

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.968 OF 2019**

Mr. Vithal Kamat Sambari (dec.)

through LR's

.... Petitioners

V/s

State of Goa & Ors.

.... Respondents

Shri G. Agni, Advocate for the Petitioners.

Shri V. Sardessai, Additional Government Advocate for Respondents No.1 & 2.

Shri A.D. Bhohe, Advocate for Respondent No.3.

Coram: - DAMA SESHADRI NAIDU, J.

Date: - 11th December 2019

ORAL ORDER:

A seed or a sapling believes it owns the earth, so it anchors itself with its roots deep into the ground. It feels it owns the sky, so it tries to grow higher and higher, as if to touch the sky. It also feels even the space between these two belongs to it. So it spreads, sways, and hangs from above, as it grows. But it does not know man—almost an alien to planet earth—has invaded it, colonised it. As every coloniser does, he pounds, plunders and pillages it. So man makes laws and the laws are humancentric. He commands the aborigines, the trees, to behave themselves. Poor trees, they do not know how? So the axe falls, for the law is amoral—almost; for the law brooks no disobedience—always. Nature expects the man to move away from a spreading tree, but the law wants the tree to move away from the man. And I am bound by law; though not a tree, I am not free.

Therefore, I decide this case, decide it in the man's favour, and against the tree. So it is the requiem for a falling tree and a failing human.

This is a Writ Petition under Article 227 of the Constitution of India. Constitution commands awe and inspiration. But the causes people, at times, espouse in the name of constitutional remedies reveals the depths the

adjudication has descended to. In the name of a right to remedy, sometimes we trivialize.

Not long ago did Shri Justice M. N. Venkatachaliah, the former Chief Justice of India, lamented about what we are doing in the name of constitutional adjudication: erecting our egos and prejudices into principles. In that interview, his Lordship said, “[a] judge is acting where an executive officer should act. ‘Shift an electric pole from this place to that’—all this is an executive decision. ‘You can’t have transformers in the middle of the footpath, a train must come to a place at this point of time’—there are many judgments of this kind. Some of them are ego trips, erecting your prejudices into principles. This is where we fumble.” And we fumble, perhaps, again and again.

Here, a couple of trees have asserted themselves and grown, as they should have, freely in the direction they liked. They have leaned, too, on to the neighbour’s compound. That has spelled trouble for them and litigation for their owners. For they faced axe, and their owner court proceedings.

The neighbour complained to the statutory authorities the trouble these trees are causing. Then, there was adjudication at two levels: one by the Deputy Collector-cum-SDO and another by the Court of the Conservator of Forests, an appellate authority under the Preservation of Trees Act, 1984.

2. The Court of the Conservator of Forests in the impugned order, dated 10.09.2019, directed:

“The Appellants . . . filed an Appeal before Appellate Authority against the Order dated 25/01/2019 passed by the Dy. Collector/S.D.O. & Tree Officer, Panaji in case No.DYC/PNJ/GOA PRESER/34/2018 and prayed to quash, set aside, and stay the impugned order.

After admitting the case, Appellate Authority issued notices to both the parties for preliminary hearing on 25.07.2019. Further, the Appellant and Respondent [were] given sufficient opportunity to make their submissions.w

During the hearing held on 10.09.2019, the Appellants informed the authority that they are not in position to cut the branches of suit mango tree, due to electricity wires passing by, and that they have no objection if the Respondent cut the same. The Respondent agreed to the same provided the cost is shared by both the parties, to which Appellant also agreed. As far as coconut tree is concerned the Appellant as well as Respondent [has] agreed to implement the direction of the Dy. Collector/SDM, Panaji.”

3. Now, the petitioner, who owns the trees, has been aggrieved. In the first place, the impugned order, it seems, is a consensual one, reflecting the will of the parties rather than the power of the court or authority. It brooks no interference. Besides, I see no reason to exercise my supervisory

jurisdiction against an order passed by supposedly an expert or experts in the field. So I fail to spot perversity in the order impugned.

I dismiss the writ petition but refrain from imposing costs.

DAMA SESHADRI NAIDU, J.

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