



2023/KER/80299

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 13<sup>TH</sup> DAY OF DECEMBER 2023 / 22ND

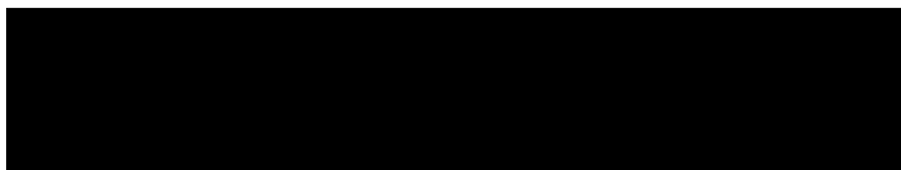
AGRAHAYANA, 1945

CRP NO. 310 OF 2022

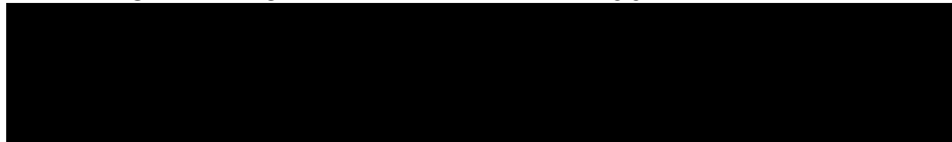
AGAINST THE ORDER/JUDGMENT OS 256/2017 OF MUNSIFF COURT,  
PERUMBAVOOR

REVISION PETITIONER/S:

1 KITEX GARMENTS PRIVATE LIMITED COMPANY



2 KITEX GARMENTS PRIVATE LIMITED COMPANY



BY ADVS.  
BLAZE K.JOSE  
URMILA ZACHARIA  
GOPIKA P.

RESPONDENT/S:

1 UMAIMATH



2 ELDHO PAUL



3 TAITUS





[REDACTED]

4 BINDHU

[REDACTED]

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY  
HEARD ON 07.12.2023, THE COURT ON 13.12.2023 DELIVERED  
THE FOLLOWING:



"CR"

**ORDER**

Dated this the 13<sup>th</sup> day of December, 2023

The revision petitioners are defendants 1 and 2 in O.S.No.256 of 2017 on the files of the Munsiff's Court, Perumbavoor. The suit is filed by respondents 1 and 2 praying for a permanent prohibitory injunction restraining the revision petitioners from flowing out chemical waste from their factory to the public canal, through the channel in the property of defendants 3 and 4/respondents 3 and 4. The other prayer is for a mandatory injunction to close the channel in the property of respondents 3 and 4, through which the effluents containing chemicals are drained into the public canal. The prayers are founded on the following averments;

The plaintiffs are the owners in possession



of the plaint scheduled paddy lands, which are part of a large cluster called the 'vilangu thazhathe peedika padasekharam'. There is a public canal on the northern side of the plaintiffs' property. The property of defendants 3 and 4 are lying on the north of that canal and the property of the defendants 1 and 2 is situated on the northern side of the property of defendants 3 and 4. The first and second defendants are conducting a textile dyeing unit in their property and chemical waste generated from the industry is flown to the public canal through the drainage channel in the property of defendants 3 and 4. The contaminated water ultimately flows into the padasekharam. As a result, water in the padasekharam is getting polluted, making it impossible for the plaintiffs to conduct paddy cultivation.

2. In their written statement, the revision petitioners refuted the factual allegations and



contended that the suit is not maintainable in view of the prohibition contained in Section 29 of the National Green Tribunal Act, 2010 ('the NGT Act' for short) and Section 58 of the Water (Prevention and Control of Pollution) Act, 1974 ('the Water Act' for short). Based on the contention, the trial court considered the maintainability of the suit as the preliminary issue and, by the impugned order, answered the issue in favour of the plaintiffs. Hence, this revision petition.

3. Learned Counsel for the revision petitioners contended that the conclusion in the impugned order is arrived at without properly understanding the scope and ambit of the NGT Act. It is submitted that the industrial unit of the revision petitioners is functioning on the strength of permits and licences issued by the statutory authorities, including the Pollution Control Board. By alleging that the revision



petitioners are causing environmental pollution by flowing out chemical waste from their factory, the respondents 1 and 2 are, in effect, imputing that the unit is being conducted in violation of the licence/permit conditions and the provisions of the Water Act. Hence, the bar under Section 29 will be attracted. To buttress the contention, the decision in **Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar and Others [(2020) 7 SCC 275]** is pressed into service. It is submitted that, contrary to the settled legal position, the court below has held bar under Section 29 to be not applicable. Such finding is rendered based on the reasoning that, since respondents 1 and 2 are seeking to redress their individual grievances, the dispute would not fall within the purview of '*substantial question relating to environment*' as defined in Section 2(m) of the NGT Act. The reasoning being unsustainable, the revision petition ought to be allowed, is the



final submission.

4. Despite service of notice, respondents have not appeared.

5. In the plaint, the specific case put forth by respondents 1 and 2 is that the revision petitioners are flowing out effluent containing chemical waste to the public canal, thereby contaminating the water in the padasekharam and making paddy cultivation impossible. Per contra, the revision petitioners assert that their factory is functioning in accordance with the norms fixed by the Pollution Control Board and no effluent above the limit prescribed by the Pollution Control Board, is flown into the public canal. The preliminary issue as to maintainability of the suit was framed by the trial court based on the above contentions.

6. The primary contention being that the court below misconstrued Section 29 of the NGT Act, it is essential to scrutinise the scheme and



relevant provisions of the Act. In this context, it is pertinent to note that the NGT Act is introduced with the objective of establishing a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources, enforcement of legal rights relating to environment, giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Dilating on the provisions and scheme of the NGT Act, the Apex Court, in **Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India [(2012) 8 SCC 326]** has, at paragraph 40 of the judgment, held as under;

*"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be*





*instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned."*

Under the NGT Act, Section 14 confers the National Green Tribunal with jurisdiction over civil cases in which '*substantial question relating to environment*' (including enforcement of any legal right relating to environment) is involved, if such question arises out of the implementation of the enactments specified in Schedule I. The Water Act is one among the enactments included in Schedule I. As such, the bar under Section 29 is attracted. Being of relevance, Section 29 is extracted hereunder;



**"29. Bar of jurisdiction.**

(1) *With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.*

(2) *No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."*

7. According to the trial court, the grievance of individuals with respect to the violation of their personal rights will not fall within the ambit of '*substantial question relating to environment*'. Here, it is pertinent to analyse the term '*substantial question*



*relating to environment'*. The term, as defined in Section 2(m) of the NGT Act, is extracted below for easy reference;

*"2(m) substantial question relating to environment" shall include an instance where,-*

*(i) there is a direct violation of a specific statutory environmental obligation by a person by which,-*

*(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*

*(B) the gravity of damage to the environment or property is substantial; or*

*(C) the damage to public health is broadly measurable;*

*(ii) the environmental consequences relate to a specific activity or a point source of pollution."*

A reading of the definition would show that, *'substantial question relating to environment'* takes in instances of direct violation of specific statutory environmental obligation by a person in relation to the situations enumerated



in the Section. The legislature has therefore consciously used the conjunction 'or', while describing the three different situations.

8. As already discussed, the relief of injunction is sought based on the allegation that the revision petitioners are flowing out chemical waste and contaminating the environment (padasekharam) in violation of the licence conditions and the statutory provisions. Undoubtedly, the jurisdiction over such a case is vested with the Tribunal under Section 14 of the NGT Act. As per Section 29, no civil court can grant injunction in respect of any action taken **or to be taken by the Tribunal** in respect of the settlement of dispute relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated by the Tribunal. Annexure I order produced along with civil revision petition shows that, raising identical



allegations as in the suit, another property owner had approached the National Green Tribunal and the Tribunal, after considering the report of the Pollution Control Board, refused to interfere with the functioning of the revision petitioners industrial unit since the effluents discharged satisfied the prescribed parameters. Thus it is evident that the National Green Tribunal has already exercised its jurisdiction with respect to the subject matter involved in the suit. In such circumstances, it can unhesitatingly be held that the bar under Section 29(2) of the NGT Act would apply to the suit filed by respondents 1 and 2.

In the result, the impugned order is set aside and the objection as to maintainability of the suit is upheld. The learned Munsiff shall decide the suit based on the findings in this order.

Having found the suit to be not maintainable



2023/KER/80299

CRP No.310 of 2022

-14-

in view of the prohibition under Section 29 of the NGT Act, I am not venturing to decide whether the prohibition under Section 58 of the Water Act is also attracted.

The civil revision petition is allowed accordingly.

Sd/-

**V.G.ARUN**  
**JUDGE**

Scl/