

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.498 OF 2019

**PLACIDO NAZARENO
RODRIGUES AND ANR.**PETITIONERS

Versus

**DULGEM JOSE FERNANDES @
DURGA JOSE FERNANDES (DEC)
THR. HER LRS. AND 2 ORS.**RESPONDENTS

Ms Laxmi Sawant, Advocate for the Petitioners.

Mr Vasudev Shirodkar, Advocate for Respondent Nos.1(a) to 1(h),
1(iii), 1(iv) and 1(vi).

CORAM: M. S. SONAK, J.

DATE : 28th MARCH 2024

ORAL ORDER :

- 1.** Heard Ms Laxmi Sawant for the petitioners and Mr Vasudev Shirodkar for respondent nos.1(a) to 1(h), 1(iii), 1(iv) and 1(vi).

- 2.** The main dispute between the parties is whether Dulgem Jose Fernandes was the agricultural tenant of the suit property or not. A suit was filed in which this dispute was raised. Dulgem filed applications under Section 7 read with Section 4 and 8A of the Agricultural Tenancy Act. These applications were being considered by the Mamlatdar and Joint Mamlatdar, respectively, although both these applications should

have been consolidated and heard by the same Mamlatdar or the Joint Mamlatdar as the case may be.

3. During the pendency of these proceedings, there have been some litigations on the issue of temporary orders. Apart from that, after the landlord Paixao Rodrigues expired, an application was made to bring his heirs on record. It was pointed out that the heirs were already on record but only necessary amendment had to be carried out to the cause title. On behalf of the legal representatives of Paixao Rodrigues, an application was filed to dismiss the application under Section 8A as abated. This was accepted by the Joint Mamlatdar and the application under Section 8A was dismissed by order dated 09.12.2010.

4. Dulgem or her legal representatives appealed to the Deputy Collector. In this appeal, the legal representatives of the landlord raised a preliminary objection and contended that this objection should be decided before the appeal could be taken up on merits. The Deputy Collector, by his order dated 23.12.2011, only held that the preliminary objection would be considered along with the main matter on merits.

5. As against the order dated 23.12.2011, legal representatives of the landlord Paixiao instituted Tenancy Appeal No.2/2012 before the Tribunal. The Tribunal, by order dated 18.02.2019, declined to condone the delay in bringing on record the legal representatives of one Ganga Kunkolkar - respondent no.1(v), who in turn was the legal heir of Dulgem.

6. This petition had therefore assailed the Tribunal's order dated 18.02.2019.

7. In so far as the application under Section 7 read with Section 4 of the Agricultural Tenancy Act is concerned, the legal representatives of Paixao Rodrigues objected to the jurisdiction of the Mamlatdar on the ground that the issue had to be decided by the Civil Court in Regular Civil Suit No.302/1988/A. This application was dismissed by the Mamlatdar on 04.01.1999. However, the Deputy Collector allowed the revision application and directed that the proceedings before the Mamlatdar should remain stayed until such issue is decided by the Civil Court in Regular Civil Suit No.302/1988/A,

8. The Deputy Collector's order dated 06.06.2001 was challenged by Dulgem or her legal representatives before the Administrative Tribunal in Tenancy Revision Application No.121/2002. The Tribunal dismissed this Revision Application by order dated 08.04.2011 by holding that the same had become infructuous in view of the Joint Mamlatdar's order dated 09.12.2010.

9. As a result, the adjudication on the main issue as to whether Dulgem was an agricultural tenant or not seems to have been postponed indefinitely. The parties have been litigating over issues of abatement, stay of proceedings, preliminary issues, etc. for all these years. In the meanwhile, the Civil Court has also disposed of Regular Civil Suit No.302/1988/A by holding that it has no jurisdiction and further all

issues have to be decided by the Mamlatdar given the provisions of Section 58 of the Agricultural Tenancy Act.

10. Considering the above circumstances, this Court felt that it would be in the interest of justice if the Mamlatdar or the Joint Mamlatdar determined once and for all the main dispute between the parties, i.e., whether Dulgem was an agricultural tenant in respect of the suit property or not.

11. In such matters, it is always better if the parties sort out the matter on merits rather than spend so much time on issues like abatement, stay and other procedural wrangles. This is a classic case of whether, on account of all such procedural wrangles raised by both sides against each other, for all these years, there has been no adjudication on the main issue of whether Dulgem was an agricultural tenant of the suit property or not. Such a situation benefits neither party. Still, possibly based on advice, the litigation continues before several fora and for several years. This is a matter where Mamlatdar, Deputy Collector, Tribunals and this Court have spent time not deciding the merits but deciding issues of abatement, stay, preliminary objections, etc.

12. Accordingly, this Court put it to the learned Counsel for the parties whether they would agree to the application under Section 7 read with Section 4 and 8A being consolidated and disposed of by the same Mamlatdar or Joint Mamlatdar, as the case may be, within some time-bound period.

13. After this matter was argued for some time, the learned Counsel for the parties, based on instructions from the parties whom they represent, submit that the following agreed order can dispose of this petition without recording any reasons for such disposal:-

- (a) *The Tribunal's order dated 08.04.2011 in Tenancy Revision Application No.121/2002 is hereby set aside;*
- (b) *The Joint Mamlatdar's order dated 09.12.2010 in case no.TNC/38/1994 declaring the proceedings abated is hereby set aside. The applicants before the Mamlatdar are now permitted to bring on record the legal representatives of the original landlord, Mr Paixao Rodrigues, within eight weeks from today;*
- (c) *Tenancy Case No.TNC/38/1994 (under Section 8A of the Tenancy Act) and TNC/21/1995 (under Section 7 read with Section 4 of the Tenancy Act) are ordered to be consolidated. Both these matters must be heard and disposed of by the same Mamlatdar or the Joint Mamlatdar as the case may be.*
- (d) *The proceedings before the Deputy Collector in Case No.TNC/DYCL/APPL/06/2011 are hereby disposed of because the order dated 09.12.2010, which was challenged in these proceedings, is now set aside.*
- (e) *The proceedings before the Administrative Tribunal in Tenancy Appeal No.2/2012 are also disposed of now that the Tribunal's order dated 18.02.2019 is set aside and further, even case no.TNC/DYCL/APPL/06/2011, in which the Deputy Collector had made his order dated 23.12.2011, is disposed of.*

14. The Mamlatdar must dispose of Tenancy Case No.TNC/38/1994 (under Section 8A of the Tenancy Act) and TNC/21/1995 (under Section 7 read with Section 4 of the Tenancy Act) jointly on merits and in accordance with the law by 30 July 2025 at the latest. The parties must cooperate with the Mamlatdar to expedite the disposal by not seeking unnecessary adjournments or otherwise avoiding adjudication on the merits.

15. It is clarified that this Court has not even remotely gone into the merits and demerits of the rival contentions, whether Dulgem and, after her, her legal representatives are indeed the tenants of the suit property or not. These matters will have to be decided by the Mamlatdar based on the evidence led by the parties and the law as applicable. Therefore, all contentions of all parties are left open to be decided by the Mamlatdar.

16. The parties or their Advocates must appear before the principal Mamlatdar on 10.04.2024 at 10.00 am. This Court understands that the Mamlatdar may be unable to take up the matter because of elections. But the Mamlatdar should allow the parties to amend the cause title and otherwise bring the heirs on record. After that, the Mamlatdar will fix a suitable date in June 2024. The Mamlatdar must dispose of the above proceedings by 30 June 2025 at the latest.

17. Apart from the Parties consenting, I must record that there were sufficient grounds to set aside the Tribunal's impugned order declining to condone delay in bringing heirs on record. Also, there was no

justification for the Joint Mamlatdar holding that case no.TNC/38/1994 stood abated.

18. From the chequered history of this litigation, it was evident that both parties focused excessively on technicalities and hypertechnicalities instead of the merits. All kinds of objections were raised from either side, perhaps not even realising they were beneficial to neither in the long run. The Courts and Tribunals also perhaps felt it expedient to dispose of matters on technicalities because disposal on merits requires greater effort. As a result, one primary proceeding spiralled into several proceedings and that too, before several fora.

19. The interests of neither party nor justice would be served by merely setting aside the impugned order and reviving an equally unjust position. Substantial justice to both the parties and the system required setting aside the above orders so that the bottlenecks created by the parties for themselves are cleared and the parties and Courts are able to focus on the main dispute pending since 1994-95.

20. For all the above reasons, a case was made out to exercise the extraordinary jurisdiction under Article 227 of the Constitution so that the parties contest on the crux of the matter rather than spend their time and also the valuable time of the various Courts, etc., squabbling over pointless technicalities having no serious nexus with the merits of the matters.

- 21.** Accordingly, this petition is disposed of based on the above-agreed order, made by invoking Article 227 of the Constitution.
- 22.** All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

NITI KISHOR HALDANKAR  Digitally signed by NITI KISHOR
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