

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 523 OF 2024**

Maria Fatima Ditosa Josefa Rodrigues & anr. .... Petitioners

*V e r s u s*

The State of Goa, Thr. The Chief Secretary & 3 ..... Respondents  
Ors.

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**Mr. A. F. Diniz, Senior Advocate** *with Ms. Fawia Mesquitta,*  
*Advocate for the Petitioners.*

**Mr. S. P. Munj, Additional Government Advocate** *for the*  
*Respondent Nos. 1 to 5.*

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**CORAM:        M. S. KARNIK &**  
**VALMIKI MENEZES, JJ.**

**DATE :    20<sup>th</sup> AUGUST 2024**

**ORAL ORDER** *(Per M. S. Karnik, J.)*

1.        Heard Mr. Diniz, learned Senior Advocate for the petitioners  
and Mr. Munj, learned Additional Government Advocate for the  
respondent nos. 1 to 3.

2.        On 29.11.2001, the petitioners made an application to the  
President of Comunidade of Quelossim, Quelossim, Goa, for grant of

Posse Difinitiva of Comunidade land at Quelossim Goa. The application reads thus:

“Andrew Francisco  
Rodrigues  
House No. 651, Alto  
Chicalim.  
Near Police Quaters,  
P. O. Box No. 60,  
VASCO DA GAMA GOA  
29/11/2001

The President  
Comunidade of Quelossim  
Quelossim Goa

Dear Sir,

Sub: Grant of Posse Difinitiva of  
Comunidade land at Quelossim Goa.

I have been granted Aforamento of Communiade land admeasuring 30,000 square metres situated at Quelossim Goa. Posse Provisional was granted to me under File No. 88/59. I have been paying "FORO" till 1999. A copy of the receipt of foro is submitted herewith for your ready référence and record

I applied for Posse Definitiva and the Honorable Administrator Comunidades has been pleased to grant my request.

In the circumstances, I request you to grant me Posse Difinitiva at the earliest.

Kindly let me know the date and time as also the amount of money, if any, to be paid by me.

Thanking you,

Yours faithfully

(Andrew Francisco Rodrigues)

CC : The Administrator of Comunidades, Margao, Goa.”

3. Thus, there does not appear to be any dispute that the petitioner was granted Posse provisional and that the petitioner has paid the 'Forro' as required from time to time. The Petitioner had applied for Posse Difinitiva and the application records that the Administrator Comunidades has granted such request. Under such circumstances, a request was made by the petitioners on 29.11.2001 for grant of Posse Difinitiva at the earliest. A copy of the application was marked to the Administrator of Comunidades, Margao, Goa. Such application for Posse Difinitiva was required to be considered by the Administrator of the Comunidades and the Collector, South Goa.

4. Learned Additional Government Advocate submitted that as the application dates back on 29.11.2001, the application may not be available with the Collector, South Goa.

5. The petitioner is in possession of the land in question. There have been some subsequent events pursuant to the filing of the application which needs a mention. The petitioners filed a Regular Civil Suit no. 93/2002/D before the Civil Judge, Junior Division, Vasco

Da Gama. The following issues were framed in the suit and the findings thereon are rendered thus :

<b>Sr. No.</b>	<b>Issues</b>	<b>Findings</b>
1	Does Plaintiff prove that he is owner in possession of Aforamento of Comunidade land admeasuring 30,000 square metres?	Negative
2	Is Plaintiff's suit within limitation?	Negative
3	What relief? What Order?	As per Final Order

<b>Sr. No.</b>	<b>Additional Issues</b>	<b>Findings</b>
1	Whether the Plaintiff proves that he is in possession of 30,000 square metres of portion of Lote No. 85 belonging to the Comunidade of Quelossim by virtue of public auction dated 24.03.1960 and by virtue of N.O.C. granted in his favour in the year 1967?	Negative
2	Whether the Plaintiff proves that he is entitled for declaration in his favour declaring himself as owner in possession of the property Aforamento of Comunidade land admeasuring 30,000 square metres situated at Quelossim, Goa?	Negative
3	Whether the Defendant proves that by Article of "Posse Provisoria" (Provisional Possession) held on 06.05.1977 the Plaintiff was put into possession of 20,000 square metres and not 30,000 square	Affirmative

metres?

- |   |   |                    |
|---|---|--------------------|
| 4 | Whether the Defendant proves that the suit is barred by limitation?                             | Affirmative        |
| 5 | Whether the Defendant proves that the suit is undervalued as such the same is not maintainable? | Affirmative        |
| 6 | What relief ?   | As per final Order |

6. The suit came to be dismissed on 30.06.2011 also on the finding that the same was not within limitation.

7. Learned Senior Advocate for the petitioners, on instructions, accepts that the petitioner was put in possession of 20000 square metres of land and not 30000 square metres. The question is whether the findings of this suit will come in the way of the Collector while considering the application which was made as far back as in 2001.

8. In this context, we need to look at the provisions of Article 338 of the Code of Comunidades. Article 338 of the Code of Comunidades, reads thus :

“Article 338 – The provisional delivery of the land granted, as emphyteusis, cannot be considered in legal relations between the comunidade and the lease holder, as this is an optional act of mere tolerance, and only the definitive possession confers to the emphyteuta the rights that the civil law recognize and assure him. He, meanwhile, can

make use of the possessory actions and of the other conservatory means against the third parties.”

9. A reading of Article 338 indicates that only the definitive possession confers to the emphyteuta the rights that the civil law recognizes and assure him. He, meanwhile, can make use of the possessory actions and of the other conservatory means against the third parties.

10. In the light of Article 338, we find that the civil suit was for declaration of title any way could not be maintained as the application for grant of Posse Definitiva was yet to be decided. There is nothing to indicate that there was a cloud on the petitioners’ provisional possession or the Administrator of Comunidades having commented adversely as regard the provisional possession. In our opinion, the findings in the civil suit will not come in the way of the petitioners for the purpose of considering the application made for Posse Definitiva in his name.

11. In such view of the matter, the application, which is at page 87 of the paper-book, be considered by the Administrator of Comunidades and the Collector, South Goa on its own merits and in accordance with law.

12. The application be decided as expeditiously as possible and preferably within a period of six months from the date when this order is placed on record of the Administrator of Comunidades and the Collector, South Goa.

13. Writ Petition is allowed in the above terms. No costs.

**VALMIKI MENEZES, J.**

**M. S. KARNIK, J.**