

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 108 OF 2020.

Franky Monteiro,

.... Petitioner.

Vs

The State of Goa, Thr. Its
Chief Secretary and 4 ors.

.... Respondents.

Shri Nigel Costa Frias, Advocate for the petitioner.

Shri P. Faldessai, Addl. Govt. Advocate for the respondent nos.1,3 and 4.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 11th March, 2020

P.C.

The village panchayat is said to be the lessor; the fifth respondent the lessee. The petitioner is the resident of the panchayat. He has complained to the second respondent-panchayat that the fifth respondent is squatting over panchayat's property beyond the lease period. He wanted the panchayat to evict him. Then, the panchayat initiated eviction proceedings before the Deputy Collector and Estate Officer, Public Premises, Salcete, at Margao Goa. It was under the Goa Public Premises (Eviction of Unauthorized Occupants) Act 1988.

2. But the Estate Officer, through his order, dated 17.7.2019, dismissed the application on the premise that the Gram Panchayat property does not fall within the purview of the Act. Aggrieved, the petitioner has filed this Writ Petition.

3. Despite service of notice, the fifth respondent, who is said to be the squatter, has not entered appearance.

4. Heard the learned counsel for the petitioner and the learned Addl. Govt. Advocate for the respondent nos. 1,3 and 4.

5. As seen from the record, the impugned order decides only the question of jurisdiction and gives its finding in the negative. In that process it extracts Section 2 of the Act.

6. Curiously, the extract misses out the amended portion of Section 2(2)(ii) of the Act.

7. Now we may extract that particular part of the provision as amended through Amendment Act 23 of the 1997. It reads thus:

“(ii)[any Corporation not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956), owned and controlled by the Government, or a local authority established by or under the State enactment};”

8. Unmistakably, the extracted clause mandates that any premises belonging to, among others, "a local authority established by or under the State enactment" is amenable to the eviction proceedings under the Act.

9. On the contrary, the learned Estate Officer has extracted the provisions without any reference to the local authority—the provision as it stood before the amendment. The learned Addl. Govt. Advocate concurs with the petitioner's counsel on this point.

10. Under these circumstances, the impugned order reveals a manifest jurisdictional error. That is, it has refused to exercise jurisdiction vested in it.

I, therefore, set aside the impugned order, dated 17.7.2019, and hold that the Estate Officer has jurisdiction to decide the issues concerning the premises belonging to the local authority: Gram Panchayat. As a result, the petition before the Estate Officer stands restored.

DAMA SESHADRI NAIDU, J.

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