

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1144 of 2016

Shri Satchit Krishna Mandrekar,
 agriculturist, aged 65 years,
 resident of H.N.793
 Deugui Vaddo, Chorao, Tiswadi Goa .. Petitioner

Vs.

1. Vaman Krishna Mandrekar (now deceased)
 through his Legal Representatives
 - a) Smt. Razai Vaman Mandrekar
 - b) Shri Pramod Vaman Mandrekar
 - c) Jyotsna Vaman Mandrekar
 - d) Shri Sidharth Vaman Mandrekar
 - e) Vishwas Vaman Mandrekar
 - f) Navita Vaman Mandrekar,
 all majors residing at Deugui Vaddo
 Chorao, Ilhas, Goa
2. Smt. Lilavati Surya Naik
 (now deceased)
3. Bikaro Narayan Naik (expired)
4. Kashinath Narayan Naik
 (now deceased)
 all three residents of Adan
 Vaddo, Madkai Tonca, Goa
- 4(a) Manik Kashinath Naik
 R/o Adan Vaddo, Madkai,
 Tonca-Ponda, Goa ..
5. Shri Ganasham Narayan Naik (expired)
6. Shri Gangaram Surya Naik
 (now deceased)
 through his legal representatives
- 6(i) Smt. Gangavati Gangaram Naik
- 6(ii) Shri Nambak @ Vyankatesh Gangaram
 Naik
- 6(iii) Shri Nitesh Gangaram Naik

6(iv) Kum Lakshan Gangaram Naik
6(i) to (iv) residing at Adan Vaddo,
Madkai Tonca, Goa

6(v) Shri Shivdas Gangaram Naik
resident of Borim, Ponda Goa

6(vi) Smt. Leena Gaurish Zalmi

6(vii) Gaurish Zalmi
(Now deceased)
both residents of Manaswaddo,
Kundaim, Ponda Goa

6(vii)(a) Kum. Khushi Gaurish Naik, minor,
Resident of Manaswaddo,
Kundaim, Ponda Goa
through her guardian Respondent no.6(vi)

7. Shri Baburai Surya Naik
of full age, resident of Bondirwaddo,
Kundaim, Goa .. Respondents

Shri M. B. D'Costa, Senior Advocate with Ms. K. Betquekar,
Advocate for the petitioner.

Shri A. D. Bhobe, Advocate for the respondent nos.1(a) to 1(d) and
1(f).

CORAM :- NUTAN D. SARDESSAI, J.

Reserved on : 3rd November, 2017

Pronounced on : 20th December, 2017

ORDER :

Heard Shri M. B. D'Costa, the learned Senior Counsel for
the petitioner, who contended that the petitioner had filed an
application for declaration of tenancy styled as that under Section

8A of the Agriculture Tenancy Act. The Mamlatdar and the Deputy Collector both held in favour of the petitioner while the District Court in revision set aside the order passed by the Mamlatdar and confirmed by the Deputy Collector in appeal. He next adverted to the judgment of the Mamlatdar to substantiate his case on the findings given therein and upheld by the Deputy Collector in appeal and submitted that even if a wrong provision of law was cited, the Court was still within its jurisdiction to exercise the powers and the District Court was in error to hold that the Mamlatdar had no jurisdiction. He placed reliance in **Collector of Central Excise, Calcutta Vs. Pradyumna Steel Ltd**, [2003]9 SCC 234]. It was his further contention that the District Court committed a jurisdictional error in setting aside the concurrent findings of facts by the Mamlatdar and the Deputy Collector and in that context, relied in **S. S. Syed Moideen and another Vs. Chakkan Pallialil Pathumma and others**; [(2004)13 SCC 111] and in **Rajaram Totaram Patel Vs. Mahipat Mahadu Patel**, [CDJ 1966 BHC 060]. It was a fit case to exercise jurisdiction under Article 227 of the Constitution of India and reverse the judgment of the District Court in revision.

2. Shri A. D. Bhole, the learned Advocate for the respondent nos.1(a) to 1(d) and 1(f) submitted that the petitioner had moved an application under Section 8A of the Agricultural Tenancy Act

(the Act, for short) before the Mamlatdar and claimed relief against the landlord- the respondents. The Mamlatdar, however, at the final hearing, decided the application under Section 7 of the Act without any opportunity of hearing to the respondents. The scope of Section 7 was to determine the question of tenancy unlike Section 8A, which was distinct and an independent provision for relief in certain cases of threatened wrongful dispossession. He placed reliance in **Smt Palmira Valadares Vs. Inacio Dias**; [1998(1) Goa L Times 220] and submitted that the Mamlatdar ought to have given notice to the respondents before it held in favour of the petitioner, particularly when only the respondent no.6 had given his no objection. The proceedings under Section 8A of the Act was not objected to by the respondents, who had given no objection for the injunction unlike the order of the Mamlatdar, which had given a finding in favour of the petitioner under Section 7 of the Act. On his part, he adverted to the order of the Deputy Collector and District Court in revision and contended that the petitioner sought to change the complexion of the proceedings. No case whatsoever was made out for interference with the order passed by the District Court and the petition had to be dismissed.

3. i have considered their submissions and examined the records of the proceedings apart from the orders passed by the learned Mamlatdar, the learned Deputy Collector and the learned

District Court in revision reversing the concurrent findings of two Courts below and besides examined the proceedings of Sections 7 and 8A of the Act to better appreciate their submissions.

4. Section 7 deals with the question of tenancy, which reads thus:

"7. Question of tenancy.— If any question arises whether any person is a [or was] tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question. ["In any such enquiry, 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 under and in accordance with the provisions of this Act, is true"]."

Section 8A of the said Act deals with the relief in certain cases of threatened wrongful dispossession and contemplates that where any tenant in possession of any land or dwelling house apprehends that he will be dispossessed contrary to the provisions of the Act, may apply in the prescribed manner to the Court for an order safeguarding his right to possession. On a bare reading of these two provisions, it is obvious that the import of the two is distinct and separate, Section 7 dealing with the question of tenancy and Section 8A contemplating relief of injunction in case of threatened wrongful dispossession. However, these provisions have to be construed in the backdrop of the facts of the case and are not to be read in isolation.

5. A cursory perusal of the application made by the petitioner, which is a part of the records would reveal that it was one captioned as that under Section 8A of the Act, in which the petitioner herein had set out at length and in great detail that he was the tenant in peaceful possession and enjoyment of the suit property bearing Survey No.91/9 of village Chorao, that he was paying rent to the landlord from the produce, that the respondent no.7 had a small house but no right or interest whatsoever in the paddy field, that he was in exclusive and peaceful possession and enjoyment of the paddy field as a tenant and further that the respondent no.7 had no right to interfere with his lawful possession as a tenant. In that context, he had sought for the **relief to declare him as a tenant** in respect of the suit paddy field bearing Survey No.91/9 and simultaneously, sought for the restraint order against the respondent no.7 from interfering with the suit paddy field bearing Survey No.91/9. Therefore, on a cursory perusal of this application alongwith the reply filed by the respondent nos.1 to 6, not only had they asserted their ownership on the paddy field bearing Survey No.91/9, but confirmed that the same was being cultivated by the petitioner herein, that the respondent no.7 had no right to interfere in the paddy field and further they had no objection to the grant of injunction in the petitioner's favour.

6. It is another matter that the respondent no.7 had taken a plea that he was in possession and cultivation of the suit paddy field since the coming into force of the Act, that the applicant had no right or title whatsoever in the suit property and prayed for a dismissal thereof. The parties had, thereafter, gone to trial and based on the material at large before her, the learned Mamlatdar had recorded the case of the petitioner and the respondent no.7 as pleaded, considered the evidence led by both the contesting parties and only then come to a finding that the petitioner was a tenant of the paddy field bearing Survey No.91/9 and simultaneously, directed the petitioner not to disturb the possession of the dwelling house of the respondent no.7 located therein based on his restrictive rights. The learned Mamlatdar for that matter in the backdrop of the pleadings was equally seized with the amendment application moved on behalf of the petitioner to amend the subject clause from 8A to an application under Section 7 being a typographical error. The learned Mamlatdar was conscious of the fact that the respondent no.7 had opposed the said application as it tantamounted to changing the nature of the case and on hearing the argument on that point, deemed it necessary to allow the amendment and converted it from an application styled under Section 8A to that under Section 7 of the Act. Hence, the contention of Shri Bhobe, the learned Advocate for the respondent nos.1(a) to 1(d) and 1(f) that the learned Mamlatdar ought to have

given notice to the respondent and/ or that he was unawares is not borne out from the records and does not substantiate his contention in that regard. There is no force in his contention that it was only the respondent no.6, who had given his no objection to the application and not the other respondents, which again is contrary to the records of the case. For that matter, his contention that an application was to be dealt with under Section 7 of the Act for giving an opportunity of hearing to the respondent, cannot be countenanced when the parties were put to notice, the respondent no.7, in particular, had opposed the application and that the finding of the Mamlatdar as apparent from the judgment, proceeded on the basis of the evidence both oral and documentary led before her and hence, there was no element of surprise to the respondents. Moreover, the judgment in **Collector of Central Excise** (supra), reiterating that it is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision of law is by itself not sufficient to invalidate the exercise of that power and supports the contention of Shri D'Costa, the learned Senior Counsel on behalf of the petitioner.

7. The learned Deputy Collector in appeal had examined the order passed by the learned Mamlatdar and on an assessment of the matter, had clearly come to a finding that there was no reason to interfere with the order passed by the learned Mamlatdar and in

that view of the matter dismissed the appeal. It is another matter that Shri Bhobe, the learned Advocate for the respondent nos.1(a) to 1(d) and 1(f) invited attention to the findings of the learned Deputy Collector, who had recorded a finding that the Mamlatdar had no jurisdiction where two persons claimed tenancy. The Deputy Collector held that the Mamlatdar had no jurisdiction to provide relief where two persons claimed to be in threatened possession under Section 8A, but he had jurisdiction to determine the issue under Section 7 of the Act and upon a consideration of Section 58(2) of the Act which prohibits the jurisdiction of civil or criminal Court.

8. The learned District Court however in revision went off at a tangent and disturbed the concurrent findings of fact recorded by the learned Mamlatdar and the learned Deputy Collector and contrary to the records held that the Mamlatdar ought to have given an opportunity to the respondent no.7 to meet the amendment sought for by the petitioner and given an opportunity to the respondent nos.1 to 6 to give their say to the grant of the amendment application converting the original application from that under Section 8A to that under Section 7 of the Act. The learned District Court for that matter ignored the judgment passed by the Courts below clearly holding on a trial that the petitioner had made out a case for tenancy and instead recorded a finding

that the claim of tenancy was based solely on the admission of the landlord and that the person could not be declared as a tenant, which is by admission or concession when the records show otherwise. The learned District Court for that matter for no justifiable reason held that the learned Mamlatdar had committed substantial error in law and jurisdictional error in not giving an opportunity to the respondent no.7 apart from the co-owners of the property to meet the amendment application and resulting in a failure of justice and violation of the principles of natural justice.

9. In **Syed Moideen** (supra), the Apex Court held that the High Court can exercise revisional jurisdiction only where the Tribunal decides the question of law erroneously or fails to decide the question of law at all. Interference with the concurrent findings of fact is not called for. The High Court in revision seriously erred in reappreciating the evidence as if exercising the appellate jurisdiction and hence, the High Court committed serious error in upsetting the concurrent findings of fact recorded by the Rent Tribunal as well as by the Appellate Authority.

10. In **Rajaram Patel** (supra), the Full Bench of the Bombay High Court dealt with the question as to the proper construction of Section 70(b) of the Bombay Tenancy and Agricultural Lands Act and Section 85 thereof. In the brief facts of that case, a suit was

filed by the plaintiffs alleging that the plaintiffs and the sole defendant were co-tenants of the field bearing Survey No.139, but on 20/06/1962, the defendant obstructed the plaintiffs' cultivation contending that he had been declared the purchaser of the field by the Tenancy Court after Tiller's day under the Act. The plaintiffs' case was that the decision to declare the tenant as a purchaser tenant was taken behind their back and without hearing them and they should have been declared purchasers alongwith the defendant. The plaintiffs alleged in the suit that they were in possession and claimed injunction against the defendant restraining him from interfering with the plaintiffs' possession. The defendant on his part alleged that he was the sole tenant and the plaintiffs had no right of appeal. A preliminary issue came to be raised as to whether the Civil Court has jurisdiction to try the suit in view of the provisions of Sections 70 and 85 of the Tenancy Act. The Civil Judge relying on the Division Bench judgment held that Section 70 contemplated a decision by the Revenue Court about the dispute between the landlord and tenant and not between the two persons both of whom claimed to be the owners of tenancy rights and therefore, the case did not fall within the ambit of Section 70(b) and the Civil Court would have jurisdiction to try the suit. Section 70(b) of the Act imposes amongst other a duty on the Mamlatdar to decide whether the person is a tenant or a protected tenant. Section 85(1) provides that no Civil Court shall

have jurisdiction to settle, decide or deal with any question, which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their power of control.

11. In **Rajaram Patel** (supra), The Full Bench was equally concerned with the interpretation of Section 70(b) being a case of a tenant applying for declaration against his landlord that he is a tenant and not where a person who claims that he is a co-tenant alongwith another tenant. The Full Bench observed that considering the function of the Mamlatdar as described in clause (b), to decide whether a person is tenant or a protected tenant", nowhere the Section says at whose instance that issue has to be decided. It did not say it must be decided only if it is raised by the landlord or by a tenant and saw no reason why the issue could not be decided whether raised by a tenant or a landlord or by a co-tenant or any other person.

12. In **Palmira Valadares** (supra), the point which was sought to be raised for determination was whether a suit for permanent injunction filed by a person claiming to be the tenant in respect of a property against another person claiming to be the tenant in respect of the same property would lie before the

Mamlatdar under the Agricultural Tenancy Act or not. The petitioner in that case had claimed that she was the tenant in possession of the property bearing Survey No.280/1 and 288/1 of the Village Carambolim and that the property belonged to the Comunidade of Carambolim. The petitioner also claimed to have been declared as a tenant by the Mamlatdar under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. The respondents no.1 to 11 filed the suit for injunction against the petitioner in respect of the same property while setting up a claim of tenancy. It was their contention that the petitioner had obtained the order declaring her as the tenant in collusion with the Comunidade of Carambolim. The petitioner contested the suit on the premise that the Civil Court had no jurisdiction to entertain the dispute and the jurisdiction vested with the Mamlatdar. The Civil Court refused the relief of temporary injunction on the ground that it had no jurisdiction to entertain the suit which order was confirmed by the Additional District Judge in an appeal against the same while the learned Single Judge of this Court was pleased to allow the same in the revision application filed by the respondent against the order of the Additional District Judge holding that the jurisdiction to entertain the same for perpetual injunction between two persons claiming to be the tenants of the suit property vested with the Civil Court and under Section 3-A of the Act only the disputes between the tenant and the landlord are contemplated

and as such the dispute between the two persons claiming to be the tenants were outside the purview of Section 8-A of the said Act. The learned Single Judge ultimately held that the suit for perpetual injunction between two persons claiming to be the tenants lies in the Civil Court. Section 8-A is not available to any person other than a tenant and certainly not against any person other than the landlord or a person claiming through him. This judgment is however not applicable to the facts of the present case.

13. Thus, considering the judgments relied upon and in the factual matrix, the learned District Court was clearly in error to interfere with the concurrent findings of fact recorded by the Courts below and reversing the findings with a direction to the Joint Mamlatdar to decide the application afresh and in the light of the observations. Such an order is clearly perverse justifying interference. In view thereof, I pass the following

ORDER

The petition is allowed and the impugned order dated 14/09/2016 passed by the District Court is quashed and set aside and the order passed by the learned Mamlatdar is restored.

NUTAN D. SARDESSAI, J.