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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 468 OF 2022

SUDHA SHIVAJI HEGDE & 2 ORS. ... PETITIONERS

VS

THE CONSERVATOR OF FORESTS

& 2 ORS.

... RESPONDENTS

Ms. A. Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Petitioners.

Ms. Sulekha Kamat, Additional Government Advocate for
Respondent Nos. 1 and 2.

Mr. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar,
and Ms. Saicha Desai, Advocates for Respondent No. 3.

CORAM: G.S. KULKARNI, J.

DATED: 13 DECEMBER 2022

ORAL ORDER.

1. This Petition is directed against the judgment and order dated 6 September 2022 passed by the Appellate Authority under the Goa, Daman and Diu Preservation of Trees Act, 1984. By the impugned order, the Appellate Authority has rejected the petitioner's appeal against an order dated 29 July 2021 passed by

the Deputy Collector and SDO-II, Salcette, Goa (for short, “the First Authority”) in Case No. SDO-II/SAL/TA/13/2017/4541, whereby an application as filed by respondent no. 3 for cutting of two coconut trees belonging to the petitioners has been allowed. At the outset, the order passed by the First Authority is required to be noted, which reads thus:–

“The Respondent is directed to cut the C-1 and C-2 Coconut trees which is bent towards the Complainant House failing which the complainant shall cut the same and deposit the cut wood at the site.”

2. The Appellate Authority while dismissing the appeal of the petitioners made the following observations:–

“This authority heard the arguments from both the sides and verified the facts of Zonal Agriculture Officer for passing the order. The report of the ZAO has clearly mentioned about the status of the two coconut trees. Both the trees are pending towards the Respondent's House. The dried leaves and nuts are found in the property of the Respondent. The ZAO has also mentioned that the tree may fall and cause danger to life and property. As the tree is pending and leaves are touching the property of the Respondent, this authority feels that

the position of the tree makes threat to life and property of the Respondent.

3. It is on such a backdrop, the present Petition is filed. This Court had initially heard the petitioners and the learned Additional Government Advocate on 20 September 2022. While issuing notice to the private respondent, the following order came to be passed. The relevant extract of the same can be noted:–

“6. In the meantime, trees in question be not cut, however this shall be subject to the petitioner being responsible for any consequences in the event any untoward incident takes place causing any harm and injury to the human life and property on account of the trees in question.”

4. In pursuance of the notice issued by this Court, respondent no. 3 has entered appearance. Mr. Kantak, learned Senior Advocate appears for respondent no. 3. On several earlier dates, the proceedings were heard, as also, suggestions were discussed as an endeavour was being made by the parties to bring about an amicable settlement.

5. On 7 December 2022, on the above backdrop, this Court had passed the following order:–

“1. On the backdrop of the previous hearing, I have heard learned counsel for the parties. The video(s) on the actual positioning of the two trees in question were played on the television monitor available in the Court room. The dispute appears to be primarily with regard to the tree labelled as C-1 which according to respondent no.3 is bending towards the property of the respondent no.3, in respect of which it is respondent no.3's complaint that a nuisance and prejudice is caused to him.

2. As stated by the learned senior counsel for the parties that some measures to pull the C-1 tree inside the property of the petitioner can be worked out. This more particularly, as earlier the tree was considerably bent towards the property of the respondent and now the situation has substantially improved and the tree is now partially protruding towards the property of the respondent, which can also be noticed from the photographs and the video.

3. If such measures are available, let the petitioner suggest such measures to respondent no. 3 as also measures to prevent branches or the fruits of the tree falling into respondent no.3's property in the event of any storm, winds etc. It would thus be appropriate that parties work out some concrete solution.

4. *In the event there is no agreement/consensus on the issues the Court will proceed to pass appropriate orders after hearing the parties.*

5. *Accordingly, stand over to 13 December 2022.*

6. *Ad-Interim relief, if any, shall continue to operate till next date.*

However, subject to the observations made in the earlier orders.

6. Accordingly, as to on what was observed by this Court in regard to the measures and suggestions discussed by the parties at the previous hearing, the proceedings are listed today.

7. Ms. Agni, learned Senior Counsel for the petitioners has placed on record a recent photograph of the tree in order to submit that to avoid the bending of the tree/falling of the tree in the premises of respondent no. 3, the tree is being tied with a rope and pulled towards the house of the petitioners.

8. The issues primarily are as to whether there is any requirement to cut the tree and if it is not cut, whether, the complaint of respondent no. 3 would continue to exist or

otherwise. In discussing these issues, considerable time was spent. It appears that there are technical/expert issues in regard to the adequate measures which are required to be adopted. Parties are required to be heard on such issues so as to consider whether the tree can be saved and at the same time, this would not adversely affect respondent no. 3. In my opinion, it would be appropriate that the Appellate Authority, which is headed by the Conservator of Forest can conveniently delve into such issues, as it would be available for the Appellate Authority, if so necessary, to invite an expert opinion on the measures which can be adopted, in this peculiar situation, on the issues as involved.

9. Accordingly, the parties are relegated to the Appellate Authority. They shall at the first instance appear before the Appellate Authority on 21 December 2022 at 2.30 p.m. The learned Appellate Authority shall take into consideration the rival contentions and pass appropriate orders on the appeal as filed by the petitioners. The Appellate Authority is free to take an aid of an expert or any other technical assistance in adjudication of the appeal, if required.

10. Needless to observe that for such limited purpose the impugned order is required to be set aside and it is accordingly set aside, to enable the Appellate Authority to decide the appeal afresh. The Appellate Authority shall hear and dispose of the appeal in accordance with law as expeditiously as possible and in any event on or before **30 January 2023**. All contentions of all parties are expressly kept open.

11. The observations of this Court in the order dated 20 September 2022, however, shall continue to operate till appropriate decision is taken by the Appellate Authority.

12. Disposed of in the above terms. No costs.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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