

(2015) 12 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 728 of 2015

Leading Hotels

APPELLANT

Vs

Anthony Mendes and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Environment (Protection) Act, 1986 — Section 3, 5
National Greens Tribunal Act, 2010 — Section 14, 16, 16(g), 16(h), 2(c)

Citation : (2016) 2 BomCR 213

Hon'ble Judges : F.M. Reis and C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : Shivan Dessai and Jitendra P. Supekar, Advocates, for the Appellant;
Norma Alvares, Advocate, for the Respondent

Final Decision : Allowed

Judgement

F.M. Reis, J.—Heard Shri Shivan Dessai, the learned Counsel appearing for the petitioner, Ms. Norma Alvares, the learned Counsel appearing for the respondent Nos. 1 to 4 and Shri A.N.S. Nadkarni, the learned Advocate General appearing for the respondent Nos. 6 to 10.

2. Rule.

3. The learned Counsel appearing for the respective respondents waive service.

4. Heard finally with the consent of the learned Counsel for the parties.

5. The above petition, inter alia, takes exception to an order passed by the learned National Green Tribunal (the Tribunal, for short) dated 08/09/2015 in Miscellaneous Application No. 15/2015 in Appeal No. 2/2015, whereby, the application filed by the petitioner, came to be rejected.

6. Briefly, the facts of the case as stated by the petitioner are that they were granted environmental clearance on 12/04/2013 by the respondent No. 7. The

respondent Nos. 1 to 4 filed a Public Interest Litigation Writ Petition No. 26/2014 somewhere in December, 2014, whereby, they challenged the validity of the acquisition of the property by the petitioner. The respondent Nos. 1 to 4, thereafter, filed an appeal before the learned Tribunal on 06/01/2015, challenging the CRZ clearance dated 09/12/2014 and the environmental clearance dated 12/04/2013, by invoking the provisions of Section 16 of the National Green Tribunal Act, 2010 (N.G.T. Act, for short). In the said proceedings, the petitioner filed an application, inter alia, seeking the dismissal of the said appeal on the preliminary ground that an appeal challenging the clearance granted under the CRZ notification, cannot be filed before the learned Tribunal. After filing such application, the respondent Nos. 1 to 4 withdrew their challenge to the environmental clearance, reserving their right to challenge such clearance before the appropriate forum and restricted the appeal preferred before the learned Tribunal only to the challenge with regard to the CRZ clearance, granted by the respondent No. 6. After hearing, the learned Tribunal, by the impugned order dated 08/09/2015, dismissed the said application, filed by the petitioner. Being aggrieved with the said order, the petitioner has preferred the present writ petition, inter alia, seeking quashing of the said order.

7. Shri Shivan Dessai, the learned Counsel appearing for the petitioner has pointed out that the learned Tribunal has no jurisdiction to entertain an appeal against the CRZ clearance, as according to him, in terms of Section 16(g) of the N.G.T. Act, the only challenge is to the directions issued under Section 5 of the Environment (Protection) Act, 1986 (Environment Protection Act, for short). The learned Counsel further points out that the CRZ clearance, which has been challenged in the said appeal, is not a direction in terms of Section 5 of the Environment Protection Act and as such, the learned Tribunal has no jurisdiction to proceed to examine the challenge to the said clearance. The learned Counsel has, thereafter, pointed out that even assuming that in terms of Section 14 of the N.G.T. Act, a grievance with regard to environment can be agitated before the learned Tribunal, nevertheless, a CRZ dispute is not included therein. The learned Counsel further submits that the CRZ clearance is issued in terms of the notification enacted under Section 3 of the Environment Protection Act, nevertheless as there is no specific mention to a clearance under the CRZ Notification in Section 16 of the N.G.T. Act, the question of examining such appeal before the learned Tribunal, would not arise. The learned Counsel further submits that an appeal is a creation of the Statute and unless and until, the Statute provides a forum of appeal to challenge such clearance, the question of the learned Tribunal exercising jurisdiction to decide the appeal, challenging the CRZ Clearance, would not arise. The learned Counsel has extensively taken us through the provisions of the N.G.T. Act, to point out that there is no reference to CRZ Clearance in Section 16 of the Act, to come to the conclusion that the learned Tribunal has jurisdiction to decide such appeal. The learned Counsel further submits that the learned Tribunal, whilst passing the impugned order, has in fact proceeded on the assumption that the proceedings initiated by the

respondent No. 1 are under Section 14 of the said Act. The learned Counsel further submits that the learned Tribunal has erroneously examined that the dispute was in connection with Schedule I of the N.G.T. Act, losing sight of the fact that the appeal preferred by the respondent Nos. 1 to 4 was under Section 16 of the N.G.T. Act. The learned Counsel has extensively taken us through the impugned order, to point out that the learned Tribunal has erroneously appreciated the material on record and has committed an error in coming to the conclusion that the learned Tribunal has jurisdiction to entertain such appeal. The learned Counsel further points out that the act of the respondent Nos. 1 to 4 in giving up the challenge to the Environmental Clearance, itself would suggest that the whole action initiated by the respondent Nos. 1 to 4 is contrary to law and as such, the impugned order deserves to be quashed and set aside. The learned Counsel further points out that the learned Tribunal has not examined the material on record, whilst coming to a conclusion that the challenge was in terms of Section 16 of the N.G.T. Act and as such, there is an erroneous exercise of jurisdiction by the learned Tribunal, which calls for interference by this Court under Articles 226 and 227 of the Constitution of India. The learned Counsel as such submits that the impugned order be quashed and set aside. The learned Counsel further points out that the respondent Nos. 1 to 4 themselves stated that there are two permissions granted, one for environmental clearance and the other being a CRZ Clearance, which would, thus, be a distinguishable factor, to hold that the learned Tribunal had no jurisdiction to examine the appeal, challenging the CRZ Clearance.

8. On the other hand, Ms. Norma Alvares, the learned Counsel appearing for the respondent Nos. 1 to 4 disputed the contentions of the learned Counsel appearing for the petitioner. The learned Counsel further points out that the CRZ clearance has been issued based on the notification issued under Section 3 of the Environment Protection Act, which deals with all environment issues and as such, any clearance granted under the Environment Protection Act, can be challenged before the learned Tribunal. The learned Counsel further submits that on perusal of the environmental clearance produced by the petitioner, it clearly stipulates that such clearance is subject to obtaining CRZ clearance. The learned Counsel further points out that it cannot be disputed that environmental clearance would also include CRZ clearance in terms of CRZ Notification of 1991/2011. The learned Counsel further submits that an appeal preferred by the respondent Nos. 1 to 4 is in terms of Section 16 of the N.G.T. Act and as such, on perusal of the provisions of Section 16(h) of the said Act, there can be no doubt that even a challenge against a CRZ clearance would lie before the learned Tribunal. The learned Counsel further points out that the object of creating such special Tribunal is essentially to examine all environmental issues as such issues require some specialized knowledge. The learned Counsel further points out that it is well settled that a purposeful interpretation has to be given to the provisions of the N.G.T. Act and in the facts of the present case, the only conclusion which can be drawn is that the challenge to the CRZ clearance would lie before the learned

Tribunal. The learned Counsel fairly submits that the impugned order proceeded on the assumption that the proceedings initiated by the respondent Nos. 1 to 4 were in terms of Section 14 of the N.G.T. Act though the substance of the matter as well as the contention is that the challenge to CRZ clearance is in terms of Section 16 of the N.G.T. Act. The learned Counsel further points out that the petitioner is delaying the matter by filing such an application on untenable grounds and as such, the petition be rejected. The learned Counsel has, thereafter, taken us through the CRZ clearance to point out that it clearly stipulates at clause 11 that any person aggrieved, may prefer an appeal under the N.G.T. Act.

9. Shri Shivan Dessai, the learned Counsel appearing for the petitioner, in reply to the said contentions, has submitted that merely because a remedy is recorded in the CRZ clearance, it would not by itself create a right of an appeal in terms of Section 16 of the N.G.T. Act.

10. We have carefully considered the submissions of the learned Counsel for the parties and we have also gone through the record.

11. We have examined a challenge to the impugned order passed by the learned Tribunal only because both the Counsel submitted that the challenge to the said order was not on merits, but only to examine whether the learned Tribunal has jurisdiction to deal with an appeal under Section 16 of the N.G.T. Act challenging a CRZ Clearance issued under CRZ Notification, 1991/2011. Being a jurisdictional issue, we proceed to examine the merits of the rival contentions.

12. The CRZ Notification, 1991/2011 has been issued in exercise of powers conferred under Section 3 of the Environment Protection Act. The contention of Shri Shivan Dessai, the learned Counsel appearing for the petitioner that only a challenge to the environmental clearance issued under the Regulations of 2006, which are also issued under Section 3 of Environment Protection Act, would lie to the learned Tribunal, cannot be accepted for the reasons stated herein below.

13. An environment is defined under Section 2(c) of the N.G.T. Act, as under :

"environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."

The object of enacting N.G.T. Act, 2010 is to provide for the establishment of a Tribunal for the effective and expeditious disposal of the cases relating to the 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. On perusal of the definition of "environment" as pointed out herein above, it clearly provides that any issue concerning the interrelationship which exist among and between water, air and land and human beings would be included as an environment issue. The fact that the CRZ

Notification, 1991/2011 has been issued in exercise of powers under Section 3 of the Environment Protection Act, would itself suggest that such clearance is granted in connection with an issue of environment. On perusal of the environmental clearance issued in favour of the petitioner, we find that such clearance has been issued subject to obtaining the CRZ clearance. Section 16(h) of the N.G.T. Act clearly provides that an appeal would lie against an order made on or after the commencement of the Act, granting environmental clearance in the area in which the Industry, etc. is allowed to operate, subject to certain safeguards in terms of the Environment Protection Act. On reading the said provision, it cannot be said that an environmental clearance, as specified in Section 16(h) of the N.G.T. Act, would be restricted only to environmental clearance granted under the Regulations of 2006. The exercise of grant of clearance under CRZ Notification would entail a matter included in the definition of environment under the N.G.T. Act and as such, any clearance granted with that regard will be subject to an appeal under Section 16(h) of the N.G.T. Act. This can clearly be viewed in the context of the object of enacting the N.G.T. Act for an effective and expeditious disposal of the cases relating to environment. The matters dealing with the measures as stipulated under the CRZ Notification are also essentially environment issues and as such, any clearance granted in terms of such Notification would be amenable to an appeal under Section 16(h) of the N.G.T. Act. In such circumstances, the only conceivable conclusion which can be drawn, based on the provisions of the N.G.T. Act, is that the environmental clearance, as stipulated in Section 16(h) of the N.G.T. Act would also include all clearances issued under the Environment Protection Act, which would include a CRZ clearance. The fact that while examining the grant of a CRZ clearance would also entail examining an aspect relating to environment cannot at all be disputed. As such, giving a restrictive meaning to the word "environmental clearance", as pointed out by Shri Shivan Dessai, the learned Counsel appearing for the petitioner, would in fact defeat the very purpose and object of creating the N.G.T. Act. Apart from that, as rightly pointed out by the learned Counsel appearing for the respondent Nos. 1 to 4, the CRZ clearance itself stipulates that any clearance granted, may be challenged before the learned Tribunal in terms of the N.G.T. Act. This itself suggests that the challenge to such CRZ clearance is amenable to an appeal under the N.G.T. Act. Though on perusal of the impugned order passed by the learned Tribunal, it appears that the learned Tribunal has proceeded on the assumption that the proceedings initiated by the respondent Nos. 1 to 4 were in terms of Section 14 of the N.G.T. Act, but however, based on the admitted facts of the case, the proceedings initiated by the respondent Nos. 1 to 4 in respect of the CRZ clearance is an appeal under Section 16 of the N.G.T. Act and as such, we cannot accept the contention of Shri Shivan Dessai, the learned Counsel appearing for the petitioner that the challenge to CRZ clearance is not amenable to an appeal under Section 16(h) of the N.G.T. Act.

14. In fact, the Apex Court in the judgment reported in Vaamika Island (Green

Lagoon Resort) Vs. Union of India (UOI) and Others, , whilst examining whether an alternative remedy is available, while challenging an order passed by the Coastal Zone Management Authority, held that such remedy is available in specific facts and circumstances of the cases and did not exclude a challenge against such orders under the N.G.T. Act. This also suggests that an appeal challenging an order passed under CRZ Notification is amenable to an appeal under Section 16 of the N.G.T. Act.

15. Hence, we find that there is no reason for interference in the impugned order for the reasons referred to hereinabove. The petition stands, accordingly, rejected.

16. Rule stands discharged.