

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 732 OF 2015**

M/S Leading Hotels,
a Company registered under the
Indian Companies Act, 1956,
having office at 573, Road 4,
La Campal, Miramar, Panaji,
Goa represented herein by
Mr. P. Ravi, major of age,
Indian National, having office
at 573, Road 4, La Campal,
Miramar, Panaji, Goa.

... Petitioner

V/s

1. Goa Foundation, a Society
registered under the Societies
Registration Act, 1960 through
its Secretary Dr. Claude Alvares,
having office at Room No. 7,
Above Mapusa Clinic, Mapusa, Goa.
2. The Tree Officer and DCF (North),
Forest Department,
Government of Goa,
Ponda - Goa.
3. North Goa Forest Division
Committee (NGDFC),
Through its Member Secretary,
Forest Department,
Ponda - Goa.
4. The Principal Chief Conservator
of Forests,
Forest Department,
Vivekananda Road,
Panaji - Goa.
5. The Collector (North),
Office of the Collector
(North), Panaji - Goa.

6. National Green Tribunal,
West Zone, Pune through
the Registrar, Western Zonal
Bench, New Administrative
Bldg., 'D' Wing, Pune,
Maharashtra.

} Deleted as per Order
dated 14.10.2015

... Respondents.

Mr. Devidas Pangam, Advocate for the Petitioner.

Ms. Norma Alvares, Advocate for the Respondent No. 1.

Mr. Dattaprasad Lawande, Government Advocate for the
Respondent Nos. 2 to 5.

**Coram : F.M. REIS &
C.V. BHADANG JJ.**

Date : 24th November, 2015.

ORAL JUDGMENT: (Per F.M. Reis, J.)

Heard Mr. Pangam, learned Counsel appearing for the petitioner, Ms. Alvares, learned Counsel appearing for the respondent no. 1 and Mr. Lawande, learned Government Advocate appearing for the respondent nos. 2 to 5.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Ms. Alvares, learned Counsel appearing for the respondent no. 1 and Mr. Lawande, learned Government Advocate appearing for respondent nos. 2 to 5, waive service.

3. We have extensively heard Mr. Pangam, learned Counsel appearing for the petitioner, Ms. Alvares, learned Counsel appearing for the respondent no. 1 and Mr. Lawande, learned Government Advocate appearing for the respondent nos. 2 to 5.

4. Mr. Pangam, learned Counsel has taken us through the impugned order dated 13.08.2015 passed by the learned National Green Tribunal to point out that the challenge in the proceedings therein was to the permission granted under the Goa, Daman and Diu Preservation of Trees Act, 1984 (the Act of 1984, for short). The learned Counsel points out that such disputes or grievances do not come within the purview of the learned Tribunal and as such, the learned Tribunal has no jurisdiction to decide the validity of such permission. The learned Counsel further points out that whilst passing the impugned order, the learned Tribunal has gone to the extent of giving liberty to the respondent no. 1 to challenge such permission in terms of the said Act of 1984 and further, gave liberty and/or direction to the Tree Officer to suspend any adverse order for a period of 15 days, to enable the respondent no. 1 to challenge such order.

The next grievance of the petitioner is that the learned Tribunal has observed that in view of the alternate remedy, the application filed by the respondent no. 1 is disposed, when the ground ought to be due to lack of jurisdiction. The learned Counsel further points out that granting such liberty to keep the order in suspension is completely erroneous, as according to the learned Counsel, once the learned Tribunal has no jurisdiction to decide the challenge to a permission under the Act of 1984, the question of such directions would not arise. The learned Counsel has taken us through the impugned order and submits that the impugned order be quashed and set aside.

5. On the other hand, Ms. Alvares, learned Counsel appearing for the respondent no. 1 has submitted that the respondent no. 1 itself has pointed out that the grievance before the learned Tribunal was in connection with the permission under the Act of 1984 and that the respondent no. 1 was given liberty to challenge such orders. The learned Counsel as such, points out that the observation of the learned Tribunal that as there is an alternate remedy provided, the petitioner can prefer an appeal as provided in terms of the Act of 1984, is in terms of

law. The learned Counsel has further pointed out that so far as the liberty granted to challenge any adverse order, if at all passed by the Tree Officer is concerned, the same was in context that on an earlier occasion, there were allegations that some trees were cut down without the permissions and a challenge was also raised relying upon the directions issued by the Hon'ble Supreme Court that no trees can be cut in an area of one Ha and with canopy density above 0.1 and as such, the directions were necessary.

6. Mr. Lawande, learned Government Advocate pointed out that the learned Tribunal has no jurisdiction in a challenge to a permission under the Act of 1984 and as such, any observation in that connection is without jurisdiction.

7. We have considered the submissions of the learned Counsel and with their assistance we have gone through the record. Upon hearing the learned Counsel, a narrow dispute to be examined in the present petition essentially is to ascertain whether the liberty granted by the learned Tribunal that in case any adverse order is passed on the challenge of the respondent no. 1, to the permissions granted to the petitioner to cut trees,

such order be kept in suspension for a period of 15 days to enable the petitioner to challenge such orders, is in terms of law, we find that once, it is not disputed that the learned Tribunal has no jurisdiction to examine a challenge to the order passed by the Tree Officer, the question of granting such liberty would not arise. The liberty granted to suspend any adverse order passed against the respondent no. 1 for a period of 15 days, as such deserves to be quashed and set aside.

8. As far as the contention of Mr. Pangam, learned Counsel appearing for the petitioner to that part of the order granting permission to challenge such order of the Tree Officer, we find that the petitioner, if so advised, can challenge the order of the Tree Officer, in accordance with law. Needless to mention that the directions of the learned Tribunal that the respondent no. 1 would be intimated about any permission, would consequently not survive, for the aforesaid reasons.

9. With regard to the contention of Mr. Pangam, that the learned Tribunal has disposed of the application on the ground that an alternate remedy is available to the said respondent is concerned, as rightly pointed out by Ms. Alvares, learned

Counsel, such observations are only in the context that the respondent no. 1 has a right of appeal under the Act of 1984. Thus, no alternate remedy is reserved by making such observations. The learned Counsel for the respondent no. 1 has also brought to our notice that in the meanwhile, there is a challenge pending before this Court. Needless to state that such proceedings will have to be examined on its own merits, in accordance with law.

10. Subject to the above, we pass the following,

ORDER

(a) The liberty granted by the learned Tribunal in the order dated 13.08.2015 to the extent that in case any adverse order is passed against the respondents, such order shall be suspended for a period of 15 days and further, the permission granted to the petitioner will have to be intimated to the respondent no. 1, are quashed and set aside.

(b) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

F.M. REIS, J.

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