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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 188 OF 2020

Maria Thelma Suresh Poojary & Ors. ..Petitioners

Versus

State of Maharashtra & Ors. ..Respondents

Ms. Ronita Bhattacharya Bector i/by Mini Mathew for petitioners.

Mr. Abhay Patki, Addl. G. P. for State.

Ms. Sharmila Deshmukh for respondent No.4.
Mr. Rui Rodrigues a/w Mr. P. S. Phatak for respondent No.6.

CORAM :-DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE :- JANUARY 12, 2021

PC :

1. The challenge in this writ petition dated 18th December, 2019 is to an order dated September 16, 2019 passed by the State Level Environment Impact Assessment Authority, respondent no.3. The said order purports to be the CRZ clearance for providing infrastructural post harvesting facility to fishermen at fish landing centres at Madh-Talapsha, Chimbai, Waredi, Borli-Mandla, Borya, Vijaydurg, Murbe, Pachu Bunder & Diwalegaon along the

coast of Maharashtra. Paragraph 10 of the said order reads as follows :-

> "10. Any appeal against this CRZ Clearance shall lie with National Green Tribunal (Western Zone Bench, Pune), New Administrative Building, 1st Floor, D-, Wing, Opposite Council Hall, Pune, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2020."

2. A preliminary objection to the maintainability of this writ petition, having regard to the efficacious remedy available to the petitioners under the National Green Tribunal Act, 2010 (for short "the Act"), is raised by Mr. Rodrigues, learned advocate for the respondent No.6-UOI and Ms. Deshmukh, learned advocate for the respondent No.4 – MCZMA.

3. Our attention has been drawn to the decision of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. Vs. Union of India & Ors.**, reported in **(2012) 8 SCC 326**. The observations of the Supreme Court in paragraphs 38 and 39 support the contention that the remedy made available by the Act should have been availed of by the petitioners, instead of approaching this Court for relief.

4. Appearing in support of the writ petition, Ms. Bector, learned advocate has advanced the following submissions:

(i) Referring to orders passed by the Supreme Court in Special Leave to Appeal (Civi) No. 27327 of 2013 **(Adarsh Co-Optv Housing Society Ltd. Vs. Union of India & Ors.)**, it is submitted by Ms. Bector that the Supreme Court was urged to reconsider the observations/directions made in the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) and that the Supreme Court had even fixed the date for such purpose; however, the Special Leave Petition before the Supreme Court was dismissed as withdrawn, keeping the point of law open. In view thereof, she prays that the Court may consider entertaining this writ petition having regard to the plight of the petitioners. According to her, because of the construction work having commenced, the petitioners' houses are flooded and they are faced with an imminent threat of deprivation of their shelter.

(ii) Availability of an alternative remedy, it is next submitted, does not oust the jurisdiction of the High Court under Article 226 of the Constitution of India; it is after all a question of exercise of discretion. Reliance in this behalf has been placed on the decision of the Supreme Court in **Balkrishna Ram vs. Union of India**, reported in **(2020) 2 SCC 442**.

(iii) Ms. Bector then contends that relegating the petitioners to the forum available under the Act would serve no purpose having regard to the prevailing circumstances arising out of the pandemic. No hearings, either physical or through Video Conference, are being conducted by the Western Zone Bench of the Tribunal which functions from Pune and all matters are being heard through Video Conference by the Principal Bench at Delhi which cannot, at any rate, be equated with an efficacious alternative speedy remedy that the statute seems to provide but the petitioners have not availed of.

(iv) Finally, it is contended by Ms. Bector that while granting the impugned clearance the views of the Wildlife Department were not obtained and this is a crucial reason as to why the Court ought to direct the said department to make a site inspection and place its report before the Court.

5. Having heard the parties, we are of the considered opinion that this is not a fit and proper case for exercise of discretion for the reasons that follow.

6. The writ petition was presented on 18th December, 2019, when the pandemic was unknown. Significantly, the impugned order records that an appeal could be filed thereagainst within 30 days. The petitioners themselves having annexed a copy of the impugned order to the writ petition, it goes without saying that they must have been aware of its contents. Instead of availing the appellate

remedy, this writ petition came to be presented. There is no statement in the writ petition that the Western Zone Bench of the Tribunal at Pune was not functional on the date of its presentation. Ordinarily, relief that is granted in a writ petition relates back to the date of its presentation. Therefore, the situation that was prevailing as on date of presentation of the writ petition may be considered for the purpose of deciding the question of its entertainability.

7. In view of absence of any statement in the writ petition of unavailability of an efficacious alternative speedy remedy as on date it was presented, we shall assume such remedy being available to the petitioners. In view of the directions in paragraph 40 of the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra), the petitioners should have approached the Tribunal since a CRZ clearance issued under the Environment (Protection) Act has been challenged.

8. Next, nothing substantial turns on Ms. Bector's submission that the point of law raised in **Adarsh Co-Optv Housing Society Ltd.** (supra) has been kept open. The Supreme Court is yet declare that the directions in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) to the effect that petitions related to environment should be instituted or transferred to the Tribunal are incorrect and the issue need to be revisited. So long such an order is not passed, the directions in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra) continue to bind us.

9. We may at this stage record that in a decision of recent origin, the Supreme Court in **Mantri Techzone (P) Ltd. Vs. Forward Foundation,** reported in **(2019) 18 SCC 494**, took note of the effect, import, scope and extent of the Act and had the occasion to observe as follows :-

> "40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.
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> 41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.
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> 42. The Tribunal has also jurisdiction under Section 15(1)(*a*) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(*b*) and (*c*) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants

a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(*c*) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See ***). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdiction.

> 46. Further, Section 18 of the Act recognizes the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.
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> (emphasis supplied)

10. In view of the relevant provisions of the Act having been judicially interpreted by the Supreme Court as above, we see no reason as to why the procedure that has been prescribed by the statute by conferring special jurisdiction of an expert body like the Tribunal should be derailed only because the petitioners choose not to take recourse thereto but to approach the discretionary jurisdiction of the High Court which, obviously, has to be exercised only in extraordinary circumstances. No such extraordinary circumstance appears to prevail so far as the present dispute is concerned. The petitioners have not disputed that the respondent no.3 is the authority to grant clearance. If indeed the views of the Wildlife Department were to be obtained prior to grant of clearance but not obtained, that amounts, if at all, to an error committed by the respondent no.3 within jurisdiction. The action of

granting clearance, thus, cannot be challenged on the ground of lack of inherent jurisdiction.

11. It is indeed true that in **Balkrishna Ram** (supra) the Supreme Court has reiterated that the principle that a High Court should not exercise its writ jurisdiction when an efficacious alternative remedy is available is a rule of prudence rather than a rule of law. However, in the present case, none of the tests laid down in the decision in **Whirlpool Corporation vs. Registrar of Trade Marks**, reported in (1998) 8 SCC 1, is satisfied; hence, prudence prompts us to decline even entertainment of the writ petition, far less interference.

12. We find the preliminary objection of maintainability of the writ petition raised by the learned counsel for the respondents to be well founded.

13. For the reasons aforesaid, the writ petition stands dismissed. There shall be no order as to costs.

14. Dismissal of this writ petition shall not be construed as expression of opinion by this Court on the merits of the petitioners' claims. If the petitioners so choose, they may approach the Tribunal with an appropriate proceeding in accordance with law, as they may be advised.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**