

(2009) 12 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 553 of 2003

Smt. Ema Maria do Tomas Noronha de Menezes and
Domingos Euclides Menezes

APPELLANT

Vs

Jaime Alcantara Soares

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 2, 2(1A), 7, 7A

Citation : (2010) 2 ALLMR 754 : (2010) 2 BomCR 780

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : M.B. D" Costa and John A. Lobo, for the Appellant; S.G. Bhobe, for the Respondent

Judgement

R.M. Savant, J.—This Petition filed under Article 227 of the Constitution of India, takes exception to the Order dated 25.07.2003, passed by the learned Civil Judge, Senior Division, Panaji, by which Order, the issue No. 3 and the issues concerning tenancy which are framed by way of additional issues on 25.07.2003 have been referred to the Mamlatdar for adjudication.

2. The facts necessary for adjudication of the above Petition can be stated thus:

The Petitioners are the original Plaintiffs and claim to be owners of property known as "Cursacho Agor" or "Novo Agor", situated at Batim, Tiswadi, which is shown in the old cadastral one unit No. 144. The said property is shown in the new Survey under survey No. 71/1 and 72/4, having an area of 8,375 square metres. The said property was purchased by the Petitioners in Execution Application No. 62/92/D in which an auction was held.

3. After the Petitioners acquired right to the said property, the Petitioners resisted the Respondent from extracting salt and the Petitioners sought the possession of the property from the Respondent. The Respondent in response

claimed to have leased hold rights in respect of the said property and claimed that the lease was created by one of the co-owners namely Milena Menezes, sister of the Petitioner No. 2 and her paternal uncle. The Petitioners thereafter issued a notice on 17.12.1995 calling upon the Respondent to vacate the suit property. This they did after they had called upon the Respondent to vacate the suit property orally. In the said notice, the Petitioners asked the Respondent to handover vacant possession of the property and claimed an amount of Rs. 40,000/- as mesne profits per annum till delivery of possession. Since the Respondent did not comply with the notice issued by the Petitioners, this resulted in the Petitioners instituting Special Civil Suit No. 157/97, which was filed for a declaration, recovery of possession and mesne profits.

4. The Respondent filed written statement in the said suit. In the said written statement, the Respondent claimed that he was a tenant of the suit property and as such was protected by the Goa, Daman & Diu Agricultural Tenancy Act (for short, "Tenancy Act"), and also claimed all the benefits under the said Act. It was also averred in the said written statement that the Respondent personally cultivates paddy in the said suit property and has been doing so since the year 1963. It was further averred that the suit property was permanently leased to the father of the Respondent and the Respondent in the year 1963 by one Maria Filomena and one Elado i.e. the paternal uncle of the said Maria and the annual rent fixed was Rs. 400/- per year. The Respondent claimed that he has paid the said rent regularly till the year 1995 and that the Petitioners have refused to accept the rent from the year 1996 onwards inspite of the same being tendered to the Petitioners.

5. The Trial Court considering the pleadings on record on 15.04.1999, framed five issues. From the point of view of the present Petition, issue No. 3 is relevant and is re-produced herein under:

Issue No. 3 : Whether the defendant proves that the salt pan and the bund around come under the Agricultural Tenancy Act ?

The Trial Court thereafter on 25.07.2003, framed the additional issues which are as follows:

ADDITIONAL ISSUES

1. Whether the defendant proves that the defendant is a tenant of the suit property and is protected by the provisions of the GDD Agricultural Tenancy Act, 1964 ?

2. Whether the defendant proves that this Court lacks jurisdiction to entertain and try this suit under the said Agricultural Tenancy Act, 1964 ?

6. The Trial Court considering the provisions of the Goa Daman and Diu Agricultural Tenancy Act and in view of the issues framed, referred the said issues to the Mamlatdar by the impugned Order dated 25.07.2003. The Trial Court further directed the parties to supply their pleadings within eight days to

be sent along with the issues.

As indicated above, it is the said Order passed by the Trial Court which is impugned in the present Petition.

7. On behalf of the Petitioners, it is submitted by the learned Senior Counsel Shri D" Costa, that there was no justification for referring the said issue to the Mamlatdar in view of the fact that out of the said total area of 8,375 square metres, the Respondent is admittedly extracting salt in an area of 6200 square metres and since the dominant use of the land in question being used for extraction of salt and since extraction of salt cannot be called an agricultural activity, the reference to the Mamlatdar was not warranted. The learned Counsel to buttress the said submission, relied upon the revenue record in respect of the area of 6200 square metres and the area of 2172 square metres. The said revenue record indicates that in so far as the area of 6200 square metres is concerned, the entry is to the effect that salt is being extracted by the Respondent. The learned Senior Counsel in support of his submission that extraction of salt would not qualify as an agricultural activity, relied upon the Judgment of the Apex Court reported in *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, . Paragraph 26 and 27 of the said report elucidate the process carried out in respect of producing salt. The learned Senior Counsel submitted that considering the said process, the conversion of sea water into salt would not come within the definition of an agricultural activity as defined in Section 2(1A) and would also not come within the definition of cultivation u/s 2(b) of the Act. The learned Senior Counsel therefore submitted that the Trial Court has erred in referring the said issue to the Mamlatdar.

8. Per contra, it is submitted on behalf of the Respondent that in view of the pleadings which are on record and considering the provisions of Section 7 and 7-A of the Tenancy Act, the reference to the Mamlatdar was warranted. The learned Counsel for the Respondent submitted that the issue of dominant user of the said land etc. would not arise in this Petition but could arise only in the proceedings before the Mamlatdar where the Petitioner would be free to urge contentions in support of the said case which they are now seeking to advance. The learned Counsel further submitted relying upon the Judgment of the Apex Court reported in *Smt. Madhumati Atchut Parab Vs. Shri Rajaram v. Parab and Others*, . that the jurisdiction is of the Mamlatdar to decide the issues which have been framed by the Trial Court in respect of tenancy and the jurisdiction would also entail a negative declaration being given by the Mamlatdar.

9. Having heard the learned Counsel for the parties, in my view, the reference to the Mamlatdar made by the Trial Court of the issue No. 3 and the additional issues, which have been framed, cannot be faulted with. The contentions sought to be raised on behalf of the Petitioners in the instant Petition relying upon the Judgment of the Apex Court can be urged by the Petitioners before the Mamlatdar. Once the Trial Court is satisfied that the issues which it has framed are required to be referred to the Mamlatdar in view of the provisions of the

Tenancy Act, it would be for the said authority to determine the said issues as statutorily the jurisdiction is of the said authority. It is for the Petitioners to satisfy the said authority that the said property cannot come within the sweep of the Tenancy Act and that the activity carried on therein does not qualify as an agricultural activity or cultivation. As held by the Apex Court in the Judgments cited in *Madhumati Atchut Parab v. Rajaram v. Parab and Ors.* (supra) it is only the Mamlatdar who has the jurisdiction u/s 7 of the said Tenancy Act to decide the said issue which would entail giving a negative declaration also that the Respondent is not a tenant or the lands are not agricultural lands.

10. In that view of the matter, no interference is called for with the impugned Order dated 25.07.2003 passed by the Trial Court referring the said issues to the Mamlatdar. It would be open for the Petitioners to urge the contentions which have been urged in the present Petition before the Mamlatdar and the dismissal of the present Petition would not come in their way. The Mamlatdar is directed to decide the said issues on their own merits and in accordance with law. Since the suit filed is of the year 1997, in my view, it would be just and proper to direct the Mamlatdar to dispose of the said reference expeditiously and latest by 31.12.2010.

11. Petition to accordingly stand dismissed.

12. Rule discharged. No Order as to costs.