
(2017) 04 BOM CK 0090
In the Bombay High Court
Case No : 78 of 2016

Santosh R. Prabhu Gaonkar

APPELLANT

Vs

State Represented by the Public Prosecutor, & Ors.

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Goa Daman and Diu Preservation of Trees Act, 1984, Section 12A

Citation : (2017) 04 BOM CK 0090

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : Shailesh Redkar, M. Correa

Judgement

1. Heard Mr. Shailesh Redkar for the petitioner and Ms. M. Correa for the respondent.

2. The challenge in this petition is to the following orders :

a) Order dated 10/12/2015 made by the Deputy Collector and S.D.O. II (Tree Officer), Margao, Goa;

b) Order dated 12/05/2016 made by the Appellate Authority; confirming the aforesaid order dated 10/12/2015.

3. Both the orders have been made under the provisions of the Goa, Daman and Diu Preservation of Trees Act, 1984 (PTA). The Tree Officer in the making of the impugned order dated 10/12/2015, has invoked the provisions of Section 12- A of the PTA. The operative part of the impugned order dated 10/12/2015 reads thus :

"The application of the applicant dated 21/07/2014 is disposed off with the directions to the respondent to harvest all three coconut trees regularly within a period of three months and to put strong net to all three coconut trees to prevent

from falling of coconut and leaves within a period of 60 days and comply the report on 11/02/2016 at 10.30 a.m."

4. Mr. Redkar, the learned Counsel for the petitioner has made the following submissions in support of this petition :- a) That powers under Section 12-A of the PTA cannot be exercised unless Tree Officer is satisfied and records satisfaction as to the existence of at least one of the two jurisdictional parameters i.e. the ruinous state of the tree or that the imminent danger of the tree likely to fall. He submits that such a satisfaction has not been recorded in the impugned orders. He submits that even the reports of the Zonal Agriculture Officer (ZAO), which are referred to in the impugned order, do not show that the trees in question were in a ruinous state or likely to fall. He submits that in the absence of such jurisdictional parameters being fulfilled, the impugned order under Section 12-A of the PTA, is in excess of jurisdiction and, therefore, ultra vires.

b) Mr. Redkar submits that even the respondent herein, had appealed to the Appeal Authority against the impugned order dated 10/12/2015 to the extent the Tree Officer had not directed cutting down or felling down of three coconut trees in question. He submits that such appeal was also disallowed by the Appeal Authority vide order dated 12/05/2016. In the said order, the appeal authority has itself noted that on the perusal of the inspection report of the Range Officer as well as ZAO, it is noticed that both the reports do not speak of the trees being in a ruinous condition and causing imminent danger/ immediate danger. Mr. Redkar submits that from this, it is clear that the jurisdictional parameters of Section 12-A of PTA were not complied with. In the absence of such compliance, the making of any order under Section 12-A of the PTA, is nothing but an exercise in excess of jurisdiction.

c) Mr. Redkar has placed reliance upon the decision of this Court in WPCR 82/2010, decided on 15/11/2010, between same parties. He submits that even in this decision, it was reiterated that the provisions of Section 12-A of the PTA will not apply unless it is established that the tree or any part thereof is in ruinous state or that it is likely to fall. He submits that in this decision, it is also held that the object of Section 12-A of the PTA, is not to enable the parties to settle their private civil disputes, for which, the remedy of the parties is before the competent civil Court. He submits that in these circumstances, it is clear that any alleged damage on account of falling of leaves, etc., has to be redressed before the Civil Court and not by resort to provisions of Section 12-A of the PTA.

5. Ms. M. Correa, the learned Counsel for respondent no.4 has countered the submissions of Mr. Redkar. To begin with, she pointed out that the Range Forest Officer, in his report dated 18/11/2013, has clearly stated that the three coconut trees in question are bent towards the property of respondent no.4 and may cause danger to life and property. She further submits that there is no necessity of entire tree as such to be in a ruinous condition or likely to fall for the purposes of invocation of the provisions contained in Section 12-A of the PTA. She submits

that it is sufficient if even a part of such tree is likely to fall and thereby cause injury to persons living or carrying on business in neighbourhood or passing by, in order to invoke the provisions contained in Section 12-A of the PTA. She submits that the authorities under the PTA, in issuing the impugned orders, have acted reasonably and the directions issued, are also proportionate. She submits that the peculiar nature of a coconut tree is required to be kept in mind because, though the tree may be in good condition, there is always a danger of coconuts and the coconut leaves falling and thereby causing injury to person living or carrying on business in the neighbourhood or passing by. Considered from this perspective, she submits that there is no case made out to interfere with the impugned orders, particularly in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. She submits that the concurrent findings recorded by the two authorities are sufficiently borne out from the material on record and no perversity has been demonstrated. For all these reasons, she submits that this petition may be dismissed.

6. Rival contentions now fall for determination.

7. Provisions of Section 12-A of the PTA read thus :

"[12-A.- Removal of trees, etc., which are in ruinous state or likely to fall.-

(1) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Tree Officer or the Deputy Collectors having jurisdiction over their respective areas, if it appears to him at any time that any tree, including coconut tree, over any land or its branch or a part thereof is in ruinous state or is in such condition that it is likely to fall and thereby cause injury to a person living or carrying on business in the neighbourhood or passerby or to a building or house or any public place, he may, by written order require the person owning or possessing such tree to lop or cut down such tree or portion of a tree, which is in such condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by:

Provided that no order under sub-section (1) shall be made unless the owner or occupier of land has been given a reasonable opportunity of being heard in the matter in person or by his agent in support of his objections:

Provided further that where the Tree Officer or the Deputy Collector in consultation with the Tree Officer is of the opinion that there is likelihood of the tree or any portion thereof falling and causing injury or danger to persons and danger is of hourly imminence and it is not expedient to provide opportunity to file objection, he may, for reasons to be recorded in writing, issue order directing the person owning or possessing such tree, to cut down and remove such tree or any portion thereof forthwith or within the time as fixed in the order and if he fails to do so the Tree Officer or the Deputy Collector, as the case may be, will take all necessary steps towards its removal.

(2) Every order required to be issued under subsection (1) of section 12-A of the Act shall be deemed to be duly served,-

(i) where the person to be served is residing in the house, at the place of his residence or in case of company, if order is addressed in the name of company, at its registered office or at it's principal office or place of business and is either,-

(a) sent by registered post; or

(b) delivered at it's registered office or at it's principal office or place of business;

or

(c) is given or tendered to him; or

(d) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed at some conspicuous part of structure or tree or building, if any, to which it relates.

(3) Whoever fails to comply with any directions issued under sub-section (1) within a period as specified in the said order, the Tree Officer or the Deputy Collector appointed by the Government in this behalf, shall take all reasonable steps to cut, or remove such tree or any portion thereof which causes obstruction or nuisance or is likely to endanger life or property of any person, to remove the same at the cost and charges of the owner or occupier of the land or of the tree and all expenses incurred thereof shall be recovered as arrears of land revenue under the Goa Land Revenue Code, 1968 and the rules framed thereunder.]"

8. Mr. Redkar, the learned Counsel for the petitioner, is right in his submission that the existence of two parameters i.e. "ruinous condition of the tree" or "likelihood of the tree to fall" are required to be satisfied before the provisions of Section 12-A of the PTA can be invoked. However, it is to be noted that the provisions concern not merely the tree in its entirety, but also, refers to branch or part of such a tree. In the present case, Mr. Redkar is right that three coconut trees in question cannot be held to be in some ruinous condition. In fact, this is evident from the reports of the ZAO, which state that the trees are young, healthy and with trunk length of approximately 9 x 10 metres. However, that by itself, is not sufficient to hold that the invocation of the provisions under Section 12-A of PTA, in the facts and circumstances of the present case, is an exercise in excess of jurisdiction.

9. Section 12-A itself provides that the Tree Officer can exercise powers where it is established that a tree or a portion of the tree is likely to fall and thereby cause injuries to persons living or carrying on business in the neighbourhood or passing by. In this case, the Range Forest Officer, in his report dated 18/11/2013, has clearly stated that the three trees are bent towards the house of respondent no.4 and can cause danger to life and property. In respect of each

of the trees, remark is that the same is leaning towards the house or the property of respondent no.4. In respect of one of the trees, it is reported that the same is completely bent towards the property of respondent no.4, causing obstruction and nuisance. The submission of Ms. Correa that peculiar nature of the coconut tree is also required to be kept in mind, also deserves acceptance. Although it is true that the trees appear to be healthy, upon considering the material on record, it does appear that its leaves or its fruits were likely to fall and thereby cause injury to person living or carrying on business in the neighbourhood or passing by. The reports of the ZAO, in so many words, may not state this fact. However, the report, in the context of each of the trees, specifically recommends the putting of net to the crown of the coconut tree to protect the falling of nuts and leaves of the coconut trees. This is obviously on the basis that there is likelihood of such nuts and such leaves of the coconut tree falling upon and thereby causing injury to persons living or carrying on business in the neighbourhood or passing by. In such circumstances, it cannot be said that the jurisdictional parameters of Section 12-A remained to be fulfilled.

10. The observations of the Appeal Authority, in its order dated 12/05/2016, in the appeal instituted by respondent no.4, no doubt, at the first blush, appear to support the case of the petitioner. However, it is required to be noted that the observation was made in a context of the contention of respondent no.4 that the three trees ought to have been cut down and that the direction to merely put a strong net so as to prevent falling of coconut trees and leaves, was not sufficient. It is, in this context, that it was observed that there is no necessity of cutting down the trees themselves since the trees were not found to be in a ruinous condition or causing imminent/ immediate danger.

11. There can obviously be no difficulty in accepting the observations made by this Court in WPCR No.82/2010, which was incidentally, a litigation between the same parties. However, in this case, we are concerned with three coconut trees in respect of which, there is a report from the Deputy Conservator of Forests as well as a report from the Zonal Agriculture Officer. Upon reading of the two reports, in their entirety, it cannot be said that the jurisdictional parameters, sufficient for invocation of the provisions of Section 12-A of the PTA, do not exist. Although it is true that the provisions of Section 12-A of the PTA are not to be invoked to settle purely private civil disputes, it is to be noted that Section 12-A itself provides that where a tree or portion of a tree is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, the Tree Officer has the jurisdiction to make suitable orders. This means that the persons living or carrying on business in the neighbourhood, can always point out to the Tree Officer the existence of the jurisdictional parameters for exercise of jurisdiction under Section 12-A of the PTA. Merely because such neighbours may be the complainants, it cannot be said that this is a case of settlement of purely private civil dispute.

12. This is a case of concurrent findings of fact. The findings are borne out from

the material on record. Directions issued by the Tree Officer do not require the petitioner to cut down the coconut trees. The impugned order merely directs the petitioner to put a strong net to all the trees, so as to prevent the falling of coconuts and leaves, so as to prevent any injury to a person living or carrying on business in the neighbourhood or passing by. Such a direction is consistent with the doctrine of proportionality. Accordingly, there is no reason to interfere with the impugned orders. The petition is, therefore, dismissed.

13. Rule is discharged. There shall be no order as to costs.

14. Interim order, if any, stands vacated.