

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 786 of 2014

SHRI VITORINO MENDONCA ... Petitioner

Versus

GOVERNMENT OF INDIA, MINISTRY OF
HOME AFFAIRS THR. ITS SECRETARY
AND 4 ORS.

... Respondent

Mr. Joseph Vaz, Advocate for the Petitioner.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,
Advocate for Respondents no. 4 & 5.

CORAM: N. M. JAMDAR, J.

DATE: 17 FEBRUARY, 2015.

ORAL ORDER:

This petition came up on board on 6/2/2015 when
the following order came to be passed:

“Heard Mr. J. Vaz, learned Counsel for the petitioner.

*2. The learned counsel for the petitioner submits that
the execution proceedings cannot continue in view of
the fact that the property in question has been
declared as Enemy Property under the Enemy
Property Act, 1968. He relies on the order passed on
8th October, 2010 by the Custodian of Enemy
Properties. However, the certificate issued under*

section 12 prima facie shows that the property would vest in the custodian. That being the position, the petitioner has not been able to to show any independent right to the property, except on his long standing possession. Perusal of the impugned order shows that all the proceedings taken up by the petitioner have resulted in orders against him.

3. In these circumstances, prima facie, the petitioner cannot seek advantage of the position that the property is notified as Enemy Property which vests in the custodian, however, since the learned counsel for the custodian seeks time, stand over to 13th February 2015.

4. The petitioner will give private notice to the respondents before the next date. It will be open to the learned counsel for the petitioner to inform the learned counsel for the respondent, who is appearing before the executing Court.

5. The learned counsel for the petitioner states that the execution proceedings are scheduled for tomorrow i.e. 7/2/2015. Till the next date the executing Court will not enforce the decree against the petitioner.”

2. Thereafter, the matter came on board on 13/2/2015 and the following order was passed:

“After arguing the matter for some time, the learned counsel for the petitioner states that he will take instructions whether the petitioner is ready to given an

undertaking to vacate the premises in question.

S. O. to 17/2/2015, high on board.”

3. The learned counsel for the petitioner states that the petitioner is present in the Court and on his instructions, he states that the petitioner is willing to give an undertaking to vacate the premises provided the petitioner is given 8 weeks time to vacate the premises.

4. The learned counsel for the respondents no.4 and 5 does not have objection for grant of 8 weeks time, he however, insists that no further time be granted and the undertaking should be filed within the stipulated period.

5. Accordingly, it is directed as under:

- (i) The petitioner will furnish an undertaking of himself and all adult members of the family residing with him that they will hand over or vacate peaceful possession of the suit property pursuant to the execution proceedings, as directed. The undertaking will also provide that no third party rights will be created.
- (ii) If the undertaking is filed as directed within two weeks from today, then the petitioner shall not be dispossessed for period of 8 weeks from today.
- (iii) If the undertakings are not filed within 2 weeks from today, then the impugned order shall stand executable forthwith.
- (iv) In case the petitioner does not vacate the premise after 8 weeks from today, it will be open to the

respondents no.4 and 5 to seek the assistance of the police machinery.

- (v) The writ petition is accordingly disposed off in the above terms.

N. M. JAMDAR, J.

Ap/-