

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 318 OF 2023**

GUIDO DE LOYOLA FURTADO REP. BY
ATTORNEY JOSE LIGORIO QUERINO ... Petitioner.
GERALDO PARRAS
VS
MARY NORONHA ...Respondent.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. P. Phadte,
Advocate for the petitioner.
Mr. A. D. Bhobe and Ms. R. Prazeres, Advocate for the
respondent.

CORAM: PRAKASH D. NAIK, J
DATED: 30th August 2023

ORAL ORDER

1. Petitioner has invoked Article 227 of the Constitution of India challenging the judgment and order dated 22.7.2022 passed by Adhoc District Judge-II, FTC Panaji in Rent Revision No.5 of 2020.

2. The case of the petitioner is as under:-

Petitioner is the owner in possession of the property known as “Sete Pe Dacos” also known as “Palmaren Sete Pedacos” abutting the 18th June Road Panaji Goa described in the Land Registration Office under No. 17813 of Book B-47(New), bearing Chalta Nos.82, 83, 84 and 85. By a Deed of Lease dated 30.12.1950, the previous owner of said property late Bernardo

Rigoberto de Coracao de Jesus Fonseca gave on lease to one Margarida Fernadnes e Vaz and three other persons, separate tenements in a row in a building existing in the suit property for rent of Rs.1.50 per month. Tenement occupied by Margarida Fernandes e Vaz consisted of one room and was meant for residential purpose and the period of lease was three years. Magarida Fernandes Vaz expired and then the respondent's late husband Luis Noronha occupied the said tenement as a statutory tenant thereof, which tenement is the subject matter of Rent Case No.28/2016/C. There were disputes between predecessor in title and the petitioner. Suit was filed by the petitioner bearing Special Civil Suit No. 200/1985 for specific performance which finally got decreed by High Court by filing consent terms in Second Appeal No. 131/2013 on 15.12.2014. Decree was registered with office of Sub Registrar of Ilhas. Upon acquiring the title to the suit property the petitioner called upon the respondent by notice dated 24.5.2016 sent by registered AD to effect payment of arrears of rent in respect of suit premises and to attorn tenancy to the petitioner. Respondent effected payment of arrears of rent from 15.12.2015 to June 2016. Petitioner issued receipt to the respondent which was acknowledged by putting thumb impression by the

respondent which was identified by her son Mr. Joao Noronha by signing thereon, as having identified the thumb impression. Respondent unauthorisely extended the suit premises by an area of 70.29 sq. mts over and above original area of suit premises.

3. Petitioner filed an application under Section 22(2)(c) of the Goa Building (Lease, Rent & Eviction) Control Act, 1968("The Rent Control Act" for short) on 7.12.2016 before the Court of Civil Judge, Junior Division and Rent Controller being Rent case No. 28/2016/C for eviction of respondent from the suit premises on the ground that respondent has impaired the value and utility of the building by illegally constructing and doing extension even without the consent from the petitioner and permissions from the City Corporation of Panaji. The petitioner claimed to be owner and in possession of property known as "Sete Pe Dacos" also known as "Palmaren Sete Pedacos" abutting the 18th June Road Panaji Goa. Late Bernardo Coracao de Jesus Fonseca was the previous owner of the property. By deed of lease dated 30.12.1950, the property was given on lease to Margarida Fernandes e Vaz and others separate tenements for rent of Rs.1.50 per month. The tenement occupied by Margarida consisted of one room. Margarida expired and Luis Noronha occupied it. Applicant filed special

Civil Suit No. 200/1985/B against Bernardo Coracao for specific performance of agreement for purchase with applicant dated 03.10.1981. Suit was decreed. Notice was sent to respondent to effect payment of arrears of rent and to attorn tenancy to applicants. The applicants are entitled for an order of eviction against respondent under Section 22(2)(c) of Goa Rent Control Act. It was prayed that respondent be evicted and applicants be put in possession of suit premises.

4. Respondent filed reply dated 18.3.2017. The respondent contended that the proceedings are not maintainable. The respondent is residing in the suit house as a mundkar with fixed habitation and with the consent of the original bhatkar. The Court has no jurisdiction to try and determine the proceedings in the light of specific bar under Section 31(1) and (2) of the Mundkar Act, 1975. The proceedings are barred by law of limitation. It was denied that the applicant is the owner in possession of the property bearing Chalta No. 82, 83, 84 and 85 of PT Sheet No. 62. The applicant has falsely stated that he is the owner in physical possession of the said property. The respondent is residing in the structure existing in the said property and which was assessed for the purpose of tax originally under house No.141 and thereafter the same was

changed to House No. 158/1 and respondent is residing therein as mundkar with fixed habitation, openly, peacefully and uninterruptedly since her marriage to Luis Noronha which took place in the year 1971. Prior to that Isabela D'Souza, who was the mother in law of respondent was residing therein as mundkar along with her son Luis Noronha who has expired on 1.7.2013. The suit was never subject matter of Deed of Lease dated 30.12.1950 or any other document. The applicant has created false documents. Payment of rent was denied. The receipt relied by applicant is false.

5. The petitioner then filed an application dated 12.10.2017 under Section 32(4) Rent Control Act, 1968 on the ground that respondent were in arrears of rent with effect from July 2016. It was alleged that the rent in respect of suit premises is Rs.1.50 per month. The Respondent failed to effect payment of rent. By letter dated 24.5.2016, the applicant/petitioner called upon the respondent to attorn tenancy to the applicant and to effect payment of arrears of rent since the property got transferred in the name of the applicant. The respondent had effected payment of Rs.27.75 by cash on 29.6.2016 and ceased to make payment thereafter. The respondent is liable for action under Section 32(4) of the Goa Rent Control Act.

6. Respondent filed her reply dated 18.1.2018 claiming that application was not maintainable and that the respondent was not liable to deposit any amount as she was not a tenant but a mundkar in respect of the suit premises and claimed that application ought to be dismissed. Respondent also claimed that documents were false and fabricated. Signature of her son on the receipt and thumb impression was denied. It was denied that the applicant is the owner and in possession of the property. The suit premises was never the subject matter of any lease.

7. Vide order dated 11.2.2020, the Rent controller dismissed the application filed by the petitioner under Section 32(4) of the Rent Control Act, 1968.

8. Petitioner preferred Rent Revision Application No. 5/2020 before the Adhoc District Judge-II, FTC North Goa at Panaji. Petitioner filed an application for producing certain documents which were inadvertently remained to be produced with the revision application.

9. Vide Judgment dated 22.7.2012, Rent Revision Application was dismissed upholding the order dated 11.2.2020 passed by the learned Civil Judge, Junior Division "C" Court and Rent Controller at Panaji.

10. Learned Senior Advocate Mr. J. E. Coelho Pereira

submitted that impugned order is contrary to the provisions of Rent Control Act, 1968. Revisional Court while passing the impugned order ought to have considered the mandate of Section 32(4) of the Rent Control Act. The findings of the Revisional Court that the petitioner has failed to produce lease agreement dated 31.12.1950 is erroneous. An application dated 1.4.2022 was preferred by the petitioner by seeking leave of the Court and lease agreement was produced. Claim of the respondent to be mundkar of the suit premises was not supported by any declaration on mundkarship. The Courts failed to appreciate the mandate of Section 32(1) of the Rent Control Act, 1968. As per the said provision, no tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or

revisional authority. As per Rule 7 of the Rent Control Act deposit of rent under Section 32 shall be made within one month from the date of which notice is served to the tenant. Respondent failed to comply with the mandate of Section 32(1) read with Rule 7, which are mandatory. Section 32(4) mandates that failure by tenant to comply with section 32(1), the Court shall stop all further proceedings and make an order directing the tenant to put landlord in possession of the building. Documentary evidence was produced on behalf of the petitioner viz letter dated 24.5.2016 by which petitioner called upon the respondent to effect payment of arrears of rent and to attorn tenancy to the petitioner in respect of subject matter of the petitioner, pursuant to which the respondent effected payment of arrears of rent on 29.6.2016 in respect of compartment bearing house no. 158/1 for a period commencing from 15.12.2004 to June 2016 which has been acknowledged by the respondent by affixing her thumb impression in the presence of her son who identified respondent. Revisional Court has erroneously held that findings of the trial Court are correct. Revisional Court has committed an error by holding that whether respondent is a mundkar has to be decided on merits. There was nothing on record to show that there was

landlord/tenant relationship between the parties. The Courts ought to have considered the letter issued by the petitioner dated 24.5.2016 and the receipt of payment of rent by the respondent to the petitioner. The respondent has not produced declaration under Goa, Daman and Diu Mundkars (Protection from Eviction) Act 1975.

11. Mr. J. E. Coelho Pereira has relied upon the decision in the case of ***Delfina Gomes Pinto Vs Safiabi***¹ and decision of this Court in case of ***Gulabi Somdas Naik Vs Mrs. Santanhinha Barreto***²

12. Learned Advocate Mr. A. D. Bhobe, appearing for the respondent submitted that Section 32(4) of the Rent Control Act provides that sufficient case has to be shown by the respondent for non-deposit of rent. In the present case, respondent has denied landlord tenant relationship in which inquiry has to be conducted. It is submitted that the learned Civil Judge Junior Division has rightly rejected the application preferred by the petitioner under Section 32(4) of the Goa Rent Control Act. Learned Civil Judge has rightly observed that inquiry is required to be conducted in consonance with Section 32(4) of the Rent

1 2003 Law Suit(Bom) 1607

2 Writ Petition No. 51 of 2015 decided 13.3.2015

Control Act. Rent receipt produced by the petitioner contains thumb impression which is stated to be identified by the son of the respondent and that the payment is made from 15.12.2014 to June 2016. However, respondent had denied receiving any notice and having made the payment of the rent and also created doubt on the genuineness of the receipt dated 29.6.2016. Order passed by the learned Civil Judge, Junior Division was confirmed by Revisional Court vide order dated 22.7.2022. There is no infirmity in both the orders. Respondent had denied the receipt dated 29.6.2016 and claimed that it has been fabricated. Respondent had denied that suit premises are on the part of four compartments. The suit premises is a mundkarial dwelling house and it is separate entity by itself. No case is made out to interfere with the impugned orders.

13. The Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 enacted to provide for the control of rents and evictions and of rates of hotels and lodging houses, and for the requisition of vacant buildings in the State of Goa.

14. Section 32 of the Act relates to payment or deposit of rent during the pending of proceeding of eviction. Said provisions reads as follows:-

“32 Payment or deposit of rent during pendency of proceedings for eviction-

- (1). No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or revisional authority.*
- (2). The deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed.*
- (3). Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.*
- (4). If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or*

revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

- (5). The amount deposited under sub-section (1) may, subjected to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf.”*

15. Section 2(i) of Goa Rent Control Act defines “Landlord” as under:

- “2(i) “Landlord” means a person who, for the time being, is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant.”*

Section 2(o) of Goa Rent Control Act defines “Tenant” as under:

- “2(o) “Tenant” means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him*

as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.”

16. The case of the petitioner is that respondent has failed to effect payment of rent in respect of suit premises w.e.f. July 2016. Petitioner acquired title to the premises pursuant to the judgment and decree dated 2.12.2014. Petitioner called upon the respondent vide letter dated 24.5.2016 to attorn tenancy to the petitioner and to effect payment of arrears of rent since the property got transferred in the name of petitioner. Initially the petitioner filed application under Section 22(2)(c) of the Goa Rent Control Act, seeking order of eviction against the respondent and the applicant be put into possession. The petitioner claimed ownership in property, lease agreement, arrears of rent by respondent and alleged that respondent had carried out unauthorised constructions and extended the tenement, over and above area of her existing house. Reliance was placed on plan prepared by surveyor. The application was contested by respondent by filing reply. Section 22 of the Goa Rent Control Act relates to grounds of eviction. Landlord who

seeks to evict his tenant shall apply to the Controller for directions in that behalf. Sub Section 2(c) stipulates that, if Controller after giving the tenant a reasonable opportunity of showing cause against the application is satisfied, that tenant has committed such acts of damage as are likely to impair the value or utility of the building, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied he shall make an order rejecting the application. Petitioner thereafter filed an application at Exh. D-9 under Section 32(4) of the Goa Rent Control Act. According to the petitioner, respondent was in arrears of rent after making payment of Rs.27.25 by cash on 29.6.2023. According to the petitioner, respondent failed to effect payment in respect of rent within stipulated time. Respondent is liable to action under Section 32(4) of the Rent Control Act. Petitioner has claimed to be owner of the property. Ownership was disputed by the respondent. It was also contended that suit premises were never subject matter of any lease. Mother in law of the respondent was inducted in the suit premises as mundkar and she was residing there as mundkar.

17. The application under Section 32(4) of the Act was rejected by learned Civil Judge Junior Division, Panaji vide

order dated 11.2.2020. It was observed that the applicant/petitioner produced lease deed between original owner of suit premises and Ms. Margarida Fernandes e Vaz. No Lease Deed with husband of opponent Luis Noronha is produced. The pleadings do not show, when the respondent was inducted as tenant, if at all, and what was the rent paid by her. The application is vague and speaks mostly about the other tenants of the suit premises. The respondent has taken a plea that respondent is the mundkar of the suit premises and there is no nexus between Margarida e Vaz and Luis Noronha. The respondent has denied receiving any notice and having paid any rent and raised doubt on the genuineness of the receipt dated 29.6.2016. Section 32(4) of the Rent Control Act provides that sufficient cause has to be shown by the respondent for non deposit of rent. The respondent has denied the landlord tenant relationship into which an inquiry had to be conducted. At this stage sufficient cause has been shown for non deposit of rent.

18. The Revision application preferred by petitioner was dismissed vide judgment dated 22.7.2022. The Revisional Court held that, the trial Court has rightly come to the conclusion that no lease deed with husband of the respondent was produced by the applicant. Whether the respondent is mundkar or not has to

be decided on merits. The applicant has to prima facie show that there is landlord tenant relationship which the applicant has failed. According to applicant the suit premises is next to the tenement occupied by Shri Gopi Amonkar and that all the four tenants had jointly signed the lease agreement with the owner late Bernardo Rigoberto de Coracao de Jesus Fonseca. It is the contention of the applicant that, Margarida Fernandes e Vaz inducted late Noronha in suit premises. There is no prima facie document to show that Margarida Fernandes e Vaz have inducted the respondent's husband in suit premises. The applicant relied on agreement dated 30.12.1950 which according to applicant is an agreement whereby the four tenements have jointly signed the lease agreement, however, though listed in the list of documents, it is not produced in file for perusal of Court. The applicant has failed to establish prima facie, to show landlord tenant relationship. The question of depositing would arise if the relationship of tenant and landlord was admitted or prima facie established by the applicant. The Trial Court has rightly considered that, as the landlord tenant relationship is denied, there is no question of the Court deciding application under Section 32(4) of the Rent Control Act. The respondent has not admitted thumb impression. Non production of

agreement is fatal to the case of applicant. The contention of applicant that respondent has not produced any declaration on mundkarship to support her case cannot be accepted as applicant has to stand on his foot and not depend on respondent. The applicant has to show prima facie case. According to respondent, the suit premises was never the subject matter of any lease deed dated 30.12.1950 or any other document. There is no nexus with Margarida Fernandes and Luis Noronha, which fact has been established on merits. Prima facie nothing is shown by the applicant that there was nexus between Margarida Fernandes and Luis Noronha. According to respondent notice was not received from applicant and there is denial of payment of rent. The receipt dated 29.6.2016 is false and fabricated. Suit premises is mundkarial dwelling.

19. I do not find any infirmity in the impugned orders. According to petitioner, he acquired title to suit premises pursuant to judgment and Decree dated 15.12.2014 passed in Second Appeal No. 131/2013 of this Court. By letter dated 24.5.2016, the petitioner called upon respondent to attorn tenancy to petitioner and effect payment of arrears of rent. According to petitioner the respondent effected payment of

Rs.27.75 by cash on 29.6.2016. No payment made thereafter. Respondent denied that petitioner is owner of premises. According to respondent she is residing in premises as mundkar. She is residing in premises since her marriage to Mr. Luis Noronha which took place in 1971. Prior to that her mother in law Isabela D'Souza was residing as mundkar along with Luis Noronha. The suit premises was never subject matter of lease deed dated 30.12.1950 or any other document. She has denied signature of son on receipt relied by petitioner about payment of rent. She has disputed thumb impression on receipts. The respondent denied having received any notice from petitioner. The alleged lease is between Dr. Rigoberto and Margarida Fernandes e Vaz. According to petitioner, after the death of Margarida, late husband of respondent Mr. Luis Noronha started residing in the suit premises. The petitioner produced receipt dated 29.6.2016 purportedly receiving sum of Rs.27.75 by cash towards Rent occupation of premises No.158/1 from 15.12.2015 to June 2016. The receipt is allegedly signed by petitioner and bears thumb impression allegedly made by respondent and identified by her son. This claim has been denied by respondent. It is pertinent to note that lease deed with husband of respondent is not produced. There is no

document to show that Margarida Fernandes e Vaz had inducted the respondent's husband in the suit premises. There is no nexus between Margarida Fernandes and Luis Noronha. The petitioner has not established the said nexus. No lease deed with husband of respondent was produced. The petitioner has to prima facie show that there is landlord tenant relationship. The pleadings do not show, when the respondent or her husband were inducted as tenant. Learned counsel for petitioner has submitted that this Court is not deciding the mundkarial issue. He drew attention of Court to various provisions of Goa Mundkar Act. It is submitted that respondent has not established that the suit premises is mundkarial. The respondent has denied landlord tenant relationship which has not been prima facie established for granting relief under Section 32(4) of the Rent Control Act. The question of depositing Rent in accordance with Section 32(3) of the Rent Control Act would arise if the relationship of the landlord and tenant is prima facie established by petitioner. Failure of petitioner to prima facie establish a tenant landlord relationship would warrant enquiry. The issue of munkarship is triable to be decided by appropriate authority. The issues involved in this proceedings including disputing genuineness of documents

relied by petitioner requires that inquiry has to be conducted and relief under Section 32(4) of the Rent Control Act cannot be granted.

20. In the case of ***Delfina Gomes Pinto Vs Safiabi*** (supra) notice demanding arrears of rent was issued to respondent therein. Tenement was leased to husband of respondent who had expired prior to institution of eviction proceedings. The respondent's claimed mundkarship and they were paying ground rent to the landlord. An inquiry was held under Section 21 of the Rent Control Act to find out whether denial of title of the landlord by respondents was bonafide or not. It was held that claim of respondents claiming mundkarship was not bonafide. The Mamlatdar held that respondents were not mundkars. On facts this case can be distinguished.

21. In the case of ***Gulabi Somdas Naik Vs Mrs. Santanhinha Barreto*** (supra) the Rent Controller directed the petitioner to vacate the premises and handover possession. The order was confirmed by District Judge. The property was let out to husband of petitioner. The petitioner did not pay arrears. Husband of petitioner did not file written statement. The Court had conducted inquiry. Parties led oral evidence. After considering the evidence on record, the Rent Controller came to

the conclusion that the petitioner's denial of title of respondents and denial was not bonafide. Thus the decision was delivered in the facts of the case.

22. In view of aforesaid analysis, I am of the opinion that the petition is devoid of merits and required to be dismissed.

ORDER

- (i) Writ Petition No. 318 of 2023 is dismissed.
- (ii) Writ Petition stands disposed of.

PRAKASH D NAIK, J.