

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

APPEAL NO. 35 OF 2014

In the matter of

1. M/s Deepak Construction Co.
Through Its Proprietor,
Deepak Yadav,
Village- Raghunathpura,
Tehsil- Narnaul,
District - MahendergarhAppellant

Versus

1. Haryana State Pollution Control Board,
Sector-6, Panchkula, Haryana
2. Regional Officer,
Haryana Pollution Control Board,
Dharuhera, Haryana.Respondents

Counsel for Appellant:

Mr. Umesh Sharma, Adv., Mr. V.K. Tandon, Adv., Ms. Mamta Tandon, Adv.

Counsel for Respondents:

Mr. Vineet Malik, Adv. , Mr. Narender Hooda, Sr. Adv., Mr. D.P. Singh, Adv. , Mr. Bano Deswal, Adv., Ms. Sukhmani Bajwa, Adv. for respondent no. 1 to 3.

Mr. Puja Kalra Adv., Mr. D.K. Singh, Adv. for respondent no.4

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Ranjan Chatterjee (Expert Member)

Dated : 5th March, 2015

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER):

1. This appeal has been preferred under Section 18 (1) of the National Green Tribunal Act, 2010 by the appellant who is the project proponent against the order of the Learned Appellate Authority who has dismissed the appeal on the ground that the lease of the land in which the unit of the appellant was functioning has been cancelled by Deputy Commissioner, Mahendergarh at Narnaul and finding that in spite of opportunity given, the appellant has failed to place the status report of the case stated to be pending before the Hon'ble High Court. The short facts leading to the filing of the appeal can be stated as follows:

2. The appellant is a unit of stone crushing established in 1982, in the Panchayat land leased out initially for the period of 10 years and stated to have been renewed from time to time for every 5 years and it is a small scale unit. The respondent Pollution Control Board is stated to have issued consent under Air Act in the year 2004-05 and was stated to have been renewed from time to time. According to the appellant, his application for consent for the year 2012-13 was not disposed of and therefore there was a deemed consent for the said year. The appellant has applied to the respondent for consent for the year 2013-16 and the same was not granted however a direction in the form of a show cause notice was issued by the respondent Pollution Control Board under Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981 on 03.09.2013. Ultimately, the respondent has passed an order of

refusal on 21.08.2013 against which a statutory appeal was filed before the Learned Appellate Authority under the said Act, 1981 which was dismissed under the Impugned order dated 07.04.2014 against which the present appeal is filed.

3. The main ground on which the appeal has been laid is that the subject of lease is under challenge before the competent Civil Court and consent ought to have been granted subject to the outcome of the result in the civil case and that the appellant has not violated any law or caused any environmental pollution. That apart it is the case of the appellant that it has got a right of renewal of lease in law.

4. The Learned Counsel appearing for the appellant vehemently insist the above points to drive home, that in the event of the Civil Court deciding the case in its favour thereby holding that the appellant is entitled for continuation of lease, great injustice will be done to the appellant in not allowing him to proceed with the stone crushing activity.

5. It is not in dispute that the appellant unit is situated in the Panchayat land in the Village Raghunathpura, District Mahendergarh.

6. It is also not in much dispute that the lease granted to the appellant has not been renewed during the period 2013. In fact this is reflected in the show cause notice issued by the State Pollution Control Board by virtue of the powers under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. In that

show cause notice it is stated that the appellant has failed to comply with the following, namely:

“1. Unit area comes into control area of Municipal Council, Narnaul.

2. Unit has not submitted fresh land deed papers and its renewal if any. Your land deed has already been expired.

3. C.A. certificate submitted by unit is not certified, that is, signed by the authorised signatory of the unit with stamp”.

Therefore, show cause was issued on the ground that the appellant was running the unit without legal land lease. It appears that the appellant has filed a Civil Suit against Municipal Council for permanent injunction. Pending the suit he has filed an interim application praying for an interim injunction restraining the authorities from interfering with their possession of the disputed land. The said application came to be dismissed by the Learned Civil Judge (Junior Division), Narnaul, in the elaborate order dated 25.07.2013. In the said order, the Learned Trial Judge has not found that the petitioner was either in lawful possession or entitled to be in possession.

7. It was against the said interim order of the Learned Trial Judge, the appellant has filed a miscellaneous Civil Appeal No. 71 of 2013 before the Learned Additional District Judge, Narnaul. The learned Appellate Judge has found that the appellant has no *prima facie* case and therefore dismissed the appeal. While dismissing the appeal, in the order dated 05.08.2013 the learned Appellate Judge has permitted the appellant to remove its articles within one month

from the disputed land and the respondents were restrained only for a period of one month from taking possession of the suit land.

8. The said period granted by the Learned Appellate Authority has also come to an end.

9. Not satisfied with of the said order of the learned Appellate Judge, the appellant has moved the Hon'ble High Court of Punjab and Haryana at Chandigarh and filed a Civil Revision No. 4942 of 2013 under Article 227 of the Constitution of India. While disposing of the said Revision, in the order dated 23.10.2013 the Hon'ble High court has found that to the extent the findings of the lower courts that the appellant cannot continue to be in possession, as the lease period has come to an end, as correct, however, in so far as eviction of the appellant is concerned, directed that the same has to be done in accordance with law. Therefore the said portion of the Judgment alone has been set aside and given liberty to the Municipal Council to take action for the eviction of the appellant. The relevant portion of the Judgment of the Hon'ble High Court is as follows:

“Both the courts below after appreciating evidence on record, have come to the conclusion that since the lease has expired, petitioner cannot continue in possession. To this extent, the finding of courts below is sustainable. But so far as his eviction is concerned, the same can be done only in accordance with law. The approach of lower appellate court is wholly perverse in this regard. The observation made

by learned lower appellate court whereby the direction has been given to remove the articles and structure within one month from the suit land, is not sustainable. Therefore, this finding is set aside whereas other part of the order is upheld.

Disposed of,

However, since the lease has already expired, respondents No. 1 and 2 will be at liberty to proceed for eviction of the petitioner in Civil Revision No. 4942 of 2013 in accordance with law.

Any observation made will not affect the merit of the case”.

10. Now, on a reference to the order of the Learned Appellate Authority dated 07.04.2014 under the Air (Prevention and Control of Pollution) Act, 1981, it is seen that in spite of sufficient time having been granted, the appellant has not chosen to produce the said High Court order which are of course produced before this Tribunal as extracted above. Even on a reference to the order of the Hon'ble High Court, it is not as if the appellants are entitled to carry on the activity of stone crushing unit. The appellant's possession have been found to be not in accordance with law which has been confirmed by all the three Courts including the Hon'ble High Court. The Hon'ble High Court has only granted permission to the Municipal Council to evict the appellant in accordance with law. It does not mean that the appellant

who may be entitled to be in possession till lawfully affected, is entitled for the stone crushing activities by way of consent from the Pollution Control Board which is to be exercised by the Board independently.

11. It is not as if the appellant is left in lurch. If the appellant is not evicted in accordance with law or in the event of the main suit being decided in his favour thereby he may be entitled for lawful possession, he can always apply for consent afresh which can be considered by the Board in accordance with law. In the circumstances that the High Court has confirmed that the appellant's possession is not lawful, one cannot compel the Pollution Control Board to grant consent at this stage. Presence of lease and lawful possession is sine quo non for grant of consent. In such view of the matter we are of the considered view that the appellant cannot be directed to be given consent by the Pollution Control Board for running its stone crushing unit and in that view of the matter we do not see any reason to interfere with the order of the learned Appellate Authority.

12. Accordingly, the appeal stands dismissed without any order as to cost.

13. As the main appeal is dismissed all miscellaneous applications namely, M.A. No. 282 of 2014, 283 of 2014 and 353 of 2014 stand closed. There shall be no order as to cost.

Delhi

Dated: 5th March, 2015.



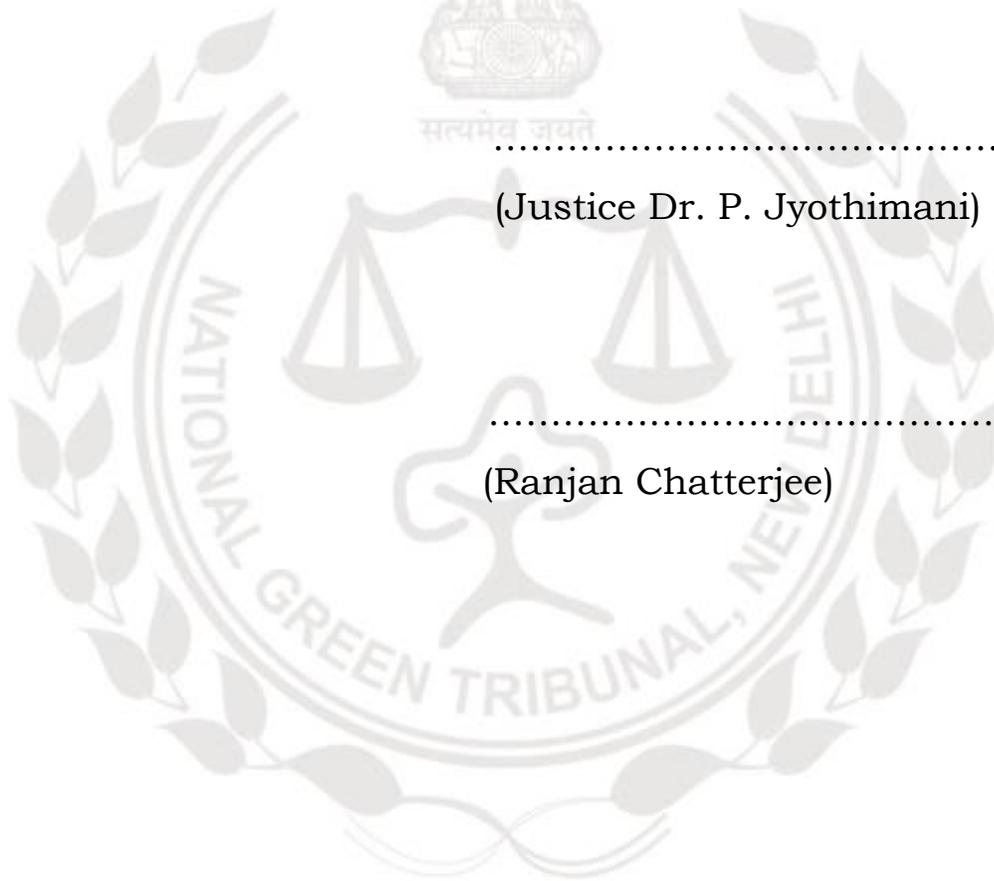
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....., JM

(Justice Dr. P. Jyothimani)

....., EM

(Ranjan Chatterjee)



NGT