

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 262/2008

- 1] Shri Neetendra Naresh Gadekar,
Major aged 32 years, agriculturist,
Son of late Naresh Pandurang Gadekar
Residing at Khalap waddo, Canca,
Bardez-Goa.
- 2] Smt. Chandra Naresh Gadekar,
Major aged years, agriculturist,
widow of late Naresh Pandurang Gadekar
Residing at Khalap waddo, Canca,
Bardez-Goa.

Petitioners

Versus

- 1] Shri Asdraleno De Mello,
Major, President of Canca Comunidade,
r/o F 3, Raya Apartments,
Agond, Mapusa, Goa 403 507.
- 2] The Mamlatdar,
Bardez Taluka, Mapusa,
Bardez, Goa.

Respondents.

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Mr. J.P. Mulgaonkar, Advocate for the petitioners.
Mr. Rohit Bras De Sa, Advocate for respondent no.1.
Ms. N. Kholkar, AGA for the respondent no.2.

CORAM : F.M.REIS & K.L.WADANE, JJ
DATED : 01/02/2016.

Oral Judgment (Per F.M. Reis, J):

1] Heard Mr. J.P. Mulgaonkar, the learned counsel appearing for the petitioners, Mr. Rohit Bras De Sa, the learned counsel appearing for the respondent no.1 and Ms. Kholkar, the learned Additional Government Advocate appearing for the

respondent no.2.

2] At the request of Mr. Mulgaonkar, the learned counsel appearing for the petitioners, leave to amend. Amendment in the prayer clause to be carried out forthwith.

3] The above petition takes exception to an order dated 28th April, 2008, whereby the disputed structure was ordered to be demolished by the respondent no.2. Mr. Mulgaonkar, the learned counsel, points out that the challenge to the said order is on two counts, first is that such order came to be passed by misconstruing the documents produced by the petitioners and as such, in breach of the principles of natural justice and secondly on the count that the petitioners have also challenged the constitutional validity of the Goa Land (Prohibition on Construction) Act, 1995 (hereinafter referred to as "the Act of 1995"). Mr. Mulgaonkar, the learned counsel, in support of his first contention, has pointed out that the subject property is surveyed in the Record of Rights bearing survey no.19/4 of village Canca wherein the name of the petitioners figures in the said records. The learned counsel further points out that the property belongs to the Comunidade which is the respondent no.1 and that the petitioners are tenants of the subject property. The learned counsel has thereafter taken us through the

impugned order to point out that even the respondent no.2 while examining the records has come to the conclusion that the petitioners are tenants of the disputed property on the basis of the survey records. The learned counsel further submits that the petitioners had a Farm house in such property and as such, the question of taking any permission from the respondent no.1 is totally erroneous and not justified. The learned counsel further submits that the provisions of the Act of 1995 are not applicable to the facts of the present case, as according to him, as the petitioners were deemed owners of such property, the respondent no.1 has no subsisting right in the property which would require any permission in terms of the provisions of the Act of 1995. The learned counsel has thereafter pointed out that the respondent no.2 has also taken a view that the petitioners have violated the provisions of the Act of 1995 which prohibits any tenanted land to be used for non-agricultural purpose though no show cause notice on that count was served on the petitioners. The learned counsel, as such, submits that the impugned order cannot be sustained and deserves to be quashed and set aside. The learned counsel further points out that the petitioners have also challenged the constitutional validity of the said Act of 1995, which the petitioners do not desire to press at this stage.

4] On the other hand, Ms. Kholkar, the learned

Government Advocate appearing for the respondent no.2, has pointed out that once the name of the petitioners figures in the survey record, the presumption in terms of law would have to be drawn in favour of such petitioners and as such, the dispute of tenancy cannot be adjudicated by the respondent no.2 in exercise of the powers conferred under the Act of 1995. The learned counsel further points out that even assuming the owner of the land disputes the correctness of such entry, such adjudication would have to be done before the Competent Authority and the respondent no.2 would not have jurisdiction to carry out such exercise. The learned counsel further points out that in the present case, the name of the petitioners apparently in the survey record as tenants though such entries are disputed by the respondent no.1 and as such, it was not open for the respondent no.2 to proceed to direct the demolition of the subject structure without giving an opportunity to the parties to adjudicate the dispute with the respondent no.1. The learned counsel as such points out that in case of any violation of the provisions of the Goa Land Agricultural Tenancy Act, the Competent Authority would have to take action in accordance with law and not the respondent no.2. The learned counsel further submits that though the respondents are in a position to disclose that the challenge to the constitutional validity of said Act has no substantive, nevertheless, as the petitioners are not pressing for such

challenge, the respondents shall not advance arguments on that count.

5] Mr. Rohit Bras De Sa, the learned counsel appearing for the respondent no.1, however, disputes that the correctness of the entry in the survey records. The learned counsel further points out that in terms of the Goa Agricultural Tenancy Act, the survey of the tenanted land has to be carried out in accordance with such provisions and according to him, as no such survey has been conducted. There can be no presumption in favour of the petitioners. The learned counsel further points out that merely because tenancy Rule has been amended to incorporate the records under the Land Revenue Code, that by itself, does not create a presumption in favour of the petitioners to contend that they are tenants of the subject property. The learned counsel further points out that the petitioners have not produced any cogent evidence to substantiate their claim of tenancy as the Code of Commuidade clearly stiuplates a specific procedure whereby tenancy are created. The learned counsel further points out that as there is no cogent material to substantiate their claim of tenancy, the respondent no.2 was justified to come to the conclusion that the construction is in violation of the provisions of the Act of 1995.

6] We have given our thoughtful consideration to the rival contentions of the respective parties and we have also gone through the record.

7] It cannot be disputed that when there is disputed claim of the jurisdiction to decide such issue is with the Competent Authority under the Agricultural Tenancy Act. In the present case, the records of the Land Revenue Code are to be read into the provisions of the Tenancy Act, and as such the contention of Mr. Rohit Bras De Sa, learned counsel appearing for the respondent no.1 that, on the basis of such records under the Land Revenue Code, there can be no presumption in favour of the petitioners-tenants, cannot be accepted. This view has also been taken by the learned Single Bench of this Court in the judgment reported in **1998 (1)Goa L.T.156** in the case of **Comunidade of Saligao Vs. Mhapa Manguesh Nagvekar and others**, wherein it has been observed at para 4 thus:-

"Undisputedly, the respondents herein had raised the issue of tenancy which can be decided by the Mamlatdar in terms of [section 7](#) of the Goa, Daman and Diu Agricultural Tenancy Act (hereinafter called as "the said Act"). [Section 58](#) of the said Act clearly provides that save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar. In view of the clear provisions

barring the Civil Court from deciding the issue of tenancy and there being specific provision in the said Act, empowering the Mamlatdar to decide the question as to whether a person is a tenant or not, ex-fade the Reference Court has acted without jurisdiction in deciding the said issue. That apart, the Apex Court in the matter of [Shri Inacio Martins v. Narayan Hari Naik and others](#), has clearly held that whenever the issue of tenancy is raised by the party to the proceedings in Civil Court, such an issue is necessarily to be referred to the Mamlatdar who is competent to decide such issue under the said Act. The Reference Court having failed to do so, and having proceeded to decide the said issue by itself has clearly acted in breach of the provisions of the law, more particularly section. 58 of the said Act which clearly debars the Civil Court from deciding the issue of tenancy. In this view of the matter, the impugned Award cannot be sustained and liable to be quashed and set aside”.

8] With regard to the contention of Mr. Mulgaonkar, the learned counsel appearing for the petitioners, that as the petitioners are deemed owners of the disputed land, the question of any permission from the respondent no.1 would not at all be required for examining whether there is any violation of the provisions of the Act of 1995 we find that as the claim of tenancy of the petitioners is disputed by the respondent no.1, such dispute would have to be examined by the Competent Authority under the Agricultural Tenancy Act unless there is a conclusive

declaration of tenancy in favour of the petitioners that they are tenants of the disputed property, it would not be appropriate to examine whether there is any violation of the provisions of the Act of 1995.

9] As such, as the dispute of tenancy has arisen in the present case and the record, prima facie, reveals that there is an entry in favour of the petitioners in the tenanted column, and taking note of the contention of the learned Additional Government Advocate appearing for the respondent no.2 we find that the respondent no.2 was not justified to pass the impugned order and direct the demolition of the subject structure. On this ground alone, the impugned order deserves to be quashed and set aside. Needless to say that in case there is any violation of the provisions of any other laws, the concerned Authority may take necessary action in accordance with law.

10] In view of the above, we find it appropriate to pass the following order:-

Order

(i) The impugned order dated 28/4/2008 is quashed and set aside and the proceedings in the case No.MAM/BAR/ILLE-CANCA/84/2008 and MAM/BAR/ILLE/CANCA/86/2008 are restored to file of the respondent no.2.

- (ii) The petitioners, if so advised, are at liberty to obtain an appropriate declaration/order from the Competent Authority with regard to their claim of tenancy over the subject property.
- (iii) The petitioners shall initiate such proceedings within three months from today.
- (iv) The proceedings shall be stayed until such adjudication is disposed of finally by the Competent Authority.
- (v) Needless to say that the respondent no.1, if so advised, shall proceed to take action in terms of the law.
- (vi) Rule is made absolute in the aforesaid terms.
- (vii) All the contentions of the parties on merits are left open.
- (viii) The petition is disposed of accordingly.

K.L.WADANE, J

F.M. REIS, J

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