

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT  
PETITION NO.8 OF 2021

Living Heritage Foundation,

... Petitioner

**Versus**

1. State of Goa, through its  
Principle Secretary (Forests)  
Secretariat, Porvorim, Goa-403521.

2. Tree Authority North Goa  
through its Member Secretary  
Office of Deputy Conservator of  
Forest (North Goa Division)  
Ponda, Goa-403401.

3. Tree Authority South Goa  
through its Member Secretary  
Office of Deputy Conservator of  
Forest (South Goa Division)  
Aquem, Margao, Goa-403601.

... Respondents

Ms. Sreeja Chakraborty, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. M. Correia, Additional Government Advocate for the Respondents.

Coram:- M. S. SONAK &  
SMT. M. S. JAWALKAR, JJ.

Date:- 8<sup>th</sup> July 2021

JUDGMENT - (Per M.S. Sonak, J.):

Heard Ms. Sreeja Chakraborty for the Petitioner and Mr. D. Pangam, learned Advocate General who appears with Ms. M. Correia, Additional Government Advocate for the Respondents.

2. The petitioner, a Non-Government Organization (NGO) has instituted this petition complaining that the Tree Authorities constituted under the Goa, Daman and Diu Preservation of Trees Act, 1984 (Trees Act) are virtually defunct and not discharging any of the duties, which they are required to discharge in terms of Section 7 of the Trees Act.

3. The petitioner, based upon the pleadings in the petition and by reference to the provisions of the Trees Act has applied for the

following substantive reliefs:

*(a) For a Writ of Mandamus to ensure the immediate revival of the Tree Authorities for the Districts of North Goa and South Goa so that they commence functioning in terms of the Trees Act and to constitute a court-monitored committee to oversee their functioning;*

*(b) For a Writ of Mandamus directing the respondents to carry out an immediate census of the trees in the State of Goa;*

*(c) For a Writ of Mandamus directing the respondents to co-opt tree experts on the Tree Authorities for the Districts of North Goa and South Goa;*

*(d) For a Writ of Mandamus directing the respondents to categorize and publish all information concerning the Trees Act on the website of the Forest Department as mandated by Section 4 of the Right to Information Act, 2005 (RTI).*

4. Ms. Sreeja Chakraborty, the learned counsel for the petitioner took us to the provisions of the Trees Act, pleadings, the material in support of the pleadings which is mainly the RTI replies received from the respondents and submitted that the Tree Authorities for the two districts of North and South Goa are defunct from the date of the enactment of the Trees Act, or in any case, from 28.11.2012, the date on which the two Tree Authorities came to be constituted. She submits that most of the duties, which the Tree Authorities were required to discharge, which includes the census of existing trees, have

not been discharged despite the expiry of almost 37 years from the date of the enactment of the Trees Act. She submits that the Tree Authorities have failed to comply with the provisions of Section 4 of the Right To Information Act, 2005 (RTI) which obligates them to publish all information concerning their functioning in the public domain. Based upon all this, Ms. Chakraborty submits that the reliefs as prayed for in this petition may be granted to activate the Tree Authorities to discharge their duties under the Trees Act.

5. Mr. D. Pangam, the learned Advocate General, at the very outset, accepted that the Tree Authorities in the State of Goa have not been functioning as they ought to have and even appreciated the petitioner for bringing to fore this issue. He submitted that at least hereafter the Tree Authorities in the two districts will function and discharge the duties which they are required to discharge under the Trees Act. The learned Advocate General submitted that even the information which is required to be published in terms of Section 4 of the RTI will be published on the website of the Forest Department within about six months from today. He submitted that Section 3(3) of the Trees Act does not cast any mandate for co-option of representatives of Non-Official Organizations and submitted that the Forest officials, always have special knowledge and practical experience in the preservation of trees. He submitted that the Tree Authorities

will henceforth, meet at least once in three months to discharge the duties which they are required to discharge in terms of Section 7 of the Trees Act and this will include carrying out of census of the existing trees. He however submitted that no time-bound directions be issued because such activities invariably take time and require resources.

6. The learned Advocate General, finally submitted that this petition be disposed of by accepting the assurances given by him on behalf of the Tree Authorities as also the assurances contained in the affidavits filed on behalf of the Member Secretaries of the Tree Authorities for North Goa District and South Goa District.

7. On perusing the petition, the two affidavits-in-reply, and the other material on record, we must say that we are extremely distressed to discover that the Tree Authorities constituted under the Trees Act, have not functioned at all since at least the year 2012, which is the year in which these two Tree Authorities came to be constituted. This is not just some instance of dereliction of statutory duties but this is an instance that points to the scant regard which such authorities and their members have to the cause of the preservation of trees in the State of Goa. Though Article 51A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for

living creatures, the two Tree Authorities in the State of Goa and its members who are the citizens of India have acted as if no such provisions exist in the Constitution of India or that the provisions of Trees Act and duties which Section 7 has cast upon them, either do not exist or were not meant to be acted upon.

### **ANALYSIS OF THE RELEVANT PROVISIONS OF THE TREES ACT**

8. The Trees Act was enacted for the preservation of trees in the State of Goa. In *Deepak Balkrishna Vahikar and another v. The State of Maharashtra and others – Public Interest Litigation No.93 of 2009 decided on 20.09.2013 (Coram: Dr. D. Y. Chandrachud, as His Lordship, then was and M. S. Sonak, JJ.)* the Division Bench of this Court, having regard to how the Tree Authorities constituted under the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 were found to be functioning, was constrained to emphasize that the Tree Authority is not an authority for the destruction of trees but the preservation of trees and the enhancement of fast depleting green cover in the urban areas of the State. Since, there are almost similar provisions under the Maharashtra Act and the Trees Act, certain observations in *Deepak Balkrishna Vahikar (supra)* will be relevant for addressing the issues raised in this petition.

9. Section 3 of the Trees Act provides for the establishment of the Tree Authorities for each revenue district in the State of Goa. The tree authority is to consist of the following members namely:-

*“(i) Development Commissioner or any other officer not below the rank of Secretary to the Government nominated by the Government – Chairman;*

*(ii) Collector of the concerned Revenue District Member;*

*(iii) Two Members of the Legislative Assembly nominated by the Government Member;*

*(iv) Two Representatives of the local bodies nominated by the Government Members;*

*v) Conservator of Forests or his nominee – Member Secretary.”*

10. Section 3(3) of the Trees Act then provides that the Tree Authority may co-opt as member in such manner and for such period as it may determine not more than three representatives of non-official organizations and Government Departments having special knowledge or practical experience in the preservation of trees.

11. Section 4 of the Trees Act provides that the Tree Authority shall meet at least once in three months at such place and time as the Chairman may decide. The quorum to constitute a meeting of the Tree

Authority shall be three members referred to in sub-section 2 of section 3. No co-opted member shall have the right to vote at a meeting. In the case of an equality of votes on any matter, the Chairman shall have a second or casting vote.

12. Sections 5 and 6 of the Trees Act refer to the appointment of a Tree Officer who has to be a Forest Officer not below the rank of an Assistant Conservator of Forests. The Conservator of Forests is also empowered to appoint such other officers and servants as he may consider necessary to function under the Tree Officer.

13. Section 7 of the Act provides that notwithstanding anything contained in any other law for the time being in force, the Tree Authority shall, subject to any general or special order of the government, be responsible for:—

*“(a) the preservation of all trees within its jurisdiction;*

*(b) carrying out census of the existing trees and obtaining, whenever considered necessary, declarations from all owners or occupants about the number of trees in their lands;*

*(c) specifying standards regarding the number and kind of trees which each locality, type of land premises shall have and which shall be planted subject to a minimum of five trees per hectare in the case of rural areas;*



*(d) development and maintenance of nurseries, supply of seeds, saplings and trees to persons who are required to plant new trees or to replace trees which have been felled;*

*(e) planting and transplanting of trees necessitated by construction of buildings, new roads or widening of existing roads or replacement of trees which have failed to come up along roads or for safeguarding danger to life and property;*

*(f) organisation of demonstration and extension services for the purposes of this Act and assisting private and public institutions connected with planting and preservation of trees;*

*(g) planting and maintaining such number of trees as may be considered necessary according to the prescribed standards on roads, in public parks and gardens and on the banks of rivers or lakes or seashores;*

*(h) undertaking such schemes or measures as may be directed from time to time by the Government for achieving the objects of this Act;*

*(i) undertaking critical study of the proposals of various Government Departments and private bodies for construction of buildings, roads, factories, irrigation works, laying out of electric, telephone, telegraphic and other transmission lines with regard to protection of existing trees and planting of more trees, whenever possible; and*

*(j) promotion, demarcation, acquisition and development of land as wood lots, gardens, parks and picnic spots in cities, towns and villages for the use and recreation of public.”*

14. Chapter V of the Trees Act which comprises Sections 8 to 15 is concerned with the restrictions on felling and removal of trees and the liability for preservation of trees. Section 8 provides that no person shall fell or remove or dispose of tree or forest produce in any land, whether in his ownership or occupancy or otherwise, except with the previous permission of the Tree Officer. The Proviso takes care of the felling of trees that might pose danger to life, property, or traffic.

15. Section 9 of the Trees Act deals with the procedure for obtaining permission to fell, cut, remove or dispose of a tree. Section 9(3) provides that the Tree Officer shall give his decision within sixty days from the date of receipt of an application seeking permission to fell, cut, remove or dispose of a tree. Section 9(4) then provides that if the Tree Officer fails to communicate his permission or refusal within the period specified under sub-section (3), the permission referred to in section 8 shall be deemed to have been granted.

16. Section 10 of the Trees Act obligates every person who is granted permission under Section 9 to fell or dispose of any trees, to be bound to plant such number and kind of trees in the area from which the tree is felled or disposed of by him under such permission, as may be directed by the Tree Officer. The Proviso empowers the Tree Officer to make some exemptions or grant some relaxations for reasons to be

recorded in writing. Section 11 provides for the planting of an adequate number of trees in blank areas within two years from the date of commencement of the Trees Act or within such extended period as the Tree Authority may specify to conform to the standards specified by the Tree Authority under Section 7(c). Section 2(b) defines a blank area to mean any piece of land (not been under the cultivation) measuring one-half of a hectare or more, which has five or fewer trees growing on it per every half hectare. Sub-sections 2, 3, and 4 of Section 11 empower the Tree Officer to issue directions for the planting of an adequate number of trees in blank areas to conform to the standards specified by the Tree Authority under Section 7(c).

17. Section 12 casts a duty on the owner of the land to comply with orders or directions made under Sections 9, 10, or 11 and to plant trees in accord with such order/directions and to ensure that they grow well and are well preserved. Sub-section 2 of Section 12 empowers the Tree officer to issue directions for the protection of such trees and in case of default, the Tree Officer may himself arrange such measures and recover the expenditure from the owner in the prescribed manner.

18. Section 12-A is concerned with the removal of trees which are in a ruinous state or likely to fall. Section 13 deals with the implementation of orders or directions given under sections 9, 10, and

11 and recovery of expenditure on failure to comply with them. Section 14 deals with the adoption of trees which is again, in the domain of the Tree Authorities. Section 15 deals with appeals against the orders made or directions issued by the Tree Officer or the Deputy Collector under Sub-sections referred to in Section 15(1).

19. Chapter VI deals with penalties and procedures. Chapter VII deals with miscellaneous provisions. Section 30 provides that nothing in the Trees Act shall apply to the Government, the Government forest under the control of the Forest Department, a forest or forest land notified under the Indian Forest Act, 1927. In the affidavits filed by the Member Secretaries of the two Tree Authorities, there is a reference to Section 30 and an assertion that the provisions of the Trees Act do not apply to "Government land". According to us, this issue does not arise in this petition and therefore, this issue is not considered in this Judgment and Order. However, there does not appear to be any ambiguity that the Trees Act shall not apply to a Government forest under the control of the Forest Department, a forest, or a forest land notified under the Indian Forest Act, 1927.

### **THE ISSUE OF DEFUNCT TREE AUTHORITIES**

20. Although the material on record suggests that the Tree Authorities have been virtually defunct right from the commencement

of the Trees Act i.e. from 1984, for the present, we will consider the position of the Tree Authorities w.e.f. 28.11.2012. This is because, by common notification dated 28.11.2012, the State Government constituted Tree Authorities for the Districts of North and South Goa to comprise the following:-

1. **North Goa Revenue District** :

- i. The Principal Secretary (Forests) ... Chairman
- ii. The Collector, North Goa District ... Member
- iii. Hon'ble MLA, Aldona ... Member
- iv. Hon'ble MLA, Calangute ... Member
- v. Adhyaksha, North Goa Zilla Panchayat, Panaji ... Member
- vi. Mayor, Corporation of the City of Panaji ... Member
- vii. Conservator of Forests/Deputy Conservator of Forests, Secretary North Goa Division. ... Member

2. **South Goa Revenue District** :

- i. The Principal Secretary (Forests) ... Chairman
- ii. The Collector, South Goa District ... Member
- iii. Hon'ble MLA, Curchorem ... Member
- iv. Hon'ble MLA, Cuncolim ... Member
- v. Adhyaksha, South Goa Zilla Panchayat, Margao ... Member

- vi. Chairperson, Margao Municipal Council ... Member
- vii. Conservator of Forests/Deputy ... Member Secretary  
Conservator of Forests,  
South Goa Division.

21. The Tree Authorities, as constituted by the common notification dated 28.11.2012, presently comprise two bureaucrats, four politicians, and the Conservator of Forest/Deputy Conservator of Forest, who are to function as Member Secretaries. Except for the two Member Secretaries, there is no material on record to indicate that the two bureaucrats and four politicians have any special knowledge or practical experience in the preservation of trees.

22. The petitioner has placed on record several applications made to the Member Secretaries of the Tree Authorities seeking information about the functioning of the Tree Authorities at least from the year 2012. The petitioner has also placed on record the responses to such applications. From the material on record, we find that the petitioner was made to run from pillar to post to secure information. In most cases, the petitioner's pleas for information were answered with a stoic expression "*not available*" or "*does not pertain to this office*". The RTI obligates the transfer of applications to the appropriate authority if the request does not pertain to the office from whom the information is

sought for. Neither were the applications transferred nor was the petitioner informed of the correct office or authority from where such information could be accessed. The petitioner was even forced to institute an appeal to the appellate authority to get information. Ultimately, very scanty information was furnished to the petitioner. From the information furnished, it is apparent that the two Tree Authorities have been defunct from the year 2012 and have been grossly derelict in the discharge of their important duties under the Trees Act.

23. The Member Secretary of the Tree Authority for South Goa after making the petitioner run from pillar to post, vide communication dated 08.05.2020 accepted that no meetings were held by the South Goa Tree Authority from the year 2012 to 2019. The Member Secretary of the Tree Authority for North Goa was not as candid but has responded that there is no information available about the Tree Authority meeting right from the year 2005 up to 2019. The specific averments in the Writ Petition about the two Tree Authorities not even holding any meetings right from the year 2012 have not been denied. There are neither any minutes available nor are there any documents produced by the respondents on record to suggest that the Tree Authorities ever met or discharged any of their statutory duties at least from the date of their constitution i.e. 28.11.2012.

24. As noted earlier Section 4 of the Trees Act, in terms provides that the Tree Authority shall meet *at least once in three months* at such place and time as the Chairman may decide. This provision has been observed, only in the breach. In fact, we are constrained to observe that the members of the Tree Authorities have completely ignored the provisions of Section 4 of the Trees Act and conducted themselves as if the provisions of Section 4 of the Trees Act do not even exist on the statute book.

25. The disturbing dereliction of duties on the part of the members of the Tree Authorities is compounded by the two affidavits filed by the two Member Secretaries of the Tree Authorities in this petition. In these affidavits, the material averments in the petition, which are backed by responses under the RTI, have not been denied by the two Member Secretaries. However, the two Member Secretaries who have filed almost identical affidavits have, on oath, stated that the Tree Authorities *are functional in all respects*.

26. In defense of the aforesaid indefensible statements the Member Secretary for North Goa Tree Authority has referred to a meeting of the Tree Authority allegedly held on 26.04.2021. Similarly, the Member Secretary for South Goa Tree Authority has referred to a meeting of the Tree Authority allegedly held on 27.04.2021. If these meetings were



indeed held, then, they would perhaps be the first and only meetings of these two Tree Authorities from the date of their respective constitution i.e. 28.11.2012.

27. The notice in this petition was ordered on 07.04.2021 and made returnable on 28.04.2021. The Member Secretaries were directed to file affidavits or status reports regards their functioning. The order had required the Member Secretaries to furnish the statistics of pending matters. This means that hardly one and two days before the returnable date in this petition, meetings were allegedly held by the two Tree Authorities. The issues discussed at the two meetings are identical or rather verbatim. No minutes are furnished. No names of the members who allegedly attended these meetings have been furnished. The statement in the affidavits that such meetings were indeed held just one or two days before the returnable date hardly inspires any confidence. The statement that the Tree Authorities are *functional in all respects* appears to be a patently false statement made on oath, without, any sense of responsibility. At least the officers who are of the rank of Deputy Conservator of Forest should be both careful and candid to the Court and disclose the correct state of facts on affidavits. The affidavits are indicative of the insensitivity with which the Tree Authorities have treated the important subject of preservation of trees in the State of Goa.

28. Although we were inclined to take a serious view about the patently incorrect statements in the affidavits filed by the Member Secretaries, we have exercised restraint having regard to the statement made by the learned Advocate General quite unhesitatingly, that the two Tree Authorities have hardly functioned since the date of their constitution and the petitioner must be given credit for raising this issue so that at least hereafter, the Tree Authorities become functional. Just as we deprecate the false statements in the affidavits filed by the two Member Secretaries, we, wholeheartedly, appreciate the fair stance and approach of the learned Advocate General for the State of Goa in this matter.

29. Section 7 of the Trees Act lists the duties which have been entrusted to the Tree Authorities in the State of Goa. The provision states that the Tree Authorities *shall be responsible for* the enumerated duties, which *inter alia* include preservation of all trees within their respective jurisdiction, carrying out a census of the existing trees, specifying standards regarding the number and kind of trees which shall be planted, development and maintenance of nurseries, supply of seeds, saplings, and trees, planting and transplanting of trees necessitated by the construction of buildings, roads, etc., undertaking a critical study of the proposals of various Government Departments and private bodies for construction of buildings, roads, factories, etc. and

promotion, demarcation, acquisition, and development of land as wood lots, gardens, parks, picnic spots, etc. These are very important duties that the two Tree Authorities were responsible for discharging. Since the two Tree Authorities did not even bother to meet since the year 2012, it is apparent that the two Tree Authorities have been grossly derelict in the discharge of such duties, for which they were responsible.

30. The petitioner has succeeded in establishing that this is a case where the State has enacted a law for the preservation of trees but has tolerated its infringement for the last several years. This is not just a case of infringement on the part of the persons who may have illegally felled the trees but this is a case where at least *prima facie*, even the Tree Officers have been derelict in not disposing of the applications for seeking permission for felling of trees within the stipulated period of 60 days thereby permitting the felling of trees under the deemed provisions. This is also a case where the two Tree Authorities have displayed total apathy in the discharge of duties for which they were responsible under the Trees Act.

31. In *Indian Council for Enviro-Legal Action v. Union of India & Ors. - (1996) 5 SCC 281*, the Hon'ble Supreme Court has held that enactment of a law, but tolerating its infringement is worse than

not enacting a law at all. The continued infringement of the law, over a period of time, is made possible by the adoption of such means which are best known to the violators of the law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is to protect and preserve the environment and save it for future generations and to ensure good quality of life. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of the law, which is actively or passively condoned for personal gain, will be encouraged which will, in turn, lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of the environment, the adverse effect of which will have to be borne by future generations.

32. The Hon'ble Supreme Court also noted that after the issuance of

the main CRZ Notification by the Central Government, no follow-up action was taken either by the coastal States and Union Territories or by the Central Government. Even the provisions of the main Notification appear to have been ignored and, possibly violated with impunity. The coastal States and Union Territory administrations were required to prepare Management Plans within one year from the date of the notification but this was not done. The effort of the Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of the law. As such the court has to pass orders and give directions for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the court having usurped the functions of the legislature or the executive. The orders are passed and directions are issued by the court in the discharge of its judicial function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal rights, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue.

33. The Hon'ble Supreme Court then concluded by observing that with rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is

becoming aware of the need to protect the environment. Even though laws have been passed for the protection of the environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of the environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but regarding many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though it is not the function of the Court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to

implement the law.

34. The petitioner has established beyond doubt that the two Tree Authorities in Goa have been defunct from the date of their respective constitutions i.e. 28.11.2012 at least and that the two Tree Authorities have been grossly derelict in the discharge of their duties and functions as enlisted in Section 7 of the Trees Act. Accordingly, the petitioner has made out a case for the issue of an appropriate writ to the two Tree Authorities to not only meet at least once in three months in terms of Section 4 of the Trees Act but further, to take necessary measures to discharge the duties for which they are responsible in terms of Section 7 of the Trees Act.

### **CO-OPTION OF EXPERTS ON THE TREE AUTHORITIES**

35. As noted earlier, the Tree Authorities constituted by common notification dated 28.11.2012 comprise two bureaucrats and four politicians. The Conservator/Deputy Conservator of Forest are the Member Secretaries. The learned Advocate General submitted that since most of the members have some nexus with the Forest Department, they ought to be presumed to be having special knowledge or practical experience in the preservation of trees.

36. According to us, except perhaps the Member Secretaries who are the Deputy Conservators of Forest, there is no material placed to indicate that any of the other members have any special knowledge or practical experience in the preservation of trees. Besides, having noted that these Tree Authorities have been defunct from 2012, it is difficult to believe that the members of the Tree Authorities have any special knowledge or practical experience in the preservation of trees. At least, no material has been placed before us in this regard despite the petitioner, specifically pleading and urging that experts be co-opted to make the Tree Authorities functional.

37. Section 3(3) of the Trees Act provides that the Tree Authority may co-opt as members in such manner and for such period as may be determined not more than three representatives of Non-Official Organizations or Government Departments having special knowledge or practical experience in the preservation of trees. No doubt, since the Legislation has used the word “may”, it is possible to contend that there is only a discretion vested in the Tree Authority to co-opt members having special knowledge or practical experience in the preservation of trees and therefore, no mandamus as such can be issued directing the Tree Authorities to co-opt such expert members. In *Deepak Vahikar (supra)*, the Division Bench of this Court was dealing with the provisions of Section 3(3) of the Maharashtra Act which read



as follows:-

*"3. Establishment of Tree Authority :*

*(1) ... ..*

*(2) ... ..*

*(3) Every Tree Authority may nominate representatives of non-official organizations, who have special knowledge or practical experience in the field of planting and preservation of trees, as members of the Tree Authority, but the number of such nominated members shall not exceed the number of members appointed under sub-section (1). These members shall be nominated in such manner and for such period as may be prescribed."*

38. Therefore, even in Section 3(3) of the Maharashtra Act the expression used was that the Tree Authority "*may nominate*" representatives of Non-Official Organizations who have special knowledge or practical experience in the preservation of trees as members of the Tree Authority.

39. The Division Bench, noted that the Tree Authority constituted by the Pune Municipal Corporation (PMC) comprised only of

Corporators i.e. elected representatives. The Division Bench noted that the Tree Authority which comprised only Municipal Corporators delayed the decisions on applications for felling, cutting, or transplantation of trees for extraneous reasons so that once the period of sixty days has elapsed, a *fait accompli* is presented and the application is deemed to have been granted. The Division Bench also noted that the Tree Authority had failed to discharge most of the duties cast upon it under the Maharashtra Act. The Division Bench then lamented that this was a very sorry state of affairs and the Tree Authority is not an authority that has been constituted for the destruction of trees. The primary objective of the Tree Authority is to ensure the preservation and protection of the trees, the plantation of trees, and the enhancement of the tree cover.

40. The Division Bench proceeded to observe that the very purpose of enactment of the Maharashtra Act or the object of the Maharashtra Act was defeated by the failure of the PMC to co-opt members of the civil society on the Tree Authority. The Division Bench explained that the object underlying the provisions of Section 3(3) is that civil society organizations with special knowledge or practical expertise in the preservation of trees, should be co-opted as non-official representatives. The Division Bench observed that it is an unfortunate reflection on the state of affairs in the PMC that not a single non-official organization

has been co-opted in the Tree Authority at present. In consequence, the entire work of the Tree Authority is manned by municipal corporators. The applications are not disposed of within the statutory period of sixty days with the result that a developer goes scot-free and can destroy trees virtually at will. Such a state of affairs needs urgent remedial attention by the Court. Article 21 of the Constitution which recognizes the right to live, it is well settled, includes the right to a clean and healthy environment. The protection of the environment is a fundamental duty under Article 51(A)(d) of the Constitution. The Division Bench further observed that our jurisprudence has now been expanded to incorporate the principles of sustainable development. Sustainable development seeks to draw a balance between the needs of development in the present with the need to preserve and protect the environment in the interests of future generations. The doctrine of public trust recognizes that the environment should be protected for future generations. Legislation, such as the Trees Act, must, therefore, be interpreted by the Court consistent with the need to ensure sustainable development so that the green cover in urban agglomerations of the State, is not destroyed by rapacious development motivated by human greed.

41. According to us, the aforesaid observations made by the Division Bench in the context of virtually identical provisions to be found in

Section 3(3) of the Maharashtra Act apply to the present case as well. Here, the bureaucrats and politicians that comprise the Tree Authorities have not bothered to hold even a single meeting of the Tree Authorities right from 2012. As a result, the Tree Authorities, have failed to discharge the important duties which they were required to discharge in terms of Section 7 of the Trees Act. The position of the Tree Officers in Goa is also not significantly different.

42. Since the Tree Authorities failed to hold a single meeting since the year 2012, the Tree Authorities, have not even considered the issue of co-option of members in terms of Section 3(3) of the Trees Act. Therefore, for the present, though we are not issuing a Writ of Mandamus to the Tree Authorities to co-opt representatives of Non-Official Organizations having special knowledge or practical experience in the preservation of trees, we are issuing directions to the two Tree Authorities to at least consider the issue of co-option of representatives of Non-Official Organizations having special knowledge or practical experience in the preservation of trees. This subject will have to be taken up by the Tree Authorities in their next meeting and the decision on this issue along with the minutes of the meeting will have to be placed before this Court whilst reporting compliance.

43. The Tree Authorities must consider how they have functioned or

rather not functioned since 2012. The Tree Authorities must consider the observations made by the Division Bench of this Court in *Deepak Vahikar (supra)*. The Tree Authorities must consider the object of the entire Act as well as the object of Section 3(3) of the Trees Act and thereafter decide on the issue of co-option of representatives of Non-Official Organizations having special knowledge or practical experience in the preservation of trees. This exercise must be completed within two months from today and a necessary compliance report filed in this Court soon thereafter.

### **CENSUS OF EXISTING TREES IN THE STATE OF GOA**

44. Section 7(b) of the Trees Act provides that the Tree Authorities shall be responsible for carrying out a census of the existing trees and obtaining whenever considered necessary declarations from all the owners or occupants about the number of trees in their lands.

45. In the absence of any census of the existing trees, the Tree Authorities will not be in a position to effectively discharge other duties like those specified in Section 7(c), (e), and (g) of the Trees Act.

46. Unfortunately, though 37 years have elapsed since the enactment

of the Trees Act, the Tree Authorities have not bothered to carry out a census of the existing trees, thereby, grossly derelict in the discharge of duties statutorily cast upon them. In the meanwhile, the cause of the preservation of trees in the State of Goa has been rendered a casualty.

47. The petitioner has pleaded and established based on limited responses received by them from the respondents under the RTI that for the last 10 years the Tree Officers have allowed 99.26% of the applications for felling of trees and rejected hardly 0.74% of such applications. The records at least *prima facie* indicate that most of such applications were allowed under the deeming clause which applies when the Tree Officer fails to dispose of applications seeking permission of felling of trees within the stipulated period of 60 days. The petitioner has pleaded as well as established that over the last 10 years almost 88,978 trees have been permitted to be felled and there were directions for replanting of only 13,875 trees. There is no record as to whether in pursuance of the permissions granted only 88,978 trees have been felled or the number is much greater. Similarly, there is no record available with the Tree Officer or the Tree Authorities that 13,875 trees have in fact been replanted or whether the figure is much lesser. Since no census is undertaken to date, no such record is available.

48. Section 10 of the Trees Act provides that every person, who is granted permission under Section 9 of the Act to fell or dispose of any tree, as specified in clause (j) of section 2 of the Act, shall be bound to plant/replant such number and kind of trees in the area from which the tree is felled or disposed of by him under such permission, as may be directed by the Tree Officer. The petitioner has pleaded that there is an obligation to plant at least an equal number of trees to that which have been felled unless some exemption is granted for special reasons.

49. From the information furnished by the respondents themselves, there is an admission that there were directions for replanting of only 13,875 trees, when in fact, permissions were given to fell 88,978 trees. This means that almost 74,445 trees have been lost, primarily on account of the dereliction of duties by the Tree Authorities and Tree officers under the Trees Act.

50. The petitioner has assessed this loss in economic terms as ₹500 crores. This estimation may or may not be correct but what is required to be emphasized is that the loss of such tree cover is not to be measured only in economic terms. The price that mankind has to pay for tinkering with, leave alone exploiting nature and natural resources, is evident from the several environmental catastrophes world over. Man-made laws may provide for appeals but against the laws of nature,

usually, there is no appeal. Bryce Nelson warned that people who will not sustain trees will soon live in a world that will not sustain people. On a more philosophical note, Richard Mabey quipped that to be without trees would, in a most literal way, to be without our roots.

51. Recently, the Hon'ble Supreme Court in its order dated 25<sup>th</sup> March 2021, in the case of *Association for Protection of Democratic Rights & Anr. V. The State of West Bengal & Ors. - Special Leave Petition (Civil) No. 25047 of 2018*, made the following significant observations whilst constituting an expert committee to make recommendations on issues concerning the preservation of trees and to make a realistic assessment of the economic value of a tree, which may be permitted to be felled:-

*“ The right to clean and healthy environment has been recognized as the fundamental right under Article 21 of the Constitution of India. Article 48-A imposes a duty upon the State to endeavor to protect and improve the environment and safeguard the forests and wildlife of the Country. In addition to this, India is also a party to international treaties, agreements and conferences and has committed itself to sustainable development and growth. This legal framework indicates that sustainable development must remain at the heart of any development policy implemented by the state. It is essential to strike the right balance between environmental conservation and protection on one hand, and the right to development on the other while articulating the doctrine of sustainable development. We may add that in our opinion conservation and development need not be viewed as binaries, but as complementary strategies*



*that weave into one another. In other words, conservation of nature must be viewed as part of the development and not as a factor stultifying development.*

*One of the moot questions often involved wherever there is a need to fell trees to develop a project is how just and fair compensation can be calculated for felling of trees by any authority or organisation which proposes such felling. We have no doubt that such compensation should be calculated and paid as a part of the project cost of the project which necessitates the felling of trees and such compensation must be utilized in an expert manner to create a better environment and, most importantly, increase afforestation, It is, therefore, imperative to make a realistic assessment of the economic value of a tree, which may be permitted to fell, with reference to its value to the environment and its longevity, with regard to factors such as production of oxygen and carbon sequestration, soil conservation, protection of flora/fauna, its role in habitat and ecosystem integrity and any other ecologically relevant factor, distinct from timber/wood.*

*We note that the issue assumes significance from the perspective of climate change as a growing national and international concern. The pivotal policy document in India on climate change is the National Action Plan on Climate Change (NAPCC) formulated by Union Government in 2008, which recognizes that the country is committed to increasing tree cover from 23% to 33%. Under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent through additional forest and tree cover by 2030."*

52. Since there is a statutory duty cast on the Tree Authorities to carry out a census of the existing trees in the State of Goa and since, for the last 37 years, the Tree Authorities, have failed to carry out such census, a Mandamus, is liable to be issue to the Tree Authorities to take all steps to undertake such census and to further complete this exercise as expeditiously as possible and in any case within one year from today.

53. In the affidavits filed by the two Member Secretaries, there is a reference to some discussions on the topics listed in paragraph 4 of the two affidavits. Incidentally, the discussions at the two different meetings allegedly held one and two days before the returnable date in this petition, are on identical subjects. However, what is significant in the present context is that there was no reference whatsoever to the statutory duty of carrying out a census of the existing trees. Such census is necessary because, in the absence of any such census, the vice of rampant illegal felling of trees will be almost impossible to deal with.

54. In *Deepak Vahikar (supra)* directions were issued by the Division Bench of this Court to the PMC to carry out the census of the existing trees in terms of the mandate of the Maharashtra Act, which mandate is virtually identical to that which is to be found in Section 7(b) of the Trees Act with which we are concerned. The Division Bench involved the experts in the field particularly for ascertaining whether census of

trees can be carried out by utilizing modern technology and in particular with the help of Radio Frequency Identification Devices (RFID) and geo-tagging. By the process of geo-tagging (additional geographical identification meta-data to various media such as geo-tag photograph or media) the latitude and longitude of every tree in an urban agglomeration can be verified, documented, and preserved. In the process, a photograph of every individual tree is taken, which is automatically tagged to the Global Positioning System ('GPS'). During the hearing, this Court had observed that PMC can take a lead role in the State of Maharashtra for developing a Geographical Information System ('GIS') based system which includes as its components geo-tagging and the creation of a database for effective mapping and enumeration of trees. Ultimately, in the course of the meeting between the PMC officials and the experts, a conclusion was arrived at that an effective census of trees can be carried out by utilizing the process of geo-tagging.

55. Based on the aforesaid, the Division bench, issued directions for completing the census with the aid of modern technology. The PMC was directed to take necessary steps to effectuate the order made to ensure that the census of trees adopting modern technology in a digitized framework with geo-tagging is duly completed within a specified time frame.

56. In Writ Petition No.17841 of 2018 instituted before the Karnataka High Court, the Division Bench headed by the Chief Justices in the context of virtually identical provisions in the Karnataka Preservation of Trees Act, 1976 noted that one of the mandatory duties of the Tree Authorities was the preservation of trees within its jurisdiction and the duty to carry out a census of the existing trees. The Bench headed by the Hon'ble Justice Abhay Oka made series of orders requiring the Tree Authorities to carry out the census of the existing trees. The Division Bench observed that in the absence of tree census, there is non-compliance with the provisions of the Preservation of Trees Act which mandates that trees must be planted in place of felling or destroyed trees. Since there was lethargy in the carrying out of tree census despite directions from Court, ultimately, proceedings for contempt were also initiated against the members of the Tree Authorities and other officials responsible for carrying out a census of the existing trees.

57. The Division Bench of the Himachal Pradesh High Court presided over by Sanjay Karol, acting Chief Justice, took Suo Moto cognizance of the rampant illegal felling of trees in Shimla town and registered *CWPIL No.96 of 2017*. This was disposed of by order dated 04.10.2018 which is reported in *2018 SCC OnLine HP 2550*. The Division Bench of the HP High Court issued directions for

undertaking the census of the existing trees. Directions were issued to ensure that every tree, be of whatever species, falling within the municipal limits of Shimla Town, apart from being numbered, must be tagged with the Radio Frequency Identification Tags. Directions were issued to complete this process within 6 months. The Division Bench also noted that the procurement of such tags is no longer an issue, for they are readily available in the market. Once these RFT are implanted inside a tree, dates concerning their growth or felling can readily be made available and monitored through sensors from a centralized place of monitoring.

58. The provisions of the Trees Act embody a reminder by the Legislature to the executive that the duty to preserve trees in the State of Goa is in the discharge of the constitutional duty to preserve the ecology and environment. The provisions of the Tree Act are rooted in the Doctrine of Public Trust, which posits that certain common resources like waters, air, forests, trees are held by the Government in trusteeship for smooth and unimpaired use of the public. This Doctrine enjoins upon the Government to protect such natural resources rather than permit their wanton exploitation, *inter alia* for commercial purposes. The material placed in this petition, which is mainly in the form of information furnished by the Tree Authorities after substantial resistance, unfortunately, suggests that at least the Tree

Authorities have breached this public trust. For almost 37 years since the enactment of the Trees Act, not even a census of the existing trees was carried out. This is despite the specific provisions in Section 7(b) of the Trees Act which obligates the Tree Authorities to carry out such a census.

59. Accordingly, directions are liable to be issued to the two Tree Authorities to carry out a census of all the existing trees in the State of Goa, except, such trees, in Government Forest under the control of the Forest Department or a forest or forest land notified under the Indian Forest Act, 1927. The Tree Authorities should seriously consider the use of modern technology i.e. the use of RFID and the process of geo-tagging. The two Tree Authorities will have to take a decision on the use of such technology within two months from today and file a compliance report in this Court.

60. Although, we are not going into the issue as to whether the provisions of the Trees Act apply to Government land, according to us, the cause of environment and preservation of trees will be better served if, the census included the trees on Government lands as well though not the Government lands that may be covered under a Government Forest under the control of the Forest Department or a forest or forest land notified under the Indian Forest Act, 1927. This means that the

Tree Authorities will have to carry out a census of the trees even on Government lands that do not form a part of the Government lands or a forest or forest land notified under the Indian Forest Act, 1927.

61. Census of the existing trees as indicated above will have to be completed by the two Tree Authorities within one year from today. Since our experience is that such directions are seldom obeyed and a *fait accompli* is presented at the end of the timeline indicated, we direct the Member Secretaries of the Tree Authorities to file a status report before us within two months to indicate the steps taken for the commencement of this exercise. The State Government will also have to give all necessary assistance to the Tree Authorities so that the Tree Authorities are in a position to comply with their statutory duties concerning a census of the existing trees.

**PUBLICATION OF INFORMATION CONCERNING THE  
TREES ACT ON THE WEBSITE OF FOREST  
DEPARTMENT**

62. Section 4 of the RTI mandates that every public authority shall, within 120 days from the enactment of RTI publish the particulars specified in Section 4(1)(b) of the RTI. Section 4(2) of the RTI provides that it shall be the constant endeavor of every public authority

to take steps in accord with the requirements of Section 4(1)(b) to provide as much information *suo moto* to the public at regular intervals through various means of communication, including internet so that the public have minimum resort to the use of RTI to obtain information. Section 4(1)(a) mandates that every public authority shall maintain all its records duly cataloged and indexed in a manner and the form which facilitates the right to information under this Act and ensures that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated. Since the Tree Authorities in the State of Goa have virtually not functioned at all since the enactment of the Trees Act or at least from 2012, they have naturally not bothered to comply with the mandate of Section 4 of the RTI, despite the expiry of the timeline set out in the said Section.

63. There is no doubt that the Tree Authorities that are constituted under the Trees Act answer the definition of “*public authority*” in Section 2(h) of the RTI. This means that the Tree Authorities were obliged in terms of Section 4 of the RTI to maintain and publish the information specified under the said provision. However, to date, the Tree Authorities, have neither maintained nor published such



information and thereby, been grossly derelict in the discharge of their obligations under the RTI as well. Accordingly, a writ of mandamus is liable to be issued to the two Tree Authorities to comply with their obligations under Section 4 of the RTI.

64. The learned Advocate General had submitted that necessary steps will be taken to comply with Section 4 of the RTI by the Tree Authorities within six months from today. We accept this statement and direct the Tree Authorities to act accordingly. The information will have to be uploaded on the website of the Forest Department and the Tree Authorities are also free to explore, in addition to the mode of uploading on the official website, other modes for placing this information in the public domain. This exercise will have to be completed within six months from today and within two months from today, the Member Secretaries of the Tree Authorities will have to file a status report indicating the steps taken for the commencement of this exercise.

**ISSUE OF DEEMED PERMISSION FOR FELLING OF TREES UNDER SECTION 9(4) OF THE TREES ACT**

65. Although no arguments were advanced on the issue of deemed permission for felling of trees under Section 9(4) of the said Act, from the pleadings and the material on record, we find that this issue is a

cause for some concern. As noted earlier, the record indicates that for at least the last 10 years over 99.26% of the applications seeking leave to fell trees were granted by the Tree Officer and only 0.74% of the applications came to be rejected. Based upon such permissions, over the last 10 years, almost 88,978 trees have been felled but there was a direction to replant only 13,875 trees. Again, there is nothing on record to indicate that even these 13,875 trees were indeed planted and are being maintained. In the absence of a census and a proper data bank, the correct position is rendered unverifiable or at least very difficult to verify.

66. From the statistics placed on record by the petitioner, we have reasons to believe that most of the permissions granted for the felling of trees are in terms of Section 9(4) of the Trees Act. This provision states that if the Tree Officer fails to communicate his permission or refusal within 60 days, then, the permission referred to in section 8 of the Trees Act shall be deemed to have been granted. According to us, the grant of permission to fell trees is quite a serious matter and the tree Officers, should not bring about a situation where such permissions are granted, only by default. The grant of such permissions by default is *prima facie* indicative of non-application of mind, not to mention lethargy and dereliction in the discharge of duties conferred by Section 9(3) of the Trees Act, which mandates that

the Tree Officer shall give his decision on any application for felling of trees within 60 days from the date of the receipt of the application. The decisions granting or refusing to fell trees must be reasoned, particularly because such decisions are appealable under Section 15 of the Trees Act.

67. In *Deepak Vahikar (supra)* the Division Bench of this Court considered the provision under Section 8(4) of the Maharashtra Act, which is, almost similar to the provisions in Section 9(4) of the Trees Act with which we are concerned. The Division Bench noted that Section 8(4) provides for deeming permission. But it is equally well settled that where a statutory provision stipulates that an application would be deemed to be granted after a stipulated period, it must, be complete in all respects and must comply with the law. The legislature could not possibly have intended a deeming provision to apply even though a legal obligation is not fulfilled. The Division Bench also took a serious note of the failure of the members of the Tree Authority to dispose of applications within the stipulated period of sixty days. The members of the Tree Authority were placed on notice that they shall follow the mandate of the law and make a decision on each application within sixty days, failing which they shall invite action in exercise of the contempt jurisdiction of this Court if such dereliction is brought to the notice of the Court.

68. The Tree Officer before granting permission to fell trees is required to take into account a host of relevant considerations, including the justification for felling of trees in the first instance. Even if permission is to be granted, suitable conditions and directions regard re-plantation or compensatory plantation are required to be made. Since such orders are appealable under Section 15 of the Trees Act, this right of appeal cannot be frustrated by the failure to indicate any reasons in the orders. In the absence of reasons, neither the aggrieved party nor the appellate authority will be in a position to effectively deal with the appeal.

69. According to us the Tree Officer must also consider making a direction that the trees can be felled only after 30 days from the uploading of his order on the website of the Forest Department. Section 15 provides that an appeal can be filed within 30 days. No doubt, an appeal can also be filed beyond this period by explaining sufficient cause. Such a direction is necessary because if trees are felled in the meanwhile, the position is almost irreversible and presents a *fait accompli*. Once the trees are cut, replantation is extremely difficult if not impossible. The Tree Officer must show sensitivity to such aspects. Ultimately the Tree Officer must not forget that the law under which he has been empowered to decide such seminal issues, is a law to preserve the trees and not some law to facilitate the destruction of

trees. Even the appellate authority is duty-bound to hear the parties and make a reasoned order. Such orders must also be placed in the public domain. Transparency in such matters is vital. Both literally and figuratively, sunshine is vital to the effective preservation of trees.

70. According to us, directions are also necessary to require the Tree Officers under the Trees Act to comply with the mandate of Section 9(3) of the Trees Act and to dispose of applications for felling of the trees within the stipulated period of 60 days, failing which they shall invite action in the exercise of the contempt jurisdiction of this Court. Again, the Tree Officers must ensure that such orders are invariably uploaded on the website of the Forest Department and otherwise made available in the public domain, no sooner the same are made. The Tree Officers must also consider whether the orders should state that the same will be effective only after the expiry of at least 30 days from the date of their uploading or publication. Such a direction, need not obviously be made in the cases covered under Section 12-A of the Trees Act which concern removal of trees, etc. which are in a ruinous state or likely to fall and cause damage to life and property. The Tree Officers should consider including such a direction in their orders granting permissions for felling of trees particularly because such orders of the Tree Officers are appealable under Section 15 of the Trees Act. Having

regard to the provisions of Section 15 of the Trees Act, such an appeal can be filed even by some public-spirited person within 30 days. The Tree Officers should consider issuing such a direction because otherwise, it is likely that the person who is granted permission to fell the trees, will immediately fell the trees and create a situation of *fait accompli*.

**CONSTITUTION OF TREE PROTECTION FUND UNDER SECTION 35-A OF THE TREES ACT**

71. Although this issue was not raised or argued, we find that Section 35-A of the Trees Act obligates the constitution of a fund to be called the "Tree Protection Fund". The following amounts shall be paid in to and form a part of the fund namely:-

- (i) all Government grants, donations from company Or institutions, fees, charges received by the Tree Officer;
- (ii) all proceeds of the disposal of tree, if any, by the Tree Officer;
- (iii) all sums collected by the Tree Officer from such other source as may be decided by the Government.

72. Section 35-A(2) provides that the funds from the Tree Protection Fund shall be applied for meeting all expenses incurred by the Tree

Officer or the Deputy Collector exercising the powers under section 12-A, as the case may be, in connection with the discharge of his functions under this Act. Section 35-B makes provisions for the accounting and audit of this fund.

73. The petitioner had sought information about the creation of such a fund. However, the petitioner was informed that some separate accounts have been maintained. Maintaining such a separate account will not constitute sufficient compliance with the provisions of Section 35-A of the Trees Act. Accordingly, directions are liable to issue to the State Government for the constitution of Tree Protection Fund, in terms of the mandate of Section 35-A of the Trees Act.

### **DIRECTIONS**

74. Accordingly, we dispose of this petition by making the following order:-

- a) The Tree Authorities are directed to meet at least once in every three months as mandated by Section 4(1) of the Trees Act and to discharge the duties for which they are responsible in terms of Section 7 and other provisions of the Trees Act;
- b) The Tree Authorities are directed to meet and consider the co-option of up to three representatives of Non-Official

Organisations having special knowledge or practical experience in the preservation of trees in terms of Section 3(3) of the Trees Act. Such meeting to be held within two months from today and compliance report together with the decision as reflected in the minutes to be placed before this Court **on or before 20.09.2021** after serving a copy of the same to the learned counsel for the petitioner;

c) The Tree Authorities, consistent with the provisions of Section 7(b) of the Trees Act, are directed to carry out a census of the existing trees and obtaining, whenever considered necessary, declarations from all the owners or occupants about the number of trees in their lands. The Tree Authorities to consider using modern technology such as RFID and geo-tagging for this purpose. This exercise to cover areas comprising the entire State of Goa except for Government forests under the control of the Forest Department, a forest or forest land notified under the Indian Forest Act, 1927 having regard to the provisions of Section 30 of the Trees Act. This exercise is to be completed within a maximum period of one year from today. The Member Secretaries of the two Tree Authorities to however file an initial status report in this Court **on or before 20.09.2021** indicating the decisions for use of modern technology and the steps for commencement of the census after serving a copy of the same to



the learned counsel for the petitioner;

**d)** The Tree Authorities, consistent with the provisions of Section 7(c) of the Trees Act must specify standards regarding the number and kind of trees which each locality, type of land, and premises shall have and which shall be planted subject to a minimum of five trees per hectare in the case of rural areas. This exercise is to be completed within a maximum period of six months from today. The Member Secretaries of the two Tree Authorities to file a compliance report in this Court **on or before 31.12.2021** after serving a copy of the same to the learned counsel for the petitioner;

**e)** The Tree Authorities, consistent with the provisions of Section 7(e) of the Trees Act must take appropriate measures for planting and transplanting of trees necessitated by the construction of buildings, new roads or widening of existing roads, or replacement of trees which have failed to come up along roads or for safeguarding danger to life and property. A status report in this regard to be filed by the Member Secretaries in this Court **on or before 31.12.2021** after serving a copy of the same to the learned counsel for the petitioner;

**f)** The Tree Authorities, consistent with the provisions of

Section 7(g) of the Trees Act must take appropriate measures for planting and maintaining such number of trees as may be considered necessary according to the prescribed standards on roads, in public parks, and gardens and on the banks of rivers or lakes or seashores. The Member Secretaries of the two Tree Authorities to file a compliance report in this Court **on or before 31.12.2021** after serving a copy of the same to the learned counsel for the petitioner;

**g)** The Tree Authorities, consistent with the provisions of Section 7(i) of the Trees Act to undertake a critical study of the proposals of various Government Departments and private bodies for construction of buildings, roads, factories, irrigation works, laying out of electric, telephone, telegraphic and other transmission lines with regard to the protection of existing trees and planting of more trees, wherever possible. A status report in this regard to be filed by the Member Secretaries in this Court **on or before 31.12.2021** after serving a copy of the same to the learned counsel for the petitioner;

**h)** The Tree Authorities are hereby directed to comply with the obligations cast upon them by Section 4 of the Right to Information Act, 2005 and to upload the information prescribed in the said Section on the website of the Forest Department and

even otherwise make available such information in the public domain by other suitable means. The minutes of the meetings of the Tree Authorities and the decisions reflected therein must also be invariably uploaded on such websites and made available in the public domain. The obligations under Section 4 of the Right to Information Act, 2005 shall be complied with by the two Tree Authorities within a maximum period of six months from today. A status report in this regard to be filed by the two Member Secretaries in this Court **on or before 20.09.2021** indicating the steps taken after serving a copy of the same to the learned counsel for the petitioner;

i) The Tree Officers appointed under the Trees Act must dispose of the applications for felling of trees within 60 days as stipulated in Section 9(3) of the Trees Act by giving reasons for the grant or refusal of such permissions. Such decisions must be uploaded by the Tree Officers on the website of the Forest Department and the Tree Officers must consider, making such decisions effective at least 30 days from the date of such publication/uploading on the website. This direction will however not apply to removal of trees etc. which are in a ruinous state or likely to fall thereby endangering life and property i.e. situations governed by Section 12-A of the Trees Act;

j) The Tree Officers should, unless the Proviso to Section 10 of the Trees Act is being invoked, specify in the order granting permissions to fell trees the details of the kind of and location at which, trees are to be planted/replanted. This is in terms of Section 10 of the Trees Act. Such particulars should form a part of the order of the Tree Officers granting permissions to fell trees and further, such order, should be invariably uploaded on the website of the Forest Department and even otherwise made available in the public domain;

k) The State Government is now directed to constitute the “Tree Protection Fund” as mandated by Section 35-A of the Trees Act within a maximum period of six months from today. The officers referred to in Section 35-B shall take necessary measures for account and audit of this fund as prescribed. Compliance report to be filed by the Secretary (Forest) in this Court **on or before 31.12.2021** after serving a copy of the same to the learned counsel for the petitioner.

75. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

*SMT. M. S. JAWALKAR, J.*

*M. S. SONAK, J.*