
(2014) 04 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 377 of 2013

Rashid Salvador Sousa

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 15, 18A, 18C, 18K, 18K

Citation : (2014) 5 BomCR 178 : (2015) 1 MhLj 295

Hon'ble Judges : Mohit S. Shah, C.J.; S.B. Shukre, J

Bench : Division Bench

Advocate : M.B. daCosta, Sr. Adv., Karishma Betquecar and Sonia Chodankar, Advocate for the Appellant; A.N.S. Nadkarni, Advocate Gen., Pradesh Dangui, Addl. G.P., A. Agni, Ashwin Ramani, J.E. Coelho Pereira, Sr. Advocate and V. Korgaonkar, Advocate for the Respondent

Judgement

Mohit S. Shah, C.J.—By this petition under Articles 226 and 227 of the Constitution filed in April 2013, the petitioner has challenged: "(a) the orders dated 30 November 1988, 8 September 1993, 20 May 1996 and 11 September 1996, and other orders passed by Mamlatdar of Mormugao Taluka in South Goa District in the years from 1992 to 1996, declaring respondent No. 3 Victor Luis Monteiro as tenant of the properties in question in Goa described in para 2 of the writ petition (the properties)". All these orders were passed by the Mamlatdar under the provisions of Chapter-II-A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Goa, Daman and Diu Act 7 of 1964) (Tenancy Act" for the sake of brevity) read with the Goa, Daman and Diu Agricultural Tenancy (Special Rights and Privileges of Tenants) Rules, 1967 ("Special Rules" for the sake of brevity) declaring respondent No. 3 as tenant of the properties;

(b) "the consequential impugned orders" permitting respondent No. 3 to sell some of the above properties under section 18-K of Tenancy Act read with Rule 6 of the Special Rules;

(c) "the consequential actions" including registered sale deeds dated 21 May 1996 and 19 September 1996 executed by respondent No. 3 in favour of respondent No. 5, a company incorporated under the Companies Act, 1956;

(d) The petitioner has also prayed for a declaration that Clauses (a) to (f) of Rule 6 of the Special Rules are ultra vires the Tenancy Act, illegal and void."

The properties in question belonged to Joaquim Antonio alone or to Joaquim Antonio and his brother Joaquim Xavier. Both the brothers are deceased. While Joaquim Xavier died as a bachelor, Joaquim Antonio had several children including Vincente Agostinho. Family trees as given by the petitioner are as under:-

The petitioner claims rights in the properties in question on the basis of a conditional will dated 13 November 1970 allegedly executed by Vincente Agostinho prior to his death on 16 November 1989 in favour of the petitioner. The condition of the bequest in favour of the petitioner was that in case of demise of testator's brother Heriberto Francisco Maria da Cunha ("Heriberto") as a bachelor or married, but without issues, the testator's estate would devolve upon the petitioner. The said Heriberto died as a bachelor (without issues) on 8 January, 2006.

2. Respondent No. 3 filed application in the year 1988 before Mamlatdar, Mormugao for a declaration of tenancy in respect of lands bearing Survey Nos. 61/1, 63/2, 65/3 and 62/1 situated at Village Cuelim. By order dated 30 November 1988, the Mamlatdar declared the respondent No. 3 as a tenant in respect of said properties under section 18-A of the Tenancy Act. By an order dated 10 September 1992, the Mamlatdar determined the purchase price and on payment of purchase price by respondent No. 3, Mamlatdar issued certificate of purchase dated 23 February, 1993 in respect of the aforesaid lands. None of the aforesaid orders came to be challenged in appeal under section 49 or the revision under section 50 of the Tenancy Act.

Thereafter on 8 September, 1993, Mamlatdar permitted respondent No. 3 to mortgage the lands for the purpose of raising loan of Rs. 10 lakhs for development of land.

The respondent No. 3 applied to Mamlatdar for permission to purchase the land bearing Survey No. 65/1-A and the Mamlatdar granted permission by order dated 16 May 1996 under section 18-C of the Tenancy Act. The Mamlatdar issued certificate of purchase for the same.

3. Thereafter respondent No. 3 applied to Mamlatdar under section 18-K of the Tenancy Act seeking sanction of Mamlatdar to sell the properties bearing Survey Nos. 63/2, 65/1-A and 65/3 on the ground that land was rendered infertile due to topographical changes and respondent No. 3 was suffering losses in the agricultural activities as he had to pay amount of loan and interest. By orders dated 20 May 1996 and 11th September 1996, Mamlatdar, Mormugao granted

the sanction. On the basis of the said sanction orders, respondent No. 3 sold the lands bearing Survey Nos. 63/2 (1000 sq.mtrs), 65/3 (entire), 65/1-A (entire) and 67/0 of Village Cuelim cumulatively admeasuring 1,83,000 sq.mtrs plus 30,877 sq.mtrs to respondent No. 5 by registered sale deeds dated 21 May, 1996 for a price of Rs. 1.83 crores plus Rs. 30,88,750/- respectively.

4. In this petition, the petitioner has challenged orders dated 30 November 1988 and 13 other orders passed by the Mamlatdar/Joint Mamlatdar between 1992 and 1994 declaring respondent No. 3 as tenant of various lands in village Cuelim and one parcel of land in village Arossim under Chapter-II of the Tenancy Act. The petitioner has also challenged the subsequent orders passed by Mamlatdar/Joint Mamlatdar, Mormugao on 20 May 1996 and 11 September 1996 granting sanction to respondent No. 3 to sell the lands. These orders are enumerated in paras 13 & 14 of the petition.

5. Insofar as lands sold by respondent No. 3 to respondent No. 5, the petitioner has specifically challenged the orders dated 30 November 1988 deleting respondent No. 3 as tenant and orders dated 20 May 1996 and 11 September 1996 passed by Mamlatdar/Joint Mamlatdar granting sanction to sell the land under section 18-K of the Tenancy Act read with Rule 6 of the Special Rules.

6. At the hearing, Mr. M.B. da Costa, learned Senior Advocate for the petitioner has challenged the impugned orders passed by Mamlatdar, Mormugao Goa and the provisions of Rule 6 of the Special Rules under which the impugned orders are passed, on the following grounds:

"(i) Clauses (a) to (f) of Rule 6, insofar as they permit sale of agricultural land by a deemed purchaser under section 18-A of the Tenancy Act to a non-agriculturist, are ultra vires the Tenancy Act which is enacted for conferring special rights on tenants of agricultural lands and is a legislation for agrarian reforms. By the impugned orders passed under Rule 6, the Mamlatdar granted sanction for sale of agricultural land to respondent No. 5 which is an industrial company and, therefore, the sanction and consequential sale deeds are illegal and void ab initio.

(ii) Only a Mamlatdar specially authorised to exercise powers under section 18K read with Rule 6 could have granted sanction for sale of agricultural land. Since no such authorization was granted to Mamlatdar prior to 22 October 1996, the impugned orders passed by the Mamlatdar, Mormugao prior to 22 October 1996 were without jurisdiction, illegal and void ab initio."

7. On the other hand, learned Counsel for the respondents including learned Advocate General Mr. Nadkarni, Ms. Agni for respondent No. 3 and Mr. J.E. Pereira, learned Senior Advocate appearing on behalf of respondent No. 5 have opposed the petition and made the following submissions:

"(i) The petition suffers from gross delay and laches. The orders passed by the Mamlatdar in the years between 1988 and 1996 are challenged in this petition

filed in 2013.

(ii) On merits of the challenge, the learned Advocate General has submitted that the provisions of section 18-K of the Tenancy Act and Rule 6 of the Special rules are required to be read along with the provisions of Goa Land Use (Regulation) Act, 1991. As per the said provisions, agricultural lands can be used only for agricultural purposes and, therefore, there is no question of the object of the Tenancy Act being frustrated.

(iii) As regards the powers of the Mamlatdars under the Tenancy Act, Mamlatdars are the revenue officers appointed for implementation of the revenue laws including the Tenancy Act. It is only when an officer other than Mamlatdar is to be entrusted with the powers and duties of Mamlatdar under the Tenancy Act that a special notification authorizing such other officer like Deputy Mamlatdar or Awwal Karkoon is required to be issued. The notification of 22 October 1996 was issued out of abundant caution."

8. We will first take up the preliminary objection raised on behalf of all the respondents.

9. All the respondents have raised a preliminary objection that the petition suffers from gross delay and laches -

"(a) The orders passed between the years 1988 and 1996 under the Tenancy Act are challenged in a writ petition filed in April-2013 and, therefore, there is gross delay of 17 to 25 years;

(b) The petitioner claims to have become co-owner of the property under alleged will dated 13 November, 1970 by one Vicente Agostinho bequeathing the property to his brother Heriberto with a covenant that in the event Heriberto dies without issues, his share in the properties inherited under the will would transmit to the petitioner. Heriberto himself did not challenge the orders of Mamlatdar passed in 1988 declaring respondent No. 3 as the deemed purchaser under section 18-A of the Tenancy Act. Heriberto in the suit filed before the Civil Court, Junior Division, at Vasco-da-gama against respondents 3 to 5 herein, challenged the sale deeds dated 21 May 1996 and 19 September 1996 executed by respondent No. 3 in favour of respondent No. 5, but did not challenge the orders of Mamlatdar passed under section 18-A of the Tenancy Act in the years between 1988 and 1996 or the orders of Mamlatdar under section 18-K read with Rule 6 of the Special Rules. Hence, it is not open to the petitioner to challenge the orders of the Mamlatdar passed way back, that too after a lapse of 25 years;

(c) Heriberto expired on 8 January 2006. If at all the petitioner had any right under the alleged will, the cause of action for the petitioner arose on 8 January 2006. However, the petitioner did not assert his right for a long period of seven years;

(d) In any view of the matter, after death of Heriberto, the suit is being prosecuted by his heirs. The petitioner made an application on 20 September

2011 seeking impleadment in the said suit as a party. That application came to be rejected by the trial Court by order dated 7 February, 2012. That order has not been challenged for the last two years. The suit is now at the stage of trial. What the petitioner failed to get in the suit two years back, the petitioner is now trying to get in the writ petition filed in April-2013. The petition is, therefore, required to be dismissed as not filed bona fide, apart from the ground of delay and laches.

(e) In fact, the petitioner has produced copies of orders of Mamlatdar, which certified copies were obtained in the year 1998. These are the copies produced by the petitioner himself with the memo of writ petition. That itself is sufficient to show not only the gross delay and laches but also the fact that the petitioner has filed present petition for the benefit of other parties in the civil suit, who had obtained those certified copies in the year 1998."

Delay and Laches

10. A three Judge Bench decision of Supreme Court in State of Punjab and Others Vs. Gurdev Singh, has held that a party aggrieved by invalidity of an order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation. If the statutory time limit expires, the Court cannot give the declaration sought for. In Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, the Apex Court has held that where invalidity of an order is challenged before a Court, the Court may refuse to quash such order on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order "bears no brand of invalidity on its forehead. Unless necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders".

11. In Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, the Supreme Court has considered all the decisions on the question of delay in invoking writ jurisdiction in the High Courts and has held that if the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and will decline to entertain the petition on merits.

12. Applying the aforesaid tests, it is clear that the petition filed in the year 2013 for challenging the orders passed by Mamlatdar during the period between 1988 and 1996 suffers from gross delay and laches for which the petitioner has offered no explanation, except to state in para 12 of the petition that the petitioner came to know about the will dated

13. November 1970 of Vicente-Agostinho in or about October 2010. The so called explanation that the petitioner's uncle Dr. Rui Sousa took 20 long years to give the petitioner the Will on account of the uncle suffering from parkinson's

disease, memory loss and hallucinations, can hardly be accepted.

The petitioner then filed an application for intervention in Special Civil Suit No. 65/1997/B filed by Heriberto in 1997 challenging the sale-deeds executed by respondent No. 3 in favour of respondent No. 5 in the year 1996, which was being prosecuted by his heirs. The said application for intervention came to be rejected by the Civil Court on 7 February 2012 but the order was not challenged.

14. The family tree set out in para 2 would indicate that if at all anybody had any right to challenge the order dated 30 November 1988 and other orders of the Mamlatdar/Joint Mamlatdar under the Tenancy Act declaring respondent No. 3 as a tenant, it was only the landlords (owners of the lands), who could have challenged the such orders being Vicente-Agostinho (through whose will the petitioner makes the claim), Heriberto (who died bachelor) and their brother Alberto (respondent No. 4). Vicente-Agostinho died on 16 November 1989 without challenging the aforesaid orders of the Mamlatdar/Joint Mamlatdar. Heriberto died as a bachelor on 8 January 2006 without challenging the orders of the Mamlatdar/Joint Mamlatdar. Alberto-respondent No. 4 has filed affidavit opposing the petition, and supporting respondent No. 3.

In view of the above, the petitioner has a bad case on locus standi also, and the vague allegations about collusion between respondent No. 3 and respondent No. 4 also cannot be looked into after lapse of more than 17 years.

15. The learned Counsel for the petitioner would, however, submit that Heriberto had already filed a suit in the year 1997 and after the death of Heriberto in the year 2006, his heirs are prosecuting the said suit and, therefore, the petition should not be dismissed on the ground of delay. It is necessary to note that in Special Civil Suit No. 65 of 1997 filed by Heriberto, the challenge is only to the sale deeds dated 21 May 1996 and 19 September 1996 executed by respondent No. 3 in favour of respondent No. 5 but the orders of Mamlatdar passed under the Tenancy Act have not been challenged in the said suit. When the person through whom the petitioner has claimed his title himself did not challenge the orders of Mamlatdar in the lifetime of the said person for as long as eighteen years before his death, the petitioner cannot be allowed to challenge those orders of Mamlatdar now. The challenge thus suffers from gross delay and laches.

16. Even if the petitioner had any rights under the alleged conditional will dated 13 November 1970 of Vincente Agostinho, the petitioner ought to have asserted those rights soon after 8 January 2006 when Heriberto Francisco expired because the bequest in the alleged conditional will dated 13 November 1970 in favour of the petitioner was to take effect upon Heriberto dying without issues. The petitioner's rights, if any, therefore, crystallized on 8 January 2006, but the petitioner did not institute any proceedings for a period of more than three years even thereafter. The application for intervention in the civil suit between other parties was thus hopelessly time barred and the present petition filed in April 2013 is even more so.

17. In view of the above discussion, in our view, the petition deserves to be dismissed in so far as it challenges the orders of Mamlatdar passed between the years 1988 and 1996. However, since the petitioner has challenged the constitutional validity of Rule 6 of Special Rules of 1967, we proceed to examine the said challenge and the other legal contentions raised before us.

Is Rule 6 ultra vires the Tenancy Act?

18. The provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1864 are not under challenge. In fact, the provisions of the Tenancy Act and the Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Act, 1976 (Goa, Daman and Diu Act 17 of 1976) inserting section 18-K are placed at Serial Nos. 201 and 202 of Schedule IX to the Constitution of India.

19. Chapter II-A of the Tenancy Act contains provisions for special rights and privileges of tenants. Section 18-A of the Tenancy Act lays down that on the tillers" day, every tenant shall, subject to the other provisions of the Tenancy Act, be deemed to have purchased from his landlord the land held by him as a tenant and such land shall vest in him free from all encumbrances subsisting on the said day. Sections 18-C to 18-G of the Act contain provisions for issuance of notices for making a declaration under section 18-A, determination of price of land to be paid by the tenants and other modalities for payment of purchase price. Section 18-K lays down following restrictions on transfer of land:

"8-K. Restrictions on transfers of land purchased under this Chapter:

No land purchased by a tenant under this Chapter shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Mamlatdar:

Provided that no such sanction shall be necessary where the land is to be mortgaged in favour of the Government or a co-operative society for the purposes of a loan for effecting any improvement of such land."

(emphasis supplied)

Section 18-L of the Act confers power on the State Government to make Rules in the following terms:

"18-L. Power to make Rules:

(1) The Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for -

(a)...

(b)...

(c) any other matter which is required to be prescribed."

Section 61 of the Tenancy Act also confers power on the State Government to make Rules to carry out the purposes of the Tenancy Act subject to the condition of previous publication and laying before the Legislative Assembly and shall be subject to such modifications as the Assembly may make during the same session or the session immediately following.

20. In exercise of the aforesaid powers conferred by section 61 read with section 18-L of the Tenancy Act, the Government of Goa made the Special Rules of 1977. The relevant Rule being Rule 6 reads as under:

"6. Circumstances in which and conditions subject to which sanction shall be given by Mamlatdar under section 18-K for transfer; etc.

The Mamlatdar may accord sanction for transfer of agricultural land under section 18-K in any of the following circumstances, namely:-

(a) That the land is required for agricultural purpose by an industrial or a commercial undertaking in connection with any industrial or commercial operation carried on by such undertaking; or

(b) that the transfer is for the benefit of any Educational or Charitable Institution; or

(c) that the land is required by a Co-operative farming society; or

(d) that the land is being sold in execution of a decree of a Civil Court for the recovery of arrears of Land Revenue; or

(e) that the land is being sold by the landowner on the ground that he is permanently rendered incapable of cultivating the land personally any and none of the members of his family are willing to cultivate personally; or

(f) that the land is gifted in favour of a Religious or a Charitable institution;

(g) that the land is being partitioned among the heirs/survivors of the deceased landowner;

(h) that the land is being leased by a landowner who is a minor; or a widow, or a person subject to any physical or mental disability or a member of the armed forces or among the land owners holding the land jointly."

21. The petitioner has challenged Clauses (a) to (f) of Rule 6 of the Special Rules as ultra vires the Tenancy Act mainly on the ground that the aforesaid clauses of Rule 6 permit sale of agricultural land by a deemed purchaser under section 18-A of the Tenancy Act even to a non-agriculturist.

22. The learned Counsel for the petitioners has submitted that Clauses (a) to (f) of Rule 6 of the Special Rules go beyond the provisions of Tenancy Act by permitting the Mamlatdar to grant sanction under section 18-K to the deemed

purchaser to sell the land even to non-agriculturists. It is submitted that the Tenancy Act was enacted to grant protection to persons lawfully cultivating the lands belonging to the original owner i.e. the landlord, in order to enable the tenants and other lawful cultivators of the agricultural lands to continue their agricultural operations and to confer upon them special rights and privileges by bestowing upon them the status of deemed purchasers of land free from all encumbrances on the tillers' day. It is submitted that if such deemed purchaser of agricultural land is permitted to sell such land to a non-agriculturist, the entire object and purpose of enacting the Tenancy Act would be defeated and, therefore, restriction that such land cannot be transferred to a non-agriculturist must be read into the provisions of section 18-K of the Tenancy Act. But for such restriction Chapter II-A of the Tenancy Act, inserted by Act No. 17 of 1976, would cease to be a legislation for agrarian reforms. Strong reliance is placed upon two decisions of Division Bench of this Court in (Shri Ganpati Devasthan Saunsthan and another v. The Collector, North Goa and others), 2000 B.C.I, (soft) 104 : 2004 (4) All.M.R. 846 and in (Gorakshwadi-Shantinagar, Gramvikas Samitee and others v. State of Goa through Chief Secretary and others), 2002(2) G.L.T. 407 and particularly following observations in Shri Ganpati Devasthan Saunsthan case (supra):

"8 The intent of the Legislature and constitutional mandate, therefore, is that an Act which is in furtherance of the constitutional objective of conferring ownership rights on the tenants as a measure of agrarian reform should not be subjected to any challenge under Part in of the Constitution of India. By virtue of Chapter U persons lawfully cultivating land even if they were not lease holders within the meaning as understood in the Transfer of Property Act were also conferred rights. The definition of "agriculture" was amended to include "horticulture". Therefore, can it be contended that the sale, gift, etc. as contemplated by section 18-K be for any purpose other than agriculture? If such an interpretation is accepted, the Act will cease to be an agrarian measure. If that be the case, the very object would be defeated. The entire purpose in enacting the Act would be frustrated. The object of the Act was not to enrich the tenant to sell the land after conferring ownership right to him. The object was to give him security to increase agricultural production and make the tenant self sufficient. Therefore, the exercise of power of transfer under section 18-K can only be permitted for the limited purpose, that is, if the land is going to be used for agricultural purposes as known to the Act. In other words the sale, transfer, etc. must be only for the purpose of carrying on operations which fall under the definition of "agriculture" under the Tenancy Act. The Mamlatdar otherwise has no jurisdiction under section 18-K to grant permission to transfer by sale, gift, exchange, mortgage, lease or assignment"

23. It is, therefore, submitted on behalf of the petitioner that Rule 6 of the Special Rules insofar as it permits the Mamlatdar to accord sanction for transfer of agricultural land under section 18-K of the Tenancy Act to a deemed purchaser under section 18-A, even to a non-agriculturist under Clauses (a) to (f) of Rule 6

of the said Rules goes beyond the intent and object of the Tenancy Act providing agrarian reforms. It is submitted that Rule 6 may be struck down as illegal, ultra vires the Tenancy Act;

24. It is further submitted by the learned Counsel for the petitioner that since the impugned orders were passed by Mamlatdar, Mormugao, Goa under Rule 6 according sanction to respondent No. 3 for transfer of agricultural lands of which respondent No. 3 became a deemed purchaser under section 18-A, to respondent No. 5 which is an industrial company, the impugned orders are also illegal and void ab initio;

25. Without prejudice to the preliminary objections, the learned Counsel for the respondents and particularly the learned Advocate General for the State of Goa have defended the legality and validity of the impugned Rule 6 of the Special Rules by submitting that the Special Rules are required to be read with the Goa Land Use (Regulation) Act, 1991.

26. Sections 2 and 3 of Goa Land use (Regulation) Act, 1991 read as under:

"2. Regulation of use of land.- Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), or in any plan or scheme made thereunder, or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act. 1964 (Act 7 of 1964) shall be used or allowed to be used for any purpose other than agricultural agriculture.

Explanation:- The expression "agriculture", "land" and "tenant" shall have the same meaning assigned to them under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964).

3. Exemption.- The provisions of this Act shall not apply to acquisition of any land vested in a tenant under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) by the State for a public purpose under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894).

(Emphasis supplied)

27. We find considerable substance in the submission of the learned Advocate General, that in view of the above legislation, though Mamlatdar may sanction under section 18-K of the Tenancy Act a sale transaction for sale of agricultural land deemed to have been purchased by a tiller under section 18-A of the Tenancy Act to a non- agriculturist, such land shall not be used or allowed to be used for any non-agricultural purpose. In view of this specific statutory restriction, the agricultural land will continue to remain agricultural land for all practical purposes. Therefore, there is no substance in the petitioner's case that the deemed purchaser of the agricultural land under section 18-A of the Tenancy Act will frustrate the object of Tenancy Act.

WERE IMPUGNED ORDERS PASSED BY MAMLATDAR WITHOUT JURISDICTION?

28. Though in the body of the petition the petitioner had made allegations that order dated 11 September 1996 purporting to amend the order dated 20 May 1996 is a patent fabrication, at the hearing, the learned Counsel for the petitioner did not raise any such contention but confined his arguments to the legal contention that the impugned orders passed by the Mamlatdar may be struck down as having been passed without jurisdiction. It is contended that the power to accord sanction conferred by sub-sections (a) to (h) of section 18-K of the Tenancy Act read with Rule 6 of the Special Rules is to be exercised only by such Mamlatdar who is specifically appointed by the Government to perform the duties of Mamlatdar under the Tenancy Act. Section 2(15) of the Tenancy Act reads as under:

"2. In this Act, unless there is anything repugnant to the subject or context -

(15) "Mamlatdar" means any person appointed by the Government to perform the duties of a Mamlatdar under this Act."

It is submitted that notification empowering Mamlatdars to exercise power under the Tenancy Act was issued only in the year 1996 vide notification dated 22 October 1996, which reads as under:

"Notification No. 1/1/96-RD(4536)

In exercise of the powers conferred by Clause (15) of section 2 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964), the Government of Goa is hereby pleased to appoint all the Mamlatdars in the State of Goa to perform the duties of Mamlatdar under the said Act, within their respective jurisdictions, with immediate effect.

By order and in the name of the Governor of Goa. Maria A. Rodrigues, Under Secretary (Revenue) to the Governor of Goa.

Panaji, 22nd October, 1996."

29. Strong reliance is placed by the learned Counsel for the petitioner on a decision of a learned Single Judge of this Court (Shri Ganesh Rama Gaonkar (since deceased) through his legal heirs v. Sudhakar D. Prabhu Dessai and others), Dated 27 September 2013 in Writ Petition Nos. 792 and 793 of 2009 in support of the contention that before issuance of notification dated 22 October 1996, the Mamlatdar of Marmgao Goa had no jurisdiction to perform the duties of Mamlatdar under Tenancy Act;

30. It is further submitted that whenever the State Government intended to confer jurisdiction on an officer to perform the duties of Mamlatdar for the Tenancy Act, specific notifications were issued, such as the notification dated 6 January, 1970 appointing all the Joint Mamlatdars in the Goa to perform the duties of Mamlatdars for the purposes of Tenancy Act within their respective jurisdictions.

31. The learned Advocate General as well as the learned Counsel for respondents

3, 3a and 5 have submitted that for performing the duties of Mamlatdar under the provisions of Chapter II-A of the Tenancy Act, there was no statutory requirement for issuance of a special notification empowering Mamlatdar to exercise powers and perform the duties of the Mamlatdar under the Tenancy Act in the area within his jurisdiction. A Mamlatdar is an officer of Revenue Department of the State entrusted with the administration and implementation of the revenue laws including the Goa Land Revenue Code and Goa Tenancy Act. Prior to 27 January 1965, the powers of revenue department were being exercised by the Administrators of what was known as "Concelhos". However, on 25 January 1965, the Government of Goa, Daman and Diu issued the following order:

"ORDER SD/RGN/DST/64

Consequent upon the creation of the post of Mamlatdars vide letter No. F.1.47/64-Goa, dated 21st December, 1964 of the Government of India, Ministry of Home Affairs and the posts of Mamlatdars in the following concelhos having been filled up with effect from the forenoon of 27th January, 1965, the post of Administrators of these Concelhos are hereby abolished, with effect from the same date:

- 1) Marmagoa;
- 2) Sanguem;
- 3) Satari;
- 4) Goa (Panjim).

By order and in the name of the Administrator of the Union Territory of Goa, Daman and Diu. K.B. hall, Under Secretary General Administration Department. Panjim, 25th January 1965."

Hence, posts of Mamlatdars in Goa were created by order dated 21 December 1964 by Government of India and the posts of Mamlatdars in Marmagoa and other areas were filled up with effect from 27 January 1965 as will be clear from the above order dated "25 January 1965. Hence, from 27 January 1965, the Mamlatdars of Marmagoa started exercising powers and performing the duties of implementing the provisions of various revenue laws in Marmagoa including the provisions of Goa Land Revenue Code and the Goa Tenancy Act;

32. Learned Advocate General and learned Counsel for other respondents have also referred to other contemporaneous legislations enacted by the same Legislature- The Goa, Daman and Diu Mamlatdar's Court Act, 1966 and the Protection of Rights of Tenants (Cashewnut and Arecanut Gardens) Order, 1965, which came to be substituted by the Act of 1971. These legislations and the statements of objects and reasons thereof refer to the powers of the Mamlatdar to decide tenancy matters under the Agricultural Tenancy Act.

33. Section 2(15) of the Tenancy Act proceeds on the basis that the powers and

duties of Mamlatdar for a concerned area under the Revenue Laws are to be exercised by the Mamlatdar of the concerned area and it is only when any person other than a Mamlatdar is to be vested with such powers and duties, that the Government of Goa is required to issue an order appointing such person to perform the duties of a Mamlatdar under the Tenancy Act. That is why a special order dated 23 September 1967 was issued by the Government of Goa and Aawal Karkoons were appointed to perform the duties of Mamlatdars under the Tenancy Act within the jurisdiction of their respective Talukas. Similarly, the Joint Mamlatdars were appointed by order dated 6 January 1970 (Annexure-P14, Page 280 of paper book) to perform the duties of Mamlatdars for the purposes of Tenancy Act;

34. It would be very strange and anomalous to hold that while the Aawal Karkoons and Joint Mamlatdars, lower in rank to that of Mamlatdar, could perform the duties of Mamlatdars for the purposes of Tenancy Act, the Mamlatdars themselves had no jurisdiction to perform the duties of Mamlatdars for the purposes of Tenancy Act. Reasonable construction is required to be placed on the provisions of section 15 of the Tenancy Act, otherwise it would create anomalous situation of depriving the Senior Officers of the rank of Mamlatdars of their powers and duties while allowing such powers to be exercised by officers junior to Mamlatdars. There is no dispute about the fact that Mamlatdar, Marmagoa was appointed by the Government from the inception of Tenancy Act to decide tenancy cases and in fact Mamlatdars of the concerned regions in Goa had decided thousands of tenancy cases in exercise of the powers under the Tenancy Act and performed the duties under the Tenancy Act even before 1996;

35. We, therefore, accept the submission of the learned Advocate General that Notification dated 22 October 1996 was issued only by way of abundant caution. Even between 1964 and 1996, thousands of orders were passed by Mamlatdars of Marmagoa and Mamlatdars of other regions of Goa in exercise of their powers and performance of their duties under the Tenancy Act. Even if the petitioner's contentions were to be accepted, "de facto doctrine" would be required to be applied, as held by the Supreme Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, and by a Full Bench decision of this Court in Shri Vijay @ Ambadas Dattatraya Pawar Vs. Ramappa Ambannappa Masare and Others, .

36. Learned Counsel for the petitioner would submit that the de facto doctrine would apply where the appointment was in fact made and only subsequently it was found that the appointment was illegal, but in the instant case, Mamlatdars were empowered to perform their duties under the Tenancy Act only from 22 October 1996.

37. The contention cannot be accepted. There is no dispute about the fact that Mamlatdars were appointed from 27 January 1965 and they had also exercised powers and performed the functions of Mamlatdars under the Tenancy Act. Hence, the de facto doctrine would certainly apply.

38. For the reasons aforesaid, the view taken by a learned Single Judge of this Court in the decision dated 27 September 2013 in Writ Petition No. 792/793 of 2009 does not commend to us.

39. In view of the above discussion, we do not find merit in any of the contentions urged on behalf of the petitioner. The petition is accordingly dismissed.