

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 22(THC)/2013(WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N :

- 1. Sandeep Azrenkar,**
R/o. Margao, Salcette, Goa
- 2. Goa Foundation,**
Through Its Secretary,
Dr. Claude Alvares and office
At Room No.7, La Brag Chambers,
Above Mapusa Clinic, Mapusa, Goa

....Appellants

A N D

- 1. State of Goa,**
Through Its Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa
- 2. The Chief Conservator of Forest,**
Forest Department, Behind Old Goa,
Medical College Complex, Campal,
Panaji, Goa,
- 3. The Tree Officer,**
North Goa, Department of Forest,
Ponda, Goa
- 4. The Tree Officer,**
South Goa, Department of Forest,
Margao, Goa.
- 5. The Collector,**
North Goa Collectorate,
Panaji, Goa.

6. Mapusa Municipal Council,
Mapusa, Bardez, Goa.

7. Department of Electricity,
Government of Goa,
Through Its Chief Engineer,
Panaji, Goa.

8. The Secretary,
Ministry of Environment and Forest,
Paryavaran Bhavan, C.G.O. Complex,
Lodi Road, New Delhi 110 003

9. Phyllis Faria,
R/o. Morod, Mapusa, Bardez,
Goa.

10. Lucindo Faria,
R/o. Morod, Mapusa, Bardez,
Goa.

11. Wynoms Faria,
R/o. Morod, Mapusa, Bardez,
Goa.

...Respondents

Counsel for Appellant :

Ms. Norma Alvares,
Mrs. Supriya Dangre,

Counsel for Respondent No.2 & 3:

Mr. Shrikrushna R. Prabhu, ACF,

Counsel for Respondent No.6:

Mr. H.D. Naik, Adv.

Counsel for Respondent No.8:

Ms. Shweta Busar,

Counsel for Respondent No.9, 10, 11 :

Mr. Shivam Desai,
Mrs. F.M. Mesquita, Adv.
Mr. Parag Rao, Adv.

DATE : January 22nd, 2015

J U D G M E N T

1. Originally Writ Petition No.286/2003 was filed in the Hon'ble High Court of Bombay at Goa which was transferred to this Tribunal vide order of dated 17th October 2013. It was therefore registered as Application under Section 14(1) of the National Green Tribunal, Act, 2010, The Applicants claim to have filed this Application raising substantial question relating to the environment by challenging the developments sought to be raised on the impugned survey numbers of Mapusa town which is claimed to be forest in nature, without any order for diversion of forest under the provisions of Forest Conservation Act, 1980.

2. Brief facts of stated in the Application are as follows: The land in question, (hereinafter called "the plot"), comprising of S.Nos. Chalta No.20 of PT Sheet No.47, Chalta No.38 of PT Sheet No.47, Chalta No.49 of PT Sheet No.48, Chalta No.29 of PT Sheet No.47, Chalta No.8 of PT Sheet No.47, Chalta No.6 of PT Sheet No.47, Chalta No.10 of PT Sheet No.47 and Chalta of PT Sheet No.47 is located at Xelpem and is within the jurisdiction of Mapusa Municipal Council. The Applicants submit that the Sawant and Karapurkar Committees which were formed to identify the private forest areas of State of Goa, have already submitted their Reports and these reports are before the Hon'ble Apex Court. The Applicants claim that the Karapurkar Committee Report identifies the above survey numbers as Forests and therefore, no further development activities can be permitted in the said plot without prior

approval under the Forest Conservation Act. The Applicants allege that during the year 2000, the Respondent Nos.9 to 11 were able to secure several permissions to fell trees on the plot and the trees were felled under cause of “re-plantation”. The Applicants, therefore, requested the Chief Conservator of Forest Goa, to enforce the provisions of Forest Conservator Act, 1980 on the said survey numbers as they had been identified as “forest” by Karapurkar Committee. Considering the above facts, the Applicants have prayed for:

“ an order or order in the nature of a writ directing the Respondent Nos.2,3,5,7,8,9 to 11 jointly and severally to restore survey Chalta No.20 of PT sheet No.47, Chalta No.38 of PT Sheet No.47, Chalta No.49 of PT Sheet No.48, Chalta No.29 of PT sheet No.47, Chalta No.8 of PT Sheet No.47, Chalta No.6 of PT Sheet No.47, Chalta No.10 of PT Sheet No.47, and Chalta No.11 of PT Sheet No.47 of Xelpem, Mapusa to its original state by removing development works including roads and electricity poles, compound walls and buildings and to replace and replant the area with appropriate indigenous forestry species.

3. This Application was dealt by Hon’ble High Court of Bombay through its several interim orders and on 2nd July 2003, the Hon’ble High Court noted that two (2) survey numbers identified under PT Sheet Nos.47 and 48 are *prima facie* covered by the Report of Karapurkar Committee showing some part of land as forest land and some part of land is non forest land. The Hon’ble High Court further directed the Respondents not to proceed to develop the property based on

development permissions granted on the plot in question till further orders. The Hon'ble High Court on the same day further issued directions in M.A. No.350/2003 in W.P. No.286/2003 which are reproduced below :

(1) The respondents No.1 to 7 are directed not to grant any permission for further development of change of zoning until the Apex Court finally decides the issue based on the Sawant Committee and/or Karapurkar Committee Reports, in so far as state of Goa is concerned.

(2) If a party obtains necessary permissions from the Ministry of Environment, respondent No.8 under the Forest Conservation Act, it will be open to such party to develop the land, provided it has other necessary permissions to carry out the development.

(3) The First Respondent if it has not already done, to demarcate the non-forest areas from the forest areas based on either Sawant Committee or Karapurkar Committee reports and submit the same to this Court within six months from today.

4. The Revenue Department-Government of Goa-Respondent No.1 filed an Affidavit on 24-2-2004 and informed that the State Government has presently taking a decision that Reports of Sawant and Karapurkar Committees would be placed with the Deputy Collector, so that the forest areas mentioned therein are known to authorities, based on which the appropriate decision could be taken in any matter relating to conversion of such land.

5. It is observed from the records that Forest Department filed Regular Affidavit along with the progress report mentioning the names of the villages and survey numbers which were surveyed for identification and demarcation of forest in compliance with the directions of the Hon'ble High Court. Such nine (9) Reports were filed up to 30-06-2008. The Affidavit of Mr. J.L. Singh, Chief Conservator of Forest, Department of Forest, Government of Goa dated 26-6-2006 (page 162) indicates that in Xelpem village of Mapusa city, total 12.61 Hectare of forest land has been identified and demarcated in P.T. Sheet Nos. 47(P), 48(P), 65(P), 66(P), 70(P) and 71(P). The Progress Reports of 30-6-2008 mentions that though State Level Expert Committee (SLEC) tentatively identified 28 ha of private forest area in S. Nos. i.e. 44, 45, 47(P), 48(P), 49, 64, 65(P) and 66(P), however, during the survey, the private forest is only 2.84 ha. comprising plot No.1 of 1.27 ha. and plot 2 of 1.57 ha. was identified and demarcated.

6. Subsequently, Dr. Shashi Kumar, Chief Conservator of Forest filed another Affidavit on 11-12-2009 wherein he submitted that there were certain errors while transferring the data and submitted that in Xelpem village the land in question i.e. P.T. Sheet Nos. 44, 45, 47(P), 48(P), 49, 64, 65(P), 66(P), 70(P) and 71(P) where the SLEC had tentatively identified 28 Hectares of forest, however, on actual identification demarcation exercise, total 12.61 hectare of private forest is

identified and demarcated. It is also mentioned that this block comprises of P.T.S. Nos. 47, 48, 65 and 66 of Xelpem village.

7. Respondent Nos.9, 10 and 11 submitted their counter Affidavit in the Tribunal on 24-4-2014, though the original Writ Petition is of 2003. They had not submitted reply in the High Court. The Respondents submit that they are the co-owners of the said property since long from about 1905. The description certificate of the property clearly establish that the said property was having number of houses, thus giving the land in question a character of a Residential property to the said property. There are 117 houses belonging to the mundkars in the said properties. The Respondents submit that there are more than 250 Chalta Nos. in the above properties which are bounded on eastern side by a public road. The entire surrounding area is residential one having college, hospitals, restaurants and shops within the radius of 100m from the boundaries of the property. The said property has the profile and gradient of a bowl. The said property on the Western, Northern and Southern side has a higher gradient and gentle slopes towards the eastern side where it abuts a public road. The Respondents claim that only when the Writ Petition No.286/2003 was served on the Respondents, they came to know that some of the P.T. Sheet Nos. were identified as private forest area by Karapurkar Committee. The Respondents claim that they engaged service of M/s. Alpha Agritech Consultants Pvt. Ltd. headed by Forest Experts and Consultants have

carried out full exhaustive studies through field visits to study the plot area, in view of three (3) criteria of Forest Identification adopted by Karapurkar Committee. The Consultants submitted their Report in Oct, 2005 concluding that the entire area of 28 Hectare of said property does not qualify as Forest. The Respondents also challenged the Karapurkar Committee Report on the ground that no field visits were done by the Committee. They also claim that the finding of the Karapurkar Committee are not final and subject to detailed ground survey. It is the claim of the Respondents that though the Hon'ble High Court had stayed said development on the identified property, the Hon'ble High Court permitted the development in non-forest area as identified by the Forest Department. The Respondents claim that the Forest Department in its Affidavit dated 30-6-2008 categorically mentions identification and demarcation of only 2.84 hectares as part of forest area from PT Sheet No.47 and 48. The Respondents, therefore, relied on the Report of the Expert Consultants and further submit that they have made an enquiry under R.T.I. Act regarding an inspection report or the map of identified in the subject property prepared by the Forest Department while arriving at a conclusion that 12.61 hectare is a Forest land. This R.T.I. inquiry was dated 15th January, 2014 and the reply was given on 30th January 2014.

8. The Respondents relied on the plan provided with R.T.I. inquiry which indicates only two patches i.e. plot Nos.1 and 2 admeasuring 1.27 hectare and 1.57 hectare respectively, as

identified forest from the PT sheet Nos. 47, 48, 65 and 67. Considering these documents along with the Expert Consultant Report, the Respondents claim that both these documents are matching in terms of the area, location and the extent of forest patches and further state that they are willing to maintain the said area in its natural status as recommended by the Expert Consultants. The Respondents further submit that they are qualified in agricultural activities and have successfully carried out the agricultural plantation business. Respondents also submit that some trees were ought to be felled for various reasons and the same were felled after taking necessary permission from Authorities and also conducting re-plantation. The Respondents claim that the Karapurkar Committee Report is so far not accepted by the State Government or Hon'ble Supreme Court and further identified patches of 2.94 hectares also, do not meet the three (3) criteria for forest identification adopted by Karapurkar Committee. The Respondents, therefore, resisted the Application.

9. Considering submissions of the parties and the documents on record, the only limited question which has to be answered is :

“Whether the land in question or any part thereof is a Forest ?”

10. At the outset, it is necessary to record that the Hon'ble Supreme Court in the matter of **Godavarman** had issued detailed directions regarding interpretation of the term “Forest”

which are not required to be reproduced as they are widely known. The Hon'ble Supreme Court had directed the State Governments to form an Expert Committees to identify the private forest in respective states. The Government of Goa thereafter formed two committees, Sawant and Karapurkar Committees, which conducted the forest identification works in the State of Goa to some extent. Karapurkar Committee adopted three (3) criteria for identification of forest which are as under :

(a) 75% of tree composition should be the forestry species,

(b) The area should be contiguous to the Govt. forest and if in isolation, the minimum area should be 5 Ha,

(c) Canopy density should not be less than 0.4.

11. It is an admitted fact that Karapurkar Committee has identified some PTS Nos. in Xelpem village in their Report and PTS Nos. 44, 45, 47, 48, 49, 64, 65 and 66 were listed in the Report with the total 28 hectares of identified private forest area. The Committee has also recorded the observation that *part of the forest area has been cleared for construction of roads for the purpose of developing the same into residential colonies. The same is required to be stopped forthwith. Lower slopes and the plain land down below are having plantation crop and paddy fields and few munkarial houses. Upper slopes of the dongar consist of natural vegetation while the lower parts are already developed. Developed area can be separated from the natural forest by carrying out detailed ground survey.*

12. The Forest Department carried out the ground survey for actual identification and demarcation of private forest area as per the orders of the Hon'ble High Court of Bombay, at Goa. The Forest Department filed an Affidavit on 26-6-2006 mentioning that the Xelpem area has been investigated and 12.61 Ha of private forest has been identified and demarcated. It is a matter of record that the Forest Department submitted progress report of the work of identification and demarcation of private forest before the Hon'ble High Court and in Affidavit dated 30-6-2008 recorded that the said identified private forest land by SLEC about 28 Ha has actually 2.84 Ha of private forest. Subsequently, the Forest Department filed another Affidavit on 11-12-2009 mentioning that there was an error which was committed in the transfer of data and accordingly it is submitted that Xelpem area has 12.61 Ha of private forest and this block comprise of PTS Nos. 47, 48, 65 and 66 of Xelpem village.

13. Looking into this controversy and also the fact that there is clear mention of term "demarcation", this Tribunal asked the Forest Department about availability of such map of demarcation which was responded in affirmative and therefore, on 14-8-2014 the Forest Department was directed to submit the authentic copy of such map prepared by Forest Department, identifying and demarcating 12.61 Ha area as private forest out of the land in question. The Forest Department submitted this map on record through affidavit dated 27th September 2014.

The Affidavit states that the land in question under PTS Nos. 47, 48, 65, 66 and 70 of Mapusa city was visited by survey team of the Forest Department on 12-05-2005 for surveying the private forest in it as identified by State Level Expert Committee. Accordingly, a plan was prepared which disclosed that the area of the then existing forest in the said land was 12.61 Ha. The Affidavit also states that this fact has already been placed on record before the Hon'ble High Court of Bombay at Goa in 2006 and also, in 2009.

14. Perusal of the said map indicates that the map has been prepared and signed by a team of Forest Officers including, S. Laxmipathy-Forest Surveyor, D.G. Pednekar-Range Forest Officer, A.A. Shetgaonkar, S.D.F.O. and Dy. Conservator of Forest, North Goa Division. The map also indicates the boundary of private forest identified, extent of private forest and also the Chalta Nos. involved in the petition. The map also indicates that the identified forest area is in "C" shape and also indicates habitation surrounding this identified forest area. The Affidavit also refers to the survey report prepared by the Team of "Eight Officers" dated 12-5-2005 which also indicates that the identified area is demarcated by pegs from Nos.1 to 27.

15. In the above context, Mr. Rafique Dada, Learned Senior Advocate for Respondent Nos.9 to 11, submits that there is total confusion and lack of clarity in the submissions made by the Forest Department. The Forest Department has listed different

PTS Nos. in different progress reports and therefore, the submissions made by the Forest Department cannot be relied upon. It is his contention that 12.61 Ha land is shown to be the forest area in PTS Nos. 47, 48, 65 and 66 and not only in 47 and 48. He also refers to the Affidavit of the Forest Department dated 30-6-2008 where only 2.84 Ha land is shown as the forest area which is more or less matching with the Expert Consultants engaged by the Respondents. He also claims that Karapurkar Committee has never visited the area and the findings are solely based on the information collected from secondary data. He also relied on the reports of Expert Consultants which factually refutes the allegations that the said area is forest by substantiating the findings in terms of the three (3) criterias of forest identification adopted by Karapurkar Committee. He also relied on the map produced by the Forest Department in the Criminal Case filed against the Respondents for felling of the trees where only two (2) plots of total 2.84 ha area, are shown as forest area. It is his submission that when enquired under R.T.I. Act, the Forest Department has submitted that there are no survey reports or maps for the said identification and demarcation of 12.61 Ha of private forest area.

16. Countering this, learned Advocate for the Applicants, Mrs. Norma Alvares submits that though she has prayed for declaring entire area of 28 Hectares as forest, she is willing to accept the findings of the Forest Department, identifying and

demarcating 12.61ha private forest, as an exceptional case without prejudice to other cases. She contends that the Writ Petition was filed in the year 2003. Subsequently, there was interim stay granted by the Hon'ble High Court. The Forest Department has filed progress reports from time to time, particularly, in 2006 and 2009 where it is clearly recorded that total 12.61 ha of land in question has been identified and demarcated as private forest. She submits that in spite of being a party to this Writ Petition, the Respondents have neither filed any Affidavit nor any say before the Hon'ble High Court. They have now come with a report allegedly prepared by Expert Consultants in October, November 2005. This fact was never brought to the notice of Hon'ble High Court at any stage by the Respondents. She also challenged the report of the consultants on various grounds as set out in the affidavit of Applicant. She, therefore, claims that this is a belated move of the Respondents to thwart the proceedings in the matter. She also contended that the illegal tree felling by the Respondents have been noticed by the Forest Department and appropriate cases have been filed against them. In fact, they have admitted to the tree cutting. The Enquiry Report dated 12-3-2012 also refers to identified and demarcated forest area and cutting of 467 numbers of trees. The panchnama was also then prepared. The statement of Shankarrao Fadtare dated 4-5-2012 also record that the illegal cutting of 467 number of trees and damages caused to standing 217 number of trees due to fire in

identified and demarcated private forest area under PTS sheet Nos. 47, 48, 65 and 71. Further the statement of Mr. Lucindo Faria i.e. Respondent No.9 dated 4-5-2012 also records the identified and demarcated private forest area. It is her contention that the Respondents were fully aware that the area has been identified and demarcated as private forest and therefore, in order to exclude this area from covering under the 3 criteria adopted for private forest identification, such illegal tree cutting was practiced. It is her contention that the map which is relied upon by the Respondents is a matter of record in the criminal case only, which clearly shows that the two (2) plots have been the present forest patches as were found present in 2012. She also draws attention to the boundary of such plot which exactly resembles the original map of demarcation prepared by Forest Department in the year 2005. She also contends that this map do not have the signatures of SLEC or team of forest officials and is only support document in criminal case. As far as R.T.I. inquiry is concerned, she pleads that in case the Respondents are aggrieved by non supply of the material and documents by the Forest Department, they can take suitable action under R.T.I. Act against the officials. She pleads that, however, non providing information and documents by the government department cannot negate the existence of the official documents.

17. In view of the above contentions, we have perused both the maps, one submitted by Forest Department in its Affidavit

dated 27-4-2014 and also by the Respondents which was received through Respondent No.1 (page 209). It is clearly evident from the survey report dated 12-5-2005 that the area of 12.61 Ha was identified and demarcated by placing pegs on ground in PTS Nos. 66, 70, 47, 48 and 65. The map also clearly shows the boundary of the private forest and the extent of the private forest. The various Google images produced by the Applicants as well as Respondents clearly indicate that the terrain and its description match with the observations of Karapurkar Committee. It is a matter of record that the Petitioner originally moved to the Hon'ble High Court for restoration of certain plots to its original state by removing the development work, claiming that the said land is a private forest. The Hon'ble High Court has expanded the scope of petition and subsequently transferred the matter to this Tribunal. The reports of the Sawant and Karapurkar Committees are before the Apex Court and this Tribunal has also dealt on this issue in Application No.14 and 16 of 2013 which was decided on 30-07-2014.

18. Considering above discussion, we are of the considered opinion that there is no substantial reason for interfering in the findings of the Forest Department regarding identification and demarcation of 12.61 Ha of private forest land in village Xelpem. The forest department, as per the orders of Hon'ble High Court, have carried out survey to demarcate the forest area, and the land in question was surveyed way back in 2005 and the report

was placed before Hon'ble High Court, and the Respondents were aware of such report. We, therefore, hold that the 12.61 Ha of land as identified and demarcated by the Forest Department shall be treated as private forest.

19. While parting with the Judgment, we would like to express our concern that the substantial delay in identification and demarcation of the private forest in the State of Goa, even after repeated directions and orders of the Hon'ble High Court, as well as this Tribunal, is resulting into massive tree cutting and destruction. This is happening only due to lack of serious lack of proper approach and apathy of the Forest Department. Such activities may lead to drastic reduction of forest areas, particularly in the areas where such demarcation work is still not completed. Any further delay will cause further loss of forest areas, as is evident from the present case, where SLEC identified 28 Ha of private forest in year 2000, and the Forest department could demarcate only 12.61 Ha of forest in year 2005. We also share the concern raised by Mrs. Norma Alvares, learned counsel that even in the identified and demarcated private forest, the offence of tree cuttings are dealt under Prevention of Trees Act and not, under the stringent Forest Conservator Act. We, therefore, direct Chief Secretary to issue necessary instructions to the Forest Department.

20. The Application is, therefore, partly allowed declaring 12.61 ha. of the land in question, as identified and demarcated by the Forest Department, as a private forest. The Forest

department is directed to take all necessary steps immediately to preserve and protect this forest land as per the Law. Any construction on said land if so done be demolished within eight (8) weeks by the Collector, North Goa.

21. We also make it clear that the directions issued by Hon'ble High Court of Bombay at Goa in M.A. No.350/2003 in W.P. No.286/2003 on 2/7/2003 as referred in Para 3 above will continue to remain in force till entire demarcation work of private forest is completed in the State.

The Application is disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date : January 22nd, 2015.