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The Goa Foundation and Another Vs. the Conservator of Forests and Others

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Court : Mumbai

Decided On : Oct-16-1998

Reported in : 1999(2)BomCR695

Judge : A.A. Desai and; R.K. Batta, JJ.

Acts : Forest Conservation Act, 1980 - Sections 2; [Constitution of India](#) - Article 226; Goa Town and Country Planning Act, 1974 - Sections 141; Goa Planning Development Authority (Development Plan) Regulations, 1989 - Regulation 26; Goa, Daman and Diu Land Revenue Code, 1968 - Sections 32; Goa, Daman and Diu Preservation of Trees Act, 1984 - Sections 8; Goa, Daman and Diu Town and Country Planning Board Rules, 1976

Appeal No. : Writ Petition No. 273 of 1997

Appellant : The Goa Foundation and Another

Respondent : The Conservator of Forests and Others

Advocate for Def. : V.B. Nadkarni, Advocate General, ;C.A. Ferreira, ;A.G. Advocate, ;G.V. Tamba, ;C.G.S.C., ;Iqbal Chagla, ;S.A., ;A.C. Pansekar, ;Percy Ghandy, ;S.V. Kamat, ;A.N.S. Nadkarni, ;M.S. Sonak and ;Ms. Swati

Advocate for Pet/Ap. : Ms. Norma Alvares, Adv.;D. Pangam

Judgement :

ORDER

R.K. Batta, J.

1. The petitioners are a registered society and are working in the field of environment with the object to maintain ecological balance. The petitioners are public spirited body and for the purpose of preservation of environment have approached this Court by way of this petition. The petitioners challenge the developmental activity being carried out by respondent No. 9 Tata Housing Development Co. Ltd., in Survey No. 69/4 of village Penha de Franca of Bardez Taluka and seek to challenge various permissions granted for the said developmental activity which is contrary to the provisions of the Forest (Conservation) Act, 1980, (hereinafter called F.C.A. 1980).

2. The petitioners' case is that Survey No. 69/4 is 'forest' and non-forest activity therein is not permissible unless prior permission is taken from the Central Government under the F.C.A. 1980. The petitioners also challenge alteration of Survey No. 69/4 from A-1 (Agricultural and Orchard (Natural Reserve) Zone and A-2 (Agricultural and Natural Reserve Zone) to S-2 (Settlement Zone) for planning purpose in the Outline Development Plan prepared under the Goa, Daman and Diu Town & Country Planning Act, 1974, (hereinafter called the 1974 Act). This alteration was done after calling objections vide Notification published in the Official Gazette dated 9th June, 1994, Series III, No, 10, Government of Goa. Accordingly, an area of 11275 sq. metres of Survey No. 69/4, subject to permissible gradient was altered for the purpose of planning from A-1 and A-2 to S-2 vide Notification published in the Official Gazette dated 9th November, 1995, Series III No. 32, Government of Goa. Even prior to this publication in the Official Gazette, the Chief Town Planner vide letter dated 5-10-95 (Exh. C at page 31 of the petition) had informed respondent No. 8 that the change of use of land from A-1 and A-2 to S-2 Zone had been approved by the Government in relation to an area of 11275 sq. metres and final Gazette Notification would be issued separately.

3. Respondent No. 9 on 8-1-96 obtained sanad from the Deputy Collector (S.D.O., Mapusa, Goa) under section 32 of the Goa, Daman and Diu Land Revenue Code, 1968, for permission to use Survey No. 69/4 for the purpose of

residential/commercial. It is to be noted here that even though for the purpose of planning in the Outline Development Plan Survey No. 69/4 had been altered from A-1 and A-2 to S-2 (Settlement Zone), yet the Deputy Collector granted sanad for the purpose of residential/commercial. For the purpose of commercial use, Regulation 26 of PDA (Development Plan) Regulations framed under the said Act of 1974, provides for Commercial Zone which is classified as C-1, C-2 and C-3. The sanad was granted subject to the condition that no tree shall be cut without the approval from the competent authority and cutting of hill should be avoided as far as possible and, if necessary, protective measures shall be taken so as not to destabilise the slope. On 9-3-96 licence for construction of residential building complex was obtained in favour of Mr. Levin Da Costa, partner of respondent No. 11 from Sarpanch, Village Panchayat, Penha de Franca, Bardez, Goa. In this licence also besides other conditions it was provided that trees shall not be cut without permission from the competent authority and the cutting of slope shall be avoided and wherever necessary protective measures shall be taken so not to destabilise the slope. The Town Planner vide letter dated 20th September, 1996 (Exh. G at page 39 of the petition) approved revised licence granted by the Sarpanch, Penha de Franca, Bardez, Goa with certain conditions. However, vide letter dated 19-11-96 (Exh. G-2 Colly.) of the Town Planner which is at page 39a of the petition to the Sarpanch, Village Panchayat Penha de Franca, an additional condition was imposed namely that the natural cover/landscape formed by trees as seen from the river Mandovi shall not be disturbed in any fashion while carrying out the development/construction. Accordingly, the Satpanch, Village Panchayat, Penha de Franca, vide letter dated 21-11-96 (Exh. G-2 Colly.) which is at page 39-b of the petition, informed Anand Bandiye, Power of Attorney Holder of Levin Da Costa, partner of respondent No. 11 of the said condition that natural cover/landscape formed by trees as seen from river Mandovi shall not be disturbed in any fashion while carrying out the development/construction. It may be mentioned here that on 4-2-94 an agreement for sale was executed between Sterline Landmarks Pvt. Ltd. of one part, Levin Da Costa and Ralph Da Costa of the second part and Manohar Bhandiye and his children as confirming parties in terms of which an area of 11275 sq.m. from Survey No. 69/4 was agreed to be sold to Levin Da Costa and Ralph Da Costa. Out of the total area of Survey No.

69/4 which was to the tune of 12325 sq.m. an area of 1050 sq.m. had been previously separated and sold to Gurudwara Shri Guru Singh Sabha on 14-4-80.

4. Levin Da Costa, partner of respondent No. 11 filed an application for permission to fell trees from Survey No. 69/4 and Range Forest Officer recommended the said application. The Deputy Conservator of Forests, North Goa Division (Tree Officer) refused to grant permission to cut the trees vide Orders dated 14-11 -96 and 25-11 -96 under section 8 of the Goa, Daman and Diu Preservation of Trees Act, 1984. However, the Conservator of Forests who is the Appellate Authority in the matter granted permission to fell 32 trees out of 51 trees originally applied for felling vide Order dated 9-1-97. On the same day i.e. 9-1-97 itself written permission to fell 32 trees was granted. In pursuance of the said permission respondent No. 11 is said to have carried out the felling of trees. The number of trees which were felled according to the petitioners was round about 200 and not 32 for which permission had been granted. On 20th January, 1997, Town Planner sent letter (Exh. 03 Colly.) to the Sarpanch, Village Panchayat, Penha de Franca that development permission had been granted subject to the condition that natural cover/ landscape formed by trees as seen from river Mandovi shall not be disturbed in any fashion while carrying out the development/construction and that the developer has cut down the greenery and put up temporary structures which disturbs the landscape/natural cover and, as such, the development has prima facie violated the said condition. The Town Planner accordingly asked the Sarpanch, Village Panchayat, Penha de Franca to immediately stop the on going activity of plot No. 69/4 and , if necessary, revoke the licence. The matter was examined by the Government. The Sarpanch, Village Panchayat, Penha de Franca informed Levin de Costa, partner of respondent No. 11 of the same and directed him to stop the activities going on in the plot till the matter was examined by the Government. Likewise, the Deputy Collector and S.D.O. Mapusa Sub-Division who had issued the conversion sanad in respect of Survey No. 69/4 informed respondent No. 8 vide letter dated 30th January, 1997 (Exh. 02 Colly.) that on inspection held on 29-1-97 large scale illegal felling of trees had taken place and since the sanad dated 8-1-96 had expired on 7-1-97 and no development had been carried out in Survey No. 69/4 within the validity of the sanad, respondent No. 8 was directed to refrain from carrying out any developmental or construction activity. Copy of the same

was sent to Levin da Costa, partner of respondent No. 11. The request for extension of sanad was rejected by the Deputy Collector and S.D.O. Mapusa vide letter dated 4th February, 1997, (Exh. 02 Colly.). The Chief Town Planner informed the Sarpanch, Village Panchayat, Penha de Franca that the Government had examined the matter and after careful examination of the terrain, conditions of slope analysis vis a vis earlier approved layout plan, it has been decided that building blocks located along the average line of 35-36 contours on the southernmost side of the property should be cancelled at this stage; similarly proposed access road from Betim-Alto Porvorim road should be cancelled and the access to the property should be taken from the northern side of the property; accordingly the development permission issued earlier for the two rows of building blocks of D/G and A and D/G and B are withdrawn as indicated in red in the enclosed layout plan and the area with green hatching should be treated as 'No Construction Zone'. Accordingly, the Sarpanch, Village Panchayat, Penda de Franca was directed to issue revised licence and a special condition had to be put that landscape should be undertaken on the southern side of the property facing Mandovi river. It is interesting to note that besides sending copies of these directions to Conservator of Forests, Panaji, Goa, Town Planner, North Goa District Office, Mapusa, Levin da Costa, a copy for information was sent to the Special Secretary to the Hon'ble the Chief Minister, Secretariat, Panaji, Goa.

5. The petitioners approached this Court in August, 1997, with prayers to quash permission granted by the Deputy Collector dated 8-1-96, Panchayat dated 27-3-97, Tree Officer dated 9-1-97 and those related to change of land use in the outline development plan concerning the project of respondents No. 8 and 9. The petitioners also prayed for directions to respondents No. 4, 6, 8 and 9 to remove all developmental works and restore the hill to its original vegetation; that directions to the Deputy Collector (respondent No. 5) to first procure prior clearance under the Forest Conservation Act, 1980, from the Ministry of Environment and Forests before issuing any sanad for conversion of plots or lands. Pending hearing of the petition, interim order from proceeding with any further construction work and for maintenance of status quo was sought as well as restraint on Deputy Collector (respondent No. 5) from issuing any sanad involving such areas or plots without prior N.O.C. from respondent No. 1.

6. By a detailed order dated 11th March, 1998, it was noticed that the entire controversy raised in the petition is whether the land in question is forest land and, as such, required prior permission from the Ministry of Environment and Forest for the purpose of non-forest use under F.C.A., 1980. The stand taken by respondent No. 9 is that the petition proceeds on the assumption that Survey No. 69/4 is forest, whereas it is not so since Survey No. 69/4 was recorded initially in A-1 and A-2 Zone which was duly altered to S-2 Zone after inviting objections and following due procedure in law. The Conservator of Forests (respondent No. 1) in his affidavit dated 29th August, 1997; took the stand that Survey No. 69/4 was not forest and, as such, the provisions of the F.C.A., 1980, are not applicable. He also pointed out that the Sawant Committee which was appointed in pursuance to the directions of the Hon'ble Supreme Court dated 12-12-96 has identified private forest area and in respect of village Penha de Franca Survey No. 69 is not one of such area identified as 'forest' area. After going through the interim report of Sawant Committee, which is at Exh. R2, it was noticed that the Sawant Committee had pointed out that in case of private forest no survey had been done at any point of time, but as per estimate and old reference, there is 256 sq. kms. private forest which include natural growth of cashew also. In the interim report, out of the said estimated 256 sq. kms. private forest, the Sawant Committee had identified -in its interim report only an area of 30.27 kms. of private forest which included mangrove area also in all the eleven talukas of Goa. This exercise of identification of the said area of 30.27 kms. was done on the basis of physical verification done by the forest officials, as a result of which 109 cases were placed before the Committee, out of which 28 cases were physically inspected by the Committee. In respect of village Penha de Franca forest officials had placed details of some survey numbers which had been classified by the Committee as 'forest. After going through the said interim report of the Sawant Committee, it appeared that Land Survey No. 69/4 and other survey numbers of Penha de Franca had not yet been examined by the Committee for the purpose as to whether the same could be classified as 'forest'. The identification was that an area of 30.27 sq. km. of private forest in the interim report also indicated that the survey in respect of entire private forest in Goa had not yet been completed since as per estimate and old reference the area of the private forest was to the tune of 256 sq.kms. It was also noticed

that Survey No. 57 which is across the road in relation to Survey No. 69/4 which falls in Reis Magos village had been classified by Sawant Committee as forest. In view of the same, it was felt that since Sawant Committee had been appointed for the purpose of identifying 'forest' irrespective of whether they are so notified recognized or classified under any law and irrespective of ownership of land of such forest, directions could be given to respondent No. 1 to place all material in respect of Survey No, 69/4 before the Sawant Committee so that the said Committee could take decision as to whether Survey No. 69/4 of Penha de Franca, which is subject matter of controversy in the petition, is to be classified as 'forest' or not, in the light of the interpretation of the expression 'forest' spelt out by the Apex Court in the judgments in Samatha v. State of A.P. & others, : AIR 1997 SC3297 and T.N. Godavarman Thirumulkpad v. Union of India and others, : AIR 1997 SC1228 , and also taking into consideration the identification of the area in terms of para 5 of the judgment in T.N. Godvarman v. Union of India (supra). In view of the said reference to Sawant Committee, no interim relief was granted, but it was clearly spelt out in Order dated 11th March, 1998, that the development and construction, if any, in the land in question shall be subject to final decision in the writ petition.

7. The report dated 22-4-98 of the Sawant Committee has been received and the Committee has come to the following conclusion:-

'On the basis of above observations and scientific data collected, analysis and interpreted, the Committee unanimously came to the conclusion that the said plot under reference (Survey No. 69/4) was 'forest'.'

8. This report of the Sawant Committee dated 22-4-98 has been objected to by respondents No. 9 and 11 on the following grounds:-

(a) This report is directly contrary to the. earlier interim report dated 4th July, 1997, as well as affidavit of respondent No. 1 of August, 1997, which report clearly shows that Plot No. 69/4, is not a 'forest'.

(b) In this report the Sawant Committee has jettisoned the three criterias adopted in its interim report dated 4th July, 1997, and instead the Committee has chosen to

rely on material which is wholly irrelevant extraneous which demonstrates total non-application of mind.

(c) The Sawant Committee has also jettisoned the criteria earlier adopted in the interim report that all green cover is not 'forest' and cashew, coconut and arecanut plantation cannot be included in the definition of 'forest'. On merits, it is pointed out that in the Outline Development Plan of 1990 Survey No. 69/ 4 is classified as A-1 and A-2 i.e orchard/agriculture and in the land records, Survey No. 69/4 is shown as barad land and with only 51 pole crop trees. The said survey number cannot be identified as 'forest'.

(d) The Conservator of Forests who is a party to Sawant Committee filed a categorical affidavit dated August, 1997, in which he stated that Plot No. 69/4 is not 'Forest' in the light of the criteria adopted by Sawant Committee in its interim report. But despite that affidavit, the Conservator of Forests is party to the unanimous decision in the report made by the said Committee on reference from this Court that Survey No. 69/ 4 was 'forest'. The report is ipse dixit and has been prepared for extraneous and collateral reasons in collusion with the petitioners.

(e) Reliance placed by Sawant Committee on the report of the sub-Committee for maintaining nature reserve constituted by Wild Life Advisory Board and on the map prepared by Town and Country Planning Department in order to come to the conclusion that there is dense tree cover on Serial No. 69/4 is wholly erroneous and shows complete non-application of mind.

(f) Reliance placed by the Sawant Committee in this report on the toposheets prepared by the Survey of India which is not annexed to the report, to come to the conclusion that Survey No. 69/4 was 'forest' is wholly erroneous and shows total non-application of mind. The toposheet was prepared by Survey of India as back as 1963 and the same could not be relied on in 1998 since over the period of 38 years vast changes have taken place in respect of the topography in Panaji city and great change has taken place around Survey No. 69/4 including Gurdwara in Plot No. 69/4 itself.

(g) The Committee has acted without jurisdiction by going beyond the scope and ambit of the reference which was to determine whether the Survey No. 69/4 is forest or not.

(h) The criteria adopted by the Committee on taking into account land in 50 metre belt adjoining Survey No. 69/4 on three sides is wholly erroneous and against the criteria adopted in its previous interim report.

(i) The conclusion that tree cover is dense and has vast under-growth is erroneous as Annexure II to the report merely shows 30 trees standing on Survey No. 69/4 which admeasures as one hectare and the same can hardly be termed as dense tree cover having vast undergrowth.

(j) This report of Sawant Committee is clearly malafide and prepared for collateral and extraneous reasons in collusion with the petitioners inasmuch as it has intentionally omitted to show Sikh Gurudwara which, exists in Survey No. 69/4 itself which was dis annexed earlier and a Gurudwara was constructed in 1986.

Respondent No. 11 has placed reliance on the report of M/s. AIC Watson Consultants Limited who have opined that Survey No. No. 69/4 is not 'forest' and the said report is based upon technical data that the soil of Survey No. 69/4 is not humus but lateritic. Reliance is also placed on M/s. Geo Profiles and Engineering Services Pvt. Ltd. for soil testing report to the effect that the soil in Survey No. 69/4 is not humus but the same is lateritic. In addition, respondent No. 9 has relied upon the report of Dr. Ashok Joshi who has opined that Survey No. 69/4 is not 'forest' as per criteria laid down by the Forest Department. Reliance is also placed on letter dated 4th June, 1998 from Dr. V. Raghavswamy, National Remote Sensing Agency, Department of Space, Government of India, Hyderabad, wherein it is stated that the land use/cover of Goa prepared by N.R.S.A. for Planning Commission, Government of India, New Delhi shows that the site in question is not falling within the reserved forest and it is located outside the notified reserved forest area and it is surrounded by agricultural land and Mandovi Creek to the North.

9. Learned Advocate Ms. Norma Alvares argued on behalf of the petitioners and submitted that in this petition it has to be decided whether Survey No. 69/4 on which construction is being carried out was forest land and whether prior permission is required from the Central Government under the F.C.A. 1980 for non-forest use. She also urged that the Court has also to examine whether changes made in the Outline Development Plan from A-1 and A-2 to S-2 are permissible as per procedure. She drew our attention to Exh R-1 on record which is annexed to the affidavit of respondent No. 1 dated 29th August, 1997 in which guidelines/criteria for application of F.C.A 1980 to private forest have been issued by the Forest Department. The Guidelines include:

(a) extent of area where long term viability of a piece of forest is an important consideration and keeping the same in view minimum area of 5 hectares should be taken for private and revenue areas not recorded as 'forest'. It is pointed out therein that F.C.A. 1980 and Guidelines made therein do not prescribe any such minimum area for application of the Act.

(b) Proximity and/or continuity: The proximity of private forest to a larger forest area and /or its contiguity with the latter area should also be an important aspect to consider while examining such cases.

(c) Composition of crop: Distinction should be made between forest species and horticulture species in private areas in view of cashew, jackfruit and coconut trees plantation. Thus at least 75% of the crop should comprise of forest species.

(d) Crown density: It would not be meaningful to apply the F.C. A. 1980 to degraded and open area under private ownership and therefore a minimum crown density of 40% may be adopted as a standard for assessing the applicability of the Act in such private and revenue area which are not recorded as 'forest' in the land records. In addition to the above, other aspects such as proximity to natural water sources, terrain and slope, presence of rare or endemic species will also be taken into account while dealing with forest areas not recorded as 'forest' in the records. Exh. R-1 further states it is necessary to establish these Guidelines because of the peculiar situation of land records in Goa which do not have any classification of land as forest. Consequently, even forest land under private ownership is not

described as 'forest' in the land records (Form I and XIV). It further states that the Forest Department has already moved the revenue authorities to make this change in the entries of land records wherever the land is under 'forest' but until then it is necessary to evolve a set of Guidelines in view of the High Court judgment applying F.C.A., 1980, to such areas and once change in land records is made, provisions of the said Act will apply automatically.

10. In view of Exh. R-1 it is the contention of learned Advocate for the petitioners that the fact that Survey No. 69/4 is recorded in Form I and XIV as barad 1 and the proposed use of Survey No. 69/4 in Outline Development Plan which was initially shown as A-1 and A-2 and was subsequently altered to S-2, would not by itself in any manner help to respondents and the land in question under Survey No. 69/4 will have to be classified as to whether it is 'forest' or was 'forest' within the meaning of F.C.A. 1980. She Further pointed that the alteration of A-1 and A-2 to S-2 in the Outline Development Plan has been done on the basis that A-land A-2 is orchard and the Planning Authority did not do behind the said classification. She drew pur attention to Part IV -Zoning Regulation and Use provisions and particularly Regulation 26-Lan Use Zones provided under the Goa, Damn and Diu Town and Country Planning Board Rules, 1976 (hereinafter referred to as the said Rules, 1976). Under Regulation 26 Item No. VII is agriculture and natural reserve which are Zones A-1 and A-2. Further details relating to Zone A-1 and A-2 show that Zone A-1 is agricultural and orchard (natural reserve) and Zone A-2 is agricultural and natural reserved Zone. According to her these Zones are required to be preserved as natural reserved in order to protect environment and ecology and even such reserve should not be permitted to be converted into settlement Zone. Of course, her contention in this petition is that Survey No. 69/4 is forest and no development in the nature of non-forest use is permissible without prior permission from the Central Government . She also pointed out that the lands were classified previously under various categories, but there was no classification in respect of private forests which are required to be identified in view of the judgment of the Apex Court in T.N. Godavarman v. Union of India (supra). She also pointed out that the Range Forest Officer in his report en-closed letter dated 30-9-96 to Deputy Conservator of Forests had pointed out that the F.C.A., 1980, was applicable; that the area had natural growth of forestry trees and thick growth

of bushes and besides that the gradient of the area was 30 slope. Thus, according to her, the report of Range Forest Officer itself suggests that Survey No. 69/4 is forest.

11. In order to support her argument that Survey No. 69/4 is forest, she relied upon the judgment of the Division Bench of this Court in Writ Petition No. 1162/1987. *Shri Shivanand Salgaocar v. Tree Officer & Dr. Con.*, She pointed out that in respect of Survey No. 6/1 admeasuring 16.51 hectares an application had been filed for permission to fell 77 trees standing in the area of one hectare. She further pointed out that the Division Bench after taking into account the definition of 'forest' in the judgment of the Full Bench in *Janu Chandra V. State of Maharashtra*, : AIR1978 Bom119 had come to the conclusion:-

'Looking however to the fact that on the entire Survey No. 6/1 there are approximately at least 250 trees and looking to the fact that on only one hectare of this land 77 trees are sought to be felled, in our view, if the respondents, after inspection, have taken the view that this is a forest land, we do not see any reason to take a different view.'

She also pointed out that in the said judgment, it was noted that Survey No. 6/1 was not recorded as 'forest' in the Government records and, on the contrary, it was shown as barad (barren); that admittedly, the land in question was nothing but barren as there were large number of trees. The classification of land as barad in the Index of Land Form III is hardly accurate and a wrong description of land in Index of Land Form III cannot prevent the application of F.C.A., 1980, if it is otherwise applicable. Accordingly, it was held in the said judgment that prior approval of the Central Government under section 2 of the F.C.A., 1980, was required before permitting to convert the land to non-forest use.

12. Learned Advocate for the petitioners also relied upon the report of the Sub-Committee for maintaining nature reserves green belts around big cities. According to her, the Conservator of Forests was not justified, in the circumstances, in giving permission to cut 32 trees and the same is required to be quashed. She further pointed out that the Sawant Committee in its report on reference made by this Court has taken into consideration all relevant factors in

coming to the conclusion that Survey No. 69/4 was forest and, as such, the petition be allowed.

13. Learned Advocate General Shri Nadkarni argued on behalf of respondents No. 1 to 5 and urged before us, after placing reliance on a judgment of the Apex Court in T.N. Godavarman Thirumulkpad v. Union of India and others, : (1997)7SCC440 that since the Supreme Court is seized of the matter and has observed that no aspect of the matter before the Apex Court be considered separately by any other Court in any form, this Court may either stay its hands or refer the matter to the Apex Court. On the other hand, all the other Advocates appearing for the parties including learned Advocate Ms. Alvares for the petitioners, learned Advocate Mr. Gandhi, appearing for respondent No. 9, learned Central Government Advocate Mr. G.V. Tamba for respondent No. 7, learned Advocate Mr. A.N.S. Nadkarni, for respondent No. 10 and learned Advocate Mr. M.S. Sonak for respondent No. 11 submitted that the High Court is not denuded of jurisdiction and in fact, cases were brought to our notice where the jurisdiction in such matters is being exercised by the High Court. Mr. Gandhi placed before us various orders passed by the Division Bench of this Court in Writ Petition No. 2754/ 1997 from time to time, order of the Apex Court in Special Leave to Appeal in Bombay Environmental Action Group and others v. State of Maharashtra and others, C.C. 1399-1400/98 from the Judgment and Order dated 11-9-97 in Bombay Environmental Action Group and others v. State of Maharashtra and others, W.P. No. 2773/97 of this Court reported in : 1999(1)BomCR455 , as well as orders passed in Civil Appeal No. 7532/1997 arising out of S.L.P. No. 20279/1997. The Apex Court was dealing in running and relocation of saw mills and it is in this context that the observations have been made by the Apex Court in T.N. Godvarman Thirumulkpad v. Union of India (supra) so that the matters connected therewith are not considered separately by any other Court. The judgment will not have the effect of putting embargo on alleged individual violations of the F.C.A., 1980. Accordingly, we do not find any merit in the submissions of learned Advocate General.

14. Learned Advocate General admitted that the alteration of A-1 and A-2 Zones to S-2 Zone in respect of 69/4 was done by the Planning Authorities without going behind the said classification. Nevertheless, it was pointed out by him that the

Sawant Committee in this report made on reference of this Court had not followed the criteria which it had earlier followed in its interim report in pursuance of directions of the Apex Court and if the Sawant Committee had followed the said criteria, it could not have come to a different conclusion. Learned Advocate General strongly criticised the report of the Sawant Committee made on reference of this Court and submitted that they did not take into consideration the relevant criteria for classifying 'Forest', but, on the contrary took into account irrelevant factors for coming to the conclusion that 69/4 was 'Forest'. The learned Advocate General however admitted that observations of the Committee at serial Nos. 2, 3, 7 and 9(b) on the first and second pages of the Report in question are relevant factors. Nevertheless he pointed out that the Committee in the report in question has taken a different stand in relation to the top sheets and ground the trusting in relation to the interim report and that density of cover in the 50 metre belt adjoining the Survey No. 69/4 on three sides has not been stated by the Committee in the report in question.

15. Learned Senior Advocate Shri Chagla, appearing on behalf of respondent No. 9 submitted that the petition in question cannot be treated as Public Interest Litigation as the petitioners have selected only respondent No. 9, whereas lot of development has taken place in the areas around in similar situation and that the documents filed along with the petition were not sufficient to maintain the same. He pointed out that the original plan shows that Survey No. 69/4 was orchard which means that Survey No. 69/4 was already put to non-forest use; that no objection whatsoever was raised by any one including the petitioners when objections were called for change of Zones A-1 and A-2 in relation to Survey No. 69/4 to S-2 and the change in question was brought about after following due procedure in law. According to him, interim report of the Sawant Committee in pursuance to the directions of the Apex Court and the report in question made on reference of this Court operate in different fields. Relying upon the judgment of the Apex Court in T.N. Godavarman Thirumulkpad v. Union of India & others, : AIR 1997 SC1228 it was urged that the consequences can follow only after forests are identified and the identification will apply prospectively.

16. In respect of the Sawant Committee report in question, it has been urged that the report is vitiated on the ground that the factors which are not relevant have been considered and the factors which are relevant have been totally ignored. With reference to the said report in question, it has been pointed out that the Sawant Committee in the report in question has not followed the criteria which earlier had been followed by the Committee in its interim report; that no explanation has been given in the report in question as to why Survey No. 69/4 was not considered in the interim report; the existence of Gurudwara in Survey No. 69/4 is not at all mentioned; that no tests were conducted by the Committee in coming to the conclusion that the soil was humus, whereas reports have been filed by the respondents No. 9 and 11 that the soil is lateritic and not humus; that it is not understood as to how aerial photographs on reduced scale 1 : 1 25000 Survey No. 69/4 could be located and these top sheets, were earlier rejected by the same Committee in the interim report; that there was no scientific data placed by the Committee in the report in question to come to the conclusion that Survey No. 69/4 was 'forest' and even otherwise since the identification of the Survey No. 69/4 has been done only on 28-4-98 that it was 'forest', the said identification has to be applied prospectively and cannot be taken into account retrospectively. Thus, according to the learned Senior Counsel Shri Chagla, the report in question is not only vitiated, but the same cannot be applied retrospectively to the case under consideration and, as such, the petition is liable to be rejected.

17. Learned Senior Counsel Shri Chagla, after placing reliance on the Range Forest Officer's report, which is at page 1045 of the record, urged that the nature of soil of Survey No. 69/4 as specified therein is laterite and the description of the 51 trees falling in Survey No. 69/4 which were sought to be cut shows that the same are immature trees and the existence of the said trees in an area of 11000 sq.m. would not be sufficient to classify Survey No. 69/4 as 'forest'. He also drew our attention to the reports upon which reliance has been placed by respondent No. 11 wherein it has been opined that Survey No. 69/4 is not forest. It was also pointed out by him that according to Dr. V. Raghavswamy the site in question does not fall within 'reserved forest'. Accordingly, it is urged that no scientific data was available for the Sawant Committee to come to the conclusion that Survey No. 69/4 was forest. Lastly, it was urged that 28 units of the project have already been

sold for Rs. 41/2 crores and respondents No. 9 and 11 have already spent more than Rs. 51/2 crores on the project.

18. Learned Advocate Shri A.N.S. Nadkarni, appearing on behalf of respondent No. 10, admitted that the Town and Country Planning Department had not gone behind the classification of A-1 and A-2 and its alterations to S-2 and did not at any point of time examine whether Survey No. 69/4 is/was forest.

19. Learned Advocate Shri Sonak, appearing on behalf of respondent No. 11 also submitted that the Sawant Committee in its present report has not followed the criteria laid down for identification of forest in the interim report which the said Committee was bound to follow; that the existence of 51 trees in Survey No. 69/4 is not indicative of forest and the land records do not show that the said Survey No. 69/4 was forest land. He adopted the arguments advanced by learned Senior Counsel Shri Chagla.

20. Learned Central Government Advocate Shri G.V. Tamba urged before us that the Sawant Committee after considering all data placed by the Conservator of Forests and after site inspection has come to the conclusion that Survey No. 69/4 was forest and there is no reason to discard the report of the Sawant Committee. He pointed out that in Shri Shivanand V. Salgaocar v. Tree Officer & Deputy Conservator of Forests, (Writ Petition No. 162/1987) this Court in a somewhat similar situation had refused to interfere with the findings of the Conservator of Forests and applying the decision of the Division Bench in the said case, no interference is called for with the findings of the Sawant Committee report submitted in pursuance of directions of this Court.

21. In reply, learned Advocate Ms. Norma Alvares, urged that the Sawant Committee was directed to give its findings on the question whether Survey No. 69/4 is to be classified as 'forest' or not in the light of the judgments of the Apex Court and the Forest (Conservation) Act, 1980. According to her, the guidelines referred to in the interim report cannot be treated as fundamental since the question of viability does not fit in with the directions of the Apex Court for identification of forest. She further pointed out that density and thick forestation are relevant for slope terrain in order to protect them, but the same cannot be adopted

for plain lands and that in case of denude forest the state on loco would be different. She placed before us Dictionary meaning of humus and canopy as contained in the Concise Oxford Dictionary and urged that the Range Forest Officer's report which is at page 1045 of the record would also suggest that Survey No. 69/4 was forest. According to her, Range Forest Officer's report that the soil of Survey No. 69/4 was lateritic is not inconsistent with the report of the Sawant Committee which found that the soil was rich and humus content since humus content is on the top layer and lateritic soil is below. She also pointed out that the adjoining Survey No. 57 of Survey No. 69/4 has been classified by the Sawant Committee as 'forest' as a result of which the area of Survey No. 69/4 by itself would not be decisive since it is continuation of forest under Survey No. 57.

22. Learned Advocate Shri Gandhi in further reply on behalf of respondent No. 9 submitted before us that the immature trees of small girth found in the year 1996 would not be sufficient to classify Survey No. 69/4 as forest when the Forest (Conservation) Act, 1980 came into force since these trees would not be even in existence at that time. He also urged that the laterite soil would support forest and relied upon the report of Dr. Desai upon which reliance has been placed by respondent No. 11.

23. In the light of the rival contentions we have scrutinised the record. The main question to be decided in this petition is whether Survey No. 69/4 was private forest within the meaning of Forest (Conservation) Act, 1980 and, as such, permission was required from the Central Government in terms of section 2 of the said Act for use of Survey No. 69/4 for non-forest purpose, namely, construction of residential complex. The other question which is required to be considered is whether the terms and conditions of licence as well as sanad have been violated.

24. Large scale deforestation resulting in ecological imbalance is the object behind the Forest (Conservation) Act, 1980. The Apex Court in a series of judgments including *Ambika Quarry Works v. State of Gujarat*, : AIR 1987 SC1073a and *Rural Litigation and Entitlement Kendra v. State of U. P.*, : AIR 1988 SC2187 had laid down that the provisions enacted in the said Act for the conservation of forests must apply to all forests so understood irrespective of ownership or classification

thereof. The Apex Court reiterated this position in T.N. Godavarman Thirumulkpad v. Union of India and others, : AIR 1997 SC1228 and Samatha v. State of A.P. & others, : AIR 1997 SC3297 . In T.N. Godavarman Thirumulkpad v. Union of India (supra) the Apex Court has laid down :-

'The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest Conservation Act. The term 'forest land', occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.'

25. In Samatha v. State of A.P. & others (supra) the Apex Court has laid down that the expression 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with trees with pastures, be it of natural growth or man-made forestation. The Apex Court then emphasised that in accordance with section 2 of the said Act, no State Government or other authority, except with prior approval of the Central Government, can grant approval for any forest land or any portion thereof to be put to non-forest use. It was pointed out that the object of the said Act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. It is pertinent to note that the Apex Court pointed out in para 123 of the said judgment that the expression 'forest land' in the respective Acts requires extended meaning to be given so as to preserve forest land from deforestation to maintain ecology and to prevent environmental degradation and hazardous effects on right to life. It was also emphasised that environmental protection has therefore,

now become a matter of grave concern for human, existence. It was further emphasised that trees are friends of man-kind and forests are inevitable necessity for human existence, healthy living and the civilisation to thrive and flourish. The need of protection and preservation of forests is thus fundamental duty of every citizen. Maintenance of ecology was thus held to be not only primary duty of the State to prevent any further degradation of the ecology and environment, but is equally the duty of every citizen.

26. In the light of the above observations of the Apex Court in *Samatha v. State of A.P.* (supra) we do not find any merit whatsoever in the objections raised by learned Senior Counsel Shri Chagla as to the maintainability of this writ petition. It is a matter of common knowledge that there are large scale violations of relevant laws in matters of constructions and illegal constructions are mushrooming. The petitioner Goa Foundation has made a beginning in pointing out such illegal constructions in violation of CRZ Regulations as well as Forest (Conservation) Act, 1980 and has set the ball rolling exposing illegal constructions. The challenge to the locus of the petitioner to maintain this petition, therefore, cannot be accepted.

27. Coming to the main challenge in the petition, Survey No. 69/4 is shown in the land records Form I and XIV as dry crop land and not garden. In the Outline Development Plan prepared by the Government and published in Official Gazette, Sr. III No. 41 dated 11-1-90 in terms of the provisions of Goa Town and Country Planning Act, 1974, 'Published land use' is stated to be A-1 and A-2. Regulation 26 of the Planning Development Authority (Development Plan) Regulations 1989 framed under section 141 of the Goa Town and Country Planning Act, 1974, various land use Zones have been specified and Zones A-1 and A-2 are shown against agriculture and natural reserve. Under Regulation 26.VII agricultural and orchard (natural reserve) is shown as Zone A-1. Regulation 26.VII(a) speaks of agricultural and natural reserve Zone as A-2. The land use permitted in A-1 Zone is agriculture, horticulture, farming and allied operations, sub-divisions reclamation, pump and other electric installations biogas plants; farmhouses, poultry, dairy, piggery and godowns for agriculture storage and implement storage, petrol filling stations. The permitted use of Zone A-2 are agriculture, horticulture farm and allied operations, sub-division of lands for agricultural purpose, any use

ancillary to agriculture in the form of use of land, reclamation, pump or other electric installations, biogas plant, petrol filling stations/L.P. Gas/kerosene godowns.

28. By Notification dated 11-1-90 published in Official Gazette, Government of Goa, Series III, No. 41, objections were invited since the published land use of various survey numbers including 69/4 was sought to be changed. The proposed change in respect of Survey No. 69/4 was from Zones A-1 and A-2 to S-2 which had been provisionally approved in the 63rd (Adjourned) meeting of Town & Country Planning Board held on 4-12-92. Subsequently wide Gazette Notification dated 9th June, 1994 published in Official Gazette, Government of Goa, Sr. III No. 10 the change of use was notified. According to Regulation 26, S-2 Settlement Zone pertains to residential use. For commercial use the Zone is C-1, C-2 and C-3. It is not disputed and, on the contrary, it is contended by learned Advocate General as well as learned Advocate Shri A.N.S. Nadkarni, appearing on behalf of respondent No. 10 Town and Country Planning Board that while effecting alteration from A-1 and A-2 Zones to S-2 Zone, the planning authorities had not gone behind the classification as Zone A-1 and A-2. Learned Advocate Shri A.N.S. Nadkarni further admitted that at no point of time it was examined by the planning authorities as to whether Survey No. 69/4 is/was forest.

29. At this stage it is pertinent to note that on 27-9-91 forest department had issued instructions regarding criteria for application of Forest (Conservation) Act, 1980 to private forests. In these directions after specifying the criteria, it was pointed out that in Goa there was no classification of land as forest in land records and consequently even forest land under private ownership is not described as 'forest' in the land record Form I and XIV. It further states that the revenue authorities have been moved to make necessary changes in the entry in the land records wherever land is under 'forest' and once the change in the land is made provisions of Forest (Conservation) Act, 1980 will apply automatically. There is a reference to the judgment of the High Court in pursuance of which it was felt necessary to evolve such guidelines. It appears that the said reference pertains to the judgment of the Division Bench of this Court in Shri Shivanand Salgaocar v. Tree Officer, (W.P. No. 162/1987) which was decided on 27th November, 1990.

We shall refer to this judgment after noting down the directions of the Forest Department dated 27-9-91 which reads thus :--

'Criteria for application of Forest (Conservation) Act, 1980 to private forests.

(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 (Conservation) 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 noteworthy that the Forest (Cons.) Act, 1980 and guidelines made thereunder do not prescribe any such minimum area for application of the Act.

(ii) Proximity and/or contiguity:---The proximity or proximity of the private forests concerned to a larger forest area and/or its contiguity with the latter area should also be an important aspect to consider while examining such cases.

(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 a 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 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 for assessing the applicability of the Act in such private and revenue area which are not recorded as 'forests' in the land records.

In addition to above, other aspects such as proximity to natural water sources, terrain & slope, presence of rare or endemic species etc. will also be taken into account when dealing with such forest areas not recorded as 'forests' in the land records.

It is necessary to establish these guidelines because of the peculiar situation of land records in Goa which do not have any classification of land as 'forest'. Consequently even forest land under private ownership is not described as 'forest' in the land records (Form I & XIV). We have already moved the revenue authorities to make this change in entries in the land records wherever the land is under forests, but until then it is necessary to evolve a set of guidelines in view of the High Court judgement applying the Forest (Cons.) Act, 1980 to such areas. Once the change in land records is made, provisions of the Forest (Cons.) Act, 1980 will apply automatically.'

It appears that inspite of the said directions, the revenue authorities did not take any steps to identify 'forest' including private forest. In Writ Petition No. 162/1987 the petitioner who owned property under Survey No. 6/1 admeasuring 16.51 hectares had applied for permission to fell 77 trees under the Goa, Daman and Diu Preservation of Trees Act, 1984. The Conservator of Forests had taken the plea that the said area in question from where the trees were to be felled was a 'forest' which was disputed by the petitioner. In the Record of Rights, Survey No. 6 / 1 was classified as barad. According to the Conservator of Forests permission from the Central Government was necessary for felling the trees before approval could be granted by the State Government. As to what constitutes 'forest' or 'forest land', reliance was placed in this judgment on a Full Bench judgment of the High Court in J.C. Wagmare v. The State of Maha-rashtra, : AIR1978 Bom119 wherein it was held that forest is basically a tract of land covered with trees and undergrowth. The Division Bench noticed that in entire Survey No. 6/1 admeasuring 16.51 hectares there were approximately 250 trees and in 1 hectares 77 trees were sought to be felled. In view of the fact that the Conservator of Forests after inspection had taken the view that the land in question is a forest land, the Division Bench declined to take a different view and dismissed the writ petition. It was noted that the area in question was not recorded as. 'forest' in the Government records, but it was shown as barad and it was found that the classification of the land as barad in Index of Land Form E was hardly accurate. It was further held that wrong description of land in Index of Land Form E cannot prevent the application of Forest (Conservation) Act, 1980 if it is otherwise applicable and that in view of the nature of land prior approval of the Central Government under section 2 of the said Act

was required before the petitioner could be permitted to convert the said land into rubber plantation which is non forest use of land as per Explanation to section 2 of the said Act.

30. According to learned Advocate for the petitioner this ruling of the Division Bench is fully attracted to the facts and circumstances of this case since in 11275 sq.m of land under Survey No. 69/4 there were least 61 trees as per stand of Forest Department, though according to her the number of forest trees was much higher. The total number of trees shown in the report of the Range Forest Officer at pages 1045 to 1049 of the record is 51, out of which permission was granted to fell 32 trees on 9-1-97 and, as such, 19 trees were left. However, as on 13-4-98 the Sawant Committee in the Annexure II to its report dated 22-4-98 still found 29 trees in existence in Survey No. 69/4. This means that the total number of trees was 61 and not 51. In the Range Forest Officer's report though the number of trees is stated to be 51, but some trees are shown under the same serial numbers as A and B and if the same are separately counted, the total number of trees comes to around 58. Likewise, it appears that in the Order dated 9-1-97 granting permission to fell trees, the number of trees actually cut is more than 32 as some trees are shown under the same serial number as 2 trees. There thus appears to be substance in the contention of the petitioner that the number of trees was much more than 51 and in the garb of cutting of 32 trees more number of trees were felled. The description of the trees contained in the list at page 1047 of the record annexed to the Range Forest Officer's report, the list of the trees which were permitted to be cut vide Order dated 9-1-97 of the Deputy Conservator of Forests and the list of trees numbering 29 which were found to be in existence by Sawant Committee as per Annexure II of report dated 22-4-98 would go to show that except for one cashew tree, one jamun tree and two tamarind trees, all other trees are of forest species. Besides these trees the said report of the Range Forest Officer shows against Column No. 7 of the proforma at page 1045 that there was thick growth of bushes; that the gradient was 30 slope and that the area had natural growth of forestry trees, as stated in columns 10 and 19 of the said proforma. The soil was laterite type prone to erosion due to slope. Thus, the report of the Range Forest Officer and the description of the trees in existence is indicative of the fact that Survey No. 69/4 was forest land consisting of forest

species trees of natural growth with thick growth of bushes and, as such, Survey No. 69/4 would fall within the scope and ambit of the expression 'forest' as interpreted by the Apex Court in a series of judgments including *Samatha v. State of A.P.* (supra) where extended meaning of expression 'forest' has been given as tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with pasture, be it of natural growth or man-made forestation. Applying the judgment of the Division Bench in *Shri Shivanand Salgaocar v. Tree Officer* (supra), also Survey No. 69/4 has to be classified as forest. In the said case in one hectare total number of trees which were found was 77, whereas in the petition under consideration, the number of trees is around 60 in an area of little more than one hectare. The description of the land survey record Form I & XIV as dry crop land is likewise hardly accurate and the number as well as description of the trees is indicative of a forest. In view of directions contained in letter dated 27-9-91 issued by the Forest Department, it was incumbent not only on the part of the revenue authorities maintaining land records, but also for the planning authorities to go behind the classification contained in land records before permitting change of use from one Zone to another Zone. This was all the more required in view of the guidelines laid down by the Forest Department in the light of the judgment of the High Court especially when in land records in Goa lands where no classification of land as forest existed including private forest. It is evident from the interim report of the Sawant Committee that as per estimate and old reference the total area of private forest is 256 sq.kms. In the said interim report the Sawant Committee was able to identify only 30.2745 sq.kms. of private forest which included mangrove area also. The total green cover outside Government forest worked to 387.329 sq.kms. which, of course, included all types of vegetation including cashew crop. In the said interim report land under some survey numbers in Penha de Franca was shown as forest. However, in report dated 22-4-98 the Sawant Committee has given findings that Survey No. 69/ 4 was a 'forest'. We shall therefore now deal with the said reports as well as the objections raised by the respondents.

31. The fundamental objection which has been raised by learned Advocates for respondents No. 9 and 11 as well as learned Advocate General is that the Sawant Committee has abandoned the criteria adopted in the interim report to determine

whether the area is 'forest' or not while deciding the fate of Survey No. 69/4 and has adopted altogether irrelevant criteria. The Sawant Committee is an expert body which was appointed in pursuance to directions of the Apex Court and we thought it proper and appropriate to refer the controversy of Survey No. 69/4 to the said Committee. The constitution of the Committee is as under :-

1. Sadanand M. Sawant, Chairman:
2. Conservator of Forests. Member.
3. Dr. A.G. Untawale - Scientist - Member.
4. Dy. Conservator of Forests. - Member.
5. Dy. Conservator of Forests. - Member.
6. Dy. Conservator of Forests. - Member.

Though Conservator of Forests (respondent No. 1) had initially filed affidavit stating that Survey No. 69/4 was not forest, yet the Conservator of Forests who is a Member of the Sawant Committee who had submitted report dated 22-4-98 has agreed with the findings of the Sawant Committee that Survey No. 69/4 was a forest. This shows as to how the affidavit dated 29th August, 1997 was filed by the Conservator of Forests in a casual manner.

32. It has been strenuously urged before us that the criteria for classifying forest which was adopted by the Sawant Committee in the interim report has been completely abandoned and irrelevant factors have been taken into consideration while coming to the conclusion that Survey No. 69/4 was 'forest'. It is also urged that the aerial photographs and top sheets of 1990 had been discarded by the Sawant Committee in its interim report, but in report dated 22-4-98 heavy reliance has been placed on the said documents in support of the conclusion arrived therein. Learned Advocate General had admitted that the criteria referred to at Serial Nos. 2, 3, 7 and 9 (b) is no doubt relevant. We have already pointed out that except for 3 to 4 trees in Survey No. 69/4, the rest of the trees are of forest species which means that the first criteria that 75% of its composition should be

forestry trees is in fact, fulfilled in case of Survey No. 69/4. The second criteria referred to in the interim report is that the forest area should be contiguous to Government forest and if in isolation the minimum area should be 5 hectares. In this respect it may be pointed out that Survey No. 57 which is adjoining to Survey No. 69/4 has already been classified by the Sawant Committee in its interim report as forest. This contiguous area under Survey No.57 is much more than 5 hectares and, as such, it fulfills the second criteria adopted by the Sawant Committee in its interim report and in our view whether the contiguity is to the Government forest or private forest would not make much difference. The third criteria laid down in the interim report is canopy density should not be less than 0.4. The meaning of the word 'canopy', as found in the Oxford Dictionary, which would be attracted would be 'the uppermost layer of foliage etc. in a forest'. The report of the Range Forest Officer itself shows that there was thick growth of bushes and Sawant Committee found after inspection of Survey No. 69/4 the presence of roots of the trees on the walls of the foundation pits. The other facts noticed by the Sawant Committee during site inspection of Survey No. 69/4 is that the soil was rich in humus content (organic matter); presence of number of trees beyond the boundaries of Survey No. 69/4 towards western, northern and north-eastern sides was noticed; it was noticed that enumeration list of plants/trees in 50 meters belt adjoining the boundaries east, north and west indicated the presence of tree species typically encountered in Forest and the tree cover is dense and has vast undergrowth. We have already pointed out that Survey No. 57 which is contiguous to Survey No. 69/4 had already been classified by the Sawant Committee in the interim report as forest. Besides site inspection, the Committee also took into consideration report on nature reserve, satellite imagery, ground trusting and the top sheets. It would not be correct to say that the Sawant Committee in its interim report had discarded the aerial photographs of 1960 and top sheets of 1960 altogether though some observations in this regard have been made. The expert Committee has thus taken into consideration all relevant aspects including site inspection observations, nature reserve report, satellite imagery, ground trusting as well as top sheets wherein Survey No. 69/4 was shown as part of fairly dense mixed jungle along the hill slopes towards river Mandovi, Dense mixed jungle or any jungle denoted in the top sheets signifies forest. The report on nature reserve dated 6-3-90 which is at

pages 45 to 55 of the record shows that the green area around the cities like Panaji, Margao, Vasco and Ponda and those lying against the bank of rivers were being destroyed for housing activities or were being diverted for construction purpose and, as such, it was observed that the nature reserve in the shape of green belt should not be destroyed any further and the illegal developments on the slopes of the hills around the cities should be stopped. The factors which have been taken into consideration by the Sawant Committee in its report dated 22-4-98 are all relevant factors and we do not find any force in the contention of learned Advocates for respondents No. 9 and 11 and learned Advocate General that irrelevant factors have been taken into consideration, whereas relevant factors have been ignored. Substantially the Committee has kept in mind and adhered to the criteria laid down in the interim report. There is no merit that the interim report shows that Survey No. 69/4 is not forest. The interim report had only identified some survey numbers as forest and the exercise of identifying forest had not been completed. In case the expert Committee had already determined whether Survey No. 69/4 was or was not forest, the expert Committee could have specifically stated in its report dated 22-8-98 that Survey No. 69/ 4 had already been inspected at the time of interim report and it was not forest. Nevertheless, the Committee has given a positive report that Survey No. 69/4 was forest. It is obvious that the report would be that Survey No. 69/4 was forest since more than half of the trees existing in the said survey number had already been cut.

33. The respondents have placed certain reports before us wherein it is stated that Survey No. 69/4 was not forest. It is not possible to give credence to these reports in the light of the report of the Sawant Committee which consists of an expert body and includes Scientist as well as Conservators of Forests and Deputy Conservator of Forests and the latter being authorities to enforce the provisions of various Acts connected with forest. M/s. Watson Consultants have given opinion on the basis of E.I.A. report for residential complex which obviously does not take into consideration the relevant criteria to determine whether the area is forest or not. The report of Dr. Ashok Joshi, Environmental Scientist though it takes into account some factors necessary for identification whether the area is forest or not, yet in the light of the expert Committee report, we are not inclined to give much credence to the report of Dr. Ashok Joshi. The report of Geo Profiles pertains only to soil

investigation which is only one of the factors in the exercise for determination whether the area is 'forest' or not. The letter of V. Raghavswamy states that the site is outside the notified reserved forest area. The reference letter on which the said opinion is given has not been filed. Except for bare opinion, no material has been placed on the basis of which the said opinion is given including the notified reserved forest area.

34. There is absolutely no merit in the submission of learned Advocate for respondent No. 9 that the Sawant Committee report has been prepared for extraneous and collateral reasons in collusion with the petitioners. There is absolutely no material to uphold these wild allegations made by respondents No. 9 and 11. We also cannot agree with learned Advocate for respondent No. 9 that the Forest (Conservation) Act would be applicable only prospectively from the date the forest area is identified. In case the area was forest it could not be put into non-forest use without prior permission of the Central Government and if no such approval is obtained, the action taken in changing the use from forest to non-forest use has to be quashed.

35. Besides, the findings of the Sawant Committee in its report dated 22-4-98 which we accept, it is also to be noted the terms and conditions of the licence and sanad have been violated. The contention of respondents No. 9 and 11 is that they have not violated any terms or conditions of the licence is totally wrong. As per letter dated 19-11-96 (Exh.G Colly. on record at page 39a) from the Town Planner to the Village Panchayat, Penha de Franca, an additional condition was imposed in the licence namely: 'natural cover/landscape formed by trees as seen from river Mandovi shall not be disturbed in any fashion while carrying out the development/construction'. The Village Panchayat vide letter dated 21-11-96 (Exh. G-2 Colly. at page 39-b) had informed of the said condition to Shri Anand Bhandiye, licence holder, C/o Levin Da Costa. This additional condition has been totally violated and the Town Planner vide letter dated 20th January, 1997 (Exh. 03 Colly. at page 168e) had informed the Sarpanch, Village Panchayat, Penha de Franca that the development has prima facie violated the said additional condition as the developer has cut down the greenery and put up temporary structures which disturb the landscape/natural cover. The Sarpanch, Village Panchayat of

Penha de Franca vide letter dated 30th January, 1997 (Exh. 03 Colly. at page 168f) informed Levin Da Costa about it and also that the access road from the existing road is taken cutting the land by 7 to 8 metres height from road level which disturbs the gradient and may also cause landslide. The Village Panchayat directed to stop the ongoing activity in the plot till the matter was examined by the Government. The Deputy Collector and S.D.O., Mapusa vide letter dated 30th January, 1997 (Exh. O2 Colly. at page 168a) informed Manohar Bhandiye that the sanad dated 18-1-96 had expired on 7-1-97 and since no development had been carried out in the property within the validity period of the sanad, he was directed to refrain from carrying out any development or construction activity. Copy of the same was sent to Levin Da Costa. By subsequent letter dated 4th February, 1997 (Exh. O2 Colly. at page 168b) the Deputy Collector and S.D.O., Mapusa informed Manohar Bhandiye through attorney Levin Da Costa that the request for extension of sanad could not be agreed to as no reasons have been mentioned as to why development of land could not be undertaken during the validity of the sanad. Still later on 25-3-97 vide letter (Exh. O2 Colly. at page 168c) the Deputy Collector and S.D.O., Mapusa informed that the matter had been referred to the Government and no further development should be undertaken in Survey No. 69/4. Ultimately, the Chief Town Planner vide letter dated 7-5-97 (Exh. P-1 Colly. at page 229) informed Sarpanch, Village Panchayat that the matter had been carefully examined and the building blocks located along the average line of 35-36 contours on the southernmost side of the property should be cancelled as well as the proposed access road from the existing Betim-Alto Porvorim road should be cancelled and access to the property should be taken from the northern side of the property. The development permission issued earlier for the two rows of building blocks of D/G and A and D/G and B are withdrawn as indicated in red in the enclosed layout plan and the area with green hatching should be treated as 'no construction' Zone. Revised licence was accordingly ordered to be issued with a special condition that landscaping should be undertaken on the southern side of the property facing the Mandovi river. This letter states that the matter has been carefully examined which means that earlier the matter was superficially examined. The fact that special condition was sought to be put in the revised licence that the landscaping should be undertaken on the southern side of the

property facing Mandovi river clearly establishes that the additional condition imposed in pursuance of letter of Town Planner dated 19-11-96 (Exh. G-2 Colly. at page 39a) and letter dated 21-11-96 of the Village Panchayat (Exh. G-2 Colly. at page 39b) had been violated. It is not understood as to how the Conservator of Forests could grant permission for cutting of the trees vide order dated 9-1-97 which would have the effect of clearly violating the said additional condition, imposed wide letter dated 21-11-96 of the Village Panchayat. Rather than taking action for violation of the said additional condition by removal of natural cover/landscape formed by trees as seen from river Mandovi which was directed not to be disturbed in any fashion while carrying out the development/construction, the Chief Town Planner/Government chose to condone the same by adding special condition to put back the landscape. A copy of this letter was marked to Special Secretary to Hon'ble Chief Minister, Panaji, Goa. We have already pointed out that the cutting of the trees in Survey No. 69/4 for the purpose of non-forest use was done without prior approval of the Central Government. In fact, as we have already pointed out, the planning authority did not bother to go into the classification of the land inspite of directions dated 27-9-91 issued by the Forest Department which are at Exh. P-1 at page 181 of the record. The forest species trees in Survey No. 69/ 4 are indicative of forest and at any rate it is not indicative of any orchard under which the planning authority has classified Survey No. 69/4 in A-1 and A-2 Zones. The approach of the planning authority in the matter appears to be rather very casual. It may also be pointed out that even though the planning authority had changed the use from A-1 and A-2 to S-2 Settlement Zone, the Deputy Collector and S.D.O., Mapusa had issued sanad in respect of Survey No. 69/4 for the purpose of residential/commercial. We have already pointed out that for commercial there is separate zoning namely C-1, C-2 and C-3.

36. There has been thus violation of the said additional condition of the licence and the project which will come up after violating the said additional condition would be an eyesore in the green belt of the hillock towards river Mandovi. Moreover, Survey No. 69/4 being a forest land section 2(ii) of the Forest (Conservation) Act, 1980 requires prior approval of the Central Government for use of forest land or any portion thereof for non-forest purpose which approval has not been obtained. Learned Advocate for respondent No. 9 had urged before us

that 28 units of the project have already been sold for Rs. 41/2 crores and respondents No. 9 and 11 have already spent more than Rs. 51/2 crores on account of which the relief to the petitioners should not be granted. We may state here that by order dated 11th March, 1998 we had made it crystal clear that the development and construction, if any, in the land in question, shall be subject to final decision in the writ petition. If the respondents Ho. 9 and 11 have thereafter knowingly spent on development and construction inspite of the said observations, they are themselves to be blamed for it and this fact cannot turn equity in their favour.

37. For the aforesaid reasons, we allow the writ petition and quash all permissions granted in terms of prayer Clause (i) for the construction of the project in question and permissions granted subsequent thereto. We further direct removal of all developmental work done in Survey No. 69/4 in the area of 11275 sq. meters which is subject matter of this petition and restore the hill to its original vegetation. Consequently, all further developments, constructions and any further activity shall be stopped forthwith. Necessary action in this behalf shall be taken by respondents No. 4, 6, 8, 9 and 11. Rule is accordingly made absolute in the aforesaid terms. We shall however leave the parties to bear their costs.

38. Learned Advocate Shri S.V. Kamat, appearing on behalf of respondent No. 9 and learned Advocate Shri M.S. Sonak, appearing on behalf of respondent No. 11 seek stay for eight weeks of the impugned judgment.

39. We have heard learned Advocates for the parties including Ms. Norma Alvares on behalf of the petitioners and learned Advocate Shri Rivonkar for respondent No. 7.

40. We are inclined to stay the removal of the developmental work done in Survey No. 69/4 in the area of 11275 sq. metres as well as restoration of the hill to its original vegetation for a period of six weeks subject to respondents No. 9 and 11 furnishing an undertaking within a week that no further development, construction and any other activity shall be carried out by them in Survey No. 69/4. No stay is granted in relation to restraint on carrying out further development, construction and any other activity in Survey No. 69/4 which have been ordered to be stopped

forthwith and the same shall be immediately stopped. A compliance report shall be filed by respondents No. 9 and 11 to this effect along with the undertaking to be filed by them within a period of one week from today. The undertaking be filed in the Registry with a copy to the Advocate for the petitioners.

41. Petition allowed.

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