

(1994) 06 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 260 of 1988

Ramrai Ganpat Goltekar and Others	Vs	APPELLANT
Shri Peter Michael Fernandes and Others		RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 18, 4, 7

Citation : (1995) 2 BomCR 463

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : Nitin Sardessai, for the Appellant; M.B. D'Costa, for the Respondent

Final Decision : Dismissed

Judgement

E.S. Da Silva, J.—This writ petition under Articles 226 and 227 of the Constitution challenges the judgment and order of the Administrative Tribunal dated 22nd April, 1988 in Tenancy Revision No. 1/81 filed by the petitioners against the respondents whereby the learned Tribunal has upset the judgment and order of the Deputy Collector, North Goa, Panaji, dated 4-5-1979 in Tenancy Case No. TNC/AP/5/78 and restored the judgment and order of the Mamlatdar of Bardez dated 24th September, 1977 passed in Tenancy Case No. 1/74.

2. The late original petitioner (hereinafter called the petitioner) who is now represented by his legal heirs had filed before the Mamlatdar an application under sections 4, 7 and 18 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter called "the Tenancy Act") seeking for a declaration of his tenancy and restoration of possession. The subject-matter of the dispute is a paddy field known as "Maina" surrounded by a loose stone wall along with other trees, situated at Maina of Siolim and belonging to the late respondent No. 2 which even prior to the said application the petitioner alleged that inspite of his tenancy was sold by the respondent No. 2 to the respondent No. 1. It appears that in the year 1973 when the petitioners went to pluck the fruits of the trees he was obstructed by respondent No. 1 and therefore the application was filed

before the Mamlatdar in the year 1974. The learned Mamlatdar after enquiry found that the petitioner was not a tenant of the property and by judgment and order dated 24-9-1977 dismissed the application. In appeal before the Deputy Collector the order of the Mamlatdar was reversed by judgment dated 4-5-1979 whereby the petitioner was declared as a tenant and the Mamlatdar directed to restore to him the possession of the suit property. However, this order of the Collector came to be unsettled by the Administrative Tribunal in revision by judgment dated 22-4-1988 which is being impugned in the present petition.

3. The first grievance of Shri Sardessai, learned Counsel appearing on behalf of the now petitioners, is that the order of the Tribunal is a non-speaking order which has neither considered nor discussed the material placed before it by the Deputy Collector. Before the Mamlatdar the respondents have admitted the possession and enjoyment by the petitioners of the fruits of the trees situated in the property. It was further submitted by the learned Counsel that the petitioner have examined several witnesses to prove that he was paying rent to the respondent No. 2 who is the predecessor-in-title of the respondent No. 1, which evidence was not destroyed by the respondents in cross-examination. Thus there is a finding by the Deputy Collector on the point of the payment of rents alleged to have been made by the petitioner to the landlord in respect whereof no challenge was raised by the respondents. This clear finding is to the effect that in the absence of any denial on the part of the respondents with regard to the payment of the rents the said payment should be held as proved. It was also urged that in view of this finding and also bearing in mind the admission made by the respondents' witnesses that the petitioner was plucking the fruits of the trees of the property the question of the petitioner producing any receipts with regard to the payment of rent would become totally irrelevant. Indeed it was contended by the learned Counsel that the landlord is to be deemed as having admitted the petitioner as tenant of the property once there is an admission on the part of the respondents' witnesses that the petitioner was enjoying and plucking the fruits of the trees in the suit property. The learned Counsel has drawn my attention to the testimony of witness Jose Fernandes wherein he has acknowledged the existence of coconut trees on the boundary of the suit land and also in the middle of the field. According to the learned Counsel this position negativities the theory of existence of two separate properties being one the paddy field and the other a landed property wherein coconut trees and other fruit bearing trees exist. It was further argued by the learned Counsel that once the landlord failed to discharge the duty of issuing receipts of rents to the petitioner he was certainly helpless to prove the payment of rents through any receipts or documentary evidence. Therefore, in such circumstances he would be able to prove the payment of rents through testimonial evidence. The learned Counsel has also urged that the respondents have deviated from their original stand in respect of the name of the suit property and the fact of the paddy field having been cultivated by one Bhiku as its tenant till 1974.

4. I do not find any merit in the submissions raised by the learned Counsel on

behalf of the petitioners. Admittedly the petitioner had filed an application before the Mamlatdar wherein he has sought for a declaration of tenancy in respect of a property which he himself styled as a paddy field "Maina" surrounded by loose stone wall and situated at Maina of Siolim. In the said application he has also stated that he was a lawful tenant of the paddy field along with other trees in respect of which he used to pay composite rent of Rs. 40/- to the late respondent No. 2. According to the petitioner the said respondents Nos. 2 and 3 who were the owners of the said paddy field has sold the same to the respondent in the month of May, 1973 and thereafter the petitioner was prevented by the said respondent No. 1 from entering into the said paddy field. Therefore and since he has been illegally evicted from the paddy field in violation of the provisions of the Tenancy Act the petitioner prayed that he be declared tenant of the paddy field "Maina" and the possession of the same to be given to him. The said application and tenancy case was filed by the end of 1973 and registered as Tenancy Case No. 1 of 1974. In this respect Mr. M.B. D'Costa, learned Counsel for the respondent, has rightly submitted that in the year 1974 the Tenancy Act covered only paddy field and other cultivable lands and neither gardens nor other lands were coming within the purview of the Act. Thus it was not possible to canvass that in the application filed by the petitioner in 1973 he could have had any claim of tenancy in respect of a garden land. This is why, according to the learned Counsel, the application of the petitioners praying for declaration of tenancy has called the land a paddy field and does not mention anything about its being a garden also. The case of the respondents in that application is that the paddy field "Maina" is situated somewhere else at a distance of about 200 metres from the property which the respondent No. 2 sold to the respondent No. 1 and which is known as "Vissol", which property is also situated at Maina and is described in the Land Registration Office under No. 37852. As far as the paddy field "Maina" it is the case of the respondents that the same although situated at Maina of Siolim is described in the Land Registration Office under No. 7077. The said paddy field which is also belonging to respondents Nos. 2 and 3 was being cultivated by one Bhiku Shirodkar as a tenant and after his death on or about September, 1974, the tenancy rights devolved to his widow Jayashree Shirodkar and to his son Govind Bhiku Shirodkar who are cultivating the paddy field as tenants. The respondents therefore denied that the petitioners are not and have never been tenants in respect of the paddy field "Maina". It was further stated by the respondents that there are no trees in or in the vicinity of the property "Maina" and since the petitioner has never been the tenant of the field the question of payment of any rents by him to the respondents does not arise.

5. It is thus seen that the petitioners have clearly laid down a claim of tenancy in respect of the suit property which they have defined basically as a paddy field surrounded by a stone wall and also to some trees although they had also made a mention that along with the paddy field there are other trees in respect of which the tenancy is to be acknowledged in their favour. Nowhere in his application the petitioner No. 1 has been able to lay down any claim to a garden

in respect of which it has been already pointed out by the learned respondents" Counsel the Tenancy Act at the time of filing the application was not affording any protection. At the most the petitioners could have claimed tenancy only in respect of the trees falling inside the paddy field "Maina" once, according to the petitioner himself, the paddy field was being closed by a stone wall. Being so it is obvious that the petitioner could have no claim to any trees even though surrounding the paddy field but located outside the stone wall and the only trees to which he could invoke any right of enjoyment could be those trees located within the boundaries of the paddy field "Maina". On the other hand it is seen that the petitioners have not been able to produce any documentary evidence with regard to the Record of Rights in respect of the so-called paddy field "Maina" to which he claims the right of tenancy. In this respect Mr. D"Costa submits that the evidence on record shows that the petitioner is a person who is very much aware of the existence of survey records. In his deposition he has admitted that besides the suit paddy field he got other paddy fields belonging to Communicate and that his name has been recorded as tenant in the concerned survey records. Thus it is clear that if the petitioner felt that he was required to secure protection of his rights in the survey records in respect of the paddy fields of Communicate there was no reason as to why he did not get his name registered in the entries of the survey records of any paddy field belonging to the respondents Nos. 2 and 3. This, according to the learned Counsel, appears to explain the fact of the petitioner in his application before the Mamlatdar having failed to even mention the survey number of the paddy field "Maina" alleged to be belonging to respondent No. 2 and to which he claims the right of tenancy. The case of the respondent No. 1 is that he had purchased from the respondent No. 2 a property by name "Vissol" which is not a paddy field identifying the property by its registration number and contended that the paddy field "Maina" is situated at a distance of about 200 meters from the property acquired by him which property bears a different registration number and was being cultivated as tenant by one Bhivan Shirodkar.

6. This being the position I find quite a substance in the further submission of Shri D"Costa that the petitioner is trying to capitalize from the fact that the respondents" evidence shows that the petitioner has been allowed to pluck the fruits of the trees situated in the land purchased by the respondent No. 1 because since 1976 garden lands have been covered by the Tenancy Act. The learned Counsel seems also justified in his grievance that consequent upon this change of the law the petitioner is also making an attempt to avail of the fact to shift his claim of tenancy to the trees located in the property "Vissol" acquired by the respondent No. 1. To be noted that the admission regarding the plucking of the fruits of the trees and to which the petitioner seeks to rely upon refers to a period before 1976 till the purchase of the property "Vissol" by the respondent No. 1 from the respondent No. 2, somewhere in the year 1973 or 1974. The petitioner besides the admission on the part of the respondents, at the time of the evidence during the trial, has not contended that such an admission has been

made by the respondents in their written statement. Further the petitioner has also never claimed, in his original application that he was a lessee of any garden belonging to the respondent No.2 and purportedly purchased by the respondent No. 1. The original Tenancy Act when enacted was expressly excluding from its purview the fruit bearing trees garden land which only after the amendment was included within the meaning of `agriculture". However, u/s 31 of the Act the trees located in the middle of the paddy field were being included within the meaning of "agriculture" but the right of tenancy to those trees would arise only in case the tenant had planted those trees. The petitioner has not led any evidence in this respect with regard to the trees to which he claims tenancy along with the suit paddy field. Once the petitioner has claimed to be the tenant of the paddy field "Maina" which he seeks to identify with the property acquired by the respondent No. 1 and the respondents' contention is that what was purchased by the respondent No. 1 and sold to him by the respondent No. 2 was the property "Vissol" different from the property "Maina" and located at some distance from the said paddy field, the petitioners were obviously bound to identify the said paddy field to which they claim tenancy. Indeed they have referred to the fact that the said paddy field is surrounded by loose stone wall and at the same time are laying a claim to some other trees which in the circumstances could be only trees located within the stone wall. However, the petitioner while deposing before the Mamlatdar has improved his claim, because, besides the paddy field surrounded by a loose stone wall, some trees in a hilly portion outside the wall and still a cashew plantation situated on the other side of the rivulet which is not even adjoining the paddy field is sought to be included in the property to which he claims tenancy. This is again a further improvement or shifting of the petitioner's stand which also involves the fact of the splitting of the rent allegedly paid by him to the landlord in respect of the tenanted property. In his application the petitioner has referred to a consolidated rent of Rs. 40/- for the paddy field while in his deposition he speaks of a sum of Rs. 15/- which was being purportedly paid to the landlord towards the paddy field and Rs. 25/- in respect of the trees. Thus and in the absence of any identification by the petitioner of the suit property by its boundaries, it is reasonable to conclude that whatever was being paid by him to the respondent No. 1 in respect of the enjoyment of the fruits of the trees could be at the most a compensation or a fee and never a rent as claimed by the petitioner.

7. Further the petitioner has not adduced any evidence to point out that Form I & XIV of the record of rights in respect of the paddy field "Maina" shows his name as tenant of the paddy field and this despite the fact that he claims tenancy of the said paddy field. On the other hand the survey records of the respondent No. 2's property "Vissol" does not suggest that there is any portion of that property which is a paddy field. On the contrary the property of the respondents is shown as a dry crop and there is no mention of any cultivation of rice made therein. It follows therefore that without definite boundaries to be established by the petitioner in respect of the suit property he would not be able to obtain any

declaration that he was the tenant of a property which he wants to identify as being the property purchased by the respondent No. 1.

8. Shri D"Costa invited my attention to the meaning of the word "tenant" in section 2(23) of the Tenancy Act which is defined as a person who on or after the date of commencement of the Act holds land on lease and cultivates it personally. The said definition thus implies that there cannot be any lease of trees only or a tenant in respect of the trees alone. Further, sub-section (12) also defines "landlord" as a person from whom a tenant holds land on lease which again corroborates the fact that there cannot be a tenancy in respect of trees only but instead the tenancy is always connected with the concept of land. It is therefore in this context that the deposition of the respondent No. 1 Peter has to be looked into when he acknowledged in his examination-in-chief before the Mamlatdar that the petitioner used to pluck fruits of the trees located in the property purchased by him. This admission is thus to be understood as meaning that the petitioner was doing so as a mere licensee of the previous owner because, as urged by Shri D"Costa, it is not possible to conceive that when the respondent himself is denying any right of tenancy to the petitioner in respect of the suit property the said respondent No. 1 would concede to the same petitioner any right of lease with regard to its trees. Moreover it is to be noted that the petitioner has failed to adduce any evidence to show that he was in the actual enjoyment of the trees located in the property purchase by the respondent No. 1 and his whole claim in this respect seems to be based only on the evidence brought on record by the respondents themselves. Further, the said petitioner has been unable to point out any statement made by the respondents admitting the very existence of a paddy field in the property "Vissol" which was the subject-matter of the deposition by the respondent No. 1. Therefore, the submission of Shri D"Costa that the petitioner wants to take advantage of the fact that the property "Vissol" is being situated at Maina of Siolim in order to claim that the said property includes the suit paddy field "Maina" to which he claims tenancy appears to be sound and well conceived. No documentary evidence was relied by the petitioner either from the record of rights or otherwise to suggest that there is at least any paddy field at Maina, Siolim, with the name "Maina" while the respondent No. 1 has established from the survey records that the property purported to have been acquired by him from the respondent No. 2 is shown as "Vissol" both in the said survey as well as in the Land Registration Office.

9. In the facts and circumstances of the case I am satisfied that the petitioner has miserably failed to make out a case to substantiate his claim of tenancy either to any paddy field "Maina" or to the property "Vissol" purchased by the respondent No. 1 from the respondent No. 2 and although I am inclined to agree with the petitioner that the impugned judgment of the Administrative Tribunal is quite cryptic and sketchy, the findings arrived at by the Tribunal on the basis of the evidence available, to the effect that the petitioner has not been able to prove that he was lawfully cultivating the suit land and therefore the judgment of the Deputy Collector was bad and bearing no support either on facts or in law,

cannot be faulted with.

10. In the result the petition is bound to fail and is hereby dismissed. Rule made is accordingly discharged with costs.