

(2011) 11 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 8513 of 2011

M/s. Aronda Properties Pvt. Ltd.

APPELLANT

Vs

Tree Officer and Ranje Forest Officer, Sawantwadi, Dist.
Sindhudurg, Deputy Forest Conservator, Sawantwadi and
State of Maharashtra

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Maharashtra Felling of Trees (Regulation) Act, 1964 — Section 4, 6

Citation : (2012) 2 ALLMR 450 : (2012) 2 BomCR 99

Hon'ble Judges : G.S. Godbole, J

Bench : Single Bench

Advocate : P.B. Shah instructed by Mr. Mahesh Rawool, for the Appellant;
Aparna Vhatkar, AGP., for the Respondent

Judgement

G.S. Godbole, J.—Rule. By consent Rule made returnable forthwith and Petitions taken up for hearing. Learned AGP waives service of Rule on behalf of the Respondents.

2 Heard Mr. Shah for the Petitioner in both the Petitions and learned AGP for the Respondents.

3 Both these Writ Petition challenge orders dated 10.5.2011 and 25.3.2011 respectively passed by the Dy. Tree Officer & Range Forest Officer, Sawantwadi, Dist. Sindhudurg whereby in proceedings u/s 4 of the Maharashtra Felling of Trees (Regulation) Act, 1964 (Maharashtra Act No. XXXIV of 1964) a penalty has been imposed on the Petitioners. Mr. Shah relies upon the Judgment of the Division Bench of this Court (Coram: J.N. Patel & S.T. Kharche, JJ.) in the case of Smt. Pramilabai V. Patil Vs. State of Maharashtra and Others, and contends that opportunity of personal hearing was not given to the Petitioners. On the other hand the learned AGP states that a show cause notice was issued and the Petitioners have replied to the show cause notice and therefore, the provisions of Section 4 has been complied with.

4 Mr.Shah has drawn my attention to the fact that in W.P. 8513/ 2011, a show cause notice for hearing was given on 2.5.2011 and the hearing was fixed on 6.5.2011 but the notice was served only on 9.5.2011 and on the next date, the impugned order was passed on 10.5.2011. In so far as W.P. No. 8569/2011 is concerned, though a show cause notice was given and the same was duly replied on 1.3.2011, however, personal hearing was not given.

5. Considering the controversy involved in the Petitions and in view of the Judgment of the Division Bench referred to above, though in my opinion, as there is efficacious statutory remedy of filing an Appeal as contemplated by Section 6 of the Act read with Chapter 13 of MLR Code, 1966 and though such an Appeal will lie before the Assistant Conservator of Forests, who is immediate superior officer in the hierarchy of the Forest Department; in the facts of this case, since personal hearing is not offered in the first case and even reply was not filed and in the second case, personal hearing was not offered though reply was filed, the Petitions are entertained so as to ensure that a personal hearing is given.

6. Hence, I pass following order

i. Impugned Order dated 10.5.2011 which is subject matter of W.P. 8513/2011 and the impugned order dated 20.3.2011 which is subject matter of W.P. No. 8569/2011 are quashed and set aside. In W.P. No. 8569/2011 no further reply is required to be filed. However, since reply to show cause notice which is subject matter of the Petition was not filed in W.P. No.8513/2011, the Petitioner shall file reply within two weeks from today.

ii. Range Forest Officer will, thereafter offer opportunity of personal hearing to the Petitioners within a period of two weeks thereafter and shall pass final orders within a period of six weeks from today.

iii. All contentions of the respective parties on merits of the controversy are expressly kept open to be agitated.

iv. Subject to the aforesaid directions, Rule is made absolute in the aforesaid terms with no order as to costs.