

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.169 OF 2021

1. Mr. Swapnil Pradip Fondekar alias Phondekar,
36 years of age,
Indian National,

AND

2. Mr. Ajinkh Pradip Fondekar alias Phondekar,
32 years of age,
Indian National

Both residing at House No. 550,
Sadetiwado, Chorao,
Tiswadi, Goa.

.....Petitioners

V.

1. Mr. Antonio David Souza
(Since deceased through legal heirs)
Major, Indian National

1 (a) Mrs. Kathia Sousa Vaz,
Daughter of late Antonio David Sousa
Resident of H.No.176, Filipe Nery Road,
Fountainhas, Panaji, Goa and her Husband

(Amendment carried out vide order dated 17/08/2022)

1 (b) Mr. Michael Vaz,
Husband of Mrs. Kathia Sousa Vaz,
Resident of H.No. 176, Filipe Nery Road,
Fountainhas, Panaji, Goa

1 (c) Mr. Karl Sousa
Son of late Antonio David Sousa

Resident of H.No. 176, Filipe Nery Road,
Fountainhas, Panaji, Goa

1 (d) Mrs. Kara Anne Sousa,
Daughter of late Antonio David Sousa

Resident of H.No.176, Filipe Nery Road,
Fountainhas, Panaji, Goa
And her Husband

1 (e) Mr. Gavin Souza
husband of Mrs. Kara Anne Sousa,
Resident of H.No.176, Filipe Nery Road,
Fountainhas, Panaji, Goa
And her Husband

2. Mrs. Rene Sequeira Souza,
Major, Indian National,
Both residing at 176,
Filipe Nery Road,
Fountainhas, Panaji, Goa

3. Mrs. Lina D'Souza,
Widow, major, Indian National,
Residing at H.No. 246,
Chorao, Tiswadi, Goa.

4. Mrs. Gail @Divya Uday Goltekar,
Major, Indian National,
And her husband

5. Mr. Uday Balchandra Goltekar,
Major, Indian National,
Both residing at AE – 16, Ektanagar,
Mapusa, Bardez, Goa.

6. Ms. Ilma Savia D'Souza,
Major, Indian National,
Spinster,
r/o H.No. 246, Chorao,
Tiswadi, Goa.

7. Mrs. Anna Francisca D'Souza,
Major, Indian National,
Widow,
And her son,

8. Mr. Rock Vincent D'Souza,
Major, Indian National,
And his wife,

9. Mrs. Nisha Luisa Maria D'Souza,
Major, Indian National,

All 3 residing at Flat No. 101,
Parashwanath, Darshan, A-26,
Shanti Park, Meera Road (East),
District Thane, 401 107

10. Mrs. Maria Helena Rodrigues,
Major, Indian National,
And her husband,

11. Mr. Maximus Marshall Rodrigues,
Major, Indian National,
Both residing at 60 ,
Meurein Street, Off M.G. Road,
Kandiwali (West), Mumbai 400 067

12. Mrs. Diana Juliana Francisco,
Major, Indian National,
Widow,
r/o Nehru Park, Samruddhi,
S – 3, F – 13, OFF NIBM Road,
Khondawa Khud, Pune,

13. Mr. Neil Percy Francisco,
Major, Indian National,
And his wife,

14. Mrs. Leela Francisco,
Major, Indian National,
Both residing at Palm Street,
4th Floor, Main Avenue, St. Cruz (West),
Oppo. St. Thereza Convent, Mumbai.

15. Mrs. Pearl Francisco Mascarenhas,
Major, Indian National,
r/o B – 501, Kwalty Garden,
OFF NIBM Road,
Khondiwa Khud, Pune, 411 048.

16. Mrs. Maria Artimisia Rumilda D'Souza
Alvares alias Rumilda Alvares,
Major, Indian National,
Widow, And her Son,

17. Mr. Gerald Alvares,
Major, India National,
Both residing at C – 402,
r/o C-402, Kwalty Garden,

OFF NIBM Road,
Khondiwa Khud, Pune, 411 048.

18. Mr. Laximan Bhiku Phondekar,
Major, Indian National,
And his brother,

19. Mr. Jaiwant Bhiku Phondekar,
Major, Indian National,
Both residing at H. No. 550,
Sadetiwado, Chorao, Tiswadi, Goa.

20. Joint Mamlatdar III, Tiswadi at Panaji

21. Deputy Collector, SDO at Panaji

(Amendment carried out as per Order dated
17/03/2021)

Ms. S. Shaikh, Advocate for the petitioners.

Mr A. Gomes Pereira, Advocate for respondent Nos.1 and 2.

Mr S.P. Munj, Additional Government Advocate for respondent
Nos.20 and 21.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 24th August, 2023

ORAL JUDGMENT:

1. Heard Mr.Shaizeen Shaikh, learned Counsel for the petitioners,
Mr Aurobindo Gomes Pereira, Advocate for Respondent Nos.1 and 2
and Mr. S.P. Munj, Additional Government Advocate for Respondent
- State.

2. Though the matter is only for admission today, it is taken up for
final disposal with the consent of the parties as well as their Advocates.

3. Rule. Rule is made returnable forthwith.

4. In this petition, challenge is to the impugned order dated 04/02/2021 passed by the Deputy Collector in case No.MUT/DYCL/APPL/8/2010.

5. The main ground challenging the impugned order is that the learned First Appellate Court without giving any reasons rejected the appeal.

6. Learned Counsel for the petitioners pointed out that the impugned order which is at page Nos.78-79 (Roznama order) dated 04/02/2021. He submits that without disclosing any reason, the appeal has been dismissed by the learned Deputy Collector being the First Appellate Court. He submits that on this ground alone the petition could be allowed and the matter needs to be remanded for decision on merit by giving reasons.

7. The learned Counsel Mr A. Gomes Pereira appearing for respondent Nos.1 and 2 strongly contended that the impugned order contains reasons and the First Appellate Authority considered the order passed by the Mamlatdar and confirmed such reasons. He submits that the proceedings are pending since long and the appeal itself was filed in the year 2010. If the matter is remanded, great prejudice will be caused to respondents who are unable to enroll their names in the survey records inspite of the orders passed by the

Mamlatdar. He then submitted that the First Appellate Court granted several opportunities to the petitioners and finally rejected the appeal though by a short order.

8. Mr Munj, learned Additional Government Advocate submits that the impugned order show the reason to dismiss Appeal.

9. Rival contentions fall for the consideration as under.

10. First of all, the appeal filed by the petitioners is of the year 2010 and the same is challenging the order passed by the Mamlatdar in connection with the mutation application filed by respondent Nos.1 and 2 which was allowed.

11. The petitioners are claiming to be agricultural tenants and deemed purchaser of the said land and tenancy proceedings are already instituted wherein respondent Nos.1 and 2 are contesting as owners. Be that as it may, the present matter needs to be considered only on the ground that there are no reasons disclosed in the impugned order for rejection of an appeal.

12. For the sake of convenience, the impugned order dated 04/02/2021 is quoted below for the ready reference:

Case No. MUT/DYCL/APPL/8/2010

1. Shri. Swapnil Pradip Fondekar

2. Shri. Ajinkh Pradip Fondekar

3. *Shri. Laxman @ Locximona B. Fondekar*

4. *Shri. Jaiwant B. Phondekar @ Fondekar*

v/s

1) *Shri. Antonio David Souza*

2) *Mrs. Rena Sequeira Souza & Others*

The above named appellants have filed an appeal against the order dated 9th April 2010 passed by the certifying officer in mutation case no. 19970 of Chorao Village

For order please.

4/2/2021 — case called out today. Ld Adv. M. D'Souza for Appellant 1 & 2. None present for opponents. Heard, the Ld Adv. for appellant 1 & 2. Perused the appeal memo dated 26/4/2010. Reply of the respondent. The Ld Adv. for appellant 1 & 2 relied upon 2016(1) ALL MR 45. Upon perusal of the said citation/ authority this court of this opinion that court of the said authority /citation is not relevant to this case. In view of above, this Court pass following order

ORDER

The appeal dated 26/4/2010 stand dismissed.

Pronounced on this 4th day Feb 2021

SD/-

4/2/2021

13. On perusal of this order, it is absolutely clear that there are no reasons expressed by the First Appellate Authority while dismissing the said appeal. The Roznama only refers about the presence of the Advocate for the appellant, who relied upon the decision reported in 2016(1) ALL MR 45. The impugned order further refers that upon perusal of the citation the said Court is of opinion that the said

citation is not relevant and then the authority proceeded to pass the order of dismissal of appeal.

14. Such order passed in the Roznama without discussing a single reason for dismissal of the appeal is pertinently illegal, perverse and not tenable in the eyes of law. The authority vested with quasi judicial powers is duty bound to give reasons for the dismissal of the appeal. In the impugned order there is absolutely no reason as to why the Appellate Authority considered that the appeal needs to be dismissed. Similarly, by only mentioning that the citation is not relevant to the case, is not sufficient.

15. Be that as it may, such an order of dismissal without reasons cannot be considered as a reasoned order. The Supreme Court time and again impressed upon the quasi judicial authorities to give reasons at the time of deciding the matter. On this ground alone the petition succeeds.

16. The impugned order dated 04/02/2021 is hereby quashed and set aside. The appeal vide case No.MUT/DYCL/APPL/8/2010 is remanded to the First Appellate Authority i.e. to the Court of Deputy Collector, Tiswadi Sub-Division Panaji with direction to decide the said appeal afresh by giving opportunity to both the sides and in any case within a period of three months from today.

17. Rule is made absolute in the above terms.

18. Parties to report to the First Appellate authority on 14/09/2023 at 11.00am. The First Appellate Authority shall thereafter fix the date for hearing and decide the matter within the period of three months. It is made clear that both the parties shall cooperate and shall not ask for any unnecessary adjournments.

19. Copy of the order shall be placed before the First Appellate Authority on or before the said date.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL BHOIR



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