

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 424 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER
VS
SHEETAL NAIK ... RESPONDENT

WRIT PETITION NO. 425 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER
VS
SITARAM SHETYE. ... RESPONDENT

WRIT PETITION NO. 426 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER
VS
SHRIDHAR J .DIUKAR (DEC) THR. HIS
LRS., ... RESPONDENT

WRIT PETITION NO. 427 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER

VS

RAMAKANT A. SIMEPURUSHKAR (DEC)

THR. RESHMA R. SIMEPURUSHKAR., ... RESPONDENT

WRIT PETITION NO. 428 OF 2022

GOA TOURISM DEVELOPMENT

CORPORATION LTD., THR. ITS

MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER

VS

JERRY ANTHONY D'SOUZA., ... RESPONDENT

WRIT PETITION NO. 429 OF 2022

GOA TOURISM DEVELOPMENT

CORPORATION LTD., THR. ITS

MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER

VS

PRABHAKAR P. SIMEPURSHEKAR., ... RESPONDENT

WRIT PETITION NO. 430 OF 2022

GOA TOURISM DEVELOPMENT

CORPORATION LTD., THR. ITS

MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER

VS

CHANDA R. NAIK (DEC) THR. HIS LRS., ... RESPONDENT

WRIT PETITION NO. 438 OF 2022

GOA TOURISM DEVELOPMENT

CORPORATION LTD., THR. ITS

MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER

VS

RAM KISHAN CHOPRA, THR. POA
VANDANA CHOPRA ... RESPONDENT

WRIT PETITION NO. 439 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER
VS
SURESH D. MAYENKAR ... RESPONDENT

WRIT PETITION NO. 440 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., ... PETITIONER
VS
JEETENDRA R. FADTE ... RESPONDENT

WRIT PETITION NO. 445 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., NIKHIL DESAI ... PETITIONER
VS
SHYAM SANDBHORE ... RESPONDENT

WRIT PETITION NO. 511 OF 2022

GOA TOURISM DEVELOPMENT
CORPORATION LTD., THR. ITS
MANAGING DIRECTOR., ... PETITIONER
VS
MEENA DAS ... RESPONDENT

Mr. Shivan Desai with Ms. Maria Viegas, Advocates for the Petitioners.

Mr. J. Coelho Pereira, Senior Advocate with Mr. Pranay A. Kamat, Advocate for the Respondents in Writ Petition Nos. 424 to 430, 438, 439, 445 and 511 of 2022.

Mr. Dhananjay B. Harmalkar, Advocate for the Respondent in Writ Petition No. 440 of 2022.

CORAM: G.S. KULKARNI, J.

DATED: 18 OCTOBER 2022

P.C.:

1. I have heard Mr. Desai, learned Counsel for the petitioners, Mr. Coelho Pereira, learned Senior Counsel for the respondents in Writ Petition Nos. 424 to 430, 438, 439, 445 and 511 of 2022 and Mr. Harmalkar, learned Counsel for the respondent in Writ Petition No. 440 of 2022.

2. The challenge in these batch of Petitions is to the orders dated 30 December 2019 (as in Writ Petition Nos. 424 to 430 and 511 of 2022) and 30 March 2021 (as in Writ Petition Nos. 438 to 440 and 445 of 2022) passed by the learned Principal District Judge, North Goa, Panaji, on Appeals filed by the respondent(s) under the provisions of Section 12 of the Goa Public Premises (Eviction of Unauthorized Occupants) Act, 1988 (for short, “**the**

Act”), which assailed the orders passed by the Deputy General Manager (FIN)/the Estate Officer, in exercise of jurisdiction under Section 5 read with Section 10 of the said Act, ordering eviction of the respondents. The orders passed by the Estate Officer are similar. Illustratively, one such order relevant to Writ Petition No. 424/2022 can be noted, which read thus:

“Now, therefore, in exercise of the powers conferred on me under sub section (1) of Section 5 of “the Act”, I hereby order the said Smt. Sheetal S. Naik, r/o Cobravaddo, Calangute, Bardez, Goa, Respondent and all the persons who may be in occupation of the said premises or any part thereof to vacate the premises within fifteen days from the date of this Order. In the event of refusal or failure to comply with this order within the period specified above, the said Respondent and all other persons who may be in occupation of the said premises or any part thereof are liable to be evicted from the said premises, if need be, by use of such force as may be necessary.

Further, in exercise of the powers conferred on me by Sub-Section (1), (2) and (3) of Section 10 of “the Act” I hereby order the above named Respondent to pay damages for the unauthorized occupation from 06-12-2012 @ license fee as on 06-12-2012 multiplied by two for the first year, multiplied by 3 for the second year and so on till the date of vacation along with interest @ 16% per annum till

the date of payment. In the event of refusal or failure to pay the aforesaid damages or any other dues payable directly or indirectly within thirty days from the date of service of this order, the amount will be recovered as arrears of Land Revenue.

SCHEDULE

Shop No. B-4, Shopping Complex Calangute, Bardez, Goa.”

3. Also a reference to the observations of the Estate Officer on a letter dated 27 July 1981 of the petitioner as made in paragraph 7 of his order dated 16 August 2019, in regard to the preferential allotment of shops, in the event, a market comes up at Calangute Shopping Complex needs to be made. These observations read thus:

“The Director of Tourism vide its letter dated 27.7.1981 had stated that the Respondent will be given preference in the allotment of shops when the market comes up at Calangute Shopping Complex and that the rent will be decided at the time of allotment. The Respondent was given preference after invited lot on 01.10.1991 for running the shop No. B-4 at Calangute Shopping Complex, Calangute Bardez, Goa and thereafter letter of allotment dated 25.11.1991 was issued by the predecessor of the Applicant, Department of Tourism to comply with certain requirement. Now,

since the Shopping Complex has been proposed for major upgradation/development, the Respondent can be given preference provided the Respondent adhered to the terms and conditions of the Applicant such as highest bid as per the tender offer etc. and that the Respondent cannot claim as a matter of right of tenant as per his own terms."

4. The respondent(s) pursuing their statutory appeals before the learned Principal District Judge were aggrieved by the orders of the Estate Officer directing their eviction and as also, directing payment of damages, which were set aside by the impugned orders dated 30 December 2019 and 30 March 2021 respectively passed by the learned Principal District Judge in Appeals filed under Section 12 of the said Act, whereby the Appeals of the respondent(s) were allowed.

5. The learned Principal District Judge while setting aside the orders dated 16 August 2019 passed by the Estate Officer has directed the Estate Officer to decide the matters afresh without being carried away by the findings given in the, said order as expeditiously as possible and within six months from 30 December 2019. Thus, these Petitions have been filed assailing the said order passed by the learned Principal District Judge.

6. Mr. Desai has raised several contentions including a contention on the jurisdiction of the learned Principal District Judge to pass the impugned orders, more particularly, contending that the apparent purpose of the remand, to direct the Estate Officer to return a finding as to whether the respondent(s) are lessees or licensees of the petitioner. It is submitted by Mr. Desai that the issue as to whether the respondent(s)/allottees would become the tenants of the petitioner is a non-issue and would not arise, as the provisions of the Buildings (Lease, Rent & Eviction) Control Act, 1968 (for short "**the 1968 Act**") are per se are not applicable to the Government premises in view of the clear provisions of Section 3(1)(a) of the 1968 Act, which provide that the said Act shall not apply to any building belonging to the Government, or a State Housing Board, or a local authority, or Industrial Development Corporation.

7. Be that as it may, after these Petitions were heard for some time, Mr. Pereira, learned Senior Counsel for the respondents', on instructions, has taken a fair position in regard to the respondents' handing over the possession of their respective premises. On instructions, the learned Counsel for the respondents' state that in

regard to the eviction as ordered by the Estate Officer, the respondents' can be given a reasonable time to vacate their respective premises. It is, however, submitted that there is a grievance of the respondents' in regard to the damages as ordered by the Estate Officer, as also, on the rate of interest which according to him, the respondent(s) would urge needs to be re-considered by the petitioner and a reasonable view of the matter on these issues be taken.

8. In my opinion, considering the canvass of the dispute, which is pending for quite some time, and more particularly, considering that the petitioner would not fall within the purview of the 1968 Act as the, said Act would not be applicable to the premises of the petitioner, which are "Government Premises" as defined under Section 3(1)(a) of the 1968 Act, it would not be of any consequence, that the issue whether the respondent(s) are tenants or licensees be decided. Such proposition is also not disputed on behalf of the respondent(s). In these circumstances, it would be appropriate that some time is granted to the respondents' to vacate the premises, as also fairly accepted on behalf of the respondent(s).

9. Insofar as the orders of the Estate Officer on damages and interest are concerned, Mr. Desai has also taken a fair stand to state that the respondent(s) can make a representation to the Competent Officer of the petitioner, on such directions of the Estate Officer and if such a representation is made, the petitioner shall consider the same and pass appropriate orders.

10. In the above circumstances, in my opinion, the Petitions would not warrant further adjudication and, can be disposed of by the following order:

O R D E R

(a) The impugned orders passed by the learned Principal District Judge on 30 December 2019 and 30 March 2021 are set aside. The eviction orders passed by the Estate Officer in each of these cases stand confirmed.

(b) The statement as made on behalf of the respondent(s) that they shall vacate their respective premises on or before 31 January 2023 stands accepted.

(c) The respondent(s) are directed to place on record the usual undertaking that they shall vacate the above premises by **31 January 2023**. The

undertaking shall be placed on record within three weeks from today.

(d) Insofar as the directions made by the Estate Officer in regard to payment of damages and interest are concerned, the respondent(s) are permitted to make a representation to the competent authority of the petitioner who shall take appropriate decision in that regard. This shall be without prejudice to the rights and contentions of the parties as may be permissible in law. Such representation shall be made within a period of four weeks from today and be decided by the petitioner within four weeks of its receipt.

(e) Insofar as the observations in paragraph 7 of the orders passed by the Estate Officer are concerned, the rights and contentions of the parties in that regard are expressly kept open.

11. Petitions are accordingly disposed of in the above terms. No costs.

G.S. KULKARNI, J.

[Corrections carried out as per order dated 16 November 2022].