



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 383 OF 2024

IN

PIL WRIT PETITION NO.15 OF 2024

AARON VICTOR E. FERNANDES ... APPLICANT

VERSUS

THE STATE OF GOA, THR.
ITS CHIEF SECRETARY
AND 9 ORS.

.... RESPONDENTS

Mr. Om D'Costa and Ms. Malisa Zemira Simoes, Advocates for the Applicant.

Mr. D. Pangam, Senior Counsel and Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for the State.

Mr. Savio Misquita, Advocate for Respondent no. 2.

Mr. Somnath Karpe with Ms. Siddhi Parodkar, Advocates for Respondent no. 9.

**CORAM:- M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATED :- 25th February, 2025

ORAL ORDER (Per M.S. Karnik, J.)

1. In terms of our earlier directions, the report of Site Inspection held on 18/02/2025 by Mr. Parag Mody, Landscape Design and Execution is placed on record. Mr. Parag Mody asked Doctor Trees to review the protocol for removal of the banyan tree from the site and its transport to the RRSM site office. The comments made by Mr. Parag Mody are thus:-



Comments:

The pic shows that the approximate final boundaries of the banyan tree post pruning. Based on the available resources, and the fact that there is no place nearby available to relocate the tree, there is no choice but the severely prune it to enable its transport in a horizontal position on a large flatbed truck. The tree will remain severely maimed for decades to come, and it is known whether or not it will return to its current state. It was also agreed that attempts will be made to replant the three ancillary trunks as separate trees.

2. So far as Site Location 2, RRSN Site Office is concerned, the same read thus:-

The site location firm relocation of the banyan tree is acceptable. Due to the proximity of the tree to the site office, it will get the necessary care required.

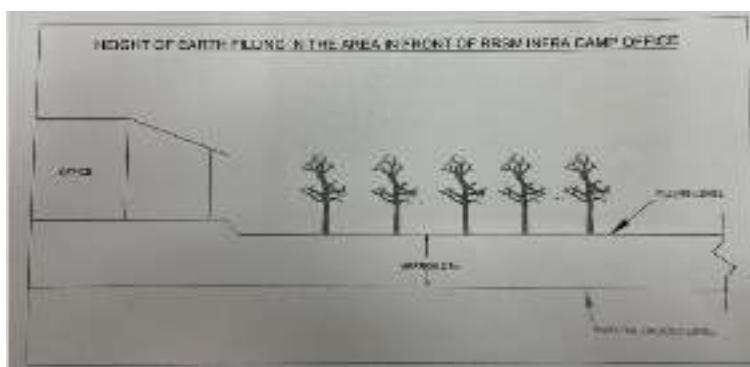
The following concerns were raised by me:

- 1. The new site for all the trees is in a rice paddy and will get waterlogged in the monsoon, making the roots susceptible to root rot.*

2. The time of care required for the trees should be at least 2 years, and not 6 months as stated in the service provider's translocation document.

The following response was provided to me by RRSM VP of Projects, Mr. Rajdeep Bhattacharya:

The water logging does occur at the natural ground level of the site, but the built-up level of the RRSM site is 2.7m higher than the natural ground level, as shown (drawing courtesy of RRSM).



When an adequate drainage channel will be created around the built up area, the surface runoff will be channelled towards the drain.

RRSM will have an office in Goa post handover for approximately 5 years. Regarding caring for the trees after end of 6 months, RRSM agreed to do the following:

- 1. RRSM will directly enter into an AMC contract with Doctor Trees for the required duration to ensure the adequate care is provided for the trees.*
- 2. RRSM will provide daily care to the trees, led by Mr. Anand, and also apply medicine as and when necessary. There will be periodic site visits*

by Doctor Trees. I recommend that Doctor Trees visit the site monthly to assess the state of the trees, as part of the terms and conditions of the AMC.

3. The duration of care will be at least 2 years from the date of relocation.

There is a report as to the state of translocated trees.

3. Learned Advocate General submitted that the entire recommendations of Mr. Parag Mody are acceptable and the cost will be recovered from the Contractor. The transport for translocation will be recovered from the Contractor. The translocation will be done under the supervision of Mr. Parag Modi and as per the report. In terms of the report, the office of the Deputy Conservator of Forest has issued the following directions regarding the translocation of the remaining banyan tree on receiving due permissions. The directions issued by the Deputy Conservator of Forest are thus:-

1. The User Agency shall inform RFO, Panaji in writing about the proposed date of translocation, intended target location with GPS coordinates etc in advance.

2. User Agency shall prepare a checklist with specifications of the heavy machineries/vehicles being used for translocation of tree in advance.

3. *The transplantation procedure submitted by M/s. Doctor Trees to be followed in true spirit including the minimum height and width to be maintained above-ground level as suggested by the petitioners [35 ft height above ground level with sufficient foliage and 13.2 ft average width]. However, effort shall be made to complete the entire translocation exercise within a time span of 24 to 36 hours, once the pruning/trimming is started, so as to minimize the shock and wilting.*

4. *Only minimal removal of horizontal branches shall be carried out so as to ensure effective translocation and survival of trees.*

5. *Transportation of trees shall be planned in such a way that ball of earth is intact and damage to the main trunk is minimal.*

6. *User Agency to ensure that responsible officials from the agency entrusted for translocation of trees are present at the site from pruning, extraction of trees with ball of earth, safe transportation and till relocation at the identified site.*

7. *It shall be the responsibility of the User Agency to photograph the entire translocation activities in a sequential manner.*

8. *User Agency through the Agencies entrusted for construction/translocation ensure aftercare of translocated trees for a minimum period of 5 years and submit a status report on its survival in every 3 months interval to the Tree Officer, North Goa, enclosing necessary photographs.*

4. Learned Advocate General submits that the directions issued by the Deputy Conservator of Forest as referred to hereinbefore will be duly complied with.

5. Mr. Om D'Costa learned counsel for the petitioner, on instructions, opposes the translocation as according to him and even from the report of Mr. Parag Mody, the tree will remain severely maimed for decades to come, and it is not known whether or not it will return to its current state. He submits that the tree should not be translocated and saved. However, considering the report of the Deputy Conservator of Forests, and as the translocation is being done under the supervision of Mr. Parag Mody, the project being in public interest, we are inclined to pass the following order:

A. The PWD, Doctor Trees and RRSM are permitted to go ahead with the translocation of the 6th (last) Banyan tree which remains to be translocated.

B. The translocation shall be carried out by Doctor Trees strictly in terms of the methodology submitted by it to the Deputy Conservator of Forests pursuant to the meeting held on 31.01.2025, as amended in the Final Action Plan submitted on 25.02.2025.

C. The Expert suggested by the Petitioners, Shri Parag Mody shall be present at the two sites where the work of translocation is undertaken, and is permitted to make monthly visits to the site where the trees are shifted/translocated for a period of one year and make any recommendations to Doctor Trees and RRSN with copy to the PWD and Deputy Conservator of Forests. DCF shall consider the recommendations and issue any directions to RRSN/Doctor Trees/PWD as he may find necessary.

D. Doctor Trees has agreed to pay Shri Parag Mody a total amount of Rs. 50,000/- plus GST. 60% of this amount shall be paid before the start of the translocation process and the balance shall be paid at the end of the one year period, post translocation.

E. The directions issued by the Deputy Conservator of Forests under No. 01/DCFN/Valuation-PJM/2024-25/340 dated 24.02.2025 shall be scrupulously followed. The directions are as under:

1. The User Agency shall inform RFO, Panaji in writing about the proposed date of translocation, intended target location with GPS coordinates etc in advance.

2. User Agency shall prepare a checklist with specifications of the heavy machineries/vehicles being used for translocation of tree in advance.

3. The transplantation procedure submitted by

M/s. Doctor Trees to be followed in true spirit including the minimum height and width to be maintained above-ground level as suggested by the petitioners [35 ft height above ground level with sufficient foliage and 13.2 ft average width]. However, effort shall be made to complete the entire translocation exercise within a time span of 24 to 36 hours, once the pruning/trimming is started, so as to minimize the shock and wilting.

4. Only minimal removal of horizontal branches shall be carried out so as to ensure effective translocation and survival of trees.

5. Transportation of trees shall be planned in such a way that ball of earth is intact and damage to the main trunk is minimal.

6. User Agency to ensure that responsible officials from the agency entrusted for translocation of trees are present at the site from pruning, extraction of trees with ball of earth, safe transportation and till relocation at the identified site.

7. It shall be the responsibility of the User Agency to photograph the entire translocation activities in a sequential manner.

8. User Agency through the Agencies entrusted for construction/translocation ensure aftercare of translocated trees for a minimum period of 5 years and submit a status report on its survival in every 3 months interval to the Tree Officer, North Goa, enclosing necessary photographs.

F. RRSM shall ensure that adequate drainage channel shall be created around the area where the trees are translocated, and channelling of surface run off towards the drain, to prevent water logging.

G. The Sub-Divisional Forest Officer, Mapusa and the Range Forest Office, Panaji shall remain present with other staff of Forest Department, Panaji Range, and oversee the entire translocation process.

H. In case of any difference of opinion between Parag Mody and Doctor Trees on the extent of pruning or other aspects of the translocation process, the decision on the same shall be taken by the Tree Officer; which shall be final and the translocation shall be done in terms of the decision of the Tree Officer.

6. It is needless to mention that the works will be carried out under the supervision of the Sub-Divisional Forest Officer, Mapusa. Misc. Civil Application No. 383 of 2024 is disposed of. Liberty to apply incase of difficulty.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.