

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.708/2011

1. Shri Valentino Cardozo,
2. Smt. Edviza Cardozo,

Both residing near Rosary School Ground,
Navelim, Salecete, Goa,

3. Shri Sebastiao Cardozo,
4. Smt. Sucorina Cardozo,
5. Shri Minguel Cardozo,
6. Smt. Bela Cardozo,

All residents of St. Francis Colony,
Quepem, Goa.

7. Shri Vito Cardozo,
8. Smt. Daminana Cardozo,

Both residents of Tolpot,
Igrmaol, Quepem, Goa.

9. Shri Pedro Francisco Cardozo,
Resident of Palolem, Canacona, Goa.

..... Petitioners.

Versus

Shree Mallikarjun Devasthan of Canacona
Shrithal, Canacona, Goa,
Represented by its Attorney
Shri Rama G. Desai.

..... Respondents.

Mr. C.A. Coutinho, Advocate for the Petitioners.

Mr. Sudin M. S. Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondents.

Coram: M.S. Sonak, J.

Reserved on: 29th January 2021.

Pronounced on: 4th February, 2021.

JUDGMENT:-

Heard Mr. C.A. Coutinho for the petitioners and Mr. Sudin Usgaonkar, the learned Senior Advocate with Ms. Vinita Palyekar for the respondents.

2. The challenge, in this Petition is to the Judgment and Order dated 29/12/2010, made by the Administrative Tribunal, Goa (Tribunal), allowing Tenancy Revision Application No.5/2008, instituted by the respondent and setting aside the Judgment and Order dated 24/1/2008, made by the Deputy Collector, Quepem in Appeal No.TNC/APPL/15/2005, declaring the petitioners as “tenants” in respect of the suit property under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (said Act) and the Rules made thereunder.

3. There is no dispute that the petitioners are the legal representatives of Diogo Piedade Cardozo. On 4th October, 2000, the

petitioners filed an application before the Joint Mamlatdar of Canacona, which was numbered as Case No. TNC/JT.MAM/NAPA/3/2000, seeking a declaration that they are the tenants of a paddy field known as “*Qurem*”, surveyed under No.180/6 of Village Nagarcem-Palolem, Taluka Canacona, admeasuring an area of 6675 sq. metres or thereabouts (suit property).

4. The Joint Mamlatdar, vide order dated 11/7/2005, dismissed the petitioners' application dated 4/10/2000, holding that late Diogo Cardozo, the predecessor-in-title of the petitioners, had held the suit property on the basis of a '*public auction*' conducted by the Committee of the Temple and such holding did not create any tenancy under the said Act.

5. The petitioners, being aggrieved by the Joint Mamlatdar's order dated 11/7/2005, appealed to the Deputy Collector of Quepem, which appeal was numbered as Case No.TNC/APPL/15/2005. By the Judgment and Order dated 24/1/2008, the Deputy Collector allowed the appeal, set aside the Joint Mamlatdar's order dated 11/7/2005 and declared the petitioners as tenants of the suit property.

6. The respondent aggrieved by the Deputy Collector's Judgment and Order dated 24/1/2008, instituted Tenancy Revision Application No.5/2008 before the Tribunal. The Tribunal, vide impugned Judgment and Order dated 29/12/2010 (to be read along with Corrigendum dated 6/1/2011) allowed the revision and set aside the Deputy Collector's Judgment and Order dated 24/1/2008. Hence the present Petition, challenging the Tribunal's Judgment and Order dated 29/12/2010.

7. Mr. C.A. Countiho, the learned Counsel for the petitioners submits that the impugned Judgment and Order is vitiated by perversity both, on facts as well as law. He submits that there is overwhelming evidence on record that the predecessor-in-title of the petitioners was cultivating the suit property (lawfully) and such cultivation commenced before Goa was liberated on 19/12/1964. He, therefore, submits that the ingredients of Section 4 of the said Act were fulfilled and the petitioners were the deemed tenants in respect of the suit property. He refers to the provisions of Section 2(23) of the said Act to point out that a person who is deemed to be a tenant under the said Act, is also a tenant in terms of this provision. He submits that since this legal position was glossed over by the Tribunal, the impugned Judgment and Order warrants interference.

8. Mr. Coutinho submits that it was never the case of the respondent that the predecessor-in-title of the petitioners entered into the suit property unlawfully or that there was anything unlawful about the cultivation since before the liberation of Goa. He submits that even in terms of Article 124 of Devasthan Regulation, the respondent leases its properties by public auction. Therefore, the suit property was leased to the predecessor-in-title of the petitioners and cultivation by the predecessor-in-title, followed by the petitioners themselves, was lawful cultivation, to say the least. He submits that the findings to the contrary recorded by the Tribunal are totally perverse and warrants interference.

9. Mr. Coutinho submits that the Tribunal, with respect, has gone at a tangent and purported to make out a case for the respondent even though such a case was never pleaded or proved by the respondent. He submits that in such matters, pleadings are required to be construed liberally and the Tribunal exceeded the jurisdiction in construing the pleadings in a narrow and pedantic manner. He submits that these are good grounds for interfering with the impugned Judgment and Order.

10. Mr. Coutinho relied on *Chondru Gomes vs. Mamlatdar, Tiswadi Taluka and ors.*¹ and *Dahya Lala and others vs. Rasul Mahomed Abdul Rahim and ors.*² in support of his submissions.

11. Mr. Sudin Usgaonkar, the learned Senior Advocate for the respondent submitted that there is no error whatsoever in the impugned Judgment and Order, much less any jurisdictional error or perversity, so as to warrant interference under Article 227 of the Constitution of India. He points out that there were no pleadings regards deemed tenancy and, there can never be any variance between the pleadings and proof. He pointed out that the evidence on record indicates that the respondent's properties were auctioned for cultivation for a period of only 3 years and, therefore, any cultivation by Diogo beyond 3 years was not lawful cultivation. He, therefore, submits that the ingredients of Section 4 of the said Act were never fulfilled and there is no legal or factual infirmity in the impugned Judgment and Order.

12. Mr. Usgaonkar submitted that Joint Mamlatdar, in this case, has also correctly appreciated the material on record and dismissed the petitioner's application, seeking a declaration of tenancy. He submits

¹ 1983 Mh. L.J. 972

² AIR 1964 sc 1320

that the 2005 amendment also makes it clear that the provisions of the said Act were intended to apply to the properties of temples. He submits that this amendment is only clarificatory in nature and, therefore, applies to the facts of the present case. He distinguished the decision in *Dahya Lala* (supra).

13. For all these reasons, he submitted that this Petition may be dismissed.

14. Rival contentions now fall for my determination.

15. The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (said Act) was enacted to provide for regulation of the terms of tenancy with respect to agricultural lands in the Union Territory of Goa, Daman and Diu and for matters connected therewith. Section 1(3) of the said provides that it shall, unless otherwise specifically provided in the said Act, come into force on such date as may be fixed by notification by the Government. The learned Counsel for the parties pointed out that vide Notification No.TNC/NTF-1/65 dated 3rd February, 1965, published in the Official Gazette, Series I No.5 dated 5-2-1965, the date for coming into force of the said Act, was notified as 9/2/1965.

16. Section 2(23) of the said Act defines “tenant” in the following terms :

“tenant” means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is [or was] deemed to be a tenant under this Act;”

17. Since, it is the case of the petitioners that their predecessor-in-title Diogo Cardozo was “*deemed tenant*”, reference is necessary to the provisions in Section 4 of the said Act, which reads as follows :

“4. Persons deemed to be tenants.- A person lawfully cultivating any land belonging to another person (hereinafter in this section referred to as the owner) on or after the 1st of July, 1962 but before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

(i) a member of the owner's family, or

(ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any members of the owner's family, or

(iii) a mortgagee in possession:

Provided that if upon an application made by the landlord within one year from the commencement of this Act to the Mamlatdar within whose jurisdiction the land is situated:-

- (a) the Mamlatdar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or*
- (b) the Mamlatdar refuses to make such declaration but his decision is reversed on appeal or revision, such person shall not be deemed to be a tenant under this section:*

Provided further that a sub-tenant cultivating any land belonging to, another person ["on or after the 1st of July, 1962, but before the commencement of this Act"] shall, notwithstanding the fact that the creation of the sub-tenancy might have been prohibited by any law for the time being in force, be deemed to be lawfully cultivating the land as a tenant for the purposes of this section; and in such cases, the intermediary tenant or tenants prior to the creation of the sub-tenancy shall not be deemed to be tenant or tenants for the purposes of this Act:

["Provided further that in the case of a person claiming to be a tenant on the ground that he was a sub-tenant cultivating any land after the 1st July, 1962 but before the commencement of this Act, the application by the landlord for a declaration that such person is not a tenant may be made within three months of the commencement of the Goa, Daman and Diu Agricultural Tenancy (Amendment) Act, 1966"].

18. Section 5 of the said Act provides that a person who lawfully cultivated as a tenant or sub-tenant any land belonging to another person (referred to as the owner) on or before 19/12/1961, but before 1st July, 1962, shall be deemed to be a tenant for all purposes of the said Act;

- (i) if such person cultivated it personally for any period immediately preceding the latter date,*
- (ii) if such land was not cultivated personally by the owner,*
- (iii) if such person was not one of the persons mentioned in clauses (i) to (iii) of section 4, and*
- (iv) if such person is restored to possession of such land in pursuance of subsection (3) of section 8.*

19. Section 6 of the said Act provides that for the purposes of Sections 4 and 5 of the said Act -

- (i) where the person who lawfully cultivated the land on the relevant date is, on or before the date of coming into force of this Act, dead, his legal representative, or where there are more than one legal representative all of them jointly shall be entitled to the same rights and subject to the same obligations as the deceased person;*
- (ii) where any land is held by two or more persons jointly as tenants, all such persons shall, if any one of them cultivated and continues to cultivate such land personally, be deemed to be tenants in respect of such land;*

(iii) when any land is cultivated by a widow or minor or a person who is subject to physical or mental disability or a serving member of the Defence Forces, through a tenant then notwithstanding anything contained in [Explanation (2) to clause (7) of section 2], such tenant shall be deemed to be a tenant.

20. From both, the pleadings, as well as the evidence on record, the following position emerges in the present matter.

(a) That the predecessor-in-title of the petitioners Diogo Cardozo obtained the suit property from the respondent in a public auction for the purposes of cultivation;

(b) The said Diogo Cardozo continued to cultivate the suit property until his demise and thereafter, the suit property was cultivated by the petitioners *i.e.* the wife, sons, daughters, sons-in-law, and daughters-in-law of late Diogo Cardozo;

(c) The survey record prepared under the Land Revenue Code had recorded the name of late Diogo Cardozo in the '*tenant's column*' in relation to the suit property. At no stage, the respondent applied for deletion of this name or for the correction of the survey records;

(d) On 18/1/2000, the Mamlatdar issued notice to the petitioners under Section 18-C of the said Act to ascertain

whether the plaintiffs, as tenants of the suit property, were willing to purchase the suit property on terms provided under the said Act; and

(e) The petitioners, in response to the notice dated 18/1/2000, indicated their willingness to purchase the suit property. However, the attorney of the respondent, vide reply dated 19/9/2000, objected to the purchase proceedings, alleging that the petitioners were not the tenants in respect of the suit property.

(f) On account of such objections, the petitioners, on 4/10/2000, applied to the Mamlatdar under Section 7 of the said Act, for a declaration that they are the tenants of the suit property.

21. The respondents, in their written statement filed before the Joint Mamlatdar, also admitted that the suit property was taken on auction by Diogo Cardozo. However, it was the case of the respondent that Diogo Cardozo was the only highest bidder at the auction and, therefore, entitled to cultivate the suit property for a period of 3 years and the status of Diogo Cardozo was not that of a tenant. The respondent was not clear in its pleadings whether any further auctions were held after the initial auction. However, the respondent referred to

1971 Government Circular, prohibiting holding of fresh auctions of paddy fields by Devasthans and pleaded that no further auctions were held from the year 1971.

22. The petitioners examined Pedro Francisco Cardozo (petitioner No.9), son of Diogo Cardozo, as one of the witnesses before the Joint Mamlatdar of Canacona. The respondent examined Anil Desai, Attorney of the respondent and Pandhari Bhagat, as witnesses before the Joint Mamlatdar.

23. Pedro Cardozo deposed that his father Diogo was cultivating the suit property prior to liberation of Goa and after his demise he, along with other legal representatives of late Diogo, were cultivating the same. He deposed that the suit property required about half khandi paddy seeds and the annual yield was about 30 khandies of paddy. He deposed that his father would pay yearly rent of ₹ 180/- to the respondent and he even produced receipts pertaining to the years 1997-98, 1998-99 and 1999-2000 which were admitted in evidence and marked as AW.1/C-collectively. He also produced the Certificate of Death of Diogo Cardozo and survey records in which the name of Diogo Cardozo was recorded as a tenant.

24. Pedro Cardozo admitted that there was no written agreement creating tenancy. He admitted that the suit property was allotted to his late father, initially in pursuance of a public auction. He deposed that he did not know whether his father had taken the suit paddy field in auction only once and thereafter it had continued without any further auction. He denied the suggestion that for last 8 to 10 years there was no cultivation in the suit property. He also denied the suggestion that since the petitioners were auction-bidders, they were not covered under the definition of “*tenant*”.

25. Anil Desai, on behalf of the respondent, also deposed that the suit paddy field was taken in auction by late Diogo Cardozo only for a period of 3 years. He deposed that there was no lease created in favour of Diogo Cardozo and, therefore, it cannot be said that late Diogo Cardozo was cultivating the suit property, as a tenant, prior to the appointed day as per the said Act. He admitted that late Diogo Cardozo was paying ₹ 180/- as “*annual auction rent*” and the respondent was issuing receipts for the same as no fresh auctions were held. He, however, clarified that late Diogo Cardozo never paid rent as a tenant, but paid the amount as auction holder/bidder. He also deposed that after such auction was held in which Diogo Cardozo took the suit property, no fresh auction had been held and, therefore, late

Diogo Cardozo was not a tenant, “*but holding as a highest auction bidder*”. He asserted that the auction holder/bidder cannot claim to be a tenant.

26. In his cross examination, Anil Desai was unable to depose to the period during which the auction of the suit property was held and the suit property was allotted to late Diogo Cardozo by the respondent. He claimed that he had no idea as to the date on which the initial auction was held prior to 1971 circular. He admitted that the receipts produced by the petitioners were issued by the respondent. Finally, he denied the suggestion that Diogo was cultivating the suit property even prior to 1960.

27. Now, Anil Desai, in the course of his evidence produced a document in Portuguese language, which was marked as Exhibit OW.1/B-colly. This document is an extract from “*Book No.5, 'Livro de termos, autos e contractos' of Devalaia de Sri Molicarjuna de Canacona*”. The translation of this document is on record at page 62 of the paper book in this petition.

28. The relevant excerpts from the document at Exhibit OW.1/B-colly produced by Anil Desai on behalf of the respondent, read as follows:

“53. The paddy Quirem plot No. 37, 2nd parcel (Sitiabolo) situated at Palolem, shown in No.53 of the respective file, being put for auction, was taken in the bid by Diago Piedade Cardoso, married, toddy taper, from Palolem as there was no other bidder who could offer higher price, for the annual rent of 1065 escudos and who guaranteeing the payment of the rent through the deposit of the rent of one year, undertook himself to comply with the conditions of the respective file.

Sd. Diago Piedade Cardoso.”

29. The respondent also examined Pandhari Bhagat before the Joint Mamlatdar. This witness, who deposed in the year 2004, claimed that the suit property was taken on auction by Diogo Cardozo about 20 years back. He also deposed that based on such auction, Diogo cultivated the suit property for a period of 3 years. He also deposed that at the same time, another paddy field was taken on auction by him, also from the respondent for a period of 3 years. This witness, in his cross examination, admitted that the property named '*Gangoll*' was allotted to him in public auction and that in the survey records, his name had been recorded as a '*tenant*'. He also admitted that the property '*Gangoll*' was acquired by the Government and compensation

was paid partly to the respondent and partly to himself (as respective shares of the tenant and the landlord).

30. Now, there is clear evidence that late Diogo Cardozo was allotted the suit property through public auction before liberation of Goa, Daman and Diu *i.e.* before 19/12/1961. This was clearly deposed to by Pedro Cardozo and in his cross examination, not even a suggestion was put to him that this was not correct. The attorney of the respondent-Anil Desai claimed to have deposed on the basis of the records of the respondent. Despite that, Anil Desai failed to disclose the date on which the initial auction was held, in which Diogo Cardozo was adjudged as the highest bidder and was allotted the suit property.

31. Anil Desai, however, produced on record an important document – exhibit OW.1/B-colly, which was in Portuguese language. The document records that Diogo Cardozo submitted the highest bid for the annual rent of '*1065 escudos*'. This means that the document produced on behalf of the respondent, itself speaks about the payment of '*annual rent*' and further, this document speaks about payment of such annual rent in Portuguese currency '*escudos*'.

32. From the aforesaid, it is more than apparent that the auction in which Diogo Cardozo was adjudged highest bidder and was allotted the suit property, was prior to the liberation of Goa on 19/12/1961. Otherwise, there was no question of payment of annual rent in the currency '*escudos*'.

33. The deposition of Pandhari Bhagat that the auction was held hardly 20 years before he deposed before the Joint Mamlatdar in September, 2004, finds no corroboration even in the case of the respondent's attorney-Anil Desai. If the auction was held hardly 20 years ago, *i.e.* some time in the year 1984, then, there would be no question of any record in *Book No.5, 'Livro de termos, autos e contractos'* maintained by the respondent in Portuguese language. Again, there would be no question of indicating the annual rent in the currency '*escudos*'.

34. Besides, Pandhari Bhagat, who claims that he was also an allottee of another property pursuant to an auction held by the respondent, was not a tenant thereof. However, in his cross examination, Pandhari Bhat admitted that a portion of the property allotted to him was acquired by the Government and he was also paid compensation in respect of such acquisition '*as respective shares of the*

tenant and the landlord'. Therefore, even the deposition of Pandhari Bhagat assists the petitioners rather than the case put up by the respondent.

35. Now, though all the witnesses in these proceedings have admitted that late Diogo Cardozo was allotted the suit property after being adjudged as highest bidder at a public auction, there is dispute as to the status of such allotment. The respondent contends that such allotment does not constitute any lease; whereas the petitioners contend that it does. The documents produced by the respondents at Exhibit OW.1/B-colly do not speak about any 3 years term. No statutory provision was also pointed out, restricting the term to 3 years.

36. Now, if Article 124 of the "*Regulamento das Mazanias*" (Devasthan Regulation) is perused, then, the same provides that the real estate shall be '*leased*' before the Managing Committee in public auction, under the conditions mentioned in the estimates approved before hand by the administrator. Thus, at least, *prima facie*, it appears that the suit property was leased to Diogo Cardozo. However, even if it is assumed that the allotment did not create any lease, it is clear that from the date of such allotment, late Diogo Cardozo was '*lawfully cultivating*' the suit property belonging to the respondent.

37. Even the respondent, at no stage, contended that late Diogo Cardozo and upon his demise, the petitioners were the trespassers in respect of the suit property, or that there was anything unlawful in cultivation of the suit property by late Diogo Cardozo and, after his demise, the petitioners. At least, right up to the year 1999-2000, the respondent has accepted an amount of ₹ 180/- annually, towards allotment of the suit property. The name of Diogo Cardozo was recorded as a tenant in the survey records and at no stage did the respondent object to such recording or make any applications for deletion/mutation.

38. Mr. Usgaonkar did try to contend that the receipts are not the rent receipts. However, on perusal of the same, it is difficult to agree with the contention of Mr. Usgaonkar. There is evidence that the annual rent was determined a ₹ 180/- in respect of the suit property. Even, Anil Desai deposed that late Diogo Cardozo was paying ₹180/- as '*annual auction rent*' towards suit paddy field, to the respondent. In any case, there is ample evidence on record to suggest that late Diogo Cardozo and after his demise, the petitioners were lawfully cultivating the suit property. There is ample evidence on record to establish that Diogo Cardozo was lawfully cultivating the suit property on or after 1st

July, 1962, but before commencement of the said Act *i.e.* before 8/2/1965.

39. Section 4 of the said Act very clearly provides that a person lawfully cultivating any land belonging to another person on or after the 1st of July, 1962 but before the commencement of the said Act, *i.e.* before 8/2/1965, shall be deemed to be a tenant, if such land is not cultivated personally by the owner and if such person is not-

- (i) a member of the owner's family, or
- (ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any members of the owner's family, or
- (iii) a mortgagee in possession.

40. Now, it is also not the case of the respondent that Diogo Cardozo who was cultivating the suit property at any time on or after 1st of July 1962, but before commencement of the said Act on 8/2/1965 fell within any of the three exempted categories. Therefore, based on the clear evidence on record, it is apparent that late Diogo Cardozo was the deemed tenant in respect of the suit property in terms of Section 4 of the said Act.

41. The Joint Mamlatdar, in his order dated 11/7/2005, virtually agreed with most of the factual contentions raised by and on behalf of the petitioners. However, the Joint Mamlatdar refused to declare the petitioners as tenants of the suit property only on the ground that the suit property was auctioned in favour of late Diogo Cardozo and such an auction, did not create any lease in favour of late Diogo Cardozo. The Joint Mamlatdar failed to take note of the provisions of Article 124 of Devasthan Regulation or, in any case, failed to note that Section 4 of the said Act merely requires a person to be lawfully cultivating any land belonging to another person on or after 1st July, 1962, but, before 8/2/1965. There is no requirement in Section 4 of the said Act that such a person must cultivate the land of another as a tenant or sub-tenant. The Joint Mamlatdar's order dated 11/7/2005 was quite correctly set aside by the Deputy Collector.

42. The Tribunal has also failed to take into consideration the overwhelming evidence on record that late Diogo Cardozo was lawfully cultivating the suit property on or after 1st July, 1962, but before 8/2/1965. The Tribunal has also proceeded on the basis that Section 4 of the said Act requires a person claiming deemed tenancy, to establish that he was cultivating the land as a tenant or as a sub-tenant. This is an error apparent on the face of the record since, such a reasoning will

amount to completely misreading the provisions of Section 4 of the said Act.

43. In ***Chondru Gomes*** (supra), the learned Single Judge of this Court has explained the import of the provisions of Section 4 of the said Act in the following manner :

“5. Section 4 of the Act, in so far as it is material for our purpose, states that a person lawfully cultivating any land belonging to another person on or after the 1st of July, 1962 but before the commencement of the Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owners family or a servant on wages or a mortgagee in possession. It is obvious that any person who satisfies the conditions of this section is deemed to be a tenant. Now clause (23) of Section 2 defines tenant to mean a person who on or after the date of commencement of the Act holds land on lease and cultivates it personally and includes a person who is deemed to be a tenant under the Act. It would, therefore, appear that by virtue of this definition a deemed tenant is for all purposes a tenant within the meaning of the Act and naturally would be entitled to all the benefits thereof. Coming back to Section 4, it would appear that in order to be declared as a deemed tenant a person claiming to be so has to prove that he had been lawfully cultivating any land belonging to another person between 1st July 1962 and the date of commencement of the Act, which I am told is 82-1965. In other words, if the person who claims to be a deemed tenant proves that he has been lawfully cultivating the land of another person between 17-1962 and 82-1965, he would be deemed to be a tenant, irrespective of the fact whether there

is contract of lease or not. It must be remembered (hat the person who is claiming, has to prove that he has been cultivating the land lawfully. The word lawfully occurring in this section has to be given its due weight. In other words, any person who is unlawfully cultivating land of another during the above-said period, would not be entitled to be termed as a deemed tenant. Hence lawful cultivation is sine qua non for being a deemed tenant.”

44. The reasoning of the Tribunal in the impugned Judgment and Order dated 29/12/2010 is contrary to the law laid down by this Court in **Chondru Gomes** (supra).

45. Besides, in **Dahya Lala** (supra), the Hon'ble Supreme Court, in the context of similar provisions in the Bombay Tenancy Act, 1939, has observed as follows :

“6. The Act of 1948, it is undisputed, seeks to encompass within its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the owners but persons who are deemed to be tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by Section 2(18) devised a special definition of tenant and included therein persons who are

not contractual tenants. It would therefore be difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land “lawfully”: It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a “deemed tenant”. Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in clauses (a), (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands.”

46. In this case, before the Hon'ble Supreme Court, the applicant had not been cultivating the land with the consent or under the authority of the owner. However, based on the fact that such an

applicant was nevertheless cultivating the land lawfully, the Hon'ble Supreme Court held that the provisions of Section 4 of the Bombay Tenancy Act, were fulfilled and such a person was a deemed tenant of the land. The Hon'ble Supreme Court pointed out that the relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land lawfully. It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition, is to rewrite the section and destroy its practical utility. Therefore, as long as the person lawfully cultivating the land of another during the window period, does not fall within the exempted categories, such person must be deemed to be the deemed tenant of the land in question.

47. Mr. Usgaonkar, relying upon a sentence from paragraph 6 tried to contend that a person who derives his right to cultivate land from the owners, would normally be a contractual tenant and not a deemed tenant, contended that this was a case of a contract in pursuance of a public auction and, therefore, Diogo Cardozo cannot claim to be a deemed tenant. This contention cannot be accepted. In the first place, it is not permissible to read a sentence from paragraph 6 de hors the context in which such a sentence appears. Secondly, the

evidence on record overwhelmingly establishes that late Diogo Cardozo was lawfully cultivating the suit property during the window period. Therefore, following the decision of the Hon'ble Supreme Court in ***Dahya Lala*** (supra), it will have to be held that late Diogo Cardozo was a deemed tenant in respect of the suit property. The impugned Judgment and Order dated 29/12/2010 delivered by the Tribunal, is contrary to the law laid down by the Hon'ble Supreme Court in ***Dahya Lala*** (supra).

48. The Tribunal, in this case, has virtually ignored the overwhelming evidence on record. The Tribunal has misread the provisions of Section 4 of the said Act. The decision of the Tribunal is contrary to the law laid down by this Court in ***Chondru Gomes*** (supra) and the Hon'ble Supreme Court in ***Dahya Lala*** (supra). The Tribunal, in a matter involving an agricultural tenant, has adopted an unduly narrow and pedantic approach in construing the pleadings before the Joint Mamlatdar. The findings recorded by the Tribunal are also vitiated by perversity. All these are substantial grounds for interference with the impugned Judgment and Order dated 29/12/2010, made by the Tribunal.

49. Mr. Usgaonkar's last contention that the provisions of the said Act do not apply to the properties of religious institutions, cannot be accepted in the present matter. This objection was based on a Notification dated 28th September, 1995, which reads as follows:

“ *Revenue Department*

Notification

36/1/88-RD (Misc)

In exercise of the powers conferred by sub-section (3) of section 56 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) (hereinafter called the 'said Act'), the Government of Goa is pleased to grant exemption in respect of land which is the property of a religious institution and wherein no tenancy rights exist from the operations of the said Act, with immediate effect.

By order and in the name of the Governor of Goa.

Maria A. Rodrigues, Under Secretary (Revenue).

Panaji, 28th September, 1995.”

50. The notification makes it clear that the exemption is in respect of the land which is a property of a religious institution and 'wherein no tenancy rights exist' from the operations of the said Act 'with immediate effect'.

51. The aforesaid means that the Notification dated 28th September, 1995 was to take effect from the date of its issuance *i.e.*

28th September, 1995 and not some prior date. Secondly, the exemption was in respect of the properties of religious institutions '*wherein no tenancy rights exist*'. It means that if, on the date of issuance of the Notification dated 28th September, 1995, tenancy rights already existed in respect of the property of a religious institution, then, the provisions of the said Act would nevertheless apply. Mr. Usgaonkar is not right in contending that the Notification dated 28th September, 1995 was only procedural and clarificatory in nature. The exemption notification is required to be construed strictly and as long as there is nothing in the notification to even remotely suggest that the same was intended to apply with retrospective effect, no such retrospective effect can be given to the notification.

52 For all the aforesaid reasons, the impugned Judgment and Order dated 29/12/2010, to be read with Corrigendum dated 6/1/2011 is, hereby, quashed and set aside and the Deputy Collector's Judgment and Order dated 24/1/2008 is, hereby restored.

53. Rule is made absolute. But, there shall be no order as to costs.

M.S. Sonak, J.