

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2002

1. Sandeep Azrenkar, r/o Margao, Salcette, Goa.
2. Goa Foundation, a Society registered under the Societies Registration Act, 1960, through its Secretary, Dr. Claude Alvares, and having its registered at Rm. 7, La Brag Chambers, above Mapusa Clinic, Mapusa, Goa. ... Petitioners

Versus

1. State of Goa, through Chief Secretary, Government of Goa, Secretariat, Panaji-Goa.
2. The Chief Conservator of Forests, Forest Department, Behind Old Goa Medical College Complex, Campal, Panaji-Goa.
3. The Dy. Collector (& SDO), North Goa Collectorate, Panaji-Goa.
4. The Secretary, Ministry of Environment & Forests, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, New Delhi 110 003.
5. The Panchayat of Se Old Goa, through its Sarpanch, Ela, Goa.
6. Shri Satish Bhandari, r/o Dotor Bhat, Opp. Pinto Service Station, Old Goa.
7. The Chief Town Planner, Town and Country Planning Dept., Old Goa Medical College Complex, Campal, Panaji, Goa.

8. Shri Babaram C. Ugvekar, Navelkar Estate, Bldg. No.14, B2, Baiginim, Old Goa.
9. Shri Mathews / Smt. Piedade Rodrigues, Grand Xencra Bhatt, Neura, Ilhas, Goa.
10. Smt. Betilda D'Cunha, Molalr, Corlim, Tiswadi, Ilhas, Goa.
11. Shri Shrikant P. Borkar, Barbosa Bldg., 2nd floor, Patrong, Baina, Vasco-da-Gama, Goa.
12. Shri Santosh S. Kundaikar, Sameer Bldg., 1st floor, Tivrem, Marcel, Goa.
13. Shri Mohandas N. Malkarnekar, B.P.D., 5/3, Alto Betim, Bardez, Goa.
14. Shri Raja Gudusab S. Pathan, Housing Board Colony, Rm. No. 8 Corlim, Ilhas, Goa.
15. Shri Chandrakant B. Halarnkar, Behind Archaeological Survey of India, House No.20, Old Goa.
16. Smt. Famida Chansab Kazi, Katya Bhat, Old Goa.
17. Smt. Rizwana M. Rafiq Mulla, House No.D-281/49/1, Plot No.56, P.D.A. Colony, Corlim, Tiswadi, Goa.
18. Shri Ravi / Shri Soma Naik, House No.62, Near Mahalaxmi Temple, Panaji, Goa.
19. Shri Advavi Rao Desai, Vishnu Niwas, Pai Building, Near Neura Road, Ela, Old Goa.
20. Shri Kashinath Govind Desai, Near Shirvaikar Garage, St. Inez, Panaji, Goa.

21. Smt. Priti P. Amonkar, House No.E/6/2, Panvel, Ribandar, Ilhas, Goa.
22. Shri Dhiraj/Shri Niraj/Smt. Varsha Wagle, Manguirish Apts., 2nd flr., 18th June Road, Panaji, Goa.
23. Smt. Maria P. Sequeira D'Costa, Fram Apts., 1st floor, B-Block, Old Goa.
24. Smt. Rosaria De Souza e Fernandes, House No.699, Manquerial Ward, St. Estevan, Ilhas, Goa.
25. Shri Madhukar N. Raikar, Asst. Rector Quarters, Polytechnic Boys Hostel Campus, Altinho, Panaji, Goa.
26. Smt. Wilma S. Fernandes, House No.68, Portel Bhat, Goa-Velha, Batim, Goa.
27. Smt. Socorrina V. M. Mascarenhas, Madkai, Adon Waddo, P.O. Mardol, Goa.
28. Shri Diogo, A. D'Costa, A-S3, Vijaynagar Housing Society, Corlim, Ilhas, Goa.
29. Smt. Bharati Gaonkar alias Bharati Y. Sathaye, Vidyanagar Housing Society, Corlim, Tiswadi, Goa.
30. Smt. Santa V. Mendes, House No.1076, Madel, Choraio, Ilhas, Goa.
31. Smt. Milagrina D. Andrade, Corlim, Mollar, Ilhas, Goa.
32. Smt. Shasvat K. Naik, C-2, S-1, Navelkar Estate, Baiguinim, Old Goa.
33. Smt. Elsie D'Souza, Bela Vista, Corlim, Ilhas, Goa.

34. Shri Devshankar S. Prasad, Church Complex, Old Goa.
35. Smt. Shakuntala S. Vernekar, House No.351, Near Mahalsa Temple, Mardol, Goa.
36. Smt. Teresa O. Pinto, Plot No.7, Cari Bhat, Carambolim, P.O. Corlim, Goa.
37. Shri Jose C. Rodrigues, Francis Pereira Ward, House No.126, Utorda, P.O. Majorda, Salcete, Goa.
38. Goa Tamil Sangam, S.K. Abdul Samad, Flat No.E-1-3, Govt. Polytechnic Qtrs., Altinho, Panaji, Goa.
39. Shri Miguel Caitano Saldanha, H.No.526, Near Church, Marcel, Goa.
40. Smt. Sacrament Rodrigues, Fondvem, H.No.300, Ribandar, Goa.
41. Shri Agnelo P. Rebelo, H.No.220/1, Mollar, Corlim, Ilhas, Goa.
42. Smt. Amalina Vaz, Madkaikar Plaza, Block No.C, 1st floor, Ilhas, Goa.
43. Smt. Luiza Maria Dias, Madkaikar Plaza, Building "C", 2nd floor, Corlim, Ilhas, Goa.
44. Shri Rolin/Agnes Joseph Fernandes, C/o Joseph Fernandes, 2/20, Christ Villa, Ghodupes Road, Mazgaon, Mumbai 400 010.
45. Shri Thomas Gracias, Reiguini Bandora, E-10, Ponda, Goa.
46. Savio Silveira, Palmar Vaddo, St. Estevam, Goa.
47. Shri Babu Bhagwan, Dotorbhat, Ela, Old Goa.

48. Shri Chandrakant Kalsekar, G/2, B-5,
Vijay Nagar, Corlim, Ilhas, Goa.
49. Shri Jayant Tari, Manas Waddo,
Kundaim, Goa.
50. Shri Zacarias Braganza, 291, Molok
Waddo, Mercedes, Ilhas, Goa.
51. Shri Sajan Vernekar, H. No. D-28,
Dhavji, Old Goa.
52. Esperance Fernandes, 562, Mandur,
Dongri, Neura, Ilhas, Goa. ... Respondents

**WITH
MISCELLANEOUS CIVIL APPLICATION NOS. 370,
372, 373 & 404 OF 2008
IN
WRIT PETITION NO. 344 OF 2002**

Shri Babaram Chintamani Ugvekar &
Others ... Applicants

Versus

Shri Sandeep Azrekar & Another ... Respondents

Ms. Norma Alvares with Mr. Om D'Costa, Advocates for the
Petitioners.

Mr. Pravin Faldessai, Additional Government Advocate for
Respondent Nos. 1, 2, 3 and 7.

Mr. S.D. Patil, Advocate for Respondent No. 4.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho
and Mr. Sagar Rivonkar, Advocates for Respondent No. 6.

Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny,
Advocate for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to
34, 39 to 41, 44, 46, 49 and 52.

**CORAM: B.P. COLABAWALLA &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON : 17th FEBRUARY 2023

PRONOUNCED ON : 29th FEBRUARY 2024

JUDGEMENT: [PER: BHARAT P. DESHPANDE, J].

1. At the outset, we would like to mention that during the course of dictation of this judgment, we had a query. We therefore kept the matter on board for directions [through a VC hearing] on 22nd February 2024. This was because one of us (B. P. Colabawalla, J.) is currently sitting at the principal seat of this Court. On that date, our query was resolved. Since the judgment was originally reserved on 17th February 2023, we, on 22nd February 2024, also enquired from the respective parties whether they have anything further to add or should we proceed with our judgment. All parties before us stated that they had nothing further to add as they have given their written submissions, and they had no objection if we proceed to pass our judgment. We have accordingly proceeded to pronounce judgment today.

FACTS:

2. By way of the present Petition, Petitioner Nos. 1 and 2, claiming to be Environmentalist associated with NGOs, inter alia challenge the conversion sanad granted by Respondent No. 3 dated 04.04.2000 in favour of Respondent No. 6, in connection with Survey No. 100/o of Ella village in Tiswadi Taluka (for short “***the said land***” or “***the said property***”), as well as all actions subsequent thereto. This challenge is laid on the premise that the said property is forest land and no permission from the Central Government under the Forest (Conservation) Act, 1980 was obtained before the grant of such sanad.

3. In a nutshell, the Petitioners' main contention is that the Forest (Conservation) Act, 1980 is applicable to the said land, which is, in fact, a hilly terrain in Ella village, Panchayat Se Old Goa, having forest trees. It is the case of the Petitioners that Respondent No.6, being the owner of the said land, in collusion with Respondent Nos. 1, 2 and 5, cut the forest trees without any permission, converted the use of the said land to a non-forestry purpose, and obtained the sanad for the purpose of developing the said land into residential plots. While doing so, Respondent No. 6 submitted false information that only 23 trees existed on the said land [while applying for permission to cut the same from the Tree

Officer], and under the guise of such permission, in fact, removed/felled 609 forest trees and 15,000 bamboos. Similarly, the remaining portion, wherein trees were existing, was cleared by burning of trees in order to destroy the entire forest. It is the case of the Petitioners that the area of Survey No. 100/o (said land) is 7 hectares and the entire area was covered by a thick forest. Though it is private land, permission from the Central Government was a must, before obtaining the sanad for conversion of the said land. It is the main contention of the Petitioners that the said land is a forest and the Range Forest Officer, the Deputy Conservator of Forest, along with other Forest Officers, have categorically observed that the said land fulfills all the criteria for being identified as a private forest.

4. It is the contention of the Petitioners that after the felling of many forest trees and bamboos, the Deputy Conservator of Forest visited the site and conducted a panchanama and thereafter, lodged a complaint under the *Goa, Daman and Diu Preservation of Trees Act, 1984* against Respondent No. 6. By the said complaint, the Court was informed of the number of trees felled and that the area was cleared illegally. Respondent No. 6, being the accused, pleaded guilty and accordingly, he was sentenced to pay a fine of Rs.1,000/.

5. It is on this basis that the Petitioners seek the following reliefs in the above Petition:-

“(a) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the sanad No.CNV/TIS/15/2000 dated 4.4.2000 issued by Respondent No.3 in favour of Respondent No.6;

(b) Issue an order directing the Respondents to restore the property to its original condition;

(c) Issue a Writ of Prohibition, or a Writ in the nature of Prohibition, prohibiting the Respondent No.6 from carrying out any development works in the above-mentioned property, without prior approval of the Central Government under the Forest Conservation Act, 1980;

(c-i) For an order or order in the nature of a writ quashing and setting aside the circular (No.16/11/90/RD) dated 23.6.1997;

(c-ii) Pending hearing and final disposal of this petition, stay of the operation of the circular (No.16/11/90/RD) dated 23.6.1997;

(d) Pending hearing and final disposal of this petition, stay any further developmental works in respect of the property;

(e) Pending hearing and final disposal of this petition, for an order restraining the Resp.No.3 from renewing or issuing any fresh sanad for the said plot;

(f) Pending hearing and final disposal of this petition, for an order restraining the Resp. No.5 from granting any construction licence for any development or construction on the said plot;

(g) Interim relief in terms of prayers (d-f);

(h) For costs of this petition;

(i) For any other reliefs this Hon'ble Court may be pleased to grant."

6. During the pendency of the present Petition, the amended prayers (c-i and c-ii), which relate to the circular dated 23.06.1997, became infructuous as a statement was made before this Court that such circular has been withdrawn by the Government.

7. The main challenge that now remains is against the sanad (Exhibit-A) dated 04.04.2000, which was issued by Respondent No.3 under the provisions of the *Goa, Daman and Diu Land Revenue Code*.

8. It is an undisputed fact that Survey No. 100/o of Ella village (the said land) is bounded on the north by Survey Nos. 50 and 59; on the west by Survey No. 98; towards the south by Survey Nos. 101, 102 and 103; and on the east by Survey No. 104, which abuts National Highway 17 (NH-17). In the survey records, the said land of Respondent No.6 [Survey No. 100/o] was partly in a settlement area to the extent of 5,254 square metres as originally indicated in the Outline Development Plan (ODP). Similarly, the property bearing Survey Nos. 101, 102 and 103, which are adjacent to the said property of Respondent No. 6 are admittedly in the settlement zone

and abutting NH-17 wherein a number of multi storeyed buildings and bungalows exist.

9. We have extensively heard the learned Counsel Ms. Norma Alvares appearing for the Petitioners, the learned Additional Government Advocate Mr. Faldessai for Respondent Nos. 1, 2, 3 and 7, learned Senior Counsel Mr. Coelho Pereira for Respondent No. 6 – owner of the said land, and learned Senior Counsel Mr. Suresh Lotlikar, who appears for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to 34, 39 to 41, 44, 46, 49 and 52 – the owners of the individual plots on the said land.

SUBMISSIONS OF THE PETITIONERS:

10. Ms. Norma Alvares would submit that the granting of a conversion sanad dated 04.04.2000 [in respect of Survey No. 100/0 of Ella village/said land] is totally illegal and without following the due procedure as laid down under the Forest (Conservation) Act, 1980. Her main contention is that the said land is a forest land, and for conversion of any forest land for any non-forestry purpose, without prior approval of the Central Government [i.e. the Ministry of Environment and Forest], is illegal. She would submit that there is no document placed on record by Respondent No. 6 to show that before obtaining the sanad dated 04.04.2000,

any such permission from the Central Government [as provided under the Forest (Conservation) Act, 1980] was obtained. She would submit that Respondent No. 6 deliberately, and in connivance with the Officers of the Goa Government, suppressed the material fact that the said land is in fact a forest, having and fulfilling all the criteria for a declaration of such land as forest land, and fraudulently obtained the conversion. While doing so, Respondent No. 6 illegally felled hundreds of various trees, cleared large scale stumps by burning the said land, sub-divided it into plots, and sold some of them to different persons, who are specifically joined as Respondent Nos. 8 to 52 to this Petition.

11. Ms. Alvares then submitted that from the beginning, all the Officers of the Forest Department of the Government of Goa consistently observed that the said land is fulfilling the criteria of a forest and therefore, the Forest (Conservation) Act, 1980 is applicable for doing any development, or for converting it for a non-forest purpose. This fact was known to Respondent No. 6 when he applied for clearing of some of the trees and also whilst executing an indemnity bond in November 1996. It is for this reason that Respondent No. 6 undertook to replant the trees which he would cut. He also undertook not to develop the said land for residential purposes. However, within a few years, Respondent No. 6 applied

for a conversion sanad and for sub-division of the said land into plots. Due to the circular issued by the Government of Goa in the year 1997 [doing away with the practice of consulting the Forest Department before issuing a sanad], the concerned Officer processed such Application of Respondent No. 6 and eventually granted the sanad without taking permission from and/or consulting the Forest Department.

12. Ms. Alvares submitted that Respondent No. 6 knew that his land is, in fact, a forest and was aware that permission for felling of trees for the purpose of development of said land would not be granted by the Forest Department. He, therefore, took the law into his own hands, and somewhere in January 2001, illegally felled around 609 trees and 15,000 bamboo and cleared the area by burning. On receipt of a complaint from some local persons, the Forest Department visited the spot and conducted a panchanama on 14.02.2001 and observed that many forest trees were cut without prior permission. Accordingly, the Deputy Conservator of Forest lodged a complaint before the learned Magistrate on 12.02.2002 claiming that Respondent No. 6 has illegally felled forest trees which is an offence under the *Goa, Daman and Diu Preservation of Trees Act, 1984*. On receipt of summons from the Magistrate, Respondent No. 6 appeared and pleaded guilty, thereby admitting

the facts mentioned in the complaint, and more so, admitting that his land is a forest land.

13. Ms. Alvares submitted that in response to the directions passed by the Hon'ble Supreme Court in the case of ***T. N. Godavarman Thirumulkpad Vs. Union of India [(1997) 2 SCC 267]***, the Government of Goa, on 24th January 1997, constituted an Expert Committee under the chairmanship of Shri Sadanand M Sawant for identification of forests in the State of Goa. This Expert Committee ("***the Sawant Committee***") thereafter prepared their report dated 8th December 1999 and submitted it to the Government of Goa. Ms. Alvares submitted that since the report of the *Sawant Committee* was not considered conclusive, the Government of Goa appointed another Committee headed by Mr. Karapurkar ("***the Karapurkar Committee***"), who tried to reconsider the lands which were visited and inspected by the *Sawant Committee*. In these circumstances, Petitioner No. 2 approached the Apex Court by filing a PIL in March 2001, alleging that the Karapurkar Committee is carrying out the work contrary to Sawant Committee's final report. In this PIL, State Government gave an assurance to the Apex Court that the Karapurkar Committee was working towards identifying additional areas so as

to complete the task that remained incomplete by Sawant Committee.

14. She therefore submitted that the report of the *Karapurkar Committee* is also of no importance since they only inspected portions of land which were left out by the *Sawant Committee*. Even otherwise, the report of the *Karapurkar Committee* is also not conclusive. She then submitted that the Government of Goa appointed another Committee [in view of the order passed by the National Green Tribunal (NGT) dated 07.01.2000] chaired by Deep Shikha Sharma (“**the Deep Shikha Sharma Committee**”), to review private forest lands identified by earlier Committees, namely, the *Sawant Committee* and the *Karapurkar Committee*. The *Deep Shikha Sharma Committee* gave its findings, which are reflected in the order of the NGT, West Zone Bench, dated 18.08.2020. She submitted that though the NGT accepted the report of the *Deep Shikha Sharma Committee*, the same is not final since in this petition a separate Committee was appointed specifically to find out whether said land is/was a forest.

15. Ms. Alvares submitted that the said land of Respondent No.6, though not identified as a forest by any of the earlier Committees, would certainly fall within the criteria of a forest land as laid down from time to time, and therefore, even though, the property was

felled, developed into plots, and sold to different persons, would not affect its original status as a forest. Consequently, she would submit that once this is the case, then the conversion sanad is required to be quashed and set aside as no permission from the Central Government was obtained for conversion of use of the said land for a non-forestry purpose.

16. In support of her contentions, she placed reliance on the following decisions:

(i) *Keshav Mills Co. Ltd. & Another Vs. Union of India & Others*, (1973) 1 SCC 380;

(ii) *Goa Foundation, Mapusa & Others Vs. State of Goa & Others*, 2001 (3) Mh.L.J.;

(iii) *Shri Shivanand V. Salgaocar Vs. Tree Officer & Deputy Conservator of Forests & Another (W.P. No. 162/1987 dated 27.11.1990)*;

(iv) *T.N. Godavarman Thirumulkpad Vs. Union of India & Others*, (1997) 2 SCC 267 and

(v) *M.C. Mehta Vs. Union of India & Others*, (2018) 18 SCC 397.

17. Ms. Alvares lastly submitted that now it has been put beyond the realm of doubt that the said land belonging to Respondent No.6 is a forest land. She submitted that during the pendency of the above Writ Petition, this Court, with the consent of parties, on

16.08.2006, constituted a Committee of experts [for short “***the Court Committee***”] to examine and report to the Court as to whether or not the said land of Respondent No.6 [Survey No. 100/o of Ella Village] was a forest land but stood degraded denuded or cleared. She submitted that this *Court Committee* has filed a report in this Court dated 14.12.2006 and observed that Respondent No.6’s land bearing Survey No. 100/o of Ella Village [admeasuring 7.69 Hectares] is a forest. Ms. Alvares submitted that once this is the finding of the *Court Committee*, the conversion sanad dated 04.04.2000, and which is challenged in the above Writ Petition, cannot stand, and has to be quashed and set aside. This is for the simple reason that the conversion sanad grants permission to Respondent No.6 to convert his land for a non-forestry purpose without the permission of the Central Government as mandated by the provisions of the Forest (Conservation) Act, 1980. Consequently, she submitted that the Writ Petition must succeed.

18. As far as the rights and/or interests of Respondent Nos.8 to 52 are concerned, Ms. Alvares submitted that in the above Writ Petition, on 28.10.2002, this Court passed an order inter alia staying further development work on the said land and restrained Respondent No.3 from renewing or issuing any fresh sanad for the said land. Thereafter, on 17.06.2003, this Court noted that some

purchasers had started construction on the said land and all those purchasers were not before this Court. Accordingly, Respondent no.5 was directed to issue stop order notices against all construction until further directions from this Court. However, if any person had a license and was constructing pursuant to such license, liberty was granted to the said person to move this Court. Ms. Alvares submitted pursuant to this liberty, only three parties i.e. Respondent Nos. 12, 32 and 35 applied to this Court for permission to carry out construction and obtain an occupancy certificate. Since these three Respondents produced all legal documents, their plots could be protected but not the plots of the rest of the Respondents. Some of the plot owners/Respondents illegally constructed structures, without obtaining permission from this Court and thus, such structures must go from the said land in order to restore it as a forest. She submitted that in order to protect the plot owners, Respondent No. 6, who is the owner of the said land, be directed to refund the amounts which he received from such Respondents towards the sale of the plots to them. She would submit that the cut-off date for this purpose could be reckoned as 28.10.2002 when this Court granted an ad-interim stay and restrained the Respondents from carrying out further development on the said land. Thus, the remaining plot owners, who illegally constructed the structures on their plots, if any, require no protection from this Court as they were

aware of the pendency of these proceedings and the ad-interim/interim orders passed by this Court.

SUBMISSIONS OF THE RESPONDENTS:

19. Per contra, Mr. Faldessai, the learned Additional Government Advocate, appearing for the Government Departments, and more specifically the Forest Department, contended that the said land of Respondent No. 6 fulfills the criteria of a forest and the Chief Conservator of Forest along with other Officers of the Forest Department, from time to time, clarified that the Forest (Conservation) Act, 1980 is applicable. He would submit that though the sanad was granted by the Deputy Collector, the same was not renewed further. In answer to our query as to whether a sanad for conversion of land is for any specific period, he was unable to give any answer. Further, he fairly submitted that though the circular dated 23.06.1997 issued by the Government of Goa was withdrawn, whilst granting the permission for conversion of the use of said land, the Head of the Forests Department was a member of the Board constituted under Section 4 of the Town and Country Planning Act, 1974, and which granted the said conversion. It is after this permission that the conversion sanad was issued by the Member Secretary of the said Board.

20. Mr. Coelho Pereira, the learned Senior Counsel appearing for Respondent No. 6, vehemently opposed the above Writ Petition on merits as well as on delay and laches. First of all, he submitted that the Developer who has entered into agreements for sale with various parties in connection with the plots sold to them, is not made a party to the present proceedings. Respondent No. 6 entered into an agreement for development of the said land with the Developer and this fact is very well known to the Petitioners, who have produced the agreements for sale and the sale deeds of the respective Respondents. The sale proceeds were also received by the Developer and not by Respondent No. 6 alone. Therefore, the question of refund of money as tried to be projected on behalf of the Petitioners, would be impossible as the Developer is not a party before this Court.

21. Mr. Pereira then submitted that the conversion sanad was granted in the year 2000 by following the due procedure including publication of notice in the newspapers. The Petitioners claim to be active Environmentalist and did not challenge or raise any objection after such publication. Similarly, after the grant of conversion, preliminary developments on the said land were carried out by constructing roads, demarcation of plots etc. which was also known to the Petitioners, but no objection was raised. He

submitted that as per the Town and Country Planning Act, 1974, a Board was constituted under Section 4 for the purpose of grant of conversion of the use of the land for a settlement zone. One of the Members of this Board is the Head of the Forest Department. Therefore, according to Mr. Pereira, while considering the case of Respondent No. 6 for grant of conversion, the Board, having one of its Members as the Head of the Forest Department, verified the papers and consented to grant permission for conversion. The Head of the Forest Department never raised any objection that the said land is a forest and permission from the Central Government is necessary. Had the said objection been taken at the relevant time, Respondent No. 6 would have either applied and obtained permission from the Central Government or would have been able to satisfy the Board that the said land of Respondent No.6 does not fulfill any of the criteria for being classified/notified as a forest. Therefore, according to Mr. Pereira, Respondent No. 6 complied with all the legal formalities before obtaining the sanad for conversion of the said land and thereafter, also obtained further permissions for sub-division of the said land and sale of the plots. According to him, the Petitioners were totally silent till the year 2002 and therefore, the Petition suffers from delay and laches as well as for non-joinder of the Developer.

22. As far as the merits are concerned, Mr. Pereira would submit that all the Committees constituted by the Government of Goa, including the *Sawant Committee*, the *Karapurkar Committee*, the *Thomas Committee*, the *Araujo Committee* and the *Deep Shikha Sharma Committee* did not identify the said property of Respondent No. 6 as a forest land. He would submit that *Sawant Committee* experts visited most of the villages in the State of Goa including village Ella but did not identify Survey No. 100/o [the said land of Respondent No.6] as a forest land. Mr. Pereira submitted that the report of the *Sawant Committee* was finally submitted in the year 1999 wherein some survey numbers in village Ella were identified as private forests, but not the said land of Respondent No. 6. This, therefore, completely belies the case of the Petitioners that the said land is a forest land. He submitted that it is important to note that village Ella is not situated in a remote area and/or an inaccessible place. The said property is near NH-17 and situated close to Old Goa, which is a tourist place.

23. This apart, Mr. Pereira submitted that the wordings mentioned by some of the Officers of the Forest Department in connection with Survey No. 100 of Ella village, is that it is a “deciduous forest”. Mr. Pereira submitted that the term “deciduous forest” cannot be termed as a forest under the Forest (Conservation)

Act, 1980 as considered by the Apex Court and by this Court in various decisions. He submitted that a “deciduous forest” means bushes grown in monsoon and not a regular forest. He would submit that the Petitioners are trying to confuse the growth of vegetation during monsoon [considered as “deciduous forest”] with the regular term of growth of forest trees and therefore, even the *Sawant Committee* and the subsequent Committees did not think that the land of Respondent No. 6 could be classified/notified as forest land.

24. Mr. Pereira submitted that the NGT, in its order dated 18/08/2020 considered the report of all the Committees appointed by the Government of Goa and finally accepted the reports and declared a total of 46.11 square kilometres [in the State of Goa] as private forest land. He submitted that admittedly the land of Respondent No.6 does not form part of this 46.11 square kilometres, which, according to Mr. Pereira, would lead to the inescapable conclusion that the land of Respondent No.6 is not a forest land.

25. Mr. Pereira submitted that once the order dated 18/08/2020 of the NGT is final and which confirms the lands identified by different Committees as forests [i.e. 46.11 square kilometres as forest in Goa], the report of the *Court Committee* [constituted by this Court], and heavily relied upon by the Petitioners, becomes

inconsequential. He submitted that the reports of the earlier Committees including that of the *Sawant Committee*, were submitted as per the directions of the Apex Court in the case of ***T.N. Godavarman Thirumulkpad (supra)***. The question of the existence of private forests in the State of Goa including the identification of it, was set at rest by the order of the NGT and therefore, the report of the *Court Committee* is inconsequential.

26. Mr. Pereira then submitted that in any event, the Committee appointed by this Court [the *Court Committee*] exceeded its jurisdiction and failed to adhere to the terms and conditions, under which it was appointed. The *Court Committee* violated the principles of natural justice while conducting its inspection and meetings as no notice or opportunity of hearing was given to Respondent No.6 or to other Respondents. The *Court Committee* also co-opted a Member to allegedly assist, which is violative of the order under which it was constituted. No permission was obtained by the *Court Committee* before opting for such a method. To take this argument forward, Mr. Pereira submitted that the Forest Officer by the name Mr. Karkhanis [acting as the Assistant Conservator of Forest] was co-opted by the *Court Committee* without the permission of the Court. In earlier proceedings under the provisions of the *Goa, Daman and Diu Preservation of Trees*

Act, 1984, Mr. Karkhanis had already deposed that the said land of Respondent No.6 is a forest. In other words, the co-opted member, already being of the opinion that the said land was a forest, had already prejudged the issue that the *Court Committee* was given the task to decide. This fact alone would vitiate the entire report of the *Court Committee*, was the submission of Mr. Pereira.

27. Mr. Pereira then submitted that the minutes of the *Court Committee* are distorted, manipulated and without the signature of all its Members. Further, no material was provided to Respondent No. 6, which the said *Court Committee* allegedly considered, so as to give an opportunity to Respondent No.6 to rebut it. No notice of the alleged inspection carried out by the Committee Members was issued to the Respondents. Even the draft report prepared by the Secretary of the *Court Committee* was never approved by the Members of the Committee.

28. Mr. Pereira submitted that the matter does not stop here. He submitted that the *Court Committee* did not follow the procedure as set out in the order dated 16.08.2006 [under which it was constituted] and submitted its report only on assumptions and conjectures which cannot be accepted as proof. In this regard, he invited our attention to the minutes of the said *Court Committee* in order to point out the discrepancies, loopholes and irregularities.

He submitted that the *Court Committee* failed to consider the criteria adopted by the *Sawant Committee* and the *Karapurkar Committee*, to come to its conclusions. No material relied upon by the said *Court Committee* was furnished to the owner of the property including the owners of the various plots. Thus, Mr. Pereira would submit that the Petition deserves to be rejected with heavy costs. In support of his contentions, he relied on the following decisions:

(i) *Dhakeshwari Cotton Mills Ltd. Vs. Commissioner of Income Tax, AIR 1955 SC 65 and*

(ii) *Tata Housing Development Co. Ltd. & Another Vs. Goa Foundation & Others, (2003) 11 SCC 714.*

29. Mr. Suresh Lotlikar, the learned Senior Counsel appearing for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to 34, 39 to 41, 44, 46, 49 and 52 [i.e. the plot owners], submitted that till date the said land [which belonged to Respondent No.6 and subsequently sub-divided and sold to various plot holders], has not been classified as a forest by any Committee constituted by the Government of Goa and finally accepted by the NGT. Only the *Court Committee* has identified it as a forest. However, the report of the *Court Committee* is blatantly violative of the principles of natural justice as no opportunity was given to the plot owners to have their

say before their plots [purchased from Respondent No.6] were purportedly classified as a forest. He would submit that five houses constructed by plot owners as per the permission granted by this Court were not even called upon by the *Court Committee* to put up their contentions. Mr. Lotlikar would submit that the report of the *Court Committee* cannot be accepted for various reasons. Firstly, the Members were not present during the meetings and the minutes of the meetings show distorted versions. No documents are placed along with the report which the *Court Committee* has purportedly considered to arrive at its findings. No opportunity was given to the plot owners, even though specific directions in that regard were issued by this Court whilst constituting the said Committee. He would further submit that non-joinder of the Developer to the present Petition is also fatal, and no relief could be granted, as claimed by the Petitioners.

30. Mr. Lotlikar then submitted that the *Sawant Committee* report ought to be accepted as every forest existing in the State of Goa including private forests were identified. Relying upon paragraph 7.7 of the *Sawant Committee's* report, which inter alia states that only remote and secluded places might have remained to be visited, itself shows that they visited Ella village which is centrally located and very close to Panaji city. He submitted that

this is also clear from Annexure VII-B of the said report which specifically identifies Survey Nos.77, 79, 136, & 138 of Ella Village as forest lands. The said land of Respondent No.6 (Survey No.100/o) is not identified as a forest. He then submitted that even the *Karapurkar Committee* report supports the findings of the *Sawant Committee* and therefore, the said Committee also did not identify the property of Respondent No. 6 as a forest.

31. Mr. Lotlikar would then submit that conversion of land (as to settlement) is not challenged before this Court. Without challenging such conversion, the sanad granted cannot be considered as illegal. This is for the simple reason that the sanad is not a consequence of the use of land as it is independent to and separate from the nature of land. According to him, the Petitioners ought to have challenged the conversion of the use of land and in the absence of it, the Petition must fail.

32. Mr. Lotlikar then submitted that the contention of the Petitioners that the Forest Officers decided that Survey No. 100/o of Ella village is forest land, is absolutely incorrect. This is for the simple reason that the Forest Officers have no authority to declare or decide whether any land is a forest land or otherwise. Such contentions of the Forest Officers, at the most, can be considered as their opinion. It is for the Government to declare whether a

particular land is a forest or otherwise. Therefore, only because some Forest Officers claim that any land is a private forest, would not make it so. In the alternative, he submitted that even otherwise, fruit bearing trees existing on the said land would have to be ignored for determining the canopy density [which is one of the criteria for determining whether a particular land is a forest or otherwise]. Not a single Committee, including the *Court Committee* has considered this aspect, though admittedly fruit bearing trees were existing on the said land. He then submitted that the Forest Officers visited the said land in the year 1996-97 and did not observe that the said land was forest land. The conversion was obtained since the land in question was mentioned in the survey records as an orchard zone. He too, therefore, submitted that there is no merit in this Petition and the same ought to be dismissed.

REJOINDER OF THE PETITIONERS:

33. In rejoinder, Ms. Alvares would submit that all the Officers of the Forest Department, from the beginning, considered the said land as forest land and that the Forest (Conservation) Act, 1980 is applicable. She submitted that the sanad which is granted to Respondent No. 6 is challenged and rightly so, since before obtaining such sanad, the permission of the Central Government is necessary. She submitted that the report of the *Court Committee*

fulfills all the criteria and adequate opportunities were given to both parties to submit their arguments. The report of the *Court Committee* clearly shows that they considered only the admitted documents, and no other documents, and therefore, no notice was necessary to the respective parties. She submitted that Respondent No. 6, time and again admitted that his land consists of forest trees and considering the report of the Forest Officer including the panchanama, it is clear that the said land was consisting of mostly forest trees, and hence, a forest.

FINDINGS:

34. Before considering the rival contentions raised by the learned Counsel appearing for the respective parties, it would be apposite to refer to the earlier orders passed in this Writ Petition, as the said orders would have a direct bearing on the contentions raised before us. The first order was passed on 28.10.2002 which reads thus:

“Heard learned counsel for the petitioners as well as the respondents, except respondent no.6. Notice before admission. In the meantime, ad interim relief in terms of prayer Clauses (d) and (e), which read as under, returnable after Diwali Vacation:

(d) Pending hearing and final disposal of this petition, stay any further developmental works in respect of the property;

(e) Pending hearing and final disposal of this petition, for an order restraining the respondent no.3 from renewing or issuing any fresh sanad for the said plot.”

35. Thereafter, on 17.06.2003, the following order was passed:-

*“Rule. Considering the permission to fell trees granted to respondent no. 6 by Permission dated 14th November 1996 where it was clearly set out that permission to cut trees was being granted with a condition that the land would not be diverted to Non-forestry purposes, the report of the Deputy Conservator of Forest that the land in question would come under Forest Conservation Act and further considering the guidelines dated 27th September 1991 issued by the Forest Department for application of the provisions of Forest (Conservation) Act and the Judgment of this Court in **Shri Shivanand V. Salgaocar v. Tree Officer & Deputy Conservator of Forests and another**, Writ Petition No.162 of 1987, decided on 27th November 1990, this would be a prima facie case where the interim reliefs sought for should be granted. It is no doubt pointed out that plots have been sold and some constructions have come up. However, considering the provisions of the Forest Conservation Act, this would be a fit case where this Court should grant the reliefs. There will also be interim relief under Clause (f). At the hearing of this petition it is pointed out that some purchasers have started construction on the property and all those*

purchasers are not before this Court. Respondent no.5 is directed to issue stop order notice against all constructions until further directions from this Court. However, if any person has a licence and was constructing pursuant to such licence, liberty to the person to move this Court. That matter will be decided separately. The learned Advocate General states that Clause 5, which is the subject matter of the dispute and is in issue, is being deleted and substituted. The statement made by the Advocate General is accepted and, consequently, at this juncture, no further order is required on the same. Considering the urgency in the matter and that a large number of persons are affected, hearing be expedited.”

36. Since this Court had granted a stay on further development with a rider that the concerned parties may approach this Court for modification, some of the added parties filed Miscellaneous Civil Application No. 572 of 2003, in which, the following order was passed on 14.10.2003.

“Heard counsel for the parties. The Interim Order, dated 17th June 2003, passed in Writ Petition No. 344 of 2002, itself permits persons, with licence to construct, to approach the Court for modification of the Order. The Miscellaneous Civil Application is filed seeking such modification on the ground that the applicant has all the necessary licences as required by law and should, therefore, be permitted

to complete her construction. We see no reason to deny such modification. The Interim Order, passed by this Court, on 17th June 2003, is, therefore, modified to the extent only of permitting the applicant to complete her construction of bungalow in Plot No.111 of Survey No.100/o of Ela Village of Tiswadi Taluka and seek occupancy certificate, water and electricity connection etc.

2. The Miscellaneous Civil Application is, accordingly, disposed of.”

37. Accordingly, this Court allowed some of the parties [who had licenses/permissions as required by law], to complete the construction/development of their residential premises on the plot which they purchased from Respondent No. 6, and also seek an occupancy certificate together with electricity and water connections.

38. Due to subsequent developments, another order was passed by this Court on 16.08.2006, wherein, with the consent of parties to the Petition, a Committee was constituted of experts [the *Court Committee*] to examine and report as to whether or not, land bearing Survey No. 100/o [the said land of Respondent No.6] was a forest land but stands degraded, denuded or cleared. Four Members were appointed and one of them was appointed as the Chairman. The terms of the reference, the criteria, the guidelines

and the methodology by which the said Committee was to function, operate, and conduct the survey was also mentioned in the order, which reads thus:-

“Heard the learned counsel for the rival parties.

Perused petition.

*2. The record of the petition reveals that pursuant to the directions of the Apex Court dated 12th December, 1996 in the case of **T. N. Godavarman Thirumulkpad v. Union of India** reported in (1997) 2 SCC 267, the Government of Goa had constituted two Expert Committees; one under, the chairmanship of Shri Sadanand M. Sawant and another under the chairmanship of Shri H. Y. Karapurkar vide orders dated 24th January, 1997 and 4th September, 1997 respectively. The above committees were set up to: (a) identify areas which are “Forests” irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest; (b) identify areas which were earlier forests but stand degraded, denuded, or cleared; and (c) identify areas covered by plantation trees belonging to Government and those belonging to private persons.*

3. The above committees submitted their reports which were accepted by the State Government. However, the said committees could not take survey

of entire State of Goa, with the result, there is no reference to the land which is a subject matter of the present petition bearing survey No.100/o in village - Ella of Tehsil - Tiswadi, District - Old Goa ("the subject land" for short).

The Issues :

4. The core issue involved in the present petition is: "whether or not the above land bearing survey No. 100/o was a forest land ?"

5. In order to seek expert opinion, looking to the consensus between the parties, we constitute and appoint an expert committee to examine and report as to whether the above subject land was earlier forest but stands degraded, denuded or cleared.

The Committee :

6. The members of the committee shall be as under:

- (1) Shri H. Y. Karapurkar, Chairman;*
- (2) Conservator of Forest, Member;*
- (3) Deputy Conservator of Forest, South Goa, Member;*
- (4) Deputy Conservator of Forest, North Goa, Member Secretary.*

The Term of Reference :

7. The term of reference of the committee is as under:

Whether the subject land bearing survey No.100/o admeasuring 1,223.73 sq. km.

*situated at village - Ella of Tehsil -
Tiswadi, District - Old Goa.*

Criteria :

8. The criteria earmarked for identification of the properties as Forest shall be as was fixed by the Government while making reference to the above committees; which is reproduced hereinbelow:

- (i) 75% of the composition should be forestry species;*
- (ii) The area should be contiguous to the Government forest and, if in isolation, should be more than 5 ha;*
- (iii) Canopy density should not be less than 0.4.*

Guidelines and Methodology :

9. The guidelines and methodology adopted by the Karapurkar Committee appointed under the order of the State Government dated 1st September, 2000 shall be the methodology and guidelines which the committee shall adopt.

10. For the purpose of reaching to its findings, the committee shall also consider the following documents:

- (i) Report of the Range Forest Officer (1996);*
- (ii) Permission granted by the Deputy Conservator of Forests to fall trees on the Survey No.100/o (1996);*
- (iii) Punchanama and related documents regarding tree felling offences (2001);*
- (iv) The photographs taken by the Forest Department at the time of registering offences of the tree felling lodged by the it,*

which will be produced before the Committee.

11. It would be open for the Committee to receive any other evidence which, in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. The parties to the petition shall also be entitled to appear before the Committee to tender evidence, if any; and make their oral and written submissions.

12. The remuneration of Dr. Karapurkar is fixed in the sum of Rs.20,000/-, initially, to be paid by the State Government. The Committee shall submit its report within three months from the date of receipt of the copy of this order.

13. The State Government to deposit an amount of Rs.20,000/- with this Court within two weeks from today. The final liability of the payment and charges shall be subject to the result of the petition.

Stand over for four months to receive compliance report.

39. Accordingly, the Committee constituted by this Court submitted its report dated 14.12.2006 and observed that Survey No.100/O of Ella village [the said land of Respondent No.6 admeasuring 7.69 hectares] was a forest.

40. After the submission of the said report, Respondent No. 6 raised objections to the findings given in the said report [to which

we have adverted to earlier] and submitted that the said report has been prepared without following the guidelines and the procedure set down by this Court in the terms of reference.

41. We are of the opinion, that before we look at the reports of the different Committees setup by the Government of Goa, it would be appropriate if we examine the report of the *Court Committee*. We say this because if the report of the *Court Committee* [identifying the said land of Respondent No.6 as a forest] is accepted by us, then the Petition must succeed for the simple reason that admittedly the conversion sanad was granted to Respondent No.6 without the approval of the Central Government as mandated by the provisions of the Forest (Conservation) Act, 1980. However, if the said *Court Committee* report is discarded, as tried to be projected by the Respondents, either on technical or other grounds, then we would examine the other Committee reports to determine [on the preponderance of probabilities] whether the said land of Respondent No.6 can be classified/identified as a forest land.

REPORT OF THE COURT COMMITTEE:

Whether needs to be rejected for violation of the principles of natural justice?

42. As mentioned earlier, vide order dated 16.08.2006, the co-ordinate Bench of this Court constituted the *Court Committee* to opine/decide as to whether the said land bearing Survey No. 100/o was a forest land. The order dated 16.08.2006, as quoted earlier in this judgment, clearly shows that the said *Court Committee* was to consist of Mr. H.Y. Karapurkar being the Chairperson; the Conservator of Forest as a Member; Deputy Conservator of Forest, South Goa, as Member; and the Deputy Conservator of Forest, North Goa, as Member Secretary. Thus, the constitution of this Committee consisted of only four Members.

43. The terms of reference for this *Court Committee* are found in paragraph 7 of the said order. The criteria earmarked for identification of the properties as a forest is found in paragraph 8, and thereafter, guidelines and methodology are found in paragraphs 9 and 10. Paragraph 11 is very relevant for deciding the contentions raised by the Respondents regarding the breach of principles of natural justice. This Court specifically observed that it would be open for the *Court Committee* to receive any other evidence, which in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. This Court further ordered that the parties to the present proceedings shall also be

entitled to appear before the *Court Committee* to tender evidence, if any, and to make their oral as well as written submissions.

44. Relying upon paragraph 11 of the order dated 16.08.2006, the learned counsel for the Respondents contended that the *Court Committee* failed to give any opportunity to the Respondents to appear before it, tender evidence, if any, and make their oral and written submissions. To properly appreciate this argument, we have to consider the report of the *Court Committee* along with the minutes appended to it. This report, at paragraph 4, shows the relevant evidence received and considered by the *Court Committee*. In paragraph 11 it speaks about the site inspection done on 14.10.2006 and 07.11.2006. Paragraph 12 of the report shows a personal hearing to the Respondents wherein it is said that the Respondents submitted their say on 12.11.2006. It specifically refers to the present Respondent No. 6, who is the owner of the land, but not the other Respondents who also purchased various plots and became co-owners of the said land. There is absolutely no reference to any opportunity being afforded to Respondent Nos. 8 to 52, being the plot owners, to appear and submit their evidence, even though they are parties to the present Petition. This apart, the minutes of the meeting held by the Committee are also produced on record. In all, there are seven meetings. During the first meeting

held on 09.10.2006, the meeting was attended by the Chairman along with other three Members. However, the minutes record in paragraph 2 itself as under:-

“The Assistant Conservator of Forests, Legal Cell, Forest Department, Shri M.V. Karkhanis also attended on request as he had headed the case earlier and has relevant documents and knowledge of the matter and of the plot under survey no. 100 of Ella village, Old Goa.”

45. In paragraph 3 of the report dated 14.12.2006, the Committee decided to co-opt Shri M.V. Karkhanis, Assistant Conservator of Forest, Legal Cell, on the ground that he was conversant with the case since the beginning. This decision was taken by the *Court Committee* without the leave of this Court and even without informing the parties to the Petition.

46. The minutes of the first meeting dated 09.10.2006 are also signed by Mr. M.V. Karkhanis, which is clear from page 3. It shows that Mr. Karkhanis was co-opted by the Committee as a Member to assist them in the matter since he was earlier acquainted and conversant with the relevant documents.

47. The order dated 16.08.2006 [of this Court], by which, the said *Court Committee* was constituted, nowhere permits the said Committee to co-opt any Member of the Forest Department.

Admittedly, the *Court Committee* did not approach this Court to permit it to co-opt Mr. Karkhanis as a Committee Member or to assist the said *Court Committee*. This decision was taken by the Committee Members unilaterally, and even without informing the Respondents. Therefore, the contention of the Respondents that the *Court Committee* violated the terms of reference has to be accepted for the simple reason that the said Committee was constituted by this Court specifically with reference to the said land of Respondent No.6, and the terms of reference were very specific as found in the order itself. The Members of the *Court Committee* were only four persons including the Chairman. Therefore, the *Court Committee* was bound to abide by the terms of reference and consider any other evidence, which would be relevant and useful for giving their expert opinion. The Chairperson of the Committee was himself a higher Officer of the Forest Department. One of the Members of the Committee was the Conservator of Forest, and the remaining two Members were the Deputy Conservator of Forest, North Goa and South Goa District. Therefore, the need to co-opt the Assistant Conservator of Forest (Mr. Karkhanis), was neither required nor necessary. Even otherwise, the Committee ought to have approached this Court seeking permission to co-opt Mr. Karkhanis on the ground that he was conversant with the facts of the matter. Nothing prevented the Committee from adopting such a course.

48. It is clear from the minutes of the meeting that Mr. Karkhanis has played a major role in the *Court Committee* coming to findings that the said land of Respondent No.6 is a forest land. In these circumstances, it was all the more necessary for the Committee to obtain permission of this Court before co-opting Mr. Karkhanis as a Member. Further, the reason for the *Court Committee* to co-opt Mr. Karkhanis was to assist the said Committee in determining whether the said land of Respondent No.6 was a forest land because he was earlier acquainted with the matter regarding the land of Respondent No.6 and conversant with the relevant documents. If this be the case, Mr. Karkhanis would actually be a witness and therefore, could never have been co-opted as a Member of the *Court Committee*. Therefore, the objections raised by the Respondents are perfectly justified as the *Court Committee* was appointed with a specific reference, and it was not permissible to alter the terms of the reference without the leave of this Court.

49. This apart, the minutes of the meeting produced along with the report of the *Court Committee*, if perused, clearly go to show that these minutes are distorted, manipulated, and not supported by proper material. The Respondents were never called upon by the *Court Committee* to submit their evidence, if any. It shows that the Petitioners were called on one date to submit their arguments.

Copies of such arguments were not furnished to Respondent No. 6. Similarly, Respondent No.6 was called on another date to submit his arguments without being informed of the contentions/arguments of the Petitioners. Hence, Respondent No.6 was not in a position to meet the arguments of the Petitioners. Thus, the contention of the learned Counsel for the Respondents that no proper opportunities were afforded to them by the said Committee is fully justified. The Respondents were not knowing as to what was going on during the meetings of the *Court Committee* and what documents they were considering. Since the written submissions of the Petitioners were not given to Respondent No. 6, he was not aware of what material had been placed before the *Court Committee* by the Petitioners. It goes without saying that if one party tenders evidence in support of his case, the other party is entitled to know what documents and evidences are furnished, and have the opportunity to rebut it, if not by way of cross examination of such parties, then at least by producing relevant documents. Similarly, the parties were also entitled to submit oral as well as written submissions. At this stage, it was the duty of the *Court Committee* to direct the parties to exchange or supply their submissions to the opposite party so as to meet the submissions of each other. By failing to adhere to such procedure, the *Court Committee* has violated the basic principles of natural justice. Since

the *Court Committee* was appointed by this Court to verify and decide whether land bearing Survey No. 100/O was a forest land, it assumed the function of a quasi-judicial nature and not only an administrative function. We therefore have no hesitation in holding that there appears to be a total breach of principles of natural justice by the *Court Committee* while conducting its meetings as well as before submitting its report to this Court.

50. Otherwise also, even if the Committee functioned in an administrative capacity, it would still have to follow principles of natural justice when such directions were specifically given to it by this Court in paragraph 11 of its order dated 16.08.2006. In ***Keshav Mills Co. Ltd. (supra)***, the Apex Court, in paragraph 8, clearly observed that the principles of natural justice that regulate an administrative act or order are a far more difficult one to answer. The Apex Court further observed that it is not feasible or even desirable to lay down any fixed or rigorous yardstick in the matter as the concept of natural justice cannot be put into a straight-jacket formula. It is futile to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that must be kept in mind in all cases is that the person concerned should have a reasonable opportunity to present his case and that the

administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. While observing this, the Hon'ble Apex Court also referred to the observations of *Tucker, L.J.* in **Russell Vs. Duke of Norfolk, (1949) 1 All ER 109**, which quote:-

“The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth.”

51. The above observations, in fact, support the contentions raised by the Respondents in the matter at hand. Even if the *Court Committee* acted in an administrative capacity, there was a specific direction to afford a reasonable opportunity to the parties, which means that the *Court Committee* was duty bound to call upon the parties to the present Petition, or their Advocates, to appear before the said Committee and then to give them an opportunity to produce their evidence, if any. Admittedly, no such procedure was followed despite these clear directions.

52. Admittedly, the *Court Committee* failed to call upon the parties including Respondent Nos. 8 to 52 or their Advocates. Even

Respondent No. 6 was called at the fag end to submit his submissions without furnishing copies of the submissions of the Petitioners. The parties were also called on different dates. Thus, it appears from the record, that the *Court Committee* completely failed to adhere to the principles of natural justice. On this count alone, the report of the *Court Committee* needs to be discarded.

53. Even on merits, the report submitted by the *Court Committee* cannot be accepted for the specific reason that that the criteria laid down by this Court were given a complete go-by and different criteria have been adopted, and that too, without giving any opportunity to the respective parties to counter it. The course adopted by the *Court Committee* while considering the documents and the photographs is not even appended to the report or to the minutes. No intimation was given to the parties about the so-called documents which the Committee considered for arriving at its conclusion. Everything was done behind the back of the parties, even though, it was specifically observed by this Court that the parties shall be given an opportunity to produce their evidence. When the Committee deviated from the reference and the terms set out in the order passed by this Court, and that too, by flouting the principles of natural justice, such a report cannot be considered for the purpose of deciding the present issue. Thus, we firmly believe

that the *Court Committee* [appointed by this Court] violated the principles of natural justice, and also, deviated from the terms of reference. Hence, the report submitted by it, holding that the said land belonging to Respondent No. 6 was a forest, would have to be discarded.

REPORTS OF THE COMMITTEES APPOINTED BY THE STATE OF GOA

54. Having discarded the report of the *Court Committee*, we have to still examine whether the said land of Respondent No.6 can be classified as a forest and consequently whether the provisions of the Forest (Conservation) Act, 1980 apply to it. Admittedly, there is no statutory definition of what constitutes a forest or forest land either in the Forest (Conservation) Act, 1980 and/or the Rules framed thereunder. Even in the *Goa, Daman and Diu Preservation of Trees Act, 1984*, the words “forest” or “forest land” are not defined. Admittedly, Survey No. 100/O of Ella village is a private land owned by Respondent No. 6. It is not Government land.

55. For the first time, in the case of ***T.N. Godavarman Thirumulkpad (supra)***, the issue with regard to the identification of forest land [whether belonging to the Government or otherwise], notifying it, and preserving it, came up before the

Hon'ble Supreme Court. The Hon'ble Apex Court, by its order dated 12.12.1996, directed all the State Governments to constitute a Committee of experts within a period of one month to: (i) identify the areas which are forests, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of such land; (ii) identify areas which were earlier forests but stood degraded, denuded or cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons. All the State Governments were directed to constitute a Committee within one month to undertake this task and to submit its report.

56. In paragraph 4, the Hon'ble Apex Court observed that the Forest (Conservation) Act, 1980 was enacted to check further deforestation which results in an ecological imbalance and thus provisions were made for the conservation of forests and matters connected thereto. Similarly, provisions were made that applications must be made to the Authorities constituted under the Forest (Conservation) Act, 1980 irrespective of the nature of ownership or classification thereof before clearing trees or converting such land for non-forest purposes. It was held that the word "forest" must be understood according to its dictionary meaning as it covers all statutorily recognized forests, whether

designated as reserved, protected or otherwise. It was further observed that “forest land” occurring in Section 2, will not include only forest as understood in the dictionary meaning, but also any area recorded as a forest in the Government records, irrespective of the ownership.

57. Prior to the decision of the Hon’ble Supreme Court in ***T.N. Godavarman Thirumulkpad (supra)***, in the case of ***Shivanand Salgaocar Vs. Tree Officer & Deputy Conservator of Forests & Another (Writ Petition No. 162 of 1987 decided on 27.11.1990)***, a co-ordinate Bench of this Court observed in paragraph 8 as under:-

*“8. The question whether the Forest (Conservation) Act, 1980 applies to the land of the petitioner turns on whether the land of the petitioner can be considered as forest land or not. Admittedly there is no statutory definition of what constitutes 'forest' or forest land'. In the case of **Janu Chandra Waghmare v. The State of Maharashtra** reported in AIR 1978 Bombay 119, a full Bench of Bombay High Court considered, inter alia, the meaning of the term 'forest' under Schedule 7, List II, Entry 19 of the Constitution of India. The Court quoted with approval the meaning of the word 'forest' as given in Oxford English Dictionary, namely (I) an extensive tract of land covered with trees and undergrowth,*

sometimes intermingled with pasture; also the trees collectively of a forest; (ii) a woodland district, usually belonging to the King, set apart for hunting wild beasts and game etc. and (iii) a wild uncultivated waste, wilderness. The Court has said that a forest is basically a tract of land covered with trees and undergrowth.

58. As per the directions of the Hon'ble Apex Court in ***T.N. Godavarman Thirumulkpad (supra)***, the Government of Goa, somewhere in January 1997, set up a Committee called the *Sawant Committee*, comprising of Forest Officers and other experts, in order to identify forest areas in the State of Goa. The *Sawant Committee* submitted its report to the Government of Goa on 18.12.1999. Admittedly, though the *Sawant Committee* considered the areas in Ella village, it did not recognize/classify/identify Survey No. 100/o [belonging to Respondent No. 6] as a forest land.

59. We are mindful of the fact that since the report of the *Sawant Committee* discloses that they were unable to visit and verify remote places and secluded land, the applicability of the Forest (Conservation) Act, 1980 [to lands other than the ones reported by the Committee] would not be limited. In order to appreciate these

observations of the Committee in paragraph 7.7, the same are reproduced for ready reference:-

“7.7. The possibility of interpretation error, coupled with other limitations like low resolution of the imageries used cannot be overlooked. Although the field staff has included all possible lands based on local knowledge also, but undulating and hilly terrain might have prevented some remote and secluded lands from identification and inclusion in the report. The committee therefore feels that applicability of Forest Conservation Act on lands other than those reported by the committee shall not be limited by this report.”

60. The Committee further recommended that the State Government may notify any additional lands identified in the future as “forests” within the meaning of the Supreme Court order dated 12.12.1996.

61. The *Sawant Committee* in its final report identified Government Forest land to the tune of 1223.73 square kilometres and forest on lands other than Government land, including revenue land, to the tune of 48.67 square kilometres. Whilst coming to its findings, the *Sawant Committee* considered the terms of reference as under:

(A) Identify areas which are forests, irrespective whether they are so notified, recognized or classified under any law, irrespective of the ownership of the land of such forest;

(B) Identify areas which were earlier forests but stand degraded, denuded or cleared; and

(C) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

62. Thus, the *Sawant Committee* constituted by the Goa Government with the above terms of reference, was duty bound to identify the areas which were earlier forests but stood degraded, denuded or cleared. This is relevant for the purpose of deciding the present Petition as it is the specific contention of the Petitioners that the said land belonging to Respondent No. 6 was degraded, denuded, and cleared, though it was a forest land.

63. The documents relied upon by the *Sawant Committee* to come to its conclusions are found in paragraph 5.1 of its report, which include:-

(i) Green cover map of Goa based on Satellite Imageries of 1:50,000 scale prepared by the Department of Science Technology and

Environment, Government of Goa based on Satellite Imageries of the year 1991-1993;

(ii) The Topo sheets of the year 1965 obtained from the Survey of India;

(iii) Village maps prepared by the Directorate of Settlement and Land Records Department, Government of Goa;

(iv) Revenue Records of ownership by survey numbers i.e. Form I & XIV obtained from the Revenue Department, Government of Goa;

(v) Regional Plan of Town and Country Planning Department, Government of Goa;

(vi) Statistics on plantation etc. obtained from the Forest Department and Statistics and Planning Department of Government of Goa;

(vii) State of Forest Report 1997 prepared by Forest Survey of India and

(viii) Government Forest Maps from State Forest Department.

64. The action taken by the *Sawant Committee* is found in paragraph 6 of its report wherein it specifies that in order to identify which lands are forests, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land, the method adopted by the Committee was to superimpose the green cover map based on satellite imageries of

1991-1993 on the Government Forest map to distinguish and demarcate on the green cover, lands other than Government Forest lands. Such demarcated maps were then superimposed on topo sheets from the Survey of India to prepare base maps. These base maps were given to the forest staff to visit the sites and report the areas which met the criteria set up by the Committee to identify as forests. Accordingly, the Range office staff visited the places and identified the areas. The Revenue authorities were also asked to identify forests on revenue lands and report it to the Committee. In addition to this, a notice was published in local newspapers to give wide publicity and scope of identification of forests to the local people. The Committee then randomly selected the site for visits by the Committee and its Members. In all, the forest area of 97 villages in the entire State of Goa were inspected by the Committee Members. Directions were issued to the Deputy Conservator of Forests to inspect and verify the sites which could not be visited by other Committee Members. The Committee had 14 visits in all and held 19 meetings.

65. With this background, the observations in paragraph 7.7 of the report and the recommendations of the *Sawant Committee* assume importance. Admittedly, paragraph 7.7 of the report of the *Sawant Committee* [as reproduced above], only indicate that there

could be a possibility of error, coupled with the fact that some remote areas and secluded lands having hilly terrain could have been left out by the Committee, and therefore, it was recommended that the Government is free to identify more lands in the future.

66. However, the fact remains that the said land [belonging to Respondent No. 6] situated in Ella village, is neither in a remote area nor secluded from habitation. Admittedly, the said land of Respondent No.6 is close to Panaji and exists in the nearby area of Old Goa. Though the said land is a hilly area it is close to NH-17. The Committee has identified certain lands existing in Ella village as forest land. This is clear from the report itself which shows [in Annexure VII-B] that Survey No. 77, 79, 136, and 138 in Ella village admeasuring 33.98 hectares are identified as forest lands by the *Sawant Committee*. However, Survey No. 100/o [the said land], which falls in between the above lands, is admittedly not identified as forest land by the *Sawant Committee*.

67. Faced with these facts, Ms. Alvares submitted that the *Sawant Committee* itself admits that it was not possible to visit all the areas and, therefore, the said report is not conclusive. We are unable to accept this argument for the simple reason that the *Sawant Committee* did in fact consider in its report Ella village in which the said land of Respondent No.6 is situated. There is nothing

on record to even remotely suggest that even though the *Sawant Committee* identified certain lands in Ella village as forest lands, they did not visit and/or did not take into consideration the said land of Respondent No.6 (being Survey no.100/o). It is not as if the said land of Respondent No.6 is in a remote area or secluded from habitation. If we were to accept the submission of Ms. Alvares, we would have to assume [without there being anything on record] that though the *Sawant Committee* took into consideration the lands in Ella village [to determine which lands fulfill the criteria of being a forest], they somehow did not visit and/or take into consideration the said land of Respondent No.6, also in Ella village. Without there being any positive evidence in that regard, we cannot come to such a conclusion merely on surmises and conjectures. Even otherwise, we find that this argument cannot be accepted because after the report of the *Sawant Committee*, several other committees (referred to hereafter), have undertaken the task of identifying lands in the State of Goa as forest lands and none of those Committees have also identified the said land of Respondent No.6 as a forest land.

68. After the report of the *Sawant Committee*, the Government of Goa appointed another Committee headed by Mr. Karapurkar (the *Karapurkar Committee*) and thereafter two separate

Committees, one for North Goa (the *Thomas Committee*) and the other for South Goa (the *Araujo Committee*) were also constituted. None of these Committees also identified Survey No. 100/o in Ella village as a forest land. In other words, none of the Committees set up by the Government of Goa identified the said land of Respondent No.6 [in Ella village] as a forest land.

69. Thereafter, the Government of Goa constituted another Committee headed by Deep Shikha Sharma (the *Deep Shikha Sharma Committee*) pursuant to the order of the NGT dated 07.01.2016. This Committee was constituted on 23.04.2018 to review identified private forest areas not only by the *Thomas Committee* and the *Araujo Committee*, but also those identified by the *Sawant Committee* and the *Karapurkar Committee*. This task was entrusted to the *Deep Shikha Sharma Committee* because grievances were made by private citizens as well as NGOs on the inclusion/non-inclusion of certain areas as private forests. To ensure a uniform approach to the issue, the *Deep Shikha Sharma Committee* was constituted. The constitution of the *Deep Shikha Sharma Committee* is found in Chapter II of its report. This Committee was constituted by the Government of Goa consisting of (i) the Deputy Conservator of Forests, Working Plan Division, Ponda as its Chairperson; (ii) the Director, Settlement and Land

Records, Panaji Goa or his/her nominee as a Member; (iii) the Additional Collector of the Revenue Department dealing with land records of North Goa District, Panaji - Goa and South Goa, Margao - Goa as Members; (iv) the Assistant Conservator of Forest, Headquarters of North Goa Division, Ponda and South Goa Division, Margao as Members; (v) **Mr. Sandeep Azrenkar, Environmentalist, resident of Margao, Goa as Member (Petitioner No. 1)**; (vi) Mr. Shirang Jhamble, Savoi Verem, Goa as Member; and (vii) the Chief Conservator Forest Surveyor of the Forest Department, as Member Secretary. Thus, it is clear that Petitioner No. 1 was one of the Members of this Committee who participated in all the proceedings and even signed the report. It is nowhere contended by Petitioner No. 1 or by Petitioner No. 2 that during the proceedings conducted by the *Deep Shikha Sharma Committee*, Petitioner No. 1 - Sandeep Azrenkar, was prevented from informing the Committee that the said land belonging to Respondent No. 6 was also a forest land and needs to be considered accordingly. From this perspective, the terms of reference of the *Deep Shikha Sharma Committee* are relevant [found in paragraph 2.2], which reads thus:

“2.2. Terms of Reference of the Review Committee
The Terms of Reference of the Review Committee
were as under:-

- (i) *The Committee shall review digitized maps of private forest areas which have been prepared using the Revenue Department/Directorate of Settlement and Land Records and overlaid on the Forest Cover Map/Classified image of the Forest Survey of India for assessment of Forest cover in Goa, conforming to the three criteria.*
- (ii) *Technical expertise of Forest Survey of India (FSI), Bangalore could be taken in order to ascertain the composition and canopy density of the identified areas, if there is any dispute.*
- (iii) *The Dy. Conservator of Forests of the concerned territorial divisions will then carry out ground verification in respect of such cases which are in doubt or having ambiguity in order to prepare final report on Private Forest areas in the State.*
- (iv) *The Committee shall submit its report within period of 3 (three) months.”*

70. Clause (iii) of the above terms specifically empowers the Committee and the Deputy Conservator of Forests of the concerned territorial divisions to carry out ground verification in respect of such cases which are in doubt or having ambiguity in order to prepare a final report on private forest areas. Thus, the Committee was empowered even to consider cases which were in doubt (such as the land of Respondent No. 6) and to carry out ground verification. However, it is quite surprising that Petitioner No. 1, being one of the Members of the Committee, did not even inform the Committee that there is a doubt with regard to the land of Respondent No. 6 and there is a need to carry out ground verification so as to identify it as a forest or otherwise. This itself shows that the report of the *Deep Shikha Sharma Committee* dated 20th June 2019, and which is also signed by Petitioner No. 1 as one of its Members, is accepted by Petitioner No. 1 and also by the Government. This report has been confirmed by the NGT as the final report identifying private forest lands in Goa. Admittedly, this report of the *Deep Shikha Sharma Committee*, though identifies Survey Nos. 77, 79, 136 and 138 existing in Ella village admeasuring 33.98 hectares as forest land, does not identify the said land of Respondent No. 6 as a forest.

71. To put it in a nutshell, when all the Committees referred to earlier did not notify/classify the land of Respondent No. 6 as a forest land, the submission on behalf of the Petitioners that it is a forest land, and that too on the basis of some documents and affidavits of the Officers of the Forest Department, cannot be considered as conclusive, especially when these Forest Officers were part and parcel of these Committees and also helped the said Committees in identifying Government Forests as well as private forests in the State of Goa, from time to time.

72. According to us, Mr. Pereira, the Learned Senior Counsel appearing on behalf of Respondent No.6, has rightly pointed out that the NGT, in its order dated 18.08.2020, has set at rest the issue by accepting the *Deep Shikha Sharma Committee* report in toto, which is clear from the observations in paragraph 25, which read thus:

“Accordingly, since the matter is pending since long and the matter has been surveyed, identified and demarcated by more than 4 times by the Forest Department by the committee as mentioned above and there was litigation pending before the Hon'ble Apex Court and Hon'ble High Court and issue was heard and decided by the National Green Tribunal Bench at Pune, we are of the view that the matter should come to end and the report submitted by the

Sharma Committee be accepted in toto. Accordingly, both the I.A. No. 240/2020 and I.A. No. 254/2020 are rejected.”

73. Paragraph 26 of the order of the NGT dated 18.08.2020 confirms the report of the *Deep Shikha Sharma Committee* thereby demarcating the area consisting of forests which includes Government Forests as well as private forests. As mentioned earlier, admittedly, even in the report of the *Deep Shikha Sharma Committee*, the said land of Respondent No. 6 is not identified as a forest. At this stage, it is necessary to mention that even though the present matter was pending, there was no restriction on the subsequent Committees including the *Deep Shikha Sharma Committee* to notify the land of Respondent No.6 as a forest land. In other words, all these Committees were entitled to identify Government Forest lands as well as private forest lands in the entire State of Goa including the land belonging to Respondent No. 6.

74. Admittedly, the Chairperson and Members of these Committees appointed by the State of Goa were Members of the Forest Department. The said Committees were assisted by the Officers of the Forest Department from time to time. Therefore, the contention raised by the Petitioners that from 1996, the Officers of the Forest Department observed that the land of Respondent No. 6

is forest land, cannot be accepted for the simple reason that nothing prevented these Forest Officers from informing these Committees and/or producing such documentary evidence before them to identify the said land belonging to Respondent No. 6 as a forest land.

75. The learned Counsel for the Petitioners vehemently contended that from the year 1996, the Forest Department and its Officers concluded that the Forest (Conservation) Act, 1980 is applicable qua the land of Respondent No. 6 and therefore, such documents cannot be ignored. However, when questioned as to why some Forest Officers who assisted the abovementioned Committees did not inform or produce such documents to show that the said land belonging to Respondent No. 6 is a forest, there was no answer. As rightly pointed out by Mr. Pereira and Mr. Lotlikar, such observations of some Forest Officers are not conclusive and at the most could be considered as their opinion. We are also aware that such Officers of the Forest Department are neither empowered nor entitled to declare the land of Respondent No. 6 as a forest land. It is only the Government, and that too, on recommendations of the Committees appointed by it, is entitled to notify a particular land as a forest land. When various Committees did not find the land of Respondent No. 6 fulfilling the criteria of being classified as a forest,

this Court cannot, on the basis of some documents of the Officers of the Forest Department, wherein they observed that the Forest (Conservation) Act, 1980 is applicable to the said land of Respondent No.6, and thereby giving an opinion that the said land was a forest land. When the experts appointed by the Government of Goa [through various Committees] did not identify the land of Respondent No. 6 as a forest, even assuming it was it was denuded, cleared or otherwise, the contention of the Petitioners on this aspect cannot be accepted.

76. It is no doubt true that Respondent No. 6 felled trees from the said property for which prosecution was launched and he pleaded guilty. However, what is important to note is that these proceedings were under the provisions of *the Goa, Daman and Diu Preservation of Trees Act, 1984* and not under the Forest (Conservation) Act, 1980. Similarly, the contention of the Petitioners that on the basis of the panchanama and other documents, it would be enough to declare the said land of Respondent No.6 as a forest cannot be accepted for the simple reason that this is the job of experts who are required to consider the criteria laid down in the case of ***T.N. Godavarman Thirumulkpad (supra)*** and later on considered in the case of ***Tata Housing Development Co. Ltd. (supra)***.

77. Before parting with this matter, we must note that Ms. Alvares placed heavy reliance on the Application filed by Respondent No. 6 with the Conservator of Forest, North Goa Division, Ponda, dated 12.09.1996 wherein Respondent No. 6 while describing the number of trees in column (vi) stated that his property consists of 200 teak trees, 30 mango trees, 200 bamboos, 500 jungli, 300 coconut trees and 30 cashew trees. On receipt of such an application, a report of the Range Forest Officer was submitted for the purpose of considering the license for felling of the trees. This report, produced at page 406 of the paper book, shows in column 19 that the Forest (Conservation) Act, 1980 is applicable as the total area is forest in nature and the area is more than 5 hectares.

78. On perusal of this report, it shows that though it is signed by the Range Forest Officer, it does not disclose the date on which such inspection was carried out and in whose presence. Respondent No.6 in his affidavit has clearly objected to the writings in column (vi) onwards in Form-B on the ground that the writing in columns (i) to (v) is totally different from the handwriting appearing in columns (vi) and (vii) wherein the number of trees and other details are mentioned. On perusing the report ourselves, we find that this is indeed the case.

79. The learned Counsel for the Petitioners also heavily relied upon the Indemnity Bond (page 403) executed by Respondent No.6 for the grant of license for cutting and transportation of trees from his property. The contents of the said Bond are quoted below for reference:-

“I, Satish Vinayak Bhandari, son of Vinayak Bhandari, major by age, landlord, resident of Ela, Old Goa, do hereby kind myself that in view of licence granted to me of cutting and transporting the trees from my private property bearing Survey number 100/o Village Ela, Old-Goa, whatever costs of that may be incurred for forest department of Government of Goa or other authorities for replanting the trees in my said private property.

I further kind myself that I will replant the trees in the said my property after cutting and transporting the existing standing trees and/or forest produce.

I undertake that I shall not develop the said property in to Plots.

In witness where of I have executed this Bond on this 12th day of November, 1996, at Ponda-Goa in favour of Forest Department of Government of Goa”.

80. After reading the said contents, the only inference that could be drawn is that Respondent No. 6 undertook to replant the trees

after cutting and transporting the existing trees. He also undertook not to develop the said property into plots. Therefore, the contention of the Petitioners that Respondent No. 6 in the said Indemnity Bond admitted that the said land/property is a forest, cannot be inferred from such document. Precisely, for this purpose, this Court appointed a Committee (the *Court Committee*) headed by Mr. Karapurkar, who was an experienced Forest Officer and who also headed another Committee (the *Karapurkar Committee*) constituted by the Government of Goa, after the *Sawant Committee*.

81. As mentioned earlier in this Judgement, the purpose of appointing the *Court Committee* was to give an opportunity to both parties to produce their evidence and only thereafter, to decide whether the said land/property was a forest or otherwise. To our mind, there were disputed questions of facts, which were required to be adjudicated by the *Court Committee*. Also, whether said land of Respondent No.6 fulfilled the criteria of being classified as a forest depended upon three major factors/criteria as laid down by the Apex Court in the case of ***T.N. Godavarman Thirumulkpad (supra)***, [and even considered by the earlier Committees], which are (i) 75% of the composition of trees on the land should be forestry species; (ii) The area should be contiguous

to Government Forest land, and if in isolation, should be more than 5 hectares; and (iii) the Canopy density should not be less than 0.4. To determine all these criteria, special knowledge is required about forests and identifications of it. Admittedly, the land belonging to Respondent No. 6 is more than 5 hectares and it is not contiguous to Government Forest land. Thus, criteria (ii) mentioned above stands fulfilled, in which, no expert opinion is necessary. However, criteria (i) and (iii) require special knowledge and only persons having experience and special knowledge about it, would be in a position to authoritatively state whether these criteria were also fulfilled qua the land of Respondent No. 6.

82. The criteria and methodology to find out a minimum of 75% of the composition as forestry species necessarily requires ground verification. It is not possible to find out such criteria by only perusing the maps or the images taken from the satellite. Precisely this has been observed by the *Deep Shikha Sharma Committee* in paragraph 2.3. (iv). This Committee observed that any ground verification is a must since out of the three criteria to notify any land as a forest, the first criteria i.e. 75% of the tree composition should be forestry species, cannot be ascertained by using forest cover map etc. Even for ground verification, the *Deep Shikha Sharma*

Committee adopted a methodology for field verification of canopy density and species composition on the ground as under:-

“(a) For field verification 5% sampling intensity was fixed, considering the extent of work, availability of resources and available time for submission of final report. Sampling points were drawn for field verification, based on Stratified Random Sampling (SRS).

(b) KML files were created for these sampling points and was given with GPS location of each point to North and South Goa Division

(c) Sample plot of 20m x 50m dimension was fixed at given GPS location for verification of canopy density and species composition as per given proforma.”

83. Thus, specialized efforts were required to be carried out for the purpose of identification of 75% of the forest species and the canopy density of 0.4. This is not possible by just visiting the plot of land or by only perusing the photographs received by the satellite images. Thus, the specialized procedure was not followed by the *Court Committee* [appointed by this Court], which is clear from the minutes of their meetings. They only perused some of the documents including the panchanama, the Application filed by Respondent No. 6 and the prosecution launched against Respondent No. 6. Though the *Court Committee* observed about

two visits to the land of Respondent No. 6, no procedure is disclosed as to what verification was carried out during such visits to the said land.

84. Admittedly, there were some fruit bearing trees in the land belonging to Respondent No. 6. Therefore, the Committee was duty bound to carry out an inspection so as to fulfill all three categories mentioned above for the purpose of declaring the land belonging to Respondent No. 6 as a forest.

85. The contention of the learned Counsel for the Petitioners that this Court, on the basis of some documents, could come to the conclusion that the land belonging to Respondent No. 6 was a forest, cannot be accepted for the simple reason that this Court is not an expert to identify the other two categories [i.e. 75% of the composition should be forestry species and the canopy density should not be less than 0.4] before the land of Respondent No.6 can be identified as a forest. Both these categories are required to be identified scientifically and by experts.

86. We as a Writ Court, are unable to accept the contentions of the Petitioners on this count for the simple reason that the job to declare a particular land as a forest is a specialized job and is required to be ascertained on the basis of three criteria laid down

by the Apex Court and enumerated by us earlier. Therefore, looking at the above material and more particularly, the failure on the part of the *Court Committee* to adhere to the terms of the reference under which it was appointed, we are unable to accede to the prayer of the Petitioners.

87. In view of the foregoing discussion, rule is discharged, and the above Writ Petition is dismissed. In view of the dismissal of the Writ Petition, all pending Applications therein do not survive and are disposed of accordingly. However, there shall be no order as to costs.

BHARAT P. DESHPANDE, J. B.P. COLABAWALLA, J.

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