
(2013) 09 GUJ CK 0061
In the Gujarat High Court
Case No : Second Appeal No. 147 of 2013

Liyakat Mahmad Circle

APPELLANT

Vs

Sterling SEZ and Infrastructure Ltd.

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 4 EFLT 468 : (2014) 1 GLR 874

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.V. Anjaria, J.—This appeal is preferred by the original plaintiffs under Sec. 100 of Code of Civil Procedure, 1908. It seeks to challenge judgment and order dated 19th June, 2013 of learned 2nd Additional District Judge, Bharuch, passed in Regular Civil Appeal No. 45 of 2013. The first appellate Court confirmed the judgment and order of the trial Court dated 15th April, 2012 passed below Exh. 17 application allowing the said application, and thereby, rejecting the plaint under Order 11, Rule 7(d) of the Code. The controversy relates to the question whether bar of jurisdiction of the Civil Court envisaged under Sec. 29 of the National Green Tribunal Act, 2010, was attracted in respect of the suit of the plaintiffs, and whether therefore, the exercise of powers by the Courts under Order 7, Rule 7(d) of the Code was justified in law.

1.1. In the Memorandum of appeal, the appellants pleaded the following questions, proposing them to be the substantial questions of law arising in the appeal:

(A) Whether the suit of the appellants is barred by National Green Tribunal (N.G.T. Act, 2010).

(B) Whether the averment in suit that "discharge of chemical mixed water through canal that may cause damage to human" is sufficient to exclude the jurisdiction of the Civil Court though in suit no order under any of Act shown in

Schedule I of N.G.T. Act, 2010 is challenged.

(C) Whether Secs. 2(1) and 14 of N.G.T. Act, 2010 have any application to the Civil Suit of Appellants.

(D) The preventing the company from laying pipeline to drain discharged water could be said to be substantial question of environment.

(E) Whether the suit against public nuisance can be said to be barred under N.G.T. Act, 2010.

(F) Whether the trial Court can see the pleading other than the suit and document of defendants while deciding the application under Order 7, Rule 11.

(G) Whether the trial Court can go beyond the pleading while deciding the application which is not labelled as to under which provision of law it is preferred.

(H) Whether the impugned order of trial Court as well as judgment and decree of Appellant and decree of Appellate Court is legal.

2. The facts and the subject-matter of the suit instituted by the plaintiffs may be appropriately stated at the outset. The original plaintiffs instituted Regular Civil Suit No. 138 of 2012 before the Court of Principal Civil Judge, Jambusar. The suit was for the relief of declaration and permanent injunction. The two defendants impleaded in the suit were the companies carrying on industrial activities and operations. It was the case of the plaintiffs that they were the owners of the agricultural lands. It was stated that after their agricultural fields, a water way was passing for exit of rainy water, and thereafter, a canal for effluent discharge was constructed. Thereafter, there was a road adjoining.

2.1. It was stated that the said area was declared as Special Economic Zone. It was the case that the defendant companies were engaged in manufacturing of pesticides by use of chemicals. The factories were situated in the said Special Economic Zone (S.E.Z.) known as Sterling Economic Zone. It was plaintiffs' case that the defendants were required to obtain necessary permission from Gujarat Pollution Control Board before establishing their factories, that they were required to create necessary intra-structural facilities to counter the menace of air and water pollution. It was alleged that the defendant had not taken any such permission from the Board. It was stated that even if any such permission was given, the same was without compliance of law, because no public hearing was conducted. Therefore, it was not binding to the plaintiffs. It was further stated that the land of the plaintiff, other lands situated in the vicinity and the lands of agriculturists in the nearby villages were acquired by the State Government for the purpose of Effluent Channel Project Ltd. (E.C.P.L.). It was stated further that in the land other than the acquired lands belonging to the plaintiffs and the adjoining fields, a pakka drainage was constructed. In the acquired land, E.C.P.L. had constructed canal for the discharge of effluent. It was stated that the said effluent discharge canal was constructed before 32 years and it was broken at several places rendering it unfit for flowing the effluent discharge of the

industries.

2.2. It was further stated that due to the fact that the effluent discharge channel was broken and open at several places, the rainy water was getting mixed with the industrial effluent and the waste water flown therein, and ultimately to the agricultural fields where the crops were grown. It was the case that there was a likelihood of getting the crop burnt and a damaged and endangering the lives of the human beings in the ultimate analysis. It was the further case that though the defendants were not authorised to discharge chemical-filled dirty water in their own way, yet they were acting in collusion and had constructed canal upto the place called Uber. It was also alleged that the chimney was placed by defendant No. 2-Company without adhering to the norms imposed by the Board. The plaintiffs alleged that the act of placing illegal pipelines on part of the defendant was injurious to the health of the villagers and inhabitants residing there.

2.3. On the basis of above pleadings, relief in the suit were prayed for. The plaintiffs prayed for relief declaration and permanent injunction to remove the canal put up on the North side of the existing canal till the pipeline on the North of the Uber canal. It was further prayed for by the plaintiffs that the pipeline constructed by the defendant upto the canal at Uber, on the North, was not legal and the plaintiffs were entitled to get the same removed. It was prayed to declare that the conduct of the defendants in placing the pipelines was illegal. It was prayed that the act on part of the defendants was against G.P.C.B. norms and resulting into damage to the living creatures, livestock and the human health. A direction was prayed for removal of the pipeline placed on the North of the canal at Uber on the ground of possible damage to the environment, crops and living creatures.

2.4. In the above suit, defendant No. 1 moved an application below Exh. 17 and contended that no cause of action was disclosed in the plaint for the plaintiffs to institute the suit and to claim any relief. The trial Court while dealing with the said application took view that the plaint was liable to be rejected on the ground of jurisdiction. The trial Court exercising powers under Order 7, Rule 11(d) of the Code, held by order dated 15-4-2013 that in view of the provisions of the National Green Tribunal Act, 2010 (hereinafter referred to as "the N.G.T. Act" for sake of brevity), the bar contained therein to the jurisdiction of Civil Court would get attracted and the plaint was liable to be rejected for want of jurisdiction. Against the said order, the original plaintiffs preferred Regular Civil Appeal before the District Court which was also dismissed. Both the Courts below took view that the Civil Court had no jurisdiction to try the suit and the suit was not maintainable in view of the provisions of the N.G.T. Act.

3. Learned Advocate Mr. M.M. Saiyed submitted that the bar of jurisdiction of the Civil Court would apply only in respect of the disputes which are required to be settled under the N.G.T. Act by the Tribunal. He submitted that though Sec. 29 of the N.G.T. Act enacts bar to the Civil Courts jurisdiction, the said bar would be

applicable in the context of Sec. 14 of the Act, and in respect of the disputes of the kind and nature contemplated therein. He submitted that under Sec. 14 of the N.G.T. Act, the Tribunal has the jurisdiction over the cases where a "substantial question relating to environment" is involved. According to him case of the plaintiffs in the suit was not one wherein any substantial question relating to environment was involved. He then submitted that phrase "substantial question relating to environment" was defined in Sec. 2(m). It was the submission of learned Advocate that in order to make a substantial question relating to the environment, the issues relating direct violation of the statutes mentioned in the Schedule to the N.G.T. Act must be arising. He wanted to emphasise that the subject-matter of the suit and the prayer did not involve the question contemplated under Sec. 2(m).

3.1. On the other hand, learned Advocate Mr. H.M. Parikh for the respondent Nos. 1 and 2 submitted by taking the Court through the averments in the plaint and the suit prayers, that the subject-matter directly involved the rights and obligations relating to environmental issues, which were the disputes to be settled by the Tribunal for which, the Civil Court's jurisdiction was ousted under Sec. 29 of the N.G.T. Act. Learned Advocate for the respondent relied on decision in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others, . He also relied on Bombay High Court decision in Gadbad S/o. Bhavdu Sonne v. Ramrao S/o. Bhavdu Sonne being Reference Case No. 1 of 2011 decided on 17-1-2013.

3.2. In Gadbad (supra), the question before the Bombay High Court whether the Civil Court can regularise encroachment over the forest land by declaration of the ownership in contravention and avoiding bar created by Sec. 2 of Forest (Conservation) Act, 1980 and whether the civil suit was maintainable to protect encroachment over the forest land in contravention of the provisions of the said Act. It was in that light the Bombay High Court considered the applicability of Sec. 14 of the N.G.T. Act. It observed that with coming into force of Sec. 14 in the N.G.T. Act, the Civil Court's jurisdiction over the Civil cases/suites involving substantial question relating to environmental (including enforcement of any legal right to environmental) and arising out of implementation of enactments specified in Schedule I to the N.G.T. Act is taken over by the Tribunal by virtue of Sec. 14 of the said Act.

4. This Court carefully examined the contentions canvassed by learned Counsels for the parties in the context of the controversy coming out from the suit of the plaintiffs. The N.G.T. Act was enacted by the Parliament to provide for an establishment of the National Green Tribunal for effective and expeditious disposal of Civil cases relating to environment protection including enforcement of any legal right relating to environment. The statement of objects and reasons while enacting the law provided that the law was framed to cope up with increased pressure on the natural resources and environment and the hike in the related litigation. The N.G.T. Act was designed to provide quick redress and

remedy relating to the rights of environment which are encompassed under Art. 21 and to provide restorative relief to the victims. The Act came into force with effect from 18th October, 2010.

4.1. The relevant statutory provisions in the N.G.T. Act may be usefully visited with. "Environment" is defined in Sec. 2(c) to include to be mentioned Sec. 3 of the Act provides for establishment of the National Green Tribunal, whereas Sec. 4 deals with composition of the Tribunal. Chapter III provides for jurisdiction, powers and proceedings of the Tribunal. Section 14 is about the dispute to be settled by the Tribunal, and Sec. 15 speaks of relief, compensation and restitution. The Tribunal has appellate jurisdiction as provided under Sec. 16. Section 29 occurring in Chapter V provides bar of jurisdiction of Civil Court.

4.2. Section 29 reads as under:

29. Bar of jurisdiction:-

(1) With effect from the date of establishment of the Tribunal under this Act, no Civil Court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No Civil Court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the Civil Court.

4.3. As per sub-sec. (2) of Sec. 29 above Civil Court is divested of jurisdiction in respect of the disputes and to entertain any question which may be adjudicated upon by the National Green Tribunal. Section 14 of the Act which provides for dispute to be settled by the Tribunal is thus,

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-sec. (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 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.

4.4. Thus, the Tribunal's jurisdiction extends to cases where substantial questions relating to environment including enforcement of any legal right relating to environment arise. Again the expression "substantial question relating to environment" is defined in the definition Section. Section 2(m) defining the term reads thus:

2(m) "substantial question relating to environment" shall include an instance where,-

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,-

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

4.5. The relief which may be granted by the Tribunal is contemplated in Sec. 15-

15. Relief, compensation and restitution:

(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-sec. (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this Section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief 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.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other Court or authority.

4.6. Also relevant is Sec. 18, which provides for the application to the Tribunal and contains the categories of persons who could seek the relief by making the application. It is also extracted hereinunder:

18. Application or appeal to Tribunal:

(1) Each application under Secs. 14 and 15 or an appeal under Sec. 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in Sec. 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by-

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time-being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent,

representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under Sec. 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

4.7. The plain reading of Sec. 14 above shows that the jurisdiction of the Tribunal is extended to settle the disputes in all Civil cases where substantial question relating to environment arises and the jurisdiction shall be exercised by it on such questions including in respect of enforcement of any legal right relating to the environment. The bracketed group of words "including enforcement of any legal right relating to environment" makes the area disputes to be settled by the Tribunal more inclusive and encompassing. The scope and ambit of jurisdiction of the Tribunal is widened. Enforcement of legal right relating to environment will have an intake of various kinds of disputes. Further, it would be seen on a closer reading of the definition in Sec. 2(m) that it has two clauses. The categories in sub-clauses (A), (B), (C) of clause (i) are in respect of direct violation of specific statutory environmental obligation by a person. Clause (ii) is also an instance of substantial question relating to environment. Under clause (ii), the environmental consequence which relates to specific activity or a point source of pollution will also fall within compass of the term of "substantial question relating to environment".

5. The subject-matter and the controversy raised in the suit may be recapitulated even at the cost of some repetition. It was a suit instituted against two industrial companies engaged in the manufacturing of pesticides. As already noted, the prayer was for declaration that the pipeline laid by the defendant companies at a particular place would endanger the living creatures and human health in light of the norms set up by the Pollution Control Board. In other words, the norms set up by the Gujarat Pollution Control Board under the Pollution laws and the regulations were directly in the limelight. In considering the prayer of the plaintiffs, those laws would have to be necessarily gone into. It would have been required to be adjudicated whether the statutes and the statutory regulations relating to pollution and the environmental maintenance were violated. The averments in the plaint, more particularly in Paras 5 and 6 read with the averments in Para 9 brought out in no uncertain terms that in the questions raised by the plaintiff, questions relating to the enforcement of legal rights relating to the environment were ingrained. In the process of adjudication of the suit arising, the statutes amongst the legislation mentioned in the Schedule would have their play. The entire premise of the grievance was that the

defendant companies had not obtained permission from the Gujarat Pollution Control Board. It was the case that the canal constructed for discharge of effluent was unfit for carrying the effluent discharge and because of its breakage, the crops in the fields was open to serious damage. It was alleged that it would also have harmful effect on the public life and public health. The grievance was also raised with regard to placing of chimney by stating that it was against the norms prescribed to be observed at the time of establishing the industries. In other words, the essential substance of the suit subject-matter, the grievance raised and the prayers made unfailingly attracted the statutory provisions of the Acts mentioned in the Schedule to the Act. The subject-matter raised substantial questions relating to environment as defined under Sec. 2(m) and contemplated under Sec. 14 of the Act. The trial of the suit was to be necessarily for enforcement of legal right relating to environment.

5.1. From the nature of the suit and the subject-matter controversy raised herein, which is highlighted hereinabove, it can hardly be denied that the averments in the suit and the prayers of the plaintiffs do raise the disputes which are required to be settled by the Tribunal under Sec. 14 of the Act. The contention of the learned Advocate for the appellants that under Sec. 14 the jurisdiction of the Tribunal would attract in respect of "a substantial question relating to the environment" and such question or questions do not arise in the plaintiffs suit is not tenable. An attentive reading of Sec. 14 was to show that the Tribunal is assigned jurisdiction by the legislature for all the civil cases where (i) a substantial question relating to environment is involved, and as stated in the bracketed portion (ii) including enforcement of any legal right relating to environment. The words "including enforcement any legal right" occurring in Sec. 14 imports a wider area for the Tribunal. Therefore, any civil case which relate to enforcement of any legal right would become a dispute under Sec. 14 and which shall have to be dealt with and decided by the Tribunal alone.

5.2. Learned Advocate for the appellants laid emphasis on the group of words in the said Section "...and such question arises out of implementation of enactments specified in Schedule I" to contend on that basis that the suit does not bring out any question relating to implementation of the enactments in question. This argument is wholly misconceived. As already seen, the suit and the suit prayers are about the grievance in relation to the environmental damage to the crop in the agricultural fields, live stock and injury to health of the people. These damage and injuries are apprehended, as the averments in the plaint clearly suggest, because of laying of pipeline in particular manner leading to improper management in discharge of industrial effluent and dirty water, which come out because of the industrial operations carried out by the defendant companies engaged in manufacturing of pesticides and using chemicals for that purpose. The Schedule I to the Act is connected to Secs. 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1) of the Act. The statutes mentioned in the Schedule are (1) The Water (Prevention and Control of Pollution) Act, 1974; (2) The Water (Prevention and Control of Pollution) Cess Act, 1977; (3) The Forest

(Conservation) Act, 1980; (4) The Air (Prevention and Control of Pollution) Act, 1981; (5) The Environment (Protection) Act, 1986; (6) The Public Liability Insurance Act, 1991; and (7) The Biological Diversity Act, 2002.

5.3. It is quite conceivable that in the compass of the grievance made and reliefs claimed by the plaintiffs in their suit, questions regarding implementation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 would arise in addition to other laws. The suit prayer is directed against the Pollution Control Board which is a statutory body entrusted with implementation of all the environmental laws including the Scheduled statutes. The kind of relief which the Tribunal could grant as per Sec. 15 of the Act also buttresses the reasoning adopted and view taken herein. The relief to be granted by the Tribunal include relief of compensation, restitution of property damaged and restitution of environment.

5.4. In making out an argument that substantial question relating to environment includes solely an instance involving direct violation of specific statutory law, learned Advocate overlooked clause (ii) in the definition Section. As per the definition in Sec. 2(m), "substantial question relating to environment", includes also an instance where, as contemplated in clause (ii), the environmental consequences relate to a specific activity or the point of source of pollution. The "specific activity" or "point source of pollution" having consequences on the environment is thus an instance of "substantial question relating to environment". It will cover the subject-matter controversy in the suit. Therefore, it is bereft of any substance to contend that the "substantial question relating to environment" is not arising in the subject-matter of the suit instituted.

5.5. In order to judge whether the plaint is liable to be rejected under Order 7, Rule 11(d), the criteria is, as is well settled, that from the reading of averments of the plaint, it must come out that they do not disclose the jurisdiction for the Court, and that the Court has no jurisdiction to try the suit. In other words, the absence of jurisdiction of Civil Court is capable of being made out on the face of reading of the averments in the plaint. The said requirement stands undoubtedly satisfied when the plaint of the plaintiff's is read and considered. The Courts below, therefore, committed no error in invoking powers under said provisions to reject the plaint on the ground of Court having no jurisdiction to try the suit in view of the provisions of the N.G.T. Act.

6. For all aforesaid considerations, it gives no room to contend that the subject-matter of suit does not raise the questions to be decided by Tribunal and consequently the bar on the jurisdiction of the Civil Court would not apply. The Civil Court had no jurisdiction to try the plaintiffs suit in view of Sec. 29(2) read with Sec. 14(1) of the act. The compass and nature of the controversy and grievance in the suit did raise substantial question relating to environment within the ambit of Sec. 2(m) and one falling under Sec. 14 of the N.G.T. Act. Therefore, the order of the trial Court below Exh. 17 which was confirmed by the

first appellate Court holding that the plaint was liable to be rejected under Order 7, Rule 11(d) of the Code was eminently proper and justified in law.

7. In the circumstances, no substantial question of law arises in the Appeal. The present appeal, therefore, stands dismissed summarily.