

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.711 OF 2014**

1. MRS. NATALINA GONSALVES,
Widow of Antonio Francisco Hipolito Gonsalves,
aged 58 years, married,
Indian National,
Resident of H. No. 385/A,
Sonarvado, Nagoa,
Salcete – Goa.
(since deceased through Legal Heirs)

1(a) Shri. Desmond Santano
Fabian Gonsalves
S/o. Late Natalina Fernandes
e Gonsalves, 40 years, Service,
R/o. H.No.385/A,
Sonarvaddo-Nagoa,
Salcete-Goa.

1(b) Mrs. Wendy Clara Angela Gonsalves
D/o. Late Natalina Fernandes e Gonsalves,
29 years, service, R/o. H.No.339,
Dignem-Verna, Salcete-Goa.

... Petitioners.

VERSUS

1. Union of India
Through Ministry of Home Affairs,
Office of Ministry of Home Affairs,
New Delhi.
2. Custodian of Enemy Property for India,
Office of the Custodian of
Enemy Property For India,
Kaiser – 1, Hind Building
Currimbhoy Road, Ballard Estate,
Mumbai.

3. Collector, South Goa,
Office of Collector, South Goa,
Margao - Goa.

4. Mamlatdar of Salcete Taluka,
Office of Mamlatdar,
Margao - Goa.

... Respondents.

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. P. Faldessai, Assistant Solicitor General of India for the Respondent Nos. 1 and 2.

Mr. T. Gawas, Additional Government Advocate for Respondent Nos. 3 and 4.

**Coram:- *DIPANKAR DATTA, CJ &
M. S. SONAK, J***

Date:- 25th March 2021

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. S. Desai, learned counsel for the Petitioners, Mr. P. Faldessai, learned Assistant Solicitor General of India for Respondent Nos. 1 and 2, and Mr. T. Gawas, learned Additional Government Advocate for Respondent Nos. 3 and 4.

2. The Petitioner seeks an appropriate writ for quashing the order dated 8th October 2010 made under Sections 5 and 24 of the Enemy Property Act, 1968 by the Custodian of Enemy Property for India (Respondent No.2) and restoration of possession of such property to the Petitioner/legal representatives of the Petitioner.

3. The impugned order dated 8th October 2010 was made by the Custodian as against the original Petitioner's mother Concecao

Costa. There is a serious dispute on the issue of service of this order on the said Concecao Costa. However, even if this aspect is not taken into account, there is no dispute that as on the date when the impugned order was made, Concecao Costa had already expired i.e. 31.10.2009. Her husband Santana Fernandes had also expired on 06.09.1997.

4. The Petitioner had pleaded that before making of the impugned order, the Custodian, neither bothered to serve any proper notice upon the said Concecao Costa or offered her any opportunity of hearing, before declaring the properties owned by her as enemy properties. There are pleadings that no efforts were taken by the Custodian to even find out about the legal representatives of Concecao Costa and to serve them or afford them any opportunity of hearing.

5. Though the returns have been filed, the aforesaid factual aspects have not been denied. The only contention which was sought to be raised was that the principles of natural justice stand excluded by implication in such matters and therefore, there was no obligation to comply with the same.

6. Mr. Faldessai also tried to refer to the provisions of the Enemy Property Act to suggest that now even if the legal representatives are found to be Indian Nationals, there is no obligation to restore the enemy property to such legal representatives. The provisions pointed out by Mr. Faldessai came into force in the year 2016. The impugned order was made in the year 2010. Therefore, at least *prima facie*, the

impugned order cannot be sustained based on the provisions which came into force in the year 2016. However, it is not necessary to go into this issue in much detail at this stage.

7. In circumstances, almost similar to those obtained in the present matter, this Court has held that the compliance with the principles of natural justice is not ruled out before, making orders under Sections 5 and 24 of the Enemy Property Act, 1968. Further, this Court has also held that the orders made against the persons who had already expired are nullities. This was in the case of ***Mr. Shane Francisco Dias Vs Union of India and others***, Writ Petition No.245 of 2018 decided on 26th November 2019.

8. Mr. S. Desai pointed out that the decision of this Court in *Shane Dias* (supra) covers the issue now raised in this petition. He submitted that even otherwise on merits the Petitioners have a good case because there was no material on record to establish that late Concecao Costa was “*enemy*” as defined in Section 2(b) of the Enemy Property Act, 1968.

9. Mr. Faldessai admitted that the decision of this Court in *Shane Dias* (supra) was not challenged by the Union of India or Custodian before the Hon'ble Supreme Court and in that sense, has attained finality. Mr. Faldessai however referred to paragraph 45 of the decision in *Shane Dias* (supra) and submitted that liberty be granted to the Respondent Nos. 1 and 2 to initiate fresh proceedings under the

Enemy Property Act, 1968.

10. According to us, the issue raised in this petition stands covered in favor of the Petitioners in terms of our decision in *Shane Dias* (supra). Therefore, this petition will have to be allowed and the reliefs in terms of prayer clauses (a), (b), and (c) will have to be granted. However, this will not preclude Respondent Nos. 1 and 2 from initiating fresh proceedings in terms of the Enemy Property Act, 1968 and Rules made thereunder, if they are satisfied that there exist any material or grounds for doing so.

11. Accordingly, Rule is made absolute in terms of prayer clauses (a), (b), and (c) of this petition which read as follows:-

(a) writ of mandamus or in the nature of mandamus or any other appropriate writ, direction or order commanding Respondent No.2 to hand over actual and juridical possession of the said property;

(b) writ of mandamus or in the nature of mandamus or any other appropriate writ, direction or order commanding Respondent No.1 to do all that is necessary to divest the said property vested in Respondent No.2 and revert the same in favour of the Petitioner herein;

(c) issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned order dated 08/10/2010 under Sections 5 and 24 of the Enemy Property Act, 1968 passed by the Respondent No.2.

12. Once again we clarify that this order will not preclude the

Respondent Nos. 1 and 2 from initiating fresh proceedings in terms of the Enemy Property Act, 1968 and Rules made thereunder, if they are satisfied that there exist any material or grounds for doing so. If such proceedings are indeed initiated, then, all rights and contentions of all parties are kept open.

13. The petition is disposed of in the aforesaid terms.

14. There shall be no order as to costs.

M. S. SONAK, J

CHIEF JUSTICE

at*

TARI AMRUT
NAGESH

 Digitally signed by TARI AMRUT
NAGESH
Date: 2021.03.25 16:11:07 +0530'