

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION No. 37(THC)/2013

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. Goa Foundation,**
Through : Secretary,
Dr. Claude Alvares,
Registered office at Rm.7,
Above Mapusa Clinic,
Mapusa (Goa)
 - 2. Sandeep Azrenkar,**
R/o. A-7, Kurtarkar Classic,
Aquem, Margao.
-Applicants**

A N D

- 1. Mormugao Planning and Development Authority,**
Through : Member-Secretary,
Commerce Centre, II nd floor,
Vasco, Goa
- 2. The Collector, South Goa**
South Goa Collectorate,
Margao, Goa.
- 3. The State of Goa,**
Through : Chief Secretary,
Govt. of Goa, Secretariate,
Porvorim, Goa.
- 4. Chief Town Planner**
Panaji, Goa
- 5. The Chief Conservator of Forest,**
Gomantak Maratha Mandir,
Panaji, Goa
- 6. Shri Anand Janardan Bhat Savoikar,**

Power of Attorney, Shri Anthony Dias,
Partner of M. & M. Space Deals,
Our Lady of Guia Building, F.L. Gomes
Vasco da Gama

7. **Mr. Maruti Nagesh Mesta,**
H.No.23, Jetty, Headland Sada,
Vasco.
8. **Mr. Shantaram V. Paradkar,**
H.No.11, Headland Sada, Vasco
9. **Mr. Maruti Madhu Mangueshkar,**
Mesta Building No.1, 1st Floor,
Anantdhara Co-op. Society,
Mangor Hill, Vasco.
10. **Mr. Mose M. Dourado,**
H.No.480, Nr. Bank of India,
Sancoale, Goa.
11. **Shri Uday Pandurang Salunke,**
B/1-6 Police Quarters, Bogda, Vasco
12. **Mr. Vinodkumar A. Kambli,**
H. No.375, Hsg. Colony, New Vaddem,
Vasco.
13. **Mr. Alisab Sulamansab Kaltimani,**
H.No.92, Near Satish Gaddag,
Mangor, Vasco.
14. **Mr. Pascoal Fernandes,**
H.No.44, Cuelim Xando,
Cansaulim.
15. **Mr. Reddy B. Yallappa,**
H.No.1/2 Bldg. No.3, MPT Colony,
Mormugao
16. **Mr. Dilip Keshav Naik,**
H.No.172, Hsg. Board Colony,
New Vaddem, Vasco.
17. **Mrs. Greta P. Rodrigues,**
Flat No.18, Sukadan Apt.
New Vaddem, Vasco.
18. **Shadab Hussain Jakati,**

Vailankanni Residency, Kate Baina,
Vasco.

- 19. Mr. Vinajay Subray Naik,**
2nd Floor, Parijath Garden, Zorint,
Zuaringar, Mormugao
- 20. Mr. Jivatma R. Kolambkhar,**
H.No.155, Ward II, Near Sada
Bus stop, Vasco.
- 21. Mrs. Suman Rama Kanekar,**
Fatima Colony Agahi Bunglow,
Alto Debolim.
- 22. Mrs. Usha Rama Bhajikhai,**
Babusso Enclave. Mr. Mes College,
Zuaringar, Mormugao.
- 23. Mr. Santosh V. Kolamkar,**
Police Qtrs., Bogda, B-3-7, Vasco
- 24. Mr. Dudakala Mastan,**
H.No.41, Headland Sada, Vasco.
- 25. Mr. Sanjay Dinkar Kadwadkar,**
Rm.B/8/4, Police Quarters,
Bogda, Vasco.
- 26. Mr. Parsuram M. Rathod,**
671, Near Zuari Central Stores,
Zuarinagar, Mormugao
- 27. Mr. Mahadev Vassant Masurkar,**
H.No.146, Nr. Bus stop,
Headland, Sada, Vasco.
- 28. Mr. Francisco A.J. Gonsalves,**
1304, Adarsha Nagar, Airport Road
Chicalim.
- 29. Mr. Vinay Shantaram Khot,**
Police Qrts., No.A2/2, Chicalim,
Vasco.
- 30. Mr. Alexander Micheal,**
H.No.13/8, Near N.S.D. Depot,
Dabolim
- 31. Mr. Isidoro Tome Carvalho,**

Nanta, Cortalim

- 32. Mr. Babani Pandurang Naik,**
Bharat Nagar Colony, New Vaddem
Vasco.
- 33. Smt. Parvati R. Pattar,**
H.No.331, New Vaddem, Vasco.
- 34. Ms. Dipti Menon,**
136, Rangavi Estate, Isorsim
- 35. Mr. Vijay Bahadur S. Patel,**
B/6/5, Bogda Police Qtrs.
- 36. Agnes Fernandes,**
H.No.161, Velsao Dando,
Cansaulim,
- 37. Yeshwant N. Mallikarjun,**
Police Qtrs., Bogda, Vasco.
- 38. Mr. Amarappa Y. Walikar,**
H.No.193, Mangor Hill,
Mangor Hill, Nr. Gurudwara,
Vasco.
- 39. Mr. Hussain Basha Khanapur,**
Behind St. Anthony's Chapel,
Chicalim, Vasco.
- 40. Mr. Shaikh Muzaffar,**
Flat No.201, Block II, Karma Garden,
Chicalim.
- 41. M/s. M.M. Space Deals,**
Real Estate
Through : Agnelo F.J. Mendannco &
Shri Manvel Dias, Our Lady of Guia Building
F.L. Gemes Road, Vasco.

...Respondents

Counsel for Original Applicant :

Mrs. Norma Alvares,
Mrs Supriya Dangre,

Counsel for Original Respondent Nos.5 & 6 :

Mr. Pradeep Varekar, ACF and J.C. Pai Adv.,

Counsel for Original Respondent Nos.7 to 41 :

DATE : 4th September, 2014

J U D G M E N T

1. The present Application was originally filed in the High Court of Bombay, Bench at Goa as Writ Petition No.434/2006, which was transferred to the National Green Tribunal vide order of Division Bench, of the Hon'ble High Court, at Goa dated 11th November, 2013.

2. The Applicants seek to raise a dispute connected with implementation of the Forest Conservation Act, 1980 in the State of Goa and enforcement of the directives of the Hon'ble Supreme Court in the "**Godavarman matter**". This Application is filed for order of quashing Conservation Sanad dated 5th January, 2006 and the development permission dated 24th April 2006 in respect of S.No.113/2 of Sancoale village as the same is identified by the Forest Department as "*forest*" in accordance with definition of the "*forest*" as per the Ruling of Hon'ble Supreme Court in "**Godavarman matter**".

3. The Applicants submit that in the "T.N. Godavarman" case, the Hon'ble Supreme Court vide its order dated 12-12-1996 directed all State Governments to --

- (a) *identify areas which are "forests", irrespective of whether they are so notified, recognized or*

classified under any law, and irrespective of the ownership of the land of such forest;

- (b) identify areas which were earlier forests but stand degraded, denuded or cleared; and*
- (c) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.*

Consequently, Goa State Government had appointed Sawant Committee for compliance of orders of the Apex Court, which adopted certain criteria for identification of “forest” as follows :

- (a) 75 per cent of the composition should be forestry species;*
- (b) The area should be contiguous to a Government Forest and if in isolation, should be more than 5 hectare.*
- (c) Canopy density should not be less than 0.4.*

This Committee could not, however, complete the entire work and therefore, the State Government appointed another Committee headed by Dr. Karapurkar to carry the work. This Committee also submitted its final report on 16-12-2002. It is submitted that both these Committees could identify 67 sqkm of the private forest only and mentioned that the identification work remained uncompleted due to certain difficulties.

4. The Applicants have arrayed Mormugao Planning and Development Authority which is the Planning Authority of

the Region as Respondent No.1 in the Application. Respondent No.2 is Collector, South Goa and Respondent No.3 is State of Goa. Respondent No.4 is Chief Town Planner while Respondent No.5 is the State Forest Department. Respondent No.6 and 41 are the developers of the said property. Respondents No.7 through 40, are the individual Respondents who have purchased the plots of the said property from Respondent No.6 and Respondent No.41.

5. The Applicants submit that the land in question bearing S.No. 113/2, though has not been included and identified as “forest” either in the Sawant or Dr. Karapurkar Committee Report, the Forest Department and the Applicants have the knowledge and information that S.No.113/2 is a “forest”. The Applicants submit that Respondent No.6 allegedly felled trees standing on this plot, in the year 2004, on two occasions, which incidents were investigated by the Forest Department. The Applicants submit that the Deputy Conservator of Forest, South Goa Division, vide his letter dated 8-6-2005 addressed to Chief Town Planner (Respondent No.4) requested that NOC for development of the property and land in question, issued by the Marmugao Planning and Development Authority (Respondent No.1) be quashed. This letter refers to illegal tree felling and also informs that the adjoining area is a forest. The Applicants submit that the Deputy Conservator of Forest again wrote to

the Chief Town Planner on 19th September 2005, informing this fact that the survey No.113/2 is the forest, as per the criteria given by the Hon'ble Supreme Court in its order dated 12-12-1996 and further, the Town Planning Department was asked to rectify the decision to change the status of area to the settlement of zone, without necessary permission under the Forest Conservation Act, 1980. It is the grievance of Applicants that in spite of these official communications, the Conversion Sanad was issued by Respondent No.2 on 5-1-2006 for use of the land for residential area. The Applicants further informed that the Forest Department again wrote to Chief Town Planner on 14-3-2006 requesting that the proposed sub-division of survey No.113/2 be revoked immediately and to stop the party from further construction activity. The Applicants submit that in spite of such communications, the Mormugao Planning and Development Authority i.e. Respondent No.1 vide its order dated 24-4-2006 granted final permission for sub-division of land S.No.113/2 of Sancoale village. The Applicants, therefore, submit that though the Forest Department has identified the plot in question as a "forest" and further the Forest Department had stopped development activity on the plot pursuant to the tree felling offence, the Conversion Sanad dated 5-1-2006 and development permission dated 24-4-2006 in respect of S.No.113/2 of Sancoale village are

granted in violation of the provisions of Forest Conservation Act, 1980 and also in breach of orders of the Hon'ble Supreme Court of India. Therefore, the Applicants pray for Writ or Order quashing Conversion Sanad dated 5-1-2006 and the development permission dated 24-4-2006.

6. The Respondent No.1 filed an Affidavit on 11th December 2006, and submits that an Application dated 19-11-2005 was received on 14-12-2005 from Sancoale village Panchyat for issuing of final NOC for sub division of land bearing S.No. 113/2 of village Sancoale village. The erstwhile planning Authority had granted development permission for sub-division (provisional) of the land in question on 17-6-2004. The Respondent No.1 had inspected the site and it was verified that the development carried out at site was in confirmation to the provisional approval granted by the erstwhile Planning Authority and therefore, the Respondent-1 Authority in its 8th meeting held on 1st March 2006, discussed the matter. Then it was decided by the Authority to approve the matter since the development was carried out as per the approved plan. The Respondent No.1 further submits that the Authority in its 11th meeting held on 19-4-2006 unanimously resolved and decided to grant development permission for final sub-division of the subject land. Respondent No.1 further submits that while processing the matter the letters from Forest Department

dated 19th September 2005 and 13th December 2005 were also available as a part of the record, in addition to tree cutting permission given by the Tree Officer dated 30-5-2003.

7. Respondent No.1 further submits that the letter of Forest Department dated 7-6-2006 was discussed in the meeting dated 21-6-2006 and the Authority resolved to seek further information from the Dy. Conservator of Forest on the statements made by him. Respondent No.1 further submits that the property surveyed in S.No.113/2 of Sancoale village has been classified and Zoned as S-1, S-2 and A-2 in the Outline Development Plan (ODP) of Mormugao and the approvals have been granted on the basis of outlined development plan in force subject to certain conditions. Respondent No.1, therefore, submits that the approvals given by the authority are in accordance with the ODP in force.

8. Respondent No.2 i.e. Collector, South Goa by his affidavit clarified the procedure for grant of Sanad in view of various orders of State Government. Respondent No.2 submits that his office has followed the procedure defined by State Government vide Circular dated 23rd June 1997 as amended on 8th February, 2005 scrupulously and the areas which have been identified by the Sawant and Dr. Karapurkar Committee have been checked and verified before grant of this Sanad. Respondent No.2 submits that the subject property is not classified as forest land, under

Sawant or Dr. Karapurkar Committee Report or has not been notified and recorded as forest area while granting the Sanad and therefore, Respondent No.2 submits that all the guidelines and instructions issued by State Government have been followed and the conversion Sanad issued is in accordance with the Law.

9. Respondent No.5 by his Affidavit filed before Hon'ble High Court and submits that a complaint was received from Nisarga Nature, Mormugao about development activities taking place in the said property and request made by the said organization for appropriate action as the said property is a "forest land". Respondent No.5 further submits that though the Respondent No.6 was given permission for felling fifty five (55) trees, the Respondent No.6 had felled around 175 extra trees. This was investigated and an offence was registered against Respondent No.6. Respondent No.5 further submits that in September 2004, another violation in the terms of felling of 25 trees was investigated and offence was registered against Respondent No.6. Respondent No.5 further submits that during the course of inspection, it was observed that the area is contiguous to another property which is also *prima facie* of forest nature. Respondent No.5 therefore, claimed to have informed the Town Planning Department immediately stating that the subject property seems to qualify as a private forest and no forest area can be

diverted for non forestry purpose without prior permission of the Central Government. Respondent No.5 further submits that the Sawant Committee Report is not accepted by the Government, however, the same is being followed for further exercise of identifying forest lands. Respondent No.5 further submits that for private land to be quantified as forest, the minimum area should be 5 hectare as per the criteria adopted by Sawant Committee. However, Respondent No.5 submits that any area less than 5 hectares also could be considered as forest subject to other criteria being applicable; however, in this case, private forest should be contiguous to forest land. Respondent No.5, therefore, submits that the subject property upon inspection *prima-facie* satisfied the criteria of private forest and hence, correspondence has been made with a concerned department for not permitting the development, it applicable or for grant of NOC by the Forest Department.

10. Respondent No.6 is the Project Proponent and the main contesting party. He has filed Affidavit to counter the prayers and for seeking dismissal of the Application. Without going into the details, it is the case of Respondent No.6 that he purchased the subject property on 12-4-2004 and subsequently obtained various permissions including provisional approval for sub-division of plots of the said property from Vasco Planning and Development Authority

dated 17-6-2004, provisional NOC from Village Panchyat of Sancoale dated 22-7-2004. Further, it is submitted that he obtained permission for tree cutting and also, NOC from electricity department. After completion of the formalities M/s. M.&.M. Space Deals who are his development partners have obtained final development permission for sub-division of plots from the Respondent No.1 on 24th April 2006. Respondent No.6 submits that development of the subject property was done in two phases. In first phase, plots have been sold to various Respondents listed from seven (7) onwards and thereafter the development of second phase commenced in the land classified as settlement S-1 zone in the ODP. It is the submission of Respondent No.6 that the subject property is classified and zoned as S-1/S-2 and A-2 in the outline developed plan of Goa approved in the year 1984 and further in 2006.

11. Respondent No.6, filed counter Affidavit to the affidavit filed by Respondent-5 and specifically contended that the subject property i.e. S.No.113/2 do not satisfy the definition of “forest” as per parameters laid down by Hon’ble Supreme Court nor the criteria adopted by Sawant and Dr. Karapurkar Committee’s. Respondent No.6 further contends that the so called *prima facie* opinion of the Deputy Conservator of Forest regarding the land in question, is not supported by any factual data or how the opinion is formed

and justified in view of set criteria. Respondent No.6 further submits that the panchanama prepared by Forest department cannot be relied upon due to absence of property owners, or even the local residents at the relevant time. He further submits that the Forest Department has not even provided any opportunity to make their submissions and drew the Panchnama *ex parte* as well gave the *ex parte* opinion. He further contends that the Forest Department has not outlined how the facts and circumstances related to subject property satisfies said definition or the said criteria. No details of plot area, status of adjoining areas, canopy density, type of trees etc. have been scientifically and analytically appraised before making such vague statement, expressing the *prima facie* opinion, though the Respondent No.1 had specifically communicated the Respondent No.5 to substantiate such opinion through documentation. In short, Respondent No.6 has denied and countered the submissions made by the Forest Department in its Affidavit.

12. Respondent No.6 further filed an Affidavit on 3rd July 2014 and contested the Google imaginary map submitted by the Applicants in support of their case. Respondent No.6 submits that the subject property situates in village Sancoale, which had been visited by both, Sawant and Dr. Karapurkar Committees, in the past which were specifically formed to identify the private forest in the State of

Goa as per the orders of Hon'ble Supreme Court. Respondent No.6 submits that these Committees have identified only four (4) plots i.e. S.No.54, 55, 56 and 69 in their report. It is, therefore, pleaded by the Respondent No.6 that the Application is filed much after the subject land is completely developed in all respect and third party rights have been created by sale of plots, only after getting the necessary permission from the authorities and, therefore, the Application is liable to be dismissed on account of delay and latches. He denied that the land S. No.113/2 is a private forest and further alleged that the nearby area is fully developed. He averred that the Application is thoroughly misconceived. According to him, part of the land purchased by him falls within settlement zone and is not at all part of private forest and as such, that could be developed for commercial or residential purpose. He asserted that as per his Application, the Collector, South Goa gave conversion Sanad in his favour for use of land for non-agriculture purposes in terms of Section 32 of Goa Land Revenue Code, 1968, after getting necessary report/feedback from all the concerned departments including the "forest". The land was not at all recognized as private forest by the Revenue Department.

13. Respondent No.6 also submitted a report of one Dr. Joshi about the Environmental Status of the subject

property. Respondent No.7 to 40, are the individual property holders. They are purchasers from Respondent No.6. It is not essential to reproduce the averments made by some of these Respondents in as much as Respondent No.6 and 41 are the developers and they are real main contesting parties and have elaborately submitted their pleadings. Further the repetition of facts and law need to be avoided for clarity.

14. We have heard the learned counsel for the parties. We have carefully perused the documents on record and accordingly following issues are framed for determination in the present Application for its final adjudication.

- (1)** Whether the Application is barred by limitation and as such liable to be dismissed ?
- (2)** Whether the land in question i.e. S.No. 113/2 in village Sancoale is a “private forest” ?
- (3)** Whether the NOC/permission granted by Respondent No.1 and 2 in favour of Respondent Nos.6 and 41 are liable to be quashed, being illegal and untenable in the eye of law, being contravened to Forest Conservation Act, 1980 ?
- (4)** Whether the developers-(Respondent Nos.6 and 41) are liable to restore the land in question to its original position or for compensatory measures due to deforestation without prior permission of competent authorities for felling of trees standing on land S.No.113/2 ?

15. The core issue is, whether the property of Respondent No.6 and 41 at land S.no.113/2 of village

Soncoale, is a private forest. It is not disputed that this land is not recognized and notified as private forest in revenue record till this date.

It is an admitted fact that Govt. of Goa appointed two (2) Committees, namely; Sawant Committee and thereafter Dr. Karapurkar Committee, to identify 'private forests' in Goa in pursuance to the directions of the Hon'ble Supreme Court in "**T.N.Godavarman Thirumulkpad vs Union of India**". Even prior to that for State of Goa, guidelines were set out by the Hon'ble High Court of Bombay, Bench at Goa, while delivering the Judgment in Writ Petition No.162 of 1987 (**Shivanand Salgaonkar Vs Tree Officer**). The Hon'ble High Court of Bombay, Bench at Goa, in its Judgment dated 27.11.1990, held that the term "Forest" is not specifically defined under the Forest (Conservation) Act, 1980 and as such, it has to be given dictionary meaning. The guidelines for identification of the forest in private property were formulated in 1991, as follows:

- i) **Extent of area**: Long term viability of a piece of forest land is an important consideration. Obviously, very small patches of forest cannot be viable in the long run from conservation Point of view. Therefore, a minimum extent of area will have to be determined to which the Forest (Cons.) Act, 1980 would be applicable in private and revenue areas not recorded as 'forest'. I propose that this area should be at least 5 hectares. It is not worthy that the Forest (Cons.) Act, 1980 and guidelines made there under do not prescribe any such minimum area for application of the Act.
- ii) **Proximity and/or contiguity**: The proximity of the private

forests concerned to a larger forest area and / or its contiguity with the later area should also be an important aspect to consider while examining such areas.

iii) Composition of crop: It is important to prescribe minimum standards in terms of crop composition in order to distinguish forest species from horticultural species. This is particularly relevant in State like Goa where occurrence of large number of cashew, jackfruit and coconut trees in private areas is a common feature. We may perhaps prescribe that at least 75 of the crop should comprise of forest species.

iv) Crown density: It would not be meaningful to apply the Forest (Cons.) Act, 1980 to degraded and open areas under private ownership. Therefore, a minimum crown density of 40% may be adopted as a standard assessing the applicability of the Act in Such private and revenue areas which are not recorded as 'forests' in the land records.

16. In “**T.N.Godavarman Thirumulkpad vs Union of India**” the Apex Court gave directions to all the States to constitute an Expert Committee viz to :

(a) identify areas which are “forests”, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest;

(b) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(c) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

Pursuant to the said order the Govt. of Goa constituted a Committee on 24.1.1997, headed by Shri.

Sandand Sawant. The Committee partially completed the identification work and submitted its report on 4.7.1997. The relevant factors as stated for identification of the forests as per the guidelines issued by Govt. of Goa for the purpose of identifying forests were as follows:

- i.** 75% of dense composition should be the forest tree species,
- ii.** The area should be contiguous to the Govt. forest and have in isolation the minimum area should be 5 Ha,
- iii.** Canopy density should not be less than 0.4 (i.e. 40%).

17. The second interim report of Sawant Committee, categorically rejected Satellite Imaginary and Topo-sheets, as one of the criteria for identifying the 'forest', for the reason that it would at the best show natural green cover, which would include plantations, seasonal crops etc. and the same cannot be a relevant consideration for classifying the 'forests'. This part of the second interim report of Sawant Committee, is rather significant inasmuch as now, the arguments of the Applicants is based upon the same criteria, which they seek to be used.

18. Learned Counsel Mrs. Norma Alvares appearing on behalf of Applicants invited our attention to the fact that Sawant and Dr. Karapurkar Committees have identified four (4) survey numbers in Soncoale village as private forests and the subject property at S.No.113/2 has not so far been surveyed and identified as private forest. She emphasized that both the

reports clearly mentions the identification process is incomplete and that's why the State Government has further constituted two (2) Districts Level Committees for the continuation of Private Forest identification process. It is her contention that the South Goa Committee in November 2013 has visited the area and noted that the stretch of area of villages Sancoale, Dabolim and Chicalin village are necessary to surveyed for identification of private forest. In short, her submission is that, mere non listing of the subject property in either Sawant or Dr. Karapurkar Committee reports does not conclude that the subject property is not a private forest.

19. The learned Counsel for Applicants further relied on the Bond given by the Respondents to the forest department while obtaining the permission for tree felling dated 30th May 2003. The Bond classified the subject property as forest land and the tree cutting permission was also given for reforestation of certain area within the subject property. The Bond does not mention any development activity or diversion of land use. The learned Counsel also highlighted the fact that the Respondents have been booked by the forest department twice for illegally felling the trees in large number.

20. Countering the above argument, learned Sr. Counsel for Respondent No.6 submits that mere perusal of the Bond would illustrate that this is a standard format prepared by the forest department which is being grossly mis-interpreted by the

Applicants to claim that the subject property is a forest. His contention is that the permission letter of the Forest Department clearly mentions that it is a permission to fell the trees on private property and there is no mention or even a remote reference to indicate that the subject property is a “forest”. The learned Sr. Counsel fairly admits that there were two instances of cutting of trees. He brought to the notice of the Tribunal that the offence was registered under the Tree Act and not under the Forest Act which should have been a logical action by the Forest Department if they were treating the subject property as a forest land.

21. The learned Counsel for the Applicants submits that the Forest Department has submitted in its Affidavit that it has written to the Town Planning Department and also, Respondent No.1 raising an alarm highlighting the fact that the subject property is a private forest. It is her contention that in spite of such clear communications issued by the forest department, the authorities have gone ahead and given permission for the development. We will now deal with chronology of the events :

- 1) Application for grant of Sanad dated 5-1-2006.
- 2) Collector, South Goa calls for comments for conversation of land use dated 27-5-2004.
- 3) Report of the Town Planning Department dated 11-6-2004.
- 4) Revised report to the Collector by the Town Planning Department dated 10-11-2005.

- 5) Modification of G.R. for procedure for considering the change in land use requiring to refer Sawant and Dr. Karapurkar Committee Reports dated 8-2-2005.
- 6) Proposal received by Respondent No.1 from Chief Town Planner dated 24-2-2006.
- 7) Final sub-division permission granted by Mormugao Planning and Development Authority dated 24-4-2006.
- 8) Forest department communication to Respondent No.1 dated 7-6-2006.
- 9) Respondent No.1 letter to forest department to substantiate his observation dated 31-7-2006.

22. We have carefully gone through the entire documents and the correspondence on record. We have noticed that procedure for grant of the Sanad was amended subsequent to the orders of Hon'ble High Court on 8-2-2005 which is as follows :

'v') The copies of the report of the Sawant Committee and the Karapurkar Committee would be placed with the Collector/Deputy Collector so that the various forest areas mentioned therein are known to the authorities based on which appropriate decision will be taken in any matter relating to conversation of such land.

Prior to that, the consultation with forest department was not necessary as per the circulation dated 23rd June 1997.

23. We have also gone through the Affidavit of Respondent No.5 filed by one Mr. Bidi, Deputy Conservator of Forest. The Affidavit mentions that a complaint was received from Nisarga Nature Club, Margao, about the development activity at the

subject property. The Affidavit refers to two (2) instances of illegal cutting of trees and mentions that offences have been registered. The Affidavit goes to submit that the property upon inspection, *prima facie* satisfy the criteria of the private forest. We wanted to know about follow up actions by the forest department for the offences registered and also, objective criteria and observations of the concerned forest official to give such *prima facie* opinion. We also wanted to know whether the forest department has replied to the communication from Respondent No.1 referred above, justifying such observations. In the present Application, Respondent-5, Forest Department, has not filed any subsequent Affidavit on these issues and also, follow up actions taken, if any. It is pertinent to note that a senior forest official has *prima facie* identified subject property as private forest, without substantiating his opinion with observations, analytical data and justifying how it meets the standard criteria for identification of private forest. What we could see from records is that the Forest official has made the *prima facie* opinion without substantiating the facts, even after making such opinion way back in 2006, and thereafter just by sending some communications to other departments, the Forest Department maintained eloquent silence on the issue. Such attitude of the forest department can definitely make the forest related matters more complex, leading to non compliance of the regulations on one hand, and also protracting process of

decision making, which will further hamper the public interest in the protection of environment. We do not know the reasons why the Forest Department chose not to submit further information and filing of counter to the Affidavit filed by the Respondent No.1. The forest department is a specialized department, and the forest officials in the field are the best technical experts in forestry matters and that surely increases the responsibility of such forest officials in forest related matters.

24. Respondents have also relied on a report of one Dr. Joshi who claims to be an Environmental Scientist on the Environmental Status Reports which has been seriously challenged by the Applicants. Suffice to say that environment is multi-disciplinary subject but at the same time, it requires immense experience and also deep interest to conduct any study related to environment. We cannot disbelieve in a report on mere submission that the basic qualification of an expert is not related to a particular subject. However, the contents of the report are more important. We do not wish to offer any comments on the conclusions of the report but certain facts/information referred in the report, may be culled out while dealing with this Application. The report mentions that the said plot is flanked by S.no.111 and 112 by north direction, S.no.113/1 by the west, Nala/rivulet by the south and S.no.94, 96 and 97 by the east. The report does not give the status of

these plots. Whether they are Government owned or private lands or not is unclear. Even during course of final arguments, no evidence was brought on record to show that any adjoining plot of the subject property i.e. S.No.113/2 is a Government owned Forest. Admittedly, the plot has area of 2 hectares only.

25. During the hearing on May 2nd 2014, it was brought to the notice that the South Goa District Committee has visited the area on 3-10-2013 which was submitted by the Applicant along with Affidavit dated 3-4-2014. The minutes go to show that South Goa Committee visited the area on 3-10-2013. We need not deal with minutes of the said meeting as they are mere observations and the committee has not prepared detail report including the analytical data, investigation findings etc. The learned Senior Counsel for the Respondent strongly objected to the contents of such minutes claiming that they have been prepared with an agenda. We are not aware about further actions taken by the Committee.

26. However, we noted the submissions made by Learned Sr. Counsel for Respondent No.6 that the Sawant and Dr. Karapurkar Committees have visited the Soncoale village as a part of identification process, and have identified four (4) S. Nos. as private forests. In fact, the report also identifies the S.nos. of areas of which even a part is likely to be the private forest. He submits that the first identification process is a screening exercise mostly on ocular observations, by the expert

committee members, which is subsequently followed by rigorous procedure of identification and demarcation of forest. The Learned Sr. Counsel submits that the forest department cannot be allowed, again and again, to visit a particular village for identification of Private forest over such a long and substantial time. This will create total lack of clarity and stall the entire development process. He agrees that once identification process is done, the further process of survey, investigations, public consultation, demonstration and notification will take time and is a quite elaborate process. However, his contention is that the identification process is a onetime process and should not be used as a fishing activity for adding more and more areas for further investigation. He would argue that such process has already affected the development at the said property and blocked money as many people have purchased the property/plots, after receipt of the necessary permissions from the authorities, since year 2006 and they are not able to construct their houses in view of the ongoing litigation and the stay.

27. The forest identification criteria laid down by Sawant and Dr. Karapurkar Committees are the pre-requisites of the identification of private forest. In the present case, admittedly neither Sawant nor Karapurkar Committee nor the South Goa Committee has identified the subject property as a private forest, in part or full. It is also to be noted that the area of the

subject property is only two (2) hectare and there is no record to show that it is contiguous to any Government forest. Under these circumstances, it is difficult to countenance the argument of learned Counsel for the Applicants.

28. Taking stock of the foregoing discussion and the reasons, we are of the opinion that the Application is destitute of substance. However, it is manifest that the Developer got cleared part of the area by felling of about 200 more trees, than the permitted one, in his overzealous attempt to develop the area. The Developer wanted to commence the development process as expeditiously as possible. His attempt was to make early profiting business. The Law should not have been arm-twisted by him in doing such development activities, either by himself or through any Agency. He did not give any report about the incident of felling of trees from his property to the police. He did not take any action against the culprits, nor did he make any attempt to arrest further loss of vegetation by taking early action, when felling of the trees was noticed. It cannot be said that he might not have noticed felling of trees immediately. His conduct of keeping silence by itself would amount to connivance or attempt to willful removal of the trees/degradation of environment. Hence, he is liable for compensatory afforestation.

29. While concluding the judgment, we are concerned with the delay in completion of exercise for identification of private

forests in the state of Goa. This delay is neither helping the cause of protection of forest and environment nor is it helping the sustainable development of the state and only results in litigation. It also impedes forest protection and development in the area. This Bench has already dealt with this issue elaborately in the Judgment rendered in Application nos. 14 and 16 of 2013, wherein certain directions have been given to State.

30. In the result, we partly allow the Application and partly dismiss the same as follows:

- (I)** The Application, as regards main prayers in respect of declaration and restoration of land, is dismissed.
- (II)** The Respondent No.6, (Developer), is directed to pay an amount of Rs.5,00,000/- (five lakhs) for the purpose of afforestation, which shall be credited to the account of State Forest Department, within period of four (4) weeks. If the Amount is not so credited then it be recovered with interest @ 18% P.A. from today till date of recovery and shall be utilized for afforestation purpose.
- (III)** The Chief Conservator of Forest, shall give six (6) monthly report about the progress of afforestation work to this Tribunal.
- (IV)** The above amount shall be deposited by the Respondent No.6, in the office of Chief Conservator of Forests, State of Goa within period of four (4) weeks. In default of payment, all the properties of the Respondent No.6, shall

be confiscated and sold in auction by the Collector, North Goa, and sale proceeds shall be deposited with the office of Conservator of Forests, as if, it is land revenue arrears.

The Respondent No.6, shall pay Rs. 1,00,000/- (One lakh) as costs of litigation to the Applicants and shall bear his own costs.



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

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

Date : 4th September 2014.

NGT