

Domingos Fernandes and Another Vs. State of Goa and Others

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Court : Mumbai Goa

Decided On : Jul-09-2012

Judge : A.P. Lavande & U.V. Bakre

Appeal No. : Writ Petition No.492 of 1993

Appellant : Domingos Fernandes and Another

Respondent : State of Goa and Others

Judgement :

Oral Judgment: (A.P. Lavande, J.)

Heard Mr. Lotlikar, learned Senior Counsel for the petitioners, Mr. Nadkarni, learned Advocate General for respondents no.1 and 2, Mr. Ferreira, learned Assistant Solicitor General for respondent no.3 and Mr. Sonak, learned Advocate for respondent no.4.

2. By this petition, which is filed as a Public Interest Litigation, the petitioners seek the following reliefs :

(a) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents from doing any work within 100 metres of the river bank.

(b) For a further writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding respondents no.1 and 2 to remove construction, as also the diesel pump which falls within 20 metres of the river bank.

(c) For a further writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing respondent no.3 to prosecute the 2nd respondent, as also the chief Secretary of the 1st respondent, for having violated the provisions of the Notification in terms of provisions of the said Act.

(d) For an injunction restraining respondent nos.1 and 2 from operating the diesel pump by itself, or through its agents, pending the hearing and final disposal of this petition.

3. The grievance made by the petitioners in this petition is that the construction of diesel pump has been carried on the bank of river in violation of CRZ Regulations, thereby flouting the Notification dated 19/02/1991 made by the Central Government under Section 3(1) and 3(2)(5) of Environment Protection Act and Rules framed thereunder. This Court by order dated 20/01/1994 by a reasoned order, refused interim order on the ground that jetty was constructed and inaugurated in 1988 and the same was being used by fishing trawlers and there was no challenge to the construction of a jetty. The said order further observed that in January, 1993, a small structure being an office of diesel pump was constructed which was necessary for carrying effective operation of fishing trawlers. It was the case of the respondents that the same was not in violation of the Notifications issued under Environment Protection Act and the construction done was not in no development zone. The Division Bench further accepted the statement made by the learned Advocate General that the Government did not intend to carry out any further construction in the matter of fishing complex.

4. In view of the above, it is evident that a small structure in which diesel pump is in operation since 1994, is necessary for carrying effective operation of fishing trawlers. We are, therefore, not inclined to grant the reliefs sought for in the petition filed by the petitioners at this stage. However, it is made clear that further construction, if at all carried out, shall be in accordance with the Rules and

Regulations in force.

5. Subject to the above observations, the petition stands disposed of.

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