

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.196/2022
WITH
WRIT PETITION NO.201/2022**

1. LINUS MARIO DLIMA, son of Benjamin Matias D'Lima, 64 years of age,

2. MRS CYNTHIA BERNARDO D'LIMA, aged 61 years of age, (legal heirs of late Benjamin Matias D'Lima) Both residents of 8/2/13 Bhawani Nagar, Marol Maroshi Road, Andheri (East), Mumbai – 400059.

... Petitioners

Versus

1. STATE OF GOA, through its Chief Secretary, Secretariat, Porvorim, Bardez-Goa.

2. JOINT MAMLATDAR OF BARDEZ-III AT MAPUSA, Collectorate Building, Mapusa- Goa.

3. MR FRANCIS FERNANDES, resident of House No.1277/1, Khursa Vaddo, Carona, Aldona, Bardez-Goa 403523.

... Respondents

Mr Shane Gomes Pereira with Mr Sujay Kamulkar, Advocates *for the Petitioners*.

Mr D. Pangam, Advocate General with Mr Geetesh Shetye (WP-196-22) and Mr S.P. Munj (WP-201-22), Additional Government Advocates *for the State*.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

**Reserved on: 27th MARCH 2023
Pronounced on: 31st MARCH 2023**

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

1. Heard Mr Shane Gomes Pereira, who appears with Mr Sujay Kamulkar for the petitioners and Mr D. Pangam, learned Advocate General who appears along with Mr Geetesh Shetye and Mr Shivdatt Munj, learned Additional Government Advocates for the State.

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

3. In both these petitions, the immediate relief was to issue a Writ of Mandamus directing the Joint Mamlatdar of Bardez to dispose of the tenancy/mundkar proceedings pending before him expeditiously and preferably within a time-bound schedule.

4. Having regard to the facts and circumstances set out in the two petitions, there was no difficulty in issuing the mandamus as prayed for. Even the learned Advocate General made a statement

that the Joint Mamlatdar of Bardez would dispose of the proceedings within six months. This statement was accepted, and the respective Joint Mamlatdars were directed to act accordingly. However, these petitions were not disposed of because we were informed that several tenancy and mundkar cases are pending before the Mamlatdars and the Joint Mamlatdars and further, there was a delay in disposal of such matters, primarily because the Joint Mamlatdars or the other authorities constituted under the tenancy and mundkar laws were occupied in several executive functions, as a result of which, there was no sufficient time to attend to these matters.

5. Accordingly, we directed the State to place on record the statistics of the pendency position in the districts of North Goa and South Goa.

6. The Under Secretary (Revenue) filed affidavits dated 03.10.2022 and 17.02.2023, placing on record the pendency statistics. Along with this affidavit and even otherwise, this Court was apprised of specific orders issued by the Government to deal with the pendency of matters under the Tenancy and Mundkar laws.

7. The Goa Agricultural Tenancy Act 1964 is an Act to regulate the terms of tenancy with respect to agricultural lands in the State of Goa and for matters connected therewith. This Act is a measure of "agrarian reform" enjoying substantial constitutional immunity. Similarly, the Goa Mundkars (Protection from Eviction) Act, 1975 was passed to provide for better protection to mundkars against eviction from their dwelling houses and granting them rights to purchase the same and to make certain other provisions connected therewith. Both these legislations are admittedly beneficial legislations enacted to benefit the agricultural tenants and mundkars.

8. Under the Goa Agricultural Tenancy Act, 1964, if any question arises whether any person is or was a tenant or should be deemed to be a tenant, then such question has to be decided by the Mamlatdar under Section 7 of the said Act. Similarly, a question as to whether any land is or is not used for agricultural purposes is also to be decided by the Mamlatdar. Section 8 imposes a bar to the eviction of tenants and restoration of possession. Section 8A empowers the grant of relief to a tenant in cases of threatened wrongful dispossession. The jurisdiction under Sections 8 and 8A is also to be exercised by the Mamlatdar.

9. Section 10 of the Goa Agricultural Tenancy Act, 1964, provides for surrender by a tenant before a Mamlatdar. Sections 11 and 12 are concerned with the termination of tenancy, and Section 14 is concerned with the heritability of the tenant's rights. Here again, the jurisdiction in such matters is vested in the Mamlatdar.

10. Section 18A of the Goa Agricultural Tenancy Act, 1964 provides that on the tillers' day, every tenant shall, subject to the other provisions of this Act, be deemed to have purchased from his landlord the land held by him as a tenant and such land shall vest in him free from all encumbrances subsisting on the said day. Again, all powers to consider issues arising under Section 18A are, for that matter, under the Chapter IIA of the said Act and are vested in the Mamlatdar in the first instance.

11. Against orders of the Mamlatdar made under the Goa Agricultural Tenancy Act, 1964, appeals are provided under the very same Act to the appellate and revisional authorities i.e. to the Collector and Administrative Tribunal.

12. Section 58B of the Goa Agricultural Tenancy Act, 1964, bars the jurisdiction of the Civil Courts. This Section provides that save as provided in this Act, no Court shall have jurisdiction

to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector, Administrative Tribunal or Government and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court. Some decisions have taken the view that if any issues that must be settled, decided or dealt with by the Mamlatdar, etc., arise before a Civil Court, then such Court will have to refer such issues for the decision to the Mamlatdar, etc.

13. Section 60C of the Goa Agricultural Tenancy Act, 1964 provides that all applications and/or proceedings under Sections 7, 7A, 14 and 18C of this Act shall be disposed of as far as possible within three years from the date of their filing or the date of their receipt from the Court of Senior Civil Judge, as the case may be.

14. The Goa Mundkars (Protection from Eviction) Act, 1975, was enacted to provide better protection of mundkars against eviction from their dwelling houses and to grant them the right to purchase the same. The jurisdiction to decide most of the issues under this Act is vested in the mundkar. The appellate and revisional authorities are also constituted under this Act.

15. Section 32 of the Mundkar Act provides that if any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act, the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination. On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court, and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof.

16. Section 37B(1) of the Mundkar Act provides that all applications filed under Sections 8A and 16 and/or proceedings pending under section 29 of this Act before the commencement of the Goa Mundkars (Protection from Eviction) (Amendment) Act, 2014, shall be disposed of by the Mamlatdar within one year from such commencement. Further, Section 37B(2) provides that the Mamlatdar shall grant no adjournments in any matter pending before him except on medical grounds or for reasons to be specified in writing. Once an adjournment is refused, the Mamlatdar shall dispose of the matter on merits.

17. In short, under the Goa Agricultural Tenancy Act, 1964 and Goa Mundkars (Protection from Eviction) Act, 1975, exclusive jurisdiction is vested in the Mamlatdar and the appellate and the revisional authorities constituted under the two enactments. Even if issues that must be settled, decided or dealt with by the authorities under the two Acts arise before the Civil Courts, such issues are referred to the Mamlatdar, etc. The suits are stayed until the Mamlatdar, etc. decide on such issues and communicate his decision to the Civil Court. There are provisions under the two Acts for expeditious disposal of the proceedings.

18. However, the affidavit filed by Sandip S. Gaude, Under Secretary (Revenue), on 03.10.2022 indicated that as of August 2022, in the North Goa district, there are thousands of cases pending before the Mamlatdars, Deputy Collectors, etc., under the various legislations. The position in the District of South Goa is also not quite different. Durga Kinalekar, Under Secretary (Revenue), discloses this position in her affidavit filed on 17.02.2023.

19. The Mamlatdars, Deputy Collectors, etc., apart from dealing with the cases under the Agricultural Tenancy Act and the Mundkars Act, are required to deal with cases under several other

legislations. Besides, the Mamlatdars, Deputy Collectors, etc., are invariably involved in other executive functions, particularly under Criminal Procedure Code, Land Revenue, etc. As a result, the pendency position is quite grim. Moreover, due to the pendency of cases before the Mamlatdars or other authorities under these two Acts, even the Civil Courts cannot dispose of the civil suits in which issues of tenancy and mundkarship have been referred to the Mamlatdars, etc.

20. The records show that in the District of North Goa, about 715 cases are pending before the Civil Courts and the District Court only because the issues of tenancy and mundkarship referred to the Mamlatdar, etc., have not yet been answered. On the other hand, in South Goa, 196 such cases are pending before the Civil Courts and the District Court. Thus, 911 cases are pending before the Civil Courts and the District Courts only because the references under the tenancy and mundkarship referred to the Mamlatdar have not yet been answered.

21. The State has also taken cognizance of the grim pendency position and issued an Order dated 14.09.2022 requiring the Mamlatdars to dispose of the pending proceedings expeditiously.

22. The contents of the Order dated 14.09.2022 issued by the Government of Goa are relevant, and therefore, the same are transcribed below for the convenience of reference:

**"Revenue Department
Government of Goa,
Secretariat, Porvorim-Goa, 403 521**

File No. 1/3/2022/RD-1 Dated:- 4/09/2022

*Read: 1. Note bearing No. 35/Secy(Revenue)Cases/2021/46 dated 09/03/2021
2. Order No 11/11/2020 RD(Part I)/2327 dated 27/08/2021*

ORDER

WHEREAS, it is observed that there is large scale pendency of revenue cases under various Acts, especially, The Goa Daman & Diu Mundkar (Protection from Eviction) Act, 1975 and Goa Daman & Diu Agricultural Tenancy Act, 1964. The issue of pendency and poor disposal of revenue court cases was raised by different Hon'ble Members of Goa Legislative Assembly in recently conducted Assembly Session, 2022 during the discussion on Demands for grants for year 2022-23.

AND WHEREAS, the Hon'ble Minister for Revenue has taken a serious note of pendency of Mundkar and Tenancy matters and also has assured the Legislative Assembly of Goa that all steps will be taken to ensure speedy disposal of Revenue Court cases by sensitizing the Revenue Officers to give utmost priority in disposal of cases in a time bound manner, and establishing a robust monitoring mechanism at the level of both Collectors and

at the level of Government. The Hon'ble Minister for Revenue has also assured the Legislative Assembly and the General public of the State that maximum efforts would be taken for disposal of Mundkar cases within a period of one year.

AND WHEREAS, various instructions were issued to all the Revenue Officers from time to time for timely and systematic disposal of various Revenue Court cases, more specially the two orders read above.

AND WHEREAS, Rule 10(14) of the Goa Agricultural Tenancy Rules, 1965 mandates that "The Mamlatdar shall dispose of the application within period of one year from the date of service of notice to the other party". Similarly, Rule 10(7) provides that, "the dates should not be issued later than 15 days". Similarly, Rule 14 of the Mundkar provides that, "the Mamlatdar may for any other sufficient reason to be recorded in writing adjourn the trial of the case for such time, as he thinks fit, but not ordinarily exceeding 10 days".

AND WHEREAS, Section 36(1) of the Goa Daman & Diu Mundkars (Protection from Eviction) Act, 1975 gives power to the Government to give directions which reads as "The Government shall have power to issue directions or orders to the Mamlatdars or the Collector to give effect to the provision of this Act and the rules made thereunder". Similarly, Section 59 of the Goa Daman & Diu Agricultural Tenancy Act, 1964 provides that, "the Government have powers to issue directions or orders to Mamlatdars, Tribunal and Collectors, to give effect to the provision of this Act and the rules made thereunder".

NOW THEREFORE, in pursuance to above referred provisions, the Government is hereby pleased to issue following directives for being implemented and followed by the Revenue officials while dealing with revenue court matter:

i. Every efforts shall be made to dispose the pending mundakar and tenancy cases within a period of one year.

ii. Not more than three adjournment in any particular case shall be granted till its final disposal and the next date of hearing fixed should not ordinarily be exceeding 10 days.

iii. Both Collector shall designate special Mamlatdar who shall exclusively deal with mundkar and tenancy court matters and who shall ensure that hearing of revenue courts should mandatorily happen once date is fixed.

iv. The Revenue Officers shall ensure that in case due to prefixed engagement if hearing on any particular dates will require to be adjourned then prior intimation to both the parties and/or their advocate on record shall be invariably given by way of SMS on their registered mobile number to avoid inconvenience and harassment to public.

v. Both the Collectors shall allot mundkar and tenancy cases to Mamlatdar-in-Collectorate also to ensure fast disposal of cases.

vi. The special designated Mamlatdars shall also hold revenue courts on Saturday to ensure timely disposal of the cases.

vii. The mundkar and tenancy cases which are pending for more than 3 years shall be taken up for hearing on day to day basis and shall be disposed off as early as possible.

viii. The Supervisory Officers shall write the APARs of the Subordinate Officers based on their performance in disposal of Revenue cases allotted to them.

ix. Both the Collector shall ensure that final judgment and orders are delivered by revenue court within a period of 30 days from the date of hearing of the final arguments/filing of written arguments.

x. The Additional Collectors of North and South Goa as per talukas allotted to them vide Order read in preamble at Sr. No. 2 above shall on daily basis monitor the disposal of cases and shall submit weekly report to the Secretary (Revenue) in Annexure 'A' and 'B' enclosed herewith.

xi. Both Collectors shall regularly review the performance and disposal of cases of all revenue officers subordinate to them and on monthly basis submit their report to Government on performance of every revenue officer under their jurisdiction in Annexure 'C' and 'D',

xii. Both Collectors shall ensure that Court Monitoring cases App is duly implemented and updated for information of the litigants, advocates and general public.

xiii. All the Mamlatdars shall ensure that the Mundkar Purchase cases and tenancy purchase cases are finally disposed off within a period of six months from the date of their filing and in no case the purchase cases be kept pending for more than six months.

xiv. Both Collectors shall analyze the pendency of cases in each taluka and properly assign the cases to revenue officers. The Collector shall designate the Mamlatdar having less pendency in other taluka for speedy disposal of cases by issuing appropriate orders for empowering the

officers to execute the work. The Collector shall regularly assess the workload on the revenue officers.

*By Order and in the name of the
Governor of Goa.*

Sd/-

(Shri Sandeep Gawde)

Under Secretary (Revenue-I)"

23. To the above Order dated 14.09.2022, formats are enclosed for reporting compliances. The Additional Collector is expected to make his observations/remarks on the performance of the Mamlatdar/Joint Mamlatdar in disposing of cases pending under the Tenancy and Mundkar Legislations.

24. The Order dated 14.09.2022 requires the Revenue Authorities to make every effort to dispose of the pending mundkar and tenancy cases within one year. The Collectors must designate special Mamlatdars who shall exclusively deal with the mundkar and tenancy court matters. The Collectors are duty-bound to ensure that the hearings before the Revenue Courts are mandatorily held once a date is fixed. The Revenue Courts are also directed to ensure that if the matters are to be adjourned, then prior intimation must be sent to both the parties and/or their advocates on record by way of SMS on their registered mobile number so as to avoid inconvenience and harassment to

the litigants and their advocates. The specially designated Mamlatdars for disposal of these cases are required to hold Revenue Courts on Saturdays to ensure timely disposal of the cases.

25. The Government's Order dated 14.09.2022 directs the Mamlatdars, etc., to take up, daily, the pending cases for more than three years so that they are disposed of at the earliest. The supervisory officials must write the APARs of their junior officials based on their performance in the disposal of Revenue cases allotted to them. The Collectors of both Districts are directed to ensure that the revenue court delivers the final judgments and orders within 30 days of hearing the final arguments/filing of written arguments. The Additional Collectors of North and South Goa must monitor the disposal of cases and submit weekly reports to the Secretary (Revenue) in the formats provided in Annexures 'A' and 'B' to the said Order.

26. Collectors of both Districts shall regularly review the performance and disposal of cases of all revenue officers and submit reports on each revenue officer's performance under their jurisdiction in Annexures 'C' and 'D' to the said Order. In addition, both Collectors are directed to ensure that the Court

Monitoring cases App is duly implemented and updated for the litigants, advocates and general public information.

27. All the Mamlatdars are directed to ensure that the Mundkar Purchase cases and tenancy purchase cases are finally disposed of within six months from the date of their filing. The purchase cases will not be kept pending for more than six months. Both the Collectors are directed to analyze the pendency of each taluka and properly assign the cases to revenue officers. The Collector shall designate the Mamlatdar having less pendency in other taluka for speedy disposal of cases by issuing appropriate orders for empowering the officers to dispose of the cases. In short, the Collector is enjoined to regularly assess the workload on the revenue officers.

28. The Government's initiative in issuing the Order dated 14.09.2022 is indeed appreciable. However, the Revenue Officers, including the Collectors and Additional Collectors of the two Districts, must ensure compliance lest the Government's Order dated 14.09.2022 remains a paper order. Directions issued by the Government in its Order dated 14.09.2022, if complied with all the seriousness they deserve, the problem of pendency before the mamlatdars and other authorities under the Tenancy Act and the Mundkar Act can be suitably redressed. Once this issue of

pendency is addressed, over 900 cases before the Civil and District Courts could also be disposed of. As noted earlier, these cases are pending disposal because the references made to Mamlatdars, etc. have not been answered.

29. Accordingly, we issue directions to the Collectors, Additional Collectors, Mamlatdars, Joint Mamlatdars and other Revenue Officers to strictly implement Government's Order dated 14.09.2022 and dispose of the pending cases under the Tenancy and Mundkar Acts as expeditiously as possible and in any case within the timeline set out in the Government's Order dated 14.09.2022. Furthermore, the Collectors and Additional Collectors must also implement the Government's Order dated 14.09.2022 by monitoring the disposal of cases and ensuring that the reports in the prescribed formats are regularly submitted.

30. Though we are disposing of these petitions by issuing the above directions, we direct the Collectors of both districts to file compliance reports in this Court by 30.09.2023. These compliance reports must indicate the pendency position as of 31.03.2023 and the pendency position as of 30.09.2023. This will indicate the status of compliances. In addition, in the compliance reports, the two Collectors must at least indicate in a tabular format whether the necessary reports, as contemplated by the

Order dated 14.09.2022, were submitted by the respective Mamlatdars/Joint Mamlatdars each month and State the action taken by the Collectors, Additional Collectors and the Revenue Secretary in cases of non-compliance or inadequate compliances.

31. Copies of the compliance reports must be furnished to the Registrar (Judicial). The Registrar (Judicial) will post this matter for directions on 09.10.2023. The matter must be posted for directions even if no compliance reports are received.

32. The Registrar (Judicial) must forward a copy of this Judgment and Order to the Collectors of North Goa and South Goa for necessary action and compliance.

33. The Rule is disposed of in both these petitions in the above terms.

34. There shall be no order for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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