

2023 LiveLaw (SC) 258

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

S. RAVINDRA BHAT; J., DIPANKAR DATTA; J.

CIVIL APPEAL NO(S). 5328-5329 OF 2016; March 22, 2023

SHRAMJEEVI COOPERATIVE HOUSING SOCIETY LTD. *versus* DINESH JOSHI & ORS.

National Green Tribunal Act 2010 - Supreme Court allows housing society's appeal against NGT's direction to halt constructions near a lake- issue whether the construction was in submerged area was decided in earlier civil proceedings in favour of the society- that decree was affirmed by the SC- So NGT could not have ignored the decree- the decree was affirmed by all the courts. When the NGT was made aware of this fact, it chose to ignore it. Without a review, or any known process by which a decree concerning the same facts could be reopened, the NGT could not have rejected the society's contentions. The society's appeal, therefore, requires to succeed.

WITH CIVIL APPEAL NO. 1877 OF 2023 (@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 12945 OF 2019) CIVIL APPEAL NO(S). 409-410 OF 2021 CIVIL APPEAL NO(S). 407-408 OF 2021 CIVIL APPEAL NO(S). 2370-2371 OF 2021 CIVIL APPEAL NO(S). 10239 OF 2018

For Appellant(s) Mr. Sumeer Sodhi, AOR Mr. Prannoy Joe Sebastian, Adv. Mr. Brijender Chahar, Sr. Adv. Mr. Pulkit Agarwal, AOR Mr. A.N.S. Nadkarni, Sr. Adv. Mr. P.C. Sen, Sr. Adv. Mr. Azmat Hayat Amanullah, AOR Ms. Pragati Neekhara, AOR Mr. Vijay Assudani, Adv. Ms. Meenakshi Arora, Sr. Adv. Mr. Himanshu Shekhar Tripathi, AOR Mr. Ambuj Dixit, Adv. Mr. Arijit Prasad, Sr. Adv. Mr. Raj Bahadur, AOR

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J U D G M E N T

S. RAVINDRA BHAT, J.

1. Special leave granted in SLP (C) No. 12945/2018. In all these appeals, all respondents were served and had entered appearance. The original applicant before the National Green Tribunal (hereafter 'NGT') too had been served; an affidavit was filed on his behalf. He was however, not represented on the date of hearing. With consent of counsel for the parties, all appeals were heard finally.

2. These appeals, under Section 22 of the National Green Tribunal Act, 2010 (hereafter 'NGT Act') and appeals by special leave¹, question various orders² of the National Green Tribunal which directed that the Nagar Palika Parishad, Mandsaur (hereafter 'Parishad'), should desist from granting sanction to develop and construct properties in the vicinity of the "Teliya Talab" (hereafter 'talab'), a man-made lake or reservoir in the city of Mandsaur.

¹ Against order dated 10.7.2018 in WP No. 3484/2018 (PIL) of the Madhya Pradesh High Court

² Dated 17.02.2016 in OA No. 100/2015; dated 19.04.2016 in RA No. 3/2016; dated 21.09.2020 in OA No. 17/2018; dated 18.11.2020 in RA No. 8 & 9/2020 and order dated 25.11.2020 in MA Nos. 9, 11 & 14/2020

3. The original applicant, Dinesh Joshi, preferred an application before the Central Bench of NGT, seeking directions for protection and conservation of the *talab*, alleging that construction permissions had been granted by the authorities, i.e., the Parishad and the State, to various private parties, and allowed construction upon a water body, resulting in depletion of the lake's area, thus reducing availability of surface water. It was also further alleged that untreated domestic waste and industrial effluents were being discharged or dumped into the *talab*. The Parishad and the Town and Country Planning Department (hereafter 'TCD') filed replies, upon being issued notices.

4. The NGT, by its order dated 17.02.2016 (referred to hereafter as 'the main order') took note of the Parishad's reply, as well as that of the TCD and relied on a 'revenue trace map' to say that the "Maximum Water Line" (hereafter 'MWL') had been shown and the land over which construction permission was given, i.e., Khasra. No. 1238, fell within the "Full Water Line" (hereafter 'FWL') as well as the MWL. It was observed that if the water was allowed to reach the maximum level, the lands would be submerged, as according to the NGT, they fell within the catchment area.

5. The appellants (except the appellant in the appeal by special leave) preferred review petitions, pointing to the fact that they had been given permission by the Parishad much earlier, and also drawing to the notice of the NGT that a Development Plan had been finally sanctioned in 2003, in terms of which a green area abutted the *talab*, beyond which a public road had been sanctioned and built, and further that their lands lay beyond this road. It was argued that in these circumstances, the NGT should review its order, as they were not heard before the main order was made.

6. The appellant in C.A. No. 5328-29/2016 (hereafter called 'the society') additionally urged that the lands owned by it were allotted a long time earlier to it, and that its use for construction of residential units to its members (who were workers, belonging to the poorer segments of society) became a subject matter of a previous litigation, whereby the state authorities had cancelled the conversion certificate, on the ground that the lands fell in the submergence area. The society filed a suit, which was decreed by the trial court³; the state's appeal was dismissed⁴ and its second appeal before the Madhya Pradesh High Court, met the same fate, i.e., dismissal⁵. It was also pointed out that the special leave petition filed by the State too, was dismissed⁶ by this court.

7. The NGT, however, dismissed all the review petitions before it, by the impugned orders. On the basis of certain representations and letters, the Collector, District Mandsaur constituted a committee of seven officials from the revenue department for the purposes of investigating and submitting the latest report with respect to the boundaries of the *talab*. Based upon the report received, the Collector issued an order on 06.06.2017. The material portion of that order reads as follows:

"the aforesaid investigation team got the demarcation done vide the Land Record District Mandsaur Letter Number 1316/MP/2016 dated 18-05-2016 and from team comprising 21 officers/employees on 04-06-2016 and 06-06-2016 and punching, report and map were submitted. As per the Panchnama, and Report and for clarifying of the facts/removal of errors mentioned in the application concerned with the Applicant regarding MWL of Telia Talab, situated at Kaba Mandsaur the Demarcation team notified the MWL limits of Telia talab to the employees of

³ By order dated 24.12.1994 passed by the Civil Judge First Class, Mandsaur in CS No. 524A/88

⁴ By order dated 18.05.2001 passed by the Additional District Judge in RCA No. 80A/2001

⁵ By order dated 23.06.2011 of the Madhya Pradesh High Court in SA No. 415/2001

⁶ By order dated 08.02.2016 in SLP (CC) No. 2066/2016

Municipal Council and Water Resources at the spot and permanent boundary signs were established, which are mentioned in the map with Green ink. After MWL signs, the colonies are not in submerged area. The survey numbers mentioned above the green ink of the map are recognised beyond the limits of MWL. After marking MWL signs, the permission of construction can be granted.

I examined the case and minutely perused the aforesaid investigation report, Panchnama, and map submitted by the Committee constituted by this Court. Being consented (sic satisfied) with the report of investigation team and as per the Mandsaur Development Scheme 2001, the MWL. (Maximum Water Level) Limit signs which are mentioned in Green ink and the demarcation map of MWL limits of Telia Talab in the report of Investigation Team, as the colonies situated outside the Signs are not submerged and hence, construction permission can be given to the colonies situated outside the signs. This map shall be a part of this order.”

8. The report submitted to the Collector and order made by him became the subject matter of controversy before the NGT. An application (No. 17/2018), objecting to the correction of the submergence area and the MWL, was filed by the applicant who moved the earlier O.A. No. 100/2015. The applicant's grievance was that the NGT had prohibited any construction in the water bound area and within limits of the MWL and FWL of the *talab*. The argument made out was that the map prepared subsequently and taken on record by the Collector's order dated 06.06.2017, could not be sustained. The Madhya Pradesh Pollution Control Board in its reply stated that the alteration of the boundaries of the *talab* did not fall within its jurisdiction. It was stated, however, that the Board had issued notice to the Parishad from time to time to comply with provisions of the Water (Prevention and Control of Pollution) Act 1974 (hereafter 'Water Act'). This was recorded by the NGT in its order. It was further recorded that the Collector's team had inspected the area and found that 10 colonies were existing within 3 kilometres from the *talab*, and further that untreated sewage water was being discharged in it. By its order dated 21.09.2020 (hereafter 'second order') the NGT severely chastised the State, the Parishad, and district revenue authorities, and directed them to immediately proceed to demarcate the water body and the area which was previously within the area of the water body, to ensure that it was not reduced in any manner. The NGT also prohibited grant of permission for construction without the demarcation of the area of the water bodies, and up to the MWL. It further directed that the entire Khasra No. 1238 should be protected and that the water body should not be disturbed.

Contentions of counsel for the parties

9. Ms. Meenakshi Arora, learned senior counsel appearing for the society, argued that the NGT's impugned orders are erroneous on two counts. Firstly, that it did not consider or deal with the fact that the portions of Khasra No.1238 was purchased by the society over four decades ago, with the hard-earned money of its members, who were lowly paid workers. They had faced litigation for over two and a half decades, when the conversion certificate issued to them, was cancelled on the ground that the lands fell within the submergence area (*Doobkshetra*). The society was constrained to file a suit for perpetual injunction, where the state was impleaded; the state relied on the deposition of an engineer from its irrigation department, who reiterated its stand. However, he was unable to point to any document or material in support of the state's argument that the land fell within the submergence area. The state's appeal was rejected; the first appellate court noted the state's stand, which was contradictory, i.e., that the lands fell in the submergence area, and at the same time, that they were required for some construction. The state's second appeal, and special leave petition were also rejected.

10. Ms. Arora urged, as the second limb of her submissions, that the doctrine of finality of judgement and *res judicata* applied to the facts of this case. The principle plays a vital role as it is based on a sound firm principle of public policy. The doctrine of finality has evolved with the objective of preventing unnecessary litigation under the colour and pretence of law. It also ensures an end to litigation, in public interest. The state, and all its agencies were bound by the decree of the courts, which had been confirmed up to this court. Learned counsel submitted that the order dismissing the special leave petition also held that the judgment of the High Court was justified.

11. Mr. A.N.S. Nadkarni and Mr. P.C. Sen, learned senior counsels, Mr. Sumeer Sodhi, Ms. Pragati Neekhra, Mr. Amit Pai, and other counsel, appeared for other appellants. Mr. Brijendra Chahar, learned senior counsel, and Mr. Yogeshwaran, learned Additional Advocate General (AAG) for Madhya Pradesh, appeared for the TCD and the Parishad respectively; and Mr. Saurabh Mishra, AAG, appeared for the state of Madhya Pradesh. They supported the submissions on behalf of the society, and urged that the NGT fell into serious error in not considering that the TCD had published the Development/Master Plan in 2001, which was finally approved on 12.05.2003. This forms the basis for development of Mandsaur. The existence of the *talab*, its boundaries, and the extent of its catchment area, were made known. No one objected to the plan, which designated a green area immediately adjoining the *talab*, after which a road was permitted. The development of residences and colonies was beyond this road. These facts were known to the general public. In this background, the applicant before the NGT persuaded it to issue orders based on a “trace” map, which had not been finalised.

12. Learned counsel submitted that after much inter-departmental correspondence between the Sub-Divisional Officer of Mandsaur, the Parishad and the Water Resources Department, as well as the Collector, finally a letter was addressed by the Sub-Divisional Officer, to the Collector, on 31.01.2022, which disclosed that the map shown to the NGT, based on which, it made its orders was

“not originally a map, but a proposed map to depict a situation if the FTL of Teliya Talab were to be increased by one feet and which only bore the signature of Shri. L.N. Badgotia, the Sub-Divisional Officer of the Water Resources Department. This Map does not bear the signatures of any authorized Revenue Officer. The Map that was presented by Shri Santosh Rathore along with his request letter is in two pages and describes all categories of land under the submergence area and which was presented to the then collector on 03.07.2021 and the factual description was presented to the then Collector. The then Collector then put the issue up for discussion but he was transferred and because of which the discussion could not take place.

On the basis of the various communications exchanged between the Chief Municipal Officer, Nagar Palika Mandsaur, and the Water Resources Department, what emerges clearly is that Map presented by Nagar Palika Parishad before the Hon’ble National Green Tribunal (NGT) which was signed by Shri. L.N. Badgotia, Sub Divisional Officer, of the Water Resources Department, is not the original Map but only is descriptive of the proposal in the year 2002 to increase the height of the dam by one feet. The Map presented to me on 30.07.2021 by the Water Resources Department bears the signatures of the Sub-Engineer, Water Resources Department, Tehsildar, Revenue Inspector and Halka Patwari and this Map also has a clear description of all of the areas that will come under the FTL and MWL and hence this is the original map.”

13. It is pointed out that the relevant correspondence between the various authorities and bodies, relating to the map furnished to the NGT, and its accuracy, as well as the instructions issued on it, have been placed on record by affidavit dated 01.11.2022, sworn to by the Chief Officer of the Parishad.

14. Learned counsel also submit that the very same issue, about the boundaries of the *Teliya Talab* is again the subject matter of another litigation before the NGT (i.e., *Abhay Kumar Akolkar v. State of MP*, O.A. No. 70/2022) in which the tribunal is cognizant of the present appeals.

15. The contesting respondents (applicants in the original applications before NGT), i.e., Mr. Dinesh Joshi and Mr. Alok Sharma, were not represented at the time of hearing. However, they had filed replies and counter affidavits to some of the appeals. Their consistent stand is that the NGT's orders do not call for interference. It is urged by them, the map of 1973-74, relied on by the NGT, was supplied by the Parishad, which cannot now resile from its stand. It is also stated that the existence of the Development Plan, was a matter of record, and the NGT was aware of it. Moreover, it is pointed out that the Parishad did not deny that untreated waste was being dumped into the *talab*.

Analysis and Conclusions

16. A plain reading of the main order by the NGT shows that it went by the pleadings, and proceeded to pass orders on the basis of the trace map produced before it. The NGT was aware that the applicant wished to interdict development in the vicinity of the *talab*, for which sanction had been granted. Yet, it did not feel the necessity of seeking particulars from the parties before it, and whether any parties were likely to be affected by its orders. As a judicial tribunal, bound by principles of natural justice, it ought to have impleaded, or at least issued a public notice, about the pendency of litigation, and sought intervention of those likely to be adversely affected. Its omission to take this step, has resulted in prejudice to all the appellants before this court, who were faced with drastic and serious consequences, because the sanction for development or construction upon the lands owned, purchased or developed by them, immediately became out of bounds.

17. Section 19 of the NGT Act pertinently provides as follows:

"19. Procedure and powers of Tribunal— (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

- (h) *setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (i) *pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;*
- (j) *pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I; (k) any other matter which may be prescribed.*
- (5) *All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."*

18. A plain reading of Section 19 clarifies that though not bound by the Code of Civil Procedure, the NGT is nevertheless bound by principles of natural justice. It is a judicial tribunal, exclusively tasked with the duty of deciding environmental disputes and causes; its remit includes wide ranging powers. In these circumstances, the NGT had to take into consideration that the nature of its directions meant that all those living or owning land near the *talab*, who had obtained sanctions from the Parishad and the TCD, were condemned unheard.

19. The second aspect is that when some of the appellants approached NGT, in review proceedings, those review petitions were summarily rejected. Again, these orders cannot be sustained, because they do not disclose any application of mind to the existence of the Development Plan, which had permitted development of the disputed areas; the orders in review also do not advert to or deal with the peculiar circumstances, concerning the society's plot, on which a previous litigation had been fought, ending in a decree against the state. Before this court, the Parishad has categorically deposed, and produced several documents, in support of its stand that the map placed before, and considered by the NGT, was only a draft, or proposal to increase the area of the *talab*.

20. It is too well settled that parties are bound by the principle of finality, which results in a decree by a competent court, acquiring a final and binding nature, especially where it is confirmed concurrently and upheld by the highest court of the land. In *Pradeep Kumar Maskara v. State of West Bengal*⁷ this aspect was stated, in the following terms:

"24. At the very outset, we are of the view that the Tribunal has no jurisdiction to differ with the decision given by the Calcutta High Court in the writ petition filed by the appellants. The Tribunal further committed grave error in following the decision in Ganga Dhar Singh case [Ganga Dhar Singh v. State of W.B., (1997) 2 CHN 140] treating it to be a Division Bench judgment of the Calcutta High Court when as a matter of fact the decision in Ganga Dhar Singh case [Ganga Dhar Singh v. State of W.B., (1997) 2 CHN 140] was decided by a Single Judge of the High Court. Even the judgment passed [Pradip Kumar Maskara v. State of W.B., Civil Revision No. 3465 (W) of 1984, decided on 8-11-1992 (Cal)] in the appellant's writ petition filed in 1984 was neither considered nor distinguished.

25. In the background of these facts, in our considered opinion, when the judgment rendered by the Calcutta High Court in the case of the appellants and the said decision having not been quashed or set aside by a larger Bench of the High Court or by this Court, the Tribunal ought not to have refused to follow the order of the High Court.

26. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not be a ground for review of such judgment merely because a subsequent judgment of the Single Judge has taken contrary

⁷ (2015) 2 SCC 653: [2014] 13 SCR 540

view. That does not confer jurisdiction upon the Tribunal to ignore the judgment and direction of the High Court given in the case of the appellants.”

21. This court has also ruled, in *Lekh Raj v. Ranjit Singh*⁸ that subsequent changes in law, cannot divest parties of the benefit derived by them in a litigation that attained finality, through a decree:

“21. If the rights of the parties had already been crystallised then, in our opinion, subsequent change in law would not take away such rights which had attained finality due to lis coming to an end inter se the parties prior to such change.”

22. In another judgment, pertinent to the facts of this case, the state invoked its revisional power to nullify the effect of orders which had attained finality and were inuring in favour of private parties. It was held that such action was without authority of law in *Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy*⁹, where the court considered the provisions of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The provision in Section 50-B(4) empowered the statutory authority to exercise *suo motu* revisional power at any time. The Court held that:

“9. ... Use of the words ‘at any time’ in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). ... Use of the words ‘at any time’ in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words ‘at any time’, the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power ‘at any time’ only means that no specific period such as days, months or years are not (sic) prescribed reckoning from a particular date. But that does not mean that ‘at any time’ should be unguided and arbitrary. In this view, ‘at any time’ must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.”

The above judgment was followed in *State of Andhra Pradesh v. T. Yadagiri Reddy*¹⁰ and *Sulochana Chandrakant Galande v. Pune Municipal Transport*¹¹.

23. In view of the above, it is held that the argument of the society (i.e., appellant in C.A. No. 5328-29/2016) is merited. The judgments of the courts in its favour, clearly reveal that the 1.4 hectares owned by it, for which conversion (from agricultural to non-agricultural use) was sanctioned, was sought to be cancelled, on the ground that the land, fell within the submergence area. The history of the previous litigation – which the NGT was seized with – reveals that the land forming part of Khasra No. 1248, owned by the society, was directly in issue in a litigation to which the state was a party, and in which it lost. That

⁸ (2018) 12 SCC 750: [2017] 7 SCR 542

⁹ (2003) 7 SCC 667: [2003] Supp 2 SCR 698

¹⁰ (2008) 16 SCC 299: [2008] 16 SCR 792

¹¹ (2010) 8 SCC 467: [2010] 9 SCR 476

decree was affirmed by all the courts. When the NGT was made aware of this fact, it chose to ignore it. Without a review, or any known process by which a decree concerning the same facts could be re-opened, the NGT could not have rejected the society's contentions. The society's appeal, therefore, requires to succeed.

24. As regards to the other appeals, this court notes that the NGT did not advert to any facts, such as the existence of the Development/Master Plan, or the green area, and the road, after which the plots were sought to be developed, although these were expressly brought to its notice, in the review proceedings. Furthermore, this court has also been appraised of the fact that the inquiry by the revenue authorities, after the second order was made, has now resulted in awareness on the part of the Collector, and the Parishad, that the map on which the NGT based its main order, was only a proposal and not a final map. Moreover, a fresh litigation (O.A. No. 70/2022) is also pending. In these circumstances, it would be appropriate that the other appeals too are allowed, and the NGT considers the issue, afresh in O.A. No. 70/2022, and ensures that the precise boundaries of the *talab* are ascertained by a properly constituted committee.

25. In view of the above, the following directions are issued:

(a) C.A. No. 5328-29/2016 is allowed. The society's rights, title, and interest in respect of the land purchased by it, for which construction permission was granted, and in respect of which decree was made by the Civil Judge First Class, Mandsaur in C.S. No. 524A/88 dated 24.12.1994, ultimately confirmed by the Madhya Pradesh High Court in S.A. No. 415/2001, by order dated 23.06.2011 shall not be disturbed or affected, in any manner.

(b) All other appeals are allowed with the direction that the NGT shall consider the question of precise boundaries of the *talab*, after considering the report of a committee, in the pending proceedings, i.e., O.A. No. 70/2022. The appellants in these proceedings are at liberty to implead themselves in the said proceeding before the NGT, which shall hear them, and consider their submissions, before rendering a final order.

(c) The committee referred to in (b) above shall consist of competent officers nominated by

(i) the Collector, from the Revenue Department;

(ii) the Chief Officer/CEO/Chairman TCD;

(iii) the Chairman/President of the Parishad; and

(iv) by the competent official of the Department of Water Resources, nominated by the Principal Secretary.

(d) The above officials nominated by the respective named officers, shall inspect the area, and also consider the record. On the basis of the inspection and observation of the record, they shall submit a report to the NGT; copies of such report shall be made available to all parties. The NGT shall thereafter hear all parties, and consider their submissions, while rendering final order.

26. The appeals are allowed, and pending applications, if any, are disposed of, in the above terms, without order on costs.