
(2012) 03 BOM CK 0217
In the Bombay High Court
Case No : Writ Petition No. 125 of 2011

Suresh Babani Gaonkar and Ors

APPELLANT

Vs

State of Goa and Ors

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 BOM CK 0217

Hon'ble Judges : U.V. Bakre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : V.M. Lawande, for the Appellant; V. Rodrigues, AGA, for respondent Nos. 1 and 2, Mr. A.F. Diniz for respondent No. 3, Ms. Sudha Pai Kir for respondent No. 4 and Mr. S. Usgaonkar for respondent No. 5., for the Respondent

Judgement

1. This petition under Article 226 of the Constitution of India seeks the following reliefs:

(a) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondent Nos. 1 and 2 to direct the respondent Nos. 3 to 5 Mining Companies to compensate the petitioners with immediate effect in terms of the calculations as assessed by the Government Department and the claims of the petitioners in respect of their paddy fields, which have been rendered unfit and useless for cultivation on account of the continuous mining activities of the respondent Mining Companies for the last six years till date and for payment of compensation every year;

OR

In the alternative to issue a writ commanding the respondent Nos. 1 and 2 to compensate the petitioners towards their claims and thereafter enforce the conditions of lease for indemnification against the mining companies;

(b) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Government authorities to

take effective measures to implement the directives of this Hon'ble Court passed in Writ Petition No. 77 of 2001 and also to take effective measures to see that after the assessment, compensation is fully granted to the petitioners/farmers/agriculturists, so affected;

It is submitted by Mr. Lavande appearing on behalf of the

eleven persons who are the petitioners before us, that they are residents of village Sirigao in Bicholim Taluka and are tenants in respect of the paddy fields by virtue of the Goa, Daman and Diu Agricultural Tenancy Act, 1964.

2. They do not dispute that the names of their ancestors/predecessors/fathers are duly incorporated in the Record of Rights in respect of the paddy fields.

3. Without entering into that aspect what we notice is that the petitioners claim to be cultivating these lands and the mining companies, namely, the private respondents before us, have on account of their mining activities rendered their fields and properties useless and unfit for cultivation.

4. The allegation is that the complaints made to the Authorities and the mining companies resulted in the mining companies agreeing to compensate the affected farmers and although we are not concerned with any other allegations, save and except, the prayers made and reproduced hereinabove, what is essentially projected is a grievance that the compensation amount has not been paid or received.

5. We had taken due note of the grievance in our order dated 26th

6. It is stated that the directions in this order and the arrangement carved out disposes of the main grievance. The petition was kept pending since a report of the inquiry which was stated to be in progress before the Mamlatdar, Bicholim was not placed on the record and file of this petition.

7. Now, Mamlatdar of Bicholim has placed the inquiry report in terms of the order and directions of this order and he has stated that the respondent-mining companies were depositing the compensation with the Tenant Association of which either the petitioners or their relatives, are members. The President of the Tenant Association was summoned to submit the relevant records and thereupon the compensation was determined in a joint meeting of the Tenant Association and the respondent-mining companies. The Mamlatdar states that each petitioners case was taken up independently by identifying the land and calculating the area and determining whether the compensation was paid or not. Therefore, it is prayed that the inquiries be concluded as the issue of compensation has been resolved.

8. That is also the stand of the mining companies and their learned counsel appearing before us stated that in terms of the arrangement with the Tenant Association and which has been in force for years together, the Tenant Association has been collecting the monies determined as compensation for

onward distribution and disbursement to the affected farmers. Our attention is invited by Mr. Diniz appearing for one of the mining companies to a statement and allegation in the writ petition and particularly at para 16, page 12, that the loss to the farmers has been computed at the rate specified in this paragraph and it is to the knowledge of the petitioner. Further, the petitioners are not disputing that they are claiming the properties/lands on the basis of the entries in the Record of Rights which also reflect the name of their ancestors. In such circumstances, it is prayed that any larger question or controversy cannot be determined in the limited jurisdiction of this Court. That would entail an inquiry into the disputed questions of fact which is impermissible in law. The petitioners may have to take recourse to the ordinary remedy provided by law and seek such amounts as they desire, by impleading all parties, including the Tenants' Association.

9. Mr. Lavande appearing for the petitioners would urge that there is no compliance with the order passed on 26th April 2011 and the inquiry by the Mamlatdar has been conducted not in a satisfactory manner and amount of compensation has been determined without any reasonable and proper basis. The petitioners would like to approach the Mamlatdar and seek a proper inquiry.

10. We are afraid, in writ jurisdiction, the quantum of compensation based on the entitlement of the petitioners to the lands, the extent of the damage caused, the nature of crops and the yield therefrom, the amount which is stated to be recovered for years after deducting all expenses as an income from the land, are all matters which would be necessary to be gone into. They cannot be gone into in our limited jurisdiction. Our directions issued on 26th April 2011 were indeed comprehensive and based on the agreed arrangement. However, since a grievance is made that the compensation amount which is offered or paid is not reasonable and the petitioners are desirous of approaching the Mamlatdar once again, we indicated to Mr. Lavande that the amount which is deposited or would be deposited thereafter, be withdrawn by the petitioners under protest and without prejudice to their rights and contentions to seek a fresh or fair and proper inquiry by making the necessary application to the Mamlatdar and if that course is agreeable, the Court may dispose off the petition by granting necessary liberty and protection to the parties.

11. Mr. Lavande states that if the course suggested is kept open, he has no objection to the petition being disposed off and the petitioners would be satisfied if the amounts are deposited with the Mamlatdar. The petitioners would appear before the Mamlatdar and after proper identification and providing the requisite details, withdraw the amounts, but, such withdrawal will not preclude them from raising appropriate contentions and that would be without prejudice to their rights and pleas including to seek fresh inquiry or approach a competent Civil Court. After hearing the parties at length, we are of the opinion that this writ petition can be disposed off with a direction to the respondents to deposit the amounts determined as compensation/damages on account of mining activities

and the amount shall be deposited with the Mamlatdar, Bicholim, who upon the petitioners making the appropriate application and identifying themselves, shall disburse the said amount in their favour. However, such disbursement would be without prejudice to the rights and contentions of the petitioners to seek such inquiry as is permissible in law by the Mamlatdar or other competent Authority and if that application is made, the Mamlatdar to consider it and pass appropriate orders thereon uninfluenced by the fact that the petitioners have approached him and withdrawn the amount deposited with him. At such inquiry, the Mamlatdar shall hear not only the mining companies, but, the Tenants' Association whose details should be made available to him from the records maintained by the mining companies. After all this compliance, the Mamlatdar should pass a reasoned order on the application made by the petitioners. Needless to state that the petitioners are not precluded from approaching the competent Civil Court either during the pendency of the inquiry or otherwise and seek compensation for the losses caused not only by the activities of the mining companies, but, those of the Tenants' Association or their office bearers. Such course is always open and we do not wish to make any comment in relation to the petitioners' right in approaching competent Civil Court. We have no doubt in our mind that this competent Civil Court, if approached, will duly consider the request of the petitioners for exemption in payment of Court fees on account of the financial condition of the petitioners and if necessary and satisfied, the Civil Court will issue requisite directions exempting them from payment of Court fees. By this order, we do not indicate that in the proceedings before the Mamlatdar or before the Civil Court, it would not be open for the mining companies or the other respondents to raise appropriate pleas including on the issue of jurisdiction, maintainability and merits of such case as may be raised by the petitioners. We have disposed of this writ petition in the light of the grievance in relation to the damages that are sought and the compensation that is prayed for loss of income. However, our order should not in any manner be seen as preventing the petitioners either in this writ petition or Writ Petition No. 77 of 2001 from seeking such reliefs as are permissible in law. The orders and directions issued today are in relation to the amounts which are stated to be deposited and lying with the Mamlatdar or Zonal Agricultural Officer. It is only then, the petitioners can make a request to him for withdrawal of the amounts without prejudice to the rights and contentions of the parties. Equally, we record the statement of the mining companies that they will deposit the amounts hereafter determined by them as compensation for the years 2011 onwards with the Mamlatdar in terms of the directions and orders in this writ petition. The petition is disposed off in the above terms. No costs.