedy by way of a writ petition under Article 226/227 of the Constitution is not ousted. It is settled law that the writ petition would be maintainable when the order under challenge is passed against the principles of natural justice or without jurisdiction. In the present case, the petitioners who are the beneficiaries under the Government Orders, who have put up residential buildings in the subject land, are not parties to the application and any order passed against them without hearing them would cause serious prejudice to them. Therefore, it is



manifest that the order under challenge has been passed in violation of the principles of natural justice.

14. Insofar as the jurisdiction is concerned, it is necessary to go deeper into the facts and circumstances leading to the challenge. The Government had taken a policy decision to allot certain house sites to the petitioners herein, who are journalists. For this purpose, three Government orders were issued out of which the lands covered in the two Government Orders namely G.O. Ms. Nos. 76 and 77 dated 28.02.2019 do not pertain to "*Kanmoi*" or water body, but those lands were classified as "Assessed Wet Waste" and subsequently it was ordered to be re-classified as "Natham" (residential site). Only one Government Order viz., G.O.(Ms)No. 329 dated 02.07.2020 pertains to the land, which was originally classified as water body. However, the third respondent challenged all three Government Orders before the Tribunal. In any event, when the Government had exercised its power to re-classify the land in question as Natham (residential site) before assigning it to the petitioners, it can no longer be regarded as a water body and such land is fit for human dwelling. In other words, what was assigned to the petitioners is only a Natham land and not a water body. Thus, it is not as if the land in question are still treated as water body in the revenue record or it physically exists as a water body. On the other hand, the Tribunal has



proceeded as if all the lands covered by the Government Orders are water bodies. At this juncture, it is relevant to refer to Section 14 of the NGT Act, which reads as follows:

“Section 14

Tribunal to settle disputes. -

(1) 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 Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

15. It is clear from the above provision that the Tribunal is vested with the power to decide all civil cases involving substantial questions relating to environment, enforcement of rights and implementation of enactments specified in Schedule I, subject to limitation of six months from the date on which cause of action first arose and with an extended limitation of 60 days. It is brought to the notice of this Court that the land in Survey No.134/2 measuring an extent of 47.32 acres was earlier classified as *Pudukkulam Kanmoi*. However, deliberations were made prior to the year 1997, the Government had taken a policy decision in 1997 and issued G.O (Ms) 573

Revenue [LD1(2)] Department, dated 18.06.1997 and assigned a portion of



WP (MD) No. 26139 of 2022

land measuring 3.70 acres by re-classifying it as "Natham Poromboke" in favour of Madurai Press Club Association to be divided among 61 beneficiaries of an extent of 4 cents of land each at Rs.25/- per square feet. Based on such assignment, further allotment of the land measuring 0.76.5 hectares was made in favour of the petitioners herein by G.O. Ms. No.369, Revenue [LD1(2)] Department dated 24.06.2008, who are members of Madurai Press Club Association, after re-classifying the lands into Natham lands. Since specific assignment was not made, a writ petition was filed and subsequently, the impugned government order was issued. Thereafter, the petitioners have constructed their houses in the land assigned to them. Furthermore, the surrounding lands are well developed where several residential as well as commercial buildings have sprung up. It is stated that several Central as well as State Government offices are accommodated in the land and they are in existence for several decades. Further, a portion of the land was also utilised for constructing quarters to the staff of the Madurai Bench of this Court, Law College Hostel, office of the Regional Transport Officer, Telecom Department, Audit Department, State Transport Corporation, TWAD Board and buildings to accommodate the forest department offices. Yet another portion of the land was also utilised for constructing crematorium/burial grounds keeping in view the increase in the population in the locality. It is stated that these buildings were permitted to be put up by



WP (MD) No. 26139 of 2022

taking note of the fact that the water body has dried up without water flow in the land in question for several decades and there is no possibility for the land to hold water to be regarded as a water body. That apart, due to urbanisation, there is a dearth of land for accommodating various buildings which are necessary to cater to the variety of needs of the public such as schools, colleges and commercial buildings. Thus, a major portion of the lands have been transferred to various departments of the Government even before a couple of decades and they are functioning as on date. Therefore, the cause of action for approaching the National Green Tribunal arose long back, certainly not within six months prior to the filing of the application. Whereas, the Original Application was filed only on 30.05.2021, challenging the Government Orders dated 28.02.2019 and 02.07.2020. In that event, the original application was barred by limitation and the Tribunal has no jurisdiction to take up the application on file. As such, we hold that the writ petition is maintainable.

16. Further, as against the orders of assignment passed in favour of the petitioners, WP (MD) No. 18208 of 2019 etc., were filed before the Division Bench of this Court and by a common order dated 18.03.2021, they were dismissed, with the following observations:

"18. Therefore, while upholding the impugned orders, we give liberty to the petitioners to bring it to the notice of the official respondents about the persons, who were given the assignments, but not qualified



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otherwise. This will apply to those cases, where allotments are made in the names of dead persons. We are of the considered view that the aforesaid exercise cannot be undertaken by us in this proceedings, in the absence of any concrete material available. Therefore, it is for the petitioners to bring it to the notice of the official respondents about the irregular allotments having been made.

19. Similarly, the petitioners can also approach the respondents seeking allotment in the available place. If unsold plots are available, as stated by the learned counsel for the petitioners and if some of the allotments are cancelled, then the official respondents are expected to consider not only the case of the petitioners, but also all other eligible persons. But, before making any fresh allotments, in the cases on hand and also in future, a complete assessment will have to be made by asking the applicants to give the particulars of the properties and getting them verified from the competent authorities. This would avoid any unnecessary litigation in future.

20. In future, while making such allotments, the official respondents can consider imposition of the conditions viz., fixation of income criteria and that the Journalist/Reporter is residing within the territorial jurisdiction of that locality."

Though, the Tribunal has referred to the said order in the proceedings impugned before this Court, it had failed to note that the first of the writ petitions is of the year 2019, that the assignments were made prior to six months before the initiation of the Application and erroneously concluded as if the entire stretch of land is a water body. That apart, a public interest litigation was filed to restrain the official respondents from establishing an Electric Hi-tech Gasifier crematorium on the apprehension that such facility, if established, would cause health hazard to the residents residing in the locality. Rejecting the said contention of the petitioner therein, a co-ordinate Bench of this Court, by order dated 23.06.2022 in WP (MD) Nos. 13259 and 15335 of 2022, observed that installing gasified crematorium would cause no prejudice



to anyone, especially when several residential colonies have mushroomed in the locality. Therefore, it was held by this Court in the said Writ Petition that crematorium and burial grounds cannot be established at a very faraway place from the residential locality, as it would cause inconvenience to the public in cremating the dead. The relevant passage of the said order is quoted below for ready reference:

"11. We carefully considered the aforesaid rival contentions. We find that the National Green Tribunal was not apprised of the fact that Hindu, Christians and Muslims were burying and cremating their dead in that survey number for over a long period of time.

12. It is common knowledge that some Hindu communities would cremate the dead bodies near to waterbodies, because they perform certain rituals like having bath etc., before and after cremating the dead. They also immerse the ashes in the water bodies. In the city, this requirement is met by constructing bathrooms attached to electric and gassified crematoriums.

13. It is the case of the respondents that for several decades the water body had dried and hence, over which, so many Government buildings have already come including the staff quarters for the Madras High Court employees. The Government Law College Hostel also appears to have been build thereon.

14. In such view of the matter, the modernisation of the existing burial ground by installing gasified crematorium would cause no prejudice to anyone, especially in view of the fact that residential colonies have mushroomed subsequently. Thus, when people purchased the land in the area, they were aware of the fact that there was a crematorium and burial grounds located near. We cannot lose sight of the fact that crematorium and burial grounds cannot be located very far away, as that would lead to a lot of inconvenience to the public.

....

16. In the peculiar facts and circumstances of this case and bearing in mind the fact that public are themselves demands a gassified crematorium in that place, we are of the opinion that installation of the gassified crematorium should not be further stalled.

In the result, these writ petitions are dismissed as being devoid of merits. No costs. Consequently, connected miscellaneous petitions are



WP (MD) No. 26139 of 2022

dismissed."

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17. Similarly, we have also passed an order dated 14.11.2022 in WP (MD) No. 2078 of 2016, which was filed as a Public Interest Litigation to remove all the constructions put up in the water body - Thallakulam Kanmoi located in Survey No.805/1A (previously Survey No.805) over an extent of 21.19.098 hectares = 52.34 acres. The writ petition was contested by stating that for decades, the land has not been utilised as a water body nor was there any flow of water. It was further submitted that several buildings have come up over a period of five decades in the said land and therefore, it is not possible to restore the said land or treat it as a water body. After hearing the counsel on either side, we have dismissed the writ petition by holding that even though encroachments in water bodies are required to be removed, taking note of the fact that several buildings have come into existence in the said land atleast five decades earlier to meet the burgeoning demands of the general public, including Corporation of Madurai and other Departments of the Government, we have refused to grant any relief, as prayed for by the petitioner therein, but a direction was issued to ensure that the remaining land, which is unutilised, is not encroached by any of the authorities for any other purposes. For better appreciation, the relevant portion of the said order is extracted below:



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Madurai North Village, presently Madurai North Taluk, was classified as a water body - Tallakulam Kanmoi, as per 'A' Register. However, due to urbanisation, several constructions and developments have been made in the said land by the Government, Madurai Corporation and private parties and are in existence for the past 5 decades. Now, the petitioner has come forward with this writ petition seeking a direction to the respondent authorities to restore the Tallakulam Kanmoi to its original status by removing all the constructions made therein. On the other hand, the respondent authorities specifically stated that there was no water supply or channel in the land in question and the buildings are existing therein for more than 50 years and hence, restoring the tank would cause serious prejudice to various departments. Similarly, the fourth respondent stated that the construction of World Tamil Sangam is well within the rules in force; there is no obstruction in flow of water due to its existence; and as directed by this court, by order dated 29.01.2016, the land lying to the north of the portions shown in the sketch at Page No.117 of the paper book is kept vacant and without any construction.

13. *There cannot be any second opinion that the encroachments in respect of water bodies have to be necessarily removed as per the procedure contemplated under the Land Encroachment Act. However, it could be seen from the pleadings and submissions made by the parties, several buildings referred to by the petitioner have come into existence atleast five decades before and the same have been permitted to be constructed in order to meet the growing demands of the general public. Such buildings include Corporation of Madurai and other Departments of the Government. It is the categorical stand of the respondents that there is no channel to supply water to the tank/ ayacut areas and the classification of the land in question was changed decades back and the land was converted into buildings in the year 1970 itself. Therefore, the relief sought by the petitioner viz., restoring the land in question to its original status viz., water body, is not feasible for consideration at this stage.*

14. *Today, Mr. S.P. Maharajan, learned Special Government Pleader appearing for the respondents 1 to 7 and Mr. R. Murali, learned counsel for the eighth respondent/Madurai Corporation in unison, on instructions, submitted that the remaining extent of land morefully described in page No.117 of the typed set of papers marked in "green color" will be kept as such and there will not be any further encroachment by any of the authorities for any other purposes. Such statements made by the learned counsel for the respondents is agreeable to the petitioner as affirmed by the learned counsel for the petitioner.*

15. *In view of the above, this Court is of the opinion that no further order needs to be passed herein, except recording the aforesaid submissions made by the learned Special Government Pleader for the respondents 1 to 7 as well as the learned counsel for the eighth respondent. Accordingly, this writ petition stands disposed of. No costs. Consequently,*



connected miscellaneous petitions are closed."

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18. Thus, it is evident from the aforesaid decisions of this Court, in respect of the very same land that the land in question can no longer be treated as a water body, conversion of the subject land into natham land taken place long back and several residential as well as commercial buildings have come up in the locality prior to several decades. All these factors could have been brought to the knowledge of the Tribunal, had all interested parties been made as parties to the proceedings. Hence, we find force in such submission of the learned senior counsel for the petitioners that in all fairness, the Tribunal ought to have made them as parties and heard them before passing the impugned order, especially when the petitioners are sought to be dispossessed. Even the application filed by the petitioners before the Tribunal to implead themselves as parties, was rejected for no reasons. After rejecting the application for impleading, the Tribunal passed an order adverse to the petitioners, who have constructed residential houses in the land in question. Therefore, this court is of the view that the impugned order is vitiated for violation of the principles of natural justice and the same cannot be allowed to be sustained.

19. At this juncture, it is necessary to state that development that had taken place in and around the subject land is sustainable and it is very much



WP (MD) No. 26139 of 2022

necessary to cater to the various needs of the burgeoning population in the locality. It is trite that development that meets the needs of the present, without compromising the ability of the future generations to meet their own needs, is sustainable. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present as well as future generation as well. The environmental and sustainable development principles ensure that the present generation does not abuse the non-renewable resources thereby depriving the future generations of their rightful claims. Destruction of certain resources is inevitable for development and economic progress. However, regard must be had to ensure that development by destruction of existing resources does not sound a death-knell to the ecology meant to be preserved for the future. Applying this concept of development, the Hon'ble Supreme Court, in the recent *order dated 03.06.2022 passed in Writ Petition (Civil) No. 202 of 1995 [T.N. Godavarman Thirumalpad v. Union of India]*, held that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private



ownership or commercial purposes. The observation of the Hon'ble Supreme Court in that decision is as follows:

*"Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology. **It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.**"*

20. Applying the aforesaid decision of the Hon'ble Supreme Court to this case coupled with the fact that the subject land in question is no longer treated as a perennial source of water and several buildings have come up over it atleast five decades ago, which stands testimony to the massive development of the City, we are of the view that the order passed by the Tribunal to restore water body known as *Pudukulam Kanmoi* to its original position by removing all the construction thereof, is practically not only feasible for compliance by the State, but also would run contrary to the re-classification of the land by the State in 1997, which has not been put to challenge before any court of law. Needless to point out that the NGT would not have any authority to question the policy decision of the State. As held by us above, the land in question,



WP (MD) No. 26139 of 2022

which has been the subject matter of several writ petitions, by way of challenge to the usage for residential or other purpose by individuals and government authorities and rejected by this Court, cannot, in suppression of the said orders, be termed in its entirety as water body. The government, in its wisdom has also ensured that appropriate drainage systems have been put in place.

21. It may not be out of place to point out here that the South Zone Bench was constituted with effect from 01.11.2012 and Vide Notification F. No. 17(4)2010-PL/NGT(Vol.IV) dated 10th August 2017, the Central Government Specified that ordinary places of sitting of the National Green Tribunal of the South Zone shall be at Chennai with jurisdiction over Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Puducherry and Lakshadweep. However, the original application was filed before the National Green Tribunal, Principal Bench, New Delhi. In this context, it is pertinent to refer to the latest order dated 21.10.2022 passed by the Hon'ble Supreme Court in *State of Uttar Pradesh and others etc., vs. Uday Education and Welfare Trust and another [2022 Live Law SC 868]* wherein, it was held that the Tribunal, before passing any order, which will have sweeping effect, has to examine the credentials also.



WP (MD) No. 26139 of 2022

22. Insofar as the other objections raised herein, the petitioners were not parties before the Tribunal and appellants before the Apex Court. Hence, they are entitled to challenge the order that affects them and that has been passed against them, without jurisdiction and in violation of the principles of natural justice.

23. Thus, for all the reasons stated above, the Order dated 23.08.2021 passed by the Tribunal in O.A. No. 125 of 2021 cannot be allowed to be sustained and is hence, set aside. Accordingly, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J.) (J.S.N.P., J.)

25.01.2023

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Index : Yes / No

Internet : Yes / No

To

1. The Chief Secretary, State of Tamil Nadu
Secretariat, Chennai
2. The District Collector
Madurai District
Collectorate, Madurai - 625 020



WP (MD) No. 26139 of 2022

R.MAHADEVAN, J.

and

J. SATHYA NARAYANA PRASAD, J.

rsh

Pre-delivery Order in
WP (MD) No. 26139 of 2022

25.01.2023