

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 75 OF 2021

GANPAT MANGLO NAIK (DEC) THR.
GANGA GANPAT NAIK AND 2 ORS. ...PETITIONERS

Versus

TATO SUBHA NAIK AND 11 ORS. ...RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Annelise Fernandes,
Advocates for the Petitioners.

Mr. Rohan P. Desai, *Advocate for Respondent No. 1.*

CORAM: MANISH PITALE, J.

DATED: 23rd February 2022.

ORAL ORDER

1. By this Writ Petition, the petitioners have challenged order dated 13.09.2019, passed by the Administrative Tribunal, whereby the Revision Application filed by the respondent no. 1 was allowed and order passed by the Deputy Collector was set aside, as a result of which, the order passed by the Mamlatdar stood re-stored.

2. In the instant case, the respondent no. 1 filed an Application under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, for declaration of tenancy in respect of a property situated at Parcem village. The landlords

were arrayed as opponents and the petitioners herein were also arrayed as opponents in the said proceedings. The respondent no. 1 claimed that he was in possession of the land and was paying rent of ₹10/- to the landlords and therefore, he deserved to be declared as tenant in respect of the suit field.

3. The petitioners, who were arrayed as opponents before the Mamlatdar, contended that even they were tenants of the suit fields and while they were not disputing the claim of tenancy of the respondent no. 1, it was contended that the petitioners were also occupying part of the suit field as tenants in their own right.

4. The rival parties placed documents on record and also other evidence in support of their respective claims. After taking the material on record, by judgment and order dated 13.09.1989, the Mamlatdar allowed the Application filed by respondent no. 1 and granted reliefs in his favour. Aggrieved by the same, the petitioners filed Appeal before the Collector, which was decided by judgment and order dated 04.01.2006. The Deputy Collector held that the petitioners had been able to place on record rent receipts and other such records to indicate that they were tenants in respect of the suit property. The Deputy Collector also found that the entries in the survey record indicated that the respondent no. 1 had been carrying out cultivation in the suit property to the

extent of 4000 square meters. On the basis of such material, the Deputy Collector found that the order of the Mamlatdar could not be sustained, which had granted reliefs entirely in the favour of respondent no. 1. Accordingly, the Appeal was allowed and the matter was remanded to the Mamlatdar for re-assessing the matter.

5. The respondent no. 1 filed Revision Application against the said order of the Deputy Collector. The Revision Application was allowed by the impugned judgment and order dated 13.09.2019, whereby the order of remand, passed by the Deputy Collector was set aside and the order of the Mamlatdar was upheld.

6. Mr. Ashwin Bhobe, learned Counsel appearing for the petitioners submitted that the Tribunal committed an error by interfering with the order passed by the Deputy Collector. It was submitted that the Tribunal ought not to have interfered with the order passed by the Deputy Collector, which was in the interest of all the parties, so that the facts of the matter could be ascertained and the rights of the petitioners as well as the respondent no. 1 could be decided on proper appreciation of the evidence on record. The learned Counsel submitted that the oral and documentary evidence on record, including the rent receipts indicated that the petitioners were also tenants of part of the

property and that they were not disputing the rights claimed in part of the property by the respondent no. 1. It was submitted that the order of remand, passed by the Deputy Collector was in aid of ascertaining the facts of the matter based on the material and evidence placed on record by the rival parties. It was submitted that the Tribunal was not justified in holding in favour of respondent no. 1, only on the basis of the entries in Form I & XIV. It was submitted that on this basis, the impugned order deserved to be quashed and set aside.

7. Mr. Rohan Desai, learned Counsel appearing for the respondent no. 1 submitted that no interference was warranted in the well reasoned order, passed by the Tribunal. It was not disputed that the name of respondent no. 1 was reflected in Form I & XIV, thereby showing that the respondent no. 1 continued as cultivator in the suit field. It was submitted that the order passed by the Tribunal was based on the material on record and therefore, the impugned order did not deserve interference.

8. This Court has perused the material on record. A perusal of the Application filed on behalf of respondent no. 1 under Section 7 of the aforesaid Act, does not show any statement as to the exact area, which was being cultivated by the respondent no. 1. It was claimed on behalf of respondent no. 1 that he had been

cultivating the suit field and therefore, he was a deemed tenant in respect of the suit field under Section 7 of the aforesaid Act. He claims that annual rent of 10/- was being paid to the landlords and therefore, such a declaration was warranted.

9. Even before the Mamlatdar, the case of the petitioners was that they were also occupying and cultivating a part of the suit field as tenants and that they were paying rent to some of the landlords. Rent receipts were also produced in support of the said contention. Thus, it becomes clear that the petitioners have asserted their rights in part of the suit property. The petitioners have not contested the rights of the respondent no. 1 in the other part of the suit field to continue as a tenant.

10. A perusal of the order passed by the Mamlatdar shows that this aspect of the matter was not adverted to and the competing claims of the rival parties were examined on the presumption that the parties were claiming rights in the suit property in its entirety.

11. The Deputy Collector, after examining the material on record, found that since the petitioners had produced rent receipts and the names of the petitioners as well as the respondent no. 1 were not found in the tenants column in Form I & XIV, a detailed examination of the material on record was necessary to arrive at a proper conclusion. It is in this backdrop that the

Deputy Collector found that it would be appropriate to set aside the order of the Mamlatdar and remand the matter for re-assessment by appreciating the evidence and material on record.

12. Considering the material placed on record filed by the rival parties, the order passed by the Deputy Collector appears to be reasonable and justified so as to give the rival parties an opportunity to support their respective stands. In fact, upon remand, the Mamlatdar would be ascertaining the claims of the rival parties and would give findings on facts on the basis of material placed on record, including the rent receipts and other such material. The order passed by the Deputy Collector was in aid of ascertaining the truth of the matter and hence, it was justified and reasonable. Yet, the Tribunal by the impugned order set aside the order of the Deputy Collector, merely on the basis that the name of the respondent no. 1 was shown as cultivator in Form I & XIV. It is not disputed that neither the name of the respondent no. 1 nor that of the petitioners were shown in the tenants column and in such a situation, particularly when the petitioners had placed rent receipts on record, it appeared that they could raise their claim. The order of the Deputy Collector ought not to have been interfered with by the Tribunal. The Tribunal has recorded its findings in paragraph 16 of the impugned order, while setting aside the order passed by the

Deputy Collector. This Court is not satisfied with the manner in which the Tribunal has set aside the order of the Deputy Collector, while exercising revisional jurisdiction and therefore, this Court is convinced that the Writ Petition deserves to be disposed of in the following terms:

- (a) The Writ Petition is allowed.
- (b) The impugned order passed by the Tribunal is quashed and set aside.
- (c) Accordingly, the order of remand of the Deputy Collector stands revived.
- (d) Parties shall now appear before the Mamlatdar on 07.03.2022.
- (e) The Mamlatdar is directed to proceed expeditiously in the matter and to finally dispose of the Application filed by the respondent no. 1, within a period of six months of the date on which the parties appear before the Mamlatdar.
- (f) It is made clear that the Mamlatdar shall proceed in the matter without being influenced by the observations made in this Order.

MANISH PITALE, J.