



Jose

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.253 OF 2023**

1. Mr. Yeshwant R. Kunkolkar,  
Son of Rohidas Kunkolkar,  
aged 50 years, Married,

2. Mr. Tilu R. Kunkolkar,  
Son of Rohidas Kunkolkar,  
aged 42 years, Married,

3. Mr. Umakant R. Kunkolkar,  
Son of Rohidas Kunkolkar,  
aged 39 years, Married,

4. Mr. Damodar R. Kunkolkar,  
Son of Rohidas Kunkolkar,  
aged about 38 years, Married,  
All Indian Nationals,  
r/o H.No. GK-1, Gavant,  
Chimbel, Tiswadi, Goa.

... Petitioners.

*Versus*

1. Smt. Amalia Ritinha da Cruz (Deceased)  
Through her LR,  
Mr. Manuel Jose Caldeira,  
Aged about 79 years, Indian National,  
Resident of H.No.44, Novo Portugal,  
Moirá Bardez-Goa

2. The Commissioner of Excise  
Office of the Commissioner of Excise  
Abkari Bhavan, M.G. Road,  
Panaji, Goa.

... Respondents.

Mr. J. Abreu Lobo with Mr. Akshaya Nanodkar, Advocates for the Petitioner.

Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocates for Respondent No.1.

Mr. Arun Talaulikar, Additional Government Advocate for Respondent No.2.

**CORAM: VALMIKI MENEZES, J.**

**DATED: 8<sup>th</sup> August, 2025**

**ORAL JUDGMENT:**

1. This petition impugns an order dated 11.02.2021, passed by the Commissioner of Excise, refusing the grant of an excise licence in terms of Section 15 of the Excise Act r/w Rule 17 of the Excise Rules.

2. The main submissions advanced by the Petitioners in challenge to the order of refusal to the grant of licence are the following:

- a) It was contended that the Petitioner has been in possession of the properties under Survey Nos. 227/1 and 225/4 of Village Morombi O Grande as a tenant since the time of his late father. The Petitioners claim that they are agricultural tenants under the Goa, Daman and Diu, Agricultural Tenancy Act and have been issued a licence to extract juice from the cashew trees which exist on the suit properties since 1983. It is the Petitioners' case that it is only in the year 2020 that the Respondents for the first time objected to the

grant of the licence, when their application came to be rejected by the impugned order.

- b) It was further submitted that the Petitioners have applied for a declaration of their right to tenancy along with an application for injunction to restrain the Respondents from interfering with the suit properties. This application was filed on 25.01.2018 and the same is pending. The Petitioners claim in the complaint itself there is an admission that the Petitioners are in possession of the suit properties. Learned Counsel takes me through the complaint dated 16.04.2018 wherein the Complainant/Respondents herein have claimed that the Petitioners' father was a caretaker of the properties and upon his death, the Petitioners were the caretakers of the properties. According to the learned Counsel, this is an admission of the possession of the suit properties with the Petitioners, which would justify the grant of the licence.
- c) Reliance was also placed on the Judgment of the Supreme Court in *Dilip (Dead) Through Lrs. v. Satish and Ors.* reported in 2022 SCC OnLine SC 810.

3. The Respondents have opposed the admission of the petition and support the impugned order.

4. The question that falls for my determination is whether the

impugned order rejecting the application for excise licence is legal and in consonance with the powers vested in the Excise Commissioner under Rule 17 of the Excise Rules.

5. A few background facts would be relevant for the decision on the point in issue of this matter.

6. In the year 2008, one Yeshodi Fernandes alias Kuncolkar had applied to the Mamlatdar of Tiswadi vide Case No. TNC/JM-II/DECL/MOG/3/2008 for a declaration of a right of tenancy to the very same properties to which the Petitioners claim possession and right of tenancy. In that application, the Petitioners sought to intervene by an application dated 17.09.2009 claiming that the applicant Yeshodi had never possessed the property nor was she a tenant of the same. In their intervention application, they claimed the right of tenancy of the properties. That tenancy application ultimately came to be dismissed for default. However, during the entire course of that application or even after, the Petitioners have not filed any proceedings to seek declaration of their rights as tenants of the properties.

7. On 25.01.2018, the Petitioners filed an application seeking a declaration of their tenancy right along with an application under Section 7 seeking an order of injunction against the Respondents herein, who are admittedly their landlords. This application is pending till date and there are no interim orders protecting the

possession claimed by the Petitioners, passed till date by the Mamlatdar.

8. In the meantime, the Respondents filed a civil suit before the Civil Court at Panjim in August, 2018 seeking a declaration of their ownership rights to the properties and orders of permanent and mandatory injunction against the Petitioners. Even this suit is pending till date without having been disposed of.

9. The Survey record in Form I & XIV stands in the name of the mother of the Respondents whose name is recorded in the Occupants column. There is no name of any tenant recorded in the Tenants column of the Survey records. However, the Petitioners claim that the name of their grandfather and father is shown in the Other Rights column in the Index of Land in Form 3 as a Caretaker. The fact remains however, that with all these proceedings remaining pending, till date, there is no order passed either by the Tenancy Court or by the Civil Court to establish, prima facie, which of the rival parties is in possession of the two properties, in which the Petitioners have sought a juice extraction licence. It is in the background of these facts, which have been reproduced by the Commission of Excise in the impugned order, that the order was passed. The Excise Commissioner has made reference to the pending litigation between the parties and the rival claims and has concluded that since the owner of the properties has refused to give 'no objection' for the

licence to be issued in the name of the Petitioners, who claims tenancy, the licence has been refused.

10. On a plain reading of the powers under Section 16 conferred upon the Commissioner of Excise to grant a licence, for extraction of juice read with the provisions of Rule 17, the grant of licence is at the discretion of the Commissioner of Excise. Obviously, on a reading of these provisions, the Commissioner of Excise is not permitted to consider the rival titles of parties or their claims over the properties, and arrive at any conclusion of these claims to enable him to decide the conferment of the licence. This essentially would be stepping into the realm of the powers of the Civil Court or of the Mamlatdar under the Tenancy Act. The Commissioner of Excise, has made reference to the rival contentions but has concluded ultimately that since the question of the rival claims is open before the Judicial for a, he has refused to grant a licence. The reasoning adopted by the Commissioner of Excise is well within the powers under Section 15 and under Rule 17 of the Excise Act. There is no infirmity at all with the conclusions of the Commissioner of Excise or in the manner in which he has rejected the application for licence.

11. The Judgment of the Supreme Court cited before me, is distinguishable on facts. That was a case which came up in appeal against an order passed by the High Court in exercise of its power under Section 482 Cr.P.C. quashing a criminal complaint. Whilst

considering the correctness of such an order, one of the questions that was considered was the right of a tenant protected under the Rent Control Act to the essential supply of electricity and water. It is in that context that the Supreme Court in paragraph 9 has observed that it is well settled that electricity is a basic amenity of which a person cannot be deprived, and in that context has noted that the question that the applicant was entitled to the electricity supply in relation to his rights under the Rent Control Act was decided in favour of the tenant. The Judgment is rendered in a completely different context and is not applicable to the facts of the present case.

12. In *C.S. Babu Chungath House, Vattaparambil Lane, Kuriachira, Thrissur v. C. Vijayan @ Raghavan and 3 Ors.*; 2018 SCC OnLine Ker 5783 cited by the Petitioner, the Kerala High Court was considering whether trade licence could be issued to a statutory tenant, without an NOC of the landlord. In that case, what was held was since there was no dispute of the statutory right of the tenant, who was admittedly protected under the Rent Act, so long as the business sought to be conducted was not illegal or prohibited, there was no requirement of the landlord's NOC, to grant such trade licence. That was a case of a statutory tenant, admitted by the landlord to be in legal possession of a premises. In the present case, the very title claimed by the Petitioner of agricultural tenancy is disputed and the same is yet to be adjudicated by the Mamlatdar. The Judgment in *C.S. Babu Chungath House* (supra) will therefore not

apply on facts to the present case.

13. In any event, the Petitioners are not foreclosed, from applying for a licence afresh if they obtain orders in their favour in the tenancy application which is pending before the Mamlatdar. Depending on the outcome of the litigation between the parties, it is always open for the Petitioners to re-apply for an excise licence for extraction of juice from the aforementioned two properties.

14. No case is made out for interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

15. Petition is therefore rejected. No costs.

**VALMIKI MENEZES, J.**