

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

Application No.29/2016 (WZ)
[M.A. No.135/2016, M.A. No.155/2016]

In the matter of :-

Sh. Nikhil Rajendra Tayal & Anr. Vs. Union of India & Ors.

**CORAM: HON'BLE MR JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

Present: Applicant/Appellant : Mr. Dhanya Kumar Hange, Adv.
Respondent Nos.4 & 5 : Mr. N.M. Kudale, Adv. i/b
Mr. Anirudha Deo, Adv.

Date and Remarks	Oral Order
Item No.16 5th July, 2016 Order No.7	<p>This Application has been moved for stopping construction of a township having built-up area exceeding 20,000 sq.mtrs on land bearing Survey No.248, 257/2, 258/1-G, 258/1-K, 258/2, P.H. No.42, jointly admeasuring about 20.31 hectares of Mouza Jaamtha, Nagpur without obtaining Environmental Clearance as envisaged under the EC Regulation, 2006, and for restoration and remediation of the environmental damage caused on account of such illegal construction. According to the Applicants, the Respondent No.4 M/s. Radha Madhav Developers and Respondent No.5 Suflam Infra Projects Ltd., have undertaken this development project and have completed construction of 49,773.185 sq.mtrs of built-up area without obtaining environmental clearance.</p> <p>Besides Respondent Nos.4 and 5, the Respondent No.1-Ministry of Environment and Forest, Respondent No.2-The Collector Nagpur, Respondent No.3-The Nagpur Improvement Trust and Respondent No.6-Government of Maharashtra Environment Department have been made parties to the present Application. In response to the Notices issued, the Respondent</p>

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No.1 and 2 have only filed replies. Pertinently, the Respondent No.1 MoEF in its reply has revealed that project comes under the ambit of the EIA Notification, 2006 and grant of the Environmental Clearance has to be considered by SEIAA, Maharashtra. The Respondent Nos.4 and 5 have resisted the Application with the Miscellaneous Application No.135/2016 raising preliminary issues of maintainability and limitation.

Now before us is the issue of permission to withdraw the present Application raised by the Applicants vide M.A. No.155/2016. It is contended that there were various criminal proceedings pending between the parties as enumerated herein below:

- (1) FIR dated 12th January, 2016 lodged by Mrs. Sushila Tayal in Crime No. M1/2016 at Ladganj Police Station;
- (2) FIR lodged by Mrs. Sushila Tayal dated 4th January, 2016 in Crime No.4/2016 at Tahsil Police Station;
- (3) NC Report lodged by Mrs. Sushila Tayal dated 23rd September, 2015 in Crime No.523/2015 at Sitabuldi Police Station. [Parties have consented not to further pursue the NC complaints];
- (4) Regular Criminal Case No.1659 of 2016 pending before Tenth Joint Civil Judge [Junior Division] & Judicial Magistrate First Class, Nagpur;
- (5) Misc. Criminal Application No.973 of 2016 pending before Tenth Joint Civil Judge [Junior Division] & Judicial Magistrate First Class, Nagpur;
- (6) Misc. Criminal Application No.1041/2016 pending before Tenth Joint Civil Judge [Junior Division] & Judicial Magistrate First Class, Nagpur;
- (7) FIR lodged against Mr. Rajesh Gawande and Mrs. Vidya Gawande in Crime No.48/2016 at Tahsil Police Station by Mrs. Sushila Tayal;
- (8) FIR registered by Mrs. Sushila Tayal at Hingna Police Station bearing Crime No.451 of 2016;

in respect of which Criminal Writ Petition No.100 of 2016 and Criminal Writ Petition No.240 of 2016 were moved before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench. It is

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further contended that the parties to the said Writ Petitions including the Applicants, their mothers Smt. Sushila Tayal and Mrs.Savitribai Agarwal and Mr. Rajesh Agarwal Partner of M/s Radha Madhav Developers settled the issues between them following the mediation as per the Consent Terms dated 4th May, 2016, a copy of which is annexed as Annexure-A to the submissions dated 19th May, 2016. It reveals that the parties desired to put an end to the aforesaid criminal proceedings as well as agreed to withdraw all Civil and Criminal complaints resulting into various litigations, Civil suits, Consumer Complaints, Application before National Green Tribunal, Pune, Registration of FIR's and other Complaints made. It appears that the Consent Terms were signed by Mrs. Savitribai Agarwal and Mrs. Sushila Tayal for self and on behalf of their sons on one hand, and Mr. Rajesh Agarwal and Mr. Hardik Agarwal on the other.

From these revelations, we have reason to believe that the Respondent Nos.1, 2, 3 and 6 were not parties to the Criminal Writ Petitions wherein the settlement as aforesaid occurred, and yet, following such Consent Terms, it appears the Hon'ble High Court of Judicature at Bombay, Nagpur Bench besides quashing the aforesaid Criminal Proceedings pertinently passed the following directions vide Order dated 4th May, 2016:

"The Application No.29 of 2016 filed by the petitioners before the National Green Tribunal, Pune shall stand disposed of as not pressed."

A copy thereof is annexed as Annexure-A to M.A. No.155/2016. In light of this Order, the Applicants are now seeking permission to withdraw the present Application.

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The record reveals that on 25th May, 2016 this Tribunal took cognizance of the aforesaid application and observed as follows:

“We have examined the pleadings from which tentatively, it could be seen that this matter is not to Civil Right between the brother and sister but this proceeding raise legal issues touching environment issue under the National Green Tribunal Act, 2010, involving the Tribunal’s jurisdiction to ensure that no Environmental damage is allowed. The prayer is also to the effect that without obtaining environmental clearance, Respondent Nos.4 and 5 have carried out illegal construction. and it shall be removed restoration and remediation of environmental damages be ordered.

On the submission of learned counsel itself, this is totally an environmental dispute, more than Civil Right of the parties. In the circumstances, the question is that the action under Section 14, 15, 16, 17 and 18 of National Green Tribunal Act, 2010 be allowed to continue or be terminated by the party who initiate the action, by the consent with the Respondents.

The matter is very sensitive, in view of the order passed by the Hon’ble High Court at Bombay, Bench Nagpur, in Cril. Writ Petition No.100/2016 dated 4th May 2016, permitting to withdraw this Application. Therefore, the matter requires serious approach and we post it for consideration of Applicant’s request on 4th July 2016.”

The case was thus listed for final hearing on 4th July, 2016, when learned Advocate for the Applicants placed before us a Pursis dated 4th July, 2016 annexing thereto a copy of the Order dated 1st July, 2016 passed by the Hon’ble High Court of Judicature at Bombay, Nagpur Bench in Criminal Application (APPW) No.78 of 2016 in Writ Petition No.100 of 2016 (D). It appears from the reading of the Pursis that a grievance was made by the Applicants before the Hon’ble High Court that this

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Tribunal has refused to permit withdrawal of the present Application. Reading of the Order dated 25th May, 2016 would certainly reveal that there was no refusal to permit the withdrawal of the Application as was represented by the Applicants before the Hon'ble High Court in Criminal Application No.78 of 2016. As a matter of fact, this Tribunal being seized of the environmental issues raised before it was concerned about its (of environment) fate before passing an order permitting withdrawal of the Application. It may be that the private parties/individuals settled their interse Civil/Criminal disputes but the issues affecting environment, if one peruses the Orders dated 4th May, 2016 and 1st July, 2016 passed by the Hon'ble High Court in Criminal Writ Petition No.100 of 2016, remained to be adjudicated upon. Unfortunately, environment is at receiving end when humans deal with it as they like and yet it remains a silent party to the proceedings before any judicial forum. It is for these reasons that this Bench wanted to take a pause and give serious consideration to this sensitive issue of environment before drawing curtain over it.

It appears from the reading of the Order dated 1st July, 2016 that the Hon'ble High Court has unfortunately mis-read our intentions and made following observations:

"In view of this position, we are of the considered view that the observations made by the National Green Tribunal in its order dated 25th of May, 2016 would be showing disrespect to the order passed by this Court passed while exercising jurisdiction under Article 226 of the Constitution of India."

The Hon'ble High Court on making reference to the Judgment and Order dated 11th September, 2015 in PIL No.88 of

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2013 [The Court on its own motion Vs. National Highway of Authority, Nagpur & Ors] further observed that it has come to conclusion that the National Green Tribunal is the Tribunal subordinate to the jurisdiction of the High Court exercisable under Article 226 and 227 of the Constitution of India. We have referred to the said Judgment dated 11th September, 2015 and found reference to the Judgment passed by the Hon'ble Apex Court in L.Chandra Kumar's case (1997) 3 SCC 261 [L.Chandra Kumar Vs. Union of India and others]. Reference to L.Chandra Kumar case is made for delineating the roles of the High Courts and Tribunals. The Hon'ble Apex Court in L.Chandra Kumar's case while commenting on the supervisory jurisdiction of the High Courts vis-a-vis Tribunals made following observations:

“97. It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We are, however, of the view that this may not be the best way of solving the problem. We do not think that our constitutional scheme requires that all adjudicatory bodies which fall within the territorial jurisdiction of the High Court should be subject to their supervisory jurisdiction. If the idea is to divest the High Courts of their onerous burdens, then adding to their supervisory functions cannot, in any manner, be of assistance to them.”

Hon'ble Apex Court at the end held as under:

“100. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Article 226/227 and 32 of the Constitution, are unconstitutional. Section 28

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of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

It clearly reveals that the jurisdiction conferred upon the High Courts under Article 226/227 and upon Supreme Court under Article 32 is part of the inviolable basic structure of our Constitution and the Tribunals have a supplemental role to perform in discharging the powers conferred by Article 226/227 and 32 of the Constitution. This begs a question as to what it means to be supplemental. Word ‘supplemental’ is an adjective derived from the word ‘supplement’. Plain dictionary meaning of the word “supplement” is “a thing added to something-else in order to complete or enhance it” - vide Oxford Dictionary of

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English, 11th Edition. Thus, the role of the Tribunals is to add muscle to the work which otherwise could be done by the High Courts.

In the instant case the environmental issues arising in the present case have not been adjudicated upon by the Hon'ble High Court but simply put to rest upon an arrangement between the private individuals-parties to the Criminal Writ Petition No.100 of 2016 vide Order dated 4th May, 2016. This approach, with respect, would generate circumstances raising several unanswered questions as regards injury/damage to environment and/or contravention of environmental laws before the law enforcing agencies prompting them to entertain reasonable doubt/s about their actions, particularly while dealing with penal provisions under Environment (Protection) Act, 1986, Section 15 and 16 of the Act, despite cessation of the issues before the Tribunal. Such a situation, we humbly believe, will undermine the confidence of citizenry in justice delivery system. As a Tribunal enjoined to play supplemental role to the Hon'ble High Court, we in our considered opinion, will be truly discharging our Constitutional/Statutory obligations by doing what the Hon'ble High Court has not done i.e. hear the environmental dispute and adjudicate upon it as mandated by law.

A question, therefore arises before us, particularly, in view of the legal mandate under the provisions of the National Green Tribunal Act, 2010 and its supplemental role as enunciated by the Hon'ble Apex Court in L. Chandra Kumar's case as follows:

'whether we have to yield to the order of the Hon'ble High Court passed following settlement between the private individuals ignoring the legal mandate under

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the provisions of the National Green Tribunal Act, 2010 to hear the disputes arising from the questions relating to environment and arising out of implementation of the Environment (Protection) Act, 1986, particularly when the dispute is unresolved and role of the Tribunal is supplemental-one to that of the Hon'ble High Court.'

We are unable to find a clear answer to this question in the given situation and, therefore, with utmost respect to the Hon'ble High Court and without any intention to show any disrespect to the orders passed by it, we may like to secure guidance from the Hon'ble Apex Court on this material issue before we grant permission to withdraw this Application.

Adverting to Section 19 of the National Green Tribunal Act, 2010, we may like to record that we have the power to regulate our own procedure free of shackles of the Code of Civil Procedure, 1908. In our humble opinion, the question which we have raised deserves an answer from the Hon'ble Apex Court in order to boldly face such predicament in future. We, therefore, make Reference to the Hon'ble Apex Court with a humble request to graciously guide us on the aforesaid issue before we pass a final order.

The Registry is directed to refer this case to the Hon'ble Supreme Court of India with a humble request to graciously give its opinion and guide us on the following issue:

'whether we have to yield to the order of the Hon'ble High Court passed following settlement between the private individuals ignoring the legal mandate under the provisions of the National Green Tribunal Act, 2010 to hear the disputes arising from the questions relating to environment and arising out of implementation of the Environment (Protection) Act,

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1986, particularly when the dispute is unresolved and role of the Tribunal is supplemental-one to that of the Hon'ble High Court.'

Adjourned sine die awaiting result of the Reference made to the Hon'ble Supreme Court of India.

....., JM
(Justice U. D. Salvi)

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



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