



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 469 OF 2024

Sanjiv Kemlo Simepurushkar,
Age 52 years,
R/o Umtawado, Calangute,
Bardez, Goa.

... PETITIONER

Versus

1. State of Goa,
Thr. its Chief Secretary,
Porvorim, Goa.

2. Conservator of Forests,
Goa Van Bhavan, Forest Department,
Altinho, Panaji, Goa.

3. Deputy Collector and SDO-I,
Mapusa, Bardez, Goa.

4. Shekhar Manohar Simepurushkar,
R/o H. No. 5/186, Umtavado,
Calangute, Bardez, Goa.

... RESPONDENTS

Ms. Sailee Kenny, Advocate for the Petitioner.

Mr. Amogh Arlekar, Additional Government Advocate for
Respondent Nos. 1 to 3.

Ms. Gautami Kamat (through V.C.) with Mr. Harsh Kamat,
Advocates for the Respondent No. 4.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 20th AUGUST, 2024.

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith. Matter is taken up for final disposal at the admission stage itself with the consent of the parties.

2. Heard Ms. Kenny, learned Counsel appearing for the Petitioner, Ms. Kamat appearing for Respondent No. 4 and Mr. Arlekar, learned Additional Government Advocate appearing for Respondent Nos. 1, 2 and 3.

3. Challenge in the present petition is to the Judgment and Order passed by the Appellate Authority dated 17.05.2024 wherein the Appeal filed by the Petitioner was partly allowed. However, while disposing of such Appeal certain directions were issued including fixing of a strong nylon net around the said tree in order to arrest the fall of fruits, dead leaves etc. The other direction is to regularly clean the surroundings of the said tree by removing dead leaves and coconuts and submit the report on six-monthly basis to the officer.

4. Ms. Kenny submits that a complaint was filed by the Respondent No. 4 who is the neighbour on 17.07.2023, upon which an inspection was carried out. The report of the

inspection dated 07.08.2023 by the Zonal Agricultural Officer would show that the coconut tree is around 7.8 mts away from the compound wall of the complainant's house. She would submit that there is absolutely no danger to the life and property of the Respondent No. 4 and the Petitioner has already given an undertaking to the concerned authority for maintaining the said tree in a proper manner and by plucking the coconuts every five months. She submits that the direction issued by the Appellate Authority is clearly beyond the scope and inquiry as well as the complaint and therefore such directions should be quashed and set aside.

5. Ms. Kamat appearing for Respondent No. 4 would submit that the tree existing in the property of the Petitioner is clearly leaning towards the house of the Respondent No. 4 which is also reported in a joint inspection report. She submits that there is a possibility of danger of falling of the said tree, coconuts and dead leaves causing injury to the life and damage to the property.

6. The complaint filed by the Respondent No. 4 is dated 17.07.2023 wherein it was alleged that one coconut tree in front of the house of the complainant/Respondent No. 4 is dangerously swinging even at the normal breeze causing threat to life and damage to his property. It is claimed that tree exists in the property belonging to the Petitioner and

due to the impact of swinging on the part of the said tree, compound wall of the property of the complainant collapsed.

7. On receipt of such complaint, joint inspection was carried out on 07.08.2023 and the observations of the Zonal Agricultural Officer read thus:

“ The observations are as follows

Coconut Tree No. 1

- *One coconut tree is located in left side of the complainant's house.*
- *The coconut tree is 8.7 mts away from compound wall of complainant's house.*
- *The coconut tree is about 40 years of age.*
- *The height of coconut tree is about 20-22 mts.*
- *The falling fronds and nuts can cause loss to life and property.*
- *During heavy rain and high wind velocity the tree may fall in any direction towards the house causing loss to life and property.”*

8. A show-cause notice was issued to the Petitioner upon which reply was filed along with an undertaking, which read thus:

UNDERTAKING

“ I, S. Simepurushkar, the Appellant, hereby undertake to take care of the tree and shall do the necessary tending periodically, including removal of the dead & dying fronds and plucking of nuts every 5 months.”

9. The Deputy Collector/SDO-I, Mapusa, Goa passed an order on 07.11.2023 thereby directing the Petitioner to cut the said coconut tree within a period of seven days. Being aggrieved by such order, the Petitioner, preferred an Appeal before the Conservator of Forests. By the impugned Judgment and Order dated 17.05.2024, the Appellate Authority quashed and set aside the order passed by SDO-I, Mapusa, Goa, however, issued certain directions in the operative part of the order which read thus:

“ **ORDER**

The order dated 07.11.2023 passed by the Dy. Collector & SDO-I, Mapusa - Goa in case No. DC/SDO/MAP/Cutt-trees/26/2023/7078 is hereby set aside.

The coconut tree shall not be cut.

Appellant shall ensure putting up of a strong nylon net having fine mesh to arrest the fall of flowers and fruits onto the property/house of the Respondent and under consultation of the Zonal Agriculture Officer. This should be done within a week of issue of this order. Regular replacement of the nylon net shall be ensured by the Appellant. The Appellant is further directed to regularly clean the mature, dead and dying fronds and harvest the coconuts every 3 months. Appellant shall submit six-

monthly compliance reports to the office of Deputy Collector & SDO-I, Mapusa.

Failure to comply with the directions shall be dealt by the Tree Officer/Deputy Collector & SDO-I, Mapusa as per the provisions of section 12 of the Goa Preservation of Trees Act, 1984.

The appeal stands disposed accordingly.

Sd/-

*Nabanita Ganguly, IFS
Appellate Authority (under GPTA, 1984) &
Conservator of Forests (Conservation)”*

10. The order of the Conservator of Forests/Appellate Authority would clearly go to show that there is no imminent danger in connection to life and property of the complainant for the purpose of directing the Petitioner to cut the said tree. These observations are found in the impugned order and that too on the basis of a joint inspection report. Admittedly, the tree is at a distance of 8.70 mts. away from the residential house of the complainant. Though, it is observed that the crown of the tree is leaning towards the residential house of the complainant, the Petitioner has given an undertaking which is quoted above that he will carry out the maintenance work and remove all coconuts and dead leaves on the periodical basis.

11. Ms. Kenny has pointed out that even the cemented portion around the base of the tree covering the roots is removed, thereby opening the said roots. The photograph

accordingly, shows that tree exists close to the compound wall, however, the base portion of tree is now cleared by removing the cemented portion.

12. Complaint which was filed by the Respondent No. 4 was only with regard to danger which he has expressed above causing damage to his property or any injury to him or his family member due to fall of coconuts or the dead leaves. Once the undertaking is given by the Petitioner, which is accepted by the authority, same should have been considered for the purpose of disposing of the Appeal.

13. Directions of the concerned authority thereby directing the Petitioner to put up strong nylon net having fine mesh to arrest the fall of fruits and leaves on to the property of the Respondent No. 4 is clearly unwarranted and unnecessary. Similarly, the direction that the Petitioner shall submit six monthly compliance report to the officer/SDO-I, Mapusa is also considered to be harsh and unnecessary.

14. The Petition is filed only showing grievance to such directions, however, when the undertaking is given by the Petitioner to carry out such work and that too regularly, there was no need for issuing these directions.

15. For the above reasons, the impugned order needs modification. By maintaining the order of allowing the

Appeal, the directions issued by the consent authority to the Petitioner needs to be quashed and set aside, specifically, when undertaking is given by the Petitioner before the concerned authority.

16. For all the above reasons rule is made absolute in the above terms.

17. Proceeding stand disposed of.

BHARAT P. DESHPANDE, J.