

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 769 OF 2010**

(1) STATE OF GOA

(Through the Chief Secretary,
Porvorim, Bardez-Goa.

(2) THE DIRECTORATE OF LAND SURVEY

Through its Director,
Panaji – Goa

.... Petitioners

Versus

(1) SHRI EUGENIO ROY ANTAO

(2) SHRI SANE A. M. G. ANTAO

both residents of Betalbatim,
Salcete, Goa.

.... Respondents.

Mr. Arun Talaulikar, Additional Government Advocate for the
Petitioner.

Mr. Valmiki Menezes, Advocate for Respondents no. 1 and 2.

Coram:- F. M. REIS, J.

Date:- 6th December, 2016

ORAL JUDGMENT:

Heard Shri Arun Talaulikar, learned Additional Government Advocate appearing for the Petitioners and Shri Valmiki Menezes, learned Counsel appearing for the Respondents.

2. The challenge in the above petition is to the disposal of the appeal preferred by the Respondents under the provisions of Section 14(3) of the Land Revenue Code.

3. Briefly, it is the case of the Petitioners that in the survey records

prepared under the Land Revenue Code, 1968, the name of the State Government was shown in the occupant's column. The Respondents filed objections under section 14(2) of the Land Revenue Code contending that the property belongs to them. The Learned Dy. Collector, by order dated 25.06.2001 has on the basis of the claim of the Respondents that a permanent afforamento was granted in favour of the Respondents by the erstwhile Regime way back in the year 1940, came to the conclusion that the property belongs to the Respondents. But, however, directed that the name of the Respondents be included in the other rights column in the revenue records under the Land Revenue Code.

4. Being aggrieved by the said order the Respondents preferred an appeal before the learned Administrative Tribunal which came to be disposed of by an Order dated 12.08.2009. The learned Tribunal, after minutely examining the material produced by the Respondents and essentially the Land Registration documents, came to the conclusion that full ownership of the property vested in the Respondents and, consequently, the name of the Respondents came to be added in the occupant's column of the Records of Rights. Being aggrieved by the said order, the Petitioners have filed the present Writ Petition.

5. Mr. Arun Talaulikar, learned Additional Government Advocate appearing for the Petitioners, has vehemently argued that the claim of the Respondents is based on an Alvara and, as such, according to him the Petitioners continue to be the owners of the property and at the most, the Respondents can be considered to be Class -II occupants of the

subject property. Learned Counsel further submits that there is no material produced by the Respondents to show that they had, in fact, paid 20 annuities for the transfer of the land in favour of the Respondents. Learned Counsel further submits that unless and until such payment is made, the question of the Respondents claiming that they have full ownership cannot arise. Learned Counsel has further brought to my notice the notification issued by the State Government in the year 2007 to, inter alia, point out that persons holding land based on Alvara are to be treated as Class -II occupants under the Land Revenue Code. Learned Counsel has thereafter taken me through the Impugned Order of the learned Tribunal to point out that the learned Tribunal has misconstrued the relevant provisions of law and failed to examine Rule 15 of the Disposal of Government Lands by Grant to point out that there are restrictions in the transfer of properties by such grants which the Respondents have breached as a portion of the properties has been transferred by the Respondents. Learned Counsel, as such, submits that the Impugned order passed by the learned Tribunal deserves to be quashed and set aside.

6. On the other hand, Mr. Valmiki Menezes, the learned Counsel appearing for the Respondents no. 1 and 2 has raised a preliminary objection as to the maintainability of the above Writ Petition as according to him, in terms of Section 14(4) of the Land Revenue Code, the Petitioner, if aggrieved with the order of the Tribunal, had an alternate remedy to prefer an appeal by filing a suit before the Civil Court within one year. Learned Counsel further points out that the Petitioners have approached this Court only in the year 2009. Learned

Counsel further points out that the Petitioners had an alternate remedy to challenge the Impugned Order which was more efficacious to the parties as the evidence could be re-appreciated and, as such, the question of interference in the Impugned Order under Article 227 of the Constitution of India would not at all be justified. Learned Counsel further pointed out that the subject property belongs to the Respondents as after the original grant of the land in favour of the predecessors of the Respondents the 20 annuities payable by the Petitioners were duly paid by the predecessors which can be confirmed from the records of the documents. Learned Counsel has thereafter taken me through the averments in the Land Registration documents wherein it is clearly recorded that such amount has been duly paid by the title holder of the subject property. Learned Counsel further pointed out that based on such payments a perpetual grant is in favour of the Respondent and, as such, the property came to be registered in the Land Registration Office. Learned Counsel further submits that as the property has been registered in the Land Registration Office the effect in law would flow in favour of the Respondents in terms of Article 953 of the Portuguese Civil Code as inscription of the property in favour of a person implies transfer of title and possession in his favour. Learned Counsel, as such, submits that the learned Tribunal has minutely examined the evidence on record and has rightly come to the conclusion that the ownership of the property now vested in favour of the Respondents and as such, the name of the Respondents is shown in the occupant's column of the Revenue Records. Learned Counsel has thereafter taken me through the Judgment of the authorities below wherein the fact that the title of the property is vested in the Respondents has been conclusively accepted. It

is also pointed out that the question of taking support of the notification of 2007 would not arise at all as, according to him, the grant in favour of the Respondents does not come within the purview of the Land Revenue Code, 1969. Learned Counsel as such pointed out that the petition be accordingly rejected._

7. I have duly considered the rival contentions and with the assistance of the learned Counsel, I have also gone through the records.

8. With regard to the first preliminary objection raised by Mr. Valmiki Menezes, learned Counsel appearing for the Petitioner, I find that Section 14(4) of the Land Revenue Code reads thus:

"Section 14.

4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties."

On plain reading of the said provision it cannot be disputed that the Petitioners had an alternate remedy to challenge the impugned judgment passed by the learned Tribunal by filing a Civil Suit within one year. The Petitioners as such had an efficacious remedy to challenge the impugned judgment which was more appropriate in the circumstances of the case as in such proceedings even the evidence would have to be recorded. On this ground alone, interference in the impugned order

under Article 227 of the Constitution of India would not at all be justified.

9. Be that as it may, with regard to the contention of Mr. Arun Talaulikar, learned Additional Government Advocate, that there is no material produced by the Respondents to contend that 20 annuities have been duly paid to the State Government, on going through the records from the Land Registration Office, there is a clear averment therein that such annuities have in fact been paid. Apart from that, the averments also record that receipt of such payment issued by the then Government was produced before the concerned authority. In such circumstances, on the basis of such overwhelming evidence on record that payment was made, the consequences in law would flow in favour of the Respondents. Once amounts have been paid and accepted by the State Government, whole title and ownership of the property would vest in favour of such person. In such circumstances, the contention of Mr. Talaulikar, learned Additional Government Advocate, that the State Government continue to be owners of the property cannot be accepted.

10. In such circumstances, I find on reading the definition of 'occupation' in terms of the Land Revenue Code that, the Judgment passed by the learned Tribunal cannot be said to be contrary to the provisions of law. Learned Tribunal has rightly appreciated the evidence on record to come to the conclusion that the Respondents are entitled to be recorded as 'occupants' in the Records of Rights. The contention of Mr. Talaulikar based on the notification issued in 2007 cannot be accepted two grounds:

(i) Such contention was not raised before the learned Tribunal. (ii)

Apart from that, the notification would not apply, in any event, to a case wherein the property has already been vested in the predecessor-title holder, upon the payment of 20 annuities as provided in law.

11. As such, I find that there is no merit in the above petition. The petition stands, accordingly, rejected. Rules stands discharged.

F. M. REIS, J.

msr.