

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.108 OF 2017**

Shri Nagendra S. Nagvekar

R/o. H.No.73/A,

Near Holy Cross Sasmollem Baina,

Vasco-da-Gama, Goa.

.... Petitioner

V/s

1. Smt. Sundaramma Kandaswami
R/o. Near Holy Cross, Sasmollem,
Baina, Vasco-da-Gama.

2. Zonal Agricultural Officer,
Through Directorate of Agriculture,
having office at South-Goa, Margao.

....Respondents

Shri P. Lotlikar, Advocate for the Petitioner.

Shri V. Parsekar, Advocate for Respondent No.1.

Ms. P. Kamat, Additional Government Advocate for Respondent No.1.

CORAM : C.V. BHADANG, J.

DATE : 20th MARCH, 2017

ORAL JUDGMENT :

Rule made returnable forthwith. The learned Counsel for the respective respondents waive service.

2. On the basis of a complaint lodged by the respondent no.1 proceedings were initiated before the learned Deputy Collector and Tree Officer, Mormugao under Section 12(A) of the Goa Preservation of Trees Act, 1984 (Act, for short). The complaint was in respect of two

trees identified as C-1 and C-2 belonging to the petitioner. In so far as the tree identified as C-1 is concerned, the Tree Officer has found that the said tree is young and healthy and there is no need to cut the same. However, so far as the tree identified as C-2 is concerned, the Tree Officer directed it to be cut. This was challenged by the petitioner before the Appellate Authority, which by an order dated 30/11/2016 has dismissed the appeal directing the petitioner to follow the order passed by the Tree Officer which order is subject matter of challenge in this petition.

3. I have heard the learned Counsel for the parties and perused record. Under Section 12(A) of the Act, the Tree Officer can take action where it is found that the tree is in ruinous state or is likely to fall. This Court in the case of ***Santosh R. Prabhugaonkar V/s. State and Ors. (Criminal Writ Petition No.82/2010)*** has held that unless and until the tree is in a dangerous or ruinous condition and is likely to fall in ordinary circumstances, no order for cutting of the tree can be passed. A perusal of the order of the Appellate Authority would go to show that the Appellate Authority has come to the conclusion that the tree is not in a ruinous condition. If that be so, in my considered view the appeal could not have been dismissed. It would be significant to reproduce the

operative part of the appellate order which reads as under:

- “(i) The petition is partly allowed. The impugned order is hereby set aside.
- (ii) The application filed by the respondent no.1 is restored to the file of SDO, Quepem, who shall decide the same afresh after hearing the parties and in accordance with law.
- (iii) Rival contentions of the parties are left open.
- (iv) Rule is partly made absolute in the aforesaid terms with no order as to costs.”

It can thus be seen that on one hand, the Appellate Authority has dismissed the appeal directing the petitioner to follow the order passed by the Tree Officer and at the same time has also observed that failure to comply with the said order would attract provisions under Sub-section 3 of Section 12(A) to take all reasonable steps to cut/trim/maintain the tree at the cost and charges of the petitioner. In my considered view, the Appellate Authority should first come to the conclusion as to whether the tree is in a ruinous condition and is likely to fall and then pass specific order either directing cutting of tree or taking reasonable steps as envisaged in Sub-section 3 of Section 12(A) of the Act. Considering the impugned order passed, I find it appropriate to remit the matter back to the Appellate Authority for deciding the appeal afresh after hearing the parties, in accordance with law. In the result, the following order is

passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned judgment and order is hereby set aside.
- (iii) Appeal No.16/2016 is restored back to the file of the Appellate Authority for deciding it afresh in accordance with law.
- (iv) Rule is partly made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

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