

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

**PUBLIC INTEREST LITIGATION WP NO.26 OF 2014**

ST. ANTHONYS MUNDKAR AND  
TENANT ASSOCIATION THROUGH  
ITS PRESIDENT DIAGO FRANCIS  
RODRIGUES AND 2 ORS.

....PETITIONERS

V/S

THE CHIEF TOWN PLANNER  
TOWN AND COUNTRY PLANNING  
DEPT. AND 13 ORS.

....RESPONDENTS

Ms. Norma Alvares, Advocate for the Petitioners.  
Mr. A.N.S. Nadkarni, Advocate General with Mr. V. Rodrigues,  
Additional Government Advocate for Respondent nos. 1 to 7.  
Mr. V. Dhond, Senior Advocate with Mr. S. Desai, Advocate for  
Respondent no. 8.  
Mr. S. Adelkar, Advocate for Respondent nos. 10 and 11.  
Mr. D. Pangam, Advocate for Respondent no. 12.  
Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for Respondent no.13.

**CORAM : F.M. REIS &  
K.L. WADANE, JJ.**

**DATE : 29<sup>th</sup> JULY, 2015.**

**P.C.:**

Heard Ms. Norma Alvares, learned Counsel appearing for the petitioners, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the respondent nos. 1 to 7, Mr. V. Dhond, learned Senior Advocate appearing for the respondent no. 8, Mr. S. Adelkar, learned Advocate appearing for the respondent nos. 10 and 11, Mr. D. Pangam, learned Advocate appearing for the respondent no. 12 and Mr. A. D. Bhobe, learned Advocate appearing for the respondent no.13.

2. The above petition was heard for interim relief on different occasions . Rule has already been issued in the above Writ Petition.

3. The petition essentially challenges the diversion of agricultural land which according to the petitioners is covered in terms of the provisions of Agricultural Tenancy Act, 1964 ("the Act" for short) for different purpose other than agricultural in breach of the provisions of the Goa Land Use Act, 1991 read with the said Act. It is the contention of the petitioners that without following the due process of law and claim that there was a fraud in statute committed by the respondents, the names of the legal tenants of the subject property have been deleted from the survey records to enable the respondent no. 8 to change the user of the subject land which is stated to be admeasuring 10 lacs square metres. This fact is seriously disputed by the respondent no. 12 who is co-owner of the disputed property as well as by the respondent no. 8, as according to them, the subject land does not come within the purview of the said Act, as according to them, there is no tenancy created in terms of the said Act. The said respondents have also raised a contention that the subject land is not an agricultural land, as according to them, as the land was not used for any agricultural purpose. The petitioners, no doubt, are vehemently disputing all the said contentions of the respondent no. 8 and the respondent no. 12.

4. On perusal of the records the fact remains that the survey

records which have been duly promulgated, in Form I and XIV the names of tenants were reflected in the tenants column. In view of the amendment to the said Act, records prepared under the Land Revenue Code are to be read into the provisions of the said Act. In such circumstances, the presumption under the said Act to the effect that the entries therein were correct would have to be drawn at this stage in favour of the petitioners.

5. No doubt, the respondents are disputing the said claim on the basis of orders obtained either from the Civil Court or some from the Mamlatdar. Most of the judgments produced before us by Mr. Dhond, learned Senior Counsel appearing for the respondent no. 8 were obtained from the Civil Court inter alia to facilitate the deletion and/or to obtain a negative declaration of tenancy with regard to such entries in respect of the subject property. There are also orders produced before us whereby a purchase certificate which was issued in favour of the tenants was sought to be assailed before Appellate Authority and in one case even an order is produced whereby such purchase certificate was set aside but however, the records also reveal that such orders are still pending adjudication before the Superior Authority under the Act. It is sought to be contented by Mr. Dhond, learned counsel appearing for the respondent no. 8 that on the basis of said orders, the presumption if any, drawn in favour of the tenants stand rebutted. But however the law to that effect is now well settled by the Division Bench of this Court in the judgment reported

in **2010(6) Bom.C.R. 594** in the case of ***Pilerne Citizens Forum Vs. State of Goa and others***, whereby Division Bench in which one of us (F. M. Reis, J) was a party wherein it has been held that upon conjoint reading of Sections 7, 7A and 58 of the Act the only authority which can grant a declaration or a negative declaration of tenancy is the Mamlatdar appointed under the Act. The learned Senior Counsel also brought to our notice the order obtained from the Deputy Collector whether there is any tenancy substitute over the subject property in view of the directions issued by the Division Bench of this Court in the Judgment reported in **2000(2) GLT 447** in the case of ***Kamat Constructions Vs. State of Goa***. Such orders from the Deputy Collector cannot be substituted to order under Section 7 of the Act, which view has been reiterated by this Court in the said Judgment of ***Pilerne Citizens Forum*** (supra).

6. With regard to the contention of Mr. Dhond, learned Senior Counsel appearing for the respondent no. 8 that the disputed land is not an agricultural land is also an issue to be examined in terms of Section 7A of the Act and the exclusive jurisdiction to that effect is with the Mamlatdar. In such circumstances, the material produced by the respondent no. 8 in support of their contention that the presumption in the entries of the records of right stand rebutted at this stage cannot be accepted. Though it is alleged by the respondent nos. 8 and 12 that the names of the tenants are not subsisting on the survey records nevertheless the fact that they were existing earlier

and deleted based on the orders under dispute is not disputed. No doubt, the findings rendered herein are only prima facie which shall not influence this Court while disposing of the Writ Petition on merits nor can be relied on before any proceedings under the said Act. As we are now dealing with a Public Interest Litigation, what we are examining is not whether alleged tenants have been victim of a fraud but whether the respondents have by some mechanism with the opposite parties in the disputed proceedings suppressed the correct and true facts from the Concerned Authority or Court to induce them to get a favourable decision only to circumvent the provisions of the Act and the Goa Land Use Act, 1991 and defeat the alleged tenancy rights. Merely because the parties in such proceedings appeared before the concerned Courts and have accepted such orders without demeanor cannot in any way obliterate or nullify if at all any fraud is committed on the statute. We are making these prima facie observation only to take a tentative view of the matter to examine the grant of interim relief, as rule has been already issued in the Writ Petition. It is also to be emphasized that the provisions of Goa Land Use Act, 1991 are enacted to impose restrictions qua the land and for the purpose of conserving agricultural land. In this context we proceed to examine the rival contentions to ascertain what interim relief can be granted in peculiar facts and circumstances.

7. Mr. Dhond, learned Senior Counsel appearing for the respondent no. 8 has pointed out that in case this Court is inclined to

grant an interim relief it would severely jeopardize the activity intended by the respondent no. 8 in the subject property and as such, the petitioners would have to be put to terms, as according to him irretrievable and substantial loss would occasion to the respondent no. 8.

8. Ms. Alvares, learned counsel appearing for the petitioners has pointed out that the petitioners are not in a position to give any security with that regard. In such circumstances, we are inclined to balance the equities and proceed to grant interim relief in the manner stated herein below:-

- (i) The respondent no. 8 shall not change the nature of the subject property nor cut any fruit bearing trees therein, nor excavate any portion of the disputed property pending the hearing and final disposal of the above petition except the area wherein respondent no. 8 have been permitted in the manner stated herein below:-
- (ii) The respondent no. 8 is permitted to put up only two villas at a specific location identified by letter "A" and "B" in the plan which is placed on record and marked as Exh. "Z" for identification and depicted in the photograph marked "Z-1" for identification having a built up/coverage area of 708 square metres in aggregate approximately in the property surveyed under survey no.5/6 as referred to in the licence dated 15.1.2015 issued by the local panchayat at page 318 of the petition and marked Exh.'A' to the affidavit filed by the petitioners.
- (iii) Respondent no. 8 shall also have an ingress and

egress to the said location referred to in para (ii) herein through a temporary access shown in the plan marked "Z" by black dotted lines along the boundary of the property under survey no.5/6 of Terekhol Village.

(iv) The respondent no. 8 shall not cut any fruit bearing trees in any portion of the property except one cashew trees stated to be located in the said portion of the property under survey no. 5/6 and cut only a minimum of other trees to put up the said two villas. Needless to state that any such trees to be cut only after taking due permission from the concerned authority if not already obtained.

(v) The respondent no. 8 shall not claim any equities in case any relief is granted in favour of the petitioners at the time of the final disposal of the above petition in respect of the said two villas referred to herein above. Any such activity carried out by the respondent no. 8 based on this order shall be at their own risk and subject to further orders which would be passed at the time of final disposal of the petition on merit. Liberty to the parties to apply for any modification of the order which will be examined after hearing all the parties in accordance with law.

9. Place the matter for final hearing by consent in the month of September, 2015. Parties are directed to complete the pleadings before the next date.

**K.L. WADANE, J.**

**F.M. REIS, J.**

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