

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 9 OF 2011

SHRI. CHANDRAKANT RAMA GAONKAR AND
ANR., ... Petitioners

Versus

COMMUNIDADE OF COLOMBA REP. BY ITS
ATTORNEY SHRI. VENKATESH PRABHU
DESSAI AND 6 ORS., ... Respondents

Mr. J. Coelho Pereira, Senior Advocate with Ms. J. Godinho,
Advocate for the Petitioners.
Ms. Ankita Kamat, Advocate for the Respondent Nos. 1 and 3.

Coram:- C. V. BHADANG, J.

Date:- 19th September 2017

ORAL ORDER:

Heard Shri Pereira, the learned Senior Counsel for the petitioners and Ms. Kamat, the learned Counsel for the respondent nos. 1 and 3 for some time. This petition can be disposed of on a short count.

2. The brief facts are that the petitioners had approached the learned Mamlatdar with an application under Section 7, read with Section 8A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short), for declaring them as tenants in respect of the subject land, which is belonging to the respondent-Communidade of Colomba. The petitioners filed an application under Section 8A (3) of the Act, seeking temporary

injunction on two counts, namely, (i) restraining the respondent-Communidade on acting on the notice of auction dated 16.01.2004 and (ii) for restraining the respondents from interfering or disturbing the peaceful possession and enjoyment of the petitioners over the subject land. It appears that the learned Mamlatdar by an order dated 22.01.2004 granted ad-interim injunction, which was made absolute by an order dated 17.03.2004. The respondent-Communidade unsuccessfully challenged the same in appeal before the learned Deputy Collector, who dismissed the appeal on 06.12.2005. The respondent-Communidade challenged the same before the learned Administrative Tribunal in Tenancy Revision Application No. 6/2006. The learned Administrative Tribunal by the impugned judgment and order dated 05.10.2010 has allowed the revision application, thereby dismissing the application for temporary injunction filed by the petitioners. Hence, this petition.

3. Shri Pereira, the learned Senior Counsel for the petitioners, on instructions, has restricted the challenge to the part refusing injunction, restraining the Comunidade on acting on the basis of the notice of auction dated 16.01.2004. He submits that in the event, the Comunidade auctions the suit property, it would create third party interest and it would further create complications in the matter.

4. The learned Counsel for the respondent nos. 1 and 3 states that the Comunidade, in any event, cannot act on the basis of the notice of auction issued way back in the year 2004 and if at all, the Comunidade intends to auction the land, it will have to issue a public notice afresh. The learned Counsel also points out that the main application under Section 7, read with Section 8A of the Act is part heard in which, recording of the evidence has started. She therefore submits that no case for interference is made out.

5. Shri Pereira, the learned Senior Counsel for the petitioners has submitted that the scope of the revision application before the Administrative Tribunal was limited and it was a challenge in principle and the Administrative Tribunal could not have set aside the concurrent findings of fact, recorded by the learned Mamlatdar and the learned Deputy Collector.

6. On hearing the learned Counsel for the parties, I find that it would not be necessary to go into the merits of the matter, in as much as, the application under Section 7, read with Section 8A of the Act is still pending before the learned Mamlatdar in which, trial has commenced. The limited challenge on behalf of the petitioners is to the order refusing stay on the notice of auction dated 16.01.2004. In any event, as submitted on behalf of the

respondent-Communidade, if at all, the Comunidade intends to proceed with the auction, it will have to issue a fresh public notice. Thus the relief, which is now sought in my considered view, does not survive. In such circumstances, the petition is disposed of with liberty to the petitioners to seek appropriate relief from the learned Mamlatdar, in the event, if, a fresh auction notice is issued by the Comunidade. Needless to mention that the Mamlatdar shall decide the application under Section 7, read with Section 8A of the Act and an application for interim relief, if filed, without being influenced by the observations contained in the impugned judgment. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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