

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 4 OF 2015

Shankar Raghunath Jog,
aged 77,
R/o. Margawadi, Sancordem,
Via Tisk, Goa.
Pin : 403 406
Pan Card No. : AGVPJ2407K
Mobile Phone no: (0091) 9420897638
Email: shankarjog38@hotmail.com
Annual Income Rs.2,80,000/-
Fax No. : Nil
National Unique Identity
Number : 652902907381

..... Petitioner

V e r s u s

1. M/s. Sociedade De fomento Industrial Pvt. Ltd.,
Vila flores da Silva,
Erasmus Carvalho Street,
Margao, Salcete, Goa.
Pincode: 403 601.
2. Shri Shrikant Vishnu Sane,
Major of age,
Tilkantem, Village Aglot,
V. P. Sancordem, Goa. 403 406.
3. The Range Forest Officer,
Government of Goa,
Collem, Goa.
4. The Assistant Survey & Settlement Officer,
Directorate of Settlement & Land Records,
Government of Goa,
Panaji, Goa.
5. The Mamlatdar of Dharbandora
Dharbandora, Goa.
6. The State of Goa,
Through its Chief Secretary,
Secretariat, Provorim, Bardez,
Goa.
7. Shri Prabhakar Vishnu Sane,

Major and his wife,

8. Smt. Pratibha Visnu Sane,
Major
9. Smt. Kanchan K. Sane,
Major
10. Smt. Suvarna Srikanta Sane
Major, wife of Shri Srikanta Sane
All c/o. Shri Shrikant Vishnu Sane,
Tilkantem, Village Aglot
V. P. Sancordem, Goa, 403 406.

..... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.

Mr. Sudesh Usgaonkar and Ms. Rosette Pereira, Advocates for the Respondent no.1.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. Dangui, Addl. Government Advocate for the Respondent nos. 3 to 6.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **28th July, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri Nigel da Costa Frias, learned Counsel appearing for the Petitioner, Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondent no. 1 and Shri Nadkarni, learned Advocate General appearing for the Respondent nos. 3 to 6.

2. It is the case of the Petitioners that a piece of land known as “Condichem Molla” admeasuring an area of 47,898 square metres and surveyed in the Cadastral Survey Plan under No. 7 (old) of Village Aglote of Sanguem Taluka

was allotted to late Shri Seguna Balcrishna Botto Sane by the erstwhile Portuguese Government under Alvara no. 94 dated 14.12.1903. It is further his case that all the lands in Aglote Village of Sanguem Taluka were surveyed in the Cadastral Plan by the Respondent no. 4 and the promulgation of the Record of Rights was conducted. It is further their contention that the said property is now surveyed in the Record of Rights prepared under the Land Revenue Code under nos. 146/1 and 148/1 which are recorded in the name of (1) Government and (2) Forest Department. It is further the contention of the Petitioner that in the year 1982, Shri Shrikant Vishnu Sane, the Respondent no. 2 herein, who is one of the grandsons of the alvara-grantee late Shri Seguna Balcrisna Sane, submitted an application to the Respondent no. 4 claiming that the land surveyed under survey no. 7(old) belongs to him and that it was allotted to his grandfather by the then Portuguese Government by alvara no. 94 dated 14.12.1903 and that it was wrongly included in survey nos. 146/1 and 148/1 and registered in the name of the Government and the Forest Department. It is further his case that on 08.04.1987, the 'Decision and Order' was issued by the Respondent no. 4 holding that survey no. 7(old) of village Aglote is not of the Government but of Shri Shrikant Vishnu Sane subject to third parties claiming rights over it. It is also his contention that on 06.03.1991 a Deed of Sale was executed between Shri Shrikant Vishnu Sane and the Respondent no. 1 for the said land. The Mutation Application was filed on 21.01.2011 by the Respondent no. 1 before the learned Mamlatdar of Sanguem to incorporate the name of the said Respondent in the Survey Records. It is further his case that Village of Aglote lies in the Taluka of Dharbandora and the Respondent no. 1 submitted a reply by affidavit to the Mamlatdar of Dharbandora. On 28.09.2012, the learned Mamlatdar commenced the Mutation Proceedings by issuing two

notices which notice was also published. There were objections by the vendors to the mutation on the ground that they had not sold their land. An intervention application was filed on 25.09.2013 by the Petitioners before the learned Mamlatdar in the mutation proceedings. It is further his case that the Petitioners upon making inquiries learnt of an Order dated 08.04.1987 of the Respondent no. 4 and ultimately after arguments were heard, mutation in favour of Respondent no. 1 was allowed in the month of July 2014 and the name of Respondent no. 1 was ordered to be entered in the Record of Rights. Aggrieved by the misappropriation of the private land by the Respondent no. 1, the Petitioner has filed the present Writ Petition.

3. The Respondents have filed their reply disputing the said contention of the Petitioners, It is further their case that the Petition is not bonafide and the sale transaction is termed to be 'questionable transaction' under misconception without specifying when, how and what caused the Petitioner to suddenly take note of such transaction in view of a public notice of mutation on 13.02.2013. It is further their case that there is neither any public interest involved in the grant made by the then Portuguese Government in favour of late Seguna Balcrishna Bhat Sane nor in the transaction between the Respondent nos. 1 and 2. It is further their case that the Petition has been filed with ulterior motives and for the other reasons stated in the reply, it is contended that the Petition be rejected.

4. The Petitioner has also filed a rejoinder disputing the contents of the Respondent no. 1 and alleged that from the documents produced on record by the Respondent no. 1, it is seen that the land in question was granted to late Shri

Seguna Balcrishna Botto Sane by then Portuguese Government by an Order dated 10.02.1904 and the documents disclosed that the allotment was a provisional concession of land at Aglote.

5. Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, has vehemently argued that the subject land is a Government land and that the Government Authorities are not taking any steps to retrieve the land which is illegally occupied by the Respondent no. 1. Learned Counsel further submits that as Respondent nos. 1 and 2 have misappropriated the land belonging to the Government, the Petitioners were forced to file a Writ Petition in Public Interest. Learned Counsel has thereafter taken us through the documents to point out that the land was given only on lease and is not to be considered as a grant in terms of the Land Revenue Code and, as such, the transactions between the Respondent nos. 1 and 2 are illegal and contrary to the provisions of law.

6. On the other hand, Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondent no. 1, has pointed out that there is no case made out for any relief to the Petitioner. The learned Counsel further submits that the Aforamento granted by the Government cannot be equated to be a leases or grants under the Land Revenue Code as held by this Court. Learned Counsel further submits that all the transactions between the Respondent nos. 1 and 2 are in accordance with law and, consequently, the Petition deserves to be rejected. Learned Counsel further submits that the Petition is not bonafide and, consequently, the question of entertaining such Petition would not arise.

7. Shri Nadkarni, learned Advocate General appearing for the Respondent nos. 3 to 6, submitted that the land was granted on a perpetual grant by the erstwhile Portuguese Regime and such grants cannot be equated to be leases under the Land Revenue Code as held by this Court. Learned Advocate General further pointed out that any action, if any, is to be taken has to be by the State Government in terms of the law governing such Grants. Learned Advocate General has pointed out that there is no case made out by the Petitioners that the State Government has allowed any misappropriation of Government land.

8. We have examined the rival contentions and we have also gone through the records. It is now well settled that the Grants made by the erstwhile Regime are in terms of Decree no.3602. Art. 72 of the said Decree provides that contracts of emphyteusis of the Government land in India, are regulated by the civil law prevailing in the Territory in the portion not governed by the Decree and in its Clause 3 enables the grantee to acquire the ownership on payment of twenty annuities of the ground rent (foro) when half of the assigned land is cultivated. Article 76 in its turn provides that the contract of emphyteusis shall be rescinded except in cases of unavoidable circumstances after a prior administrative inquiry without right to any compensation. It is apparent therefore from the aforesaid provisions of Article 72 and Article 76 of the Decree no. 3602 that the grantee can acquire full ownership to the land granted by complying with the stipulations referred to therein. It is also to be noted that the grant once made can only after an administrative inquiry be terminated in case there is breach of any of the conditions in the grant of emphyteusis. Such emphyteusis granted by the erstwhile

Portuguese Regime cannot be termed to be leases in terms of Land Revenue Code of 1968. The right of the Government in such cases is only to receive rent (foro) as possessory ownership is in favour of the grantee. Even in terms of Articles 1676, 1677 and 1678 of the Portuguese Civil Code, an aforamento holder has a right to hypothecate, gift and even sell such land subject to the conditions stipulated therein. Consequently, in such circumstances, there are disputing questions of facts which arise in the above Petition. On the basis of the averments made by the Petitioner merely because the mutation entries have been effected would not by itself justify the relief sought by the Petitioner. The land was admittedly granted in Aforamento and, as such, the contention of Shri Nigel Da Costa Frias that the Government land is being misappropriated, cannot, prima facie, be accepted. The disputed questions of fact cannot be examined in the aforesaid case by the present Petition.

9. For the aforesaid reasons, the Petition stands rejected.

K. L. WADANE, J.

F. M. REIS, J.

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