

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 671 OF 2023

Nicolau Monteiro ... Petitioner
V e r s u s
State of Goa, Thr. The Chief Secretary and 6 ...Respondent
Ors.

Mr. Rohit Bras De Sa, Advocate with *Mr. Prataprao Naik,*
Advocate for the Petitioner.
Mr. Neehal Vernekar, Additional Government Advocate
for the Respondents.

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

ORDER

1. Heard both sides.
2. The Petitioner is aggrieved by Order dated 06.03.2023 passed by the Mamlatdar of Tiswadi Taluka, Panaji, Goa, directing the incumbent Managing Committee of the Morombi-O-Grande Tenants Association, to file a first information report and any other proceedings deem fit under law before the competent authorities.
3. Learned Advocate for the Respondent no.1 raised a preliminary objection about maintainability of this Petition under Article 227 of Constitution of India before this Court since the Petitioner had alternate efficacious remedy of appeal under Section 49 of the Goa Daman and Diu Agricultural Tenancy Act, to challenge the impugned Order dated 06.03.2023. It is submitted that since the Order is

appealable, this Court should not entertain the Petition either under Article 226 or 227 of Constitution of India.

4. Learned Advocate for Petitioner Mr. Bras De Sa submitted that assuming that the Order can be challenged by preferring an appeal under Section 49 of the said Act, this Court is not precluded from entertaining the Petition in the peculiar facts of this case. It is submitted that the impugned Order is violative of principles of natural justice. The Petitioner has also challenged the Order denying the production of documents passed by the Respondent no.7. The Petitioner in his application for dropping the proceedings had contended that he was elected on the basis of recommendation of some elderly members of the Tenants Association. He was kept in dark about functioning of the Tenants Association by Ex-Secretary and Ex-Chairman of the Association. He was not given papers of the Association. The Petitioner was not responsible for any irregularities committed by the members of the Tenants' Association. The Petitioner had filed an application for production of additional documents in support of his contention that he was not involved in the day to day management of the Tenants' Association. The Petitioner tried to demonstrate through documents that he did not participate in any auction starting from the year 2016 till 2021. The said application for production of additional documents as well as application for dropping the proceedings were dismissed. The

impugned Order dated 06.03.2023 was passed without considering the documents sought to be produced by the petitioner which has resulted in violation of principles of natural justice. The Petitioner had challenged the Orders dated 23.01.2023, 31.01.2023 and 06.03.2023. The demand notice has been issued against the defaulters including the Petitioner. The Petitioner and others are directed to clear the dues within 15 days. Hence, Petitioner is seeking urgent reliefs in the Petition.

5. Mr. De Sa has relied upon the following decisions :

(i) ORY X Fisheries Private Limited vs. Union of India & Ors.¹

(ii) Radha Krishnan Industries vs. State of Himachal Pradesh & Ors.²

6. Learned Additional Government Advocate, Mr. Vernekar appearing for the Respondents, submitted that the impugned Order was passed on 06.03.2023. The Petition has been filed on 02.09.2023. The Petitioner now cannot contend that in view of the urgency, this Court should entertain the Petition which is not maintainable in law. It is further submitted that the Morombi-O-Grande Tenants Association had preferred Writ Petition no. 352 of

¹ (2010) 13 SCC 427

² (2021) 6 SCC 771

2023 contending that the Mamlatdar vide Order dated 06.03.2023 observed that the earlier Managing Committee of Petitioner therein abused its powers and misappropriated the funds of Petitioner etc. and directed registration of FIR but failed to exercise its powers for the purpose of recovery of misappropriated amount. The said Petition was disposed off vide Judgment and Order dated 11.10.2023 by holding that the FIR is already lodged and the only relief which needs consideration was the recovery of the misappropriated amount and accordingly the Court directed the Mamlatdar to initiate proceedings against the erstwhile Managing Committee members or its office bearers towards recovery of the misappropriated amount as mentioned in the auditor's report dated 23.08.2022, in a time bound manner and to deposit such amount in the bank account of the Petitioner's Association. The Mamlatdar was directed to complete the exercise within one year.

7. In the case of **ORY X Fisheries Private Limited vs. Union of India & Ors.** (supra), it was observed that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

8. In the case of **Radha Krishnan Industries vs. State of Himachal Pradesh & Ors.** (supra), the Apex Court has observed that the power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of the fundamental rights or for any other purpose as well. The High Court has the discretion not to entertain the Writ Petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person. Exceptions to the rule of alternate remedy arise where the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution. There has been a violation of the principles of natural justice; the order or proceedings are wholly without jurisdiction; or the vires of a legislation is challenged. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. In cases where there are disputed questions of fact, the High Court may decide to decline

jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

9. The Petitioner had challenged the Orders dated 06.03.2023, 23.01.2023 and 31.01.2013. The application for dropping proceedings was dismissed by Malatdar. The application for production of documents was dismissed. Order dated 06.03.2023 was passed with directions as stated above. Prior to this order, Writ Petition no. 1877 of 2021 was disposed off by the Division Bench of this Court on the statement of learned Advocate General that the Mamlatdar of Tiswadi will dispose of complaints dated 11.08.2021 and 22.07.2021 within six months. There is no doubt that the remedy of appeal under Section 49 of the Goa Daman and Diu Agricultural Tenancy Act, is available to the Petitioner. The statutory remedy of preferring an appeal can be resorted to by Petitioner. The order rejecting the production of documents has culminated in the final order and the said final order is appealable. It is pertinent to note that a Writ Petition under Article 227 of the Constitution of India, can be entertained by this Court in exercise of powers of supervisory jurisdiction. There is no question of by passing statutory remedy in the present case. This Petition was filed on 02.09.2023 challenging the aforesaid orders. However, Petitioner is contending that in view

of demand note, this Petition may be entertained. The submissions cannot be accepted.

10. In these circumstances, I am not inclined to entertain this Petition challenging the impugned Orders. The main impugned Order was passed on 06.03.2023.

11. Considering the aforesaid circumstances, I pass the following order :

ORDER

(i) Writ Petition no. 671 of 2023 is disposed off as not maintainable since the Petitioner has alternate remedy of preferring an appeal under Section 49 of the Goa Daman and Diu Agricultural Tenancy Act.

(ii) The Petitioner is at liberty to resort to remedy as available in law.

(iii) It is clarified that this Court has not adjudicated the issues on merits.

(iii) Petition stands disposed off.

PRAKASH D. NAIK, J

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