

(2015) 10 BOM CK 0172
In the Bombay High Court
Case No : Writ Petition No. 585 of 2015

Maria Christine Rebillet Perdriau and Others	APPELLANT
Vs	
Goa Coastal Zone Authority Management and Others	RESPONDENT

Date of Decision : 23-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 10 BOM CK 0172

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Anarkali Agni, Senior Advocate and Kalpa Govekar, Advocate, for the Appellant; Purna Bhandari, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

F.M. Reis, J.—Heard Mrs. Anarkali Agni, learned Senior Counsel appearing for the petitioners, Ms. Purna Bhandari, learned Additional Government Advocate appearing for the respondent Nos. 1, 2, 4, 8, 9, 10, 11 and 12, Mr. Shivan Desai, learned Counsel appearing for the respondent No. 5 and Mr. Jitendra Supekar, learned Counsel appearing for the respondent Nos. 6 and 7.

2. Rule. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. Learned Counsel appearing for the respondents waives service.

3. The above petitioners inter alia seeks a writ of certiorari or a writ in the nature of certiorari or any other writ direction or order quashing and setting aside the order dated 29.5.2015 passed by the learned National Green Tribunal, Western Zone at Pune.

4. Briefly the facts of the case are that the petitioner Nos. 1 and 2 had filed a petition being Writ Petition No. 872/2012 inter alia challenging the construction activities being carried out by the respondent No. 5 as well as the respondent Nos. 6 and 7 and the non-action by the concerned authorities.

5. By an order dated 2.12.2013, the Writ Petition was transferred to the learned National Green Tribunal by this Court. ("The Tribunal" for short). On 31.1.2014, the learned Tribunal issued a notice to the respondents and on 26.2.2014, the respondent No. 5 sought time to place on record the order passed by this Court. An application was filed by the respondent No. 5 on 27.3.2014 to place on record certain orders passed by this Court dated 16.9.2013 to 2.12.2013, 20.12.2013. The learned Tribunal thereafter directed the Goa Coastal Zone Management Authority ("GCZMA" for short) to decide the grievances within time limit fixed by the Tribunal. The GCZMA heard the parties and passed an order dated 25.4.2014 deciding to drop the proceedings. The said order of GCZMA was also challenged by the petitioners which is pending before the learned Tribunal being Appeal No. 18/2014. An affidavit in rejoinder came to be filed by the petitioners on 8.5.2014 inter alia seeking a direction that the structure built by the respondent No. 5 is without legal permission and for a direction that no music festivals or other activities which may cause harm to the environment be allowed to be held in the properties of the respondent No. 5. Subsequently on 8.5.2014, the learned Tribunal directed to file an affidavit on behalf of the State by the Collector concerned by placing on record the observations of the concerned committee and the constitution thereof on 10.7.2014. The respondent No. 5 filed an application on 10.7.2014 to discard the affidavit in rejoinder filed by the petitioners. No affidavit was filed by the Collector pursuant to the order passed by the learned Tribunal. Thereafter on 1.8.2014, the learned Tribunal directed that the Misc. Civil Application No. 111/2014 and Application No. 12/2014 would be heard together with Appeal No. 18/2014 and as such, the parties were directed to complete the pleadings. On 22.8.2014, the application bearing No. 12/2014 was taken up for hearing but, however, the report of the committee was not placed on record. As such, it was noted in the order dated 22.8.2014 that the learned Tribunal does not have any material to ascertain whether there is due compliance of the order dated 8.5.2014 and accordingly, the learned Advocate appearing for the GCZMA sought time to get necessary information from the concerned Department. Subsequently on 22.8.2014, an affidavit was filed by the Collector in compliance with the order dated 8.5.2014. Thereafter, on 10.10.2014, an affidavit was filed by the Member Secretary of the Pollution Control Board. After affidavits were exchanged the petitioners filed Written submissions on 19.12.2014 in Appeal No. 18/2014 and the matter was reserved for orders on the point of maintainability of the appeal which was Miscellaneous Civil Application No. 138/2014 in Appeal No. 18/2014. It is further the contention of the petitioners that the appeal bearing No. 18/2014 and the application bearing No. 12/2014 were taken up suo moto on 29.1.2015 on which date neither the petitioners nor their advocate were present nor they were notified about the date on which the matter was taken up suo moto by the learned Tribunal. On 13.2.2015 the Sub-Registrar produced a copy of the sale deed and the matter was reserved for orders. On 29.5.2015, the application bearing No. 12/2014 was disposed of on merits.

6. Being aggrieved by the said order, the petitioners have filed the present Writ Petition.

7. Mrs. Agni, learned Senior Counsel has taken us through the records and proceedings in the main application filed by the petitioners to point out that the contention only with regard to the maintainability of the appeal being MCA No. 138/2014 was heard by the learned Tribunal and no opportunity was given to the petitioners to argue the main application bearing No. 12/2014. The learned Senior Counsel has thereafter taken us through the record of the minutes of the order dated 29.5.2015 to point out that the petitioners were not present on the said date though the learned Tribunal had directed the Sub-Registrar to produce the copy of the relevant documents. The learned Senior Counsel has thereafter taken us through the records of the minutes of the order dated 13.2.2015 to point out that the report from the Sub-Registrar were filed and a copy thereof was furnished to the petitioners and the matter was thereafter reserved for orders. The learned Senior Counsel further points out that thereafter no hearing has taken place and the matter came to be disposed of by a final order dated 29.5.2015, which is impugned in the present petition.

8. The learned Senior Counsel has thereafter taken us through the records to point out that there was no hearing at all with regard to the contentions raised by the petitioner in the original application No. 12/2014 as the matter was only posted for decision on the maintainability of the appeal No. 18/2014. The learned Senior Counsel further points out that by the impugned order the main application No. 12/2014 has been finally disposed of without giving any hearing to the petitioners and, as such, on the ground alone would call for interference of this Court under Articles 226 and 227 of the Constitution of India. The learned Senior Counsel thereafter points out that as the petitioners did not get any effective hearing on merits on the main application bearing No. 12/2014, the impugned order dated 29.5.2015 deserves to be quashed and set aside.

9. On the other hand Mr. S. Desai, learned Counsel appearing for the respondent No. 5 and Mr. J. Supekar, learned Counsel appearing for the respondent Nos. 6 and 7 have fairly accepted the position that there was no hearing on the main application filed by the petitioners bearing No. 12/2014 before the impugned order was passed by the learned Tribunal. The learned Counsel further points out that the respondent Nos. 5 to 7 also were not heard before the impugned order was passed on 29.5.2015. Ms. P. Bhandari, learned Additional Government Advocate appearing for the respondent Nos. 1, 2, 4 and 8 to 12 has also accepted the position that after the Sub-Registrar had produced the copy of the documents directed to be produced on earlier occasion, the matter was only heard on the maintainability of the appeal bearing No. 18/2014 and no arguments were heard in connection with the original application No. 12/2014.

10. Upon hearing the learned counsel and taking note of the contentions advanced by the learned counsel appearing for the respective parties, we find that, the fact that the impugned order dated 29.5.2015 was passed without

following the principle of natural justice cannot be disputed. It is well settled that the Tribunal has to comply with the principle of natural justice which includes giving an effective hearing to the parties before passing a final order on such application. Having failed to give an effective hearing to the parties, the impugned order passed by the learned Tribunal dated 29.5.2015 stands vitiated and deserves to be quashed and set aside.

11. We have not examined the merits of the contentions raised in the application filed by the petitioners bearing No. 12/2014. Such application shall have to be examined by the learned Tribunal afresh after giving both the parties an opportunity of being heard and disposed of the same in accordance with law.

i. The impugned order dated 29.5.2015 passed by the learned Tribunal is quashed and set aside.

ii. Original Application No. 12/2014 is restored to the file of the learned National Green Tribunal, Pune.

iii. The learned Tribunal is accordingly requested to dispose of the said application afresh after hearing the parties in accordance with law.

iv. All the contentions of both the parties on merits are left open.

v. Rule is made absolute in the above terms.

12. Writ Petition stands disposed of accordingly.