

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1011 OF 2015

Shri Mukund Rama Naik Karmali,
Aged 78 years, resident of
House No.899/B, Karmaliwada,
Kakoda, Quepem, Goa.

..... Petitioner

V e r s u s

Shri Pedro Mascarenhas,
Major in age,
Resident of House No.900,
Karmaliwada, Cacora,
Quepem, Goa.

..... Respondent

Mr. S. S. Kakodkar, Advocate for the Petitioner.

Mr. K. A. Noorani, Advocate under legal aid for the Respondent.

CORAM: S. B. SHUKRE, J.
DATE: 28TH JANUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by
consent.

2. This writ petition challenges the order dated 23/9/2015 passed in
R.C.A. No.43/2015 by the Court of Adhoc District Judge-I, South Goa,

Margao, thereby confirming the order passed by the Dy. Collector on 25/5/2015. By this order, the Dy. Collector had directed that the tree in question which is a cotton tree (savori) be cut by the petitioner within ten days from the date of the order.

3. Learned counsel for the respondent fairly submits, on instructions, that Section 12A mandates that the order of cutting of the tree must be passed by the Dy. Collector on the basis of the report/ order made by him in consultation with the tree officer. A bare perusal of the order of the Dy. Collector as well as the impugned order is enough to reach a conclusion that the mandate of Section 12 A has not been followed in the instant case.

4. Learned counsel for the respondent also points out that as per the notification dated 25/10/1983, the Goa Daman and Diu, Preservation of Trees Second Ordinance, 1983 (Ordinance 2), the Administrator of Goa, Daman and Diu Act, 1984 has appointed the the Conservator of Forest as the appellate authority and not the Court of District Judge. However, that is not the ground raised in this petition.

5. Considering the fact that mandate of Section 12 A has not been followed in letter and spirit, this petition deserves to be allowed and is allowed.

6. The matter be sent back to the Dy. Collector for deciding the question regarding the dangerous nature of tree or otherwise in accordance with section 12 A. The Dy. Collector shall call for the report of the Tree Officer as mandated by the section and thereafter by applying his mind to the facts of the case shall dispose of the complaint of the respondent. The whole exercise be completed within four weeks from the date of the order. Needless to say that both parties shall be given an opportunity of being heard in the matter. All contentions of both the parties are kept open.

7. Rule is made absolute in these terms. No costs.

8. Parties are directed to appear before the Dy. Collector on 4/2/2016 at 10.a.m.

S. B. SHUKRE, J.

Ap/-