

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 104/2004.

1. Shri Bhaskar Vaman Harvalkar,
of major age, and residing at
Bambar, Nanora, Sattari Taluka.
 2. Shri Harishchandra Vassu Harvalkar,
of major age, residing at Bambar,
Nanora, Sattari Taluka.
- ... Appellants.

Versus

1. State of Goa
Through the Chief Secretary,
Secretariat, Panaji, Goa.
 2. The Conservator of Forests
with his office at Junta House
3rd Floor, Panaji, Goa.
 3. The Dy. Conservator of Forests,
(Tree Officer)
North Goa Division, Ponda, Goa.
 4. The Mamlatdar of Sattari Taluka
With his office at Valpoi,
Sattari, Goa.
- ... Respondents.

Mr. L. Raghunandan, under Legal Aid Scheme for the Appellants.

Ms. Susan Linhares, Addl. Government Advocate for the Respondents

Coram: M.S. SONAK, J.

Dated:14th JANUARY, 2021.

ORAL JUDGMENT:

Heard Mr. Raghunandan, learned Counsel appointed under the Legal Aid Scheme for the appellants, and Ms. Susan Linhares learned Addl. Government Advocate for the respondents.

2. This appeal was admitted on 18.08.2005 on the following Substantial Questions of Law:

“1. Whether the suit instituted by the appellants challenging the legality of the notices dated 13.12.89 and 18.12.89 demanding payment of the compounding fees was barred by provisions of Section 28 of the Goa, Daman and Diu Preservation of Trees Act, 1984?”

3. Today Mr. Raghunandan, learned Counsel for the appellants relying on the provisions of Section 100(5) of the C.P.C., urges framing of yet another additional substantial question of law in the context of the provisions of Section 30 of the Preservation of Trees Act, 1984 (said Act). The question proposed by him reads as follows:

“ Whether the proceedings initiated against the

plaintiffs for the offence under Section 8 of the Preservation of Trees Act, 1984 were vitiated in view of Section 30 of the Preservation of Trees Act, 1984.”

4. According to me, there is no necessity for framing any additional substantial question of law, since it is always open to the appellants to contend that the provisions of the said Act were not applicable in this matter, and as a consequence, the appellant's suit could not have been dismissed by resort to the provisions of Section 28 of the said Act. Since the additional substantial question of law, to a great extent is subsumed in the substantial question of law already framed, there is no necessity to frame the additional substantial question of law, in this matter.

5. The appellants, in this case, are the original plaintiffs and the respondents are the original defendants in Special Civil Suit No.18/1991/A instituted in the Court of Civil Judge, Senior Division, Bicholim.

6. This suit was for a declaration that the notices dated 13.12.1989 and 18.12.1989 for compounding of the offences under the said Act were unjust and illegal and seeking a perpetual injunction against the respondents from enforcing the same.

7. The Trial Court, by judgment and decree dated 30.04.2001 dismissed the suit on various grounds including *inter alia* on the ground that such suit was not maintainable on account of the provisions of Section 28 of the said Act.

8. The appellants appealed and the first appellate court, by judgment and decree dated 05.04.2005, in Regular Civil Appeal No.25/2014 dismissed the appeal. Hence the present Second Appeal on the aforesaid substantial questions of law.

9. Mr. Raghunandan, the learned Counsel for the appellants, submits that there is ample evidence on record that the appellants were allotted the suit property under the provisions of the Goa Land Revenue Code for certain specific purposes. He submits that this means that though the appellants were allottees of the suit property, the same was government land. He refers to the provisions of Section 30 of the said Act to submit that nothing in the said Act shall apply to the government land. He, therefore, submits that the appellants' suit could not have been dismissed by relying upon the provisions of Section 28 of the said Act since the said Act was not at all applicable in this case.

10. Mr. Raghunandan submits that from the marginal note or the headnote to Section 30 of the said Act, it is clear that the same

provides certain areas to which the said Act would not apply. He submits that even if it is assumed that there is some ambiguity in the text of Section 30 of the said Act, such ambiguity has to be resolved by reference to the marginal note or the headnote to this Section. He submits that by the adoption of this principle of interpretation it is quite clear that the said Act does not apply to the government lands and consequently the two courts erred in non-suiting the appellants by reference to the provisions of Section 28 of the said Act.

11. Mr. Raghunandan, the learned Counsel, without prejudice to the aforesaid contentions submits that in this case, the procedure prescribed for compounding the offence was never followed by the respondents. He submits that the issue of compounding can arise only after the compounding fees are actually paid. Therefore, he submits that the compounding notice can neither be said to be in good faith and can such notice be regarded as a valid notice in terms of the said Act.

12. Mr. Raghunandan submits that in such circumstances, the provisions of Section 28 of the said Act cannot be construed as a bar to the maintainability of the suit and the two Courts erred in construing so.

13. Ms. Susan Linhares, learned Addl Government Advocate for

the respondents, defends the impugned judgment and order based on the reasoning in the impugned judgments and decrees. She submits that the appellants' interpretation of Section 30 of the said Act may not be correct since all that Section 30 of the said Act provides is that the provisions of Section 30 will not apply to the *government*. No doubt the provisions of the said Act are also not to apply to a government forest under the control of the Forest Department or forest notified under the Indian Forest Act, 1927. She however points out that it was the case of none of the parties that the land in question was government forest or forest notified under the Indian Forest Act, 1927.

14. Ms. Linhares submits that there are findings that the impugned notices were issued in good faith and there is no perversity in recording the findings of such fact. The bar under Section 28 of the said Act was clearly attracted and the suits were quite correctly dismissed as not maintainable.

15. The rival contentions now fall for my determination.

16. To appreciate and evaluate the rival contentions there is a necessity to refer to Sections 28 and 30 of the said Act which read as follows:-

“28. Bar of Proceedings. *No suit or proceedings shall lie against the Government or any person empowered to exercise power or to perform duties or discharge functions under this Act, for anything done or purporting to be done or omitted to be done in good faith under this Act or the rules and orders made thereunder.*

30. Act not to apply to certain areas. *Nothing in this Act shall apply to the Government, a Government forest under the control of the Forest Department, a forest or forest land notified under the Indian Forest Act, 1927.”*

17. Now, Section 30 of the said Act upon which Mr. Raghunandan places emphasis only provides that nothing in the said Act shall apply to the *government*, a Government forest under the control of the Forest Department, a forest or forest land notified under the Indian Forest Act, 1927. Admittedly, the land in question is neither a government forest under the control of the Forest Department or a forest land notified under the Indian Forest Act, 1927.

18. At least a plain reading of Section 30 of the said Act does not indicate that the same was not to apply or was not intended to apply to the “Government land”.

19. Section 30 merely states that the provisions of the said Act were not to apply to the “Government”. The said Act was enacted to

provide for the preservation of trees. Therefore, it could never have been the intention of the legislature to exclude government lands that were allotted to private parties under the provisions of the Land Revenue Code as otherwise, based on such an interpretation, the provisions of the said Act could be easily frustrated by unauthorisedly felling trees on government land and thereafter claiming that the provisions of the said Act are not at all applicable to such unauthorized felling. Since the object of the said act is the preservation of trees, in the absence of a clear provision, it is not possible to strain the existing provision and read the word “land” after the word “government” in section 30 of the said act. Such reading might render the unauthorized felling of trees from government lands by the allottees of such lands unjustifiably immune from the preservative or the protective provisions of the said act.

20. Besides, it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly, the Courts must avoid rejection or addition of words and may resort to that only in exceptional circumstances to achieve the purpose of the Act or to give purposeful meaning to the section. There is never any presumption that a casus omissus exists and generally, the Courts should avoid creating a casus omissus where there is none.

21. Section 30 only provides that the provisions of the said Act

will not apply to the *government*. This is possibly based on the premise that the government will not indulge in some wanton or unjustified felling of trees unless the situation absolutely warrants the same. This is also possibly to immunize the government when it fells trees in the public interest and emergent situations. Therefore, on a plain reading of the provisions in section 30 of the said Act, it is not possible to construe it in the manner urged by Mr. Raghunandan.

22. The marginal note or the headnote of a Section can be employed as an external aid to interpretation only when the text of the provision is unclear or ambiguous, but not otherwise. In this case, the text is quite clear, and therefore, there is no case made out to interpret the provisions by reference to the marginal note or the headnote. In **CIT v Ahmedbhai Umarbhai** AIR 1950 SC 134 it is held that the title of a chapter cannot be legitimately used to restrict plain terms of an enactment. In **Raichurmantham v Prabhakar Dugar** AIR 2004 SC3625 it is held that in case of a conflict between the plain language of a provision and the meaning of a heading or a title, the heading or the title would not control the meaning which is clearly and plainly discernable from the language of the provision thereunder.

23. The rule of *Ejusdem Generis* is also not at all attracted in the present case because there is no commonality between “Government” as an entity and government forest or land notified under Indian

Forest Act, 1927. This is also not a case of *Casus Omissus* because the interpretation of the section as it stands does not lead to any absurdity as such.

24. For all the aforesaid reasons, it is not possible to accept Mr. Raghunandan's contention that the provisions of the said Act were not at all applicable in the present matter on account of the interpretation suggested by him qua the provisions of Section 30 of the said Act.

25. Now Coming to the provisions of Section 28 of the said Act, it provides that no suit or proceedings shall lie against the Government or any person empowered to exercise power or to perform duties or discharge functions under this Act, for anything done or purporting to be done or omitted to be done in good faith under this Act or the rules and orders made thereunder.

26. In this case, the trial Court and the first appellate Court have recorded concurrent findings of facts, that the authorities which issued the impugned notices had acted in good faith. There is nothing on record to indicate that the authorities had breached any prescribed procedures. However, even if it is assumed that there were some irregularities or breaches of procedure, that by itself will not render the action as one taken in bad faith or as an action that is not taken in good faith. There is no case made out to disturb the

concurrent findings of facts as recorded by the two Courts on the aspect of good faith. Possibly, this is a reason why no substantial question of law was even urged alleging any perversity in such finding of facts.

27. Since the findings of facts as to good faith are based upon the material on record, the provisions of Section 28 of the said Act were clearly attracted in this matter and based thereon, the two Courts were justified in dismissing the suit by adverting to the provisions of Section 28 of the said Act.

28. For all the aforesaid reasons, the Second Appeal is required to be dismissed and is hereby dismissed. There shall be no order as to costs.

29. Before I conclude, however, it is necessary to place on record appreciation for the efforts put in by Mr. L. Raghunandan in arguing this matter on behalf of the appellants under the Legal Aid Scheme.

M.S. SONAK, J