

IN THE HIGH COURT OF BOMBAY AT GOA  
WRIT PETITION NO.136 OF 2021

NAVELIM KHAJAN TENANTS  
ASSOCIATION,

Through

a) Pedro Bras Helario Sequiera – Chairman

73 years

r/o Local wada,

Navelim, Divar

Tiswadi – Goa

b) Nanu Chari – Treasurer

74 years,

r/o Local wada,

Navelim, Divar

Tiswadi – Goa.

... Petitioner.

Versus

1. DEPUTY COLLECTOR & SUB  
DIVISIONAL OFFICER,

Tiswadi – Panaji

Goa.

2. MAMLATDAR OF TISWADI,

Tiswadi – Panaji

Goa.

3. SHRIKANT VENKATESH NAIK

s/o Venkatesh Naik, age 62 years,

r/o H. No. 67 Local wada,

Navelim, Divar

Tiswadi – Goa.

... Respondents.

Mr. Vibhav Rajiv Amonkar, Advocate for the Petitioner.

Mr. Prashil Arolkar, Advocate for Respondents No.1 and 2.

Mr. Preetam Talaulikar for Respondent No.3.

**Coram: M.S. SONAK, J.**

**Date: 22<sup>nd</sup> June 2021**

**ORAL JUDGMENT: (PER M.S. SONAK, J)**

Heard Mr. Amonkar for the Petitioner, Mr. Prashil Arolkar for Respondents No.1 and 2, and Mr. Talaulikar for Respondent No. 3.

2. Rule. The rule is made returnable forthwith at the request of and with the consent of learned Counsel for the parties.

3. The challenge in this petition is to the order dated 23.02.2021 made by the Deputy Collector setting aside the election of the Petitioner to the Navelim Khajan Tenants Association.

4. The record indicates that the Petitioner, by filing an application, had specifically raised a plea that an appeal was not maintainable in such matters under section 49 of the Goa Daman and Diu Agricultural Tenancy Act, 1964 (said Act) and the Rules made thereunder.

5. From the perusal of the impugned order, it is seen that the Deputy Collector has not even considered this objection but proceeded straight away to allow the appeal on merits. This is not correct. The Deputy Collector was duty-bound to decide whether the appeal was at all maintainable or not in terms of section 49 of the said Act.

6. The issue as to whether the appeal was maintainable or not can be said to be a debatable issue. Therefore, the Deputy Collector was duty-bound to decide this issue rather than to proceed to ignore this issue and decide the appeal on merits.

7. On the aforesaid short ground and without requiring the Petitioner to avail of the alternate remedy before the Tribunal, the impugned order is hereby set aside.

8. The matter is now remanded to the Deputy Collector who shall decide both, the issue of maintainability of the appeal as well as the merits as expeditiously as possible and in any case with a period of three months from the date the parties file authenticated copy of this order. The reason why the direction is given to decide the issue on maintainability, as well as merits, is because otherwise the parties, tend to postpone the hearing on merits indefinitely. Since this is an election matter, the same has to be decided expeditiously and it is only appropriate that all the issues are decided by the Deputy Collector together, rather than piecemeal.

9. The parties to now appear before the Deputy Collector on 06.07.2021 at 3:30 p.m. and produce an authenticated copy of this order. The Deputy Collector to act based on the authenticated copy of this order.

10. It is made clear that all contentions of all parties on the issue of maintainability, as well as merits, are kept open to be decided by the Deputy Collector. The Deputy Collector need not be influenced by any prima facie observations made by this Court in its orders dated 23.02.2021 and 02.03.2021.

11. The rule is made absolute in aforesaid terms. There shall be no order for costs.

**M.S. SONAK, J.**