

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.357 OF 2022

Dr. Jainath Dhulapkar,
Age 62 years,
Son of late Shri Datta Naik,
Resident of H.No.336,
Dhulapi Corlim,
Tiswadi Goa.
Adhar Card No.492850607653.
Mobile No.9096211259

... Petitioner

Versus

- 1 State of Goa,
Through it's Chief Secretary,
Porvorim Goa.
- 2 The Director of Agriculture,
Department of Agriculture,
Krishi Bhavan Miramar,
Tonca Caranzalem Panaji Goa.
- 3 The Deputy Collector (Revenue)
North Goa, Panaji Goa.
- 4 The Mamlatdar of Tiswadi Taluka,
Panaji Goa.
- 5 The Police Inspector,
Old Goa Police Station,
Old Goa.
- 6 Corlim Khazan Tenants Association,
having office at Dhadyar-Corlim Goa
Through it's Treasurer Mr. Albino Sequeira,
Resident of H.No.73,
Volvaddo Corlim-Tiswadi-Goa.

7 Mr. Judas D'Mello,
(Chairman Corlim Khazan Tenants
Association)
H.No.958, Mangurar Carambolim,
Tiswadi Goa.

8 Mr. Rajesh N. Phadte,
H.No.625, Mangurar,
Carambolim,
Tiswadi Goa.

...Respondents

Mr. Sagar Dhargalkar, Advocate for the Petitioner.
Mr. D. Pangam, Advocate General with Mr. Suhas Parab, Additional
Government Advocate for Respondent Nos. 1 to 5.
Mr. Vibhav Amonkar, Advocate for Respondent Nos. 6 and 7.

CORAM: **M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED: **4th JANUARY 2023**

ORAL JUDGMENT (Per M. S. Sonak, J)

1. Heard the learned counsel for the parties.
2. Rule. The rule is made returnable with consent and at the request of the learned counsel for the parties.
3. The learned Advocate General states that the repairs/reconstruction of the sluice gate etc. is complete. This has been informed to the Corlim Khazan Tenants Association, represented by Mr Amonkar, vide communication dated 03.01.2023. The learned

Advocate General hands in a copy of the communication dated 03.01.2023 to the Court.

4. The communication dated 03.01.2023 reads as follows:-

*"No. 2-Accts/F. 235/Works/SCD/D. Agri/2022-23/982
Government of Goa,
Office of the Executive Engineer,
Soil Conservation Division
Directorate of Agriculture
Krishi Bhavan
Tonca Caranzalem Goa.*

Dated: 03/01/2023.

*To,
Shri Francis Judas D'Mello, Chairman,
Corlim Khazan Tenants Association,
H.No.958, Mangerar, Carambolim,
Tiswadi – 403110.*

*Sub: Strengthening to the bund "Corlim Khazan (Mayem
Khazan)" at Corlim in Tiswadi Taluka **regarding
handing over of sluice gates***

*Ref:- 1. This office letter No.2-Accts/F.235/Works/SCD/D.
Agri/2022-23/976 dt. 02.01.2023
2. Mamlatdar office letter No. MAM/TIS/AK-II/01/Ten-
Asso/2023/57 dt. 03.01.2023.*

Sir,

*In respect of above cited work and letters referred above, it is to
inform that the agency has completed both the sluice gate works
namely Bandara and Mangerar such as construction of wing wall of
bandara sluice gate, replacement of wooden structure of both sluice
gates including painting with wood preservative, plastering of*

abutment walls etc. As such, it is requested to take over the possession of both the sluice gates for further needful.

Further, it is to state that there are instances of deliberate damaging of sluice gate wooden structures for flooding of khazan lands for pisciculture purpose. Hence, you are requested to keep watch and ward over operation of sluice gates by the lessee of the sluice gates and to restrict intake of saline water up to the capacity of the water body/poiem of the khazan lands.

Yours faithfully,

*Sd/-03/01/2023
(R. V. Kenavdekar)
Executive Engineer*

Copy to :

- 1. The Mamlatdar of Tiswadi Taluka,
Panaji Goa ... for needful as per above referred letter*
- 2. The Asst. Engineer-III, Soil Conservation Division"*

5. From the above communication, it is clear that the Tenants Association has been called upon to take possession. The learned Advocate General states that within ten days from today, the Mamlatdar will communicate the date for handing over possession to the Association. Mr Amonkar states that the Association will take possession on the said date.

6. The learned Advocate General submits that the bund, sluice gate etc., have been repaired by the State Government at the cost of

₹4.85 crores. However, he presents that these days instances have been reported of deliberate and malicious damage to the bunds and sluice gates. Based upon such damage, khazan fields are left inundated, rendering it impossible to undertake agricultural activities. He pointed out that this is done mainly to undertake illegal fishing, even without holding any auction. He submits that it is for this reason that the Association is directed to keep a vigilant watch and ensure that this does not happen.

7. The Tenant Associations like the Respondent No.6 – Association are constituted under the Goa Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975. Rule 2(d) of the said Rules defines "*Association*" to mean a group of tenants who have become deemed purchasers under the Goa Agricultural Tenancy (Fifth Amendment) Act, 1976, and who jointly derive benefit from a common major bund or bunds in a locality and is recognized as such under these rules by the Mamlatdar of the Taluka having jurisdiction. Rule 3 of the said Rules provides for the constitution and recognition of the tenants Association.

8. Rule 4 of the said Rules is concerned with the functions of the General Body of the Association. For example, one of the statutorily prescribed functions is to consider and decide the matters regarding the conservancy, maintenance, and repairs of any bund, embankment, ridge, sluice gate or any other matter which the Managing Committee

may especially refer to for consideration or which the majority of the members of the General Body want to raise.

9. Similarly, it shall be the duty of the General Body of the Association to consider and decide the terms and conditions of lease of fishing rights of sluice gate or "Umalo" in the vicinity of sluice gate, "pons" or "murados" or in the rivulet and also to decide whether the public auction of fishing rights of the sluice gate or vicinity thereof, "pons" or "murados" shall be reserved exclusively for the members of Tenants Association or not.

10. Rule 5 of the said Rules provides that members of the Association shall perform such duties as may be assigned to them by the Managing Committee to watch and ward the bunds.

11. Rule 6 is concerned with the constitution and functions of the Managing Committee. Rule 6(5) refers to the Managing Committee's responsibility for discharging the specified functions. Amongst these, the Managing Committee shall be responsible for taking all steps necessary for the conservancy, maintenance or repairs of bunds. The Managing Committee is also required to prepare the estimates for repairs, maintenance etc., from the Soil Conservation Division of the Directorate of Agriculture and take steps for execution of these works through the Soil Conservation Division. The Managing Committee is also responsible for auctioning the right to fishing in the vicinity of the

sluice gates and leasing out the trees on the bunds. Finally, the Managing Committee is responsible for taking immediate steps for closer breaches in the bunds and executing the work. Explanation - 1 to Rule 6(5) provides that the Managing Committee shall work and function collectively. The responsibility of all members of the Managing Committee shall be joint for any acts of omission and commission as regards the duties of the Office bearers.

12. The Rules also contemplate the control of the Mamlatdar over the functioning of such an Association. In terms of Rule 6(11), the Mamlatdar shall have the power to call from the Managing Committee any records, statements, registers, accounts or reports that he may think necessary. Furthermore, in case of any complaints about non-compliances, the Mamlatdar may by written order direct that the records, money, or other property so detained be delivered to such successor within the time limit to be specified in such order, and if the office bearers fail to comply, the Mamlatdar can make appropriate orders for compliance.

13. Rule 6(15) provides that if the Mamlatdar, after summary enquiry, is satisfied that the Managing Committee or any office bearer thereof has failed to discharge the duties or has abused the powers or has misappropriated the funds of the Tenants Association by not maintaining the accounts in the specified manner resulting in loss to the Tenants Association or has done any acts which are harmful to the

agricultural land, the Mamlatdar shall dissolve the Managing Committee or summarily remove any office-bearer of the Managing Committee and appoint an Ad hoc Managing Committee or any of its office bearer to perform all the duties and exercise all the powers of the Managing Committee as enumerated in the preceding rules till the new Managing Committee or his office bearer takes charge.

14. Rule 10 also provides that the Mamlatdar shall have full power to take necessary action on matters which have not been specifically provided in these rules in connection with the discharge of joint responsibility by the tenants.

15. Rule 11 provides that any Association constituted under these Rules may, subject to the availability of funds, get a contribution from the Government towards the cost of repairs to bunds on the same terms and conditions as specified in Rule 12-A of the Goa Agricultural Tenancy (Fifth Amendment) Rules, 1968 as amended from time to time. Rules 8 and 9 deal with the procedure for lease of fishing rights and trees on bunds and the execution of works of repairs, respectively.

16. The Rules mentioned above are referred only to emphasize that it shall be the duty of the Association and its members to see that there are no breaches caused to the bandararas, bunds or sluice gates causing inundation of khajan lands. The Association and its members must ensure that there is proper upkeep and maintenance. Therefore, the

Association and its members must be vigilant and take effective steps to ensure that there are no such breaches caused to bandararas, bunds by miscreants with ulterior motives.

17. As was rightly pointed out by the learned Advocate General the instances of malicious breaches in bunds and consequent inundation of khazan fields are on the rise. It is not as if these breaches are caused due to natural disasters or due to wear and tear that was not preventable. The Association, often through Government assistance, allegedly spend a significant amount for repairs and maintenance of such bunds. Yet curiously, the instances of breaches are on the rise. In such circumstances, it is reasonable to assume that such breaches are deliberate and malicious.

18. Therefore, the Association and its members must remain vigilant and take all steps to prevent such instances. Further, the Association and its members must take all measures to ensure regular supervision, upkeep, and maintenance of these bunds. Public interest is involved in maintaining such bunds, sluice-gate, etc. because Khazans and their eco-system constitute the ecological heritage of the State of Goa.

19. Mr. Amonkar, on behalf of the Association, undertakes that the Association and its members would keep a vigilant watch to ensure that there is no damage to the bunds, bandararas, sluice gates and other

structures that now have been repaired by the Government at the cost of almost ₹4.85 crores. We accept this undertaking and direct the Association and its members to keep a vigilant watch to prevent damage to sluice gates, including bunds and bandararas.

20. As noted above, the Association and its members must ensure that there are no such breaches and regular maintenance and repairs to the bunds, bandararas, sluice gates etc. If the Association and its members are not vigilant and there are breaches to bunds, bandararas, sluice gates, etc., then the Association and its members would be personally liable for damages caused and the consequences. Therefore, through the Mamlatdar, the State Government must fix responsibility and take immediate steps to recover the amount from the Association and its members personally. Ultimately, these Associations and members hold such properties and trust, and therefore, they are accountable for the same.

21. The learned Advocate General states that within ten days from today, the Mamlatdar will also fix the date for the auction of the fishing rights on the two sluice gates, which are the subject matter of this matter. Mr. Amonkar states that once the date is fixed, the auction process will be taken as expeditiously as possible by giving necessary notices and by following the procedure prescribed under the law. Mr. Amonkar states that the process will be completed within 30 days of receiving the communication from Mamlatdar.

22. Mr Dhargalkar points out that in the past, the Association has failed to collect the instalments of the auction price from the previous auction purchasers. The Association should take immediate steps to recover this amount if this is true. The Mamlatdar should also consider whether the Association and its members should be required to deposit this amount immediately in the accounts of the Association, leaving it open to the Association to recover such amount at their pace from the previous auction purchasers. The Mamlatdar should communicate the steps taken within three months from today to the Petitioner. If the steps are not satisfactory, it will be open to the Petitioner to take steps as are permissible in law.

23. Mr Amonkar states that at least hereafter, the Association will ensure that the instalments towards the auction purchase are collected. However, considering that there are allegations about the Association not bothering to collect the balance instalments, it would be in the interests of justice if the Association obtained some security either by way of bank guarantee or post-dated cheque, at least in respect of balance instalments.

24. Mr Dhargalkar has several other complaints about the functioning of the Association. He states that proceedings have already been filed before the Mamlatdar. Accordingly, we direct the Mamlatdar to consider such grievance and dispose of the proceedings in accord with law as expeditiously as possible and in any case within

four weeks from today. Furthermore, the Mamlatdar should comply with the principles of natural justice and communicate the decision to all the parties concerned.

25. The rule in this petition is now disposed of in the above terms.

26. Accordingly, there shall be no order for costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

TARI AMRUT NAGESH | Digitally signed by TARI AMRUT NAGESH
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