

**Babush Vs. State and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1175417](http://sooperkanoon.com/1175417)

**Court :** Mumbai Goa

**Decided On :** Jun-24-2014

**Judge :** A.R. Joshi

**Appeal No. :** Criminal Writ Petition No. 42 of 2014

**Appellant :** Babush

**Respondent :** State and Others

**Judgement :**

Oral Judgment:

1. Rule made returnable forthwith with the consent of the parties.

The present writ petition is taken up for final disposal at the admission stage itself considering that the issue involved in the matter is very small and in fact need not have much elaboration to be done inasmuch as what has been challenged in the present writ petition is the concurrent orders passed by the Deputy Collector dated 24/9/2013 and the order dated 19/3/2014 passed by the Appellate Authority.

2. The main dispute in the present matter is regarding the apprehension in the mind of the present respondent/original complainant that the coconut tree which is grown in the property belonging to the present petitioner is in a ruinous condition and may fall at any time over the property occupied and belonging to the original complainant/present respondent no.4. Without going into much details as to

whether the said house property of respondent no.4 is legal or illegal, suffice it to say that present respondent no.4 is in occupation of the said portion over which apparently the coconut tree belonging to and grown in the premises of the petitioner is leaning to certain extent. This has been established by the reports of inspection dated 28/8/2012 and 17/5/2013. During the arguments learned counsel for the petitioner stated that the impugned order passed by the Dy. Collector dated 24/9/2013 and order of the Appellate Authority dated 19/3/2014 are passed on wrong premise and without there being any factual basis on the count that there is nothing on record that the said coconut tree is in fact in ruinous condition. On this aspect, attention of this Court is drawn to Section 12 of the Goa Daman and Diu Preservation of Trees Act, 1984.

3. It is also submitted on behalf of the petitioner that the petitioner undertakes to secure the said coconut tree inasmuch as he will see that the coconuts do not fall down from the said tree in the surrounding area and he will make an arrangement of affixing a sort of net below the crown of the coconut tree. Also he undertakes that as and when the coconuts are ripe for plucking, he will make all endeavour to get down the said ripe coconuts. He further stated that earlier when attempts were made to pluck down the coconuts, on some occasions respondent no.4 had obstructed. On this, learned counsel for respondent no.4 stated that earlier also such obstruction was not made and hereinafter no such obstruction shall be made by respondent no.4 or any of his representatives or family members of the petitioner and his agents. Upon taking instructions learned counsel for respondent no.4 also agrees to the suggestion made by the learned counsel for the petitioner to secure the coconut tree by affixing a net so as to take precaution as far as possible and to see that the coconuts do not fall in the surrounding area.

4. On the above understanding between the litigating parties, in the opinion of this Court, the present writ petition can be disposed of by setting aside the impugned orders. Hence, directions are given to the petitioner to adhere to the undertaking as spelt out in the earlier paragraph of the order so also respondent no.4 to obey his part of the obligation also detailed in the earlier paragraph.

5. With these directions the present writ petition is disposed off. Rule is made absolute in terms of the above directions and the impugned orders are set aside.

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