

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.336 OF 2018**

Soniya Rodrigues D'Costa

... Petitioner

V e r s u s

1. Remedios D'Cusha & 13 Ors. ... Respondents

Mr. Ressano Hector Noronha, Advocate for the Petitioner.

Ms. J. Colaco, Advocate for the Respondent no.1.

Coram :- C. V. BHADANG, J.**Date : 3rd July 2019.**

ORAL ORDER

1. The challenge in this petition is to the judgment and order dated 14.08.2017 passed by the Conservator of Forest (conservation) as the Appellate Authority under The Goa, Daman and Diu Preservation of Trees Act, 1984 (Act, for short).

2. The petitioner had filed a complaint dated 10.06.2015 about a teak tree being leaning against the kitchen balcony of the house of the petitioner. The Deputy Collector, who is the competent authority, under the Act called for a report from the Range Forest Officer. The Range Forest Officer gave his report on 26.06.2015 stating that "the tree is 0.30 metres close to the residential house and is totally leaning above the roof, towards the kitchen balcony and it may be dangerous to life

and property.” On the basis of the said report, the learned Deputy Collector by an order dated 06.07.2017 directed the respondents to cut the tree within eight days. That was challenged by the respondent no.1 before the Appellate Authority. The Appellate Authority by its judgment and order dated 14.08.2017, has allowed the appeal and has set aside the order passed by the learned Deputy Collector. Hence, this petition.

3. I have heard the learned Counsel for the petitioner and perused the record.

4. The only contention raised on behalf of the petitioner is that the order of the Deputy Collector which was based on the report of the Range Forest Officer was legal and proper and the Appellate Authority was not justified in interfering with the same. The learned Counsel has shown me the photograph of the subject tree in order to claim that it is entirely leaning on the kitchen balcony of the house of the petitioner. It is submitted that the Range Forest Officer who is an expert has opined that the tree maybe dangerous to the life and property and the Appellate Authority was not justified in sitting in appeal over such decision.

5. The learned Counsel for the respondent no.1 has supported the decision.

6. I have carefully considered the circumstances and the submissions made. Section 12A of the Act to the extent relevant reads thus :

“12-A.- Removal of trees, etc., which are in ruinous state or likely to fall.-(1) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Tree Officer or the Deputy Collectors having jurisdiction over their respective areas, if it appears to him at any time that any tree over any land or its branch or a part thereof is in ruinous state or is in such condition that it is likely to fall and thereby cause injury to a person living or carrying on business in the neighbourhood or passer-by or to a building or house or any public place, he may, by written order require the person owning or possessing such tree to lop or cut down such tree or portion of a tree, which is in such condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by.”

It can thus clearly be seen that what Section 12 A of the Act contemplates is removal of trees “which is in ruinous state or in such condition that it is likely to fall.” The apprehended

danger of the fall of the tree should be real and in presentee and should be the outcome of a ruinous state of the tree or which is otherwise likely to fall. The report of the Range Forest Officer does not indicate that the tree is in ruinous condition or is likely to fall. On the contrary, the photographs only shows that the tree is touching/resting against the grill of the kitchen balcony. The Appellate Authority who is also an expert officer of the rank of Conservator of Forest, has rightly found that the report of the Range Forest Officer only shows that the tree 'may' be dangerous to life and property and, in any event, it does not show that the subject tree is in ruinous condition or is likely to fall.

7. In my considered view, it would not be open for this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India to substitute its decision in the place of the one which has been taken by the Appellate Authority as it is a plausible view. There is no case made out for interference.

8. The petition is dismissed with no order as to costs.

C. V. BHADANG, J.

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