

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.414 OF 2022

M/s. Vibhav Real Estate,
Partnership Firm,
having its principal place of
business at House No.12/1898,
opposite house of Dr. Eurico Da Silva,
St. Joaquim Road, Borda, Margao,
Goa-403602,
Through constituted attorney Mr.
Vibhav Pundalik Parkar, Age 33 years,
Businessman residing at Borda,
Margao, Goa.

...Petitioner

Versus

- 1). State of Goa
Through its Chief Secretary,
Secretariat, Porvorim Goa.
- 2). Office of the Additional
Collector-III, Ponda,
Office of Collector, Ponda Goa.
- 3). Smt. Asha @ Manush Bhisso
Zambaulikar,
w/o. Mr. Bhisso Zambaulikar,
resident of H.N.868/3-1,
Pamdgal Shiroda, Ponda Goa.
- 4). Joint-Mamlatdar-III of Ponda
Taluka,
Office of Mamlatdar, at Ponda
Goa.

...Respondents

Mr. T. Sequeira, Advocate *for the Petitioner.*

Mr. Devidas J. Pangam, Advocate General *with Mr. Geetesh R. Shetye, Additional Government Advocate* *for Respondent State.*

Mr. Ashwin D. Bhobe *with Ms. A. Kuvelkar, Advocates* *for the Respondent No.3.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED : 15th NOVEMBER, 2022

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

Heard Mr T. Sequeira, learned counsel for the Petitioner, Mr Devidas J. Pangam, learned Advocate General, and Mr Geetesh R. Shetye learned Additional Government Advocate for the respondent State. Mr Shivan Desai learned counsel for respondent No.3.

2. Rule. The Rule is made returnable immediately at the request and with the consent of learned counsel for the parties.

3. The Petitioner challenges Condition No.9 of the Sanad dated 17.05.2022 which reads as follows:

'9. Applicant shall not carry out any change in use of land in the disputed area of 10,810m² claimed by Smt. Asha @Manush Bhisso Zambaulikar & others as tenant vide case no.TNC/JM III/Decl/Shirodka/10/2018 under Sy, no.470/2 of Shiroda village unless the said issue is decided in finality before the Competent Court.'

4. Mr Sequeira learned counsel submits that as of date, respondent No.3 has neither been declared as an agricultural tenant nor is there any interim order granted by Mamlatdar in her favour. Accordingly, he submits that the Petitioner was forced to file an affidavit dated 12.05.2022 to the effect that he will not carry out any development activity in the portion of the land admeasuring 10,810 sq mtrs claimed by respondent No.3 until Joint Mamlatdar decides the interim injunction in the application under Section 8A filed by the respondent No.3 against the Petitioner.

5. Mr Bhobe learned counsel for respondent No.3 contests the above position. He had sought time to file an affidavit to contest the averments in the petition. However, we proceed based on denials for the order we propose to make.

6. Respondent No.3 has filed an application before the Mamlatdar seeking declaration of tenancy and relief in Section 8A of the Agricultural Tenancy Act. The proceeding before the Joint Mamlatdar-III at Ponda is numbered Case No.JM/III/TNC/Decl Shiroda/10/2018.

7. Mr Sequeira points out that the above proceedings have been pending since 2018. We agree with Mr Sequeira that the delay in disposing of the application for an interim injunction is quite inordinate. Therefore, we direct the Joint Mamlatdar to dispose of the

application for an interim injunction made in the above proceedings as expeditiously as possible and, in any case, within three months from the date the parties produce an authenticated copy of this order before him/her.

8. If the interim injunction is granted, the Impugned Condition No.9 will continue because the same restrains the Petitioner from converting the disputed area of 10,810 sq. mtrs until the Joint Mamlatdar finally decides the tenancy issue. However, if the Joint Mamlatdar declines the interim injunction, the Petitioner, at its own risk, will be entitled to convert even the disputed area. However, such conversion will ultimately have to abide by the final decision in the tenancy proceedings before the Joint Mamlatdar. Additionally, the Petitioner will have to make this position clear to subsequent purchases so that no equities are created or claimed.

9. The parties will have the right to resort to the remedies provided under the Agricultural Tenancy Act against the orders made by the Joint Mamlatdar, both in the interim or the final stage. Nothing in this order is even remotely intended to curtail the rights of either party in this regard. The issue of development will then depend upon orders made by such authorities.

10. This court has not examined the rival contentions on the claim of tenancy or interim reliefs because, according to us, such matters

have to be first looked into by the appropriate authorities under the Tenancy Act. The parties do not dispute that the appropriate authority, in this case, would be the Joint Mamlatdar before whom the proceedings are pending.

11. The parties must appear before the Joint Mamlatdar on 28.11.2022 at 3:30 PM and file authenticated copy of this order. The parties are to cooperate with the Joint Mamlatdar in expediting disposal of the application for interim relief and the final matter. Therefore, the Joint Mamlatdar should not entertain any unreasonable request for adjournment on either side. In particular, respondent No.3 should not delay this matter for any reason whatsoever.

12. All parties' contentions are left open for the decision of the Joint Mamlatdar in the first instance.

13. The Rule is disposed of in the above terms. Accordingly, there shall be no order for costs.

14. All concerned to act based on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.