

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO. 539 OF 2016****IN****WRIT PETITION NO. 479/2016**

Mr. Fernando V. Da Silva De Ataide
E Tieve De Noronha, rep By Att.
Mr. Rui M.de Sa Pinto and 4 Ors.
Rua Jacinto Nunes, Lisboa, Portugal. **Petitioners.**

Versus

State Of Goa, Thr.
The Chief Secretary And 6 Ors.
Secretariat, Alto Porvorim, Bardez Goa. **Respondents.**

Mr. Rafiq Dada, and Mr. J. E. Coelho Pereira, Senior Advocates with
Mr. S. Karpe, Mr. V. Korgaonkar, Mr. Shiraj Salelkar, Advocates for the
petitioners.

Mr. S. D. Lotlikar, Advocate General & Mr. D. Lawande, Additional
Advocate General with Mr. P. Dangui, Additional Government
Advocate for the respondents No.1 and 3.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 09/08/2016.

ORAL ORDER : (PER F.M. REIS, J.)

Heard Mr. Rafiq Dada, and Mr. J. E. Coelho Pereira, Learned
Senior Advocates appearing for the petitioners and Mr. S. D. Lotlikar,
learned Advocate General appearing for the respondents No.1 and 3.

2. In the above writ petition, Rule has already been issued and the matter is posted for final hearing. While issuing the Rule, there were directions issued that any further action taken by the respondents based on the impugned Act under challenge, would be subject to any further orders that may be passed in the above writ petition. Thereafter, the Respondent No.3 - Collector of North Goa was directed to bring to the notice of such claimants about the pendency of the above petition and that any action so taken shall be subject to the result of the above petition.

3. The petitioners have, thereafter, filed an application, *inter alia*, contending that in the meanwhile, based on the impugned Act, the respondents have started the process of issuing Sanads in respect of the subject land. Reply was, thereafter, filed by the respondents, *inter alia*, disputing the contentions raised by the petitioners and the challenge to the constitutional validity of the impugned Act. The matter was heard only for grant of interim relief as sought by the petitioners.

4. Mr. Rafiq Dada, learned Senior Counsel appearing for the petitioners has pointed out that a constitutional challenge is raised in

the above petition to the Goa (Abolition of Proprietorships, Titles and Grants of Lands) Act, 2014 (the “Act” for short). The learned Senior Counsel has pointed out that the petitioners' proprietary rights in respect of the subject-property are sought to be extinguished by the subject Act. The learned Senior Counsel has raised a challenge to the competence of the State Government in enacting such legislation as, according to him, the subject Act would come within Entry 42, of List III (Concurrent List), of Seventh Schedule. The learned Senior Counsel further points out that the impugned Act would, in fact, result in acquiring the proprietary rights of the petitioners which are covered by Entry 42, of List III (Concurrent List), of Seventh Schedule. The learned Senior Counsel further points out that the respondents' contention that the legislation is within Entry 18 of List-II of the Seventh Schedule which deals with lands, has no substance. The learned Senior Counsel further points out that as the field has already been occupied, the question of the State Government having any competence in enacting such a Legislation is totally erroneous. The learned Senior Counsel has, thereafter, taken us through Article 254 of the Constitution to point out that the State Government cannot enact such Legislation. The learned Senior Counsel has also taken us through the provisions of Article 31A of the Constitution to point that

there is no assent of the President of India for such a Legislation. The learned Senior Counsel further points out that the petitioners have attributed *malafides* to the respondents for enacting such Legislation. It is also pointed out that the petitioners are proprietors/owners of the subject property and the subject Act would itself lead to confiscation of the property of the petitioners, without payment of any reasonable compensation. The learned Senior Counsel further submits that in the meanwhile, in case the respondents are permitted to implement the Act unabatedly, it would result in grave injustice and irretrievable loss to the petitioners and, as such, it would be appropriate to stay the operation of the Act. The learned Senior Counsel further points out that operation of the said Act would, in fact, even result in a situation where unknown persons and trespassers may own the properties which otherwise belong to the present petitioners. The learned Senior Counsel has, thereafter taken us through the provisions of the said Act to point out that the impugned Act is ultra vires the Constitution and consequently, deserves to be struck down.

5. On the other hand, Mr. S.D. Lotlikar, learned Advocate General has pointed out that the subject Act is constitutionally valid and, as such, the contention of the petitioners has no basis. The

learned Advocate General further points out that even assuming that there is no assent of the President to the Act, that by itself does not vitiate the Act and the question of examining this aspect, at this stage, would not be justified. The learned Advocate General also points out that there is a presumption about the constitutional validity of the Act and, as such, unless and until the Act is struck down by this Court, the question of granting any interim relief in favour of the petitioners is not at all justified. The learned Advocate General has further pointed out that the Notification which is presently issued is with regard to “homestead” as defined under the Act and, as such, there can be no irreparable injury to the petitioners as, according to him, admittedly such persons are occupying houses in the subject properties. The learned Advocate General has also taken us through different provisions, namely Articles 31 A, 251, and 254 of the Constitution to point out that there is no repugnancy in the Act enacted by the State Government and, as such, according to him, as the Act has been enacted under Entry 18 of List-II of the Seventh Schedule, the contention of the petitioners, on that count, deserves to be rejected. The learned Advocate General further points out that presently, the State Government is only intending to proceed to examine allotment of lands to homesteads and the cultivating tenants. The learned Advocate

General further points out that apart from examining the “homestead” and “cultivating tenant” as defined under the said Act, the State Government does not intend to implement the impugned Act, at the moment.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. The contention raised by the petitioners to justify that the impugned Act is ultra vires the Constitution, are matters which will have to be examined at the final hearing of the petition. We are only examining the matter on a narrow compass as to whether any interim relief can be granted in the present petition. There can be no doubt that there is a presumption of constitutional validity of an enactment by the Legislature. This, by itself, does not mean that the Court cannot grant any interim relief, in the facts and circumstances of a particular case. Taking note of the contention of the learned Advocate General that presently the impugned Act would be implemented only to homesteads and the cultivating tenants, we find that as far as the remaining lands are concerned, as the respondents/State Government do not intend to implement the subject Act at the moment, we shall now examine as to what interim relief can be granted as far as homesteads and the

cultivating tenants are concerned.

7. At this stage, the contention of Mr. Rafiq Dada, learned Senior Counsel appearing for the petitioners cannot, prima facie, be lightly brushed aside. Looking to the documents produced on records, it prima facie reveals that the proprietary rights of the subject property which were recognized in favour of the petitioners are sought to be extinguished. No doubt, this aspect has been seriously disputed by the learned Advocate General appearing for the State, which is also a matter which will have to be gone into at the time of hearing of the above petition. Prima facie there were no subsistence rights of the Government in the properties which were owned by the petitioners. The contention of the petitioners that the exercise by the Government would lead to confiscation of the land on payment of illusory compensation, would also have to be examined at the final hearing.

8. Be that as it may, considering the rival contentions, in the present case, the fact remains that there are provisions which have been pointed out to us, which can lead to a situation whereby a totally new situation may arise at the time of the final disposal of the petition. In such circumstances, we have already passed an ad interim order to

the effect that any further action by the respondents would be subject to the final result of the petition. We have also issued directions to the effect that the concerned Collector shall bring to the notice of the alleged claimants about the pendency of the petition and that any such action taken would be subject to the result of the above petition. To that extent, any prejudice to the petitioners would stand protected. But, however, it would be appropriate in the interest of justice that considering that the respondents contend that based on the subject Act, the properties stand vested in the State Government and on the basis of the alleged Sanads which may be issued by the Collector-respondent No.3 to the homesteads and the cultivating tenants, besides the said ad interim directions referred to above, there should be some safeguards to ensure that the homesteads and the cultivating tenants do not create a situation which would be irreversible.

9. In such circumstances, we find that, in the interest of justice, besides the ad interim directions issued in the Order dated 13th June, 2016, the respondent No.3-Collector shall ensure that the alleged claimants i.e. homesteads and the cultivating tenants, strictly satisfy the definition as provided in the subject Act and shall further impose a condition that such claimants shall not create any third party rights in

respect of the subject Sanads which would be issued by the Collector-respondent No.3, nor change the nature of such property, nor exceed the existing plinth area or reconstruct the existing houses, except repairs, until further orders. It is made clear that the observations made herein above are tentative and any action taken by the respondents based on the subject Act shall be subject to further orders which may be passed in the above petition.

The application stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.