

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 71 OF 2019

AND

WRIT PETITION NO. 727 OF 2019

WRIT PETITION NO. 71 OF 2019

Shri Nandram Mandrekar, Aged 71 years,
Indian National, resident of House No. 128,
Deulwada, Mandrem, Pernem-Goa. ... Petitioner

Versus

Shri Mahesh Mandrekar, aged 53 years,
Indian National, resident of House No. 82, ...Respondents
Askawada, Mandrem, Pernem, Goa,

AND

WRIT PETITION NO. 727 OF 2019

Shri Nand Ram Mandrekar, Aged 70 years,
Indian National, resident of House No. 128,
Deulwada, Mandrem, Pernem-Goa. ... Petitioner

Versus

1. Shri Mahesh Mandrekar, aged 54 years,
Indian National, resident of House No. 82,
Askawada, Mandrem, Pernem, Goa.

2. Smt. Rajeshree Mandrekar, of major age,
Indian National, resident of House No. 82,
Askawada, Mandrem, Pernem, Goa.

3. The Mamlatdar of Pernem Taluka,
Government of Goa, having Office at
Pernem-Goa. ...Respondents

Mr. Parag Rao, Advocate with Mr. Akhil Parrikar, Advocate
for the Petitioner.

Mr. Ganesh Naik, Advocate for Respondent No.1 in Writ
Petition No. 71 of 2019 and Respondent nos. 1 and 2 in Writ
Petition No. 727 of 2019.

Mr. Tukaram Gawas, Additional Government Advocate
for Respondent no.3-State in Writ Petition no. 727 of 2019.

CORAM: M. S. SONAK, J
DATED: 30th November, 2023

JUDGMENT

1. Heard Mr. Rao, learned Counsel for the Petitioners in both the Petitions, Mr. Ganesh Naik for first Respondent in Writ Petition no. 71 of 2019 and first and second Respondent in Writ Petition no. 727 of 2019, and Mr. Tukaram Gawas, learned Additional Government Advocate for the third Respondent in Writ Petition no. 727 of 2019.
2. Rule, in both the Petitions. The rule is made returnable immediately with the request and consent of the learned Counsel for the parties.
3. Learned Counsel for the parties agree that both these Petitions can be disposed of by common Judgment and Order since they are connected to each other.
4. The challenge in Writ Petition no. 71 of 2019 is to the Orders dated 07.08.2017 passed by the Deputy Collector and the Order dated 03.08.2018 passed by the Administrative Tribunal in effect rejecting

the Petitioner's application for intervention in case no. DCP/LRC/103/24/2013 instituted by the Respondent Mahesh Mandrekar (Mahesh) seeking a correction in the Survey Records by changing the name of Mandrekar to Azgaokar. This change was sought in respect of property surveyed under no. 302/6 of Village Mandrem, Pernem, Goa.

5. In the proceedings instituted by Mahesh, the Petitioner applied for intervention claiming that he was a legal representative of Mandrekar and, therefore, the change as applied for should not be allowed.

6. The roznama placed on record in this matter bears out that the Deputy Collector, at the outset, called upon the Respondent-Mahesh, to establish his relation with Abubai Bhavin Azgaokar. The Deputy Collector, in the roznama dated 08.01.2015, observed that it is only after Mahesh establishes such a relationship with Abubai Bhavin Azgaokar that the Petitioner's application for intervention will be decided.

7. The record also bears out that the Deputy Collector called for a report from the Mamlatdar in the context of change as sought by Mahesh. The Mamlatdar submitted his report on 11.09.2014, which reads as follows :

No: MAM/PER/103/LRC/Rep/2014/2748
O/o the Mamlatdar of Pernem Taluka,
Pernem - Goa.
Dated:-11/09/2014

To,

The Dy Collector & SDM.
Pernem-Goa.

Sub:-Regarding connection of name U/S 103 LRC, 1968.
Ref : Memorandum No.DCP/LRC/103/24/2014/1489 dated 17/06/2014:

Sir,

With reference to above referred Memorandum pertaining to the above-cited subject the enquiry is conducted through Talathi of Mandrem saza and Talathi submitted that the name recorded in the record of rights of the property bearing sy. no. 302/6 of Mandrem is "Abu Bhavin Mandrekar" as occupant. There are no documents indicating the name as "Abu Bhavin Asgaonkar" It is also revealed in the local enquiry that the legal heirs of the said "Abu Bhavin Mandrekar" are not residing in Mandrem Village.

This is for your kind information.

Yours faithfully
sd/-
(Rajesh Ajgaonkar)
Mamlatdar of Pernem Taluka,
Pernem - Goa.

8. The matter before the Deputy Collector was then adjourned on several dates because the Deputy Collector was busy with administrative work. There is no clarity about whether Mahesh's Advocate argued the matter before the Deputy Collector. However, the roznama for 12.06.2017 records that the Petitioner's Advocate sought some time to argue the matter. Such time was granted, and the matter was fixed on 07.08.2017.

9. Roznama for 07.08.2017 records that the Petitioner's Advocate did not appear and on this date so the Deputy Collector passed the impugned Order dated 07.08.2017, which reads as follows :

o

Application for correction of surname from MANDREKAR to ASGAOKAR and document of Abubai is allowed in view of Land Reg. Certificate dtd. 13/12/1902. Other name of deceased person is required.

Sd/-7/8/”

10. The Deputy Collector apparently did not consider the issue of either maintainability or even the issue of allowing the intervention application. Even the Mamlatdar's report or the other material on record was not noticed or considered. Mr. Rao has placed on record a single-line Order made by the Deputy Collector on 07.08.2017 itself dismissing the intervention application in the following terms :

o

Dismissed since present proceeding is not for any declaratory relief.”

11. The Petitioner applied for leave to the Administrative Tribunal to challenge the Order dated 07.08.2017 made by the Deputy Collector. By the impugned Order dated 03.08.2018, the Tribunal has dismissed the application for leave to appeal dated 03.11.2017.

Therefore, the Petitioner has also challenged the Order dated 03.08.2018.

12. Since this Court is satisfied that the Tribunal's Order dated 03.08.2018 warrants interference, no observations or comments are made on the Deputy Collector's Order dated 07.08.2017, even though Mr. Rao made a submission regards the procedure followed and the vulnerability of the orders made.

13. Mr. Ganesh Naik submitted that there is no infirmity in the Deputy Collector's Order or the Tribunal's Order declining leave to appeal because the Petitioner failed to establish any connection with Mandrekar, whose name was recorded in the Survey Records. He submitted that the Tribunal has correctly gone into the merits of the dispute and held that the Petitioner had no connection with Mandrekar, whose name was recorded in the Survey Records. Therefore, he submitted that the Petitioner had no locus standi to either seek intervention or leave to appeal.

14. Having considered the rival submissions, I am satisfied that the Tribunal should not have, in this case, declined leave to appeal.

15. Firstly, at the stage of granting leave to appeal, the Tribunal was not justified in going into the merits of the matter and rendering

a firm finding that the Petitioner has no nexus with Mandrekar, whose name was recorded in the Survey Records. At this stage, all that the Tribunal was expected to do was, to see whether the Petitioner was a busybody or interloper trying to interlope in the matter without having a semblance of interest. This the Petitioner was not.

16. Secondly, the Tribunal and, for that matter, the Dy. Collector completely ignored the Mamlatdar's report dated 11.09.2014, which had made similar observations regards the Respondent Mahesh. The issue before the Tribunal was not whether the Mamlatdar's report was right or wrong. However, the Tribunal should have considered whether leave should have been granted to the Petitioner to institute an appeal against the Deputy Collector's Order given the fact that the Survey Records did refer to one Mandrekar and the Mamlatdar's report dated 11.09.2014 stated that there are no documents indicating the name of Abubai Bhavin Azgaonkar. At the stage of deciding whether leave should have been granted or not, this material was sufficient for the grant of leave.

17. Thirdly, there is virtually no decision on the issue of intervention made by the Deputy Collector. It is only after the intervention was to be allowed that the parties would have produced material in support of their respective case. The Deputy Collector,

without grant of adequate opportunity to, in fact, both the parties, made the orders and, in such circumstances, at least leave to appeal should have been granted to the Petitioner. The observation in this paragraph is only *prima facie* and it is open to the Tribunal to examine the aspect of breach of natural justice or infirmity in procedure in further detail once leave to appeal is granted and the appeal is restored.

18. Lastly, the Tribunal, at the stage of grant of leave, should not have ventured into the merits of the matter. At that stage, the Tribunal did not have sufficient material before it. The matter referred to by the Tribunal was wholly inadequate for deciding the matter on merits. Mr Rao pointed out that even the arguments were on the point of leave to appeal and not on merits.

19. For all the above reasons, the Tribunal's Order dated 03.08.2018 is liable to be set aside and is hereby set aside. The Petitioner's application dated 03.11.2017 for leave to appeal is allowed. Therefore, the Petitioner's appeal against the Deputy Collector's Order dated 07.08.2017 will have to be heard by the Tribunal on merits and in accordance with law.

20. The Appeal is accordingly restored, and the Tribunal is directed to dispose of the appeal on merits.

21. The challenge in Writ Petition no.727 of 2019 is against Mamlatdar's Order dated 05.04.2019. This Order, as pointed out by Mr. Rao, is consequent to the Deputy Collector's Order dated 07.08.2017. Therefore, the fate of this Order dated 05.04.2019 will depend upon the Petitioner's appeal before the Tribunal, which is now hereby restored. This position is clarified.

22. Therefore, though this Court is not inclined to interfere with Mamlatdar's Order dated 05.04.2019, at this stage, it is not as if this Court has approved the said Order. Instead, the interest of justice will be served if leave is granted to the Petitioner to institute an appeal against the Order dated 05.04.2019 before the appropriate Appellate Authority. Suppose such an appeal is instituted within a month from today. In that case, the Appellate Authority shall decide such appeal on merits without going into the issue of limitation or leave to appeal. Further, it would be advisable if the said Authority keeps the appeal pending until the Tribunal decides the appeal against the Deputy Collector's Order dated 07.08.2017.

23. There are at least two clarifications which are necessary in both these matters. The first is that this Court has not gone into the rival contentions of the parties on merits. All such contentions are left open and none of the observations in this Order should be taken as any reflection on the merits of the rival case.

24. Secondly, it is clarified that all these are matters for corrections/change in the Survey Records. It is well settled that Survey Records are not documents of title. Therefore, if any of the parties choose to institute civil suits or other civil proceedings, such civil suits or other civil proceedings must be decided on their own merits uninfluenced by the entries in the Survey Records concerning the suit property.

25. The Rule is made absolute in both these Petitions in the above terms. There shall be no order as to costs.

26. The Petitioner and Mahesh Mandrekar should appear before the Tribunal on 08.01.2024 at 10.30 a.m. and file an authenticated copy of this Order.

27. The Tribunal should take cognisance of the authenticated copy of this Order, restore the appeal instituted by the Petitioner, and dispose of the appeal on its own merits and in accordance with law as expeditiously as possible and preferably within one year from the said date.

28. Both the Petitions stand disposed of.

M. S. SONAK, J