

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 133 OF 2020
WITH
WRIT PETITION NO. 134 OF 2020**

1. SHRI SAGUN NAIK KURADE (DECEASED)

Through his Legal Representatives,

a) Shri Naguesh Sagun Naik Kurade

(i) Shri Bhagwant Naguesh Naik Kurade,

son of late Naguesh Sagun Naik Kurade,

Aged 47 years, Indian National, And his wife

(ii) Smt. Vassundhara Bhagwant Naik Kurade,

wife of Bhagwant Naguesh Naik Kurade,

Aged 45 years, Indian National,

(iii) Shri Utkarsh Naguesh Naik Kurade,

son of late Naguesh Sagun Naik Kurade,

Aged 46 years, Indian National, and his

wife

(iv) Smt. Kamakshi Utkarsh Naik Kurade,

Utkarsh Naguesh Naik Kurade, aged 38 years,

Indian National,

All residents of House No. 1135,

Pontemol, Curchorem-Goa.

b) Tejaswini Naguesh Naik Kurade

c) Shri Vallabh Sagun Naik Kurade

d) Nilima Vallabh Naik Kurade

e) Shri Krishna Sagun Naik Kurade

f) Jyoti Krishna Naik Kurade

All major of age, Indian Nationals,

Resident of Curchorem-Goa

Represented through their duly

Constituted Power of Attorney

Mr. Vallabh Saguna Naik Kurade

Major of age, businessman,
Resident of Curchorem-Goa

...PETITIONERS

Versus

1. Conservator of Forests
Government of Goa, Panaji Goa.

2. The Director of Land Survey,
Government of Goa, Panaji Goa.

...RESPONDENTS

Mr. Chaitanya Padgaonkar along with Ms. Vaishali Mahato
AdvocateS for the Petitioners.

Mr. Manish Salkar, Government Advocate for the
Respondents.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 26th October, 2023

PRONOUNCED ON: 02nd November, 2023

JUDGMENT:

1. Since both these petitions are dealing with the same issue and filed by the Petitioners challenging the orders of learned Administrative Tribunal in two different appeals, are taken up together for final disposal, with the consent of the parties.

2. Rule.

3. Rule is made returnable forthwith

4. Heard the matter finally with consent.

5. Shri Padgaonkar along with Miss Vaishali Mahato argued on behalf of the Petitioners in both the petitions. Mr Manish Salkar the learned Government Advocate argued on behalf of the Respondents.

6. Writ Petition no. 133/2020 is filed thereby challenging the impugned order dated 28.10.2019 in Land Revenue Appeal no. 27/2018. The said appeal was filed by the Respondent no. 2 thereby challenging the Order dated 29.06.2017 passed by the Deputy Collector/SDO Quepem bearing case no. Dy.COLL./QPM/LRC/Title/17/2013. The learned Administrative Tribunal while allowing the Land Revenue Appeal no. 27/2018 quashed and set aside Order of Deputy Collector/SDO and dismissed the application filed by the Petitioners dated 18.02.1982 for correction of survey records in the respect of survey nos. 109/1, 110/2, 110/16 and 110/48 of the village Rivona, Sanguem Taluka. In short it was the case of the Petitioners that the said properties have been wrongly recorded in the name of Forest Department, Government of Goa and that such survey records be corrected by deleting name of the Forest Department and including the name of Petitioners therein.

7. Writ Petition no. 134/2020 is filed by the Petitioners thereby challenging the impugned Order dated 28.10.2019 in Land Revenue Appeal no. 17/2018 passed by the learned Administrative Tribunal. By the impugned Order, the learned Administrative Tribunal quashed and set aside order dated 22. 06. 2017 passed by the Deputy Collector of Quepem in case no. Dy.Coll./QPM/LRC/Title/18/2013. Similarly, the learned Administrative Tribunal dismissed the application filed by the Petitioners dated 18.02.1982. The said application dated 18.02.1982 was filed by the Petitioners before the survey authorities for correction of survey records and inclusion of the Petitioners name in survey nos. 105/1, 113/3, 113/4, 113/5, 113/7, 114/7, 114/8, 114/9, 114/10 and 120/1 of village Colombo of Sanguem Taluka. In short it was the case of the Petitioners before the survey authorities that the above survey numbers have been wrongly recorded in the name of Forest Department, Government of Goa and that the said properties belongs to the Petitioners and therefore name of the Forest Department be deleted and the name of the Petitioner be included in the occupant's column.

8. Both these applications filed in the year 1982 by the Petitioners before the survey authorities were allowed by the Deputy Collector, Quepem, after conducting an enquiry. The Forest Department challenged the said Orders of the Deputy Collectors before the learned Administrative Tribunal. By two separate Orders, the learned Administrative Tribunal quashed and set aside Orders of Deputy Collector and finally rejected the applications filed by the Petitioners for correction of survey records, which is challenged before this court in the present petitions.

9. Mr Padgaonkar appearing for the Petitioners in both the petitions would submit that there was no ground raised by the Forest Department with regard to the documents produced by the Petitioners, however the Administrative Tribunal on its own considered that these documents are not of the property recorded in the name of the Forest Department. He submits that no notice was given to the Petitioners by the Administrative Tribunal while deciding on such grounds though the Forest Department in their appeals failed to raise such grounds. He would submit that the documents placed by the Petitioners during enquiry were never

challenged by the Forest Department and therefore it was not open for the Administrative Tribunal to consider such documents and to hold that such documents are not related to the property of the Forest Department. He claimed that findings of the learned Administrative Tribunal in both these appeals are therefore perverse and on the aspects which were never canvassed by forest Department.

10. Mr Padgaokar would submit that the duty of the First Appellate Court is to examine only the grounds raised in the Appeal Memo or Petition and if any other ground is tried to be canvassed, to give opportunity to the opposite side. He would submit that the manner in which the impugned orders are passed would clearly go to show that the same are cryptic and on the issues which were never urged on behalf of Forest Department.

11. Mr Padgaokar would submit that a detailed enquiry was conducted by the Deputy Collector/SDO in which oral as well as documentary evidence was produced. Such findings of the Deputy Collector have been reversed without any plausible reasons. He claimed that there is clear non-application of mind on the part of learned Administrative Tribunal. He then claimed that no title

document was placed on record on behalf of the Forest Department except one Gazette of 1951 which is not a final notification in favour of the Government.

12. Mr Padgaokar would submit that since a full fledged enquiry was conducted by adducing evidence, the parties should not be relegated to civil proceedings as tried to be canvassed on behalf of the Respondents. He would submit that the material produced by the Petitioners before the Deputy Collector is sufficient enough to delete the names of the Forest Department from the respective survey holdings in these proceedings itself.

13. Per contra, Mr Salkar the learned Government Advocate first of all claimed that the petition itself is not tenable on the ground that the Petitioners are having alternate efficacious remedy in terms of section 14 (4) of the Land Revenue Code, 1968. He would submit that the present petition filed under Article 227 of the Constitution of India need not be entertained since the Petitioners are having alternate efficacious remedy by filing a Civil Suit and claiming their right to be decided by a Civil Court.

14. Mr Salkar would then submit that even otherwise the reason of the Administrative Tribunal cannot be faulted with under Article

227 of Constitution of India as such reasons/findings cannot be termed as perverse, illegal or without jurisdiction.

15. Rival contentions fall for determination.

16. The facts with regards to both matters are already discussed earlier and therefore there is no need to again quote same facts.

17. In Writ Petition no. 133/2020, the Petitioners filed an application dated 18.02.1982 before the Survey Officer of Land Survey, Government of Goa for correction of survey records in respect of survey nos. 109/1, 110/2, 110/6 and 110/48 of village Rivona, Sanguem taluka. It is the contention of the Petitioners that they are the owners in possession of the said properties and that name of the Forest Department have been wrongly recorded in the survey holdings. They prayed that the name of Forest Department from the above survey records be deleted and the names of the Petitioners be inserted in the occupant's column. The Petitioner's said application was considered by the Deputy Collector/ SDO Quepem and a notice was issued to the Forest Department. A written statement was filed on behalf of the Forest Department opposing such application for correction of survey records. Enquiry was conducted in which Petitioners examined themselves and other

witnesses. Various documents were produced. Similarly witnesses were examined on behalf of Forest Department and various documents were placed on record.

18. The Deputy Collector/SDO Quepem vide its Judgement and Order dated 29.06.2017, allowed the application filed by the Petitioners for deletion of the name of the Forest Department in survey no. 109/1, 110/2, 110/16, and 110/48 of Rivona village. The Deputy Collector/SDO further directed inclusion of the names of the Petitioners in the above survey holdings in occupant's column. The order of the Deputy Collector/SDO dated 29.06.2017 was then challenged by the Forest Department before the learned Administrative tribunal by filing Land Revenue Appeal no. 27/18 under section 188(1)(c) of the Land Revenue code, 1968. This appeal was disposed of by the impugned judgement dated 28.10.2019. The learned Administrative Tribunal allowed the appeal, quashed and set aside order of Deputy Collector and dismissed/rejected application dated 18.02.1982 filed by the Petitioners for correction of survey records.

19. In writ petition no. 134/2020, the Petitioners filed an application dated 18.02.1982 before the Survey Officer of Land

Survey for correction of survey records in respect of survey nos. 105/1, 113/3, 113/4, 113/5, 113/7, 114/7, 114/8, 114/9, 114/10 and 120/1 of village Colombo of Sanguem taluka. The Petitioners claim that the above property is owned and possessed by them and that it has been wrongly surveyed by Forest Department. The prayer in the application is to delete the name of Forest Department and to include the names of Petitioners in the occupant's column. Such application was considered by the Deputy Collector and notice was issued to the Respondent/Forest Department. A written statement was filed by the Forest Department and thereafter enquiry was conducted during which both parties led evidence and produced various documents. The learned Deputy Collector/SDO vide its Judgement and Order dated 22.06.2017 allowed the application filed by the Petitioners thereby directing to delete the name of Forest Department and including the name of the Petitioners in the occupant's column of the above survey holdings.

20. The Forest Department then challenged the said order dated 22.06.2017 by filing and Land Revenue Appeal No. 17/2018 before the learned Administrative Tribunal under section 188(1)(c) of the Land Revenue Code, 1968. Learned Administrative Tribunal

decided Land Revenue Appeal no. 17/2018 vide its impugned order dated 28.10.2019 thereby allowing the said appeal, setting aside Order of Deputy Collector and rejecting the application dated 18.02.1982 filed by the Petitioners for correction of survey records.

21. With these facts, the objections raised by the Respondents to the present petition on the ground that there is alternate efficacious remedy available to the Petitioners needs to be decided.

22. Chapter VIII of the Land Revenue Code, 1968 deals with land records. Section 94 deals with preparation of records of rights wherein duties are cast on the Government to take all measures for preparation and maintenance of land records including record of rights and maps and all other matters connected thereto or incidental thereto, in accordance with such rules and directions as may be made in that behalf. Section 95 deals with record of rights wherein it is provided that the record of rights in land as occupant, tenant, government lessee, mortgagee or howsoever shall be maintained in every village in the prescribed form and such record of rights shall include the particulars namely (a) Survey numbers, sub divisions, areas, assessment of land and the tenure on which it is held: (b) Names of persons who are occupants, government

lessees, or mortgagees of the land: (c) Names of tenants if any of the land; (d) Names of the persons holding an encumbrance or any other charge or right on the land; (e) Nature and extent of respective interest of such persons and the conditions or liabilities if any attaching thereto; (f) The rent, if any, payable for the land; (g) Such other particulars as government may prescribe by Rules made in this behalf. Normally this record of right in the above format is called as Form no. I and XIV.

23. Section 99 puts obligation to furnish information of the persons whose right, interests or liabilities are required to be, or have been entered in any record or register, shall be bound on the requisition of any revenue officer or Talati to furnish or produce all such information or documents. Section 103 provides correction of clerical errors wherein the powers are given to the Collectors to carry out clerical errors in the record of rights. Section 105 carries a presumption of correctness of the entries in record of rights and register of mutation.

24. Chapter XI deals with procedure of Revenue Officers in connection with the enquiry to be conducted under the said Code.

25. Chapter XII deals with Appeals, Revision and Reviews. Section 188 deals with appeals against the orders passed by SDO or other officers while dealing with the application filed under the Code.

26. The applications filed by the Petitioners dated 18.02.1982 in both these petitions were admittedly for correction of land records which were promulgated. The Revenue Courts i.e. Deputy Collector conducted an enquiry into the application filed by the Petitioners in both these matters as provided under Chapter XI. Similarly the Appeal was filed challenging the Order of the Deputy Collector/SDO under Section 188 of the Code. Thus it is clear that the record of rights of all the above survey holding shows that the land belongs to and is possessed by the Government i.e. Forest Department.

27. Chapter III of the Code deals with title of Government lands. Mr Salkar claimed that the application filed by the petitioners is under Section 14 (3) of the Code. Thus it is his contention that once the enquiry is conducted or appeal is decided against such order, the aggrieved person is having an option to file a Civil Suit and that the decision of the Civil Court shall be binding on the parties.

28. Thus, Mr. Salkar would submit that after the decision of the Revenue Authorities in the enquiry proceeding and also in an Appeal, the only option with the Petitioners is to file a Civil Suit against the Forest Department and any decision of the Civil Court would be binding on the both the parties. He then submitted that the powers under Article 227 of Constitution of India need not be exercised when there is alternate efficacious remedy available to the Petitioners.

29. Section 14 of the Land Revenue Code reads thus:-

14. Title of Government to lands, etc.— (1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the Government subject to right of way, and all other rights, public and individual, legally subsisting.

Explanation:— In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Unless it is otherwise expressly provided in any law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the Government and it shall have all the powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or an officer authorised by the Government in this behalf (4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision therefrom may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

30. On the plain reading of Section 14 and more specifically sub-section (4) and (5), its amply clear that when the claim of the Petitioner was rejected by the Appellate Court while dealing with the application for correction of survey records, the only option was to file a Civil Suit wherein proper adjudication of the claim of the petitioners could have been decided i.e. the ownership and

possession.

31. The claim raised before the Revenue Authorities is for deletion of the names of Forest Department on the ground that the Petitioners are the owners in possession of the said survey holdings. Admittedly, the Survey Authorities or the Revenue Courts are not entitled to grant any declaration or ownership which the Petitioners are trying to claim before the Revenue Authorities. The enquiry as contemplated in Section 14(3) of the Code is only a Formal enquiry to enquire whether there is any mistake in the survey record and such enquiry cannot be for deciding title or possession claim.

32. Contention of Mr. Padgaonkar that no purpose would be served in relegating the parties to the Civil Court since entire evidence, oral or documentary is already produced before Revenue Courts and therefore this Court can certainly look into it, cannot be accepted for the simple reason that Article 227 of the Constitution of India gives supervisory powers over the Courts within the territory of this Court. The power of superintendence could be exercised by this Court with limited purpose. While dealing such powers of Superintendence, this Court cannot sit as an Appellate

Court over the impugned decision and examine the evidence produced by the parties before the Survey Authorities. Even otherwise, the powers of superintendence is limited to the extent of considering the illegalities committed by the Court in exercising jurisdiction over the matters.

33. Mr Padgaonkar placed reliance in the case of **Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and Others** reported in **2023 SSC OnLine SC 95**. First of all, proposition laid down in this decision is not applicable to the matter in hand. The Apex Court was discussing about the powers of High Court under Article 226 of Constitution of India, which is not at all the case in the present matter. Thus such decision is not applicable to the matter in hand.

34. Mr Padgaonkar then referred to the decision in the case of **Santosh Hazari versus Purushottam Tiwari** reported in **(2001) 3 Supreme Court Cases 179**. In the above case, the Supreme Court was dealing with Section 100 and Section 96 of Civil Procedure Code, 1908 which specifically deals with second appeal and first appeal respectively.

35. The above decision is also not helpful to the Petitioners since

the decision of the Civil Court cannot be equated with the decisions of the Revenue Courts. There is no provision of second appeal against the order of the learned Administrative Tribunal as provided in the Land Revenue Code of 1968. Therefore both these decisions will not help the Petitioner in any manner.

36. A perusal of the orders passed by both the authorities, would show that there is a dispute of title as well as possession over the said properties. By filing simple application for correction of record of rights, such title dispute cannot be decided by the Revenue Authorities. Even though while conducting some enquiry in an application for correction of survey records, the Revenue Courts allowed the parties to lead evidence and produce documents showing title to the property, same cannot be considered to by-pass the specific provisions under Section 14 (4) and (5) of the Land Revenue Code, 1968. Revenue Authorities are not empowered or authorised to decide as to who is the owner of the property. At the most while conducting formal enquiry about correction of survey records, they may prima facie look into the title documents. Such enquiry is only to consider whether the party applying for correction of survey records is entitled to record its name in the

occupant's column. It is well settled that the entries in the survey records cannot be considered as a title over the said property. However, at the most it reflects that the person whose name is recorded in the occupant's column is the occupant of the said survey holding.

37. The learned Administrative Tribunal in both these appeals after considering all the evidence of the parties and even considering the submissions, held that the documents and evidence adduced by the parties clearly shows that the properties claimed by the Petitioners on the basis of documents produced by them are different than the properties of the Forest Department. This observation is on the basis of reasons after considering the documents, the boundaries and oral evidence. Such finding cannot be disturbed only because another view is possible.

38. The only option to the Petitioners is provided under Section 14 (4) of the Code which is considered to be alternate and efficacious remedy and not by way of the present petition. Thus, the submissions of Mr. Salkar that the petition filed under Article 227 of Constitution of India needs to be rejected on the basis of alternate and efficacious remedy, has to be accepted.

39. Writ Petition no. 133 of 2020 and Writ Petition no. 134 of 2020, therefore stand dismissed. Rule issued in both these matters stand discharged. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.