Ratnagiri Nagar Parishad vs Gangaram Narayan Ambekar on 6 May, 2020

Equivalent citations: AIRONLINE 2020 SC 553

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Bench: Dinesh Maheshwari, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2412/2020
(Arising out of SLP(C) No. 18417/2017)

Ratnagiri Nagar Parishad …Appellant(s)

Versus

Gangaram Narayan Ambekar & Ors. ...Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. Leave granted.

2. This appeal emanates from the judgment and order dated 29.8.2016 passed by the High Court of Judicature at Bombay 1 in Second Appeal No. 771/2015, whereby the judgment and decree dated 11.2.2015 passed by the District Judge, Ratnagiri 2 in Regular Civil Appeal No. 34/2011 came to be affirmed, as a result of which the suit filed by the respondent Nos. 1 to 19 (original plaintiffs) in the Court of Civil Judge, Senior Division, 1 For short, “the High Court” 2 For short, “the first appellate Court” Ratnagiri3 being RCS No. 25/2005 for permanent injunction against the appellant and respondent No. 20 (State of Maharashtra), restraining them from starting the Solid Waste Disposal Project4 at the suit property, has been decreed. In other words, the trial Court had dismissed the suit, but the first appellate Court allowed (decreed) the same, which decision has been upheld by the High Court in the Second Appeal.

3. Briefly stated, the respondent Nos. 1 to 19 filed the stated suit on 31.1.2005 in representative capacity being residents of different Wadas of the villages at Fansavle, Dandeadom, Mirjole, Majgaon and Kelye in District Ratnagiri. The gravamen of the issues raised in the stated suit was that the appellant – Ratnagiri Nagar Parishad intends to set up a Solid Waste Disposal Project (the Project) in the suit property at village Dandeadom, Taluka and District Ratnagiri bearing Gat No. 219 admeasuring 2H□46 Aars.5, which land had been allotted to the appellant by the State Government. The suit land is located around 10 kms. away from the limits of the Ratnagiri city at a hilly and sloppy area. The entire area is rocky and hard. The location selected for setting 3 For short, "the trial Court" 4 For short, "the Project" 5 For short, "the suit land" or "the suit property" up the Project was wholly ill□advised, as it would entail in serious health problem for the villagers in the locality and also inevitably pollute the river nearby flowing from Kelye village through the villages Majgaon, Mhamurwadi upto Sakharat. Moreover, on this river, Sheel Dam is located on the boundary of Fanasavle village, which provides water supply to Ratnagiri city. Thus, the Project is likely to pollute the Dam water as well. It is asserted that the entire Kokan area receives heavy rainfall between months of June and October and considering the direction of flow of river and other streams in the nearby area, there is imminent possibility of causing severe water pollution due to the solid waste piled up on the suit property. Initially, some other site was identified for setting up the Project, but due to political intervention, it has been shifted to the present location, which is not at all ideal being a rocky hard and sloppy track. Other fallow lands are available in the Nagar Palika jurisdiction, which are more suited for the intended Project spread over in several acres and are at the base of the Ratnadurg Fort. The authorities had in fact commenced the process of acquiring that land near Bhataye seashore within the limits of Fansop village, but for reasons best known to the authorities, the idea to continue the Project at that location has been disbanded. It is asserted that there is no existing public road access to the suit land and the trucks carrying the solid waste will have to be provided access through private lands in the neighbourhood including that of some of the plaintiffs. Furthermore, the appellant had not taken any permission from the competent authority (the Health Officer of Jilla Parishad/Health Department). In substance, the grievance is substantially about possible environmental fallout due to setting up of the Project in the suit property and in particular, to the nearby river and dam, which is the source of water supply to habitants of District Ratnagiri.

4. The appellant filed written statement and refuted every assertion in the plaint about the possible environmental fallout due to setting up of the Project at the stated location. The appellant asserted that the land belonged to the State Government and only after due consultation and deliberations with all concerned, it has been allotted to the appellant for setting up of the Project thereat. Further, the necessity of setting up such a project need not be underscored. It is a statutory obligation of the appellant and also necessitated on account of directions issued by the Court in public interest litigation in that regard. The appellant is obliged to collect solid waste on daily basis from the localities within the District (Ratnagiri) and provide for mechanism to dispose of the same as per the standard protocol. Considering the ill□effects of process of collection and disposal of such waste, an expert opinion/report was submitted to the Government. It is stated that the Project would be set up strictly in conformity with the Environment (Protection) Act, 19866, which had already come into force including the Municipal Solid Wastes (Management and Handling) Rules, 20007. These Rules have been formulated on the basis of directions given by this Court. The appellant denied that the

Project would be a cause for pollution, as all precautions would be taken and necessary environment clearances will be obtained from the competent authority. It is stated that initially the authorities had selected three places for setting up the Project, but it was realised that the other two locations would be non□compliant with the prescribed conditions under the concerned environment laws. As a matter of fact, the State Government had established a High□Level Committee to make 6 For short, "the 1986 Act" 7 For short, "the 2000 Rules" recommendations about the location of the Project, on 5.12.2003 consisting of (1) Regional Officer, Pollution Control, (2) Sub□Divisional Forest Officer, (3) Jilla Parishad Geologist, Ground Water Survey and Development Machinery, (iv) Town Planner and

(v) District Health Officer. The said Committee, after due deliberations identified the suit property as ideal for setting up of the proposed Project, which indeed would be compliant with all environment regulations. The appellant, therefore, stoutly denied the assertion in the plaint that the decision was taken by the appellant unilaterally and without following due process. The appellant also denied the assertion about likelihood of polluting the Dam water or river flowing from village Kelye through other villages upto the sea. The appellant denied the factual assertions in the plaint and called upon the plaintiffs (respondent Nos. 1 to

19) to substantiate the relevant facts stated therein. The appellant had specifically denied that the Project would be set up on the slope, as suggested in the plaint. Further, it is asserted that no waste, which will become rotten and wet or polluted water will be allowed to flow from the suit land. These precautions will be taken without exception and stringent conditions will be prescribed as is evident from the official records. In other words, the plaintiffs have made irresponsible and frivolous statements in the plaint without any basis to substantiate the same. According to the appellant, the suit was politically motivated. The appellant specifically asserted that the Project site was yet to be finalised by the appellant and would abide strictly by the recommendations of the experts providing for stringent conditions. The appellant asserted that because of the pendency of the suit proceedings, necessary permissions and clearances from the competent authority under the environment laws could not be pursued further. It is thus stated that the Project would be set up only after such permissions are granted and would be implemented under the strict supervision of the concerned authorities. The appellant also stated that the suit was not maintainable and ought to be dismissed with costs.

5. On the basis of rival stand, the trial Court framed six issues for determination as follows: □Issues

1. Whether the Plaintiffs have established that the disputed Solid Waste Disposal and Management project is harmful to the health of the citizens of the Panchkrosh?

2. Whether the Plaintiffs have established that the suit property is not convenient for the Solid Waste Disposal and Management Project?

3. Whether the Plaintiffs have established that objections and obstructions have been caused in his legal rights?

4.Whether the Plaintiffs are entitled to seek relief in the Civil Court?

5. Whether the Plaintiffs are entitled to get the Permanent injunction Order?

6. What Order and Decree?

Both sides produced oral and documentary evidence in support of their stand. The trial Court, after analysing the evidence adduced by the plaintiffs (respondent Nos. 1 to 19), noted that the assertions made by the plaintiffs were founded on their understanding of the matter and no proof to support that claim was forthcoming. The trial Court noted the admission given by the plaintiffs' witnesses that no proof has been produced by them to establish the fact of existence of public settlements near the suit property. Also, that they had no knowledge or expertise about the solid waste Project nor they collected any information from any expert before asserting that the said Project would not be viable and entail in causing pollution to the Dam water and river as such. They also admitted that the case set out by them was on the basis of their personal knowledge and there was no scientific basis. In the cross□examination, they had admitted that before taking possession of the disputed land for the proposed Project, the Project Officer of the Nagar Parishad and other Officers had held discussion with the Dandeadom Sarpanch and members. These admissions clearly belied the case made out by the plaintiffs that the appellant had decided to set up the proposed Project unilaterally and without any consultation. The trial Court, therefore, proceeded to dismiss the suit filed by the respondent Nos. 1 to 19 by concluding thus: □"15. In the present case, the Plaintiffs have not given the strong proof for establishing that there is residential colonies near the Proposed project. In the same way, they have not established the manner in which water pollution will be caused due to the proposed project. For the purpose of establishing that there will be water pollution due to the proposed project, it was necessary for the Plaintiffs to establish the so called Plan of the flow of Dandeadom river. For the purpose of establishing that there will be water pollution due to the project, it was necessary for the plaintiffs to give evidence of expert persons. The Plaintiffs have admitted in their cross examination that they have taken personal information of the solid Waste Project. The allegations made in the suit by the plaintiff seems to be their personal opinion. In the same way, it becomes clear that there is no scientific base to their opinion. As the Plaintiffs have established that there will be the alleged pollution in future, the question of giving the permanent injunction does not arise. The plaintiffs have not established that their legal right has been neglected. The Plaintiffs have not given prima facie evidence for giving the permanent injunction.

11. The answer of issues No. 1 to 4 is being given in the negative and the Order is being made as under:

ORDER

1. Suit is being dismissed with costs.

2. Decree may be made accordingly."

6. The matter was carried in appeal by the respondent Nos. 1 to 19/plaintiffs. The first appellate Court after adverting to the rival contentions formulated following points for its consideration: ☐Points

1. Whether the suit solid waste and Management Project is injurious to the health of villagers in vicinity as alleged?

2. Whether the suit land is convenient and suitable for suit solid waste and management project?

3. Whether there is an obstruction and interference in the lawful rights of plaintiffs?

4. Whether the plaintiffs are entitled to claim relief before Civil Court?

5.Whether plaintiffs are entitled to get decree of perpetual injunction?

6.Whether judgment and decree of Ld. Trial Court requires interference?

7. What order and decree?

The first appellate Court then adverted to the oral evidence of the witnesses examined by the plaintiffs and defendants (appellant and respondent No. 20) and went on to opine as follows: ☐"28. After considering the oral evidence led by both the parties, it reveals that the oral evidence led by the plaintiff is more trustworthy and credible than the evidence led by the defendants. Because during cross examination witnesses for plaintiffs remained stick up to their version narrated by them in their examination in chief, but, here, so far as regards evidence of defendant's witnesses, their statement in examination in chief is demolished by way of cross examination, as they have given above noted vital admissions. It reveals from oral evidence led by both the parties that the suit property is situated on hilly area, which is having stony surface. It also reveals that the suit property is having slope towards southern and western side. It also reveals that Dandeadam river is situated on the bottom of the slope. The witnesses for defendants itself also admitted that in Ratnagiri city there is a collection of 15 to 16 trucks solid waste per day. If such a huge wastage is going to be stored on the suit property, which is having slope towards river, then, definitely it will pollute river water. Because the plaintiffs have specifically pleaded and deposed that in the Konkan Region there is rain fall of 120 to 130 inch per year in rainy season. A judicial note can be taken of this fact that there is heavy rain fall in Konkan region in every rainy season. If such a huge wastage is going to be stored on the suit property, then definitely it will be flown into river because of slope and because of the heavy rain fall. If such a wastage will be flown into river water, because of its decomposition, it will be fermented and it will definitely pollute the river water. Admittedly river water flows from various villages and Dandeadam river joins with Sheel river within vicinity of Fansavale village. Admittedly dam is constructed over Sheel river from which there is water supply to Ratnagiri city. If such river waste is polluted due to the solid waste storage, then the entire water in Sheel dam will also be polluted and it will result ultimately causing danger to the life and health of citizens of Ratnagiri city and citizens of the vicinity. Therefore, the oral evidence of plaintiffs shows that the

proposed project is dangerous for the life and health of the citizens, so also the suit property is not suitable and convenient for the proposed project." The first appellate Court then adverted to the documentary evidence on record and opined as follows: □"31. It reveals from over all careful scrutiny of the documentary evidence produced by both the parties that, the defendants are not coming before the Court with clean hands. Because the documentary evidence produced on record by both the parties clearly shows that previously S.No. 137/16 situated at village Kasop was acquired for the project of solid waste management, but, that project was cancelled and suddenly the defendants acquired the suit property for the project, for which no reason is given by the defendants. The defendants have not given any reason as to why they cancelled the project at village Kasop on S. No. 137/16. Admittedly, the property bearing S. No. 137/16 is situated at the distance of 3 to 4 kmtr. from Ratnagiri city, that too near sea shore. Admittedly the suit property is situated at the distance of 10 to 15 kmtr. from Ratnagiri city. Under such circumstances genuine question arises for what reasons the defendants cancelled their project on S.No. 137/16. To that effect it is the case of the plaintiffs that because of political pressure by the side of Kohinoor Hotel they cancelled the project. Considering entire evidence before the Court and considering facts and circumstances, I find substance in the submissions and evidence of plaintiffs to that effect. Because, S. No. 137/16 at village Kasop was suitable and convenient by all means and that too its compensation amount of Rs. 1,20,000/□was deposited by the defendant No. 1 under such circumstances, there was no reason for the defendants to cancel that project. But here that has been done highhandedly without any plausible reason.

32. The cross examination of defendant No. 1 shows that daily near about 15 to 16 trucks solid waste is collected in the Ratnagiri City. Admittedly, the suit property is situated at 15 kmtr. from Ratnagiri city. As per the evidence of D.W. 1 near about 16 trucks are being used daily for the management of solid waste. If we consider the expenses of shifting 16 trucks solid waste daily from Ratnagiri to suit property by trucks, then per year the defendant No. 1 has to spend lacs [sic.] of rupees for payment of trucks transportation charges. This also shows that the suit property is not suitable for solid waste management. Moreover, as per the evidence of D.W. 1 that the vehicles used for transportation of solid waste are open. As per the Municipal Solid Waste (Management and Handling) Rule, 2000 (hereinafter called as the Rule) clause 4 of Schedule 2 shows that, "Vehicles used for transportation of wastage shall be covered. Wastage should not be visible to public nor exposed to open environment preventing their scattering." Therefore, this Rule shows that open vehicles can not be used for transportation of solid waste, but, here as per the admissions given by D.W. 2 open vehicles are being used. If such open vehicles carries solid waste upto the suit property, then again it will cause scattering of waste and it will cause pollution.

33. The plaintiffs have specifically proved that the suit property is situated in hilly area having sheer slope towards a river, which is situated at the bottom of the slope. In this respect, it is pertinent to note here the provision of the Rules. The defendant No. 1 have itself produced Municipal Solid Wastes (Management and Handling) Rules, 2000 at Exh. 125. After perusal of these Rules, it reveals that, certain guidelines in these Rules for selection of a property for such a Solid Wastes Project. Schedule 3 of these Rules deals with Site selection. Clause 8 of Schedule 3 shows that, "the landfill site shall be away from water bodies." Here it is necessary to reproduce Clause 8 of Schedule 3 of ready reference. It is as under, "Schedule 3(8) – The Landfill site shall be away from habitation

clusters, forest areas, water bodies, monuments, National Parks, Wetlands and places of important cultural, historical or religious interest."

34. This clause 8 clearly indicates that, the Solid Waste Project must be away from water bodies and habitation clusters. But, here in the case at hand, the proposed project is situated near the river. Admittedly, in rainy season the water will flow from the project to the river and it will pollute the river water. Therefore, the proposed project is also against the Clause 8 of Schedule 3 and hence, it is illegal one.

35. The sum and substance of above discussion is that, it is an admitted position that S. No. 219 i.e. suit property is situated on hilly area having sheer slope towards river situated at its bottom. If such huge quantity of solid waste is being stored on the suit property, then in rainy season definitely it will decompose and it will be fermented and it will flow into the river water, because of which entire river water and dam water will be polluted. Admittedly, that Sheel dam water is being supplied to the citizens of Ratnagiri city and citizens in the vicinity. If a such polluted water is supplied, then it will cause danger to the life and health of the citizens. The defendants have not produced on record any document, which will show that the Pollution Control Board and Bhujal Survey Officer has surveyed the suit property as convenient and suitable for the project. No such clearance certificate about suit property is produced on record. So also the defendants have not produced on record any document, which will show that they will filter the water and supply it to the citizens. Therefore, if the water will be flown into river then definitely pollution will happen and it will cause danger to the life and health of the public. It is a constitution right of every citizen to get unpolluted air, water and environment. Right to life is provided under Article 21 of the Constitution of India. Project are being made for the welfare of public and not for causing danger to their health and life. For the reason stated above, if the project will be made on the suit property, then the [sic] water will be polluted and it will cause definitely an [sic] interference in the lawful rights of plaintiffs to get unpolluted water and environment. Under such circumstances, I find substances in the submissions of Ld. Advocate for the plaintiff and I record my findings to points No. 1 and 3 in the affirmative, point no. 2 in the negative." On the basis of the aforesaid conclusions, the first appellate Court passed the following order to decree the suit filed by respondent Nos. 1 to 19: □"O R D E R

1. The appeal is allowed with costs.

2. The judgment and decree passed by Ld. Trial Court dated 31.01.2011 is hereby set aside.

3. the suit bearing Regular Civil Suit No. 25/2005 is decreed as under:

> (a) The defendants and their representative are hereby perpetually prohibited from starting proposed Solid Waste (Management and Handling) Project on the suit property i.e. Gat No. 219 of village Dandeadam.

4. Decree be drawn accordingly."

7. Feeling aggrieved, the appellant carried the matter by way of a Second Appeal before the High Court. The High Court after adverting to the findings and conclusions recorded by the first appellate Court, opined that the same did not warrant any interference, not being perverse and being based on oral and documentary evidence. In its opinion, therefore, no substantial question of law arose for consideration. The High Court observed thus: □"11. In my view, the defendant has failed to produce any competent witness before the learned trial judge to prove that if the project as proposed was allowed to be set up, it will not cause any health hazard or create any pollution problem and would not affect the villagers of the said village. In my view the appreciation of evidence by the appellate court is proper and does not warrant any interference.

12. The finding of facts rendered by the appellate court are not perverse and are based on the oral and documentary evidence led by both parties and cannot be interfered with by this court in the second appeal under section 100 of the Code of Civil Procedure, 1908. There is no substantial question of law having arisen in this second appeal.

13. Second appeal is devoid of merits and is accordingly dismissed. No order as to costs."

8. Aggrieved, the appellant has filed the present appeal by special leave. The thrust of the grievance of the appellant is that the first appellate Court and the High Court committed manifest error in entertaining the claim of the plaintiffs (respondent Nos. 1 to 19), which was not substantiated by the plaintiffs themselves. The plaintiffs had failed to discharge the onus. They had failed to establish jurisdictional facts regarding actionable nuisance and moreso their suit was founded on mere apprehensions on the basis of their understanding of the situation of the possibility of nuisance or future nuisance. It was a quia timet action for passing a preventive and precautionary permanent injunction against the authorities. Significantly, no declaratory relief was sought and the suit was only to grant simpliciter permanent injunction, which cannot be countenanced. It was a speculative suit and the plaintiffs having failed to discharge their initial burden of proof, no relief could be granted. The Project has been conceived after due deliberations by the competent authorities and on the basis of opinion given by the experts in that regard. Further, the Project will be fully compliant with all stipulations for preserving environment and obviating even the slightest possibility of causing pollution in the neighbourhood. The land has been identified as an ideal land for the proposed Project by the experts and the State Government had also accorded approval by allotting the same to the appellant for the stated purpose. The approach of the first appellate Court is completely unacceptable, as it has failed to first examine the adequacy of the evidence given by the plaintiffs and to ascertain whether the plaintiffs had discharged their initial burden of proof at all. However, the first appellate Court chose to first examine the evidence of the defendants (appellant and respondent No. 20), that too selectively, and misread the same out of context to form its opinion and also took judicial notice of irrelevant facts □which is nothing short of being replete with conjectures and surmises. The High Court fell in error in not entertaining the second appeal despite such manifest and cardinal infirmities committed by the first appellate Court.

9. The respondent No. 20 – State of Maharashtra has supported this appeal. It is urged by the State that the subject suit was completely premature, as only site for the Project is identified. The suit is based on speculations and misplaced assumptions that if the Project is installed at the identified

location, it would discharge waste and permit flow of polluted water directly into the river. There is no actual basis for such assumption. It is urged that the civil/trial Court could not have granted injunction not only on account of Section 41(f) of the Specific Relief Act, 19638, which predicates that the Court shall not grant injunction to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance, but also on account of Section 41(h), which envisages that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, an injunction cannot be granted. It is urged that the plaintiffs could assail the decision(s) of the appropriate authority of allotment of land in question for the stated purpose, and setting up of the Project which would be implemented after due permissions and clearances, if granted by the competent authorities under the concerned environment law. At the stage of consideration of such proposal, the person(s) likely to be affected by the Project could make representation to the concerned authority, and if the decision of the authority is adverse, can invoke remedy of appeal before the National Green Tribunal 9 under the National Green Tribunal Act, 201010. In that, the Tribunal (NGT) is established to deal exclusively concerning the subject of environmental 8 For short, “the 1963 Act” 9 For short, “the NGT” 10 For short, “the 2010 Act” protection and conservation of forests and other natural resources and there is express bar on the jurisdiction of the Civil Court, much less to grant any injunction or deal with environmental issues in terms of Section 29 of the 2010 Act. It is urged that after coming into force of the 2010 Act, jurisdiction of civil Court is barred and for that reason, the decree passed by the first appellate Court and confirmed by the High Court is not sustainable in the eyes of law. It is urged that there is no other suitable site for setting up of the Project; and the decision regarding suitability of the subject land has been taken by the Municipal Solid Waste Committee being the expert body in that regard. Even that decision has not been assailed nor the concerned authorities including the Pollution Control Board have been made party to the suit. It is urged that the site has a separate approach road available to transport the solid waste and the assertion made by the plaintiffs to the contrary is mischievous and false. The State has also urged to allow this appeal and to set aside the decree passed by the first appellate Court, as confirmed by the High Court vide impugned judgment.

10. Per contra, the respondent Nos. 1 to 19 (original plaintiffs) have reiterated the grounds which had commended to the first appellate Court and the High Court to decree the suit and issue mandatory injunction against the authorities concerned. It is urged that setting up of the Project at the stated location would inevitably entail environment issues in the area and pollute the river due to dumping of waste on the site. It is urged that when the suit was filed, the civil Court was competent to adjudicate the cause of action and grant relief of mandatory injunction as prayed by the plaintiffs. As a result, the competence of the civil Court was never questioned by the defendants. Further, reliance is placed on the Affidavit in Compliance, which clearly indicates that the Ratnagiri Airport is located within 6 kilometres from the disputed land and the said Airport has now been declared as Naval base. The subject land where the Project is proposed to be established is on the Northern side of the Naval base and Ratnagiri town is on the Southern side. Thus, as per the applicable rules there is express bar for setting up of Solid Waste Disposal Project (the Project) at the proposed location. Moreover, because of the peculiar topography, the waste water will flow towards the river in the neighbourhood and would be a serious health hazard for population of around 1 lakh in Ratnagiri. It is urged that the apprehension of the plaintiffs of future mischief was not groundless but is based on strong foundation that the site is on a slope and will create imminent

toxic problem in the area. In substance, the respondent Nos. 1 to 19 (plaintiffs) have adopted the reasons which had weighed with the first appellate Court and the High Court in second appeal and would urge that this appeal be dismissed in light of the finding of fact so recorded by the said Courts.

11. We have heard Mr. Rakesh Bhatkal and Mr. Somiran Sharma, learned counsel for the appellant, Mr. Sandeep Deshmukh and Mr. Nachiketa Joshi, learned counsel for the respondent Nos. 1 to 19 and Mr. Sachin Patil and Mr. Rahul Chitnis, learned counsel for the State of Maharashtra (respondent No. 20).

12. The fundamental question for our consideration is the effect of enactment of the 2010 Act. It is an Act to provide for establishment of a National Green Tribunal (NGT) for effective and expeditious disposal of cases relating to, amongst others, environmental protection including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Chapter III of the Act delineates the jurisdiction, powers and proceedings of the Tribunal. Section 14 deals with the jurisdiction of the Tribunal (NGT) over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I. Section 20 predicates that the Tribunal (NGT) shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Section 29 of the 2010 Act is of some significance. It is a provision regarding bar of jurisdiction of civil Court. Section 29 reads thus:□"29. (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." It will be now useful to advert to the exposition of a three❑Judge Bench of this Court in Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. vs. Union of India & Ors. 11. In paragraphs 40 and 41 of the reported decision, the Court 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.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice." (emphasis supplied) 11 (2012) 8 SCC 326

13. The question is whether the suit as filed in the year 2005 would be affected by the coming into force of the 2010 Act with effect from 2.6.2010 and in particular consequent to establishment of the Tribunal (NGT) on 18.10.2010. Indeed, the present suit was filed prior to that date. However, it was pending before the civil Court even after the establishment of the Tribunal (NGT). For, the trial Court decided the suit only on 31.1.2011. Concededly, the trial Court has not even adverted to the express provision in the form of Section 29 regarding bar of jurisdiction of the civil Court. On perusal of the tenor of the plaint and the subject matter of the present suit, it is indisputable that the case plainly involved substantial question relating to environment including enforcement of legal right relating to environment. That cause was the foundation for the relief of permanent injunction sought by the plaintiffs. By virtue of Section 29 and in particular the dictum in paragraph 41 of the reported decision of this Court, the civil Court ought not to have continued with the suit. It is a different matter that the trial Court chose to dismiss the suit on the finding that the plaintiffs had failed to substantiate the case set up by them in the plaint. Once the suit was barred by law, the civil Court could not have proceeded with the suit and at best, the parties could have been relegated before the NGT, the special forum created by the 2010 Act. Indeed, the trial Court did not have the benefit of the reported decision of this Court. For, the said decision was rendered on 9.8.2012. However, it is intriguing that even the first appellate Court and the High Court did not think it necessary to advert to the effect of Section 29 of the 2010 Act and in particular, the decision of this Court in Bhopal Gas Peedith Mahila Udyog Sangathan (supra). The fact that the suit was filed in earlier point of time, does not mean that the civil Court could have continued with the action (in this case, first appeal before the first appellate Court and the second appeal before the High Court being continuation of the suit) concerning the substantial question relating to environment including enforcement of legal right relating to environment. In any case, there remained no tittle of doubt after the exposition of this Court that such pending cause/action ought to be transferred to the NGT for adjudication thereof. As a concomitant of this conclusion, the findings and conclusions rendered in favour of the plaintiffs, in particular by the first appellate Court and the High Court, will be of no avail and in law stand effaced being without jurisdiction and nullity.

14. Arguendo, the plaint as filed by the respondent Nos. 1 to 19 also suffers from another fundamental deficiency. Indeed, it is a cleverly drafted plaint, so as to give an impression that the competent authority had not taken any decision in exercise of statutory powers until the filing of the suit. However, in the written statement, clear assertion has been made by the defendants (appellant and respondent No. 20) that the decision to allot suit land to the appellant and for setting up the Project was taken after due deliberation and consultation with the expert Committee including in exercise of statutory powers of the concerned authority in that regard. None of these decisions of the competent authority has been assailed by the plaintiffs nor any declaratory relief sought in that

regard. In such a case, it would not be enough to ask for permanent injunction simpliciter and the suit so filed ought to have been rejected at the threshold on that count alone. We may usefully advert to the exposition of this Court in Board of Trustees of Port of Kandla vs. Hargovind Jasraj & Anr.12. In paragraphs 26 to 31, the Court observed thus: □"26. Mr Ahmadi next argued that the termination of the lease being illegal and non est in law, the respondent□plaintiffs could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the court competent to do so. We are not impressed by that submission.

27. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft□quoted passage in Smith v. East Elloe Rural District Council (1956 AC 736). The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

> "... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' [Smith case (1956 AC 736) pp. 769□70] (emphasis supplied) This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects." [Ed.: Wade and Forsyth in Administrative Law, 7th Edn., 1994.] 12 (2013) 3 SCC 182

28. The above case was approved by this Court in Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group [(2011) 3 SCC 363], wherein this Court observed: (SCC pp. 369□70, para 19) "19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

29. To the same effect is the decision of this Court in Pune Municipal Corpn. v. State of Maharashtra [(2007) 5 SCC 211] wherein this Court discussed the need for determination of invalidity of an order for public purposes: (SCC pp. 225□26, paras 36 & 38□39) "36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

> 'The principle must be equally true even where the "brand of invalidity" is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court' [H.W.R. Wade, Administrative Law (6th Edn., Clarendon Press, Oxford 1988) 352].
>
> He further states:
>
> 'The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid.
>
> It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.' [H.W.R. Wade, Administrative Law (6th Edn., Clarendon Press, Oxford 1988) 352□53] ***
>
> 38. A similar question came up for consideration before this Court in State of Punjab v. Gurdev Singh [(1991) 4 SCC 1]. ...
>
> 39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the court for declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. 'If the statutory time of limitation expires, the court cannot give the declaration sought for.'" (emphasis supplied)

30. Reference may also be made to the decisions of this Court in R. Thiruvirkolam v. Presiding Officer [(1997) 1 SCC 9] , State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth [(1996) 1 SCC 435] and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [(1997) 3 SCC 443], where this Court has held that an order will remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.

31. It is true that in some of the above cases, this Court was dealing with proceedings arising under Article 226 of the Constitution, exercise of powers whereunder is discretionary but then grant of declaratory relief under the Specific Relief Act is also discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration. Suffice it to say that filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. It is not, therefore, possible to fall back upon the

possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when we have, while dealing with the question of possession, held that possession also was taken over pursuant to the order of termination of the lease in question." (emphasis supplied) We may also refer to Anathula Sudhakar vs. P. Buchi Reddy (D) by LRs. & Ors.13, wherein this Court opined that where the averments regarding title are mentioned in the plaint but if the matter involves complicated question of fact and law relating to title, the Court will relegate the parties to the remedy of a comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

15. Applying the principle underlying these dicta, as no declaration has been sought by the plaintiffs in the present case, the suit for simpliciter permanent injunction could not be proceeded further at all. Even for this reason, the decree passed by the first appellate Court and confirmed by the High Court, cannot stand the test of judicial scrutiny. The Courts have 13 (2008) 4 SCC 594 clearly glossed over this crucial aspect, which disentitled the plaintiffs for relief of permanent injunction simpliciter.

16. Be that as it may, on a fair reading of the judgment of the trial Court, it is manifest that the trial Court had opined that the plaintiffs failed to substantiate the case set out in the plaint regarding the actionable nuisance. The trial Court justly analysed the evidence of the plaintiffs in the first place to answer the controversy before it. The first appellate Court, however, after adverting to the oral and documentary evidence produced by the parties, proceeded to first find fault with the evidence of the defendants to answer the controversy in favour of the plaintiffs. The first appellate Court committed palpable error in not keeping in mind that the initial burden of proof was on the plaintiffs to substantiate their cause for actionable nuisance, which they had failed to discharge. In such a case, the weakness in the defence cannot be the basis to grant relief to the plaintiffs and to shift the burden on the defendants, as the case may be. Thus understood, the findings and conclusions reached by the first appellate Court will be of no avail to the plaintiffs.

17. Be that as it may, the first appellate Court ought to have kept in mind the principle expounded in Kuldip Singh vs. Subhash Chander Jain & Ors.14. In paragraphs 6 to 8 and 10 of the reported decision, the Court observed thus: □"6. A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process.

In Fletcher v. Bealey [(1885) 28 Ch D 688], Mr Justice Pearson explained the law as to actions quia timet as follows:

> "There are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage

will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action".

7.Kerr on Injunctions (6th Edn., 1999) states the law on "threatened injury" as under:

"The court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The plaintiff, however, must show a 14 (2000) 4 SCC 50 strong case of probability that the apprehended mischief will in fact arise in order to induce the court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the court can be invoked, an injunction will not be granted".

8. In our opinion a nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually existing nuisance is capable of being assessed in terms of its quantum and the relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a children's school or opening a shop dealing with highly inflammable products in the midst of a residential locality.

xxx xxx xxx

10. In the case at hand, it is not disputed that the bhatti was not operational on the date of filing of the suit. A bhatti (baking oven) is not an activity which by itself is illegal or inherently dangerous or injurious. It cannot also be said that the bhatti merely because it has been constructed or become operational would pose such an injury as would be irreparable or would be incapable of being taken care of by a process known to law. The pleadings raised by the plaintiffs do not and could not have set out the nature and extent of injury, if any, caused or likely to be caused to the plaintiffs. The High Court has at one place observed that the bhatti would "emit

> smoke, heat and smell" which would be a nuisance to the residents of the locality. At another place it has stated that "smoke, gases and ash etc." which were emitted from the furnace would certainly be a nuisance to the residents of the locality. The findings so recorded are oscillating and are not clear and specific. They are guesswork. A clear finding as to nuisance could not have been recorded by basing it on generalised statements of certain witnesses stating that a bhatti emits smoke, heat and smell which statements would be mere ipse dixit of the witnesses. There is no foundation either in pleadings or in evidence for observation made by the High Court as to gases, ash etc. emitting from the furnace.

In our opinion, no case for quia timet action was made out. The suit filed by the plaintiffs was premature. No relief, much less by way of preventive injunction, could have been allowed to the plaintiffs. In our opinion, the suit as filed by the plaintiffs should be dismissed with liberty to file an appropriate suit on proof of cause of action having accrued to the plaintiffs consistently with the observations made hereinabove." (emphasis supplied) We have no hesitation in taking the view that the first appellate Court proceeded on a mere possibility of injury likely to be caused on account of setting up of the proposed Project. On the other hand, the defendants asserted that the Project has been conceived and the suit land has been identified for that purpose. The Project is at a nascent stage for which permissions would be obtained from the concerned authorities under the environment laws before implementing the same. At this initial stage itself, the civil Court was moved by the plaintiffs on the basis of their understanding of the situation.

18. Further, Section 41(f) of the 1963 Act clearly mandates that an injunction cannot be granted to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance. Similarly, the respondent No. 20 (State of Maharashtra) is right in contending that the plaintiffs would have equally efficacious relief by resorting to other mode of proceedings. To wit, when the proposal regarding setting up of the Project is being finalised and permissions are granted by the competent authority under the concerned statutory dispensation, at that time, the affected parties would be free to make representation which can be considered by the competent authority appropriately. Hence, the civil Court ought not to have granted injunction simpliciter also because of the stipulation in Section 41(h) of the 1963 Act, wherein it is made amply clear that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, an injunction cannot be granted. The scheme of Section 41 of the 1963 Act predicates that the civil Court must refuse to grant injunction in the situations referred to therein vide clauses (a) to

(j). The recent amendment to that provision by Act 18 of 2018 has inserted clause (ha), for making it explicitly clear that the civil Court must refuse to grant injunction if it would impede or delay the progress of completion of any infrastructure project, such as the present one. Indeed, this amended provision does not apply to the present case. However, the Court could not have answered the matter in issue on the basis of assumptions and conjectures, much less unsubstantiated claim of the plaintiffs.

19. Taking any view of the matter, the civil suit, as filed by the respondent Nos. 1 to 19 (plaintiffs) ought to have been dismissed, as was rightly done by the trial Court. Indeed, the dismissal of the suit would not come in the way of the plaintiffs or any other person affected by the proposed Project to make representation to the appropriate authority, considering the proposal for grant of statutory permissions under the concerned environment laws, and if that decision is not acceptable, to carry the matter further in appeal before the NGT or any other forum, as may be permissible by law. We leave all questions open in that regard.

20. Accordingly, this appeal succeeds and the judgment and decree passed by the first appellate Court and by the High Court, is set aside. Resultantly, the civil suit filed by the plaintiffs (respondents Nos. 1 to 19) stands dismissed with observations made hitherto. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar) .....J. (Dinesh Maheshwari) New Delhi;

May 6, 2020.