

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 81 OF 2008**

Smt. Laxmi Narshiv Naik (since deceased)
Through her Legal Representatives

- (1) Raghuvir Narsinha Naik
major of age, agriculturist,
- (2) Smt. Sushila Raghuvir Naik
major of age, housewife
Both residents of House No.140,
Ambrewada, Dhargal, Pernem-Goa. ...Petitioners

Versus

- (1) Shri. Tukaram Navso Ambre
R/o. Shirgal, Pernem, Goa
- (2) Shri Madhusudhan Shenvi Dessai,
R/o. Mauswada, Pernem - Goa.
- (3) Smt. Prabhavati B. Pathekar,
R/o. Oxelbhag, Dhargal.
- (4) Smt. Prabhavati N. Lingudkar
R/o. Monte De Guirim, Bardez, Goa. ...Respondents

Mr. D. Pangam, Advocate for the Petitioners.
Mr. S.D. Lotlikar, Senior Advocate with Ms. P. Hegde, Advocate for
Respondent No.1.

Coram:- F. M. REIS, J.

Date:- 24th July, 2015

ORAL JUDGMENT:

Heard Mr. D. Pangam, learned Counsel appearing for the
petitioners and Mr. S.D. Lotlikar, learned Senior Counsel appearing

for respondent no.1.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for respondent no.1 waives service.

3. Upon hearing the learned Counsel appearing for respective parties and on perusal of the impugned orders passed by the learned Deputy Collector and the Tribunal, the main grievance of the learned Counsel appearing for the petitioners is that the learned Deputy Collector by judgment and order dated 7/06/2001 directed that the impugned order passed by the learned Mamlatdar be stayed and also allowed the application for condonation of delay, but however, confused the situation and directed the learned Mamlatdar to decide the application for declaration filed by the petitioners afresh in accordance with law.

4. It is pointed out by Mr. D. Pangam that in fact, what was argued before the learned Deputy Collector was only the application for condonation of delay and the application for stay of the operation of the impugned order passed by the learned Mamlatdar and, as such, according to him the question of setting aside the judgment of the

learned Mamlatdar without giving a hearing to the petitioners on merits is not at all justified.

5. On the other hand, Mr. S.D. Lotlikar, learned Senior Counsel has pointed out that the petitioners challenged the order of the learned Deputy Collector before the Tribunal and in fact, the learned Tribunal has examined the matter on merits and proceeded to dismiss the revision application filed by the petitioners and, as such, according to him there is no jurisdictional error committed by the authorities which would call for interference by this Court under Article 227 of the Constitution of India.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. The order passed by the learned Deputy Collector dated 7/06/2001 clearly discloses that in fact by such order the operation of the impugned order of the learned Mamlatdar dated 31/03/1995 was stayed after allowing the application for condonation of delay. In such circumstances, Mr. Pangam, learned Counsel for the petitioners is justified to contend that the judgment of the learned Mamlatdar could not be set aside by the learned Deputy Collector whilst passing such order. As there is

gross jurisdictional error committed by the learned Deputy Collector whilst passing the said order which has not been considered by the learned Tribunal in the revision preferred by the petitioner, I find that there is a jurisdictional error committed by the learned Tribunal in dismissing the revision preferred by the petitioners.

7. In view of the above, I pass the following order:

O R D E R

(i) The impugned order passed by the learned Tribunal dated 26/06/2006 and the directions in the impugned order passed by the learned Deputy Collector dated 07/06/2001 to the learned Mamlatdar to decide the declaration filed by the petitioners afresh is quashed and set aside.

(ii) The learned Deputy Collector shall decide the appeal preferred by the respondents afresh after hearing the petitioners in accordance with law as expeditiously as possible within 3 months from receipt of the order.

(iii) The parties are directed to appear before the learned Deputy Collector on 17/08/2015 at 10.00 a.m.

(iv) Rule stands disposed of accordingly.

F. M. REIS, J.

NH/-