

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NO.49 OF 2023**

SERGIO E DSILVA AND 2 ORS ... Petitioners.
VS
DR. CAETANO DE LOIOLA PEREIRA ...Respondent.

Mr. M. Salkar and Ms. K. Singh, Advocate for the petitioners.
Mr. F. E. Noronha, Advocate for the respondent.

CORAM: M. S. KARNIK, J
DATED: 6th July 2023

ORAL ORDER.

1. Heard Mr. Salkar, learned counsel for the petitioners and Mr. Noronha, learned counsel for the respondent.

2. The challenge in this petition under Article 227 of the Constitution of India is to an order dated 11.4.2018 passed by the Administrative Tribunal Goa under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as "the said Act" for short). The petitioners had filed an application on 2.5.2000 for declaration of tenancy under section 7 of the said Act before the Mamlatdar in respect of the suit properties. On 20.9.2020, the Joint Mamlatdar dismissed the application for default. The application filed for restoration on 13.10.2002 was allowed by order dated 4.2.2003. The respondent herein filed an

appeal before the Deputy Collector. On 8.2.2006, the Deputy Collector allowed the appeal and directed the Mamlatdar to decide the matter within 90 days from 23.02.2006.

3. The petitioners challenged the order dated 8.2.2006 before the Administrative Tribunal. The Administrative Tribunal by judgment dated 12.1.2011 partly allowed the revision and remanded the matter to the Deputy Collector with a direction to dispose of the matter within 3 months. The order dated 25.5.2006 passed by the Mamlatdar was stayed. The Deputy Collector allowed the appeal by order dated 6.11.2012. The present respondent filed the Revision under Section 50 of the said Act before the Tribunal challenging the order dated 6.11.2012 of the Deputy Collector.

4. Revision proceeded exparte as against the petitioners before the Tribunal as observed by the Tribunal in paragraph 2 of the impugned order. By the impugned order dated 11.4.2018, the Tribunal allowed the Revision and set aside the order dated 6.11.2012 of the Deputy Collector and SDO Quepem. Tenancy proceedings stood closed.

5. Petitioners applied for roznama on 18.12.2018 whereupon they came to know of the impugned order having been passed. The application for a certified copy was made on 30.1.2020. The copy

was received on 13.2.2020. The present petition was filed on 24.6.2021. The learned counsel for the petitioners invited my attention to the reasons at paragraphs 10,11, 13 and 14 of the petition to contend that the petitioners had sufficient cause for not appearing before the Tribunal, hence the exparte order which was passed be set aside.

6. Mr. Noronha, learned counsel for the respondent, apart from opposing the Writ Petition on merits, submitted that the petitioners have an alternate remedy of preferring an application before the Tribunal for setting aside the exparte order. It is submitted that the petitioners can approach the Tribunal by preferring an appropriate application in the manner provided by Order 9 Rule 13 of the CPC. Mr. Noronha, invited my attention to the provisions of Rule 2 of the Goa Daman and Diu Administrative Tribunal Act (Powers of Civil Court) Rules, 1976. Rule 2 reads thus:-

2. Tribunal to have powers of Civil Court- The Tribunal shall in exercising its original, appellate or revisional jurisdiction in any application, petition, appeal or other proceedings filed before it, have all the powers which are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908)

7. It is submitted by learned counsel for the respondent that in the light of Rule 2 , it is always open for the Tribunal to entertain an application in the nature of Order 9 Rule 13 of CPC for setting aside the exparte order.

8. In the fact situation of the present case, it would be appropriate, if, in the first instance, the petitioners approach the Tribunal having regard to the nature of the reasons set out which can be more appropriately dealt with by the Tribunal. It is also open for the Tribunal to address itself on the issue of maintainability of the application.

9. The petitioners to prefer an application before the Tribunal for setting aside the exparte order dated 11.4.2018 passed in Revision Application No.43/2012 which application shall be dealt with in accordance with law. The issue of maintainability is kept open.

10. Petitioners have been pursuing the present petition bonafide since the date of its filing on 24.6.2021 and the period spent in prosecuting the petition may be sympathetically considered while dealing with the question of delay.

11. Needless to mention that in the event, the Tribunal is of the opinion that such an application for setting aside exparte order is not

maintainable, it will always be open for the petitioners to approach this Court challenging the order impugned in this petition as well as the order passed by the Tribunal on such application.

12. In this view of the matter, the petitioners shall file an application for setting aside exparte order within a period of four weeks. The period spent in prosecuting this petition will enure to the benefit of the petitioners. All contentions are kept open.

13. The petition is disposed of. No costs.

M. S. KARNIK J.

VINITA VIKAS
NAIK

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