

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.751/2012

LOURENCO FERNANDES (SINCE
DECEASED) THROUGH HER LR'S. ... Petitioners.

Versus

ORGAN REALTY PRIVATE LTD., REP. BY
ATTORNEY PARAG JHAVERI AND ORS. ... Respondents.

Ms. S. Kenny, Advocate for the Petitioners.

Mr. V.A. Lawande and Mr. Parimal Redkar, Advocates for Respondents
No.1 to 5.

Coram: M.S. SONAK, J.
Date: 18th February 2021

ORAL ORDER:

Heard Ms. S. Kenny for the petitioner and Mr. V.A. Lawande for the respondent Nos. 1 to 5 who are the main contesting respondents.

2. The challenge in this petition is to the order of the Administrative Tribunal dated 02.07.2012 in Tenancy Revision Application No. 7/2010, by which, the Administrative Tribunal has upheld the rejection of temporary injunction sought for by the petitioners before the Mamlatdar and the Deputy Collector.

3. From the aforesaid, it is clear that three authorities had declined grant of any interim reliefs to the petitioners pending the disposal of Tenancy Application No. TNC/9/2001 instituted by the petitioners seeking a declaration of tenancy in respect of the suit property.

4. According to me, no case has been made out to interfere with the impugned orders, particularly because the orders are only interim. There is no perversity or some serious legal error pointed out.

5. However, Ms. Kenny points out that from 09.01.2013 onwards there is limited interim order operating in favour of the petitioner restraining the respondents from cutting trees from the property bearing survey no. 66/0 of Azossim village. She submits that such relief may be continued pending disposal of Tenancy Application No. TNC/9/2001.

6. The order dated 09.01.2013 made in this petition reads as follows:-

“Heard Shri S. D. Lotlikar, learned Senior Counsel appearing for the petitioners.

2. Issue notice before admission to the respondents, returnable on 23.01.2013.

3. In the meanwhile, it is pointed out by Shri S. D. Lotlikar, learned Senior Counsel appearing for the petitioners that there was an interim order in operation in terms of the ad-interim order dated 30.06.2011. Hence, until returnable date the respondents are restrained from cutting the trees from the property bearing survey no.66/0 of Azossim Village.”

7. Though it is true as contended by Mr. Lawande that the order dated 09.01.2013 was made before any notice was served on the respondents, the record indicates that even after the respondents were served, the order was continued from time to time. As such, we have to proceed on the basis that this interim order which restrains the respondents from cutting the trees in the property bearing survey no.66/0 of Azossim village is in operation even to date.

8. Mr. Lawande learned Counsel for the contesting respondents points out that even before this order was made, some trees were already felled based on permission for felling of such trees from competent authorities. He submits that after the restraint order was made by this Court, no trees have been felled. The record also does not indicate any complaint from the petitioners about felling after the restraint order was made.

9. If this is so, then, it is clarified that the order dated 09.01.2013 will be read and construed as a restraint upon the respondents to fell any further trees from the property bearing survey no. 66/0 of Azossim village.

10. According to me, there can be no difficulty if the interim order dated 09.01.2013, as now clarified by this order, is continued until the final disposal of the Tenancy Application No. TNC/9/2001 pending before the Mamlatdar of Tiswadi Taluka at Panaji, Goa. Accordingly, it is ordered that pending the final disposal of agricultural Tenancy Case

No.TNC/9/2001, the respondents, shall not fell any further trees from the property bearing survey no. 66/0 of Azossim village.

11. The Mamlatdar of Tiswadi Taluka is directed to dispose of agricultural Tenancy Case No. TNC/9/2001 as expeditiously as possible and in any case within one year from the date of production of an authenticated copy of this order.

12. The parties, including in particular the petitioners should cooperate in the matter of expeditious disposal of agricultural Tenancy Case No. TNC/9/2001 and not delay the matter merely because the restraint on the respondent to fell any further trees is now maintained.

13. Further, it is made clear that the Mamlatdar, whilst disposing of agricultural Tenancy Case No. TNC/9/2001 should not be influenced by any of the impugned orders declining interim reliefs to the petitioner or the present order continuing the limited restraint order and agricultural Tenancy Case No.TNC/9/2001 will have to be disposed of based on the evidence led by the parties and on its own merits and following the law. Needless to say, that all contentions of all parties are expressly kept open for determination by the Mamlatdar.

14. The rule in this petition is made partly absolute in the aforesaid terms. There shall be no order as to costs.

15. The parties to file an authenticated copy of this order before the concerned Mamlatdar so that the Mamlatdar takes steps to expeditiously dispose of agricultural Tenancy Case No. TNC/9/2001.

M.S. SONAK, J.

jfd/-