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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8504 OF 2012

Suresh Lachmandas Ahuja ...Petitioner

vs.

Maharashtra Pollution Control
Board, Sub Regional Office,
Kalyan II & Others

...Respondents

Mr.J.S.Chandnani for the Petitioner

Mr.S.B.Shetye for the respondent No.1

Ms M.P.Thakur, AGP for respondent Nos.4 and 6.

Mr.Kamlesh Mali for respondent No.7

CORAM : A.S.OKA, &

S.C.GUPTA, JJ.

DATE : DECEMBER 11,2013

P.C.:

1 Heard the learned counsel for the petitioner, learned counsel for the first respondent and the learned counsel for the seventh respondent. A preliminary objection is raised by the respondents on the ground that the Tribunal established under the National Green Tribunal Act,2010, will have jurisdiction to entertain the dispute in this petition.

2 We have perused sections 14 and 16 of the National Green Tribunal Act,2010. In the present case, no objection certificate issued by the first respondent has been challenged on various grounds including the ground that the business has been started by the seventh respondent in a structure which is unauthorisedly constructed and in any

event, there is no occupation certificate granted in respect of the said structure. Therefore, one of the main questions which arises in this petition is whether the seventh respondent illegally commenced user of the structure when admittedly there is no occupation certificate granted to permit the use of the structure.

3 In paragraph 9 of the petition, there is a specific averment made that there is neither a completion certificate nor an occupation certificate granted in respect of the structure. In the petition, reliance has been placed on a notice issued by the second respondent Village Panchayat under section 52 of the Mumbai Village Panchayat Act, 1958 on 22nd June 2011 to the petitioner. In the said notice, it is alleged that the petitioner has carried out excess construction contrary to the permission to the extent of 1166 sq. ft. While dealing with the specific contention in paragraph 9 of the petition, in the reply of the seventh respondent in paragraph 12 thereof, a specific case is made out that there is no provision and/or mandate to obtain completion or occupation certificate from the Village Panchayat. Thus, the admitted position is that the seventh respondent has neither obtained a completion nor an occupation certificate in respect of the structure in which he is carrying on business. The seventh respondent is relying upon the permission dated 12th April 2005 granted in exercise of power under sub section 2 of section 52 of the said Act of 1958 in which

condition no.8 has been specifically incorporated that unless the completion certificate is obtained, house/structure shall not be used. The said permission has been renewed on 26th June 2008 by incorporating a condition that the construction shall be carried out subject to the conditions incorporated in the original permission. The learned counsel for the seventh respondent submitted that the seventh respondent has applied for grant of completion certificate along with Architect's report of completion. He states that the Village Panchayat has levied the property taxes on the structure.

4 At this stage we must note that to the reply filed by the Pollution Control Board, a letter dated 28th April 2012 addressed by the said Board to the seventh respondent has been annexed calling upon the seventh respondent to produce extended No Objection Certificate from the Village Panchayat failing which the action of cancellation of consent shall be taken. It is also stated that even the action of suspension of the consent shall be taken.

5 Thus, it appears that the seventh respondent has started user of the structure in which he is carrying on business without obtaining completion certificate which was a mandatory requirement of construction permission granted on 12th April 2005.

6 Hence, rule. The learned counsel for the first respondent as well as seventh respondent waive service. Learned AGP waives service for fourth and

sixth respondents. Rule on interim relief is made returnable on 30th January 2014.

7 In view of prima facie finding recorded by us, we hereby restrain the seventh respondent from using the House no.746 on Survey No.14 at Village Ashele, Taluka Ambernath, District Thane for any purpose whatsoever without obtaining completion certificate from the second respondent Village Panchayat.

(S.C.GUPTA, J.)

(A.S.OKA, J.)