IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 105 OF 2019

Jose Manuel Monteiro … Petitioner

Versus

State of Goa, Thr. Its
Chief Secretary and another …. Respondents

WRIT PETITION NO. 106 OF 2019

Francisco Fernandes … Petitioner

Versus

State of Goa, Thr.Its
Chief Secretary and another …. Respondents

WRIT PETITION NO. 107 OF 2019

Ana Maria Rodrigues … Petitioner

Versus

State of Goa, Thr.Its
Chief Secretary and another …. Respondents

WRIT PETITION NO. 108 OF 2019

Andrew Rodrigues … Petitioner

Versus

State of Goa, Thr.Its
Chief Secretary and another …. Respondents

WRIT PETITION NO. 109 OF 2019

Minguel Mendes … Petitioner

Versus

State of Goa, Thr.Its
Chief Secretary and another …. Respondents

WRIT PETITION NO. 110 OF 2019

Antonio F.X.Pereira … Petitioner

Versus

State of Goa, Thr.Its
Chief Secretary and another …. Respondents

Mr. Dhaval Damodar Zaveri, Advocate for all the Petitioners.

Mr. Dattaprasad Lawande, Advocate General with Ms. Priyanka Kamat, Additional Government Advocate for the respondents, in WP Nos.105/2019 to 107/2019 and 109/2019.
Mr. Dattaprasad Lawande, Advocate General with Mr. Rajesh Shivolkar, Additional Government Advocate for the respondents, in WP Nos.108/2019.
Mr. Dattaprasad Lawande, Advocate General with Mr.Arun A.S.Talaulikar, Additional Government Advocate for the respondents, in WP No.110/2019.

Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.

Date : 29 January 2019.

P.C. :

In all these petitions, the challenge is to the provisions of Section 33 (3) of the Goa Land Revenue Code, 1968.

2. All these petitions were moved for interim relief on 18th January 2019, we made the following order:-

> *"Mr. D. Zaveri, learned Counsel for the Petitioner, on instructions, states that the Petitioner is an agricultural tenant of the property in which the structures which are not proposed to be demolished are located. Mr. Zaveri is, however, unable to make any statement as to whether it is the Petitioner who has put up the structures in question. Mr. Zaveri is also unable to explain as to whether such structures were put up with any permissions from any of the statutory Authorities. Mr. Zaveri is also unable to explain as to how the structure came to be put up in the tenanted property by the person who claims to be an agricultural tenant. There are no photographs annexed to the Petition to indicate the nature of structures.*
>
> *2. In the aforesaid circumstances, merely on the basis that vires of Section 33(iii) of the Goa Land Revenue Code has been questioned, we do not deem it appropriate to grant the Petitioner any ad interim relief. Accordingly, the prayer for ad interim relief is refused.*
>
> *3. Place this Petition for further consideration on 28 January 2019.*
>
> *4. The Petitioner to clear the office objections within one week from today.*

5. Mr. Kamat, the learned Additional Govt. Advocate waives service for the Respondents."

3. We are today informed that structures in question have already been demolished. As noted earlier, the petitioners were unable to state with clarity, who had put up these structures and whether the structures were put up with any permissions and clearances from any statutory Authorities. The petitioners claimed to be agricultural tenants. Normally, the properties vested in agricultural tenants cannot be used for any purposes other than the agriculture. In these circumstances, it was incumbent upon the petitioners to disclose the genesis of such structures. In the absence of such disclosures, in our extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India, we would not be in a position to extend any reliefs to the petitioners, on facts.

4. It is settled position in law that issues on constitutionality of a statute are not to be decided for mere academic purpose. In the present case, even if we were rule in favour of the petitioners on law, on facts, the petitioners have made out no case whatsoever for grant of any reliefs or for extending any protection to the structures in questions. In these circumstances, at the behest of the present

petitioners, it will not be appropriate to entertain any constitutional challenge to Section 33 (3) of the Land Revenue Code. Such challenge, can perhaps be considered in appropriate case instituted by appropriate petitioner.

5. At this stage, Mr. Zaveri, learned counsel for the petitioners, expresses an apprehension that by referring to the provisions of Section 33 (3) of the Land Revenue Code, the respondents may prevent the petitioners from undertaking agricultural activities. This apprehension is entirely misconceived. Even the learned Advocate General states that, if the petitioners are really agricultural tenants in respect of the properties in question, then obviously, there can be no prohibition to they undertaking any agricultural activities in the property in question.

6. For all the aforesaid reasons, these petitions are dismissed. There shall be no order as to costs.

Prithviraj K. Chavan, J. ***M.S.Sonak, J.***