

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 808 OF 2009.

Pilerne Citizens Forum Society
registered under the Provisions of
the Societies Registration Act
represented herein by its Secretary
Aaron Paul Fernandes, Residing at
Navelim, Pilerne.

..... Petitioner.

Versus

- 1 The State Of Goa, Through
the Chief Secretary, Having
Office at Secretariat,
Porvorim, Goa.
- 2 The Administrator Of
Comunidade, North Goa,
Mapusa, Bardez, Goa.
- 3 The Registrar Of
Comunidade of Pilerne,
Having Office at C/o.
Comunidade Of Pilerne,
Bardez, Goa.
- 4 The Comunidade of Pilerne,
Through its Attorney, Shri
Cosmas Francis Fernandes,
Having office at Pilerne,
Bardez, Goa.
- 5 The Mamlatdar of Bardez
(Pilerne), Having office at
Pilerne, Bardez, Goa.
- 6 Dy. Collector Of Mapusa,
Having Office at Mapusa,
Bardez, Goa.
- 7 Shri. Premanand Ramchandra
Malik S/o Late Ramchandra
Damodar Malik, Major,

Agriculturist, R/o Maina,
Pilerne, Bardez, Goa.

- 8 Smt. Sitabai Ramchandra
Malik, Major, widow of Late
Ramchandra Malik, R/o
Maina, Pilerne, Bardez, Goa.
- 9 Mr. Anand Ramchandra
Malik, S/o Ramchandra Malik,
Major, married
- 10 Smt. Aparna Malik, W/o
Anand Malik, Both r/o.H. No.
886/8, Vijaynagar, Alto Torda,
Salvador du Mundo, Porvorim,
Bardez, Goa.
- 11 Smt. Priyanka Premanand
Malik, W/o of Premanand
Malik, R/o. Maina, Bardez,
Goa.
- 12 Shri. Chandrakant Naik, S/o
Fotu Naik, Major, Married
- 13 Smt. Rajeshri Chandrankant
Naik, W/o Shri. Chandrakant
Naik, Both r/o. 34-5, Shanti,
Nagar, Ponda, Goa.
- 14 Shri. Gokuldas Naik Dangui,
S/o Pandurang Dangui, Major,
married
- 15 Smt. Mandakini Naik Dangui
W/o Shri. Gokuldas Naik
Dangui, Both r/o. Shanti
Nagar, Ponda, Goa.
- 16 Shri. Uday Ghanashyam Naik,
Son of Ghanashyam Naik,
Major, Resident Of 1203, 'A',
Wing, Pratap Heritage, N. R.
Complex, Opp. Veer Sawarkar

Udyan, L. T. Road, Borivalli
(W), Mumbai-92.

- 17 Sir Biotech India Limited,
Through its Managing
Director, with its registered
office at 6926 Jaipura Mills
Compound, Sabji Mandi,
Clock Tower, Delhi.
- 18 The Village Panchayat Of
Pilerne Marra, Through its
Secretary Pilerne, Bardez,
Goa.
- 19 The Town Planner, Town &
Country Planning Department
Mapusa, Bardez, Goa. Respondents.

Mr. Nigel Costa Frias, Advocate for the petitioner.

Mr. P. Faldessai, Additional Government Advocate for the
respondent nos. 1, 5 and 6.

Mr. N. Sardessai, Senior Advocate with Mr. D. Shirodkar,
Advocate for the respondent no.4.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza,
Advocate for the respondents no. 16 and 17.

Mr. Prashant Vengurlekar, Advocate for the respondents no. 7 to
15.

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

Date:-6th April,2015.

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

Heard Mr. Nigel Costa Frias, learned Advocate appearing
for the petitioner, Mr. P. Faldessai, learned Additional
Government Advocate appearing for the respondent nos. 1, 5
and 6, Mr. N. Sardessai, learned Senior Advocate appearing

Advocate for the respondent no.4, Mr. J. E. Coelho Pereira, learned Senior Advocate appearing for the respondents no. 16 and 17 and Mr. Prashant Vengurlekar, learned Advocate appearing for the respondents no. 7 to 15.

2. The above petition inter alia seeks for the following reliefs:-

- “A. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, commanding the Respondent no. 5 to take action under Section 10 of the Agricultural Tenancy Act and transfer the land bearing survey Nos. 31/1 and 32/1 of Pilerne Village to the Government.
- B. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, directing an enquiry into the functioning of the Respondent No. 4 specially with regard to survey Nos. 31/1 and 32/1 of Pilerne Village.
- C. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondent Nos. 1 and 2 to take over the

management of Respondent no. 4.

- D. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondent 4, 16 and 7 not to proceed with any developmental work or transfer the title or create any third party right upon survey nos. 32/1, 31/1-A and 32/A of Pilerne Village.
- E. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondent Nos. 1, 2, 5 and 6 to produce all the records pertaining to the tenancy status of land bearing survey Nos. 31/1 and 32/1 of Pilerne Village.
- F. For a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondent Nos. 1, 2, 5 and 6 to treat this as a case of violation of the Agricultural Tenancy Act, the Goa Land Use Act and the Code of Comunidade and to take appropriate action there upon.
- G. For a Writ of Mandamus directing the Respondent no. 4 not to proceed with any

allotment of the proposed plot in survey Nos. 31/1 and 32/1 of Plierne Village.

- H. For a declaration that the order dated 31.3.08 of the Administrative Tribunal in case No.3/AT/ADM/2008/COM/SUIT/ PERM is illegal being in violation of the provisions of the G.D.D. Agricultural Tenancy Act,1964, the Code of Comunidades and the Goa Land Use Regulation Act, 1991 and hence null and void.
- I. For a declaration that the compromise decree dated 21.10.08 passed by the Civil Judge Senior Division at Mapusa in Special Civil Suit 136/08/A(new) and Regular Civil Suit No. 182/03/A(old) is illegal being in violation of the provisions of the G.D.D. Agricultural Tenancy Act, 1964, the Code of Comunidades and the Goa Land Use Regulation Act, 1991 and hence null and void."

3. We have heard the above Petition at length. The main contention raised by the learned counsel for the petitioner is that the whole exercise carried out by the respondent no. 4 ultimately disposing of the property was a fraud of the statute by

circumventing the provisions of the Goa Land Use Act, as according to the petitioner the subject property was a tenanted land.

4. On the other hand, the learned Senior counsel appearing for the respondents have disputed that there was a tenant in the disputed property and further submitted that only for the purpose of settling a dispute an arrangement was worked out between respondents inter se to dispose of the subject property. The learned counsel appearing for the petitioner has also taken us extensively through the records in the above Writ Petition as well as the pleadings in the collateral proceedings before the Civil Court and before the authority under the Agricultural Tenancy Act in support of his contention.

5. Per contra, the learned Senior counsel appearing for the respondents have also relied upon material on record to point out that the settlement arrived at between the parties was a bonafide settlement only for the purpose of settling a dispute between the parties. According to them, ultimately, the Comunidade/ respondent no. 4 in fact sold the property to the respondents no. 7 to 15. The learned Senior counsel for the respondents have also relied upon the Order of this Court dated 28.2.2013 passed in Writ Petition No. 228/2011 wherein this Court has taken a view that as disputed question of facts arise

and the contentions raised in the petition requires evidence to be recorded the parties should be relegated to get their dispute adjudicated in a proper proceedings.

6. Taking note of the observations of this Court in the said Order the learned counsel appearing for the petitioner upon instructions seeks leave to withdraw the above Writ Petition with liberty to take appropriate legal proceedings with regard to the matter in dispute in the above petition. The learned counsel for the petitioner further points that the petitioner should be protected on the point of limitation for filing the suit. The learned Senior counsel appearing for the respondents have pointed out that the question of condoning the delay would not arise as according to them, there is no provision to condone delay in terms of the Indian Limitation Act and the period cannot be excluded in terms of Section 14 of the Limitation Act. The learned senior counsel for the respondents further points out that this matter has to be considered and decided by the learned Civil Judge on its own merits.

7. Considering the rival contentions and for the reasons stated in the Order passed by this Court in Writ Petition No. 228/2011 dated 28.2.2013, we find that the question of examining the rival contentions which are disputed questions of fact in the present petition would not arise at all.

8. Be that as it may, the petitioner, if so, advised are always at liberty to file a suit or any other proceedings to get such alleged contention raised to the above petition decided in accordance with law. The contention of Mr. Nigel Costa Frias, for protection to the petitioner to file such suit within the period of limitations can be dealt with by the learned Civil Judge after considering the observations in the judgment reported in **2009(1) SCC 786** in the case of ***Shakti Tubes Limited Vs. State of Bihar and others.***

9. Hence, for the aforesaid reasons, petition stands dismissed as withdrawn, with liberty as prayed for. All the contentions of both the parties on merits are kept open.

10. Rule stands disposed of accordingly.

vn* K. L. WADANE, J.

F. M. REIS, J.