

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.416/2021 (F)

WITH

CIVIL APPLICATION NO.44/2021

WITH

MISC. CIVIL APPLICATION NO.83/2022 (F)

VITHAL KHANDEPARKAR

...PETITIONER

Versus

SHIVANAND SALGAONKAR

...RESPONDENT

**Mr. S. N. Joshi with Ms. Chaitali Velingkar, Advocates for the
Petitioner.**

Ms. Neha Shiroadkar, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 19th January 2022

P.C.:

1. Heard Mr. Joshi for the petitioner and Ms. Neha Shiroadkar for the respondent.

2. On 07.12.2021 this Court passed the following order:

“1. When the Writ Petition is called out for hearing a strong objection is raised regarding maintainability of the Writ Petition in view of the alternative remedy available to file an appeal before the Collector under

Section 49 of the Goa Daman and Diu Agricultural Tenancy Act, 1964.

2. The learned Counsel for the petitioner submits that according to him, the present Writ Petition is maintainable as there was no specific opportunity of hearing granted by the Mamlatdar while passing the impugned order and holding that the application in the form in which it was filed by the petitioner was not maintainable in view of the co-tenants not being made parties. He submits that although the impugned order records that leave is granted to the petitioner to file a fresh application along with other co-tenants, if such a fresh application is filed as of today, it would lead to further delay in settling the dispute. Therefore, on instructions, the learned counsel for the petitioner submits that this Court may consider granting liberty to the petitioner to file an application before the Mamlatdar for revival of the application that stood disposed of by the impugned order and to move an application therein for joining the co-tenants as parties.

3. Issue notice on the specific submission made on behalf of the petitioner, returnable on 11.1.2022.

4. Ms. N. Shirodkar, learned Counsel waives notice on behalf of the sole respondent.”

3. Today, Mr. Joshi makes submissions on how the impugned order dated 24.08.2021 was passed in violation of the principles of natural justice. These submissions are countered by Ms. Shirodkar who contends that there was no violation of

principles of natural justice. In addition, Ms. Shirodkar contends that even the impugned order dated 24.08.2021 does not preclude the petitioner from moving fresh application by joining the co-tenants as parties. She points out that similar orders have been made in the context of other co-tenants as well.

4. Having regard to the aforesaid rival submissions, according to me, it is not necessary to go into the issue of violation of principles of natural justice in this petition. The interest of justice will be served if, the petitioner is granted liberty to file an application before the Mamlatdar itself for revival of the application that stood disposed of by the impugned order and further, to move application therein for joining the co-tenants as parties. Accordingly, such liberty is granted to the petitioner. Once such application is filed, the same will have to be disposed of in accord with law and after providing opportunity of hearing to all concerned parties. The issue of violation of principles of natural justice or otherwise will naturally have to be considered by the Mamlatdar himself once such application is filed. The application will have to be decided uninfluenced by the observations in the order dated 24.08.2021 as also the observations if any in the present order. In short, this Court, has only granted liberty to the petitioner in terms indicated in paragraph 2 of the above order dated 07.12.2021. Thereafter, it

will be for the Mamlatdar to decide such application in accord with law and on its own merits.

5. With liberty as aforesaid, this petition is disposed of. There shall be no order for costs.

6. The civil applications do not survive and the same are also disposed of.

M. S. SONAK, J.