Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.352 OF 2023

1 Morombi-O-Grande Tenants Association, Merces, Tiswadi – Goa Through its Chairman, Shri Shamir J. Coutinho, Son of C.P. Coutinho, 70 Years of age, Married and resident of House No.50, Firguem Bhat, Merces, Tiswadi- Goa. …Petitioner

V/S.

1 State of Goa Through
Chief Secretary
Secretariat Porvorim Goa.

2 Mamlatdar of Tiswadi Taluka,
Having his office at Mamlatdar Building,
Panaji, Tiswadi Taluka Goa.

3 Mr. Nicolau Nunes
Aged 56 years, Indian National,
r/o. H.No.56, Vaddy, Merces,
Tiswadi Goa.

4 Mr. Tiago Mendes
s/o. Mr. Mendes, 64 years
r/o. Vaddy, Merces, Tiswadi Goa.

5 Mr. Blasio De Sa

s/o. Minguel De Sa, 74 years,
r/o. H.No. 77, Carmita Vaddy,
Merces Tiswadi Goa.

6 Mr Vinayak P. Pilankar
60 years of age,
r/o. Khumbarvada, Merces, Tiswadi, Goa.

7 Nicolau Monteiro
64 years of age,
r/o. Malabhar, Vaddy Merces
Tiswadi Goa. ... Respondents.

Mr Arjun Naik, Advocate for the petitioner.

Mr. Geetesh Shetye, Additional Government Advocate for Respondent Nos.1 and 2.

Mr. Vibhav Amonkar, Advocate for Respondent No.4.

Mr. Rohit Bras De Sa, learned Counsel for Respondent No.7.

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

RESERVED ON : 4th OCTOBER,2023

PRONOUNCED ON: 11th OCTOBER, 2023

JUDGMENT : (Per Bharat P. Deshpande, J)

1. Rule. Rule is made returnable forthwith. Heard the parties with consent for final disposal.

2. The petitioner is a Tenant Association duly registered under the Goa, Daman and Diu Agricultural Tenancy Act,1964 and Rules thereunder. The petitioner is basically challenging the impugned order passed by the learned Mamlatdar of Tiswadi Taluka, Panaji Goa on 06/03/2023 in case No.MAM/TIS/AK-II/HC/TEN-ASSO/2021/3454.

3. By this order the learned Mamlatdar /respondent No.2 herein, after conducting enquiry into the complaint dated 22/07/2021 and notice dated 11/08/2021, observed that the earlier Managing Committee of the petitioner abused its powers and misappropriated the funds of the petitioner, failed to maintain the accounts property thereby resulting loss to the tenants association and also did acts which are harmful to the agricultural lands, only directed the petitioner to lodge/register FIR against the erstwhile Managing Committee however failed to exercise its powers for the purpose of recovery of misappropriated amount, which, according to the audited report is Rs.69,55,500/-.

4. A basic challenge is against the impugned order on the ground that the Mamlatdar himself ought to have registered the FIR and initiated the proceedings for recovery of misappropriated amount from the earlier Managing Committee.

5. We have heard learned Counsel Mr. A. Naik, learned Counsel appearing for the petitioner, Mr. G. Shetye, learned Additional Government Advocate for respondent Nos.1 and 2, Mr. Vibhav Amonkar, learned Counsel for respondent No.4 and Mr. Rohit Bras De Sa, learned Counsel for respondent No.7.

6. Mr Naik would submit that at each stage the petitioner has to approach this Court since Mamlatdar failed to exercise his powers for taking appropriate recourse against the misappropriation and illegalities committed by the earlier committee. It is his contention that under the Goa, Daman and Diu Agricultural Tenancy (Discharge of Joint Responsibility of Tenants) Rules, 1975, hereinafter called as "Rules,1975", the Mamlatdar is having wide powers to take appropriate recourse against the Managing Committee if it is pointed out to the Mamlatdar that irregularities have been committed. He submits that the petitioner approached this Court on a couple of occasions for redressal of their grievances only because there was total inaction on the part of respondent No.2/Mamlatdar.

7. Mr Naik while elaborating his submissions would submit that the petitioner association is registered before respondent No.2/Mamlatdar under Rules 1975. The Managing Committee of the petitioner's association is elected by the Mamlatdar from amongst the tenants/farmers of the associations. Such a Managing Committee has to perform the work as entrusted under the said Rules. On failure of the Managing Committee to perform its duties, action is contemplated at the hands of the Mamalatdar against such a Managing Committee and even the committee could be dissolved. He would submit that from time to time the Managing Committee was formed and the last committee which was elected in the year 2016 for a period of three years. The said Managing Committee consist of respondent Nos.3 to 7 which was elected on 01/06/2016 up to 31/05/2019.

8. Mr Naik would then submit that after expiry of the term i.e. on 31/05/2019 or thereafter, no elections were held by the Mamlatdar/ respondent No.2 and the earlier Managing Committee consisting of respondent Nos.3 to 7 continued to manage the business illegally till the year 2021. During this period of three years, respondent Nos.3 to 7 committed several irregularities, illegalities and even misappropriated funds of the petitioner association. They failed to even intimate respondent No.2 about the expiry of their term, and the list of voters so as to conduct fresh elections. Several complaints were lodged by the petitioner and their members with respondent No.2 against the earlier Managing Committee consisting of respondent Nos.3 to 7. Finally, respondent No.2 scheduled the election of a new managing committee on 02/02/2021, however, for want of quorum the same was adjourned. Fresh elections were fixed on 12/02/2021 but the same were postponed on the ground that the voters' list was not updated. Respondent Nos.3 to 7 then requested the Mamlatdar to replace the said committee with an ad-hoc committee. Accordingly, the Mamlatdar/respondent No.2 directed respondent Nos.3 to 7 to hand over the charge to the ad-hoc committee. This order was challenged by respondent Nos.3 to 7 by filing Writ Petition No.263 of 2021. During that petition, the statement was made by the learned Advocate General that elections would be held within 30days time and accordingly the petition was disposed of on 06/09/2021.

9. Mr. Naik would then submit that on 11/10/2021 the present Managing Committee was elected for a period of three years commencing from 11/10/2021 to 10/10/2024.

10. Mr Naik would then submit that when the ad-hoc committee was appointed by the Mamlatdar, the present chairman Mr. Shamir Cutinho was appointed as Chairman of the ad-hoc committee. He lodged a complaint before respondent No.2 against respondent Nos.3 to 7 specifically alleging misuse of powers, misappropriation of the funds of the association and even committing fraud. He also informed respondent No.2 that the earlier committee did not deposit the auction/instalment amount to the tune of Rs.24,52,500/- in the Bank Account of the Association. Similarly, the earlier Managing Committee had withdrawn an amount of Rs.7,40,000/- in the year 2020 and an amount of Rs.8,20,000/- in the year 2021 without any plausible reason. Similarly, the earlier committee misappropriated the fixed deposit of Rs.18 lakhs and obtained a loan of Rs.6,30,000/- on the strength of fixed deposit without there being any authority under the law. The complaint further shows that the earlier Managing Committee mismanaged the sluice gate of waterways and had withdrawn huge amounts for distribution to the farmers without proper reason. A request was made to the learned Mamlatdar to register FIR for fraud and misrepresentation of the funds of the association and further to debar respondent Nos.3 to 7 from contesting further elections. A specific request was made in the said complaint about recovery of the misappropriated amount from respondent No.3 to 7.

11. Mr. Naik would then submit that though such a complaint was filed by the present chairman when respondent Nos.3 to 7 were the Managing Committee members, respondent No.2 failed to take any action therefore the present chairman had to issue legal notice dated 11/08/2021 asking respondent No.2 to initiate action against respondent Nos.3 to 7. Inspite of such legal notice, respondent No.2/Mamlatdar remained silent and his inaction provoked the petitioner to approach this court by filing Writ Petition No. 1877 of 2021 (F).

12. Mr Naik would then submit that considering grievances raised by the petitioner in the said petition, this Court vide order dated 04/10/2021 directed Mamlatdar/respondent No.2 to dispose of the complaint dated 22/07/2021 and 11/08/2021 within a period of six months from the date of such order. He therefore would submit that only with the intervention of this Court, the learned Mamlatdar was forced to exercise his powers under Rules 1975 by initiating enquiry against respondent Nos.3 to 7.

13. Mr. Naik would then submit that in order to assess the amount misappropriated by respondent Nos.3 to 7 the auditor by the name YKP Associates having office at Panaji was appointed with the approval of respondent No.2. The auditor after verifying the records of the Association issued their report in a sealed envelope addressed to respondent No.2. On opening the sealed envelope, the respondent No.2 observed that the auditor had certified the total amount misappropriated and the deficit came to Rs.69,55,500/-. Besides this, the auditor also noted that an auction amount of Rs.13,00,000/-was refunded to the lessee without approval of the Mamlatdar. After respondent Nos.3 to 7 filed a reply to such audit report, the enquiry was conducted by respondent No.2 that too after the extended time, which is impugned in the present petition.

14. Mr Naik would submit that the powers under Rule 1975 give wide discretion to the learned Mamlatdar, however, he failed to exercise it in spite of accepting the auditor's report and finding out that there was misappropriation of the huge amount of association by the earlier committee. His main grievance is that no orders are passed with regard to the recovery of misappropriated amounts.

15. Mr. G. Shetye, learned Additional Government Advocate appearing for respondent Nos.1 and 2 submits that the FIR is already lodged against respondent Nos. 3 to 7 and therefore the only question which remains in the petition is with regard to the recovery of misappropriated funds. Mr. Shetye pointed out that the powers under Rule 10 of Rule 1975 are wide enough giving discretion to the learned Mamlatdar to take necessary action on the matters which are not specifically provided in the said Rules in connection with the discharge of joint responsibility by the tenant. In other words, according to Mr.

Shetye, the Mamlatdar assumes the powers to direct the recovery of misappropriated funds.

16. The rival contentions fall for determination.

17. It is not disputed that the audit report prepared as per the directions of the learned Mamlatdar clearly shows a specific amount under the caption of "misappropriation". Thus, the only question which needs consideration is whether inaction on the part of Mamlatdar would certainly affect the rights of the petitioner association in the recovery of the misappropriated amount by the earlier committee.

18. We are concerned with the powers given to the learned Mamlatdar by Rules 1975 and whether respondent No.2 actually exercised such powers in order to take necessary action in the matter in connection with the discharge of joint responsibility by the tenant association.

19. From the submissions advanced by Mr. A Naik and, more specifically, which are not disputed, we clearly found that respondent No.2, from time to time, failed to exercise its duty under Rules 1975 and for that purpose, the petitioner association or its members were required to approach this Court for redressal of their grievances. The statutory duty provided under the Act and the Rules of 1975 is required to be discharged in the public interest. Inaction on the part of the Officer clearly affects the rights of the Association or its members, and the same needs to be curbed.

20. The petitioner is a tenants association constituted under Rule 1975, more specifically Rule 2(d) which defines "Association" to mean a group of tenants ["who have become deemed purchasers by virtue of the Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 and"] who jointly derive benefit from a common major bund or bunds in a locality and is recognised as such under these rules, by the Mamlatdar of the Taluka having jurisdiction. Rule 3 deals with the Constitution and Recognition of Tenants Association. There is no dispute that the petitioner association is duly recognised and constituted under the Rules of 1975.

21. Functions of the general body are provided in Rule 4 of the association; it deals with the election of the managing committee, office bearers and the attorney. It also provides for approval for annual statements of Accounts to be prepared by the Managing Committee, amongst others. The General Body shall meet once a year, in the first fortnight of the month of December, to decide on general matters. For the purpose of election of the Officer bearers of the Managing Committee, a special meeting needs to be convened by the Mamlatdar with a notice of at least 10 days in advance, and the same will be presided over by the Mamlatdar or his representative. Sub Rule 4 of Rule 4 provides that the majority of the members present shall take all the decisions of the general body. Rule 5 prescribed the duties of the members, whereas Rule 6 deals with the constitution and functions of the Managing Committee. It specifically provides that the Managing Committee of the Association shall be comprised of the office bearers, namely, a Chairman, a Vice-Chairman, an Honorary Treasurer, an Attorney and an Honorary Secretary. The term of the Managing Committee shall be 3 years from the date of election.

22. Sub-Rule 5 of Rule 6 deals with the functions of the Managing Committee. It includes

> (a) To maintain the list of tenants up-to-date as prescribed in Form III under Rule 3.

(b) To take all steps which are necessary to be taken for conservancy, maintenance or repairs of bunds.

(c) To get the estimates prepared for repairs, maintenance, etc., from the Soil Conservation Division of the Directorate of Agriculture and take steps for execution of these works through the Soil Conservation Division.

(d) To prepare the annual statement of Accounts showing receipts and expenditures and present the same before the general body on the date fixed for the meeting.

(e) To auction the right to fishing in the vicinity of the sluice gates and to lease out the trees on the bunds.

(f) To take immediate steps for closer of breaches in the bunds and get the work executed.

(g) Any other work which the Mamlatdar or the General Body may entrust to the Managing Committee in the interest of the proper upkeep and maintenance of the bunds and sluice gates.

23. Sub Rule 10 of Rule 6 puts the responsibility on the treasurer to maintain all the accounts of the Association showing receipts and expenditures and to get the accounts audited annually by an Auditor appointed by the Managing Committee with the approval of the Mamlatdar. Sub Rule 11 of Rule 6 gives powers to the Mamlatdar to call from the Managing Committee any records, statements, registers, accounts or reports which he may think necessary. Sub Rule 12 of Rule 6 deals with the power of attorney who shall look after the up-to-date maintenance of the list of tenants, disputes arising out of the discharge of the functions by the Association etc. Sub-Rule 13 deals with the situation when the election of the new Committee is conducted and provides that the old Committee shall hand over the charge of all the receipts, papers, property and cash balance within 15 days to the new Committee.

24. Rule 6(14) is important/relevant in this matter which provides that the Mamlatdar on receipt of any complaints about non-compliance of the formalities as disclosed in Rule 6, may by a written order direct that the records, money or other property so detained be delivered to such successor within the time limit to be specified in such order and if the Chairman, Vice-Chairman, Treasurer, Attorney and Secretary fail to comply with the said order, the Mamlatdar shall:

(a) direct that such money be recovered as an arrear of land revenue;

(b) issue a search warrant for recovery of any records, stores or other property and exercise all such powers as may be lawfully exercised by an Executive Magistrate under the provisions of Chapter VII of the Cr. P.C.

25. Rule 6(15) is again relevant and under this provision respondent No.2 conducted the summary enquiry which resulted in passing the impugned order.

26. Rule 6(15) provides, that if the Mamlatdar, after conducting summary enquiry, is satisfied that the Managing Committee or any office bearer thereof has failed to discharge the duties or has abused the powers or has misappropriated the funds of the Tenants Association by not maintaining the accounts in the specified manner resulting in loss to the Tenants Association or has done any acts which are harmful to the agricultural land, he shall dissolve the Managing Committee or summarily remove any office-bearer of the Managing Committee and appoint an ad hoc Managing Committee or any of its office bearer to perform all the duties and exercise all the powers of the

Managing Committee as enumerated in the preceding rules till the new Managing Committee or his office bearer takes charge.

27. Thus, there are wide powers given to the Mamlatdar to conduct summary enquiry and to satisfy itself about the misuse, abuse or misappropriation of funds of the Association by the Managing Committee or its office bearers. In such enquiry, if the Mamlatdar comes to the conclusion that there was misuse, abuse of powers and misappropriation of the funds of the Association by the Managing Committee, he shall dissolve such Managing Committee and appoint an ad hoc Committee.

28. Mr A. Naik while pointing out such powers of respondent No.2 submitted that in spite of a complaint lodged by the present Chairman on 22/07/2021 and subsequent legal notice dated 11/08/2021, no action was taken by the concerned Mamlatdar. The Chairman along with others was forced to approach this Court by filing Writ Petition No.1877 of 2021 with a prayer to direct the Mamlatdar /respondent No.2 to conduct summary enquiry. Only thereafter a statement was made by the learned Advocate General on behalf of respondent No.2 that such complaints will be disposed of within a period of six months. Accordingly, an order was passed by this Court on 04/10/2021 only on the statement made on behalf of respondent no.2 that he will act under Rule 6(15) of Rule 1975. Thus it shows that respondent No.2 failed to look into the complaint dated 22/07/2021 and the notice dated 11/08/2021 which disclosed about the mismanagement, abuse of powers and misappropriation of funds of the Association by the earlier committee. Thus it is clear that only when the present Chairman along with others approached this Court, the learned Mamlatdar was forced to take action. This is really unfortunate. The question remains to be answered as to why respondent No.2 did not act immediately on receipt of the complaint dated 22/07/2021 and the legal notice dated 11/08/2021. There is absolutely no reason forthcoming on behalf of the respondent No.2.

29. Rule 7 of the Rules 1975 deals with "Accounts of the Committee" and it provides that the funds of the association shall consist of the income derived out of the lease of fishing rights at the sluice-gate, income from trees on the bunds and the contribution from the members of the Association. It further provides that the accounts of the Association shall be maintained in the cash book and shall be in Form V appended to these rules. All the pages of the cash book before the same is opened shall be serially numbered and authenticated by the Mamlatdar and the same shall bear his seal. The cash book shall be maintained regularly by the Treasurer and it shall be countersigned by the Chairman every month. It further provides that the Treasurer is required to issue receipts for all amounts received on behalf of the Association. The receipt shall be in Form VI as appended to the rules. It further provides that the accounts maintained by the Managing Committee shall be open for inspection by the members of the Association. Similarly, the objections received shall be duly preserved and put up in the General Body meeting after they have been considered by the Managing Committee.

30. Rule 10 of the Rules 1975, which is relied upon by Mr. A. Naik as the power of the Mamlatdar reads thus:

> *"The Mamlatdar shall have full power to take necessary action on the matters which have not been specifically provided in these rules in connection with the discharge of joint responsibility by the tenants."*

31. Mr. Naik would submit that under Rule 10, the Mamlatdar shall have full powers to take necessary action including recovery of the misappropriated amount. He would submit that in the impugned order respondent No.2 accepted the audit report which clearly depicts the misappropriation of the amount by the earlier committee. Therefore, according to Mr Naik, apart from lodging FIR for misappropriation of the funds of the association, respondent No.2 was duty bound to take necessary steps for the recovery of such misappropriated amount from respondent Nos.3 to 7 as recovery under the land revenue. By not doing this, the learned Mamlatdar failed to discharge his duty effectively. In other words, the association is at a loss which clearly affects the day-to-day affairs and maintenance work of the bunds for the benefit of its tenants.

32. Mr. Shetye appearing for respondent Nos.1 and 2 would submit that powers under Rule 10 are wide enough and in fact include the powers to recover misappropriated funds. He submitted that Section 42-A(3) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 provide that any sum which is payable by a tenant or any other person towards the costs of any such work as is referred to in sub-section (1) and any sum payment of which has been directed by an order of the Mamlatdar or the Tribunal or the Collector including an order awarding costs, shall be recoverable as an arrear of the land revenue.

33. In sum and substance, when respondent No.2, in its order dated 06/03/2023, clearly observed and admitted that there was misappropriation of funds by the earlier committee members as found mentioned by the auditor's report to the tune of Rs. 59,22,500/-, he ought to have exercised his powers under Rule 10 r/w. Rule 6(15) thereby directing to recover such an amount from the earlier committee members. These are not mere powers, but these are powers coupled with a duty to exercise such powers where the situation so demands and a conclusion is drawn about the misappropriation and the necessity to recover the misappropriated amounts.

34. Paragraph 72 of the impugned order shows that respondent No.2 prima facie found that there was misappropriation of funds however, he went on to say that in order to fix responsibility individually on the erstwhile Managing Committee members, criminal investigation is necessary. At this stage, it is necessary to note that in connection with the misappropriation of funds, apart from initiating criminal proceedings, civil proceedings are also required to be initiated, which are separate and distinct. The standard of proof in the criminal and civil proceedings is different. The Mamlatdar is duty-bound to protect the interest of the association, and on failure to do so, it is the duty of this Court to direct the Mamlatdar to act accordingly.

35. Since the FIR is already lodged, the only relief which needs consideration is the recovery of the misappropriated amount, and accordingly, we direct respondent No.2/Mamlatdar to initiate proceedings against the erstwhile Managing Committee members or its office bearers towards recovery of the misappropriated amount as mentioned in the auditor's report dated 23/08/2022, in a time bound manner and to deposit such amount in the bank account of the petitioner's Association. Accordingly, we allow the petition in terms of prayer clause (A) which reads as follows:

> *(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ, order or direction thereby directing the Respondent No. 2 to initiate the proceedings for the recovery to recover the money misappropriated by the Respondent Nos. 3 to 7 as the arrears of land revenue as per the auditor report dated 23-08-2022 in time bound manner and further to deposit the said amount in the Bank Account of the Petitioner association in stipulated time.*

36. The Mamlatdar must complete the above exercise within one year from today. The rule is made absolute in the above terms. There shall be no order for costs.

BHARAT P. DESHPANDE,J. **M. S. SONAK, J.**

MEENA VISHAL BHOIR Digitally signed by MEENA VISHAL BHOIR Date: 2023.10.11 15:39:21 +05'30'