

IN THE HIGH COURT OF BOMBAY AT GOA

PILWRIT PETITION NO. 9 OF 2018

Federation of Rainbow Warriors

...Petitioners

Versus

1. The Deputy Conservator of Forests & 6 Ors. ...Respondents

Mr Nigel Da Costa Frias and Ms. Maria Correira, Advocates for the Petitioner.

Mr Dattaprasad Lawande, Advocate General with Ms. P. Bhandari, Addl. Government Advocate for the Respondent Nos.1 to 5.

Mr S. D. Lotlikar, Senior Advocate with Mr C. Padgaonkar, Advocate for the Respondent No.6.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ***

Date: 13 June 2018

P.C.

1. We have heard Mr. Nigel Da Costa Frias, learned Counsel for the Petitioner, Mr Lawande, learned Advocate General for the Respondent Nos.1 to 5 and Mr. S. D. Lotlikar, learned Senior Advocate for the Respondent no.6.

2. By consent of the learned Counsel, we have taken up the matter for final disposal. We dispose of this Petition on the basis of consensus arrived at by the learned Counsel for the parties on the course of action to be adopted, hence we have not given elaborate reasons and facts.

3. The Petitioner has challenged the order dated 2 April 2018 passed by the Principal Chief Conservator of Forests, Goa under the Preservation of Trees Act, 1984 (*Act of 1984*, for short). While disposing of the proceedings, the Principal Chief Conservator of Forests has opined that the Act of 1984 is not applicable to the land in question.

4. It is the contention of the learned Advocate General that this position stated by the Principal Chief Conservator of Forests is correct and the Act of 1984 is not applicable, however, safeguards provided in the Circular dated 15 November 1991 have been followed.

5. Proceedings filed by the Petitioner are pending before the National Green Tribunal are challenging the grant of Environmental Clearance to the project in question. The National Green Tribunal by order dated 22 November 2017 had modified the interim relief granted by it restraining cutting of trees on the basis of the statement made by the Advocate General of the State of Goa as under :

“He added that the tree cutting/tree felling issue can be examined by lawful authorities concerned i.e. Tree Officer under Goa Daman & Diu Preservation of Tree Act, 1984 or the Forest Officials under Forest Conservation Act, 1980 as

the case may be in accordance with law and on the grant of NOC or permission to cut the identified trees, the trees be allowed to be cut. This he submitted is independent of the EC in question. He, therefore, makes a statement that the State shall not cut any tree or allow any tree to be cut/fell in the designated area for the Airport MOPA without there being any valid permission granted by any of the lawful authority specified hereinabove and the copy of such NOC/permission granted if any, therefor being furnished to the Appellant Mr. Abhijit Prabhudessai in Appeal No.61/2016 and for a period of fortnight thereafter in order to enable the Appellant to seek redressal of his grievances, if any, under the relevant statute in the said case. Statement is accepted. Order dated 7th November, 2017 stands modified accordingly.”

6. The statement of the learned Advocate General before the Tribunal shows that the Act of 1984, is stated to be applicable. However, in view of the contrary stand now taken by the State Government, it will be necessary that the further course of action is determined by the National Green Tribunal, which had granted the liberty based on the statement.

7. Therefore, it is directed that the effect to the orders impugned in this Petition dated 6 February 2018 and 2 April 2018 granting of permission for cutting the trees in question will be given only after so approved by the National Green Tribunal.

To make it abundantly clear, the trees in question will not be cut unless the National Green Tribunal before whom the main matter is pending grants liberty to do so.

8. Learned Advocate General states that the State will approach the Tribunal for the above purpose and the application be expedited. If the application is so made, we request the National Green Tribunal to consider it as early as possible.

9. We make it clear that all the contentions of the parties in respect of the applicability of the Act of 1984 and further steps taken are kept open to be urged before the Tribunal. As regards observations made in the order disposing of PILWP No.1 of 2018 is concerned, in the order impugned therein, the Authority had proceeded on the basis that the Act of 1984 is applicable and it was not made basis of the order. In the present impugned order, however, the Authority has specifically opined that the Act of 1984, is not applicable and, therefore, the issue has squarely arisen. Therefore, we had asked the State for its stand, which was informed as above. Hence we feel it appropriate that the matter is looked at by the Tribunal, where the main proceedings are pending.

10. The Petitioner undertakes that the Respondent No.6 will be made party-Respondent in the proceedings before the National Green Tribunal. Even otherwise, it is open to the Respondent No.6 to join itself as party-Respondent in the proceedings.

11. The PILWP is disposed of in the above terms.

12. All parties to act on an authenticated copy of this Order.

Prithviraj K. Chavan, J.

N. M. Jamdar, J.