

(2013) 11 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 20002 of 2012 and Stay Application No. 16245 of 2012

Gajanan Enclave Pvt. Ltd.

APPELLANT

Vs

Jaipur Development Authority

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 2 CDR 1060

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner with following prayer,

i. by issue of appropriate writ, order or direction, the respondents may be directed to immediately stop the work of establishment of STP at khasra No. 137 village Gajadharpura Tehsil & District Jaipur and establish the same at vacant government land of Khasra No. 149/2 of said village or at any other suitable place far from the project of the petitioner Ganpati paradise city and to remove the construction which has already been raised.

ii. by issue of appropriate writ, order or direction the consent to establish STP dated 7.9.2010 (Annexure-6) granted by respondent No. 3 in favour of respondent JDA may be quashed and set aside.

iii. By issue of appropriate writ, order or direction even if the said STP is made operational during the pendency of writ petition that may be stopped and be removed.

iv. Any other relief which this Hon''ble Court may deem fit, just and proper in the facts and circumstances of the case, the same may kindly be granted in the favour of the petitioner company.

Objection has been raised by the learned counsel Shri Akhil Simlote appearing for the respondent No. 3 - Rajasthan State Pollution Control Board that this writ petition in view of specific bar contained in Section 14 read with Section 16(c) of the National Green Tribunal Act, 2010 (for short, "the NGT Act"), would not be maintainable. An appeal against the impugned order would lie only before the National Green Tribunal. In this connection, learned counsel has cited a judgment of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others,

Additionally, Shri Akhil Simlote, learned counsel for the respondent Board, submitted that under challenge in this writ petition is the order dated 07.09.2010 by which the Rajasthan State Pollution Control Board granted consent to set up the Sewage Treatment Plant (STP) at the disputed land and therefore the prayer clause No. 1 that the STP should be relocated to some other land, though indirectly seeks to challenge the order dated 07.09.2010 and prayer clause No. 2 directly challenge that order. Learned counsel has produced for perusal of the Court the order dated 09.09.2013 subsequently passed by the Rajasthan State Pollution Control, Board and contended that now the permission has been granted to operate the STP and the STP has been fully established and made operationalized. Learned counsel has also cited a Division Bench judgment of this Court dated 23.09.2013 passed in Civil Writ Petition (PIL) No. 8759/2011 - Rajesh Kumar Saini & Ors. vs. State of Rajasthan & Ors., wherein in identical facts situation, the Court ordered for transfer of the petition to the National Green Tribunal for disposal.

2. Shri Rajdeepak Rastogi, learned Counsel for petitioner, argued that the observations made by the Supreme Court in Bhopal Gas Peedith Manila Udyog Sangathan, supra, does not in any way restrict the jurisdiction of this Court. This Court under Article 226 of the Constitution of India has got much wider jurisdiction than the Tribunal established under the NGT Act. Section 16(a) of the NGT Act when it provides that any person aggrieved by directions issued, on or after the commencement of the NGT Act, by the State Government u/s 28 of the Water (Prevention and Control of Pollution) Act, 1974 (for short, "the Act of 1974") aggrieved by an order passed u/s 25 or 26 of the Act, may prefer an appeal to the Tribunal, does not debar the jurisdiction of the High Court under Article 226 of the Constitution of India, to examine the correctness of the order passed by the State Pollution Control Board in exercise of its power of judicial review. In support of his arguments, learned counsel for petitioner has relied on the judgment of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, Learned counsel argued that the order dated 09.09.2013 passed by the Rajasthan State Pollution Control Board is not part of the record and has been produced for the first time today before this Court, therefore the petitioner be permitted to amend the writ petition to challenge that order.

3. It is argued that multiple objections are being raised on behalf of the Rajasthan State Pollution Control Board and the Jaipur Development Authority.

The first objection is that the order of consent to set-up STP and now to operate the STP, is appealable order before the State Appellate Authority. Yet, the second objection is that the appeal would also lie to National Green Tribunal. The respondent JDA has also raised an objection that the appeal lies to the JDA Appellate Tribunal. In the circumstances, therefore, all the issues ought to be decided only by the High Court to avoid multiplicity of litigation and forums.

4. Having heard learned counsel for the parties and perused the material on record this Court finds that the Parliament in its wisdom has, by enacting the National Green Tribunal Act, 2010 as a special legislation, provided for the 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 and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The order of allotment of land by the respondent Jaipur Development Authority at Khasra No. 137 of Village Gajadharpura on Kalwar Road, Jaipur, for setting up of Sewage Treatment Plant, would therefore be incidental to environmental protection, for which initially consent to set up was granted, by the Rajasthan State Pollution Control Board on 07.09.2010, and subsequently, to operate the same by order dated 09.09.2013, in exercise of its powers conferred under the provisions of Section 25 and 26 of the Act of 1974.

5. The Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan, supra, has observed that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should only be dealt with by the specialized tribunal, that is, NGT, created under the provisions of the NGT Act. It was so observed by the Supreme Court in Para 41 of the report, which for the facility of reference is reproduced hereunder.

41. We find it imperative to place on record a caution for consideration of the Courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

6. Howsoever the learned counsel for petitioner may canvass that this Court in exercise of its powers of judicial review, despite the specific provision made by the National Green Tribunal Act, would retain the power to entertain such like dispute under Article 226 of the Constitution this Court is not inclined to countenance that argument in view of afore-noted specific verdict of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan, supra.

7. Firstly, appeal against orders passed under Sections 26 and 27 of the Act of

1974 passed by the State Board lies to the Appellate Authority u/s 28 of the Act of 1974. Section 14 of the NGT Act provides that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. Section 15 of the NGT Act provides that the Tribunal may, by an order, provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I, for restitution of property damaged, and for restitution of the environment for such area or areas, as it may deem fit. Section 16(a) of the NGT Act provides that any person aggrieved by an order or decision made by the Appellate Authority u/s 28 of the Act of 1974, may within thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. The remedy of the petitioner in the present case would, therefore, lie before the Appellate Authority u/s 28 of the Act of 1974. And if now, in its perception, the STP having already been established and made operationalized, that remedy would not be efficacious, even then he cannot directly approach this Court. His further remedy would still lie before the National Green Tribunal. This Court, in the face of efficacious remedy available to him under the provisions of the NGT Act, is not inclined to entertain the writ petition. The writ petition is therefore dismissed as not maintainable, however, with liberty to the petitioner to approach either the Appellate Authority or the National Green Tribunal for redressal of its grievances. This also disposes of the stay application.