

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 335 OF 2010

SHRI NARAYAN SITARAM SHET TANAVADE
AND 4 ORS.,

... Petitioners

Versus

SMT. LUIZINHA COSTA E PEREIRA AND
44 ORS.,

... Respondents

Shri S.D. Padiyar with Shri P. Arolkar, Advocates
for the Petitioners.

Shri Agnelo F. Diniz with Shri Ryan Menezes,
Advocates for Respondent No. 3.

CORAM:- C.V. BHADANG, J.

DATE:- 1st August, 2016.

ORAL ORDER:

Heard the learned Counsel for the
petitioners and the learned Counsel for respondent
no. 3.

2. The challenge in this petition is to the
concurrent finding recorded by the Courts below,
negating the case of tenancy, set up on behalf of
the petitioners.

3. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioner no. 1, Narayan Tanavade and his four brothers, filed an application before the Joint Mamlatdar at Mormugao, to declare them as tenants of the suit property namely, Muxelem situated at Mestawado, bearing Chalta Nos. 16, 17, 18, 19 and 20 of P.T. Sheet No. 138 of City Survey of Vasco-da-Gama.

The case made out in the application was that the suit property was given on lease to their grandfather, late Bhiva Tanavade, about 120 years back, by one Joao Piedade Pereira and said Bhiva Tanavade, was residing in the suit property by constructing a house and had planted different types of trees therein. Late Sitaram Tanavade, the father of the original applicants, was the only son of Bhiva Tanavade. It was contended that Sitaram constructed two more houses in the suit property and further under took plantation of different types of trees and the property was made productive. It was

contended that the applicants have inherited the tenancy rights. It was contended that on 20.08.1996, one Cedric Dias came on the suit property with labourers and tried to interfere with the possession of the applicants, which led the applicants to approach the Joint Mamlatdar.

4. The respondent Smt. Luizinha Costa e Pereira contested the application, who denied that the property was ever leased to the grandfather of the applicants or any of the applicants. It was contended that the usufruct of the property including the structure therein, was always enjoyed by the respondents and their predecessors.

5. Before the Joint Mamlatdar, the applicants, Narayan Tanavade and Narendra Tanavade examined themselves alongwith a representative of Vasco Planning and Development Authority and produced certain documents.

6. On behalf of the respondents, Antonio Pereira was examined and he produced certain documents.

7. The learned Joint Mamlatdar by a detailed order dated 17.09.1998 rejected the application. The learned Mamlatdar found that the applicants have not been able to establish the payment in kind, by their ancestors and the claim that the property was leased to their grandfathers was not acceptable.

8. The petitioners challenged the said order before the Deputy Collector, who dismissed the appeal on 11.05.1999, which was in turn challenged before the Administrative Tribunal in Revision Application No. 50/1999. The Administrative Tribunal dismissed the revision application on 31.08.2009, which brings the petitioners to this Court.

9. I have heard Shri Padiyar, the learned Counsel for the petitioners and Shri Diniz, the

learned Counsel for respondent no. 3. With the assistance of the parties, I have gone through the evidence led on behalf of the parties, as also the impugned orders.

10. It is submitted on behalf of the petitioners that the Joint Mamlatdar failed to properly appreciate the evidence on record, in coming to the conclusion that the petitioners had failed to establish that the rent was paid in kind. He submitted that the Deputy Collector, who was the First Appellate Authority, ought to have gone through the findings and the evidence and should have come to his own conclusion. The learned Counsel was at pains to point out that the Deputy Collector has failed to deal with the contentions on behalf of the petitioners and has simply confirmed the findings recorded by the Joint Mamlatdar. This, in the submission of the learned Counsel for the petitioners, would amount to refusal to exercise jurisdiction, legally vested in the Deputy

Collector. The learned Counsel pointed out that the learned Administrative Tribunal failed to correct the error in the revisional jurisdiction. He submits that the revisional jurisdiction under Section 50 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (the Act, for short), is wider in scope and ambit than under Section 115 of the Code of Civil Procedure (CPC). The learned Counsel therefore, submits that the petition be allowed, granting a declaration that the petitioners are tenants of the suit land. In the alternative, it is submitted that the matter be remanded to the Deputy Collector, for deciding the same afresh.

11. On the contrary, it is submitted by the learned Counsel for respondent no. 3 that the learned Joint Mamlatdar after threadbare consideration of the evidence and other material on record, had rightly come to the conclusion that the petitioners have failed to establish that the rent was paid in kind to the landlords and to establish

their possession as tenants. The learned Counsel pointed out that in the land acquisition proceedings (which the petitioners were aware, as admitted by AW-2), the entire compensation was paid to the landlords and there was no objection on behalf of the petitioners. The learned Counsel has also referred to the proceedings of encroachment/removal of one Shankar Dhargalkar on the land, which was taken by the landlords. He therefore, submits that there was enough material to show that it was the respondents, who were cultivating the land and the case of tenancy, has rightly been negated.

12. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out in the concurrent finding recorded by the Courts below. The Joint Mamlatdar has noticed the definition of tenant (under Section 2(23) of the Act), that of a lease (under Section 2(13) of the Act) and rent (under Section 2(20) of the Act). Under Section

2(23), a tenant means a person who on or after the date of commencement of the Act, holds land on lease and cultivates it personally including a person, who is cultivating and/or was a tenant in this Act. Under Section 2(13), a lease means a transfer of a right to enjoy land, made orally or in writing, for a specified, or unspecified period and in consideration of rent.

Thus, the payment of consideration in the form of rent, which may either be in cash or kind or both, paid or payable by the tenant on account of use or occupation of the land, is *sine qua non* for being a tenant. The learned Joint Mamlatdar has found that there is nothing in the application or the evidence of AW-1 or AW-3 about the payment of rent, either by them or by their predecessors. In the written submissions, it was claimed that 2/3rd of the coconut produce was given by their father to the landlords, which represents the payment made in kind. AW-3 states that the coconut trees from the suit property were always plucked "on behalf of the

owners" by his father and the plucking was done under the supervision of the landlords. AW-2 stated that the produce of the coconut trees was divided into three equal portions, out of which $1/3^{\text{rd}}$ portion was given to the father of the petitioners and $2/3^{\text{rd}}$ portion was retained by the landlord. If that be so, it was the landlord who was giving $1/3^{\text{rd}}$ portion to the father of the petitioners, which would run counter to the case that rent was paid in kind by the father of the petitioners. The petitioner no. 3, also stated in his cross examination that since beginning, the opponents and their predecessors have been taking $2/3^{\text{rd}}$ of the produce and $1/3^{\text{rd}}$ of the produce was given to them or their predecessors.

In such circumstances, to my mind, the case made out that the rent was paid in kind, in the form of a portion of the coconut produce, has rightly not been accepted.

13. The learned Joint Mamlatdar has thereafter, noticed the deposition of Sitaram Tanawade in

Regular Civil Suit No. 88/1977, wherein he admitted that he was paying rent to Roque Pereira, the father of original petitioner no. 2, towards his residence. He has further stated that the usufruct of the trees was enjoyed by Roque Pereira since 1968 and before that, his sister Filsubai Pereira.

14. The second aspect is about the personal cultivation by the tenant(s). In this regard, there was an acquisition of about 725 square metres, out of the suit property, by the Government, which was during the lifetime of Sitaram Tanawade and the entire compensation towards acquisition was paid to the landlords, which was never objected to by Sitaram Tanawade. There is further evidence that, when the electric transformer was erected in the suit property, Roque Pereira protested, and when the Municipal Corporation laid a road passing through the suit property, permission of Roque Pereira was taken and it was not questioned or objected to on behalf of the petitioners. Similarly, the

encroachment on the part of the land by Shankar Dhargalkar, was removed by Roque Pereira, as admitted by the applicant no. 2. The Joint Mamlatdar has found that the witness no. 3 was examined only in order to cover certain lapses in the evidence of witness no. 2 and the evidence was not found reliable.

15. It is true that the Deputy Collector has not visited every finding of fact in the context of the evidence led. However, the question is whether for this reason alone, the matter needs to be sent back. I find that the Administrative Tribunal has found that, in the absence of any material irregularity or fallacy in conclusion recorded by the Joint Mamlatdar, it was not necessary for the Deputy Collector to "disclose all the aspects of evidence again". The contention on behalf of the petitioners that the scope of revision under Section 50 of the Act is wider than Section 115 of CPC, also, cannot *prima facie*, be accepted.

Section 50(2) of the Act (as it stood prior to its amendment by Act No. 19/2014), reads thus:

(1)

(2) *An application for revision may be made to the Administrative Tribunal against any order, other than an interim order of the Collector, on the following grounds only:-*

(a) that the order of the Collector was contrary to law;

(b) that the Collector has failed to determine some material issue of law; or

(c) that there was a substantial error in following the procedure provided by this Act, which has resulted in the miscarriage of justice."

16. It can thus be seen that the Administrative Tribunal can interfere in revision, where the order of the Collector is contrary to law or where the Collector has failed to determine some material issue of law or there was a substantial error in

following the procedure provided under the Act, which has resulted in miscarriage of justice.

17. I do not find it necessary to record a conclusive opinion on the scope and ambit of the revision under Section 50(2) of the Act vis-a-vis Section 115 of CPC. However, a bare perusal shows that, primarily it is where, the order of the Collector is contrary to law or where the Collector has failed to determine some material issue of law or there was a substantial error in following the procedure, which has resulted in the miscarriage of justice, that the Administrative Tribunal can interfere.

18. On going through the order passed by the Joint Mamlatdar and the evidence led, I am not inclined to interfere with the concurrent finding or to remand the matter to the Deputy Collector, as the findings by the Joint Mamlatdar are in accordance with the oral and documentary evidence on record.

19. At this stage, the learned Counsel for the petitioners submits that the petitioners would be deemed tenants. However, the learned Counsel fairly conceded that this ground was not raised before any of the Courts below. The said contention cannot be entertained, as having being raised for the first time in this Court.

The petition is without any merit and is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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