

(2009) 03 BOM CK 0136
In the Bombay High Court
Case No : Writ Petition No. 202 of 2000

Antonio Travasso

APPELLANT

Vs

Administrative Tribunal for Goa and Others

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Constitution of India, 1950 — Article 227
Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 7

Citation : (2009) 03 BOM CK 0136

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : M.B.D" Costa and J.A. Lobo, for the Appellant; Sudin Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Challenge in this Writ Petition, filed under Article 227 of the Constitution, is to the Judgment dated 13-1-2000 of the learned Administrative Tribunal, Goa, by which the application filed by the Petitioner(since deceased and now represented by his legal heirs) dated 11-1-1983, claiming tenancy u/s 7 of the G.D.A. Agricultural Tenancy Act, 1964(Act, for short) has been dismissed.

2. Some facts are required to be stated to dispose off this Writ Petition. The Petitioner(since deceased) had filed the said application before the Mamlatdar claiming tenancy of a paddy field known as "40 lanco de Xeliconso" surveyed under No. 196/40 of Curtorim village belonging to Comunidade of Curtorim and leased to Respondent No. 4. The application was granted in favour of the Petitioner by the Mamlatdar by Order dated 12-6-1983 and an appeal filed therefrom was dismissed by the Deputy Collector by Order dated 17-10-1989. The learned Administrative Tribunal reversed both the said orders and dismissed the application of the Petitioner.

3. The application has been dismissed on two counts. Firstly, that the Mamlatdar

had no jurisdiction to decide whether a person "was a tenant", his jurisdiction being restricted to decide whether a person "is a tenant". The learned Administrative Tribunal in coming to the said conclusion placed reliance on the case of Shri Sukdo Ladko Naik v. Shri Navso Bombdo Gawde and Ors. 1999(2) GLT 214 which in turn was decided by placing reliance on a Judgment of the Apex Court in the case of Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others, which was decided with reference to Section 70(b) of the Bombay Tenancy and Agricultural Act, 1948, provisions of which were in para materia with the provisions of Section 7 of the Act. The learned Administrative Tribunal also held that the evidence produced was insufficient to conclude that the Petitioner/applicant was otherwise a tenant of the suit property. On the first count, the learned Administrative Tribunal observed, and in my view rightly, that the Petitioner had filed an application on or about 11-1-1983 stating that he was a tenant of the suit property wherein he had stated that he was cultivating the suit paddy field for the last 18 years or more and again, as rightly noted by the Administrative Tribunal as on 11-1-1983. The learned Administrative Tribunal took note of the fact that the Fifth Amendment to the Act had come into force from 20-4-1996 and thus it was clear that the Petitioner had claimed that he was a tenant of the suit paddy field prior to the appointed date i.e. 20-4-1996. Admittedly, as per the Fifth Amendment to the said Act persons who were the tenants of the agricultural land had become deemed purchasers in respect of the lands held in tenancy by them from the appointed date. Needless to observe the claim of the Petitioner was in respect of a past tenancy in that he was a tenant and in the light of that he had become a deemed purchaser at a time when the Petitioner filed the application. On the appointed date he had become a deemed purchaser and such a claim could not have been decided by the Mamlatdar. There is no dispute that Section 7 of the said Act at the relevant time provided that if any question arises against any person "is a tenant" or should be deemed to be a tenant under the Act, the Mamlatdar after holding an inquiry shall decide the same.

4. Learned Senior Counsel on behalf of the Petitioner submits that the expression "or was" came to be added in Section 7 of the said Act w.e.f. 21-11-1990 and as such the learned Administrative Tribunal ought to have remanded the case to the Mamlatdar for deciding whether the Petitioner was a tenant or not of the land in question. I am not inclined to accept this submission. There is no doubt that with effect from 21-11-1990 the question whether any person is or was a tenant or should be deemed to be a tenant under the Act was required to be decided by the Mamlatdar. The said expression "or was" came to be added to in Section 7 of the said Act by way of clarification. The law even prior to 21-11-1990 was that whether a person is a tenant was required to be decided by the Mamlatdar who had no jurisdiction to decide whether a person was a tenant. The learned Administrative Tribunal has decided the question whether the Petitioner was a tenant by itself and therefore there was no need for the learned Administrative Tribunal to have remanded the case to the Mamlatdar. In other words the learned

Tribunal rendered a decision on merits that the Petitioner was not a tenant.

5. As regards the merits of the case the learned Tribunal came to the conclusion that the Petitioner was not a tenant. Admittedly, the Petitioner's name was recorded in Form No. III. True, an entry in Form No. III being made by a public servant in discharge of his official duties, is relevant but the said entry could not have carried a presumption either in terms of the relevant provisions of the Land Revenue Code or for that matter u/s 7 of the said Act. The Petitioner had given his own evidence and that of one Santarita Rebello. Whilst the Petitioner had stated that he was cultivating the paddy field for about 20 years which was in consonance with the plea earlier taken by him that he was cultivating the paddy field for the last 18 years or more, the said Santarita Rebello did not support the claim of the Petitioner when he vaguely stated that the Petitioner was cultivating the said paddy field for quite many years. On the contrary, Respondent No. 4 had categorically stated that he was cultivating the said paddy field for about 20 years. Respondent No. 4's witness Manuel Fernandes who is his brother-in-law might have not in terms supported the case of Respondent No. 4 but his other witness Minguel Soares had categorically stated that Respondent No. 4 was cultivating the said paddy field for the last about 20 years and had further stated that the Petitioner had not cultivated the said paddy field and besides the said Respondent No. 4 nobody else cultivated the said paddy field. The learned Administrative Tribunal has correctly assessed the evidence produced on behalf of the parties and has come to the conclusion that it is Respondent No. 4 who was cultivating the said paddy field. The learned Administrative Tribunal also rightly concluded that only because the name of the Petitioner appeared in Form No. III it did not mean that he was a tenant in respect of the paddy field. Learned Counsel on behalf of the parties stated that the said entry remained in Form No. III only and it was never promulgated because of the present dispute. Respondent No. 4 had produced a record from the Comunidade to show that he was a tenant and moreover there was no evidence to support the Petitioner's claim that he was paying any rent to the said Comunidade. In case the Petitioner had paid any rent either on his own behalf or that of the Respondent No. 4, the Petitioner would have certainly had some receipts. Learned Senior Counsel submits that the Petitioner had also claimed to be a sub tenant of the said Comunidade and this aspect was not considered by the learned Administrative Tribunal. Learned Senior Counsel has also referred to Rule 10 and submitted that as the Petitioner was not represented by any Advocate it was the duty of the Mamlatdar to assist the Petitioner in his claim. It is true that the Petitioner had stated in his application that he was a sub tenant of Respondent No. 4 for more than 18 years and this shows that the application was got drafted by the Petitioner after seeking some advice which obviously means that he became a sub tenant at a time when sub tenancy was prohibited under the said Act. However, in case the Petitioner was a sub tenant the least he would have mentioned was how much rent he was paying to Respondent No. 4 and then what rent was being paid by the latter to the Comunidade. The Petitioner

improved his story by stating that he was cultivating the paddy field from the time of his grandfather but the period for which he was cultivating the paddy field mentioned by him earlier was not changed. In other words, sub tenancy only for a particular period from 1-7-1962 till the commencement of the Act were approved by the Act and others were frowned upon or prohibited.

6. In my view, the learned Administrative Tribunal has correctly decided both the points and therefore no interference is called for with the impugned Judgment. It is to be noted, as stated by the Apex Court in Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, that the jurisdiction of this Court under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate Courts and tribunals within the bounds of their authority, and, not for correcting mere errors .

7. It is also stated therein that an appeal or a revision is generally considered to be continuation of the original suit or proceeding.

8. In view of the above, I find there is no merit in this petition and consequently the same is dismissed.