

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 640 OF 2019

1. Sundernath Shripad Sinai Dessai & 2 Ors. ...Petitioners
Versus
1. Balkrishna Sakharam @ Sitaram Pednekar @
Gadekar & 11 Ors. ...Respondents

Mr. V. R. Tamba, Advocate for the Petitioners.
**Mr. Amay Phadte, Advocate for the Respondent nos. 1, 2, 4 to 8,
10, and 11.**

CORAM: M. S. SONAK, J
DATED: 27th August 2021

ORAL ORDER

1. Heard Mr. Tamba, learned Counsel for the Petitioners, and Mr. Phadte learned Counsel for the Respondent nos. 1, 2, 4 to 8, 10, and 11.

2. The challenge in this Petition is to the judgment and order dated 11.12.2018 made by the Administrative Tribunal, Goa, (Tribunal) allowing Tenancy Revision Application no. 1 of 2018, instituted by the Respondents challenging the Deputy Collector's order dated 29.08.2013.

3. In this case, the Mamlatdar, before whom an application to declare the Respondents as tenants was pending, made an order dated 29.04.2011 allowing the Respondents' application for an amendment to include, *inter alia*, property surveyed under no. 469. The Mamlatdar also allowed the Respondents to make some consequential corrections in the original pleadings.

4. Aggrieved by such order, the Petitioners herein instituted an Appeal before the Deputy Collector being Case no. DCP/TNC/REV/1-7/2011. By judgment and order dated 29.08.2013, the Deputy Collector allowed this Appeal and set aside Mamlatdar's order dated 29.04.2011.

5. The Respondents herein, aggrieved by the Deputy Collector's order dated 29.08.2013, instituted Tenancy Revision Application no. 1/2018, which came to be allowed by impugned judgment and order dated 11.12.2018. Hence, the present Petition.

6. Mr. Tamba, the learned Counsel for the Petitioners, submits that the Mamlatdar, in this case, had allowed the application for amendment by making a cryptic order. He submits that the order allowing the amendment changes the entire nature of the proceedings and, therefore, the same should not have been allowed. He submits that the Deputy Collector, in this case, has made a detailed and reasoned order and the same should not have been interfered with by the Tribunal in the exercise of its limited revisionary jurisdiction. He submits that the jurisdiction of the Tribunal is circumscribed by Section 50(2) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Tenancy Act) and unless the parameters specified therein were fulfilled, there was no question of the Tribunal interfering with the well-reasoned order of the Deputy Collector. He relied on *Vidhyadhar Devba Korde & Ors. vs. Anandi Raghu Yeso Satarkar & Ors.*¹ and *K. B. Lahoti & Company & Ors. vs. Champalal Vithuram Jajoo (deceased) by his L.Rs.*

¹ 1998(1) GLT 382

*Chandrakant Champalal Jajoo & Ors.*² , in support of his contentions.

7. Mr. Amay Phadte, the learned Counsel, defends the impugned judgment and order based on the reasoning reflected therein. He submits that this is not a case where the Tribunal has exceeded its jurisdiction and therefore, this Court, ought not to interfere with the impugned order.

8. Having considered the rival contentions and perused the record, I am satisfied that no case is made out to warrant interference with the impugned judgment and order made by the Tribunal.

9. In the first place, if the application for amendment is perused, then, it is quite clear that the amendment was necessitated to only clarify the position and to enable the Mamlatdar to determine the real dispute between the parties. Such a clarificatory amendment was correctly allowed by the Mamlatdar, though, without making an elaborate order. If such an amendment was not to be allowed, all that would have resulted was a multiplicity of proceedings. As it is, the matter has been pending from 2011 onwards only on the issue of the amendment.

10. This is not at all a case where the nature of the proceedings before the Mamlatdar has changed after the amendment was allowed. The amendment only seeks to clarify matters so that there is no cause for avoidable confusion. The amendment was quite correctly allowed by the Mamlatdar. The lack of detailed

² 2020(5) Mh.L.J. 196

reasons in the Mamlatdar's order has been made good by the detailed reasons in the Tribunal's order. To remand the matter to the Mamlatdar for fresh consideration will only delay the proceedings even further. As it is, the issue of the amendment has taken almost 11 years.

11. The Deputy Collector, in this case, has gone into the merits of the matter and tried to return findings as to how the case of the Respondents was untenable on merits. This is contrary to the well-settled legal position which obtains at the stage of considering an application seeking leave to amend. At that stage, the Court is not required to go into the merits and thereafter return some findings or refuse an amendment because, ultimately, what is sought to be introduced by amendment, may not be tenable on merits. The Tribunal has relied on the decision of this Court in *Janardan Urkuda Waghmare vs Ratanlal Kashinath Gudekar*.³ which has held that the merits of the amendment are not to be looked into while considering the application for amendment.

12. Since the view taken by the Deputy Collector, in this case, was contrary to law, certainly, the Tribunal was entitled to interfere with the same in the exercise of its revisional jurisdiction. Section 50(2) of the Goa Tenancy Act on which heavy reliance was placed by Mr. Tamba itself suggests that an application for revision may be made to the Administrative Tribunal against any order on the three specified grounds. The first ground is that the order of the Collector was contrary in law. In this case, since the

3 2007(6) ALL MR 800

order of the Deputy Collector was contrary to law, the same was quite correctly interfered with by the Tribunal.

13. Besides, in this case, the Deputy Collector had also failed to determine a material issue of law namely whether the proposed amendment was necessary for adjudication of the real controversy between the parties. Instead, the Deputy Collector chose to proceed on merits and interfere with the order of the Mamlatdar granting leave to amend. This is therefore a case where the Deputy Collector had failed to determine the material issue of law and this is yet another ground on which the Tribunal could have and has interfered with the order of the Deputy Collector.

14. The Tribunal has referred to precedents that lay down the principles for consideration of applications seeking leave to amend. Such principles have been correctly applied to the facts of the present case and the amendment application has ultimately been allowed or rather the order of the Mamlatdar allowing the amendment application has been upheld. Costs have also been awarded in favor of the Petitioners.

15. The decision in *Vidhyadhar Devba Korde* (supra) turns on its own facts. No doubt, in the said case, the learned Single Judge of this Court has held that the revisional jurisdiction can be exercised only on the grounds referred to in Section 50(2) of the Tenancy Act. In this case, as noted earlier, since at least two of the grounds specified in Section 50(2) of the Tenancy Act were clearly attracted, there is no error in the exercise of jurisdiction by the revisional Court.

16. ***K. B. Lahoti*** (supra) refers to the distinction between the exercise of revisional jurisdiction and appellate jurisdiction. This judgment was rendered in the context of provisions not similar to the provisions in Section 50(2) of the Goa Tenancy Act. The decision can be of no assistance to the Petitioners in this case.

17. In my judgment, there is neither any jurisdictional error nor any perversity in the reasoning of the Tribunal to warrant interference under the extraordinary jurisdiction under Article 227 of the Constitution.

18. For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed.

M. S. SONAK, J.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2021.08.30 12:11:27 +05'30'