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SARV JAN KALYAN SEWA SAMITI

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 3571 of 2019)

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APRIL 16, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

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Judgment/order: Effect of – Order passed by the National Green tribunal – Appeal thereagainst – Appellant’s case that as a result of the order passed by the tribunal, appellant has been completely shut out from redress in the proceedings pending before the NGT – Held :Consequence of the impugned order is to effectively shut out the appellant from addressing its objections to the proposed exchange before the NGT – This course of action, followed by the NGT, is indefensible – NGT ought to have, in deference to the order passed by this Court, allowed the process which had been initiated before the State and Ministry of Environment, Forest and Climate Change to continue, but to permit the appellant in the pending proceedings to address its objections in accordance with law – NGT was duty bound to follow the order of this Court and the same was not done – Thus, the impugned order of the NGT set aside.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3571 of 2019.

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From the Judgment and Order dated 11.02.2019 of the National Green Tribunal, Principal Bench at New Delhi in O.A. No. 124 of 2017.

N. Hariharan, Sr. Adv., Varun Mahalawat, Siddharth S. Yadav, Nishant Anand, Varun Deswal, Ms. Mallika, Prateek, Abhigya, Adity Vaibhav Singh, Ms. Rekha Ahgara, Ms. Sneha Siddharth, Advs. for the Appellant.

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Anil Grover, AAG, C. U. Singh, Sr. Adv., Ms. Shyel Trehan, Raghav Anand, Aman Shukla, Ms. Liz Mathew, Ms. Noopur Singhal, Rahul Khurana, Sanjay Kumar Visen, Advs. for the Respondents.

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The following Order of the Court was passed

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O R D E R

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Appeal admitted.

2. On 8 February 2019, the following order was passed by this Court, when a challenge was addressed to the order of the National Green Tribunal¹ dated 5 December 2018:

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“Since the proceedings are still pending before the National Green Tribunal, it is not necessary for this Court to entertain the civil appeal at this stage. The earlier order dated 30 October 2018 and the subsequent order dated 5 December 2018 (the latter is impugned in the present appeal) are interlocutory. Any decision by the Ministry of Environment, Forests and Climate Change, Government of India and by the Forest Department of the Government of Haryana must be in accordance with law.

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Since the OA is still pending before the Tribunal, this shall not come in the way of the appellant pursuing its remedies in the pending proceedings.

The appeal is accordingly disposed of. No costs.”

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3. On 5 December 2018, the NGT had, while adverting to its earlier order dated 30 October 2018, reiterated that the fourth respondent herein may submit a proposal to the Ministry of Environment, Forests and Climate Change² and to the State Government. The proposal was to be considered by the State of Haryana and by the MOEF&CC.

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4. When the earlier Civil Appeal came up before this Court on 8 February 2019, as the order indicates, it was disposed of since the direction contained in the order dated 5 December 2018 was interlocutory in nature. However, this Court observed that:

(i) Any decision by the MOEF&CC and by the Forest Department of the Government of Haryana must be in accordance with law;

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(ii) Since the Original Application³ was still pending before the

¹ NGT

² MOEF&CC

³ OA

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- A NGT, this shall not come in the way of the appellant pursuing its remedies in the pending proceedings.

5. Following the order passed by this Court, a two-Judge Bench of the NGT passed the following order on 11 February 2019:

- B “At the outset, we have been informed that the order dated on 05.12.2018 was challenged by the applicant before the Hon’ble Supreme Court. However, the said civil appeal has been decided without any interference by the Hon’ble Court. Therefore, the steps to be taken in furtherance of the proposal given on 05.12.2018 should be expedited. The State of Haryana, before which the
- C proposal is pending for consideration, to decide the same within two weeks from today. Thereafter, the matter be sent to Regional Officer, MoEF at Chandigarh who shall consider and decide within two weeks from date of receipt of the proposal from State of Haryana.

- D Accordingly, Original Application No.124 of 2017 stands disposed of, with no order as to cost.

M.A. No.208 of 2017

- E This application does not survive for consideration as the main appeal itself stands dismissed.

M.A. No.208 of 2017 stands disposed of accordingly.”

The above order dated 11 February 2019 is the subject matter of the present Civil Appeal.

- F 6. On behalf of the appellant, it has been submitted that as a result of the impugned order of the NGT, the appellant has been completely shut out from seeking redress in the proceedings which were pending before the NGT. It has been urged that the clear intendment of the order of this Court was that all objections which the appellant has in regard to the proposal for the exchange of land with forest land alleged to have
- G been encroached upon would have to be considered by the NGT. The NGT has obviated that process by simply disposing of the OA without considering the objections.

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7. On the other hand, Mr. C.U. Singh, learned senior counsel appearing on behalf of the fourth respondent, submits that the fourth respondent has already taken steps to dismantle and shift the wall and the impugned order of the NGT was in furtherance of the earlier directions which have already been issued on 30 October 2018 and 5 December 2018. Moreover, it has been submitted that the Court may at best delete the last sentence of the order of the NGT by which the OA has been disposed of so that the OA may be restored to file for consideration of such objections as the appellant may have. Alternatively, it has been submitted that the appellant may be left at liberty to pursue its remedies once a final decision has been arrived at by the State of Haryana and by the MOEF&CC.

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8. At the outset, it is necessary to observe that the order of this Court dated 8 February 2019 indicates that the reason why the Court did not interfere, at that stage, with the order dated 5 December 2018 was because it was of an interlocutory nature. At the same time, this Court observed that any decision by the MOEF&CC as well as by the State Government would have to be in accordance with law. More significantly, since the OA was pending, this Court observed that this shall not come in the way of the appellant pursuing its remedies in the pending proceedings. We find from the impugned order of the NGT dated 11 February 2019 that it proceeded on the basis of what it was informed as the crux of the order of this Court. Had the NGT awaited a copy of the order of this Court, it would have been in a position to appreciate the contents of the order which was passed on 8 February 2019. The consequence of the impugned order is to effectively shut out the appellant from addressing its objections to the proposed exchange before the NGT. In our view, this course of action, which has been followed by the NGT, is indefensible. The NGT ought to have, in deference to the order passed by this Court, allowed the process which had been initiated before the State and MOEF&CC to continue, but to permit the appellant in the pending proceedings to address its objections in accordance with law.

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9. We are, therefore, unimpressed with the submissions which have been urged on behalf of the fourth respondent and, for that matter, on behalf of the State of Haryana. The NGT was duty bound to follow the order of this Court and we are constrained to observe that this has not been done.

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- A 10. For the above reasons, we allow the appeal and set aside the impugned order of the NGT dated 11 February 2019 in its entirety. We accordingly restore OA 124 of 2017 to the file of the NGT and now expect that the NGT shall abide by the order passed by this Court on 8 February 2019.
- B 11. The Appeal is accordingly disposed of. No costs.

Nidhi Jain

Appeal disposed of.