

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.113 OF 2014**

1 Shri Rajaram Rau Patil,
(since deceased)
Through his legal heirs,

1a Shri Chandrakant Rajaram
Patil,
Son of late Rajaram Rau
Patil, Aged 52 years,
married, Indian
National, Resident of
776, Khanbhag Police
Chowki, Sangli,
Maharashtra.

1b. Smt. Sunanda Raghunath
Patil,
daughter of Rajaram Rau
Patil, wife of Raghunath
Bapusaheb Patil, Aged 45
years, married, Indian
National, Resident of
"Vishranti Bungalow",
A/11/1, Near Urban
Bazar, Koyana Vasahat
Karad, District Satara,
Maharashtra.

1c Smt. Sunita Yuvraj
Patil,
daughter of Rajaram Rau
Patil, wife of Yuvraj
Vilasraj Patil, Aged 44
years, married, Indian
National, Resident of
"Vilasraj Bungalow",
Plot No.55, S.No.46,
Audumbarraoji Patil

Nagar, Link Road,
Isababi Pandharpur,
District Solapur,
Maharashtra.

- 1d. Shri Uddav Rajaram
Patil,
Son of late Rajaram Rau
Patil, Aged 41 years,
Unmarried, Indian
National, Resident of
776, Khanbhag Police
Chowki, Sangli,
Maharashtra.
- 1e Smt. Shaila Prtaprao
Salunke,
daughter of Rajaram Rau
Patil, wife of Prataprao
Ghanasham Salunke, Aged
38 years, married,
Indian National,
Resident of 391, Ravivar
Peth, Risaldar Wada,
Karad, Taluka Satara,
Maharashtra.
Respondents No.1(a) to
1(c) & 1(e) represented
by power of attorney by
petitioner no.1(d) Shri
Uddav R. Patil.

.... Petitioners

Versus

- 1 Shri Cheruparambil
Mathew @ C.M. Mathew,
s/o. M. Mathew, major of
age, resident of C/o.
Adv. D.R. Duple, Quepem-
Goa. Presently residing

at C/o. Adv. V.V.
Alvenkar, 'Indira' Opp.
Shree Nagdev Temple,
Murida-Fatorda, Salcete,
Goa-403 602.

- 2 Shri Marcel de Piedade
Braganca,
age 73, r/o. Malbat,
Margao-Goa.
- 3 Smt. Maria Amalia
Violanda Betuz
Mascarenhas Braganca
(Respondents no.2 & 3
have died issueless)
represented through LR's
- (i) Francisco Savio Furtado
De Braganza, Son of
Antonio F. Braganza, 45
years, son of late Mr.
Antonio Braganza, behind
Ne era high school,
Malbhat, Margao-Salcete-
Goa.
- (ii) Mr. Albin Agnelo
Brganza, Mr. Antonio
Francisco Braganza, 44
years, resident of House
No.203, behind Ne era
High School, Malbhat,
Margao, Salcete-Goa.
- (iii) Mrs. Sameena Shaikh
alias Maria Neves
Braganza, Daughter of
Mr. Antonio F. Braganza,
44 years, married,
Resident of House

No.1953, Mascani,
Cuncolim, Salcete-Goa.

4 Shri Abel Rodrigues,
since deceased
represented by LR's

- (a) Mrs. Lira Rodrigues
e Pinto - deleted
- (b) Mrs. Ida Rodrigues
e Nunes
- (c) Mr. Winston Nunes
- (d) Miss Wylla Nunes
- (e) Mr. Warren Nunes
- (f) Mrs. Sevigne
Fernandes Nunes
- (g) Mrs. Palmira
Rodrigues (since
deceased)
 - (i) Mr. Gill Carvalho
 - (ii) Dillon Carvalho
 - (iii) Carlos Carvalho

All major, R/o.
H.No.228, Bairro,
Mazalwado, Assagaon,
Bardez, Goa.

5 Smt. Olga V. Braganza,
major
R/o. Perxetta, C/o.
Barnable Souza, Guirim,
Bardez, Goa.

6 Smt. Meena Braganza,
R/o. H.No.19,
Camarcuzanam, Mapusa,
Bardez, Goa.

7 Smt. Anjia A.P. Dias @

Braganca Since deceased
represented through LR's

- (a) Beatriz Braganza
- (b) Vincent Braganza
- (c) Zita Olinda

Braganza

w/o. late Agostinho

Braganza

- (d) Ashely Braganza
- (e) Pearly Braganza
- (f) Maria Braganza
- (g) Rudolf Fernandes
- (h) Anthony Braganza
- (i) Deena Braganza
- (j) Alexander Braganza
- (k) Lee Braganza
- (l) Suzan Braganza
- (m) Rui Braganza

All major, R/o. H.No.

1285, Santa Cruz,

Bondir, Ilhas, Goa.

... Respondents

Shri Shivan Desai, Advocate for the Petitioners.
Ms. N. Shirodkar, Advocate for Respondent No.1.
Shri Sudin Usgaonkar, Senior Advocate with Ms.
Vinita Palyekar, Advocate for legal
representatives of respondents no.2 & 3.

CORAM : C.V. BHADANG, J.

DATE : 5th OCTOBER, 2016

ORAL JUDGMENT :

The learned Counsel for the petitioners
seeks leave to delete respondent no.4(a). Leave
granted at the risk of the petitioners.
Necessary correction to be carried out

forthwith.

2. Rule. Rule made returnable forthwith. The learned Counsel for the respondents waive service. Heard finally by consent of the parties.

3. This petition will have to be allowed on a short count.

The brief facts are that there is a reference under Section 30 of the Land Acquisition Act being Land Acquisition Case No.62/1995 in which the petitioners raised an issue of tenancy. In the year 2006, the issue was referred to the Mamlatdar and that reference is registered as reference no.3/2006. Subsequently, there was a Civil Suit between the parties in which on a similar contention being raised, the issue of tenancy was referred to the learned Mamlatdar on the basis of which reference no.1/2008 is registered. Both these reference cases were proceeding simultaneously

before the learned Mamlatdar in which common evidence was recorded. It so happened that there was an order passed in reference no.1/2008 deciding on the sequence of the cross-examination by the parties, who were having a common interest. This order was challenged in an appeal before the learned Deputy Collector in which there was stay of proceedings of the reference no.1/2008. In the meanwhile, reference No.3/2006 was dismissed in default by order dated 21/09/2011. This was challenged by the petitioners before the Deputy Collector in which the present respondent no.1 was the only party. The Deputy Collector allowed the appeal by judgment and order dated 9/11/2012. This was in turn challenged by the respondent no.1 in tenancy revision application no.45/2012 before the Administrative Tribunal. The Administrative Tribunal by judgment and order dated 15/11/2013, had allowed the revision application thereby restoring the order passed by the learned Mamlatdar. This is how the matter comes to this

Court.

4. On hearing the learned Counsel for the parties and on perusal of record, it transpires that the appeal arising out of the order passed in reference no.1/2008 is decided and the said reference is pending before the Mamlatdar. The issue in Reference No.3/2006 and 1/2008 is the same. It is further significant to note that both these references were proceeding together in which common evidence was recorded. It is submitted on behalf of the petitioners that the petitioners were under a bonafide belief that because the proceedings in reference No.1/2008 were stayed, the reference No.3/2006 would not proceed. Be that as it may, having regard to the overall circumstances, I do not find that the order of dismissal, of reference no.3/2006 can be sustained.

The learned Counsel for the petitioners undertakes to bring the legal heirs of respondents no.2 & 3 on record before the

learned Mamlatdar.

5. The petition is accordingly allowed. The impugned order passed by the Mamlatdar on 15/11/2013 is hereby set aside. Reference No.3/2006 is restored to the file of the learned Mamlatdar. The Mamlatdar shall proceed to decide the said reference along with reference No.1/2008. Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

NH