

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 114 OF 2018

Mr. Suresh A. Kamat, Age 81 years, S/o late
A. V. Kamat, businessman (Presently retired)
residing at H. No. 652/C, Behind Police ... Appellant
Quarters, Near Shipyard Club, Chicalim, Goa.

V e r s u s

1. The Chief Secretary of Goa, Secretariat
Complex, Government of Goa, Porvorim, Goa.
2. The Chief Engineer, Water Resources
Department, 2nd Floor, Sinchal Bhavan, Near
Porvorim Police Station, Alto Porvorim,
Bardez, Goa.
3. The Executive Engineer and Ground
Water Officer (South) Office of the Executive
Engineer, Works Division XIII, Water ... Respondents
Resource Department, Gogal, Margao, Goa.

Appellant in person, assisted by Mr. Vibhav Amonkar, Advocate.

**Ms. Priyanka Kamat, Additional Government Advocate for the
Respondents.**

CORAM. A. K. MENON, J

Reserved On : 29th March 2022

Pronounced on : 12th April 2022

JUDGMENT

1. This appeal assails order and judgment dated 19.04.2018 passed in Civil Suit no. 37 of 2016 by the District Court, South Goa, and seeks relief in terms of the reliefs in the suit. The appeal came to be admitted on 16.01.2019.

2. The appellant appears in person. The appeal has been taken up on priority for hearing. The Registry has meanwhile found the appellant fit to appear before the Court in person and advance submissions provided he is assisted by one other person during the course of the hearing for explaining the questions posed to him in view of his hearing being slightly impaired. At the hearing of this appeal, Mr. Vibhav Amonkar, was good enough to assist the appellant.

3. At the outset, the appellant submitted that he would prefer to file written submissions and then be heard in person. Written submissions dated 30.03.2022 are on record but the hearing of this appeal, he sought leave to file further written submissions which was permitted and accordingly written submissions dated 28.03.2022 has now been placed on record.

4. By way of factual background, I find that the Civil Suit was filed by the applicant against The Chief Secretary, Goa Chief Engineer and Appellate Authority and The Executive Engineer and Ground Water Officer (South), Government of Goa, Office of the Executive Engineer. It is the case of the appellant that he was engaged in the business of supplying ground water to various customers in and around Vasco Da Gama during 2008–09. He was a owner of a Water Tanker bearing registration no. GDS 4731, (*herein after referred to as the 'Tanker'*).

5. The defendants were being sued in their capacity as they are allegedly personally responsible for the affairs of the Water Resources Department including the ground water cell. The appellant did not own any well or any other source or ground water. He would normally transport ground water from wells in and around the city of Vasco Da Gama including PWD supplies. According to the appellant, there were 20 odd wells supplying water in the Vasco Da Gama area and about 25 water Tankers operating. It was then a flourishing business.

6. In February 2009, he received a notice from the third defendant alleging that he owned a bore-well at Vasco Da Gama and

that he was engaged in sale and transporting of ground water by Tanker. The well allegedly owned by him was located in a scheduled area under the Goa Ground Water Regulations Act 2002 and Rules 2003 (herein after referred to as '*the said Act*'). The Well had not been registered with the Ground Water Resources Division and further that he was transporting water without permission. He was asked to show cause why action should not be taken against him.

7. The appellant immediately contacted the respondent no.3 and informed him that he did not own any well and that he purchased water from several well owners in that area. He owned only one Tanker and that transportation of water was his main source of income. He was unaware that he was operating in a Scheduled Area but on receipt of the said show cause notice, he promptly stopped operating the Tanker. On 02.03.2009, he received yet another notice directing him to stop all transportation of ground water till permission was granted to him by the Water Resources Department. (WRD, for short). He promptly complied and also sought clarifications from the Department. Meanwhile, he was served with notice under Section 149 of the Criminal Procedure Code (Cr.P.C.).

8. The appellant thereafter visited the Vasco Police Station and informed the Officer in charge that he had stopped the business of transportation after receipt of the notice and he would be applying for a proper permission. On 16.03.2009, he is believed to make an application under Form V, describing his Tanker and seeking for registration. It was received by the WRD on 18.03.2009. It is his case that he tried to inquire with defendant no.3 as to how water suppliers in the area were operating Tankers without such permission. He was orally assured that all illegal operations would be looked into. The appellant then received a communication from defendant no.3 confirming that his application for permission for transportation was under consideration. Later his application was found to be vague and it was evasive about the source of ground water. He was directed to submit a fresh application. He accordingly made a fresh application on 21.04.2009 providing details of approval of one of the wells in the area for registration and for permission to draw water. Meanwhile, his business came to a stand still.

9. The appellant was aggrieved by his not having been granted permission. He was aggrieved by the fact that the second defendant with whom he sought to file an appeal on or about 15.05.2009 also did not address his grievance and refused to entertain his appeal

stating that there is nothing new in the appeal. According to the appellant, the Goa Ground Water Resources Act 2002, was used as a tool for harassing and destroying small businesses like his. The appellant thereafter repeatedly sought permission to continue his business. According to the appellant, he personally visited the Ground Water Cell at Margao and sought permission to recommence his business but his attempts did not succeed. He thereafter received a letter demanding sum of ₹ 65,100/- from him for granting the required permission for resuming water suppliers business at the rate of three Tankers per day. Rs. 5,000/- was payable towards charges for permission for transportation of ground water for one year and Rs. 60,000/- was pertaining to withdrawal of ground water @ ₹ 20/- per cubic metre for 100 days and a sum of Rs. 100/- for registration of the well in question.

10. The appellant objected to the demand since he did not own a Well and there was no question of paying a sum of Rs.60,000/- for drawing ground water. He was only a transporter. Since there was no response, he filed the Writ Petition before this Court being Writ Petition no. 363 of 2012. The appellant was then directed to make a representative to the Chief Secretary-respondent no.1 who was directed to take action in accordance with law, but these directions

were apparently not complied with. The Appellant then filed a fresh writ petition which was converted to Public Interest Litigation Writ Petition being PIL WP No. 22 of 2013. As a result of certain directions issued in that Public Interest Litigation, an affidavit came to be filed by the Secretary and Water Resource Department, Government of Goa, dated 15.01.2015. The PIL came to be disposed with various directions to the defendants and the Government of Goa. The order of the Court, *inter alia*, directed that, if the petitioner files any suit, the same shall be decided as expeditiously as possible and preferably, within a period of two years from the filing of the same.

11. The Appellant thereafter filed his suit claiming losses allegedly suffered by him in the sum of ₹ 24.50 lakhs and further sum of Rs. 2,00,000/- towards loss suffered due to the water Tanker being kept ideal, which was subsequently sold as scrap and ₹ 2,00,000/- towards mental tension and harassment and the amount of legal expenses incurred. Thus, he sought a decree in a sum of ₹ 28,50,000/-. The suit went to trial and by judgment dated 19.04.2018, the suit came to be dismissed.

12. According to the appellant, he has not violated any provisions of the said Act or Rules; that his Tanker was engaged only in transportation of non potable water to various customers in and around Vasco area since 2007 a little before the area being declared as scheduled area. According to him, the defendants have set up a false and fictitious case misinterpreting the act. Mr. Kamat submitted that a proper interpretation of Section 6.2 will reveal that it has to be read along with Sections 13 and 14 of the Act and the powers granted to the Ground Water Officer. The petitioner believes that the provisions of the act really pertain to those who own wells and who draw water from deep down the wells going to a depth of 200 to 500 feet by employing his own equipment, pipeline and after the water is drawn, it is loaded on to the Tankers. It is part of this activity which is said to be illegal; that the appellant has not dug any bore Well and since he is not the owner of any well, he is not required to register himself in any manner. The Act does not provide for registration of a Tanker. The WRD has no authority to decide upon the manner in which a Tanker can be brought within the purview of the Act.

13. Mr. Kamat submits that even barges transport water in substantial quantities but the Act is not been applicable to such manner of transportation. The appellant was merely transporting

water as owner of the Tanker on behalf of third parties. Well owners may be in violation of the Act, but not the appellant. Thus, he contends that the interpretation of Section 6.2 of the Act must be held in his favour. According to him, the only reason for insisting of registration of Tankers is illegal since it may lead to extortion. He alleges that the new regulations would lead to the Tanker being left idle and provide a fertile platform forcing people to make payments by way of illegal gratification. According to him, these were issues raised in the PIL but not addressed by the Court and, as on date when he was asked to register, there were no provisions under the rules or any forms for registration of the Tanker. According to Mr. Kamat, Government funds have been systematically siphoned for over ten years from 2003 to 2014 causing immense harm to the interest of the common man forcing the common man to illegal gratification.

14. Mr. Kamat has in his written submissions further contended that the respondents' opposition and defence to the effect that the appellant has not produced any evidence to establish losses and damage to the extent of 28.50 lakhs is neither true nor acceptable. It defies logic according to him. He has contended that the vehicle being idle would obviously mean that loss has been caused. He has submitted that the payments for transportation of water is normally

against delivery and being a small activity, there is no necessity for maintaining records. According to him, the stoppage of transportation of water in the manner contemplated by the authorities without capping the operation of the wells, is false and the Ground Water Resource Officer and the Chief Engineer are guilty of administrative and financial frauds; that in the trial Court, the officials did not appear for cross examination. No reason was furnished for their absence. The officials are said to be well connected socially and politically. He makes a reference to judicial pronouncements and the verdict of the trial Court. The submissions contained various references to gross injustice to the common man including himself.

15. Mr. Kamat has further contended that when he sought copies of papers and files submitted by him under the Right to Information Act, initially the authorities-WRD had declined stating that the original files had gone missing. He submitted that supplying water which was purchased by him from well owners, cannot be declared as illegal by any authority unless the Road Transport Authority so declares. In the present case, he submits that the WRD had no cause to prevent transportation of water which he was engaged in. The operation of extraction of water by digging illegal bore wells was not

controlled by the WRD which had continued regularizing such bore wells after he filed this petition in Court. He reiterates that it was the duty of the Ground Water Officer to take action against the owner of the wells to stop extraction in 2007, no action was taken against illegal and unregistered bore wells. He objects to the verdict delivered by the Principal District Judge, South Goa, which he states is full of incorrect claims and allegations which are objectionable for its false contents and '*abusive surmises*'. He has further submitted that in case the operation of Tankers requires registration or licence of the WRD and the same can be done after suitable amendment in the concerned statute. Till then he submits that he could not have been prevented from operating the Tanker by the WRD.

16. Mr. Kamat further submits that the affidavits filed by the WRD reveal that over 500 Tankers were plying in the State of Goa in 2009 but not even ten of them were registered with the WRD. Registration commenced only in the year 2013 and some persons were granted permission without registration of wells. According to him, Mr. Kamat requiring the registration of Tanker with WRD was only for collecting illegal gratification in the guise of registration and by imposing a condition that the Ground Water Officer has 90 days to

give such an approval and in some cases he could grant approvals even in two days.

17. Mr Kamat contends that a second application was submitted by him on 21.04.2009 which met all the requirements for permission under the Ground Water Regulations. After about seventeen months, he claims that the Ground Water Officer sent a communication asking him to pay Rs. 5,000/- for grant of permission for transportation of ground water by his Tanker. He contends that reference was made to the second application before the trial Court but apparently has not been dealt by the trial Court. The appellant claims that the claim for compensation of Rs. 28.50 lakhs stands enhanced to Rs.50 lakhs based on notional loss suffered on account of wrong interpretation and false allegations made by the District Court as well as this Court which led to a ten year old battle without any justification. The whole proceedings under the pretext of false allegations are made as regards the filing of a PIL by a 'Dummy NGO' and it is further alleged that the so-called policy disappeared after four years. The Appellant claims that a serious vigilance inquiry is required to be conducted as the common man has borne the brunt of the misconceived policy. The trial Court according to the Appellant has manipulated facts contending that the second

application was also faulted because no consent of the well owner was produced with the application. Several portions of his written submissions are unintelligible. He makes serious allegations against 'surmises' of the District Judge and against officials of the WRD. He suggests in the written submissions that the vigilance inquiry is required against the officials of the WRD and the trial Court to unravel the truth. According to Mr. Kamat, the officials concerned deliberately demanded compliance with their own requirements to save their fraudulent interpretations and actions.

18. In conclusion, he claims that the compensation is based on '*possible earnings*' for operations of the Tanker '*lost due*' to illegal forced stoppage for a number of years. It is contended that in the consequence of harassment amounts to atrocity on the petitioner due to false and hostile narratives. In sum and substance, he contends that there are no rules for obtaining a licence from the WRD for running small business such as transportation of water from water sources of third parties through the Tanker and that administration of jurisdiction of the Tanker lies with a different department. He requests the Court to consider all the points to arrive at a conclusion without forcing him to go to a higher Court.

19. In support of his contentions he has sought to rely upon certain fresh documents annexed to his written submissions which appears to be true copy of Form V bearing the date 13.02.2003 which had been objected to by Ms. Kamat, on behalf of the State since these were not available before the trial Court when the trial Court heard the suit. The objection is justified and must be accepted. I have therefore not considered the new documents.

20. Ms. Kamat in opposition has supported the judgment and order of the trial Court. She has invited my attention to the facts of the case as set out in the judgment and order contending that appeal is nothing but a reiteration of the case in the plaint. According to Ms. Kamat, no grounds for interference of the order and judgment of the trial Court had been canvassed. Inviting my attention to paragraphs 9 to 17 of the submissions, she pointed out that apart from the plaintiff's evidence, no other witness was examined and since the defendants did not enter into the witness box, evidence in the matter was closed. All six issues were held against the plaintiffs. My attention is also invited to paragraphs 20 and 21 of the impugned judgment in support of the plea that the appellant had failed to prove his case.

21. Ms. Kamat, on behalf of the Respondents has invited my attention to Section 6(1) and 6(2) of the Act highlighting the fact that transportation of ground water source in scheduled areas beyond 30,000 litres was not permissible without the permission of the Ground Water Officer. He submitted that the prohibition is not restricted to transportation by Tankers but to all means of service transport including pipelines. Thus it was not a case where the Act sought to differentiate between the modes of transportation of water. All modes of service transportation and through pipeline were sought to be controlled. In Scheduled Areas under Section 6(2), transportation by pipeline or by service transport was not permissible without permission of the Ground Water Officer. There is an annual limit of 30,000 litres that was set. Thus, within 30,000 litres, there was no prohibition.

22. My attention is also invited by Ms. Kamat to Rule 4(1) of the Rules. Rule 4(1) provided that application for grant of permission to transport ground water from a source in the Scheduled Area would have to be in Form V which would require the Appellant to provide the necessary particulars. She submitted that it was open for the Appellant to provide any one source of ground water extraction and it was not necessary to be a well owner in order to apply for such

permission for transportation since the form pertained to grant of permission for transportation and not for extraction of water. Particulars of the source however were required to be provided. She submitted that the appellant has misconstrued the purpose for which the statute was enacted and the Rules framed. Essentially and what is material to note is that she submitted and in my view justifiably that the Appellant made no effort whatsoever to quantify the losses that were allegedly caused to him. The affidavit of evidence was bereft of any material on the basis of which loss could have been proved. The defendants therefore cannot be held liable. She submitted that the District Court dealt with all the relevant issues and correctly come to the conclusion that no case is made out for grant of relief. Ms. Kamat therefore submitted that the appeal deserves to be dismissed.

CONCLUSIONS:

23. Having heard Mr. Suresh Kamat at some length and in view of his advanced age, I had permitted him to file his written submissions. The Appellant has been generous in use of ungracious language, often harsh which could be attributed to the bitterness he seems to have experienced in his attempts to carry on his business. The written submissions make up a general complaint against the policy of the

State, The Goa Ground Water Regulation Act 2002 and Rules of 2003. The Act itself I find was meant to regulate and control the development of Ground Water Resources and matters connected therewith. It defines that "*Ground water*", provides for appointment of a Ground Water Officer. Sources of water defines a "Well". It also provides for constitution of a ground water cell, declares the 'Scheduled Area some of which areas said to be over exploited. The Act provides for protective measures in such exploited areas, registration of existing wells, permission for sinking new wells in the Scheduled reas and grant of permissions to transport ground water in scheduled areas. Needless to mention, it also provides for cancellation of such permissions granted.

24. Essentially the enactment was intended to protect ground water exploitation. The appellant has contended that his case is unique inasmuch as he was not the owner of the well and, therefore, was not required to register under the provisions of the said Act. He has claimed compensation. The suit filed before the trial Court was clearly one which sought payment of compensation and nothing more. Perusal of the plaint reveals that the appellant sought a decree in a sum of Rs. 24.80 lakhs along with interest @ 18% per annum 'being the compensation for destroying the business of the plaintiff by

illegal and discriminatory actions of the defendants since April 2009. He also claims losses suffered due to idling of water Tanker for a sum of Rs.2,00,000/- and a further sum of Rs. 2,00,000/- towards mental tension and harassment.

25. The submissions on behalf of the State and its Officers contains a denial of his claim for damages which sets out the fact that action has been taken against violators of provisions of the Act; that the provisions of the Act were necessary for reasons set out; that the respondents have denied that the Act was used as a tool as harassment and destroying small business as alleged. It thus denied that the defendants adopted any tactics to dodge as the Appellant claims or employing discriminatory methods against the appellant. All allegations of making the appellant's life miserable destroying his relations with the customers, have been denied. The provisions of the Act have been reiterated and it is contended that the Department of Water Resources has carried out its duty of enforcement of the provisions of the Act. Defendants have specifically denied that the appellant suffered any losses, the respondents were not liable to pay any compensation.

26. Issues were framed on 14.09.2017 and these issues have been answered as set out in the impugned judgment, which are reproduced herein below :

ISSUES

- 1. Whether plaintiff proves that the defendants illegally prevented him from conducting business of supply of water by Tanker ?*
- 2. Whether plaintiff proves that he suffered loss in business due to the act of defendants ?*
- 3. Whether plaintiff proves that he is entitled to recover an amount of Rs.24,50,000/- together with interest @ 18% on it from defendants ?*
- 4. Whether plaintiff proves that he is also entitled to compensation @ Rs. 2,00,000/- per annum with 18% interest from filing of the suit till actual payment and further damages ?*
- 5. Whether the suit is within limitation ?*
- 6. Whether defendants prove that plaintiff was illegally transporting ground water by Tankers ?*
- 7. What order & costs ?*

27. In his affidavit of evidence, the appellant has set out various dates and events and developments which are essentially reproduction of the contents of the plaint. He admits that he intended to comply with the provisions of the Act but there were no specific provisions for Tanker owner to register. He assails the respondents' attempt to recover Rs.65,100/-, of which Rs.60,000/- pertained to withdrawal of ground water and which would only apply to a well owner. As far as the Appellant is concerned, the demand against him could only have been Rs.5,000/- for permission for transportation of ground water by Tanker. He has deposed that Writ Petition no. 363 of 2012 was filed by him which was disposed directing him to make representation to Chief Secretary-respondent no.1, however, it is his contention that no decision was taken. Aggrieved, he filed second Writ Petition, which was converted to a PIL Writ Petition, and which was disposed on 18.11.2015 which, *inter alia*, permitted the petitioner to file a suit which had to be disposed of as expeditiously as possible. The contents of the plaint have already been referred to above and I find that the suit was heard and disposed of within the time schedule as directed by this Court in the PIL Writ Petition.

28. This Court really concerned with the challenge to that judgment in the suit and having considered the submissions of Mr.

Kamat, none of his submissions seek to assail the findings against him in the suit. Perusal of his cross examination of the plaintiff reveals that he was made aware that he was required to register his Tanker and provide information of a source of the water that was proposed to be used to transport water and that it is because he did not disclose a source of water that the defendant no.3 did not issue the necessary licence or permission. Paragraph 62 of the judgment returns a finding that the appellant did not furnish the necessary details and therefore his application came to be rejected. However, the plaintiff virtually led no evidence as to the monetary aspect of the claim that he had made. The Appellant was not required to own a Well but only disclose a source or sources for which he would carry water, but he did not.

29. Issues nos. 2, 3 and 4 pertain to whether the plaintiffs did suffer loss in business due to the acts of the defendants and to the extent of Rs.24.50 lakhs and further sums of Rs. 2,00,000/-. In this behalf, it was necessary for the plaintiff to establish and prove that such loss has been incurred. On a perusal of the evidence led before the trial Court, I find that the affidavit of evidence of the Appellant is bereft of any particulars of any loss that he had incurred. Apart from deposing himself, no other evidence was sought to be led. The

evidence as to damages that he claims of suffered loss reveals in paragraph 44, 45 and 46, the contents of which are reproduced below :

“44. I say that the losses suffered by me since April 2009 till filing of the present suit is as under :

<i>Sr. No.</i>	<i>Compensation due to</i>	<i>Loss suffered</i>
<i>(a)</i>	<i>Destroying the business by illegal and discriminatory actions since April 2009 till date @ approx. Rs. 3.50 lakhs per year for seven years</i>	<i>Rs. 24.50 Lakhs</i>
<i>(b)</i>	<i>Loss suffered due to idling water Tanker which had to be subsequently sold as scrap.</i>	<i>Rs. 2.00 Lakhs</i>
<i>(c)</i>	<i>Mental tension and harassment alongwith the amounts spent for filling Court cases for justice.</i>	<i>Rs. 2.00 Lakhs</i>
	<i>Total.</i>	<i>Rs. 28.50 Lakhs</i>

45. I say that the analysis of the data presented by the Secretary in the affidavit clearly reveals that the Department was only selective in enforcement of the Act till the filing of the petition in 2012 which is blatantly illegal with the consequent huge injustice to those whose business was destroyed as a result in a most objectionable

manner which the High Court in its verdict has accepted by directing the respondents to implement the Act within a time frame of six months from the date of the verdict by way of completing the registration of all Tankers and wells and to collect the revenue dues even though a lot of past dues are practically irrecoverable.

46. I say that the notification no. 207/CE-WRD-CPO/2008-09/395 dated 10.09.2009 can be made applicable only w.e.f. 08.04.2011 as otherwise it violates clause 27 of the act. Similarly imposing a tax of Rs. 5,000/- (Rupees Five Thousand Only) per year on a water Tanker is without any jurisdiction and hence constitutes administrative illegality which has wide implications."

30. At no stage did the Appellant adduce further evidence in quantifying the monetary claim that he had made. The impugned judgment had after considering the pleadings and the evidence and while dealing with the monetary claim. The impugned judgment in

considering issues nos. 1 and 6 has dealt extensively with the pleadings, the evidence led and has concluded that the defendants did not illegally prevent the appellant from his business. I find no reason to fault those findings. With particular reference to issues nos. 2, 3 and 4, the trial Court has observed that the appellant has not established his claim, no documents whatsoever have been produced in support of the claim and that there is no evidence adduced in support of the monetary quantification. The material brought on record and to which the trial Court has made reference, indicates that the appellant failed to prove the loss incurred. It is not necessary to examine the aspect of limitation in view of the fact that even on the aspect of limitation, it has found the appellant's claim for loss from April 2009. The claim for compensation for allegedly destroying his business loss suffered due to the remaining of Tanker idle and causing monetary quantification which relate to 2009, the suit has only been filed in August 2016. Issue to limitation also is held against the appellant.

31. The impugned judgment has considered all factual aspects, the material placed before the Court and the evidence led and has come to the conclusion which, in my view, cannot be faulted. Even in the written submissions filed by the appellant before this Court, there has

been no attempt to assail the judgment on merits and demonstrate how the judgment is bad and requires interference.

32. In my view, the appellant has failed to make out a case for interference. As a result, the appeal fails and is dismissed. The Court however notes with appreciation the patient and able assistance provided by Mr. Amonkar during the conduct of proceedings.

33. No orders as to costs.

A. K. MENON, J

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