

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.556 of 2010

Caetano Souza (since deceased)
 through his Legal Representative
 Ms. Felicia Pinto, daughter of
 Miguel Francisco Pinto, aged 64
 years, residing at Chimbél,
 Ilhas, Goa. .. Petitioner

V/s.

1. Shri Augusto Souza, gov. servant,
 residing at Chimbél, Tiswadi,
 Goa
2. Autustinho Carvalho (since deceased)
 through his Legal Representatives
- 2(a) Romualdo Carvalho,
 residing at Chimbél, Ilhas, Goa.
- 2(b) (iv) Paul d'Souza, r/o Villa John Fill,
 Real Al Rosa Bldg. Vord Vaddo,
 Porvorim, Bardez, Goa
- 2(b) Socorrin Carvalho,
 residing at Chimbél, Ilhas, Goa
- 2(c) Reina Carvalha alias Antonetta
 Carvalho,
 residing at Chimbél, Ilhas, Goa
- 2(d) Roy Carvalho,
 residing at Chimbél, Ilhas, Goa
- 2(e) Rupali Carvalho
 residing at Chimbél, Ilhas, Goa
3. Archdiocese of Goa,
 Bishop's House, Altinho,
 Panaji, Goa. ... Respondents

Mr. M. B. D'Costa, Senior Advocate with Ms. K.

Betquekar, Advocate for the petitioner.

Mr. A. D. Bhobe, Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

Reserved on :- 26th JULY, 2016

Pronounced on :- 29th JULY, 2016

JUDGMENT :

The challenge in this petition, under Article 227 of the Constitution of India, is to the concurrent orders passed by the learned Collector and the Administrative Tribunal, Goa, by which the order of the Awal Karkun passed on 05/06/1992, carrying out mutation of the name of the petitioner in respect of the subject plot No.8 has been set aside.

2. The brief facts are that the petitioner (now deceased) Caetano Souza had filed Special Civil Suit No.26/1989/A before the learned Senior Civil Judge at Panaji, in which, the Archdiocese of Goa, Daman and Diu (the landlord) was defendant no.1, while one T.D.

Vernekar was the defendant no.2. The said suit was filed for declaration, permanent injunction and cancellation of the Sale Deed. In the said suit, now deceased Caetano Souza had sought a declaration that he is a tenant of the suit property and a deemed owner and consequently, the Sale Deed, alleged to have been executed between the defendant nos. 1 and 2 in respect of the suit property, being null and void and for permanent prohibitory injunction etc. It appears that the said suit was decreed in view of the consent terms. The relevant clauses (c) and (d) of the consent terms read thus :

"(c) That on account of the said services rendered by the plaintiffs, the defendant no.1 transfers all its rights in respect of the plot no.8 of the suit property in favour of the plaintiff, without any consideration, which plot admeasures 893 square metres and more particularly shown in the annexed plan. That the said plot no.8 is bounded on the East by an open space and access of three metres wide, on the west by the plot No.7 of the suit property, on the North by the property bearing new Survey No.56, Sub Division 3 of Village Panchayat of Chimbel

and on the South by the plot No.5 and 6 of the suit property. That the plaintiff will be considered as the owner of the said plot No.8 from the date of the consent terms.

(d) That the plaintiff hereby declared that he is surrendering from the date of these consent terms all his rights, title and the interest in the suit property with the exception of the said plot No.8."

3. On the basis of these consent terms, the petitioner was successful in getting the order of mutation from the Awal Karkun on 05/06/1992. It appears that the respondents Augusto Souza and Augustinho Carvalho, who were adjacent occupiers, challenged the order of mutation before the Deputy Collector, who by an order dated 21/07/1992, allowed the appeal and set aside the order passed by the Awal Karkun. It appears that before the Deputy Collector, the very validity of the consent decree passed by the Civil Court, was questioned on the ground that the Civil Court could not have recorded the consent terms in view of the provisions of the Goa, Daman, Diu Agricultural Tenancy Act, 1964 (the Act, for short). The Deputy Collector accepted the contention on behalf

of the appellants holding that the jurisdiction to decide the issue of tenancy was, at the relevant time, vested with the Mamlatdar and the Civil Court could not have decided the said issue, the consent notwithstanding. The Deputy Collector found that the decree was a nullity and as such, can be ignored and challenged in a collateral proceedings, for which the Deputy Collector placed reliance on the decision in the case of **Official Trustee, West Bengal and others Vs. Sachindra Nath Chatterjee and Anr;** AIR 1969 SC 823. In the result, the Deputy Collector found that the order of the Awal Karkun, (which is primarily based on the consent decree, passed by the Civil Court, which is a nullity), deserves to be set aside. The Administrative Tribunal has concurred with the said finding, which brings the petitioner before this Court.

4. I have heard Shri D'Costa, the learned Senior Counsel for the petitioner and Shri Bhobe, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have perused the order passed by the Courts below.

5. It is submitted by Shri D'Costa, the learned Senior Counsel for the petitioner that the Deputy Collector and the Administrative Tribunal have proceeded on the assumption that as if the claim of tenancy set up by the petitioner was accepted by the Court or there was a finding to that effect. It is submitted that although the petitioner filed Special Civil Suit No.26/1989, claiming to be a tenant, the consent terms do not make any reference to petitioner having surrendered his tenancy rights. The learned Senior Counsel was at pains to point out that in clause (a) of the consent terms, the parties had recorded that the petitioner had rendered his services to the Archdiocese of Goa, Daman and Diu, in respect of the suit property and in lieu thereof, the Archdiocese of Goa, Daman and Diu had transferred its rights in respect of plot No.8 admeasuring 893 square metres in favour of the petitioner and the petitioner had surrendered all his rights, title and interest in rest of the property, in favour of the Archdiocese of Goa, Daman and Diu. It is submitted that the respondents were not parties to the said suit and were

mere occupiers of an adjacent land, who were noticed while the mutation entry was accepted by the Awal Karkun. He submits that the respondents cannot justifiably challenge the order of the Awal Karkun as having no right, title or interest in plot No.8. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of **Tulsan Vs. Pyare Lal and others;** (2006)10 SCC 782.

6. The learned Senior Counsel points out that the petitioner had filed yet another Civil Suit being RCS No.67/1992/D against Augusto D'Souza and others, which was also based on the consent decree passed in RCS No.26/1989. It is submitted that the said suit has been decreed on 23/10/2015, directing the restoration of plot No.8 to its original state and of handing over of vacant possession of the encroached area to the petitioner/ plaintiff. It is pointed out that issue no.5 in the said suit was about the consent decree being without jurisdiction and being null and void, which has been answered in the negative. He, therefore, submits that the impugned order cannot be sustained.

7. On the contrary, it is submitted by the learned Counsel for the respondents that the fundamental principle is that a decree passed by the Court without jurisdiction is a nullity and its invalidity can be set up whenever and wherever it is sought to be enforced and/ or relied upon, including any collateral proceedings. Reliance is placed in this regard on the decision of the Supreme Court in the case of **Kiran Singh and others Vs. Chaman Paswan and others**; AIR 1954 SC 340(1). The learned Counsel submits that the petitioner, having gone to the Civil Court with a case of tenancy under the Act, cannot thereafter resile from the same and the parties cannot be permitted to record consent terms. The learned Counsel submits that it is the basic principle that whatever cannot be done directly cannot be permitted to be achieved indirectly. The learned Counsel was at pains to point out that the consent decree, being either collusive or against the provisions of the Act, was *void-ab-initio* and the order of the Awal Karkun, which was solely based on the consent decree, has rightly been set aside.

8. I have given my anxious consideration to the rival circumstances and the submissions made and I do not find that the impugned orders can be sustained.

9. The material facts are not in dispute. The question is about their interpretation and the consequent legal effect. Indisputably, the order of the Awal Karkun is based on the consent decree passed in RCS No.26/1989. Admittedly, the petitioner had filed the said suit on the premise that he was tenant of the property bearing Survey No.56/2 of Village Panchayat of Chimbél. It is further a matter of record that the petitioner and the Archdiocese of Goa, Daman and Diu (landlord) arrived at consent terms and the suit was decided on the basis of the same. The parties, *inter alia*, agreed that the petitioner had rendered certain services to the Archdiocese of Goa, Daman and Diu in respect of the land, in lieu of which the right, title and interest in respect of plot no.8 were transferred in favour of the petitioner, while the petitioner surrendered his rights in respect of

the remaining land in favour of the Archdiocese of Goa, Daman and Diu. These consent terms were arrived at before the competent Court, recording any finding that indeed the petitioner was a tenant of the Archdiocese of Goa, Daman and Diu in respect of the subject land. That apart, it needs to be mentioned that the order by which the application for Temporary Injunction was rejected by the Trial Court in RCS No.67/1992 and which was confirmed by the Appellate Court, was the subject matter of challenge before this Court in W.P.No.312/2002, which was decided on 15/02/2003. This Court had noticed that the application for Temporary Injunction was rejected holding that prima facie, the consent decree was a nullity as the subject matter of the suit was outside the purview of the jurisdiction of the Civil Court. This Court, disagreeing with the said proposition, has allowed the petition, thereby granting Temporary Injunction. Subsequently, RCS No.67/1992 has been decreed on 23/10/2015. A perusal of the said judgment shows that issue no.5 therein was whether the consent decree was without jurisdiction and was null and void, which has been answered in the negative. The Trial

Court has in para 75 found that while passing the consent decree, the Court has not decided any tenancy claim. There can be no manner of dispute with the proposition that a decree, without jurisdiction and which is a nullity, can be resisted whenever and wherever it is relied upon and even in collateral proceedings and to that extent, no fault can be found with the reasoning articulated by the learned Deputy Collector and the Administrative Tribunal. However, the question is whether the decree was indeed a nullity as having been passed in contravention of the provisions of the Act. As noticed earlier, the Civil Court has not decided any issue as to tenancy or its surrender and if that be so, it is difficult to accept that the decree can be branded as a nullity as being passed in breach of the provisions of the Act. The learned Senior Counsel for the petitioner is right in submitting that the learned Deputy Collector and the learned Administrative Tribunal have proceeded on the premise, as if there was a finding about existence of a tenancy.

10. In so far as the question of registration of

the consent decree is concerned, indisputably, the same has been registered in the year 2001. Thus, as of today, the said ground would not be available for questioning the order passed by the Awal Karkun. It is trite that the Court may take note of the subsequent developments, if any, which have a bearing on the matter in dispute.

11. For these reasons, the petition is allowed. The impugned orders passed by the Deputy Collector and Administrative Tribunal are hereby set aside and the order passed by the Awal Karkun dated 05/06/1992 is restored.

12. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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