

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 26 OF 2014

WITH

WRIT PETITION NOS. 735 AND 741 OF 2016

AND

MISC. CIVIL APPLICATION NO. 885 OF 2016

WITH

STAMP NUMBER (APPLN.) NO. 2305 OF 2015

WITH

MISC. CIVIL APPLICATION NOS. 403, 514, 627, 809 OF 2015

AND

MISC. CIVIL APPLICATION NOS. 314 AND 853 OF 2016

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 26 OF 2014

1. St. Anthony's Mundkar and Tenant Association,
a society registered under the Societies
Registration Act, 1960, through its President,
Diago Francis Rodrigues,
Tiracol, Pednem, Goa,
 2. Anthony Mendes, r/o Tiracol Village,
Tiracol, Pednem, Goa.
 3. Goa Foundation, a society registered under
the Societies Registration Act, 1960,
through its Secretary, Dr. Claude Alvares,
Addr: Room 7, Above Mapusa Clinic,
Mapusa-403 507, Goa.
Email id: goafoundation@gmail.com
Tel: 2256479
PAN No: AAAAG0249C
- ... Petitioners.

V e r s u s

1. The Chief Town Planner,
Town and Country Planning Department,
Dempo Towers, Patto, Panaji, Goa.
2. Town and Country Planning Board,
through Member-Secretary,
Dempo Towers, Patto, Panaji, Goa.
3. Goa State Pollution Control Board,

through Member Secretary,
Dempo Towers, Patto, Panaji, Goa.

4. State EIAA,
through its Secretary,
c/o. Goa State Pollution Control Board,
Dempo Towers, Patto, Panaji, Goa.
5. State of Goa through its Chief Secretary,
Secretariat, Porvorim, Goa.
6. Collector (North)
North Goa District Collectorate,
Panaji, Goa.
7. Mamlatdar of Pednem
Pednem, Goa.
8. M/s. Leading Hotels Ltd.,
having office at 573, Road 4,
La Campal, Miramar,
Panaji, Goa.
9. Vincent D'Souza,
r/o Tiracol Village,
Pednem, Goa.
10. Diago Constance D'Souza,
r/o Tiracol Village,
Pednem, Goa.
11. Mrs. Magdalene Pereira,
r/o Tiracol Village,
Pednem, Goa.
12. Mr. Kashinath Surendra Khalap,
R/o. B-502, Kim Towers, Morod
Mapusa, Bardez-Goa.
13. The Village Panchayat of Querim-Tiracol
through its Secretary
Querim, Pernem, Goa. ... Respondents.
14. Camilo D'Souza,
H. No. 40D, Tiracol, Pernem.
and

Deepak Khalap,
r/o Taikalwadi, Mumbai.

... Intervenors.

WITH

WRIT PETITION NO. 735 OF 2016

Shri Kashinath Surendra Khalap
major of agem Indian National
residing at r/o B-502, KIM
Towers, Mapusa, Bardez, Goa.

... Petitioners

V e r s u s

1. State of Goa through its
Chief Secretary, having office at
Secretariat, Porvorim, Goa.
2. The Under Secretary (Revenue)
Government of Goa, having
office at Secretariat, Porvorim,
Goa.
3. Shri Sandip Jaques,
Secretary-cum-Director
CS & CA
Law/Jail Labour/Emp
Government of Andaman &
Nicobar Administration,
having office at Andaman.

... Respondents

INTERVENOR

1. St, Anthony Mundkar and
Tenant Association, A Society
Registered Under the Societies
Registration Act, 1960, through
its President, Diago Francis
Rodrigues, Tiracol,
Pednem, Goa.
2. Anthony Mendes,
R/o Tiracol Village, Tiracol
Pednem, Goa.

3. Goa Foundation, Society
Registered under the Societies
Registration Act, 1960, through
Its Secretary, Dr. Claude Alvares,
Room 7, Above Mapusa Clinic,
Mapusa Goa 403 507, Goa. ... Intervenors

Mr. D. Pangam, Advocate for the Petitioner.
Ms. Amira Razaq, Government Advocate for the Respondent nos. 1 and 2.

WITH

WRIT PETITION NO. 741 OF 2016

M/s. Leading Hotels,
a Company registered under the
Indian Companies Act, 1956,
having office at 573, Road 4,
La Campal, Miramar, Panaji,
Goa represented herein by its
Shri P. Ravi, General Manager
and Authorised representative. ... Petitioners

V e r s u s

1. State of Goa
through its Chief
Secretary, having office
at Secretariat, Porvorim,
Goa.
2. The Under Secretary (Revenue),
Government of Goa, having
office at Secretariat,
Porvorim, Goa.
3. Sandip Jacques
Secretary-cum-Director
CS & CA)
Law/Jail Labour/Emp
Government of Andaman &
Nicobar Administration,
having office at Andaman. ... Respondents

INTERVENOR

1. St, Anthony Mundkar and
Tenant Association, A Society
Registered Under the Societies
Registration Act, 1960, through
its President, Diago Francis
Rodrigues, Tiracol,
Pednem, Goa.
2. Anthony Mendes,
R/o Tiracol Village, Tiracol
Pednem, Goa.
3. Goa Foundation, Society
Registered under the Societies
Registration Act, 1960, through
Its Secretary, Dr. Claude Alvares,
Room 7, Above Mapusa Clinic,
Mapusa Goa 403 507, Goa.
Email id : goafoundation@gmail.com
Tel : 2256479
PAN NO AAAAGO249C

... Intervenor

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. R. Shivolker, Addl. Government
Advocate for the Respondent nos. 1 and 2.

WITH

MISC. CIVIL APPLICATION NO. 885 OF 2016

Goa Foundation,
Through Its Secretary,
Dr. Claude Alvares.

... Applicants

V e r s u s

State of Goa,
Through its Chief Secretary &
two others.

... Respondents

Ms. Norma Alvares, Advocate for the Applicants.

Ms. Amira Razaq, Government Advocate for the Respondent nos. 1 and 2.

WITH

STAMP NUMBER (APPLN.) 2305 OF 2015

1 M/s. Leading Hotels,
Represented By Its Mr. P. Ravi.
Office At 5732, Road 4, La Campal,
Miramar, Panaji, Goa. ... Appellant.

V e r s u s

1 Sujoy Gupta And Anr.,
A Wing, Campal Trade Centre,
Panaji, Goa. ... Respondent

MISC.CIVIL APPLICATION 403 OF 2015

1 M/s. Leading Hotels,
Represented By Its Mr. P. Ravi.
Office At 573, Road 4, La Campal,
Miramar Panaji, ... Applicant.

V e r s u s

1 St. Anthonys Mundkar And Tenant Association
Through Its President Diago Francis Rodrigues And 2 Ors.
Tiracol, Pednem, Goa. ... Respondent.

MISC.CIVIL APPLICATION 514 OF 2015

1 Mr.floriano Concescao Lobo.
R/o H.no. 173, Pirazona,
Moirra, Bardez, Goa. ... Applicant.

V e r s u s

1 St. Anthonys Mundkar And Tenant
Association And 2 Ors.,
Tiracol,pendem, Goa. Respondent.

MISC.CIVIL APPLICATION 627 OF 2015

1 M/s Leading Hotels Ltd.,
Represented By Shri P. Ravi,
General Manager And Authorised Representatives
Having Office At 573, Road 4,
La Campal Miramar, Panaji, Goa., ... Applicant

V e r s u s

1 St.anthony's Mundkar And Tenant Association,
Thr.its President Diago Francis Rodrigues And 2 Ors.,
Tiracol, Pednem, Goa. ... Respondent

MISC.CIVIL APPLICATION 809 OF 2015

1 St.anthonys Mundkar And Tenant Association
Through Its President Diago Francis Rodrigues And 2 Ors.,
Tiracol,pendem, Goa. ... Applicant

V e r s u s

1 The Chief Town Planner Town And
Country Planning Dept. And 13 Ors.,
Dempo Towers, Patto, Panaji, Goa. ... Respondents.

MISC.CIVIL APPLICATION 314 OF 2016

1 Goa Foundation, Through Its Secretary,
Dr. Claude Alvares.
Room 7, Above Mapusa Clinic, Mapusa ... Applicant

V e r s u s

1 The Chief Town Planner Town And
Country Planning Dept. And 13 Ors.
Dempo Towers, Patto, Panaji, Goa. ... Respondents.

A N D

MISC.CIVIL APPLICATION 853 OF 2016

1 Shri. Deepak Khalap.,
Taikaslwadi, Mumbai

... Applicant

V e r s u s

1 St. Anthonys Mundkar And Tenant Association
Through Its President Diago Francis Rodrigues
And 2 Ors.
Tiracol, Pendem, Goa.

.. Respondents.

Ms. Norma Alvares, Advocate for the Petitioners and Applicants in Misc. Civil Application Nos. 809 of 2015 and 314 of 2016.

Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui, Addl. Government Advocate for the Respondent nos. 1 to 7.

Mr. Shivan Desai, Advocate for the Respondent no. 8 and Applicant in STA no. 2305 of 2015 and MCA no. 403 of 2015.

Mr. D. Pangam, Advocate for the Respondent no. 12.

Mr. Ashwin D. Bhobe and Ms. Shradha Bhobe, Advocates for the Respondent no. 13.

Mr. J. P. Supekar, Advocate for the Applicants in MCA No. 627 of 2015.

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

Reserved for Judgment on : **21st February, 2017**

Judgment Pronounced on : **31st March, 2017**

JUDGMENT (Per F. M. Reis, J.)

Heard Ms. Norma Alvares, learned Counsel appearing for the Petitioners, Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 1 to 7, Mr. Shivan Desai, learned Counsel appearing for the Respondent no. 8, Mr. D. Pangam, learned Counsel appearing for the

Respondent no. 12 and Mr. A. D. Bhobe, learned Counsel appearing for the Respondent no. 13.

2. The above Public Interest Litigation filed by the Petitioners, inter alia, seeks to quash and set aside all the negative declaration and tenancy free certificates related to the subject properties as enumerated in annexure 9C as well as to quash and set aside the approval of Town and Country Board dated 09.12.11 and 25.02.13 and 09.04.13 and 10.04.13 as well as the Conversion Sanad dated 30.12.11 and 03.05.13 together with the Pollution Control Board consent dated 10.02.14. It is further prayed to quash and set aside the Sale Deeds conveying the property surveyed under nos. 2/5 (part), 2/8, 2/11, 2/13, 2/13, 2/18(part), 2/21, 2/23, 2/29, 2/30, 2/31, 2/32, 2/33, 2/34, 2/35, 2/37, 2/38, 2/39, 2/40, 2/41, 2/42, 2/43, 2/44, 2/45, 2/47, 2/48, 2/50, 2/51, 2/52, 2/53, 2/54, 2/55, 2/57, 2/58 (part), 2/59, 2/60, 2/61, 2/62, 2/63 (part), 2/64, 2/65, 2/66, 2/67, 2/68, 2/69, 2/70, 2/71, 2/72, 2/73, 2/74, 2/75, 2/76 (part), 2/77 (part), 2/79, 2/81 (part), 2/84 (part), 3/1, 3/2, 3/9, 3/11, 3/13, 3/14, 3/17, 3/18, 3/20, 3/21, 4/6, 5/9, 5/12, 6/1, 6/4, 6/11, 6/14, 6/17, 6/21, 6/22, 6/33, 6/39, 6/41, 6/43, 8/1, 8/3, 8/4, 8/5, 8/6, 8/7, 8/9, 8/10, 8/11, 8/13, 8/15, 8/16, 8/17, 8/19, 8/21, 8/22, 9/3, 9/4, 9/6, 9/8, 9/9, 9/11, 9/12, 9/13, 9/15, 9/16, 9/17, 10/2, 11/2, 11/6, 11/7, 11/10, 11/12, 11/13, 11/14, 12/1, 12/2, 12/6, 12/7, 12/9, 12/11, 12/12, 12/15, 13/1, 13/3, 13/4, 14/1, 14/4, 14/5, 14/6 and 15/6 to the Respondent no. 8.

3. Briefly, the contentions raised in the above Public Interest Litigation as claimed by the Petitioners are that the Goa Agricultural Tenancy Act came into force in the year 1964 which, inter alia, provides security to tenants. It is further their case that after the Land Revenue Code came into force, a survey exercise was initiated to prepare the Survey Records in terms of the Revenue Code. The Fifth Amendment to the Agricultural Tenancy Act came into force in the year 1976, inter alia, provides that every tenant who personally cultivated the land on 08.10.1976 which is a Tillers Day is deemed to be the owner of such land. The records also reveal that the said Fifth Amendment was struck down by the Judicial Commissioner's Court as being unconstitutional and a challenge to such Judgment was upheld by the Apex Court and, as such, the Fifth Amendment to the Agricultural Tenancy Act was held to be valid. Somewhere in the year 1991, the Goa Land Use (Regulation) Act was passed and came into force with retrospective effect from 02.11.1990. It is further inter alia provided that the Agricultural Tenancy lands whereby the ownership was conveyed in favour of the tenants by a legal fiction were prohibited from being used for any non-agricultural purpose subject to the provisions stipulated therein. It is further the contention of the Petitioners that tenants from Tiracol applied to the Mamlatdar to determine the payment of the purchase price in terms of the Fifth Amendment somewhere in the year 1991. The notices were issued by the Mamlatdar of Pernem under Section 18C of the Tenancy Act to landlords and all interested parties and by Judgments and Orders passed therein, the

purchase price was determined and, consequently, the certificate of purchase was issued to the tenants who had paid the purchase price into the Government Treasury. It is further their case that 15 years thereafter somewhere on 14.06.2006, a Company named Magus Estate & Hotels Pvt. Ltd. appears at Tiracol and signed a Deed of Indenture with the members of the Khalap Family-Respondent no. 8 for sale of the property surveyed under nos. 2-16 of Tiracol Village and ultimately the Sale Deeds were executed on 26.10.2007, 14.11.2007, 26.02.2008, 12.08.2008 and 08.04.2010. It appears that several Tiracol residents even gave the Power of Attorney to Sandip Ganguly and Ryan Semelhago both persons associated with the Leading Hotels-Respondent no. 8. It is further contended that the said Khalap Family who include the Respondent no. 12, filed Civil Suits for deleting the tenants names from the records and also for a permanent injunction against them. In such proceedings, the defendants who were the tenants of the subject property admitted the claims of the Khalap Family through the said Power of Attorney Holders. An application was also filed in subsequent cases before the Mamlatdar's Court to delete the names of the tenants wherein the said persons who were tenants admitted such claims. The learned Judge by 16 Judgments passed on 15.01.2008, 22 Judgments passed on 12.02.2008 and 28 Judgments passed on 11.01.2011, had decreed the Suits filed by the said Khalap Family. In the meanwhile, the learned Mamlatdar's Court also disposed of the cases pertaining to deletion of tenants' name and, consequently, corrections were carried out in the Survey Records.

Thereafter, the Respondent no. 8 applied for tenancy free certificates to the Deputy Collector wherein the said Shri Sandip Ganguly represented the Leading Hotels and Ryan Semelhago represented the Tenants who agreed with the case of the Respondent no. 8. In such proceedings, the Talathi claimed that there were no tenants in the subject property. Thereafter, it is contended by the Petitioners that on 23.05.2011, the Respondent no. 8 applied to the Collector for Conversion of 4,89,975 square metres of Agricultural Land to non-agricultural use. The learned Collector sends a letter for inquiry to the Town and Country Planning Authorities and the Mamlatdar and the Forest Department. A report was submitted on 15.06.2011 that the properties were tenanted on 02.11.1990 and the tenants names were deleted after 1990. The Petitioner no. 1 thereafter on 30.06.2011 raised objections to the Conversion of the land and, thereafter, on 08.09.2011, the Respondent no. 8 applied to the Collector for Conversion of 1,43,475 square metres of the agricultural land to non-agricultural use. The learned Mamlatdar also made a report that there were tenants on the original Form I and XIV whose names have been deleted and the Government conveyed to the Town Planning Authority, its approval of setting up of Golf Course Resort (GCR) in an area of 7,70,000 square metres. The Forest Department also sent an NOC for conversion except for survey no. 15/1 and recommends that the clause be inserted in the Sanad that some portion of Survey nos. 4 and 5 be maintained under vegetation. Ultimately, the Town Planning issued the NOC for conversion of 40,000 square metres

only subject to verification of tenancy status by the competent authority. The learned Collector seeks for a report from the Deputy Collector on the Tenancy Inquiry Report and tenancy free Judgments were produced by Respondent no. 8. The Government approved Respondent no. 8's revised plan for setting up a Golf Course Resort of 9,90,000 square metres and Respondent no. 8 sought for conversion somewhere on 18.03.2013. The Mamlatdar on 05.04.2013 submitted a report that there were tenants on the original Form I and XIV whose names had been deleted. The Town Planning issued NOC for Conversion and the Respondent no. 8 on 24.04.2013, requested for Sanad for an area of 1,32,559 square metres which was issued on 03.05.2013 for an area of 1,32,559 square metres. The Pollution Control Board grants consent on 10.02.2014. Thereafter, it is contended by the Petitioners that inquiries were made and the Petitioner no. 3 writes three different representations objecting to the whole exercise of granting of such permissions to the Respondent no. 8. After the above PIL was filed and Rule was issued, an interim Order was passed on 29.07.2015, inter alia, restraining Respondent no. 8 from constructing in the subject land except for two sample villas. The State Government issued a notification and notifies a fact finding Authority headed by Mr. Sandip Jacques with all powers of the Mamlatdar of Agricultural Land Tribunal under the Goa, Daman and Diu Agricultural Tenancy Act, somewhere on 02.09.2015 where the following points were determined to be enquired into :

a) Whether the lands in question as referred in

the PILWP 26/2014 were agricultural lands and/or tenanted lands, and

b) Whether the allegations regarding Tenancy made in the Petition as regards tenanted lands are true and correct,

c) Whether the lands are, or are not, tenanted lands.

d) Whether any person was, or was not, a tenant of such lands ?

An inquiry was conducted for a period of four months and a report was submitted to the Respondent no. 5 and thereafter filed an affidavit, inter alia, stating that such fact finding inquiry came to the conclusion that the subject lands were tenanted and proceedings with regards to tenancy were pending and it would not be appropriate for him to conclude the tenancy issue and, as such, the State Government took a decision not to accept the report.

4. The Respondent no. 8 filed their affidavit in reply, inter alia, raising preliminary objections stating that the proceedings is malafide and gross abuse of the process of the Court and that it is in fact an attempt to agitate the private animus and personal interest of the Petitioners and that there was a suppression of facts which disentitled the Petitioners from any relief. It is also pointed out that the facts reveal that the members of the Petitioner no. 1 Association and the Respondent no. 8 and the original

owners had for the last several years been involved in highly contumacious proceedings which are being strenuously contested. It is also pointed out that the Petitioner in a mala fide attempt are trying to enforce their private claims before this Court in a Public Interest Litigation. It is also pointed out that the Petitioners has deliberately suppressed the material facts and, as such, the Petition deserves to be rejected. It is further contended that the Petitioner no. 2 is a member of the Petitioner no. 1 Association and is a legal heir of Santan Joakim Mendes and proceedings involving him have already been adverted and despite of this, a totally false case has been put up in the present Petition. It is further submitted that there are disputed questions of facts in the present Petition which cannot be decided in a Petition under Article 226 of the Constitution of India. The Respondents have also enumerated different complaints lodged by the Respondent no. 8 against different Members of the Associations of the Petitioner no. 1 as well as Petitioner no. 2. It is also pointed out that the President of Petitioner no. 1- Association had built up an illegal structure in CRZ-1 area and appropriate proceedings have been initiated by the concerned Petitioners by invoking the provisions of the Special Statute. The Respondent no. 8 has also pointed out that large number of proceedings in connection with the disputed tenancies were pending before different fora including the Tenancy Revision Applications which had been filed by the members of the Petitioner no. 1- Association. It also stated that in all such cases, the purchase certificates were obtained ex parte without giving a proper name to the land owners.

The Respondent no. 8 has also shown a nexus between the Petitioner no. 1-Association and the proceedings which are pending in connection with the disputed cases of tenancies. The Respondent no. 8 has also placed on record in the affidavit the pending Re-opening Applications filed by the members of the Petitioner no.1-Association. It is further pointed out that the issue of Golf Course project proposed by the Respondent no. 8 was considered and was resolved the Panchayat shall oppose the same and take appropriate steps to stall the same. It is also stated that on 11.09.2012, a complaint raising similar issues was raised and the same was in-warded to the Goa State Pollution Control Board. All these averments are made to show that the Petition is barred by laches. It is further pointed out that the Deputy Collector in compliance with a Writ Petition of this Court passed a resolution conducting the necessary inquiry and after complying with all the requisite formalities, the learned Deputy Collector issued the tenancy free certificates. It is further pointed out that the Conversion Sanad dated 30.12.2011 was issued after complying with all the legal formalities. The Respondent no. 8 has also placed on record the written permissions obtained in connection with the subject project. The allegations made by the Petitioners in the Petition have been specifically denied and the claim of tenancy by the Petitioners and the members of the Petitioner no. 1-Association have been seriously disputed and pointed out that the purchase certificate no longer survives and are a nullity as they were obtained exparte.

5. The Petitioner no. 3 filed a rejoinder. It is seriously disputed that the Petitioners filed the above Petition for collateral purposes and pointed out that complaints were lodged after the Petitioner No. 1-Association was formed. It is further pointed out that persons are also residing in the plots of the subject property for decades and even carrying out construction therein. It is further submitted that the Petitioners have not adverted to the individual proceedings adopted by various persons as this Petition is not about restoration of tenanted lands erstwhile tenants nor is it filed either on behalf of those who are in possession of their lands or on behalf of those who have surrendered their lands. It is contended that there is no legal nexus between the various proceedings listed in detail by the Respondent no. 8 and the issues raised in the present Petition as the issues raised are totally different. It is pointed out that the subject lands are tenanted and acts intended by the Respondent no. 8 are contrary to the provisions of law and affect tenanted agricultural lands in Tiracol Village.

6. An affidavit in sur-rejoinder was also filed by Respondent no. 8 disputing the contentions raised in the affidavit in reply.

7. An additional affidavit was filed by the Respondent no. 8 to inter alia place on record the complaints lodged by them against the members of the Petitioner no. 1-Association.

8. The Respondent no. 13 also filed an affidavit being the Secretary of the Village Panchayat. He has stated that there has been no development in Keri and Tiracol Villages and there is hardly any tourism and economic development in the said Villages. It is also pointed out that the project of the Respondent no. 8 was considered in the context of overall benefits and development of the Village. It is also pointed out that the benefits which were going to be set up by the Respondent no. 8 would benefit the Village.

9. The Respondent no. 8 also filed an additional affidavit thereafter dated 20.07.2015 disputing the averments made in the additional affidavit filed by the Petitioners.

10. The Respondent no. 11 also filed an affidavit and pointed out that all the properties mentioned in para 3 of the Affidavit are agricultural properties and her late father in law was an agricultural tenant of all the said properties.

11. The Respondent no. 5 has also filed an affidavit wherein it is pointed out that whether a land is a tenanted one or not is a disputed question of fact and, as such, the present Petition at the instance of the Petitioners deserves to be rejected.

12. The Respondent no. 8 filed an additional affidavit dated 28.07.2015, inter alia, contending that Respondent no. 8 and the Original owners followed the due process of law by obtaining in principle approval from the competent authorities.

13. Ms. Norma Alvares, learned Counsel appearing for the Petitioners, has submitted that the primary intention of filing the above Petition is to ensure that agricultural tenancy lands are not divested to non agricultural use in total disregard to the Goa Land Use Act which prohibits the user of tenanted lands for any other purpose other than agriculture. Learned Counsel further pointed out that it is an admitted position that the duly promulgated Survey Records in Form I and XIV stood in the names of tenants which included the members of the Petition no. 1-Association. Learned Counsel further pointed out that after due notifications in terms of the Agricultural Tenancy Act, the learned Mamlatdar who were the competent authorities issued Sanads/Purchase Certificates in favour of the tenants of the subject properties at Tiracol Village. Learned Counsel further submits that the Respondent no. 8 have by an illegal expedient along with the Original owners being the Khalap family, embarked to defeat the provisions of law in getting the names deleted by initiating vexatious and frivolous proceedings before the Forums without jurisdiction. Learned Counsel has thereafter taken us through some of the Judgments passed by the Civil Court to point out that the suits which were filed by the Khalap

family, inter alia, for a Negative Declaration against the respective tenants of the property were disposed on the basis of an admission by the duly constituted Attorneys who were in fact the personnel of the Respondent no. 8. Learned Counsel further pointed out that the Respondent no. 8 has indulged in a legal malice in proceeding to delete the names of even persons who had Purchase Certificates in their favour. Learned Counsel further pointed out that even the Sale Deeds executed by the Khalap family were executed much before the illegal expedient indulged upon by the Respondent no. 8 and the Original owners of the subject property. Learned Counsel further pointed out that as the tenants were deemed owners of the subject property, the Sale Deed executed in favour of the Respondent no. 8 are a nullity in law and cannot create any legal effects in favour of the Respondent no. 8. Learned Counsel has extensively taken us through the proceedings before the learned Mamlatdar initiated by the Predecessor-in-title of the Respondent no. 8 on a false plea that such alleged owners were not intimated in the Purchase proceedings. Learned Counsel further submits that the application for condonation of delay were mostly granted without any contest and it appears that the whole exercise by the Respondent no. 8 is a device to defraud the statutory proceedings. Learned Counsel has thereafter pointed out that one of the Members of the Khalap family was in fact present at one of the Purchase proceedings and admitted that the persons were tenants of the subject property. Learned Counsel further submits that ironically such portion of the property was the subject matter of the Sale

Deed which was sought to be deleted only after the present proceedings were filed by the Petitioners herein. Learned Counsel further pointed out that the Tenancy Free Orders obtained from the Deputy Collector are contrary to the factual position that the subject lands were tenanted properties. Learned Counsel has thereafter taken us through the said Orders to point out that the learned Deputy Collector had not even held an inquiry nor proceeded in a manner as directed by this Court. Learned Counsel further pointed out that it was incumbent upon the Deputy Collector to examine whether as on 1990, the subject lands were tenanted de'hors of the orders obtained from the Civil Court or the Mamlatdar's Court which are tainted and obtained by fraud and collusion. Learned Counsel further submits that in such circumstances, the Town Planning Authorities were not justified to grant the permissions to carry out development of the property when the records conclusively established that the lands were tenanted. Learned Counsel further pointed out that the learned Collector has also granted the Conversion Sanad overlooking the report of the Mamlatdar which clearly stated that there were tenants shown in the Survey Records in the year 1990 and their names were deleted only thereafter. It is further pointed out that though the Predecessor-in-title of the Respondent no. 8 are claiming to be the owners of the property, there is no explanation to show in what manner the lands were being enjoyed by them since the year 1964 up to the period when they purported to execute the disputed Sale Deeds. Learned Counsel has thereafter extensively taken us through the different Orders produced on record as well as the fact finding

inquiry initiated by the State Government to point out that the contention of the Petitioners that the land is tenanted has been duly accepted by the Inquiry Officer. Learned Counsel further pointed out that the Petitioners are not raising individual claims of any of the tenants but the public interest involved is that the Respondent no. 8 and the Original owners are indulging in an illegal expedient with malafide notice to defraud the statute and claim that the lands are not tenanted when, according to the Petitioners, the lands are in fact tenanted and, as such, are protected from change of user in terms of the provisions of the Goa Land Use Act. Learned Counsel thereafter has taken us through the Orders passed and pointed out that the Orders passed by the learned Mamlatdar are challenged before the Appellate Forums and proceedings are still pending and, as such, according to the learned Counsel unless all such proceedings attained finality, the question of the statutory authorities granting any development permission to the Respondent no. 8 is totally unjustified and without any basis. Learned Counsel as such pointed out that the Petitioners are entitled for the reliefs sought in the above Petition.

14. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 1 to 7, has submitted that a right to a tenancy is a creation by a contract between the Landlord and the tenant. It is further pointed out that when the Civil Court has come to the conclusion and the parties have accepted that there is no tenancy in the subject property, the

question of this Court examining whether the lands are tenanted or not would not at all be justified. Learned Advocate General further submits that as the competent authorities have taken a view that the lands are not tenanted, the question of any interference by this Court in a Petition under Article 226 of the Constitution of India would not at all be justified. It is further pointed out that the report of the fact finding inquiry has not been accepted by the State Government and, as such, it is impermissible for the Petitioners to rely upon such inquiry report to claim that the lands are tenanted. Learned Advocate General further pointed out that the authorities have on the basis of the report submitted by the Talathi and the Mamlatdar have passed an Order that the subject lands are tenant free. Learned Advocate General further pointed out that in case this Court finds that the procedure adopted by the Respondent no.8 is not in accordance with law, it is always open for the Court to direct the competent authority to re-examine the matter as to the alleged claim of tenancy by the Petitioners. It is further pointed out that the Petitioner no. 2 is claiming to be a tenant of an area of 120000 square metres without any material or document to substantiate his claim of tenancy. Learned Advocate General further pointed out that all the claims of tenancy are fictitious and without any basis and, as such, the Petition deserves to be rejected.

15. Shri Shivan Desai, learned Counsel appearing for the Respondent no. 8, has seriously disputed the contention of the learned

Counsel appearing for the Petitioners. Learned Counsel at the outset pointed out that the Petition itself is not maintainable and it deserves to be rejected for suppression of material facts and for gross delay in approaching the Court. Learned Counsel further pointed out that though some of the Members of the Petitioner no. 1 were involved and aware about the subject transaction from the year 2008, the Petition has been filed in the year 2014 which is grossly barred by laches. Learned Counsel further pointed out that there is no piece of material produced on record to substantiate the claim of tenancy by the Petitioners. Learned Counsel further pointed out that the Petitioners are only banking upon the promulgated Survey Records when such records only have a presumptive value and cannot by itself create a tenancy in favour of the Members of the Petitioner no. 1. Learned Counsel further pointed out that at the time when the Civil Court passed negative declaration, the Judgment passed by this Court was in operation wherein it was held that the Civil Court has jurisdiction to grant a negative declaration. Learned Counsel further pointed out that the Judgment of the Apex Court to the contrary overruling the Judgment of this Court was passed only in the year 2010-11 and, as such, the question of claiming that such Judgments are a nullity is totally farfetched. Learned Counsel further pointed out that the claim of the Petitioners that the proceedings initiated by the Respondent no. 8 and the Original owners was only a mockery of the judicial process, is totally misplaced and without any foundation and deserves to be rejected outright. Learned Counsel further pointed out that the tenancy is created by

a contract between the parties and in fact the Petitioners have not produced any material in support of their claim of tenancy nor any contract has been produced nor the particulars of such tenancy specified in the Petition. Learned Counsel has thereafter taken us extensively through the proceedings which were initiated by the Predecessor-in-title of the Respondent no. 8. to point out that the whole exercise in law has been duly complied with and followed by the Respondent no. 8 whilst taking steps to delete the names which have been erroneously included in the tenants column of the Survey Records. Learned Counsel further pointed out that the Petition is filed for collateral purposes and, in fact, when proceedings are pending before the authorities under the Agricultural Tenancy Act, it is not open to the Petitioners to scuttle such proceedings and approach this Court for the reliefs sought. Learned Counsel further pointed out that the claim of tenancy is a disputed question of fact and the allegations of fraud and collusion are seriously disputed by the Respondent no. 8 and this disputed question of fact cannot be decided in a Petition under Article 226 of the Constitution of India. Learned Counsel has also brought to our notice the Judgments passed by the Division Bench of this Court in similar matters wherein the parties were relegated to file proper proceedings to get their claim adjudicated and pointed out that the Petition itself is an abuse to the process of Court and deserves to be rejected. Learned Counsel further pointed out that the Respondent no. 8 has invested a substantial amount for the purpose of development of the subject property and on the basis of

baseless claim put forward by the Petitioners, it would not at all be justified for this Court to stop the development being carried out after obtaining all the requisite permissions from the statutory authorities. Learned Counsel further pointed out that the Petition be accordingly rejected.

16. We have duly considered the rival contentions. With the assistance of the learned Counsel we have also gone extensively through the records and the different Judgments and Orders in connection with the subject property. Before we consider the matter on merits, we shall first deal with the contention of the learned Counsel appearing for Respondent no. 8 that the Petition is barred by laches. The records, prima facie, clearly reveal that though it is contended that Orders from the Civil Court to seek deletion of the names and Negative Declarations were initiated since the year 2008, nevertheless, the fact remains that until the filing of the above Public Interest Litigation, no development was carried out by the private Respondents. In any event, in the Judgment of the Apex Court reported in **(2012) 3 SCC 619** in the case of **Manohar Joshi vs. State of Maharashtra & Ors.**, it has been inter alia observed at Para 147 thus :

“147. The demolition was objected to by the appellants amongst others on the ground that there was delay and laches in moving the petitions to the High Court. It was submitted that if the petitioners were vigilant, they could have seen the building coming up from November

1996 onwards, but the petitions have been filed only in August 1998. According to them by the time the petitions were filed, the tenants' wing was complete, and even the other wing of Sundew Apartments was nearing completion. The Division Bench has rejected this submission in para 220 of its judgment by observing that merely because a construction is coming up, a citizen cannot assume that it is illegal or that the developer had obtained the construction permission in a manner contrary to law. Besides, when the petitioner in Writ Petition No. 4434 of 1998 (who is a Corporator) sought the information about the construction, he was informed by PMC that the same could not be made available under the relevant rules, though no such rules were shown to the Division Bench. The High Court has on the other hand noted that as a matter of fact even the construction of the building meant for the tenants was actually said to have commenced in March 1997 only. Hence, in the facts of the present case it could not be said that the writ petitions suffered on account of delay or laches, and therefore the High Court was right in rejecting that contention."

17. The basic contentions of the learned Counsel appearing for the Petitioners are that the land which was the subject matter of the Sale Deeds executed in favour of the Respondent no. 8 were tenanted properties and, as

such, consequently, the restrictions provided under The Goa Land Use (Regulations) Act of 1991 would apply. Section 2 of the said Act reads thus :

“Section 2 – Regulation of use of land.-
Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agriculture.”

18. The law recognizes that land which is vested in a tenant in terms of the Agricultural Tenancy Act 1964 cannot be used for any purpose other than agriculture. It is contended by the learned Counsel appearing for the Petitioners that the only concern in the present Petition is the public interest and not whether any of the member of the Petitioner no. 1-Association have any private interest in the subject property. It is also the contention of Ms. Norma Alvares, learned Counsel appearing for the Petitioners, that the Petitioners are not concerned with the private interest, if any, of the persons who were shown as tenants in the promulgated Survey Records.

19. The broad outline of the contentions raised in the present Petition are that to circumvent the restrictions imposed under the Goa Land

Use Act and the Agricultural Tenancy Act and in connivance with the Officials and by committing fraud of the provisions of the said Acts, an expedient was resorted to by the Respondent no. 8 with the Landlords on one side and the Tenants of the property by misrepresentation and suppressing various factual facts, Orders were obtained from the Civil Court and the Mamlatdar to delete the names of the tenants shown in the Survey Records. It is the contentions of the Petitioners that the NOC granted by the Town Planning Department is for an area of 9,90,000 square metres from the property surveyed under no. 2 to 13 of Tiracol Village subject to the tenancy issue being examined by the competent authority. It is further the contention that as the subject land has restrictions in terms of the Goa Land Use Act, the question of granting any NOC from the Collector to use the land for any purpose other than agriculture is illegal and has no legal sanction. The claim of the Petitioners that the land is tenanted has been seriously disputed by the Respondent nos. 8, 12 and the Intervenor. But the fact remains that when the Survey Records were conducted after the Land Revenue Code of 1969 came into force, the Survey Records had the names of tenants in the Tenant's column. The duly promulgated Survey Records which were promulgated somewhere in the mid 70's also disclosed the names of tenants in the Tenant's Column. The Agricultural Tenancy Act Fifth Amendment came into force somewhere in the year 1976 and by legal fiction, the tenants became deemed owners of such properties subject to the payment of the purchase price. In terms of the Agricultural Tenancy Act, the Petitioners

claim that notices were issued in the Government Gazette as well as in the newspapers of the persons deemed to be owners of such agricultural land and due formalities in terms thereof were followed and sanads were granted in favour of the persons shown as tenants in the Tenant's Columns of the Survey Records. It would be appropriate to note that in view of the amendment to the Agricultural Tenancy Act, the record of rights under the Land Revenue Code are to be read into the Agricultural Tenancy Act. In such circumstances, the presumption under the Agricultural Tenancy Act would have to be drawn that the persons shown in the Record of Rights are tenants of the subject property. No doubt, such presumption is rebuttable and it is open to the Landlord to establish that there was no tenancy in existence at any point of time specially during the relevant period when the Fifth Amendment to the Agricultural Tenancy Act came into force. The claim of the Petitioners as well as the private Respondent nos. 8, 12 and the Intervenor would revolve upon whether the persons shown as tenants in the promulgated Survey Records are tenants or not of the subject properties. As this aspect is seriously disputed by the Respondent nos. 8 and the original owners, such disputed question of fact cannot be decided in a Petition under Article 226 of the Constitution of India. The Petitioners and other concerned persons would have to resort to measures in accordance with law to establish their rival contentions so that a conclusive decision is arrived at as to whether the subject land was tenanted as on the date of the Fifth Amendment to the Agricultural Tenancy Act came into force. In case the

tenancies are established, no doubt, the disputed Sale Deeds executed in favour of the Respondent no. 8 would have no legal effect as such sales are clearly barred and, in any event, would be by person non domino. But, what is relevant to be considered is that the competent forum would have to conclusively decide the claim of the Petitioners that the subject land was tenanted in terms of the Agricultural Tenancy Act, 1964. Mr. Shivan Desai, learned Counsel appearing for the Respondent no. 8, however, relies upon the declaratory Decrees/Orders obtained from the Civil Court in the year 2008 and 2011 in respect of some sub-divisions of the subject property to the effect that the persons shown in the Survey Records are not tenants of such properties. The learned Counsel has also brought to our notice the negative declaration issued by the learned Mamlatdar in that regard and pointed out even Appeals preferred challenging the purchase certificates issued in the year 1993 were allowed. The Orders relied upon by the learned Counsel appearing for the Respondent no. 8 of the Civil Court are substantially on the basis of admission of the Defendants therein whose ancestors are shown to be tenants and cultivators in the Survey Records. Mere admission does not obliterate the rights of deemed ownership in terms of the Fifth Amendment of the Agricultural Tenancy Act. The fact that Purchase Certificates were already in place in some cases has not been brought to the notice of the concerned Court. The circumstances in which the names of such persons were recorded in the cultivators column has also not been explained. In such circumstances, what would be material to consider is whether the private

Respondent no. 8 and the original owners have indulged upon an illegal expedient to circumvent the provisions of the Agricultural Tenancy Act and the Goa Land Use Act to fraudulently claim that the subject properties are not tenanted. Learned Counsel appearing for the Respondent no. 8 has pointed out that there are no particulars of fraud alleged in the Petition but what would be material is to consider whether the admitted facts as disclosed from the records could, prima facie, show that the parties wanted to circumvent the provisions of law to proceed with the development in the land which could otherwise be used only for agriculture as claimed by the Petitioners to be a tenanted land. In case the concerned authorities find that the whole exercise carried out by Respondent no. 8 is a fraud on the statute, the Orders obtained in such proceedings would stand vitiated as they cannot defeat the provisions of law which impose a restriction from user of land for any purpose other than agriculture.

20. In such circumstances, besides what the parties say or admit, it is the duty of the concerned authorities as notified under the Agricultural Tenancy Act, to apply its mind before granting a relief which may result in a situation which would defeat the rights reserved in public interest. It has to be borne in mind that such Orders would have legal consequences and will govern the rights of the parties to the tenancy rights and, as such, the claims would have to be viewed in a proper prospective. In the present case, the records reveal the orders obtained by the Respondent no. 8 or the original

owners are based on admissions of the persons who are shown to be tenants in the Record of Rights. The records also reveal that a substantial amount was paid to such persons so as to facilitate the Respondent no.8 to obtain such Orders. The records also disclose that a Power Of Attorney was executed by such persons in favour of the representatives of the Respondent no. 8. This is coupled with the fact that such attorneys had admitted the claim of the Respondent no. 8 and/or the original owners of the property. The cumulative effect of such facts has to be examined to ascertain whether the whole exercise carried out was essentially to circumvent the provisions of law which would govern the rights of the parties and the public interest involved to ensure that tenanted lands which have been vested on the tenant are not used for any purpose other than for agriculture. The statement made in contravention of the facts whether made by one or both the contracting parties, cannot alter the truth of the situation or cure the lacuna of the consequences of withholding relevant and correct information from the concerned authorities to obtain such orders. The fact that the person shown as tenants had appeared before the authorities or Courts through their Attorneys and agreed with the claim put forward by the Respondent no. 8 and/or the original owners without demur cannot obliterate or nullify the fraud committed on the statute.

21. In the present Petition, we are not dealing with the alleged fraud committed on private rights between the Respondent no. 8 and the original

owners on one side and the person shown as tenants on the other side. What we are concerned is whether there has been a fraud in public law and the consequences on the public interest on account of such colourable action by the parties. The Apex Court in a Judgment reported in **2005(7) SCC 605** in the case of ***Bhaurao Dagdu Paralkar vs State of Maharashtra & Ors.*** has observed at Para 12 thus :

“.....

But “fraud” in public law is not the same as “fraud” in private law. Nor can the ingredients, which establish “fraud” in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State for Home Deptt.* that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation of statutory law. “Fraud” in relation to the statute must be a colourable transaction to evade the provisions of a statute.

“ ‘If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.’ Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the

provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensure that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See *Shrisht Dhawan v. Shaw Bros.* SCC p. 554, para 20.)"

22. From the forgoing observations, it is clear that if an Order or Judgment is obtained in a colourable exercise to defeat the provisions of the statute, it cannot be said to be a Judgment and Order in law and the same is rendered a nullity. The Court of Law will not countenance any attempt which

may be made to extend the operation of the act to something else which is quite foreign to its object and beyond its scope. A party cannot in mala fide exercise of the legal process indulge in an illegal expedient to defeat the objects of the statute which has imposed restrictions, in public interest, to preserve agricultural lands. Invoking the jurisdiction of the Court by stating incorrect facts and feigning ignorance of the true facts, thereby obtaining decrees, would be wholly inequitable to confer a benefit on a party who is a beneficiary thereof. The Courts and Authorities have to realise that powers and jurisdiction bestowed upon such forums are to be exercised in Public Trust while discharging statutory functions. The rights which have been reserved for the benefit of the public in maintaining the lands vested in a tenant, not to be used for any purpose other than agriculture, are to be protected and the Courts being guardians of all such rights, play a crucial role in enforcing such rights as elaborated in law. The State Government as such is expected to ensure that the provisions of Section 2 of the Goa Land Use Act are strictly complied with and the lands vested in a tenant are not allowed to be divested for any purpose other than agriculture. There has to be a corroborative effort on the part of the Petitioners, the State or Public Authorities and the Courts to secure the observance of the statutory rights, benefits and privileges as provided by law. In such circumstances, the concerned authorities would have to examine the Orders obtained by the Respondent no. 8 and ascertain whether the aim was essentially to defeat the provisions of the statute. In the present case, the concerned authorities

would have to consider on its own merits whether the subject lands were vested in a tenant as on the date the Goa Land Use Act came into force. It would also be pertinent to note that there are a number of Judgments obtained from the Civil Court in 2008 and 2011. Apparently, most of such Judgments were passed after the Apex Court had taken a view that the Mamlatdar has jurisdiction to grant a Negative Declaration of tenants. The Apex Court in the Judgment reported in **(2009) 4 SCC 183** in the case of ***Madhumati Atchut Parab vs. Rajaram V. Parab & Ors.***, has observed at Paras 10 and 11 thus :

“10. On a consideration of the objects and reasons of the Goa Tenancy Act and the relevant provisions of the same, we are of the view that although Section 7 of the Goa Tenancy Act provides that where any question arises whether any person is or should be deemed to be a tenant, the Mamlatdar shall, after holding an enquiry, decide such question, even then, the negative declaration namely, “such a person is/was not a tenant” should also be dealt with by the Mamlatdar for the reasons stated hereinafter.

11. The expression in Section 7 of the Act as to the determination of the fact that whether a persons “is or was a tenant”, would also include the question whether the person is not a tenant, and after conducting an enquiry the Mamlatdar shall decide the same. Therefore the question

which was raised is that, if the Mamlatdar after conducting an enquiry comes to the conclusion that the person concerned is/was not a tenant, he is bound to mention the same. Therefore, it does also amount to a declaration to the effect that the person is not a tenant. Accordingly, it results in a negative declaration.”

23. In this connection, the Division Bench of this Court, where one of us (Shri F. M. Reis, J.), was a party in **Writ Petition no. 294/2008** in the case of **Pilerne Citizens and others vs The State of Goa & Ors** and reported in **2010(6) BCR 594** has observed at Paras 19, 20 and 32 thus :

“19. Thus, the legal position which emerges from the provisions of the Tenancy Act can be summarised as under :

(a) Exclusive jurisdiction is conferred on the Mamlatdar to decide the issue whether a person is a tenant under the Tenancy Act or not. Exclusive jurisdiction to decide whether any land is used for agricultural purpose is also conferred on the Mamlatdar.

(b) The jurisdiction of the Civil Court and other authorities is expressly ousted to decide the issue of tenancy, which is required to be decided under section 7 of the Tenancy Act.

(c) The definition of tenant is very wide and any person lawfully cultivating any land belonging to another person on or after 1st July, 1962 but before the commencement of the Tenancy Act shall be deemed to be a tenant

provided other conditions in section 4 are satisfied. Therefore, any person lawfully cultivating the land of another person becomes a tenant irrespective of the fact whether there was any lease executed in favour of such a person.

(d) There cannot be a termination of tenancy or surrender of tenancy except in accordance with sections 9, 10 and 11 of the Tenancy Act. No tenant of any land shall be terminated or evicted save as provided under Tenancy Act.

(e) In case of failure of the tenant to purchase the land in accordance with section 18-A read with section 18-C, the land does not revert to the landlord and it has to be resumed by the State for allotment to various persons named in sub-section (2) of section 18-K.

(f) Section 55 of the Tenancy Act declares lands owned by a Comunidade to be owned by a single person and not by the individual members and to that extent Code of Comunidade stands amended.

(g) No exception has been carved out under the provisions of the Tenancy Act in respect of the lands held by a Comunidade and section 55 of the Tenancy Act makes it clear that a Comunidade is on par with any other individual landlord of the agricultural land.

20. Another material enactment is the Land Use Act, which is specifically enacted for

regulation of use of agricultural land for non-agricultural purposes. Section 2 of the Land Use Act, which came into force on 2nd November, 1990 reads thus :

2. Regulation of use of land. - Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agriculture.

The section starts with non obstante clause and the section has been given overriding effect over the provisions of the Goa, Daman and Diu Town Planning Act, 1974 and the Goa Land Revenue Code. The section not only prevents a tenant in whom the land is vested under the Tenancy Act from using the land for any purpose other than agriculture, but even a person other than such a tenant is not entitled to use the land for any purpose other than agriculture. The restriction imposed is qua the land which is vested under section 18-A of the Tenancy Act. In view of section 3, the said embargo is lifted only after acquisition of the agricultural land under the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894). The legal effect of the section 2

is that once there is a vesting of a land under section 18-A of the Tenancy Act in a tenant, the land cannot be used for any purpose other than agriculture and even under the provisions of Town Planning Act and Land Revenue Code, the change of user cannot be allowed. Change of user is allowed only when there is vesting as a consequence of acquisition under the said Act of 1894. It is obvious that the Land Use Act has been enacted to encourage agriculture and to prevent the agricultural lands from being used for any non-agricultural purpose. The intention of Legislature appears to be that once the land vests in a tenant under section 18-A of the Tenancy Act, under no circumstances user thereof can be permitted to be changed except after acquisition under the said Act of 1894. The object of the Legislature seems to be that such tenanted agricultural lands have to be preserved as an agricultural lands and, therefore, the salutary provision of section 2 has been enacted. Such a land vested in a tenant cannot be transferred to any third party without prior permission of the Mamlatdar.

.....

.....

32. In a public interest litigation what is brought to our notice is that a tenanted land admeasuring more than one lac square meters has been allowed to be used for non-agricultural

use completely contrary to section 2 of the Land Use Act. We are making no adjudication on the rights of either Hadfadkar or Nazareth. We are really shocked to note the modus operandi adopted to defeat the provisions of the Tenancy Act, which is a legislation as a measure of agrarian reforms as well as the provisions of beneficial legislation like Land Use Act. Section 2 of the Land Use Act has been given overriding effect over the provisions of not only the Land Revenue Code but also for the provisions of Town Planning Act. Once the land vests in a tenant under the Tenancy Act, no person can use the said land for any purpose other than the agricultural use. This Court cannot be a silent spectator to the exercise of jurisdiction by the Civil Court and by the Administrative Tribunal, which was not vested in them. This Court cannot allow the provisions of beneficial legislations being circumvented in this fashion. The order of the Administrative Tribunal sanctioning the compromise and the consent decree of the Civil Court are without jurisdiction and non est. Secondly, the order of the disposal of the Revision Application No. 24/2001 on the basis of such compromise is also null and void. The aforesaid two orders and the decree of the Civil Court will have to be ignored. It is contended before us that there is no specific challenge in the writ petition to the said orders and the

decree. However, there is a prayer for transferring the land to the Government in accordance with the provisions of the Tenancy Act on account of illegal transfer by the tenant. Moreover, the issue of legality and validity of the said orders very much arises in the Suo Motu petition. As stated earlier, this Court cannot permit the parties to defeat the provisions of law by adopting such modus operandi and to use the said lands for non-agricultural purposes which could have been lawfully used only for agriculture. In the case of (Balvant N. Viswamitra Vs. Yadav Sadashiv Mule)⁴, 2004 DGLS (soft) 495 : (2004)8 S.C.C. 706, the Apex Court held thus:

In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.”

24. The Division Bench of this Court in another Judgment passed in ***Writ Petition no. 291/2000*** dated 05.09.2000 in the case of ***Kamat Construction Pvt. Ltd. & anr. vs. Deputy Collector & SDO & Ors.***, has observed at Para 11 thus :

“11. The Petitioners may have their own case. It is possible for them to satisfy the authority concerned that the land concerned was one where there was no agricultural tenant. It is open for them to satisfy the authority i.e. the Deputy Collector an Sub-Divisional Officer concerned and that would be in the fitness of the case. We are, therefore, of the view that the authority should hear the Petitioners and they will be at liberty to place all documents, and the authority will examine whether there was any tenancy on the date on which the Goa Land Use (Regulation) Act, 1991 came into force, and whether any illegal conversion has taken place. Thereafter, necessary order will be passed. It will be for the authority to decide the representations of the Petitioners as well as of other persons who are similarly situated. Representations will be decided on merit. The authority shall endeavour to hear and decide the representations expeditiously and preferably within three months from the date of receiving them. The request of Shri Usgaonkar, learned Advocate that the construction be permitted in the meanwhile is not entertained”

25. On the basis of the said directions of this Court, it appears that the Respondent no. 8 moved the Deputy Collector to obtain Tenancy Free Certificate. On perusal of such Orders, they are primarily on the basis of concession by the persons shown in the Tenant's Column of the Survey Records who were otherwise apparently paid some considerations by the Respondent no. 8. The duly promulgated Survey Records though prepared under the Land Revenue Code are to be read in to the Agricultural Tenancy Act in view of the amendment to the Rules. Section 7 of the Agricultural Tenancy Act, inter alia, provides that in any inquiry of tenancy, the Mamlatdar shall presume that any statement as to the existence of a right of tenancy in a record of rights prepared in the prescribed manner is true. By a Notification bearing no. 1/1/93-RD issued in exercise of powers conferred by Sections 54 and 61 of the said Agricultural Tenancy Act of 1964, the Goa, Daman and Diu Agricultural Tenancy (Revenue Survey and Record of Rights) Rules of 1967, came to be amended whereby a proviso has been inserted to Rule 51 which reads thus :

“Provided that all surveys made and maintained and record of rights prepared and prescribed under the Goa Land Revenue Code, 1968 (Act 9 of 1969) and the rules framed thereunder shall be deemed to be surveys made and maintained and the record of rights prepared and prescribed under the provisions of these rules.”

The said proviso clearly provides that the record of rights prepared under Land Revenue Code would have to be read into the proviso under the Agricultural Tenancy Act, 1964.

26. In the present case, in the duly promulgated Survey Records the names of tenants figured and even Purchase Certificates by the Mamlatdar on the date when the Goa Land Use Act came into force. In the background of such factual matrix, the manner in which the names of such persons have been deleted would have to be examined in the context of the principles as enumerated herein above and considered. The obligation of the Deputy Collector though has no jurisdiction to decide the issue of tenancy in terms of the said Act of 1964, is to examine whether as on the date the Goa Land Use Act came into force, the land vested in the tenants in terms of the Agricultural Tenancy Act. Merely on the basis of concession or Orders which are alleged to be vitiated, cannot be the sole basis to be considered by the learned Deputy Collector whilst issuing such Tenancy Free Certificates. The concerned parties would have to produce cogent evidence to establish their respective claims and the learned Deputy Collector would have to consider upon inquiry whether in fact the land had vested in a tenant as on the date the Goa Land Use Act came into force.

27. The Deputy Collector, as such, would have to examine as observed herein whether the orders obtained by the Respondent no. 8 to

delete the names of the persons shown in the tenant's column are by playing a fraud on a statute, which would make such Orders a nullity. This will naturally depend on whether the subject property was tenanted as on the date the Fifth Amendment to the Agricultural Tenancy Act, came into force. In such circumstances, we find that the Deputy Collector without examining all these aspects but merely relying upon the Orders obtained based on concession as well as admission of the persons shown as tenants, has proceeded to grant such certificates to the Respondent no. 8. We cannot accept the findings in the said Tenancy Free Certificates and the Court cannot allow the objects of a legislation which is a measure of agrarian reforms as well as a beneficial legislation like the Land Use Act to be defeated if the subject lands are in fact tenanted, which has to be examined on its own merits. In such circumstances, we are of the considered opinion that all the Tenancy Free Certificates obtained by the Respondent no. 8 deserve to be quashed and set aside and the learned Deputy Collector be directed to hold a fresh inquiry in terms of the Judgment passed by this Court in the said Judgment passed in ***Writ Petition no. 291/2000*** in the light of the observations made herein above. The essential aspect to be considered on its own merit is whether the land had vested in the tenants when the Goa Land Use Act came into force and not merely on the basis of the Orders which are alleged to have been obtained by committing fraud on the statute.

28. Mr Shivan Desai, learned Counsel appearing for the Respondent

no. 8, however, is justified to contend that the issue of tenancy and the validity of the Sale Deeds in favour of the Respondent no. 8 cannot be examined in the present Public Interest Petition. The records reveal that proceedings with regard to such rival claims of tenancies are still pending before the competent forums. The Petitioners, if so advised, are at liberty to move the concerned Courts or Authorities to get their claims adjudicated in accordance with law. As such, the claim of tenancy by the Petitioners which is seriously disputed by the Respondent no. 8 as well as the original owners, cannot be decided in the present Writ Petition and the parties are at liberty to get such aspect decided by approaching the competent Forums in accordance with law. All contentions in that regard are left open. Any proceedings which are pending in connection with the rival claims in the subject property would have to be examined by the competent forums in accordance with law. We have not proceeded to consider the rival contentions about the validity or otherwise of the Orders impugned in the present Petition except the Tenancy Free Certificates issued by the learned Deputy Collector as the validity or otherwise of such Orders would depend upon a final adjudication of the claim of the Petitioners that the subject lands were tenanted and, as such, the restrictions imposed under the Goa Land Use Act 1991 would come into operation. All contentions with that regard are left open. As already pointed out herein above, in case such Orders have been obtained by playing a fraud on the statute, no benefit can accrue based on such Orders on the Respondent no. 8 herein.

29. At this stage, by consent of the learned Counsel, it was pointed out by Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 1 to 7, that the Inquiry in terms thereof may be conducted by Mr. Agnelo Fernandes, Deputy Collector of Dharbandora, by having sittings at Mapusa wherein the Petitioners and the Respondents, being interested parties are at liberty to take part in such inquiry and produce the material in respect of their respective stand.

30. The Judgment relied upon by Shri Shivan Desai, learned Counsel appearing for the Respondent no. 8, in ***Writ Petition no. 228 of 2011*** in the case of ***Pilerne Citizens Forum & anr. vs. The State of Goa & Ors.***, would not be applicable to the facts of the present case as the Petitions were examined in the context of delay and laches taking note of the fact that the plot owners had already put up their constructions. In any event, considering the view we propose to take in the present case, the said Judgment would not be applicable to the facts of the present case.

31. The Judgment of the Division Bench of this Court in the case of ***Marvin S. Gonsalves vs. State of Goa*** in ***Writ Petition no. 506, 557 and 577 of 2009 and 657 of 2011***, has been duly considered whilst taking the view in the present case.

32. As already pointed out herein above, the question of examining the validity or otherwise of the Orders obtained by the Respondent no. 8, would not be justified. But, however, whether the exercise indulged upon by the Respondent no. 8 is in accordance with law or a case of fraud on the statute are matters to be considered by the competent forums in accordance with law. But the fact remains, unless a conclusive decision is taken in accordance with the provisions of law on the existence or otherwise of Agricultural Tenancy over the subject land at the time of the enactment of the Goa Land Use Act came into force, it would not be appropriate to change the nature of the property which would result to an irretrievable situation. The Petition is in public interest to protect the lands which are stated to be agricultural, cannot be used for any use other than agriculture. The Respondent no. 8 is in fact changing the nature of the land and desires to use it for non-agricultural purpose. In this context, we find that the impugned Orders passed by the learned Deputy Collector issuing the Tenancy Free Certificates would have to be quashed and set aside and the Deputy Collector would have to consider whether there was land vested on the tenant on the date when the Goa Land Use Act came into force.

33. In view of the above, we pass the following :

ORDER

(1) The Petition is partly allowed.

(2) All the Tenancy Free Certificates obtained from the Deputy Collector in respect of the subject property are quashed and set aside.

(3) Shri Agnelo A. Fernandes, Deputy Collector of Dharbandora, shall proceed to hold an inquiry in terms of the directions issued by this Court in the Judgment passed in ***Writ Petition no. 291/2000*** dated 05.09.2000 and in the light of the observations made herein above within five months from the receipt of the Judgment.

(4) The NOC granted by the Town Planning Authorities as well as the Sanad granted by the Collector, shall be kept in abeyance until the final adjudication/decision as mentioned herein.

(5) The Respondent no. 8 shall not carry out any construction activity in the subject property except what was permitted by the interim Order of this Court dated 29.07.2015, till the time the inquiry is completed by the Deputy Collector in terms of the directions in the present Judgment.

(6) Needless to say, the Petitioners and the private Respondents, if so advised, are at liberty to initiate or proceed with appropriate proceedings in connection with their rival stands over the subject property in accordance with law.

(7) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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