

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.584 OF 2017**

1. Mary Bertha Gracias,  
daughter of late Sebastiao Gracias,  
aged 60 years, residing at H. No.638,  
Uddy Vaddom Sun City, Gioa Velha,  
Ilhas, Goa.
2. Mrs. Bernardeta Fernandes,  
daughter of Sebastiao Gracias,  
married and her husband
3. Mr. Michael Sebastiao Fernandes,  
both residing at H. No.340, Aviao,  
Caranzalem, Ilhas, Goa.
4. Mrs. Leena Ribeiro,  
daughter of Sebastiao Gracias, married  
and her husband
5. Mr. Augusto Ribeiro  
both of full age,  
residing at H.No.511, S. Cruz, Ilhas,Goa.
6. Mrs. Sebastiana Mendes,  
widow of Sebastiao Gracias,  
residing at H. No.638, Uddy Vaddo,  
Sun City, Goa Velha,  
Ilhas and Goa (now deceased-deleted) ... Petitioners

The petitioners nos.2 to 5 are represented  
by their constituted attorney the petitioner no.1.

**V e r s u s**

1. Jeronimo Fernandes and his wife
2. Mrs.MAdgalena Fernandes,  
resident of Goa Velha, Uddy Ward,  
Goa.
3. Jose Fernandes,  
major in age, resident of

House No.722, Uddy Ward,  
Goa Velha, Goa.

4. Mrs. Monica Fernandes,  
major in age,  
resident of House No.722, Uddy  
Ward, Goa Velha, Goa.
5. Mrs. Sarita Fernandes,  
major in age, resident of  
House No.722, Uddy Ward,  
Goa Velha, Goa.
6. Hospicio do Sagrado Coracao de Maria,  
Margao, Goa, through the Director of  
the Health Services, Panaji, Goa.
7. Director of Health Services,  
Directorate of Health Services,  
Campal, Goa.
8. Chief Secretary,  
Government of Goa, Secretariat,  
Porvorim, Bardez, Goa.
9. Tony Gracias, son of late  
Sebastiao Gracias, of full age,  
and his wife,
10. Maria Perpetua Araujo Gracias,  
of full age, both residents of H. No.638,  
Uddy Vaddo, Sun City, Goa Velha,  
Ilhas, Goa.
11. Martha D' Souza,  
residing at H.No.620,  
Morgado, Goa Velha, Ilhas Goa.
12. Teodosio D'Souza, (now deceased)  
(a) Mrs. Sarita D; Suza, (daughter)  
  
(b) Mr. Munnusamy, both residing in  
flat No.6, Shanta Durga, India  
Atto Santa Cruz, Tiswadi, Goa.  
  
(c) Mr Newton D' Souza (son) bachelor  
residing at H. No.696,

Near Immaculate Heart Convent,  
Uddi, Goa Velha, Ilhas, Goa.

(d) Linda D' Souza, (daughter)  
spinster residing at H.No.696,  
Near Immaculate Heart Convent,  
Uddi, Goa Velha, Ilhas Goa.

13. Sebastiana Mendes (deleted) ... Respondents

Shri M. B. D'Costa, Senior Advocate with Ms. K. Betquecar,  
Advocate for the Petitioners.

Shri P. A. Kholkar, Advocate for the Respondent Nos.1 and 2.

Ms. Neha Kholkar, Additional Government Advocate for the  
Respondent Nos.6 to 8.

**Coram:- NUTAN D. SARDESSAI, J.**

**Reserved for Judgment on : 2 August 2018**  
**Judgment Pronounced on : 10 August 2018**

## **JUDGMENT**

1. Rule. Heard forthwith with the consent of the learned Counsel appearing for the parties. Learned Counsel appearing for the respondents waives service.

2. This petition under Article 227 of the Constitution of India takes exception to the order dated 08.03.2017 passed by the Adhoc District Judge, FTC-I, Panaji, pursuant to which he dismissed the application filed by the petitioners to drop the respondent nos.6 to 8 from the proceedings and saddled the

petitioners to pay costs to the respondent nos.1 and 2 and the respondent nos.6 to 8.

3. Heard Shri M. B. D'Costa, learned Senior Advocate appearing on behalf of the petitioners who contended that the father of the first petitioner was a tenant of the respondent no.6 under a written agreement, the lease of which was renewed on 13.06.1968 for a period of six years w.e.f. 01.06.1968. However, pursuant to the Fifth Amendment to the Agricultural Tenancy Act, 1964, Act for short hereinafter, the Predecessor of the petitioner Sebastiao who was a tenant became a deemed owner w.e.f. 08.10.1976. The Government pursuant to a Notification dated 24.12.1976 transferred the assets of the respondent no.6 to the Government w.e.f. 01.01.1977. Since however, the property vested in Sebastiao on 08.10.1976 on account of the Fifth Amendment to the Act, the said property could not be a part of the assets of the respondent no.6 as on 01.01.1977 and therefore did not form a part of the property of the Government. He had filed a composite petition bearing no.1139/2016 claiming tenancy rights which was admitted on 10.02.2017. A Civil Suit was filed by the tenant against the trespassers who took a plea of the non-joinder of the Government as a necessary party and

who were accordingly added as parties and the suit stood assigned to the Court of the District Judge.

4. Shri M. B. D'Costa, learned Senior Advocate placed reliance in the judgment dated 12.08.2013 in Tony Gracias & Ors vs Mr. Francis Crasto & anr. [Writ Petition No.352 of 2006] where a learned Single Judge of this Court (F. M. Reis, J.) had clearly held that when the suit was simplicitor for injunction and the plaintiff was seeking restoration of possession to its original condition, the said parties were not necessary parties to the proceedings. The same learned Single Judge (F. M. Reis, J), in his judgment had recorded that as the petitioners had not made any allegations nor any material was brought on record to show that there was any lis between the petitioner and the two parties, the learned Judge was not justified to pass the impugned order and in that view of the matter, had allowed the petition. The petitioners had filed the suit no.17/2009 against different parties for injunction. However, in view of the addition of the Government as a party one forum of appeal was lost to the petitioners. The petitioners had moved an application to delete the Government as a party which came to be dismissed by the impugned order even though no cause of action was claimed against them. He once again reiterated that once the tenant became a deemed owner

in view of the Fifth Amendment on 08.10.1976 prior to the coming into force of the Notification w.e.f. 01.01.1977, the property vested in the petitioners' predecessors and therefore the respondent nos.6 to 8 were not necessary parties. The reliefs claimed in this suit were similar to those claimed in the earlier suit bearing RCS no.133/2004. The petition had therefore to be allowed.

5. Shri P. A. Kholkar, learned Advocate for the respondent nos.1 and 2 contended at the outset that to substantiate the plea of deemed ownership the petitioner had to first establish the plea of tenancy when his name was not even reflected as a tenant in the survey records. The lease on which the petitioners banked upon was only for six years with automatic termination on 01.10.1974 and therefore no question arose of any plea of deemed ownership. An application for impleadment of the Government was moved in 2006 which came to be allowed vide the order dated 29.10.2007 impleading the Hospicio Hospital and the Government as the necessary parties to the proceedings. He next adverted to the impugned order and submitted that the application filed by the petitioner was about ten years after the impleadment of the respondent nos.6 to 8 as parties to the suit and which was to seek dropping of the respondent nos.6 to 8. There was no

explanation for such long delay and besides there was no exercise of diligence by the petitioners. There was no perversity in the impugned order and therefore no case whatsoever was made out for interference. Last but not the least, it was his submission that in terms of Section 56 of the Act, Government lands stood excluded from the purview of the application of the Agricultural Tenancy Act and therefore the plea of deemed ownership could also not accrue in favour of the petitioners' predecessor Sebastiao. On a parting note he contended that the judgment relied upon in the Writ Petition no.352/2006 was not between the petitioners and the respondent nos.1 and 2 but arising from another proceedings and did not have any bearing on the present case. The petition had therefore to be dismissed.

6. Ms. Neha Kholkar, learned Additional Government Advocate appearing for the respondent nos.6 to 8 invited attention to the reply filed on behalf of the said respondents to the application for their deletion moved by the petitioners and submitted that the tenancy issue framed by the Trial Court had been dismissed against the petitioners and similar was the position in the revision application filed by the petitioners. The petitioners were purposely delaying the proceedings with an intention to take undue advantage of the suit property and

therefore the impugned order did not call for any interference. Besides, she adopted the arguments of Shri P. A. Kholkar, learned Advocate appearing for the respondent nos.1 and 2 and submitted that no prejudice would be caused to the petitioners in case the respondent nos.6 to 8 continued to be in the proceedings. Finally, it was her contention that the order impleading the respondent nos.6 to 8 dated 29.10.2007 had attained finality and on that count too the petition had to be dismissed.

7. i have taken note of the contentions of Shri M. B. D'Costa, learned Senior Advocate appearing for the petitioners, Shri P. A. Kholkar, learned Advocate appearing on behalf of the respondent nos.1 and 2 and Ms. Neha Kholkar, learned Additional Government Advocate on behalf of the respondent nos.6 to 8. Besides, i have also considered the supporting records and the judgments in Writ Petition No.352/2006 to better appreciate their contentions.

8. First and foremost, the petitioners had filed the RCS no.133/2004 against the respondents herein except respondent nos.6 to 8 for injunction and for recovery of possession. The respondent nos.6 to 8 came to be impleaded in view of the objections raised on behalf of the respondent

nos.1 and 2 to the non-joinder of necessary parties and in view thereof the same suit came to be placed on the file of the District Court as the Government was impleaded as the party-respondent to the proceedings. The order dated 29.10.2007 impleading the respondent nos.6 to 8 was apparently not challenged at the instance of the petitioners and which has attained finality as rightly submitted by Shri P. A. Kholkar, learned Advocate for the respondent nos.1 and 2 and Ms. Neha Kholkar, learned Additional Government Advocate appearing on behalf of the respondent nos.6 to 8. It is only ten years later that the petitioners sought leave of the District Court to drop the respondent nos.6 to 8 from the cause title and to remit the matter back to the Court of the Civil Judge, Junior Division, Panaji, where it initially lay. The respondents had raised an objection to such application and it is pursuant to the impugned order dated 08.03.2017 that the learned Adhoc District Judge dismissed the application and besides saddled the petitioners with costs to be paid to the respondent nos.1 and 2 on the one hand and the respondent nos.6 to 8 on the other.

9. Coming to the aspect of tenancy, apparently the petitioners had not produced any survey records to show that the name of their Predecessor Sebastiao was recorded as a

tenant therein. The only document on the basis of which such claim of tenancy was raised, was the lease agreement dated 13.06.1968 and that too of being taken in public auction and which was to last for a period of six years from 01.06.1968 and to end by 31.05.1974 irrespective of any notice or notification in that regard. Therefore, the contention on behalf of the petitioner that their predecessor had become a deemed owner in view of the amendment to the Agricultural Tenancy Act w.e.f. 08.10.1976 and/or that he would not be affected by the notification transferring the assets of the respondent no.6 to the Government vide the order dated 24.12.1976, would not advance their case. However, it is another matter that the petitioners had challenged in Writ Petition No.1129/2016 the denial of their plea of their tenancy by various fora and on the petition being admitted on 10.02.2017 which is an altogether a different matter and can have no bearing on the case at hand.

**10.** No doubt, the argument of Shri D'Costa, learned Senior Counsel carries weight that by the joinder of the Government as a party to the proceedings, one forum of appeal was lost to the petitioners but that by itself cannot be a ground to set aside the impugned order when the learned Trial Judge had duly considered the plea raised on behalf of the petitioners and the respondents and held against them. The issue whether

the petitioners' predecessor was a tenant who continued to be in possession would continue in possession till the eviction and entitled to recovery of possession if evicted, are matters which can be pursued in an independent petition filed before another Single Judge. Though there may appear force in his contention that there was no allegation in the suit against the respondent nos.6 to 8 and/or that they were not necessary parties, the petitioners had no explanation to account for the lack of diligence and the delay and laches in seeking to drop the respondent nos.6 to 8 from the proceedings after a lapse of ten years when the application to add these respondents as parties was allowed as way back on 29.10.2007. Last but not the least, by virtue of Section 56 of the Act, the contention on behalf of the petitioners that their predecessor became a deemed owner would also not stand the test of scrutiny when the operation of being the deemed owner pursuant to the Fifth Amendment would not apply in respect of the lands owned by the Government. Looked at from any view point, the impugned order does not suffer from the vice of illegality nor is there any jurisdictional error calling for the exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

11. In view thereof, there is no merit in the petition, which is accordingly dismissed.

12. Rule is discharged.

**NUTAN D. SARDESSAI J.**

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