SUPREME COURT OF INDIA

Anil Hoble

Vs.

Kashinath Jairam Shetye & Ors.

C.A.No.26024 of 2016

(T.S.Thakur,CJI., A.M. Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

07.10.2016

JUDGMENT

A.M.Khanwilkar,J.,

1. Delay condoned.

2. This appeal arises from the final judgment and order passed by the National Green Tribunal (Western Zone) Bench, Pune dated 29th May, 2015 in Application No. 51/2014 and dated 14th December, 2015 in M.A. No. 180/2015 (WZ) and Review Application No. 15/2015(WZ).

3. Respondent Nos. 1-4 had filed an application before the Tribunal under Section 14(1) read with Section 14(3) of the National Green Tribunal Act, 2010 complaining about degradation of environment on account of unauthorized construction on plot of land falling within CRZ(III)(No Development Zone - in short NDZ)
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4. According to the said respondents (original applicants), the appellant (original respondent No.3) was responsible for construction of a commercial building on plot of land bearing Chalta No.1/PTS No.10, Panjim City and Survey No.65/1-A Village Morombio Grande in Merces Panchayat, without obtaining necessary permission from the concerned Authorities. That construction is detrimental to the coastal ecosystem and river ecosystem; and is also likely to cause pollution of river water due to the commercial activities of the Bar and Restaurant. It was alleged that the appellant exerted political influence to facilitate construction of the unauthorized structure on the said plot.

5. The appellant opposed the said application by raising preliminary objections. Firstly, that the subject application was not maintainable - as remedy of appeal under Section 16 against the decision of the Authority could be preferred. Secondly, the applicants had failed to comply with the procedure prescribed under Rule 13 of the National Green Tribunal (Practices and Procedure) Rules, 2011. Thirdly, the application was barred by limitation - as the cause of action had arisen soon after the construction work was commenced in the year

2011. The application, however, was not filed within 6 months therefrom. Further, a writ petition for similar challenge was filed before the High Court and has since been withdrawn. No liberty has been given by the High Court to the applicants to pursue the same cause of action. On merits, it was asserted that the structure was in existence prior to 19th February, 1991 when the CRZ Policy came into force. It was used as a garage at the relevant time. The appellant after purchasing the plot and the structure standing thereon vide registered sale deed dated 3rd August, 1992, initially used it for motor garage and allied activity. The same structure after repair and renovation was used as Restaurant and Bar. In substance, the stand of the appellant was that since the structure was in existence prior to 19th February, 1991, the change of user after taking permission of the concerned authorities would not make the same unauthorized. The appellant had taken due permission of the competent Authority for re-roofing and re-flooring of the structure. It was not a case of construction of a new structure within the No Development Zone (NDZ) as is contended.

6. The Tribunal after analyzing the documentary evidence including the survey reports brought on record by the parties, negatived the plea of the appellant that the structure as it exists at present was constructed prior to 19th February, 1991. The Tribunal recorded that finding on the basis of the contents of the registered Sale Deed dated 3rd August, 1992 executed in favour of the appellant by the original owner of the plot, the House Property Revenue Records, Settlement of Land Records, No Objection Certificate given by the Panchayat, Inspection Report dated 2 nd May, 2012, and also the contents of the affidavit filed by the appellants. The Tribunal held that the structure as existed prior to 19th February, 1991, on plot of land bearing Survey No. 65/1-A or in Survey No.83/2-A of Village Morombio Grande in Merces Panchayat, falling within 100 metres distance (in CRZ III area), was a small structure at the corner of the said plot and was used as a garage. The Tribunal then relied on the decision of the High Court of Bombay in the case of *Goa Foundation vs. The Panchayat of Condolim & The Panchayat of Calangut*[1] , in which directions were issued to the State Authorities to take action against such unauthorized structures and constructions put up on the land falling within CRZ-III area in Goa, village or town-wise after 19 th February, 1991; and further that permission can be granted "only" for repair and renovation of the existing "dwelling units" in such areas. The Tribunal following that decision observed that the structure other than the original structure as existed on 19th February, 1991, standing on land Survey No. 65/1-A or in Survey No.83/2-A of Village Morombio Grande in Merces Panchayat at South Goa be demolished forthwith after following due process. The directions given by the Tribunal read thus :-

> "a. All the structures, including Restaurant and Bar/Pub and allied structures standing in the land Survey No.65/1-A, or in Survey No.83/2-A, of Village Morambio Grande, shall be demolished by Deputy Collector, South Goa, within the period of six(6 weeks)
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> b. We direct Respondent No.3 Anil to pay amount of rs.20(Twenty) Lacs as costs of degradation of environment and violation of CRZ Notification, 1991, within six(6) weeks to the Environment Department, Govt. of Goa along with costs of Rs. 5000/-

(five thousand) as litigation costs, which be equally disbursed in favour of all the applicants.

c. The GCZMA, is directed to hold enquiry regarding houses illegal structures of CRZ area about which permission might have been obtained without following due procedures and to take appropriate action against the violators of CRZ Notifications.

d. The compliances about demolition of illegal structures of Respondent No.3 and costs payment of costs, shall be reported to the tribunal within(6) weeks.

e. The application is accordingly disposed of. The appellant thereafter filed review petition before the Tribunal which, however, was dismissed on December 14, 2015, thus reiterating the direction already issued by the Tribunal."

7. Aggrieved, the appellant has filed the present appeal challenging both the judgments on the original application and the review application. According to the appellant the finding of fact recorded by the Tribunal with regard to the status of the structure standing on the subject plot is manifestly wrong. It was then contended that even the finding of the Tribunal that permission can be granted only for repair or renovation of dwelling units, was contrary to the CRZ Policy document. Further, the CRZ Policy document does not restrict the user of the existing structure or disallow the change of user therein. Further, the appellant having taken due permission of the competent Authority to use the structure as Restaurant and Bar must prevail. In the alternative it is submitted that the appellant was entitled to repair and renovate the original structure as it existed on 19th February, 1991 and use it for the purpose/activity permissible after taking approval of the competent Authority in that behalf. The learned counsel for Respondent No. 5 invited our attention to the relevant documents, in particular to the show cause notice issued by Goa Coastal Zone Municipal Authority (GCZMA) dated 25th May, 2012 and the Report of the Enquiry Committee (GCZMA) dated 30th February, 2014 which concluded that there was no violation of CRZ Regulation.

8. The appellant has not seriously pursued the preliminary objections which were otherwise raised in the reply to the application filed before the Tribunal and rejected by the Tribunal. The principal argument of the appellant is that the factual finding recorded by the Tribunal about the status of the structure on the subject plot is manifestly wrong. In the first place, merely because remedy of appeal is provided against the decision of the Tribunal before this Court that does not mean that this Court must reappreciate the entire evidence on record and specially when the same has already been analysed by the Tribunal, unless the appellant is able to demonstrate that the finding recorded by the Tribunal suffers from error apparent on the face of the record or is perverse. Nevertheless, we permitted the appellant to refer to the relevant contemporaneous record which has already been extensively analysed by the Tribunal. On going through the said documents, we are not in a position to take a view different than the view already taken by the Tribunal. We find that when the appellant purchased the subject plot vide registered Sale Deed dated 3 rd August, 1992, only a small structure at the corner of the said plot was in existence and was used as a garage and which

was indisputably within 100 metres from the High Tide Line. On this finding, it necessarily follows, that the structure as it exists now is quite different - both in shape, size and location being in the middle of the plot. Obviously, it is an unauthorized structure constructed after 19th February, 1991. The CRZ policy dated 19.02.1991 prohibits any construction upto 200 metres from the High Tide Line. It is to be treated as 'No Development Zone', except for repairs of existing "authorized structures" not exceeding specific permissible FSI, plinth area and other norms for permissible activities including facilities essential for such activity under the Notification. The relevant clause in the said Notification, dealing with land area falling within CRZ-III area reads thus :-

> "CRZ-III
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> i. The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone. No construction shall be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants. However, the following used may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.
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> ii. Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in guidelines at Annexure-II.
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> iii. Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the Ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

iv. Reconstruction/alterations of an existing authorized building permitted subject to (i) to (iii) above.

(emphasis supplied)

9. Relying on sub-clauses (i), (iii) and (iv), it was contended that the Tribunal committed error in law on two counts. Firstly, in assuming that the structure within CRZ area can be used only as a dwelling unit, and secondly, that repairs and renovation permission can be given only to such dwelling units. This submission does not commend us. Sub-clause (i) plainly mandates that "no construction" of any kind be permitted within 200 metres from the High Tide Line. That area has to be treated as "No Development Zone", except for repairs of "existing authorized structures" (on the date of the Notification i.e. 19th February, 1991) and not exceeding the permissible FSI, plinth area and density and for permissible activities. Sub-clause (iii) deals with CRZ area between 200 to 500 metres of High Tide Line with which we are not concerned in the present case. In as much as, the finding of fact by the Tribunal about the location of the plot is that the plot was within 100 metres from the High Tide Line. There is nothing to doubt the correctness of this finding.

10. The moot question then is: whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as on 19 th February, 1991 when the CRZ Policy came into being. That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure as it existed when the plot was purchased by the appellant on 3rd August, 1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location for which reason the Tribunal issued direction to remove the same. The view taken by the Tribunal relying on the decision of the Bombay High Court, which the Tribunal was bound to follow, permitted retention of only dwelling units within CRZ III area and constructed prior to 19th February, 1991. The direction given by the High Court in the case of Goa Foundation (supra) have been reproduced by the Tribunal in para 12 of the impugned judgment, which reads thus :-

"12. The Hon'ble High Court summarized findings and gave directions in paragraph 32 as follows :

(A) To conduct survey and enquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III Zone in Goa, village or town wise as on 19 th February, 1991 and increase the number thereof thereafter, date-wise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February 1991 in the locality comprised of the dwelling units and to take action against the same for the demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof they are being allowed to be utilized for such construction activities.

(E) Till the survey and enquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and enquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/or renovation of the existing houses.

(F) The Respondent No.5 to conduct an enquiry and fix responsibility for the violation of CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All this directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and enquiry should be conducted as expeditiously as possible and should be concluded preferably within the period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this court in the first week after the summer vacation of 2007, for necessary for the order.

(I) Meanwhile, on conclusion of the survey and inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above effort report.

(J) The Respondent No.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public available to the public and in that regard a website should be opened and the entire material should be displaced on the website. The Respondent No.3 should ensure due compliance of this direction by 10th of June, 2007.

(L) The respondent No.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this court in the third weekof June, 2007.

(N) Rule is made absolute in above terms."

So long as these directions are in force, the State Authorities or Municipal Authorities were bound by the same and they could not have granted permission to any applicant in breach thereof. Any permission given contrary to those directions must be viewed as nullity and non-est, having been given in complete disregard of the directions of the High Court. Thus, the permission granted to the appellant by GCZMA would be of no avail, as it is not consistent with the directions of the High Court.

11. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19th February, 1991. That being an unauthorized structure within the meaning of sub-clause (i) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

12. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19th February, 1991, so as to be used as a Restaurant and Bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration.

13. Hence this appeal must fail and the same is, therefore, dismissed with no order as to cost.

[1]*W.P.No.422/ 1998 & W.P.No.99/1999*