

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

**M.A. No.138/2014**

**In**

**APPEAL No. 18/2014 (WZ)**

**(Disposed of on 29<sup>th</sup> May, 2015 and restored by Orders dated 3<sup>rd</sup> July, 2015 of Hon'ble High Court of Bombay in Writ Petition No.5754 of 2015)**

**CORAM:**

**Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

**1. Mrs. Marie Christine Perdriau,**  
Major of age, Occ: Business  
R/o. H.No.511, Murrod Vaddo,  
Condolim, Bardez Goa. Managing  
Director of Flying Maya Guest House  
Ltd.

**2. Flying Maya Guest House Pvt.  
Ltd.,**  
Registered under the Indian  
Companies Act, 1956 with  
Registration No.  
U55102GA2005PTC004117  
(CIN), having office at: H.No.511,  
Murrod Vaddo, Candolim, Bardex,  
403 515 – Goa.

**.....Appellants**

**A N D**

**1. Goa Coastal Zone Management Authority,**

Through its Member Secretary,  
having office at C/o. Department of  
Science, Technology and  
Environment (Govt. of Goa) 3<sup>rd</sup> Floor,  
Dempo Towers, Patto-Panaji-Goa  
403 001.

**2. M/s. Sham Resort Hotels Pvt. Ltd.,**

Through Director, Mr. Nitan  
Chhatwal  
Plot No.2, New India Co-op Society,  
E.W. Road No.2 – JVPD Scheme,  
Juhu, Mumbai – 400 049.

**.....Respondents**

**Counsel for Applicant :**

Mr. Asim Sarode, Advocate.

**Counsel for Respondents :**

Mrs. Fawia M. Mesquita, Adv. for Respondent No.1

Mr. Subramaniam, Senior Advocate a/w Mr. Saket Mone,  
Adv. and Mr. Shivam Desai for Respondent No. 2.

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**Date: January 28<sup>th</sup>, 2016**

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**ORDER**

1. By filing this Miscellaneous Application Original Respondent No.2 (Proprietor of M/s. Sham Resort Hotels Pvt. Ltd) challenges maintainability of the Application bearing No.18(THC)/2014 (WZ) on various grounds.

**2.** Before coming to the objections raised by Original Respondent No.2 – Sham Resort Hotels Pvt. Ltd, hereinafter, referred for convenience as “M/s Sham Hotels”, it may be made clear that in reply affidavit Original Appellants Mrs. Marie Christine Perdriau and Anr. categorically stated that they have given of other challenges and grounds of the Appeal is restricted to the orders passed by the Goa Coastal Zone Management Authority (GCZMA) dated April 25<sup>th</sup>, 2014 and May 20<sup>th</sup>, 2014 and the Appeal has been filed under Section 16 of the National Green Tribunal Act, 2010. Thus, the other orders rendered by Gram Panchayat and other authorities viz. the Town Planning Authority, etc. are not subject matter of the challenge in the present Appeal.

**3.** This litigation has got chequered history. The Petitioners (Original Appellants) had filed Writ Petition bearing No.872/2012 wherein they have challenged orders of the GCZMA as well as orders passed by the Village Panchayat and Town Planning Authority. They submitted that they have forwarded representation to the GCZMA to examine the issue and requested to determine whether the construction of M/s. Sham Hotels is within CRZ-III and therefore, liable to be demolished. Hon'ble High Court of Bombay at Goa directed GCZMA to decide the representation vide order dated September 16<sup>th</sup>, 2013

and therefore, GCZMA was required to consider whether the construction of M/s. Sham Hotel was legal and proper and whether CRZ permission granted on September 5<sup>th</sup>, 2005 for construction of Sham Hotels was legal or it was against the provisions of CRZ Notification, in as much as the land under the Sham Hotels is within the CRZ-III area. Any further proceeding in the matter need not be set out in details. It would suffice to mention that GCZMA decided to drop the proceedings initiated against M/s. Sham Hotels vide impugned order dated April 25<sup>th</sup>, 2014 and May 20<sup>th</sup>, 2014 but directed removal of only one compound wall and tiles laying around the house. The grievance of the Appellants was that entire construction of the house property by M/s. Sham Hotels is on Survey No. 139/1 (Part) of Village Calangut, Bardez Taluka is illegally erected and violation of CRZ Notification, 1991, 2009 and 2011 and as such is liable to be demolished. Both the Appellants were aggrieved due to dismissal of the major part of the complaint and grant of only minimal relief by the GCZMA. Consequently, they filed above referred Writ Petition which comprises of other refusal of reliefs. Hon'ble High Court of Bombay at Goa vide order dated December 2<sup>nd</sup>, 2013 transferred Writ Petition No.872/2012 to this Tribunal for decision in accordance with law. Original Appellants filed affidavit reiterating the

same stand that construction carried out by Original Respondent No.2 Sham Hotels is in NDZ of the CRZ area and therefore, is illegal. The Appellants submitted that the construction could not have been allowed since proprietor of M/s. Sham Hotels is not from ilk of fishermen folk nor any permission was sought by him in accordance with CRZ Notification, 2011 for repairs or renovation of the structure. They pointed out that case of M/s. Sham Hotels is based upon so-called construction permission granted by Village Panchayat in 2007 and completed in 2009 on such basis.

**4.** Coming to the main grounds of objections raised by M/s. Sham Hotels, pertaining to maintainability of Application No.18(THC)/2014 (WZ), it may be stated that first objection is on the ground that there is no appeal provided against order of GCZMA whereby proceedings are dropped fully or partly. Next objection is that the Application is hopelessly barred by limitation in as much as initially permission was granted by GCZMA on September 5<sup>th</sup>, 2005. Approval was granted by Deputy Town Planner on August 21<sup>th</sup>, 2006 and Village Panchayat granted on January 24<sup>th</sup>, 2007 which propelled construction activity that was completed in 2009 prior to coming into enforce of National Green Tribunal Act, 2010. In other words, provisions of National Green Tribunal Act,

2010 are not applicable to the impugned orders and if at all Original Appellants were aggrieved, they should have either persuaded the writ jurisdiction or file an appeal before NEAA as then was. The limitation cannot be extended merely because of transfer of the Writ Petition No.872/2012 by the Hon'ble High Court to the National Green Tribunal. So also the Appellants are asking for revocation of permission granted by other authorities which are not been added as parties and the enactments in which such permissions have been issued viz. Town and Country Planning Act, Village Panchayat Act are not within the Schedule- I appended to the National Green Tribunal Act, 2010 and hence, such comprehensive, plural and wholesome reliefs cannot be clubbed together by the Appellants nor other reliefs fall within the umbrella of the National Green Tribunal Act, 2010 and hence, the Appeal is not tenable to the extent of other reliefs as well as the main relief pertaining to dropping of the proceedings by the GCZMA. M/s. Sham Hotels further disputes *locus standi* of the Appellants on the ground they are not Indian citizens. It is contended that Appellant No.1 is foreigner and therefore, said Appellant Mrs. Marie cannot espouse cause of violation of CRZ under the Appeal No.18/2014. On these premises, Original

Respondent No.2 (M/s. Sham Hotels) sought dismissal of the Appeal on preliminary ground.

**5.** The M.A. (seeking dismissal of Appeal No.18/2014) is disputed by Original Appellants. Mrs. Marie Christine Rebillet Perdriau submits that the impugned orders were not communicated to her and the Appeal is filed within the period of six (06) months of communication of the said orders. Consequently, transfer order dated December 2<sup>nd</sup>, 2013 in Writ Petition No.872/2012 by Division Bench of Bombay at Goa parse extended period of limitation, inasmuch as the proceedings ought to be deemed as continued when the termination is not resulted during the continuation of the said Writ Petition. Mrs. Marie submits that the objections now raised by M/s. Sham Hotels were available before transfer of the Writ Petition No.872/2012 by High Court of Bombay at Goa but such objections were never raised and therefore, they should be deemed as waived. Her status of foreign national was not claimed at to be legal bar to challenge the impugned order and other orders when the Writ Petition was pending and therefore, now such objections is unavailable to M/s. Sham Hotels. She submits that when GCZMA decided to drop majority of the relief sought in the complaint filed by her, it was an order which can be challenged under Section 16(g) of the

National Green Tribunal Act. It is denied that the impugned decision is outside the pale of Appeal provided under the National Green Tribunal Act, 2010. So she seeks dismissal of M.A. No.138/2014.

**6.** We have heard learned Advocate for the parties. We have also gone through written submissions filed by them. We may mention here that earlier the issue of limitation was considered much in this Tribunal but there was some confusion created either artificially or intentionally which probably entailed reconsidering of the issue of limitation in accordance with direction of Hon'ble High Court in Writ Petition No.5754 of 2015 (M/s. Sham Resorts and Hotels Pvt. Ltd Vs. Mrs. Maria Christine Rebillet Pedriau and Ors.). The Hon'ble High Court while disposing of the said Writ Petition No.5754 of 2015 directed this Tribunal to decide M.A. No.138/2014. It appears that due to some official mistake of staff member in keeping aside the said application or some erroneous method of filing the same without scrutiny by the concerned party, M.A. No.138/2014 was filed and appeared only on one day notwithstanding the fact that it was never shown on record prior to December 19<sup>th</sup>, 2014. We are also surprised to go through record because order dated December 8<sup>th</sup>, 2014 shows as below:-

*“Heard learned Advocate for the Applicant on preliminary objection as regards maintainability of the Appeal/Application.*

*We have also heard learned Counsel for the Respondents.*

*Be treated as part heard.”*

Therefore, it was naturally expected that the matter will appear on cause list of further hearing. There is no record to show that M.A. No.138/2014 was filed and scrutinized by the Registry nor it shows that it was placed before the Tribunal for issuance of Notice. Obviously, to the extent of filing of M.A. No.138/2014 in the Registry, we are intrigued and find that the circumstances are shrouded by circumstances which caused confusion that may be due to some errant staff member intentionally done or without any intention to do mischievous act. The malafide or good motive could have been gathered by the Hon’ble High Court in case record of the matter might have been called for perusal but it is discretion of the Hon’ble High Court. We do not wish to enter into that domain and complain about the denial of right of natural justice to the official who dealt with the matter because internally we made official inquiry in this behalf and took necessary action.

**7.** Be that as it may be, as it is, learned Senior Counsel Shri Subramaniam laid emphasis on nature of the order impugned in the Appeal. He points out that the order impugned by the Appellants is comprehensive and comprises of permission granted by the Deputy Town Planner as well as Village Panchayat Candolim dated January 24<sup>th</sup>, 2007. It is his main contention that order of GCZMA dated May 20<sup>th</sup>, 2014, in any manner and by no stretch of imagination cannot be subject matter of Appeal because the Appeal is barred by limitation. According to him, subject communication dated April 25<sup>th</sup>, 2014 and order dated May 20<sup>th</sup>, 2014 passed by GCZMA also cannot be subjected to appeal inasmuch as the order only amounted to “dropping of proceedings” which cannot be regarded as decision or order. He argued that considering Section (2) read with Section 16 of the National Green Tribunal Act, 2010, the Appeal is not maintainable and is liable to be dismissed.

**8.** The written submissions filed by the contesting Respondents also hammer on the maintainability of the Appeal on the ground of limitation, *locus standi* of the Appellants and applicability of the National Green Tribunal Act, 2010 to the impugned permissions which are under challenge. Chief bone of contention raised by M/s. Sham Hotels is that the Appellants merely rely upon

transfer order passed by the Hon'ble High Court of Bombay at Goa on December 2<sup>nd</sup>, 2013 whereby Writ Petition No.872/2012 came to be shifted to the jurisdiction of this Tribunal. But mere transfer order cannot give rise to new cause of action nor can it extend period of limitation provided under the statute. Learned Senior Counsel Shri Subramaniam argued that the transfer order dated December 2<sup>nd</sup>, 2013 does not extend the period of limitation for which remedy was already barred as on December, 2013 or remedy under Section 14 could not be availed as on that date, even assuming that National Green Tribunal Act, 2010 was applicable at that time. He submitted that Section 2(m) necessarily encompasses involvement of substantial question relating to environment which can be agitated at instance of a person where direct violation of statutory environmental obligation is demonstrated by any group or a person which affects community at large. He would submit that unless and until the adjudicatory process is completed, the question of granting compensation under Section 15 of the National Green Tribunal Act, 2010 cannot be entertained and therefore, period of five (05) years will not be available in the present case. He vehemently argued that Section 16 of the National Green Tribunal Act, 2010 provides appeal under sub-clause (g) against directions

issued, on or after the commencement of the National Green Tribunal Act, 2010, if it is so issued under Section 5 of the Environment (Protection) Act, 1986 or under sub-clause (h) against an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. So also refusal to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 is appealable under sub-clause (i) of Section 16 of the National Green Tribunal Act, 2010. He would submit, therefore, that the subject order passed by the CRZ Authority is not appealable firstly for the reason that it does not fall within the ambit of sub-clauses (g), (h), (i) of Section 16 as well as Section 15. He contended that any direction given by the GCZMA whereby the proposal is drafted cannot be branded as "Order or decision in the matter". Another limb of his argument is that the other reliefs sought by the Appellants against legal authority like Gram Panchayat are not at all covered by Schedule-I of the National Green Tribunal Act, 2010 and hence, to that

extent the Tribunal has no jurisdiction to go into the merits of such reliefs claimed by the Appellants. Last but not least argument of learned Senior Counsel Shri Subramaniam is that the Appellants are not legally entitled to file the Appeal due to absence of *locus standi* because the Appellant No.1 is a foreigner.

9. Learned Counsel for the Appellants refuted arguments of learned Senior Counsel Shri Subramaniam. It is submitted that the transfer of the matter by the Hon'ble High Court of Bombay at Goa includes transfer of the legal remedy of which maintainability cannot be challenged by the Proprietor of M/s. Sham Hotels. It is also argued that no such contention was raised before the Hon'ble High Court of Bombay at Goa nor any objection was raised at the time of transfer of Writ Petition and therefore, now the Proprietor of M/s. Sham Hotels is estopped from challenging jurisdictional avenue of the National Green Tribunal (WZ), Pune. It is argued by learned Counsel for the Appellants that Appellants cannot be put to unnecessary inconvenience due to shuttling from this Tribunal to the High Court and High Court to this Tribunal on the issue of jurisdiction. Learned Counsel for the Appellants submitted that considering of words of Section 16(j) of the National Green Tribunal, Act 2010, the expression "determination" could include

direction or order within the compass of Section 16(j) which makes order appealable. It is argued that relief regarding civil remedies pertaining to the order passed by the Gram Panchayat also by the other authorities like DSLR could not come within the jurisdiction of the National Green Tribunal and therefore, the Appellants urged to delete them from the memorandum of the Appeal.

**10.** In other words, thrust of the Appellants is on the interpretation of Section 16(g) and Section 16(j) of the National Green Tribunal Act, 2010.

**11.** It is worthwhile to mention that Senior Counsel Shri Subramaniam empathically argued that appeal is not statutory right but is right created in a statute and therefore, unless there is specific provision in the statute which arouse appellate remedy, such remedy cannot be availed by any party. Sub-clause (g) of Section 16 of the National Green Tribunal Act, 2010 reads as follows:

*“(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);”*

At this juncture, it is worth to be noted that the words “direction issued” implicitly includes otherside of the

coin, meaning thereby it includes non-issuance of the directions issued under Section 5 of the Environment (Protection) Act, 1986. A party cannot be left remediless if the authority fails to issue any direction and keep the matter in abeyance. The legal doctrine "*Ubi jus ibi remedium*" is squarely attracted in the facts and circumstances of the present case. The impugned order issued by the GCZMA in our opinion comes within the ambit of Section 16(g) of the National Green Tribunal Act, 2010 and therefore, takes colour of an appealable order.

**12.** We are in agreement with learned Senior Counsel Shri Subramaniam that there is no concept of "continuity of cause of action" in the context of the National Green Tribunal Act, 2010. We also appreciate that once the cause of action start running then it cannot be rested by any extraneous reasons. Still however, when the Writ Petition No.872/2012 was pending before the Hon'ble High Court of Bombay at Goa, the cause of action to challenge the impugned order must be assumed to be surviving and pending for decision. It could not be segregated from the Writ Petition. Obviously, when the Writ Petition was transferred to this Tribunal there was no question of fresh cause of action to file the Appeal inasmuch as the impugned orders were already subject matter of the challenge before the Hon'ble High Court of

Bombay at Goa. The only fact of the transfer was to shift domain of jurisdiction from the High Court to the National Green Tribunal and hence, the cause of action also along with other pleadings, comprehensively got shifted to this Tribunal. We do not agree with the contention of learned Senior Counsel Shri Subramaniam that transfer of the Writ Petition by Hon'ble High Court of Bombay at Goa could have created or shifted the cause of action for the present Appeal. There is no question of "creation of cause of action" but it is just transfer of cause of action which already existed at the relevant time. There is no dispute about the fact that the National Green Tribunal Act, 2010 was enforced as on date when the Writ Petition was transferred by the Hon'ble High Court of Bombay at Goa to the National Green Tribunal. M/s. Sham Hotels did not challenge the said order of transfer before the Hon'ble Supreme Court. In other words, the order of the Hon'ble High Court is considerate to and has become final. Now we cannot make any different kind of interpretation and it was for M/s. Sham Hotels if there was any confusion to go before the High Court and get such confusion cleared, no such step was taken. Under all these circumstances, argument of learned Senior Counsel Shri Subramaniam in the context of lack of jurisdiction to the National Green Tribunal

merely because of the transfer of the matter by High Court cannot be entertained and will have to be rejected. In the case of *Yog Raj and Ors. Vs. The State of Himachal Pradesh and Ors.* [Original Application No. 264(THC) of 2013 (CWP No.9199 of 2012)], Hon'ble Principal Bench of National Green Tribunal observed as follows:

*“4. The present writ petition before the Hon'ble High Court was filed in October, 2012 and was transferred to this Tribunal by order of the Hon'ble High Court dated 9<sup>th</sup> July, 2013 and re-numbered as O.A. 264(THc)/2013. In the clear terms, this application would be liable to be dismissed as barred by time under Section 14 and/or Section 15 of the National Green Tribunal Act, 2010 but as it is a case of transfer to the Tribunal in terms of the order of the Hon'ble Supreme Court of India in the case of “Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India & Ors.” MANU/SC/0642/2012 : (2012) 8 SCC 326, we do not propose to reject this application on the ground of limitation. But the consequences of filing a belated petition would have to be borne by the Applicant. Applicants cannot claim advantage of their own delay. The Committee appointed by the Tribunal has submitted its report and the objection raised by the Applicants has no merits as*

*already noticed. The photographs placed on record show that there is damage to the property but the damage does not appear to be of such nature that the entire property requires dismantling and reconstruction. It is figmentation of the Applicants.”*

Sum-total of foregoing discussion is that there is no merit in the objections raised by Respondents including M/s. Sham Hotels and we are not in agreement with the contentions of learned Senior Counsel Shri Subramaniam.

**13.** In the result, M.A. No.138/2014 is dismissed with costs of Rs.25,000/-.

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

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

**Date : 28<sup>th</sup> January, 2016.**  
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