

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.272 OF 2002

Comunidade of Taleigao,
having its office at Taleigao,
represented by its present Attorney,
Shri Agapito Francis Gomes,
major of age,
married, resident of Bondiem
ward, Taleigao, Ilhas Goa.

... Appellant

Versus

1 Shri Jose Maria Martins,
resident of S. Paulo,
Taleigao, Ilhas Goa.

2 Smt. Beatriz P. L. Dias e Menezes,
resident of St. Cruz, Ilhas Goa. (Deceased)

2a) Mrs. Brigida Aurora Dias,
wife of Mr. Carlos Santana de Braganza,
50 years of age, Indian National,
Resident of House No.1190,
Segundo Bairro,
St. Cruz, Ilhas Goa.

... Respondents

Mr. Andre A. Pereira, Advocate for the Appellant.

Mr. Joseph Vaz, Advocate for Respondent No.1.

Mr. Joaquim Godinho, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J

DATED: 16th September 2021

ORAL JUDGMENT

1. Heard Mr. A. Pereira, learned counsel for the Appellant, Mr. Joseph Vaz, learned counsel for Respondent No.1, and Mr. J. Godinho, learned counsel for Respondent No.2.

2. This is an appeal against the judgment and award dated 30.03.2002 in Land Acquisition Case No.45/95 made by the Additional District Judge at Panaji (Reference Court).

3. By the impugned judgment and award, the Reference Court has held that the Appellant is entitled to 50% of compensation and Respondent Nos.1 and 2 are also entitled to 50% of the compensation in respect of the portions of the acquired lands for which they were adjudged as the agricultural tenants.

4. Mr. Pereira at the outset submits that Respondent No.1 in the course of his cross-examination has admitted that his father and after the demise of his father himself, were the components of the Appellant – Comunidade. Mr. Pereira submits that there is also an admission that Respondent No.1 was receiving "Jono" from the Comunidade. Based on this, Mr. Pereira submits that Respondent No.1 was one of the co-owners of the property acquired. He then relies on the decision of the learned Single Judge of the Gujarat High Court in *Patel Narottamdas Shankerlal Vs Bababhai Joitaram Patel and others*¹ to submit that one of the co-owners

¹ 1977 (Vol. XVIII) Gujarat Law Reporter 333

cannot himself be a tenant and consequently a deemed tenant. Mr. Pereira submits that Respondent No.1 at the highest could have claimed for some share from the Comunidade but there was no question of Respondent No.1 being a tenant of the acquired land or seeking compensation in respect of the acquired land.

5. Mr. Pereira submits that before the Reference Court Mrs. Beatriz Dias Menezes was styled as Respondent No.2. He submits that after the appeal was filed against the impugned award, said Beatriz expired leaving behind no legal representatives. He submits that the present Respondent No.2(a) Mrs. Brigida Dias who claims that the said Beatriz was her aunt could not have sought for any impleadment before this Court. He submits that the impleadment of such parties who are strangers is impermissible in a reference under Section 30 of the Land Acquisition Act, 1894 (the said Act). For this proposition, he relies on *P. Rojamani and others Vs The Mandal Revenue Officer, Palakonda and others*², and the decision of the Hon'ble Supreme Court in the case of *Sri Sangappa Kalyanappa Bangi Vs Land Tribunal, Jamkhandi, and others*³.

6. Mr. Pereira then submits that the judgments and orders made by the Mamlatdar declaring the Respondents as tenants are without jurisdiction and consequently a nullity. He submits that nullities or orders without jurisdiction need not even be challenged and the

² 1999 (2) LAC 1 (AP)

³ 1998 (2) LAC 298 (SC)

Reference Court should ignore them. He submits that in any case, even the Civil Court has jurisdiction to set aside the orders made by the Mamlatdar under the special Act if such orders are nullities or found to be without jurisdiction. In support of such a proposition, he relies on the decisions in *State of A.P. Vs Manjeti Laxmi Kantha Rao and others*⁴, *The State of Maharashtra Vs Nargis B. Mewawala*⁵ and *Shri Arjun Pandurang Kandolkar Vs Smt. Lourdes Martins*⁶.

7. Finally, Mr. Pereira submits that the provisions of the Agricultural Tenancy Act do not apply to the properties of Comunidade because such properties are not entitled to protection under Article 31A of the Constitution of India. To make good this point, he places reliance on *Union Territory of Goa, Daman and Diu and another Vs Lakshmibai Narayan Patil*⁷.

8. Based on the aforesaid submissions, Mr. Pereira submits that the impugned award to the extent it apportions compensation to the Respondents warrants interference. Mr. Pereira submits that in this case, the Reference Court should have awarded entire compensation to the Appellant – Comunidade.

4 (2000) 3 SCC 689

5 1987 (2) Bom. C.R. 237

6 1998(2) Goa L. T. 361

7 AIR 1990 SC 1771

9. The learned counsel for the Respondents countered the submissions of Mr. Pereira. They submit that most of his contentions were not even raised before the Reference Court and therefore, the same ought not to be entertained by this Court. In any case, they submit that the Respondents have already been declared as tenants by the Mamlatdar and such declaration was never challenged by the Comunidade by instituting appeal, revision, etc. They submit that such declaration has therefore attained finality. They rely on the decision of this Court in *Goa, Daman and Diu Industrial Development Corporation, Panaji Goa Vs Shri Vassu Jaidev Gaonkar (Civil Revision Application No.66/2000)*⁸. However, they submit that the Respondents are satisfied with the aforesaid apportionment of 50% of compensation in their favor. They, therefore, submit that this appeal may be dismissed.

10. The rival contentions now fall for my determination.

11. In this case, Respondent No.1 has deposed before the Reference Court to his claim that he was a tenant in so far as the acquired portion of the Comunidade property was concerned. Respondent No.1 in the course of his deposition has produced the judgment and order dated 08.04.1996 made by the Mamlatdar declaring him as an agricultural tenant.

⁸ 2001 (2) Goa L.T. 63

12. There is no dispute that the judgment and order dated 08.04.1996 made by the Mamlatdar who is the competent authority under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act was never challenged by the Comunidade by taking out proceedings under the Tenancy Act or for that matter by even attempting to challenge such order before the Reference Court assuming that such a challenge was possible. The submission that such a contention was raised before the Reference Court but has not been recorded in the impugned judgment and award cannot be accepted. If this was the position then, at the earliest the Appellant should have moved to the Reference Court and sought for inclusion/clarification on this aspect in the impugned judgment and award. The record of the Reference Court cannot be disputed before this Court and that too, at such a belated stage.

13. There can be no quarrel with the proposition that the jurisdiction of the Civil Court is never ousted even in the matters where finality is ascribed to an order of prescribed authority or special tribunal where such authority or tribunal does not comply with the provisions of the relevant statute or does not act in conformity with the basic rules of the judicial procedure. Similar would be the position where the order made by the special tribunal or authority is a nullity and *ex facie* without jurisdiction.

14. However, in this case, it is difficult to agree with the contention of Mr. Pereira that the judgment and order made by the

Mamlatdar declaring Respondents as tenants is either a nullity or was not made after complying with the basic rules of judicial procedure. Admittedly, the Comunidade was issued a notice of the proceedings before the Mamlatdar but the Comunidade chose not to contest such proceedings. Thereafter, even the orders made by the Mamlatdar were never challenged by resort to the provisions of the Agricultural Tenancy Act. There is nothing on record to indicate that these orders were challenged before the Reference Court again, assuming that such a challenge was competent. Having regard to such circumstances, there was nothing wrong in the Reference Court relying on the declaration made by the Mamlatdar in favor of the Respondents and apportioning 50% of compensation in their favor.

15. The contention that Respondent No.1 was one of the components of the Comunidade and therefore, he was one of the co-owners of the Comunidade property is again, not quite well-founded. The Comunidade is a legal entity that can sue and may be sued in its own name. The Officers of the Comunidade had themselves acknowledged tenancy of Respondent No.1. The decision of the learned Single Judge of the Gujarat High Court was delivered in the circumstances which can have no comparison in the circumstances of the present case. Besides, at no stage, such a plea was raised either before the Mamlatdar or for that matter, in all seriousness before the Reference Court. For all these reasons, no

case is made out by the Appellant to interfere with the apportionment made in the impugned judgment and award.

16. In so far as Respondent No.2 is concerned, records bear out that upon the demise of Beatriz she had applied to this Court vide Misc. Civil Application No.423 of 2011 seeking her impleadment as Respondent No.2(a). In this application, she had claimed that certain properties of late Beatriz have been bequeathed in her favor including the property which was the subject matter of dispute before the Reference Court. This application was allowed on 26.06.2015. This order was never challenged by the Comunidade.

17. Therefore, this is not a case of some stranger seeking impleadment in reference proceedings. This is a case where Respondent No.2(a) claim to have acquired some right and interest in the property of deceased Beatriz and therefore, sought for impleadment and such impleadment was permitted.

18. Finally, the contention that the provisions of the Agricultural Tenancy Act do not apply to Comunidade lands was again never raised at any stage. In any case, there is nothing in the decisions relied upon by Mr. Pereira which even remotely deals with this aspect in the context of Comunidade lands. Therefore, it is not possible to entertain such a plea in this appeal.

19. According to me, there is no error in the impugned judgment and award that has apportioned compensation on an equitable basis. The learned counsel for the Respondents submitted that the Respondents are satisfied with the apportionment made and therefore, there were no cross-objections lodged.

20. For all the aforesaid reasons, this appeal is required to be dismissed and is hereby dismissed. There shall however be no order as to costs.

M. S. SONAK, J.

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