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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

