

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

M.A. No. 209/2015

IN

Application No. 22/2015 (WZ)

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

M/s. Nanu Estates Pvt. Ltd.

A company with office at
Nanu House, Varde Valaulikar Road,
Margao Goa 403 601
Through : Director Mr. S.K. Naik,
Occn. Business, R/of. Krishnasheel,
Mont-Hill, Margao-Goa.

....Appellant

A N D

- 1. Mr. Sayed Tayeeb,**
S/o. Syed Ali,
House No.1667, Near T.B. Hospital,
Chincholem, Bhatulem,
Post Caranzalem, Goa.
- 2. The State of Goa,**
Through : Chief Secretary,
Having office at Secretariate
Porvorim, Bardez, Goa
- 3. The North Goa Planning and
Development Authority,**
Through : Member Secretary,
Having Office at Patto, Panaji-Goa

4. Deputy Collector and DRO,

D.O. for Flying Squad Team,
North Goa District,
Collectorate Building,
Panaji-Goa

5. Deputy Collector and SDO,

Collectorate Building,
Panaji, Goa

**6. The Town and Country Planning
Department,**

Through : Chief Town Planner,
Govt. of Goa, Office at Patto,
Panaji, Goa

7. Senior Town Planner,

The Town and Country Planning
Department,
Government of Goa.

8. The Corporation of City of Panaji,

Through : Commissioner with
Office at CCP Building,
Panaji, Goa.

...Opponents

Counsel for Appellant :

Mr. P.M. Bendre, Adv.

Mr. Pratik V. Shah, Adv.

Counsel for opponents :

Mr. Asim Sarode, Adv.

Date: January 8th, 2016

ORDER/JUDGMENT

1. The original Application No.22/2015 is filed by Applicant Sayed Tayeeb under Section 14, 15 and 18 of National Green Tribunal Act, 2010, alleging illegal hill cutting

by original Respondent No.7 which is resulting in to change in natural drainage pattern and increase in instances of hill-slope instability and landslides, thereby adversely affecting the environment. The Original Applicant (Respondent-1 in this MA) states that the illegal activity was noticed on 11th September 2012 and the same is continuing. The original Applicant has filed the Application No.22/2015 with following prayers :-

1. Direct the Respondents authorities to initiate action against Respondent No.7 for hill cutting i.e. without permission and/or being in excess of any permission granted for hill cutting, is without such mandatory statutory permission for the same, including action under Section 17B of the (Goa) Town & Country Planning Act.
2. Direct the Respondents authorities to examine and undertake a study of the extent to which hill cutting in excess of what has been permitted by Law and/or any permission that Respondent No.,7 claims to possess have affected, has affected the stability of the Altinho hill in the environs of the hill cutting and to require Respondent No.7 to forthwith take remedial action in respect thereof.
3. Direct the Respondents Authorities and in particular Respondent Nos.2 to 8 to revoke and/or withdraw and/or cancel all the permissions, NOCs, clearances, approvals and/or licenses granted to Respondent No.7 and in particular the permission/permissions dated 24-7-2012 and 8-8-2012 granted by the Respondent No.2 in favour of the Respondent No.6, Respondent No.7 having acted in contravention thereof, and/or in the

alternative to quash and set aside the same, with all the legal consequences thereof and further to direct the Respondent authorities to take all such action that shall become necessary in consequence thereof, including for demolition of the constructions carried out by Respondent No.7.

4. Directions may be issued to Respondents to collectively form a special vigilance squad to curb and stop the encroachment and other such activities on hill tops and hill slopes in Goa in particular and everywhere in India in general.

2. Original Respondent No.7 filed the present Misc. Application No.209/2015 raising certain preliminary objections. The Applicant in M.A. submits that the original Applicant had filed Writ Petition No.32/2012 before the Hon'ble High Court of Bombay at Goa on the grounds which are similar to the grounds mentioned in the present Application No.22/2015. The Hon'ble High Court did not grant any interim relief against the present Application. Subsequently, in Order dated 26th December 2012, the Hon'ble High Court clearly observed on perusal of revocation of the stop work order issued by the concerned authority dated 12th December 2012 that "it is clearly specified therein that the hill cutting is within permissible limits". Subsequently, the original Applicant withdrew the Writ Petition on 17th April 2014. Present Application No.22/2015 is filed on 18th February 2015 i.e. more than about ten (10) months after the withdrawal of the said Writ Petition.

3. The Applicant further submits that the original Applicant was aware about the period of limitation prescribed by the Law and has averred that he came to know about the construction and alleged hill cutting in July 2012. Still however, he had not filed any application before the Tribunal within prescribed period and therefore, instant Application is barred by limitation as per provisions of Section 14(3) of NGT Act, 2010. Further, the Applicant in M.A. No.209/15 submits that the main Application does not constitute any cause of action under any of the statute mentioned in Schedule-I appended to the National Green Tribunal Act, 2010 and therefore, the Application 22/2015 is not maintainable on the ground of jurisdiction.

4. Respondent No.1 i.e. original Applicant submits that the Writ Petition No.32/2012 was purely Civil in nature and the present Application 22/2015 raises substantial issue of environment involved in the matter. Respondent No.1 denies allegation of intentional exceeding the period of limitation and further submits that the hill cutting by the original Applicant No.7 is a continuous activity and is causing a grave harm to the environment and local flora and fauna. Respondent No.1 therefore prays for dismissal of Misc. Application No.209/15.

5. It is noted from the submissions of the Applicant in M.A. that the main contentions of the Applicant are on two counts. Firstly, he relies on fact that the original Applicant has filed the present Application No.22/2015 after near about

ten (10) months from the date when the Hon'ble High Court gave the Petitioner liberty to avail alternative remedy. Secondly, it is his contention that the prayers in the original Application No.22/15 are not related to the enactments specified in the Schedule-I of the National Green Tribunal Act, 2010. It is, therefore, necessary to adjudicate both these issues.

6. The original Applicant Syeed Tayeeb had filed the Public Interest Litigation W.P. No.32/2012 before the Hon'ble High Court of Bombay at Goa and it is observed from the order of the Hon'ble High Court dated 26th December 2012 that the Hon'ble High Court noted the following :

“6. On perusal of the said order dated 12/11/2012, it is clearly specified therein that the hill cutting is within the permissible limits. Considering the said aspect, I find that the petitioner is not entitled for any ad interim relief at this stage. Place the matter for further hearing on 7/01/2013”.

7. Subsequently, the Applicant has sought withdrawal of the Petition with liberty to pursue appropriate remedies, if any, as may be available in law. The Hon'ble High Court granted such withdrawal with liberty as prayed for; vide order dated 17th July 2014. The present Application is filed in the Tribunal on 18th February 2015 which is beyond the stipulated period of six (6) months as per section 14(3) of the NGT Act, 2010, even considering the date of withdrawal of the Writ Petition from the Hon'ble High Court as starting date,

which is to the benefit of the original Applicant. The legal position of the period of limitation under Section 14 of the National Green Tribunal Act, 2010 is now well settled by various judgments of the Hon'ble Principal Bench and also, of this Bench. The Applicants have also not sought any condonation of delay, stating any specific reasons for not filing the Application in stipulated period. Though the Applicant has mentioned section 15 of NGT Act while filing the Application, no case has been made out justifying such consideration, in view of any proven damage to the environment requiring consideration of restitution/restoration or compensation as the case may be. In fact, the observations of the Hon'ble High Court referred above shows the position otherwise. It is therefore manifest that the Original Applicant has referred to section 15 just to avail additional period of limitation, on the grounds which are very feeble and cannot sustain in the eyes of Law. Under such circumstances, the Application No.22/2015 needs to be considered only under Section 14 of the National Green Tribunal Act and is, therefore, filed much beyond stipulated period of Limitation of six (6) months as specified in section 14(3) of the National Green Tribunal Act from the first date of cause of action.

8. The perusal of the prayers made in the Application clearly illustrate that intervention of the Tribunal has been sought against the permission granted under provisions of Goa Town and Planning Act. Admittedly, this Regulation is

not listed in Schedule appended to the National Green Tribunal Act, 2010. The Tribunal, therefore, cannot proceed with such Application which primarily involves the regulation which is outside the scope of provisions of the National Green Tribunal Act.

9. Resultantly, the Misc. Application succeeds on both the counts i.e. delay in filing of Application beyond the stipulated period as per section 14(3) of the National Green Tribunal Act and raising the issues which are not related to the enactment listed in Schedule-I Appended to the National Green Tribunal Act.

10. Accordingly, Misc. Application No.209/15 is allowed. Resultantly the Original Application 22/2015 is dismissed as barred by limitation. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date : January 8th, 2016.

ajp