

SUPREME COURT OF INDIA

Tata Hsg. Development Co. Ltd.

Vs.

Goa Foundation

C.A.Nos.6336 with 6337 and 6338 of 1998

(Y. K. Sabharwal and B. N. Agrawal, JJ.)

17.09.2003

JUDGEMENT

B. N. AGRAWAL, J.:-

1. These appeals by special leave are directed against the judgment rendered by Goa Bench of Bombay High Court in a writ application, which was filed by respondent Nos. 1 and 2 (hereinafter referred to as 'the contesting respondents') by way of public interest litigation, whereby the same has been allowed, permissions granted to the appellants for change of land use, construction and felling of trees in relation to Survey No. 69/4 measuring 11275 sq. mtrs. situate in Village Penha De Franca concerning the project undertaken by appellant No. 1 over the said land quashed, and the appellants were directed to remove all development works done thereon.

2. Survey No. 69/4 measuring 13593 sq. mtrs., by virtue of deed of partition amongst the co-owners of the property, came to the share of Manohar Lal Bhandiye (respondent No. 10) and his wife Shantabai Bhandiye in the month of December, 1965 wherein this property situate in Village Penha De Franca was specifically described as 'Palmar De Sam Tamas De Malim' which means 'Coconut

Plantation'. In Goa Gazetteer of the year 1980 it was specifically enumerated that out of the trees standing over the aforesaid plot, only 6 were of 'forestry species'. Out of the aforesaid land, an area of 1050 sq. mtrs. was sold to Gurudwara Committee in the year 1980 which constructed a three-storeyed Gurudwara thereon in the year 1986. In the same year a proposed Regional Plan was prepared by the Chief Town Planner under Section 9 of the Goa, Daman and Diu Town and Country Planning Act, 1974 (hereinafter referred to as 'the Town Planning Act') showing the entire area in which the aforesaid plot was situated as an 'orchard' and not Government forest/natural cover and the same was first published in the local newspapers and suggestions and objections invited from members of the public. As no objection from any member of the public, including the contesting respondents, was received, the proposed plan was approved and published in the local newspapers as required under Section 15 of the Town Planning Act. Thereafter, in the year 1990 a proposed Outline Development Plan was prepared by the Chief Town Planner under Section 33 of the Town Planning Act wherein character of the land in question was shown as A-1 [Agricultural and Orchard [Natural Reserve] Zone] and A-2 (Agricultural and Natural Reserve Zone). The proposed Outline Development Plan was published in the local newspapers and suggestions and objections invited from members of the public as required under Section 35 of the Town Planning Act, but as no objections were received from any member of the public, much less the contesting respondents, to the zoning of the said plot as agriculture, it was duly approved and published in the local newspapers. On 27-9-1991 the Government of Goa in the Department of Forest issued guidelines for identifying forest within the State. In the year 1992, erstwhile owners of the plot in question applied to the Town and Country Planning Board to accord permission for making changes in the status of the land in question from A-1 and A-2 to S-2 (Settlement Zone) under Section 44 of the Town Planning Act which permission was granted by the Chief Town Planner as in spite of the issuance of public notice under Section 35 of the Town Planning Act, none objected to the conversion of land use from agriculture to settlement and the same was published in the local newspapers as required under Section 37 of the Town Planning Act pursuant to which the concerned Deputy Collector granted conversion sanad as required under Section 32(1) of the Goa Land Revenue Code converting the same from agricultural to residential/commercial.

3. On 4-2-1994 there was an agreement for sale and development of the plot in question between M/s. Sterling Landmarks formed by the aforesaid owners and Shri Costa and Shri D'Souza and thereafter in the year 1995 a partnership firm was constituted by Shri Costa and Shri D'Souza in the name of M/s. Key Holdings (Appellant No. 2). On 29-12-1995 an agreement was entered into between appellant No. 2 and The Tata Housing Development Co. Ltd. (appellant No. 1) for development of land measuring 11275 sq. mtrs. of the said Survey No. 69/4 whereafter on application being filed by the appellants, for according sanction to their building plan, the Town and Country Planning Department, after giving no-objection certificate to the Plan, forwarded the same to the concerned Gram Panchayat which granted licence for construction on 27-3-1996. In the meantime, appellant No. 2 purchased the aforesaid plot measuring 11275 sq. mtrs. (hereinafter referred to as 'appellants' plot') from its owners on 13-2-1996. Subsequently, the plan of the Project was revised twice and no-objection certificate was granted by the Town and Country Planning Department whereafter the concerned Panchayat granted construction licence for the revised plan which was valid for a period of 3 years on a condition that natural landscape formed by trees as seen from river Mandovi was not to be disturbed. Thereafter, appellant No. 2 applied to the Tree Officer for according permission to fell 51 trees standing on the appellants' plot as required under the Goa, Daman and Diu Preservation of Trees Act, 1984. Upon the said application, the Range Forest Officer, after making thorough inspection, submitted his report disclosing therein that he found 51

trees thereon all of which were immature and soil was laterite which cannot support existence of a forest and recommended for according permission, but the same was rejected by the Tree Officer on the sole ground that the appellants' plot was just opposite the State Secretariat in the vicinity of which there was no building, but later on the Conservator of Forest, Goa, who was the appellate authority, granted permission to fell 32 trees out of 51 standing on the appellants' plot, subject to the condition that the appellants were to plant 89 trees in their place while, as a matter of fact, the appellants plants approximately 720 trees on and around their plot. In December, 1996, appellant No. 1 started construction and developmental activity on the said plot.

4. Thereafter, it appears, this Court vide order of 12th December, 1996 in a public interest litigation, in the case of T. N. Godaverman Thirumulkpad v. Union of India and Ors., (1997) 2 SCC 267, directed each and every State Government to constitute within one month an Expert Committee to :-
AIR 1997 SC 1228 : 1997 AIR SCW 1263

(i) identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

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

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

Pursuant to the said order the Government of Goa constituted a Committee on 24-1-1997 headed by Shri Sadanand Sawant, members of which were Conservator of Forest and a Scientist besides three Deputy Conservators of Forests. At first the Committee, which was known as Sawant parties Committee, submitted its Interim Report in relation to Government forest which was called 'First Interim Report'. Thereafter, Sawant Committee, after laying down the criteria, proceeded to identify private forests by making physical inspection of the areas and visited 28 cases (villages) out of 109 placed before it. One of the 28 villages was Penha De Franca in which the appellants' plot is situate. The Committee identified certain survey numbers of the said village as forest, but survey number of the appellants' plot was not enumerated therein. It also identified degraded, denuded or cleared forest in which also the appellants' plot did not figure. After making verification, the Committee submitted its Report dated 4-7-1997 which is called 'Second Interim Report', wherein it has been enumerated that the Committee, after taking into consideration all relevant factors, including the guidelines issued by the Government of Goa, laid down the following three criteria for the purpose of identifying a forest :-

1. 75% of the composition of the trees in the forest should be forestry species.

2. The area should be continuous to Government forest and if in isolation the minimum area should be 5 hectares.

3. The canopy density should not be less than 0.4, i.e. 40%.

In the said Report the Committee categorically rejected satellite imagery and toposheets as a correct indicia for identifying forest stating therein that satellite imagery would indicate nature green cover which would include most of the plantations/seasonal crops, such as cashew, coconut, arecanut, etc., which according to the Committee, could not be considered for the purpose of classifying a forest. It also rejected the Nature Green Cover Maps as they would include all types of vegetation and of all density and class, including cashew crop which could not be fitted into the criteria taken for identification of forests. As appellants' plot did not fulfil any of the three criteria laid down by the Committee for identifying a forest, the same did not figure in the list of forest lands mentioned in the report.

5. Thereafter a writ application was filed by the contesting respondents before Goa Bench of the Bombay High Court challenging the grant of various permissions in favour of the appellants for change of user of the appellants' plot and carrying out developmental activity thereon. The said writ application was contested by appellant No. 1 on grounds, inter alia, that the appellants' plot was not a forest land. In the said writ application, Conservator of Forest, who himself was a member of Sawant Committee and participated in its deliberations before submitting the Second Interim Report, filed an affidavit stating therein that the appellants' plot was not a forest and accordingly had not been shown as such by the Committee in its Second Interim Report. The Chief Town Planner also filed an affidavit, contesting the prayer made in the writ application stating therein that the area around and adjoining the appellants' plot was developed inasmuch as there were no less than 12 such developed properties. On 11-3-1998, in the aforesaid writ application, the High Court issued Rule, but did not grant any interim relief. By the same order the Court, however, directed Sawant Committee to identify and submit report on the question whether appellants' plot was a forest or not as in its opinion it was not clear whether Sawant Committee, before submitting the Second Interim Report, visited the same.

6. Pursuant to the aforesaid direction of the High Court, Sawant Committee made physical inspection of the appellants' plot and submitted its report dated 22-4-1998, which may be called 'Third Interim Report', in which it reported that the appellants' plot was a forest. The criteria adopted by the Committee were (i) Satellite Imagery and Toposheets of 1960; (ii) Slope Analysis Maps prepared in 1988; and (iii) Enumeration of the plants in a 50 metre wide belt adjoining the boundaries of the said plot only on three sides, i.e., the North, East and West, but excluding the South where there was a huge structure admeasuring 1000 sq. metres.

7. In the writ application, the appellants relied upon the following reports to show that their plot was not a forest :-

(i) Report dated 24-9-1997 prepared by AIC Watson in relation to the appellants' plot which was based on a field visit over a period of two weeks and it was stated therein that the soil was laterite, organically poor with low nitrogen and phosphorous contents which concluded that the said plot was not a forest.

(ii) Report dated 19-5-1998 submitted by Geo Profiles which, after drawing samples from the appellants' plot and detailed investigation and testing, concluded that the soil was laterite, poor in human content and the same cannot sustain large trees.

(iii) Report dated 3-6-1998 submitted by Dr. Ashok Joshi, who was an Environmental Scientist, which Report was prepared by him after four days' field visit of appellants' plot based on a soil test report of the Directorate of Agriculture, Government of Goa. The said Report concluded that the canopy density of the plot was only 5%, i.e., there was only one tree per 200 sq. mtrs., only 6 of the 51 trees were of forestry species and that the soil comprised of laterite boulders, low in humus content which oil cannot sustain a forest.

(iv) Report dated 4-6-1998 submitted by National Remote Sensing Agency which disclosed that the appellants' plot was surrounded by agricultural land and did not fall within a reserve forest.

8. At the time of arguments before the High Court, it was contended on behalf of the appellants that no reliance should be placed upon the Third Interim Report of Sawant Committee as the same jettisoned the criteria laid down by it in the Second Interim Report for identifying a forest and adopted criteria which had either been rejected by it earlier or wholly arbitrary and erroneous.

9. The High Court, after hearing the parties, accepted the Third Interim Report of Sawant Committee, refused to place reliance upon the aforesaid reports filed on behalf of the appellants and allowed the writ application, as stated above. Hence Civil Appeal No. 6336 of 1998 by the developer and the owner on grant of special leave to appeal. Civil Appeal Nos. 6337 and 6338 of 1998 have been filed by other persons who claim to have invested monies for buying residential accommodation in the development scheme undertaken by the developer. The Tata Housing Development Co. Ltd., in which also leave to appeal was granted.

10. Shri Ashok H. Desai, learned Senior Advocate appearing in support of the appeal filed by the

developer and the owner, submitted that the High Court was not justified in placing reliance upon the Third Interim Report of Sawant Committee according to which the appellants' plot was a forest as the said Report jettisoned the criteria adopted by it while submitting its Second Interim Report for identifying a forest and instead adopted the criteria which had either been rejected by it earlier or were wholly arbitrary and erroneous. Dr. A. M. Singhvi, learned Senior Advocate appearing in support of the other two appeals, submitted that in any view of the matter the appellants of these appeals having invested huge sums of money for purchasing the flats, their interest should not be jeopardised. Ms. Indira Jaisingh, learned Senior Advocate appearing on behalf of the contesting respondents, on the other hand, submitted that the High Court was quite justified in accepting the Third Interim Report of Sawant Committee.

11. Thus question which falls for consideration of this Court is whether the High Court was justified in accepting the Third Interim Report of Sawant Committee and allowing the writ application on the basis thereon. For deciding this question, it would be necessary to refer to the Second Interim Report of Sawant Committee in which it has laid down three criteria for classifying any land as "forest". Relevant portions of the said Report run thus :

"After the formation of the Committee, it was first decided to get the Forest cover through NRSA, Hyderabad but seeing the time involved and nature of interpretation, it was decided to carry out the exercise through physical verification by the departmental staff only. Nature of interpretation means the satellite data gives the natural green cover which includes most of the plantation/seasonal crops such as cashew, coconut, arecanut etc. For the purpose of classifying "Forest" such growth cannot be considered. The Committee has taken the stand that for considering any area as forest :-

i) 75% of its composition should be forestry species.

ii) The area should be in contiguous to Government forest and if in isolation the minimum area should be 5 hectare.

iii) The canopy density should not be less than 0.4.

The above criteria which was in existence with Forest Department, Govt. of Goa has been approved by the Govt. of Goa."

"Based on the satellite imageries, toposheets, the areas outside the Govt. Forests have been marked on the map and the Forest officials have done the physical verification of such areas applying the

above criteria."

"The Committee has procured the maps of 1978 from the Town and Country Planning Department which has been prepared based on the aerial photographs of 1960 and toposheets of 1960. In these maps Natural Green Cover has been shown but again it does not either speak about the density or the species composition..... This Natural Green Cover (Pvt.) outside the Govt. Forests being very high compared to the figure likely to be arrived at by the committee finally under the classification of Private Forests, it is obvious as these private green cover includes all types of vegetation and of all density class including cashew crop which may not be fitted into the criteria taken for identification of private forests."

12. From a bare perusal of the aforesaid passages from the Second Interim Report of Sawant Committee it would appear that the Committee had categorically laid down three criteria for identifying a land to be forest and it had rejected Satellite Imagery and Toposheets of 1960 and Nature Green Cover maps as the relevant criterions for classifying any land to be a forest. In the Third Interim Report of Sawant Committee in which it was reported that the appellants' plot was a forest, curiously enough, the three criteria referred to above, which were earlier followed by the Committee for holding a land to be a forest land, were abandoned. Instead, the Third Interim Report laid down principally the following criteria :-

(i) Satellite Imagery and Toposheets of 1960;

(ii) Report of the Sub-Committee for maintaining Nature Reserve green belt around cities particularly with reference to the map prepared for nature reserve on hill slopes;

(iii) Enumeration of the plants in a 50 metre wide belt adjoining the boundaries of the appellant's plot on three sides, i.e., the North, East and West, but excluding the South side which had a huge public structure admeasuring 1000 sq. metres.

13. From a bare perusal of the Third Interim Report, it would appear that the three criteria laid down in the Second Interim Report of the Sawant Committee have been given a complete go-bye and in relation to the appellants' plot altogether different criteria have been adopted. The course adopted by the Committee in taking into consideration different criteria while examining individual case of the appellants' plot was wholly unwarranted, especially when the Committee in its Report has not assigned any reason for making the deviation.

14. The appellants' plot does not satisfy any of the three criteria laid down by the Committee in its Second Interim Report. From various reports referred to above, it would appear that out of 51 trees on the appellants' plot only 6 were of forestry species which is only 12% of the total number of trees standing thereon and as per the criterion laid down by the Committee for holding a land to be a forest at least 75% of the trees should be forestry species. The second criterion that the land should be contiguous to Government forest is also not fulfilled as the appellants' plot is not contiguous to Government forest but in isolation and for an isolated plot to be classified as a forest the minimum area required is five hectares, which is also not fulfilled as, indisputably, area of the appellants' plot is 11275 sq. mtrs. which is just above one hectare. The third criterion that the canopy density should not be less than 0.4% i.e., 40% is also not met by the appellants' plot as here the same is only 5% which is far less than 40%, the minimum required for classifying a land to be forest.

15. In its Second Interim Report Sawant Committee categorically rejected satellite imagery and toposheets as one of the criteria for identifying a forest as the same would at best show natural green cover which, according to the Committee, would include plantations, seasonal crops, etc. and the same cannot be a relevant consideration for classifying a forest, as such the Committee in its report relating to the appellants' plot was not justified in taking the same into consideration. Likewise, in its Second Interim Report, the Committee had rejected nature reserve green belt map as a relevant consideration for holding a land to be forest on the ground that the same would show all types of vegetation including cashew crops etc., as such in the Third Interim Report the Committee was not justified in placing reliance upon the Report of the Sub-Committee for maintaining Nature Reserve around the city. So far as the third criterion that weighed with the Committee is concerned, it may be stated that enumeration of the plants in a 50 metre belt adjoining the appellants' plot on three sides was irrelevant, especially when the Committee did not find that 75% of the plants, in the 50 meter wide belt adjoining the boundaries of the appellants' land, were of forestry species.

16. Further, Sawant Committee in the Report in question came to the conclusion that the soil of the appellants' plot was rich in humus content only by looking at the same. It may be stated, as would appear from the various Reports referred to above, filed on behalf of the appellants before the High Court, that composition of soil can only be determined after its sample is drawn and tested which, in the instant case, was tested in the Government approved laboratory before submission of the reports referred to above and the same cannot be ascertained by merely looking at the soil of the plot through naked eyes. Apart from this, Sawant Committee was not justified in classifying the appellants' plot to be a forest merely on the basis of presence of roots of trees on the walls of the pits thereon ipso facto which cannot be a relevant consideration as it would not show that the roots were of trees of forestry species, especially in view of the fact that out of 51 trees only six trees were found to be of forestry species and if the roots of those six were found on the walls of the foundation pits, the same could not have been taken into consideration for identifying the appellants' plot to be forest as out of 51 trees only 12% of trees were found to be of forestry species which is far less than 75%, which was one of the criteria laid down by the Committee in its Second Interim Report for classifying a forest.

17. At this juncture, it may be relevant to point out that Sawant Committee submitted its final

Report dated 8-12-1999 wherein on the basis of the findings in its Third Interim Report alone the appellants' plot has been shown as a forest. In the final Report, Sawant Committee has reiterated all the three criteria referred to above for treating any land to be a forest land.

18. This being the position, we are of the view that the Third Interim Report of Sawant Committee, having been based upon the criteria which were rejected by it in its previous report, cannot be accepted as there was no ground for making a departure therefrom while submitting the Report in relation to the appellants' plot. The Committee was not justified in holding the appellants' plot to be a forest land on the basis of altogether different criteria for which there is no reasonable nexus, especially when none of the three criteria laid down in the Second Interim Report has been adhered to. Thus the High Court was not justified in accepting the Third Interim Report of Sawant Committee and concluding on the basis thereof that the appellants' plot was a forest.

19. In the result, Civil Appeal No. 6336 of 1998 is allowed, the impugned judgment rendered by the High Court is set aside and the writ application is dismissed. In view of the aforesaid decision, Civil Appeal Nos. 6337 and 6338 of 1998 are dismissed, the same having been rendered infructuous. In the facts and circumstances of the case, parties are directed to bear their own costs.

Order accordingly.