

2023 SCC OnLine Bom 1985

In the High Court of Bombay at Goa
(BEFORE M.S. SONAK, J.)

Vandana Prabhugaonkar ... Petitioner;

Versus

Goa Coastal Zone Management Authority, Thr. the
Member Secretary and Others ... Respondents.

Writ Petition No. 2135 of 2022 (Filing No)

Decided on September 14, 2023

Advocates who appeared in this case:

Mr. Sahil Sardesai, Advocate for the Petitioner.

Ms. Sulekha Kamat, Additional Government Advocate for the State.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— The Petitioner challenges the direction/order under Section 5 of the Environment (Protection) Act, 1986 read with Environment (Protection) Rules. As against the impugned order, the Petitioner has an alternate and efficacious remedy available before the National Green Tribunal.

2. Mr. Sardesai relies on the decision of the Hon'ble Supreme Court in Madhya Pradesh High Court *Advocates Bar Association v. Union of India* (Writ Petition (Civil) No. 433 of 2012) in which it is held that Sections 14 and 22 of the NGT Act do not oust the High Court's jurisdiction under Articles 226 and 227 of the Constitution as such jurisdiction is a part of the basic structure of the Constitution.

3. There is no dispute that the jurisdiction of this Court under Articles 226 and 227 of the Constitution cannot be ousted. However, still, the question is whether this Court should exercise its extraordinary jurisdiction when the Petitioner has an alternate and efficacious remedy available under the statute.

4. The Division Bench of this Court in the *Directorate of Mines and Geology v. Saldas Khorjuvekar* (Writ Petition No. 127 of 2020 decided on 25.03.2021) held that normally the statutory remedy provided under the NGT Act should not be bypassed.

5. No circumstances exist in this case for bypassing the alternate and statutory remedy available to the Petitioner. Accordingly, without examining the merits of the matter, this petition is dismissed on the ground of an alternate and efficacious remedy available to the Petitioner.

6. The Petitioner is free to avail of alternate remedy before the NGT.

At the same time, the Petitioner cannot be prejudiced for having instituted this petition, and in the meantime the limitation period for instituting the proceedings before the NGT has expired. The Petitioner was bonafide pursuing this petition and the petition was pending before this Court till today.

7. Mr. Sardesai states that within 30 days from today, the Petitioner will file necessary proceedings before the NGT. If such proceedings are filed, then the NGT should decide the proceedings on merits without non-suiting the Petitioner by citing the bar of limitation.

8. The petition is disposed of with liberty as above.

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