

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE, BENCH PUNE
MEMORANDUM OF APPLICATION
UNDER SECTION 14, 15, 18, 20 & 23 OF NGT ACT, 2010
r/w RULE NO. 24 OF NGT (P&P) RULES, 2011
ORIGINAL APPLICATION NO. 107/2022 (WZ)**

In the matter between:

Mr. Irba Mashnaji Konapure & Anr. ... Applicants

Versus

Union of India & Ors. ... Respondents

**COMPILATION OF JUDGMENTS IN REBUTTAL ON
BEHALF OF RESPONDENT NO. 11**

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Advocate for the Respondent No. 11

Writ Petition No. 594 of 2015

Windsor Realty Pvt. Ltd. v. Ministry of Environment and Forest

2016 SCC OnLine Bom 5613

In the High Court of Bombay

(BEFORE V.M. KANADE AND REVATI MOHITE DERE, JJ.)

Writ Petition No. 594 of 2015

Windsor Realty Pvt. Ltd., through its Directors (Mr. Gopal Narang and Mr. Akshay Raheja), having Office at Off CST Road, Near Bandra Kurla Complex, Santacruz (E), Mumbai - 400 098
Petitioner

v.

1. Secretary, Ministry of Environment and Forest, Paryavan Bhavan, CGO Complex, Lodhi Road, New Delhi-110 003

And

Aayakar Bhavan, 2nd Floor, Maharshi Karve Road, New Marine Lines, Mumbai - 400 020

2. Amit Maru, 22 Opp. Block No. 4/5, Bhanjibhai Rathod Marg, Tardeo, Tulsiwadi, Mumbai - 400034

3. Member Secretary National Coastal Zone Management Authority, Paryavan Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003

4. Secretary Environment Department, Government of Maharashtra Mantralaya, Mumbai - 400 032

5. Member Secretary Maharashtra Coastal Zone Management Authority, New Administrative Building, Opp. Mantralaya, Mumbai - 400 032

6. The Regional Director Central Groundwater Board, Central Region, N.S. Building, Civil Lines, Nagpur - 440 001 Maharashtra

7. Central Ground Water Board State Unit Office, 217/11, Kendriya Sadan, 'B' Wing, GPOA, First Floor, Akurdi Pune - 411044

8. Member Secretary, Maharashtra Pollution Control Board Mumbai

9. The Executive Engineer, Building Proposal Department Western Suburbs, Municipal Corporation of Greater Mumbai, Sanskriti Bhawan, 90 feet road, Kandivili (E), Mumbai - 400 101
Respondents

Alongwith

Writ Petition No. 589 of 2015

1. M/s. Nish Developers Pvt. Ltd., a Private Company, duly incorporated under the provisions of Companies Act, 1956, having its office at 101, B Mittal Court, 10th Floor, Nariman Point, Mumbai 400 021

2. Mr. Sanjay R. Bamboli, of Bombay Indian Inhabitant, ad Director of M/s. Nish Developers Pvt. Ltd. having its office at

101, B Mittal Court, 10th Floor, Nariman Point, Mumbai 400 021 Petitioners

v.

1. The State of Maharashtra Notice to be served on Government Pleader, High Court, O.S. Bombay.
2. Maharashtra Pollution Control Board, MPCB, having its office at Kalpataru Point, 4th floor, Oppo. Cine Planet, near Sion Circle, Sion East Mumbai - 400 022
3. The Principal Secretary, Environment Department, Govt. of Maharashtra, Mantralaya, Mumbai 400 032
4. The Municipal Corporation of Greater Bombay, Mahapalika Bhavan, Mahapalika Marg, V.T., Mumbai - 400 001
5. State Level Environment Impact Assessment Authority S.L.E.I.A.A. a Committee, constituted under the Provisions of Environment Protection Act and having its office at Mantralaya, Mumbai.
6. Mr. Vinod Mohanlal Jain of Bomay, Indian Inhabitant, residing at 3/3 F Wing, Suyash CHS Ltd., Sayani Road, Bandoorkwala Compound, Opp. Parel St. Depot, Mumbai 400 025
7. Mr. Santoshkumar Ramprasad Pandey of Bombay, Indian Inhabitant, residing at R/19, 2nd Floor, Meghawadi, Old Building No. 2, Dr. S.S. Row Road, Lalbaug, Mumbai - 400 012.
8. National Green Tribunal A Tribunal constituted under the Provisions of NGT Act, 2010 having its Office at Secretariat Building, near Income Tax Office, Pune Camp, Pune 411 001 Respondents

Alonwith

Writ Petition No. 844 of 2015

B. Brother Builders Ullengal Building No. 6 Annexe, Opp. Plaza Cinema, N.C. Kelkar Road, Dadar, Mumbai - 400 028 Petitioner

v.

1. Santosh Daundkar an adult, Indian Inhabitant, 10/37 BIT Chawl, KK Marg, Mumbai Central, Mumbai 400 008
2. The Secretary, Ministry of Environment & Forests Paryavaran Bhavan, CGO Complex New Delhi-110 003
3. The Secretary, Urban Development Department, Mantralaya, Mumbai - 400 023
4. The Secretary, Environment Department, Government of Maharashtra, Mumbai - 400 023
5. The Member Secretary Maharashtra Costal Zone Management Authority, Mantralaya Mumbai - 400 023
6. The Member Secretary, State Level Environment Impact Assessment Authority, Mantralaya, Mumbai - 400 023.
7. The Chief Executive Officer, Slum Rehabilitation Authority, Bandra (East), Mumbai 400 051
8. Central Ground Water Board, State Unit Office, 217/11, Kendriya Sadan, 'B' Wing, GPOA First Floor Akurdi, Pune 411 044 Respondents

Alongwith

Appellate Side Writ Petition No. 6754 of 2015

1. M/s. Shree Balaji Concepts A Partnership Firm, having its Registered Office at Kadar Manzil, 1st Floor, Margao, Goa 403 601
2. Mrs. Radha Satish Timblo wife of late Satish Timblo Partner of Petitioner No. 1, adult, natural citizen of India, residing at H. No. 1681/1, behind Hotel Majestic, Porvorim, Bardez, Goa - 403 501 Petitioners

v.

1. State of Goa through its Chief Secretary, Secretariat, Porvorim Goa.
2. Cavelossim Villagers Forum, a Society registered under the Societies Act, 1860, bearing Registration No. 196/Goa/2013, H. No. 314/LIBR-Plaza, Patrecantem, Cavelossim, Salcete, Goa 403 731 through its President, Mr. Iris Passanha r/o. H. No. 314/L, Patrecantem, Cavelossim, Salcete, Goa.
3. Village Panchayat of Cavelossim Cavelossim, Salcete, Goa.
4. Senior Town Planner, Town and Country Planning Department South Goa, District Office, Margao, Goa
5. The Collector, South Goa District, Margao, Goa,
6. Assistant Engineer-Sub Division, Sub-Division - I, Works Div - II, Water Resource Department Gogol, Margao, Goa
7. Goa Coastal Zone Management Authority, C/o Department of Science, Technology and Environment, Government of Goa, 3rd Floor, Dempo Towers, Patto, Panaji, Goa
8. Goa State Pollution Control Board, 1st Floor, Dempo Towers, Patto, Panaji, Goa.
9. Goa State Biodiversity Board, C/o Department of Science, Technology and Environment, Opp. Saligao, Seminary, Saligao, Bardez, Goa - 403 511 Respondents

Alongwith

Appellate Side Writ Petition No. 9877 of 2015

1. Mrs. Anamika Amerkar,
2. Shri Gurudas Amerkar, both major of age, Indian Nationals, r/o H. No. 416/3, 4th Ward, Colva, Salcete Goa 403708 Petitioners

v.

1. Goa Coastal Zone Management Authority, through its Member Secretary C/o Department of Science, Technology & Environment, Government of Goa, Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 404 511
2. State of Goa, through the Chief Secretary, having office at Secretariat, Porvorim Bardez, Goa - 403521
3. Judith Almeida, House No. 257/1, Ward 3, Colva, Salcete, Goa - 403708.
4. Village Panchayat Colva, Colva Salcete Goa - 403708. through its Sarpanch Respondents

Mr. Rafique Dada, Senior Counsel with Mr. T.N. Subramaniam, Senior Counsel, Mr.

Prasad Dani, Senior Counsel, Mr. Saket Mone, Mr. Subit Chakraborti, Mr. Vishesh Katra i/b Vidhi Partners in Writ Petition No. 594 of 2015.

Mr. T.N. Subramaniam, Senior Counsel with Mr. Ninad Laud, Ms. Faiza Dhanani i/b Dhruve Liladhar & Co. for Petitioner In Writ Petition No. 6754 of 2015.

Mr. Aniruddha Joshi with Mr. Sanmish Gala i/b Markand Gandhi & Co. for the Petitioner in Writ Petition No. 844 of 2015.

Mr. Ashish Kamat i/b Mr. C.N. Gole for the Petitioner in Writ Petition No. 589 of 2015.

Mr. C.M. Korde, Senior Counsel - Amicus Curiae.

Mr. Parag Vyas with Mr. Mohamedali M. Chunawala for UOI - Respondent Nos. 1 and 3 in Writ Petition No. 594 of 2015.

Ms. P.H. Kantharia, Government Pleader with Ms. Anjali Helekar, AGP for Respondent Nos. 1 and 3 in Writ Petition No. 589 of 2015 and in Writ Petition No. 844 of 2015.

Mr. Ajit Anekar with Mr. Thomas James i/b Auris Legal for Respondent No. 2 in Writ Petition No. 6754 of 2015 and for Respondent No. 3 in Writ Petition No. 9877 of 2015.

Mr. Aditya Pratap for Respondent No. 2 in Writ Petition No. 594 of 2015 and for Respondent No. 1 in Writ Petition No. 844 of 2015.

Mr. Rajiv Chavan, Senior Counsel with Mr. Jaydeep Deo for Respondent - UOI in Writ Petition No. 844 of 2015.

Ms. Sharmila Deshmukh for Respondent No. 5 in Writ Petition No. 594 of 2015 and Writ Petition No. 844 of 2015.

Ms. Rupali Dixit for Respondent No. 2 in Writ Petition No. 589 of 2015.

Mr. Sandeep Bane for Respondent Nos. 6 and 7 in Writ Petition No. 589 of 2015.

Mr. G.D. Utangale alongwith Mr. Chetan Mhatre i/b Utangale & Co. for Respondent No. 7 in Writ Petition No. 844 of 2015.

Ms. Rekha Panchal for Respondent No. 8 in Writ Petition No. 594 of 2015.

Writ Petition No. 594 of 2015; Writ Petition No. 589 of 2015; Writ Petition No. 844 of 2015; Appellate Side Writ Petition No. 6754 of 2015; and Appellate Side Writ Petition No. 9877 of 2015

Decided on June 9, 2016

The Judgment of the Court was delivered by

V.M. KANADE, J.:— The learned Counsel appearing on behalf of the parties in Writ Petition No. 9877 of 2015 requested this Court that it may be separately heard. Hence, Writ Petition No. 9877 of 2015 is de-tagged from this group of Writ Petitions and would be heard separately.

2. All these Writ Petitions, except Writ Petition No. 9877 of 2015, can be conveniently disposed of by this common judgment since the issue involved in these Petitions is identical.

3. Heard.

4. Rule. Rule is made returnable forthwith. Respondents waive service. By consent of parties, Petitions are taken up for final hearing.

5. For the sake of convenience, hereinafter, facts in Writ Petition No. 594 of 2015 would be referred to.

6. Petitioner has filed this Petition under Article 226 of the Constitution of India, challenging the Judgment and Order passed by the National Green Tribunal (For short "NGT") dated 01/10/2014 in Misc. Application No. 65 of 2014 in Application No. 13 of 2014.

7. Respondent No. 1 is the Ministry of Environment & Forest. Respondent No. 2 is the Applicant in the original proceedings before the National Green Tribunal.

Respondent No. 3 is the Member Secretary of National Coastal Zone Management Authority. Respondent No. 4 is the Secretary of the Environment Department, Government of Maharashtra. Respondent No. 5 is the Member Secretary of Maharashtra Coastal Zone Management Authority. Respondent No. 6 is the Regional Director, Central Groundwater Board. Respondent No. 7 is the Central Ground Water Board. Respondent No. 8 is the Member Secretary of Maharashtra Pollution Control Board.

8. Petitioner is a Company incorporated under the Companies and carrying on real estate business for more than 22 years. Petitioner - Company was established in the year 1988 and has been in the business of creating landmark properties in real estate in accordance with the provisions of law, as a developer. Petitioner has developed a plot of land situated at Village Groegaon (West) admeasuring 34,320.40 sq. mtrs.

9. Petitioner, before developing the said property, applied for obtaining Commencement Certificate and, initially, on 07/07/1993 the plans for the commercial building were originally approved.

10. On 18/09/1997, Commencement Certificate was issued for Building No. 1, Sub Plot B, CTS No. 1A/3 of Village Goregaon and 1A/1B at premises at Street Village, Pahadi Village, Goregaon West Ward P/South.

11. On 26/12/2001, the plans for commercial building were originally approved.

12. On 26/12/2002, Commencement Certificate for proposed residential building on Plot bearing CTS 1A - A(part) was issued.

13. On 01/03/2006, consent to establish was given by Maharashtra Pollution Control Board ("MPCB") and it was valid till completion of the construction.

14. On 03/02/2006 MPCB addressed a letter to the owners informing them that EIA Notification of 07/07/2004 may not be applicable.

15. Petitioner, thereafter, amended the plans from time to time and the construction was carried out by the Petitioner on the said property in compliance with the amended plans approved and sanctioned by the Planning Authority and has constructed one commercial building, one residential building alongwith club house and the buildings are in final stages of completion.

16. Petitioner was served with the Application No. 13 of 2014 filed by Respondent No. 2, seeking certain reliefs under Section 14 read with Section 15 and 18 of the said Act.

17. On 12/03/2014, Petitioner filed its affidavit-in-reply which was converted into an application being Misc. Application No. 65 of 2014 in which issue of limitation as well as locus of Respondent No. 2 to file application under Section 14 and 15 of the said Act before the NGT was raised. Respondent No. 2 filed its affidavit-in-reply. Affidavit-in-reply was also filed by Respondent No. 9 in the main application, stating therein that construction carried out by the Petitioner was in accordance with law and as per the sanctioned and approved plans of Municipal Corporation of Greater Mumbai and it was further stated in the affidavit that the plot was not affected by CRZ and hence permission from CRZ was not required for carrying out construction on the said proeprty.

18. On 01/10/2014, NGT dismissed the Petitioner's Misc. Application No. 65 of 2014, holding that the Application filed by Respondent No. 2 was within limitation and that Respondent No. 2 had locus to file the application before the Tribunal.

19. Initially, preliminary objection was raised regarding maintainability of the Writ Petition against the orders of NGT. However, at the time of hearing of the Petitions, Mr. Pratap, the learned Counsel appearing on behalf of Respondent No. 2 did not press this objection.

20. Though this objection is not pressed, in our view, the said objection is without

any substance. This Court in PIL No. 88 of 2013 by Judgment and Order dated 11/09/2015, relying on the judgment of Hon'ble Supreme Court in *L. Chandrakumar v. Union of India* [(2014) 10 SCC 1] held that Writ Petition challenging the order of NGT is maintainable before Division Bench of the High Court. Division Bench of this Court presided over by Chief Justice Mohit Shah (as he then was) has taken a similar view in Writ Petition No. 5754 of 2015 (*Sham Resorts and Hotels Pvt. Ltd. v. Maria Rebillet*) and entertained the Petition against the order of NGT. Another Division Bench of this Court also took a similar view in Writ Petition No. 433 of 2015 (*Leading Hotels Ltd. v. Mr. Anthony Mendis*)

21. The Supreme Court in *L. Chandrakumar v. Union of India* [(1997) 3 SCC 261] held that all decisions of Tribunals which are created under Articles 323A and 323B of the Constitution of India, would be subject to High Court's writ jurisdiction under Article 226 and 227 of the Constitution of India.

22. In view of this settled position in law, we have no manner of doubt that this Court has jurisdiction to entertain Writ Petitions challenging the orders passed by NGT.

23. The second submission was regarding alternative remedy which was available to the Petitioner of filing an appeal against the order of NGT to the Supreme Court of India. This objection is also without any substance. The Apex Court in *Whirpool Corporation v. Register of Trade Marks, Mumbai* [(1998) 8 SCC 1] has held that writ court can exercise its discretionary jurisdiction of judicial review in respect of the Petitioner having an alternative remedy available to file an appeal, particularly in three contingencies viz (I) where Writ Petition seeks enforcement of fundamental right, (ii) where there is a violation of principles of natural justice and (iii) where the Order from the proceedings are wholly without jurisdiction or virus of the Act is challenged.

24. In the present case, Application was filed before the NGT, challenging the locus of Respondent No. 2 in filing Application and secondly on the ground that the Application was barred by law of limitation.

25. The issue raised in these Petitions is of considerable importance and the same is likely to affect large number of cases which may be filed before NGT. On the one hand, it is essential to ensure protection of environmental rights as laid down under the Environment (Protection) Act, 1986 and other Acts mentioned in Schedule-I of the National Green Tribunal Act, 2010 and therefore the extent and scope of power which may be exercised by NGT has to be considered in detail on the touchstone of the provisions of Environment (Protection) Act, 1986 and other Statutes including the Constitution of India. Secondly, the question of limitation also needs to be decided in view of the peculiar manner in which the period of limitation is prescribed under Section 14 of the National Green Tribunal Act, 2010. In view of the peculiar wording of the said section, correct interpretation of the said provision is necessary, firstly in order to ensure that those who violate the provisions of Environment (Protection) Act, 1986 do not get away scotfree and, at the same time, applications are not filed belatedly after the entire project is completed. The third question which is equally important is : whether NGT can entertain an application which is in the nature of PIL, though the words used in the section are that "on a complaint filed by a person aggrieved, NGT can entertain an application". The exact connotation of the words "person aggrieved" is therefore required to be looked into.

26. There are two conflicting interests viz right of citizens to ensure that there is due compliance of the provisions of Environment (Protection) Act, 1986 and, at the same time Developers and Builders who have already completed the Project are not harassed by the applications being filed after considerable lapse of time. These two conflicting interests will have to be reconciled by laying down proper law in accordance with the provisions of the Act.

27. Since all these Petitions raise this important question mentioned hereinabove,

we thought it fit to appoint Mr. C.M. Korde, the learned Senior Counsel as an Amicus Curiae to assist this Court. Mr. C.M. Korde readily agreed to assist this Court and has taken us through the relevant provisions of the National Green Tribunal Act, 2010, Environment (Protection) Act, 1986, Limitation Act and various judgments on which reliance is placed by him. During the course of his arguments, he candidly submitted that certain observations made by the NGT, Pune Bench were apparently self-contradictory and certain findings were given without taking into consideration two other judgments given by Coordinate Bench of the NGT (Delhi), which had taken a contrary view to the view taken by the Pune Bench of NGT. He also submitted that proper reasons were not given while discarding the ratio of the judgment given by Coordinate Bench of NGT (Delhi) by Pune Bench of NGT.

28. Mr. Rafique Dada, the learned Senior Counsel for the Petitioner in Writ Petition No. 594 of 2015 and Mr. T.N. Subramaniam, the learned Senior Counsel in Writ Petition No. 6754 of 2015 have also assisted this Court and taken us through various judgments delivered by this Court and Supreme Court and they submitted that the impugned order passed by NGT has not taken into consideration various aspects and the finding which is given on the issue of limitation is contrary to the provisions of the Act itself. They submitted that the NGT, Pune Bench had held that there is a continuous cause of action and therefore Tribunal could entertain the application filed under sections 14, 15 and 18, if no action is taken on the complaint filed by the original applicant to the Environmental Authorities and in that case cause of action would first arise from the date on which the original applicant came to know about the violation and the consequent inaction by the Environmental Authorities after a complaint was filed by the original applicant. They submitted that if the period of limitation is construed as held by the NGT, Pune Bench then complaint could be filed at any point of time even after the Project was completed. They submitted that this was not the intention of the Parliament and therefore the section was worded in very peculiar manner. They submitted that Environment (Protection) Act, 1986 did not provide for a period of limitation for the Authorities under the Act to take any action but on the other hand section 14(3) of the National Green Tribunal Act, 2010 provided that the NGT could entertain an application within six months from the date on which the cause of action first arose.

29. Mr. Dada, the learned Senior Counsel appearing on behalf of the Petitioner submitted that, in the present case, Project had been completed, Buildings were nearing completion and thereafter present application has been filed and, as such, it was clearly barred by limitation. It was also submitted that there were no averments or pleadings in the application regarding the date of knowledge on which the cause of action first arose, giving right to the original applicants to file their application before the NGT.

30. We have heard all the Counsels at length. We have perused the impugned orders.

31. There is some substance in the submissions made by Mr. Korde, the learned Amicus Curiae who has assisted this court and also in the submissions made by Mr. Dada, the learned Senior Counsel appearing for the Petitioner in Writ Petition No. 594 of 2015 and Mr. Subramaniam, the learned Senior Counsel appearing on behalf of the Petitioner in Writ Petition No. 6754/2015.

32. Perusal of the impugned orders indicate that there were two judgments of the Coordinate Bench viz of NGT, Delhi wherein the said issue of locus and limitation had been considered and the said judgments have been brushed aside without giving reasons by the Tribunal. NGT, Delhi in *Rana Sen Gupta v. (1) State of India, (2) State of West Bengal (3) Rashmi Metaliks Ltd. (4) West Bengal Pollution Control Board* (Appeal No. 54/2012) had held that the Appellant in that case is not an aggrieved

person to challenge the order which was impugned before the NGT. The learned Senior Counsel appearing on behalf of the Petitioner also submitted that reliance on the case of *Goa Foundation v. Secretary, MoEF* (MA No. 49/2013 in Application No. 26/2012) was misplaced. It was submitted that on the one hand NGT Bench, Pune brushed aside the judgment of the Coordinate Bench in the case of *Rana Sen Gupta* (supra) and on the other hand it relied on the judgment of *Goa Foundation* (supra) by holding that the judgment of Coordinate Bench was binding and to be respected by the another Bench. It is obvious that in the said order two contradictory observations have been made by the NGT Bench, Pune.

33. In our view, there is much substance in the submission of Mr. Dada, the learned Senior Counsel appearing on behalf of the Petitioner that the view taken by NGT Bench, Pune that the cause of action would arise from the date of knowledge of the original applicant about the alleged violation and secondly from the date on which Environmental Authorities do not take any action after violation is brought to their notice is not in accordance with law.

34. Section 14(3) of the National Green Tribunal Act, 2010 reads as under:

“14(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.”

35. A bare perusal of the said section clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima facie, therefore it cannot be interpreted by any stretch of imagination that it would arise from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part. There appears to be a lot of confusion in the mind of NGT Bench, Pune on various aspects of continuous cause of action. Perusal of the said Section indicates that the concept of continuous cause of action cannot apply to the complaints which are filed before the NGT because had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose. If the interpretation which is sought to be given to the provision by the NGT Bench, Pune in the impugned order is accepted, the complaint could be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years. At the same time, if there is any violation of the provisions of the Environment (Protection) Act, 1986, the same have to be addressed and looked into. The only question is by which Authority.

36. Taking an overall view of the matter and considering the importance of the issues which are raised by the Petitioners and original Applicant and also the fact that impugned order does not address the issue in its proper perspective, we set aside the impugned order and remand the matter to the Tribunal to decide afresh on merits and in accordance with law. During the pendency of the said Misc. Application, further proceedings in the main Application are stayed. Tribunal shall also frame a preliminary issue on the question of limitation and locus after giving an opportunity to both sides and lay down the concept of “aggrieved person” and also on the point whether NGT can entertain an application which is in the nature of PIL which is otherwise maintainable in the High Court and Supreme Court of India. We direct the NGT to decide all these issues within a period of three months.

37. Since issue involved in these matters is similar, wherever impugned orders are passed, the same are set aside and during the pendency of the said Misc. Application, further proceedings in the main Application are stayed and wherever no orders are passed, NGT will frame preliminary issue on the facts of each case as mentioned above and decide the same expeditiously within a period of three months.

38. With the aforesaid directions, all these Petitions excluding Writ Petition No.

9877 of 2015 are disposed of and the rule is made absolute accordingly.

39. We must express our appreciation for the assistance given by Mr. C.M. Korde, the learned Amicus Curiae.

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ITEM NO.36

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34831/2016

(Arising out of impugned final judgment and order dated 09-06-2016 in CWP No. 6754/2015 passed by the High Court Of Judicature At Bombay)

CAVELOSSIM VILLAGERS FORUM

Petitioner(s)

VERSUS

M/S SHREE BALAJI CONCEPTS & ORS.

Respondent(s)

Date : 26-10-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Ms. Madhumita Bhattacharjee, AOR
Mr. Vidur Kamra, Adv.

Intervention Mr. Guru Krishna Kumar, Sr. Adv.
Ms. Smriti Churiwal, Adv.
Mr. Kush Chaturvedi, Adv.
Mr. Priyashree, Adv.

For Respondent(s) Mr. Dhruv Mehta, Sr. Adv.
Mr. Ninad Laud, Adv.
Mr. Iro D'Costa, Adv.
Mr. Jayant Mohan, Adv.

Mr. Jai A. Dehadrai, Adv.
Mr. S. S. Rebello, Adv.
Ms. Shivangini Gupta, Adv.
Ms. Supriya Juneja, Adv.

Mr. Ishaan George, Adv.
Mr. Sumit Kumar, Adv.
Dr. (Mrs.) Vipin Gupta, AOR

Mr. Subrat Birla, Adv.
Mr. Subhash Chandra Birla, Adv.

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

In paragraph 36 of the impugned Judgment, the High Court has directed as under :-

"36. Taking an overall view of the matter and considering the importance of the issues which are raised by the Petitioners and original Applicant and also the fact that impugned order does not address the issue in its proper perspective, we set aside the impugned order and remand the matter to the Tribunal to decide afresh on merits and in accordance with law. During the pendency of the said Misc. Application, further proceedings in the main Application are stayed. Tribunal shall also frame a preliminary issue on the question of limitation and locus after giving an opportunity to both sides and lay down the concept of "aggrieved person" and also on the point whether NGT can entertain an application which is in the nature of PIL which is otherwise maintainable in the High Court and Supreme Court of India. We direct the NGT to decide all these issues within a period of three months."

The main question of law, as advanced by the learned counsel for the petitioner, is that the High Court could not have entertained the writ petition. We do not think that this matter should be kept pending on that question since ultimately, the proceedings before the Tribunal will be delayed.

Therefore, leaving the question of law open, this Special Leave Petition is disposed of with a direction to the Tribunal to pass appropriate orders in terms of paragraph 36 of the Judgment extracted above.

It will be open to the parties to take all available contentions before the Tribunal.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR