REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2535 of 2020

THOMAS LAWRENCE …APPELLANT

VERSUS

THE STATE OF KERALA & ORS. ...RESPONDENTS

JUDGMENT

R.F. Nariman, J.

1. The present appeal arises out of an order of the National Green Tribunal, Principal Bench, New Delhi, dated 06.11.2019, in which the NGT states:

> "In view of order dated 14.10.2019 in O.A. No. 71 of 2019, *Sanjeev SJ, President, Environmental Protection and Research Council v. State of Kerala*, no separate order is necessary in this matter as the issue raised can be gone into in the course of EIA study in the said matter.
>
> The application is disposed of."

Mrs. Anitha Shenoy, learned senior advocate, appearing on

behalf of the appellant/PIL-Petitioner states that the order dated

14.10.2010 dealt with a completely different matter, namely, Original Application No.71 of 2019, which was concerned with a challenge to the environmental clearance granted to one Dragon Stone Reality Private Limited. This clearance was in respect of an area of 9.75 acres of the Veli-Akkulam Wetland. As against this, the present Execution Application No.39 of 2019 arises out of an Original Application No.875 of 2018, which is in respect of violations with regard to 19.73 acres of the Veli-Akkulam Wetland. Thus, the present case concerns itself with an order dated 19.12.2018 of the NGT which reads as follows:

> "Allegation in this letter, which has been treated as an application, is that there is mass destruction of Wetlands and 10 acre Pond inside the Technopark Region, Thiruvananthapuram, Kerala.
>
> Let the District Collector, Trivandrum look into the matter and take appropriate action in accordance with law within one month.
> Copy of this order along with complaint be sent to the District Collector, Trivandrum by e-mail for compliance.
>
> Needless to say that order of National Green Tribunal is binding as a decree of Court and non-compliance is actionable by way of punitive action including prosecution, in terms of the National Green Tribunal Act, 2010.
>
> The application is disposed of."

Learned counsel for the appellant through her written submissions placed reliance on reports of local authorities including the

Agricultural Officer, Attipura and Village Officer, Attipura to argue that the land over which the construction was taking place was a wetland and that in view of the Kerala Conservation of Paddy Land and Wetland Act, 2008, the construction would be illegal. She further placed reliance on several orders of this Court, including the Order reported as **M.K. Balakrishnan v. Union of India** (2017) 7 SCC 810(2), to show that in view of the embargo on reclamation of wetlands under Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, the action of the State in the instant case would be illegal. She further argued that in view of the bar on reclamation of wetlands as described above, the order dated 30.04.2019 passed by the Collector would not be "in accordance with law" as mentioned in the order of the NGT dated 19.12.2018 thereby making the Execution Petition filed by the appellant maintainable.

3. This Court was approached as it has been alleged that the District Collector has not taken action in accordance with the order dated 19.12.2018 as a result of which it is necessary to set aside the NGT order and remand the matter for *de novo* hearing.

4. Shri Vikas Singh, learned senior advocate appearing on behalf of the State of Kerala has pointed out that by an order dated 30.04.2019, the District Collector has held as follows:

> "The Hon'ble National Green Tribunal, New Delhi registered an application (OA No.875/2018) based on a complaint received by e-mail from Sri. Thomas Lawrence, regarding mass destruction of wetlands and 10 Acre ponds inside the Technopark Campus, Thiruvananthapuram. The Hon'ble Tribunal vide order dtd. 19.12.2018 directed District Collector, Thiruvananthapuram to look into the matter and take appropriate action in accordance with law within one month. Revenue (P) Department as per G.O (MS) No. 40/2018/Rev dtd. 03.02.2018 accorded sanction for reclamation of 861.2 Ares of land in Survey No. 279, 280, 281, 282, 290, 291, 292, 295, 296, 297, 353, 355, 358, 359 of Attipra Village, Thiruvananthapuram Taluk for the
> IIIrd phase Development of Technopark, Thiruvananthapuram as per the provision in Sec 10 of Kerala Conservation of Paddy and Wetland (Amendment) Ordinance 2017. By virtue of G.O dated 03.02.2018, for the purpose of development of Technopark (third phase), necessary exemption has been granted by the Government, as contemplated under the Kerala Conservation of Paddy Land and Wetland Act of 2008 and the Ordinance of 2017 made thereunder, considering the same as one falls under "public purpose", as defined under Section 2 (xiv) of the Act of 2008. Accordingly, 861.2 Ares of land was reclaimed as per Section 10 of the Ordinance of 2017. While granting exemption for the purpose of reclamation, as aforesaid, to the property scheduled therein necessary safeguards were also directed to be maintained for water conservation. In the above circumstances, no action whatsoever can be taken at the level of District Collector under Sections 11 and 13 of the Act of 2008."

In addition, he pointed out that way back in 2003, these lands were covered by land acquisition notifications showing that they were paddy land/converted paddy land and/or dry land and not wetland as alleged by the petitioner. Shri Pinaki Mishra, learned senior advocate, appearing on behalf of Respondent Nos.7 and

9, showed us a map in which it is clear that the Aakulam lake was at a distance of 3 kms from the impugned site. He also showed us on the map that Technopark Phase II was already completed as was Technopark Phase I, Technopark Phase III being the present project. According to him, the petitioner has missed the bus and has knocked at the doors of the NGT after huge constructions had already been undertaken after all permissions had been obtained including permissions under Section 10 of The Kerala Conservation of Paddy Land and Wetland Act, 2008. He further argued, placing reliance on a response to an RTI application dated 07.10.2020, that the State Wetland Authority, Kerala had prepared a draft list comprising of 40 wetlands in Kerala and that the land involved in the present case has not been identified as a wetland. He also pointed out that the appellant not having challenged the order of the NGT dated 19.12.2018 or the order of the Collector dated 30.04.2019, the execution application filed in the present case would be infructuous and was therefore rightly dismissed by the NGT vide the impugned order.

5. Given the fact that the Collector has passed an order pursuant to the NGT's order dated 19.12.2018, it is clear that the execution application filed before the NGT has become infructuous. It is

open to the petitioner to challenge the order of the Collector dated 30.04.2019 in accordance with law. If such challenge is made within a period of 8 weeks from today, the petitioner's challenge will not be dismissed solely on the ground of delay.

……..... J.
(ROHINTON FALI NARIMAN)

……..... J.
(NAVIN SINHA)

……..... J.
(INDIRA BANERJEE)

New Delhi;
October 29, 2020.