

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 354/2022

1. Smt. Chandralekha Chandrakant Naik
Gaonkar@ Dhiraj Quemu Naique,
55 years of age, housewife, Indian National,
r/o H.No.816, Gaonkarwada-Surla,
Valguem, Bicholim Goa.

2. Shri. Dhiraj Chandrakant Naik Gaonkar @
Dhiraj Quemu Naique,
Son of Shri Chandrakant Yeshwant Naik
Gaonkar @ Quemu Esvanta Naique,
37 years of age, service, married,
Indian National, r/o H.No.816,
Gaonkarwada-Surla Valguem, Bicholim, Goa.

3. Shri Pramod Chandrakant Naik Gaonkar @
Pramod Quemu Naique,
Son of Chandrakant Yeshwant Naik
Gaonkar@ Quemu Esvanta Naique, 35 years
of age, service, unmarried
Indian National, r/o H.No.816,
Gaonkarwada-Surla, Valguem, Bicholim Goa

4. Shri Suraj Chandrakant Naik
Gaonkar@ Suraj Quemu Naique,
Son of Shri Chandrakant Yeshwant Naik
Gaonkar@ Quemu Esvanta Naique
33 years of of age, service, unmarried Indian
National, r/o H.No.816
Gaonkarwada-Surla, Valguem, Bicholim,
Goa

... Petitioners.

Versus

1. Shri. Anant Yeshwant Naik Gaonkar
Son of Yeshwant Naik Gaonkar
52 years of age, agriculturist, married,
Indian National, r/o H.No.603,

Gaonkarwada-Surla, Bicholim, Goa.

2. Anuja Anant Naik Gaonkar
Wife of Anant Y. Naik Gaonkar
46 years of age, Housewife, married,
Indian National, r/o H.No.603,
Gaonkarwada-Surla , Bicholim, Goa.

(3. Shri. Keshav Shamba Shet
Son of Shri. Shamba Shet, Major of age,
Indian National, R/o Baye, Surla, Bicholim, ... Respondents.
Goa.) ... deleted as per order dated
18/8/2023.

Mr Vallabh D. Pangam, Advocate *for the Petitioners.*

Mr Amey Salgaonkar, Advocate *for Respondents No.1 and 2.*

Mr Pravin Faldessai, Addl. Govt. Advocate *for the State.*

CORAM : M. S. SONAK, J.

DATE : 18th August 2023

ORAL JUDGMENT :

1. Heard Mr Pangam for the Petitioners and Mr Salgaonkar for Respondents No.1 and 2. Mr Pravin Faldessai, Addl. Govt. Advocate appeared in this matter at the request of the Court.

2. Mr Pangam seeks leave to delete Respondent No.3, who he states, is a formal party. Accordingly, leave is granted. The amendment is to be carried out forthwith.

3. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

4. The challenge in this Petition is to the Tribunal's order dated 19/1/2022, holding that Land Revenue Appeal No.48/2021 instituted by the Petitioners was not maintainable and dismissing the said appeal as not maintainable.

5. In this case, Respondents No.1 and 2 applied for the mutation before the Joint Mamlatdar-I, Bicholim Taluka, under the provisions of the Goa Land Revenue Code, 1968 (LRC). This application was dismissed by the Joint Mamlatdar by order dated 21/9/2021.

6. Respondents No.1 and 2 appealed to the Deputy Collector & Sub-Divisional Officer of Bicholim Taluka against the Joint Mamlatdar's order dated 21/9/2021. This appeal was allowed by the Deputy Collector & Sub-Divisional Officer, Bicholim, by order dated 2/11/2021. Therefore, the Petitioner filed a second appeal bearing Land Revenue Appeal No.48/2021 before the Administrative Tribunal. The Tribunal, vide impugned order dated 19/1/2022, has dismissed this second appeal as not maintainable. Hence, the present Petition.

7. Mr Pangam, learned Counsel for the Petitioners, submits that normally such appeals are filed before the Administrative Tribunal. He submits that Section 2(7) of the LRC provides that the Collector means not only the Collector of the district but also includes any officer appointed by the Government to exercise and perform all or any of the powers and functions of the Collector under the LRC. He refers to Section 3 of the LRC to submit that the Collector's powers are delegated or exercised by a Deputy Collector. Therefore, Mr Pangam submits that the appeal correctly

lay before the Tribunal and not before the Collector of the District. He relies on *Anantrau Atmarama Malik and Ors. vs. Union of India and Ors.* AIR 1975 Goa 45 in support of his contentions.

8. Mr Pangam, without prejudice to the above, submits that the Tribunal was not justified in dismissing the appeal as not maintainable. The Tribunal should have returned the appeal memo for presenting it before the appropriate appellate authority, i.e. the Collector.

9. Mr Salgaonkar learned Counsel for Respondents No.1 and 2, defends the impugned order based upon the reasoning reflected therein. He submits that there was no delegation of the Collector's power to the Deputy Collector and, therefore, the second appeal would lie to the Collector and not to the Tribunal, given the provisions of Section 188 of the LRC.

10. Mr Faldessai learned Addl. Govt. Advocate submitted that a second appeal, in the facts of the present case, would lie to the Collector, as was correctly held by the Tribunal. He admitted that there was no delegation of powers from the Collector to the SDO or Dy. Collector under Section 188 of the LRC. The delegation, he pointed out, was only from the Collector to the Additional Collector.

11. The rival contentions now fall for my determination.

12. The Tribunal, in this case, has correctly relied upon the provisions of Section 188 of the LRC, which reads as follows :

“188. Appeals. -(1) Save as otherwise expressly provided, an appeal shall lie from every original order, other than an interim order passed under this Code -

(a) if such an order is passed by an officer subordinate to the Sub-Divisional Officer, to the Sub-Divisional Officer;

(b) if such an order is passed by the Sub-Divisional Officer, to the Collector;

(c) if such an order is passed by the Collector, to the Tribunal;

(d) if such an order is passed by an Assistant Survey and Settlement Officer, to the Survey and Settlement Officer or to a revenue officer notified by the Government in the Official Gazette to be the appellate authority;

(e) if such an order is passed by a Survey and Settlement Officer, to the Director of Settlement and Land Records or to a revenue officer notified to be the appellate authority; and

(f) if such an order is passed by the Inspector of Surveys and Land Records, to the Superintendent of Surveys and Land Records.

(2) A second appeal shall lie against any order passed in first appeal:

(a) if the first appeal was filed under clause (a) of sub-section (1), to the Collector;

(b) if the first appeal was filed under clause (b) of sub-section (1), to the Tribunal;

(c) if the first appeal was filed under clause (d) of sub-section (1), to the Director of Settlement and Land Records or to a Revenue Officer notified by the Government in the Official Gazette to be the second appellate authority; and

(d) if the first appeal was filed under clause (e) or (f) of sub-section (1), to the Tribunal.”

13. On a plain reading of the provisions of Section 188, it is clear that save as otherwise expressly provided, an appeal shall lie from every original order, other than an interim order passed under this Code if such an order is passed by an officer subordinate to the Sub-Divisional Officer, to the Sub-Divisional Officer. In the present case, the original order was made by the Joint Mamlatdar under the provisions of the LRC. The Joint Mamlatdar is, admittedly, an officer subordinate to the Sub-Divisional Officer. Therefore, in terms of Section 188(1)(a), first appeal against the Joint Mamlatdar's order lay to the Deputy Collector and Sub-Divisional Officer. Such an appeal was, accordingly, filed before the Deputy Collector/Sub-Division Officer of Bicholim against the Joint Mamlatdar's order dated 21/9/2021.

14. Section 188(2) of the LRC provides that a second appeal shall lie against any order passed in first appeal if the first appeal was filed under clause (a) of sub-section (1) of section 188 to the Collector. Since, in this case, the first appeal was filed under Clause (a), sub-section (1) of Section 188 of LRC, the second

appeal lay to the Collector and not to the Administrative Tribunal. The Tribunal has analysed the provisions of Section 188 of LRC and held that the second appeal before it was not maintainable. The Tribunal held that the second appeal, in the facts of the present case, appropriately lay before the Collector and not the Tribunal.

15. The Tribunal has also considered the decisions in *Anantrau Atmarama Malik* (supra), *Rudraji Shivram Parshekar and ors. vs. Narayan Krishna Palyekar and ors.* - Writ Petition No. 538 of 2014 decided on 15/11/2016 and held that the first decision concerned exercise of powers of the Collector under Section 14(3) of the LRC by the Deputy Collector and the second about exercise of the powers of the Collector under Sections 113 and 114 of the LRC by the Deputy Collector. Such decisions would not apply in the context of the provisions in section 188 of the LRC. This distinction is correct. Based upon the two decisions, it cannot be held that the second appeal appropriately lay before the Tribunal and not before the Collector, in the facts of the present case.

16. The Tribunal has also considered the decision in *Shri Higinio V. De M. Viegas and ors. vs. Thomas Dias & Anr.*, 2014(1) All MR 731 and distinguished the same. It does appear that the decision in *Higinio V. De M. Viegas* (supra) was rendered because no objection was raised before the Tribunal to the maintainability of the Appeal and the Court concluded that there was no lack of inherent jurisdiction. Even in the said decision, this Court accepted Mr S. Desai's contention that the second appeal ought to have been filed before the Collector. However, this Court held that nevertheless, considering that the appeal was filed to the authority higher to the Collector, being the learned Tribunal, and as no

objection on that count was raised, no case was made out to interfere with the Tribunal's order under Article 227 of the Constitution of India, particularly since the Petitioners in the said case had not demonstrated any prejudice. Therefore, this decision is not an authority for the proposition that the second appeal lay before the tribunal and not the Collector.

17. Mr Pangam's contention based on Section 2(7) of the LRC cannot be accepted. Section 2(7) of the LRC reads as follows :

“2(7) “Collector” means the Collector of the district and includes any officer appointed by the Government to exercise and perform all or any of the powers and functions of a Collector under this Code;”

18. Mr Pangam was unable to produce any order or notification to show that the Deputy Collector or the Sub-Divisional Officer appointed by the Government to exercise or perform all or any of the powers and functions of a Collector under the LRC. In the absence of any such order or notification delegating powers of the Collector to the Deputy Collector for the purpose of Section 188 of the LRC, the argument based upon Section 2(7) of the LRC cannot be accepted.

19. In the above regard, a reference can be made to the Notification dated 31/10/1978 issued by the Government in exercise of the powers conferred by proviso to sub-section (4) of Section 6 of the LRC and all other powers enabling him in this behalf. This notification directs that the Additional Collector of Goa shall exercise the power and discharge duties of the Collector under the provisions of Sections 30, 32, 33 and clause (b) of sub-

section (1) and clause (a) of sub-section (2) of Section 188 of the LRC within its jurisdiction. No similar notification was pointed out regards delegation from the Collector to the Deputy Collector or the Sub-Divisional Officer. Mr Faldessai, learned Additional Govt. Advocate states that there is no such notification issued.

20. Similarly, Mr Pangam's contention based upon Section 6 of the LRC also does not advance his case or afford any cause to interfere with the Tribunal's impugned order. The provisions of Section 6 or 6A operate in a different field, and cannot ordinarily impact the construction or interpretation of Section 188 of LRC.

21. For all the above reasons, the Tribunal's decision regards maintainability of the second appeal before it, in the facts and circumstances of the present case, warrants no interference.

22. However, the Tribunal, after holding that the appeal instituted by the Petitioners was not maintainable, should not have proceeded straight away to dismissed the said appeal. Instead, the Tribunal should have returned the appeal memo to the Petitioners for presenting it before the appropriate appellate authority i.e. the Collector, North Goa. To this extent, the Tribunal's impugned order warrants interference or rather modification.

23. The above course was necessary, because the filing of the second appeal before the Tribunal was a bonafide act. Similar appeals were filed in the past, and even entertained by the Tribunal. Sometimes the Collectors or Add. Collectors, going by some past practice refused to even accept the filings of second appeals. The right to file a second appeal is a valuable right. These factors were relevant to the decision making.

24. Accordingly, the Tribunal's impugned decision to the extent it holds that the Petitioners' appeal before it was not maintainable, is upheld. However, the Tribunal's impugned order is modified and the Tribunal shall now return the appeal memo to the Petitioners within 15 days from the Petitioners' filing an authenticated copy of this order before the Tribunal.

25. Mr Pangam states that the returned appeal memo will be filed before the Collector of North Goa within 30 days from its return by the Tribunal. If this is done, the Collector or the Additional Collector, as the case may be, must dispose of the Petitioners' second appeal, on its own merits and in accord with law without advertent to the issue of limitation, provided the second appeal before the Tribunal was instituted within the prescribed period of limitation. If there was any delay, then the period spent before the Tribunal or this Court must be excluded from consideration or held as satisfactorily accounted for.

26. This Court has not examined merits of the matter and, therefore, the merits of the matter are left open for the Collector or the Additional Collector, as the case may be, to examine. All contentions of all parties, including that of Respondents No.1 and 2 herein are explicitly left open.

27. Rule in this Petition is disposed of in the above terms. There shall be no order for costs.

28. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.