

(1994) 06 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 106 of 1989

Shri John Fernandes, since deceased, through legal
representatives and Another

APPELLANT

Vs

Joint Mamlatdar of Salcete, Margao, Goa and Others

RESPONDENT

Date of Decision : 08-06-1994

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 7, 8A

Citation : (1995) 1 BomCR 15 : (1994) 96 BOMLR 58

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

Bench : Single Bench

Advocate : S.S. Usgaonkar, for the Appellant;

Judgement

E.S. Da Silva, J.—This writ petition which challenges the judgment and order of the Administrative Tribunal dated 13th September, 1988, can be disposed of by a short judgement since the point involved is a clear point of law and has been already concluded by a recent judgement of a Division Bench of this Court.

2. The original late petitioner No. 1 was the son of late Joao Anthonio Fernandes who died in 1958. He was the owner of a paddy field and after his death he left as his heirs the late petitioner No. 1 and his brother Carlito Fernandes. Upon the death of Joao, inventory proceedings were instituted in 1959 wherein the said Carlito was appointed as "Cabeca de Casal" (Head of the estate). The paddy field was being cultivated by late Joao during his lifetime, but during the inventory proceedings, the same started being cultivated by Carlito as "Cabeca de Casal". The inventory proceedings were completed somewhere in December, 1980 and the paddy field was allotted to the late petitioner No.1 John. It seems that on 4.4.81 the respondent No. 4 made an application to the Mamlatdar under sections 7 and 8A of the Tenancy Act, praying that she be declared tenant in respect of the said paddy field and also sought an injunction against the petitioner No. 1. Upon hearing the said petitioner, the Joint Mamlatdar (respondent No.1) granted the injunction in favour of respondent No. 4 by order

dated 2nd June, 1981 on the ground that there was a threat on the part of the petitioner to dispossess the respondent No. 4. The petitioner then approached the Collector in appeal. The Deputy Collector by judgement dated 18th September, 1982 dismissed his appeal holding the respondent No. 4 as deemed tenant. A revision filed by the petitioner before the Administrative Tribunal did not also meet with success and the learned Tribunal by the impugned judgement and order dated 13th September, 1988, dismissed the petitioner's revision which fact has prompted the petitioner to approach this Court for redressal.

3. Shri S.S. Usgaonkar, learned Counsel for the petitioners, has submitted that it is settled position in law that a "Cabeca de Casal" cannot create any lease or tenancy in favour of third person during the pendency of the inventory proceedings.

4. The position as enunciated by Shri Usgaonkar is correct and deserves acceptance. Indeed a "Cabeca de Casal" as a trustee of the heirs of a deceased person administering the estate of the deceased in that capacity has only the right of administration of the assets of the estate and cannot by any stretch of imagination bind the said estate by an act of dispossession or alienation. Admittedly a lease for more than one year is an act of alienation and cannot be held as an act of administration. Being so the "Cabeca de Casal" cannot create a lease during the pendency of the inventory proceedings for a period of more than one year. If he does so the said lease is illegal and invalid. This point has been otherwise concluded by a recent judgement delivered by a Division Bench of this Court dated 3rd August, 1993, in Letters Patent Appeal No. 11/90 which was relied by the learned Counsel in the case of Smt. Motibai Sarvotham Pai Cano and Others Vs. Smt. Maria Elsa do Perpetuo Socorro Mota and Another, In this judgement the Court has relied upon two decisions being one of the High Court at Lisbon and the other of the Supreme Court of Justice of Portugal on the subject of creation of lease by the "Cabeca de Casal". The first decision is published in the Gazette of the Law Ministry 1947 Vol. 2 pg. 229. It was held therein that the "Cabeca de Casal" is the legal representative of the undivided estate and its manager. The management stands in force upto the end of the partition of the estate and inasmuch as the final decree of partition conveys properties to the co-heirs, the properties must be given free of any burden or encumbrance so that all the contracts of "Cabeca de Casal" cannot project their effects beyond the period of management. Similar is the view taken by the Supreme Court of Justice of Portugal in the other case published in Gazette of Law Ministry 1948 Vol.5 pg. 242.

5. In the result this petition is bound to succeed and is accordingly allowed. The judgement of the learned Administrative Tribunal dated 13th September, 1988, is hereby quashed and set aside and the order of injunction passed by the Joint Mamlatdar dated 2nd June, 1981 is accordingly vacated. Rule made absolute in the above terms with no order as to costs.

Rule made absolute.