

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10241 of 2018

VISHAL ARINJAY SHAH

Appellant(s)

VERSUS

SOU. SMITA PRADEEP SHAH & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

Learned counsel for the Project Proponent - respondent No.2 states on instructions that no construction activity is being undertaken as of now at the stated location and in the event any construction is required to be undertaken, prior permission of the Tribunal will be obtained in that behalf. In view of this statement nothing more is required to be done.

The grievance in this appeal, however, is that the transferee - user is committing breach of the order passed by the Tribunal which had expressly restrained any construction activity till environmental clearance and necessary permission is obtained. The relevant extract of the order dated 24.05.2016 reads as follows:

“.... In the circumstances, we direct Pollution Control Board to enforce its Stop Work Order and shall not allow any construction activity till proper EC and necessary permission is obtained.”

That position was reiterated in the order dated 19.04.2018 passed by the Tribunal, in the following words:

“....In terms of the said order the Project Proponent has to be restrained from putting up any structure which may be part of the request for grant of Environmental Clearance before Ministry of Environment, Forest & Climate Change and also

there has to be restrained against the Project Proponent regarding user of the property in question till it is granted a valid Environmental Clearance. Therefore till his request in the application is considered on merit by the Ministry of Environment, Forest & Climate Change in terms of notification dated 14th March, 2017 even 3rd party interest cannot be created by the Project Proponent. Hence we order accordingly.

We make it clear that in case of grant of Environmental Clearance by the Competent Authority, the Project Proponent is granted liberty to approach this Tribunal seeking further order in this regard. In view of this observation we dispose of Original Application No.22 of 2016 which is renumbered as Original Application No. 115 of 2018 now on the file of Principal Bench and all the pending applications, reserving liberty to the applicant in Original Application No.22 of 2016 to seek relief in respect of issues not covered by this order."

However, the Tribunal in the impugned order dated 28.09.2018 proceeds to record as follows:

".... On perusal of the order passed on 19th April, 2018, we find that there was no specific direction while concluding the same. It has been submitted by the Learned Counsel for the Applicant that the Project Proponent was restrained by order dated 24.05.2016.....

It is pertinent to note here that the Application for grant of EC filed by the Project Proponent is still pending consideration.

Therefore, we are of the considered view that the order dated 19th April, 2018, there had been no specific direction for the Respondents to comply with. However, the liberty was granted to the parties that in case of grant of Environmental Clearance by the competent authority, to seek redress by approaching the appropriate forum. The restriction which appears in the order is to the Project Proponent that no third party interest shall be created by him. ..."

This observation, in our opinion, is not consistent with the spirit of the direction given in the order dated 24.05.2016, which is to prohibit any construction activity by any one until a proper environmental clearance and necessary permission is obtained. For the time being, we say no more.

Accordingly, we set aside the impugned order and relegate the parties before the Tribunal for fresh decision on the application under consideration on its own merit in accordance with law, after giving opportunities to all concerned.

The Tribunal may give notice to Project Proponent as well as transferee - user before passing appropriate directions.

The appellant may file an application for impleadment of third party including the transferee - user, if so advised.

The appeal is allowed accordingly.

.....J
(A.M. KHANWILKAR)

.....J
(HEMANT GUPTA)

New Delhi
December 07, 2018

ITEM NO.12

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10241/2018

VISHAL ARINJAY SHAH

Appellant(s)

VERSUS

SMITA PRADEEP SHAH & ORS.

Respondent(s)

Date : 07-12-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)

Ms. Neela Gokhale, Adv.
Ms. Shradha Agrawal, Adv.
Ms. Shruti Dixit, Adv.
Ms. Kamakshi S. Mehlwal, AOR

For Respondent(s)

Mr. T.V.S. Raghavendr Shreyas, Adv.
M/s. Samridhi Jain, Adv.

Mr. Mukesh Verma, Adv.
Mr. Pawan Shukla, Adv.

Mr. Makarand D. Adv.
Mr. Mustfa A. Khan, Adv.
Ms. Bharti Tyagi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

Learned counsel for the Project Proponent - respondent No.2 states on instructions that no construction activity is being undertaken as of now at the stated location and in the event any construction is required to be undertaken, prior permission of the Tribunal will be obtained in that behalf. In view of this statement nothing more is required to be done.

The grievance in this appeal, however, is that the transferee - user is committing breach of the order passed by the Tribunal which had expressly restrained any construction activity till environmental clearance and necessary permission is obtained. The relevant extract of the order dated 24.05.2016 reads as follows:

“.... In the circumstances, we direct Pollution Control Board to enforce its Stop Work Order and shall not allow any construction activity till proper EC and necessary permission is obtained.”

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“....In terms of the said order the Project Proponent has to be restrained from putting up any structure which may be part of the request for grant of Environmental Clearance before Ministry of Environment, Forest & Climate Change and also there has to be restrained against the Project Proponent regarding user of the property in question till it is granted a valid Environmental Clearance. Therefore till his request in the application is considered on merit by the Ministry of Environment, Forest & Climate Change in terms of notification dated 14th March, 2017 even 3rd party interest cannot be created by the Project Proponent. Hence we order accordingly.

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The Tribunal may give notice to Project Proponent as well as transferee - user before passing appropriate directions.

The appellant may file an application for impleadment of third party including the transferee - user, if so advised.

The appeal is allowed accordingly.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANITA RANI AHUJA)
COURT MASTER (NSH)