

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 112/2014 (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. Shri Surendra Kale,

Age yrs. Occn. Service,
38/1, Sahajanand Society,
Kothrud, Pune- 411 038

2. Shri Jayant Phadake,

Age 63 Yrs. Occn : Business,
57/2, Sahajanand Society,
Kothrud, Pune 411 038.

....Applicants

A N D

1. Shri Dhananjay Kulkarni,

Chairman, Sahajanand Co-
Operative Society, 20/2,
Sahajanand Society, Kothrud,
Pune 411 038

2. Mrs. Savita Desai,

Secretary, Sahajanand Co-
Operative Society, 30/2, Sahajanand
Society, Kothrud, Pune 411 038

3. Shri Anil Kale,

Treasurer, Sahajanand Co-op.
Society, 9/1, Sahajanand Society,
Kothrud, Pune 411 038

4. Shri Vishwas Harshe,

Committee Member,
Conservancy & Garbage,
Sahajanand Co-operative Society,
10/2, Sahajanand Society,
Kothrud, Pune 411 038.

- 5. Shri Vishwas Patil,**
Committee Member,
Sahajanand Co-operative Society,
53/1, Sahajanand Society,
Kothrud, Pune 411 038.
- 6. Shri Arvind Patankar,**
Committee Member,
Sahajanand Co-operative Society,
54/1, Sahajanand Society,
Kothrud, Pune 411 038.
- 7. Shri Anil Thombre,**
Committee Member,
Sahajanand Co-operative Society,
13/1, Sahajanand Society,
Kothrud, Pune 411 038.
- 8. Pune Municipal Corporation,**
Municipal Corporation, PMC
Pune.
- 9. The Chairman, Tree Authority,**
(Through The Municipal Commissioner
Pune Municipal Corpn. Shivajinagar,
Pune.
- 10. Shri Vijay S. Patole,**
Co-Ordinator,
Smart Seva Sahakari Sansthan,
Kothrud Regional office of
Pune Municipal Corporation,
Kothrud, Pune.

.....**Respondents**

Counsel for Applicant :

Mrs. Supriya Dangare

Counsel for Respondent No. 1 to 7 :

Mr. S.K. Jain, Adv. a/w.

Mrs. Kinkar, Adv.

Mr. Seoul Shah, Adv.

Counsel for Respondent No.8 & 9 :

Mr. P.S. Suryavanshi, Adv.

Counsel for Respondent No. 10 :

Mr. Ranjit S. Pote, Adv.

Bhagyashree Alate, Adv.

DATE : September 10th, 2015

J U D G M E N T

1. This Application is jointly filed by Shri Surendra Kale and Shri Jayant Phadake who are members and residents of Sahajanand Society, Pune, against the office bearers of the Sahajanand Co-operative Society, Pune alleging illegal and unauthorised tree cutting which were standing within premises of the said Housing Society. The authorities i.e. Pune Municipal Corporation (P.M.C.) and Tree Authorities are also the Respondents. While hearing of the proceeding, the co-ordinator of Smart Seva Sahakari Sansthan who executed the work of alleged tree cutting was also made party. Without going into much details of the pleadings, briefly the case of Applicants is that the Respondent Nos.1 to 7, vide meeting of Society, though resolved and also sought permission from the authorities to trim certain trees from safety point of view, the office bearers of the society went ahead with cutting the trees, so called proposed to be trimmed, through the services of Smart Seva Kendra, in an unauthorised and illegal manner.

2. The Respondent Nos.1 to 7 i.e. the office bearers of the society, countered this submission and claimed that the Applicants have filed this Application in vindictive manner as certain inquiries related to financial irregularities have been initiated against the Applicants.

They also pointed out that the Applicants were present during the Society Meeting held on December 15th, 2013 when it was resolved that certain dangerous and infected trees shall be trimmed after obtaining due permission of the Pune Municipal Corporation. Such work was executed through the Smart Seva Kendra which is recognized and authorised by the P.M.C. and the work was actually executed in the month of January and February 2014, to be precise on 20th January 2014 and 13th February 2014. They further submit that the payments to Smart Seva Kendra for such execution of work were released by 25th of April 2014. The Respondents further claim that even though the Applicants were present in the Society Meeting, they had not raised any objection and further, they have not yet filed any Appeal against the permission granted by the P.M.C. which is provided in the statute itself i.e. Maharashtra (Urban Areas) Protection and Preservation of Trees, Act 1975. They claim that the Applicants are permanent residents of the Society and the present Application has been filed on 27th November 2014. They further claim that the Applicants made a complaint to the P.M.C. on 7th May 2014 which was duly investigated by the P.M.C. and necessary action as per the Maharashtra (Urban Areas) Protection and Preservation of Trees Act 1975 has been taken by the P.M.C. and therefore, if at all the Applicants were aggrieved by the work which was

executed by the Society, they have already exhausted available remedy under the said Act and further the present Application has been filed much beyond the limitation available under Section 14 of the N.G.T. Act. Hence it is untenable and be rejected.

3. P.M.C. submits that permission was granted for trimming/felling of trees vide letter dated 2nd January 2014 after due enquiry and inspection and subsequently, it received complaint from the Applicants on 7th May 2014 which was duly investigated and on noticing certain non-compliance, a criminal case under the provision of the Maharashtra (Urban Areas) Protection and Preservation of Trees, Act 1975 has been lodged in the Court of Judicial Magistrate First Class, Pune. The P.M.C., therefore contends that they have taken necessary action in the matter.

4. Respondent No.8 Smart Seva Kendra, pleads that they are a group of unemployeed people engaged by the P.M.C. to carry out services required in a particular locality including typing, photocopy, plumbing, carpentry so on and so forth. They were approached by Sahajanand Society to carry out the work of trimming of trees as per permission of the PMC, for which they had given certain quotation. The work was accordingly executed on 20th January 2014 and 13th February 2014 and thereafter, the necessary payment was also received from the Society in

the month of April 2014. They, therefore, contend that the Applicants made complaint only on 7th May 2014 regarding illegal cutting of trees for which no fault can be attributed to the Seva Kendra as they have executed the work on 13th February 2014 itself. They contend that this is a case of internal rivalry between two groups of the members of the Housing Society and internal feud amongst the Society Members and they are unnecessarily being dragged into such conflict. Even if, the Applicants had any objection or complaint regarding the work carried out by the Sewa Kendra, they should have immediately brought it to the notice of the Housing Society or the P.M.C. when the work was carried out on 13th February 2014, because the Applicants are permanent residents of the said Society.

5. Considering the limited scope of the issues involved, it would be pertinent to refer some of the important events related to the matter in a chronological manner. The Sahajanand Society resolved to trim the trees in its Executive Committee Meeting dated 15th December 2013 wherein Applicant Surendra Kale was present. In the said meeting, it was resolved that the dangerous and insect infected trees trimming should be carried out subject to permission from the Pune Municipal Corporation. Thereafter, necessary permission was sought from the PMC which was granted by the PMC vide letter dated 2nd January 2014. They gave contractual work to

execute the work to the Smart Seva Kendra on 10th January 2014 and the work of trimming of trees was carried out on January 20th, and February 13th, 2014. The payment for such execution of work was made in stages till April 25th, 2015. The Applicants being members of the Society were expected to be aware of such developments. Subsequently, the complaint was lodged by the Applicant with PMC on May 7th, 2014 and the officials of PMC carried out the investigation on May 12th, 2014 and issued show cause notice on May 31st, 2014. Subsequently, a criminal prosecution also has been filed against them in the Court of Judicial Magistrate First Class. The instant Application is filed on November 11th, 2014 which is time barred and ill motivated. So, it is sought to be dismissed.

6. In the intervention period, it is noted that in the Society's Meeting dated April 17th, 2014, the Society has resolved to lodge certain criminal proceedings against one of the Applicant, Surendra Kale, for alleged financial irregularity and fraud. The Advocate for Respondent Nos.1 to 7 highlighted this aspect and submits that the actual trimming of trees was executed on January 20th, 2014 and February 13th, 2014 and only after the society initiated criminal action against the Applicant, the Applicant has vindictively filed such complaints related to alleged cutting of trees with PMC and the present Application. She pleads that in any case, the cause of action arose even

considering the last date of tree trimming, carried out on February 13th, 2014, is much beyond stipulated six (6) months of limitation as prescribed under the NGT Act.

7. We may note that the Applicants are Members of the Society and residents of the Society. Out of them, Applicant No.1 is member of the Managing Committee of the Housing Society. So, there exists no justified reason for delay in filing of the Application/complaint after such trimming or cutting of the trees on February 13th, 2014. In any case, necessary action under Maharashtra (Urban Areas) Protection and Preservation of Trees, Act 1975 has been initiated by the PMC and the matter will accordingly be dealt by the competent Court of Law. We hope that the competent Court would expedite the proceeding in the said matter. We, therefore, are of the considered opinion that the present Application is a fall out of the internal rivalry and feud amongst the Members of the Society and the Applicants have not approached the Tribunal with clean hands. We also note that the society has not been added as Respondent, though the onus of compliance of tree felling permission and other regulations, is responsibility of the society. Moreover, the Application has been filed beyond the prescribed period of Limitation of six (6) months provided under section 14(1) of N.G.T. Act, even considering from cause of action dated 13th February 2014, which triggered when the alleged tree cutting work

was executed or even from date of alleged police complaint.
The Application therefore, deserves dismissal.

8. Another important fact which was revealed during the proceedings is that PMC do not have any compliance verification mechanism, once the permission of tree felling/trimming is granted, though the said permission is a time bound permission. Learned counsel for PMC fairly admitted this position and would submit that he will ask PMC authorities for framing such mechanism on priority basis. We expect the Commissioner, PMC to ensure that such framework is evolved and Notified in three (3) months, and submit a copy of same to Registry of the Tribunal

9. In view of the above discussion, the Application is disposed of as barred by Limitation. No costs.

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

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

Date : September 10th, 2015.

ajp