



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 859 OF 2023

Mr. Manuel Philip Mascarenhas, 60 years of age, Son of Mr. Philip Mascarenhas, Resident of House no. 251, Gauliwada, Netravali, Taluka Sanguem, South Goa, Goa ... Petitioner.

Versus

- 1 The District Level Committee Under the Scheduled Tribes and Other Traditional forest Dwellers (Recognition of Forest Rights) Act, 2006, through its Chairman /Collector, South Goa District, Margao Goa.
- 2 The Goa Forest Development Corporation Ltd., A Government of Goa Undertaking, Through its Managing Director, Having office of 1 lift, 3rd floor, Junta House, Panaji, Goa.
- 3 The Range Forest Officer, Goa Forest Development Corporation, Quepem, Goa. ...Respondents

Mr A. D. Bhobe and Ms S. Shaikh, Advocate for the petitioner.
Mr S. Samant, Addl. Govt. Advocate for respondent no.1.
Ms M. Correia, Addl. Govt. Advocate for respondent nos. 2 and 3.

WITH
WRIT PETITION NO. 861 OF 2023

Thomas Antao, 66 years of age, Son of Inacio Antao, Resident of House no. 45, Gauliwada, Netravali, Taluka Sanguem, South Goa, Goa. ... Petitioner.

Versus

1. The District Level Committee Under the Scheduled Tribes and Other Traditional forest Dwellers (Recognition of Forest Rights) Act, 2006, through its Chairman /Collector, South Goa District, Margao Goa.
2. The Goa Forest Development Corporation Ltd., A Government of Goa Undertaking, Through its Managing Director, Having office of 1 lift, 3rd floor, Junta House, Panaji, Goa.
3. The Range Forest Officer, Goa Forest Development Corporation, Quepem, Goa.

...Respondents

Mr A. D. Bhohe and Ms S. Shaikh, Advocate for the petitioner.
Mr P. Faldessai, Addl. Govt. Advocate for respondent no.1.
Ms M. Correia, Addl. Govt. Advocate for respondent nos. 2 and 3.

**WITH
WRIT PETITION NO. 862 OF 2023**

Mr. Prakash Sonu Gavali, 59 years of age,
Son of Sonu Gavali, Resident of House
no. 40, Gauliwada, Netravali, Taluka
Sanguem, South Goa, Goa.

... Petitioner.

VERSUS

1. The District Level Committee Under the Scheduled Tribes and Other Traditional forest Dwellers (Recognition of Forest Rights) Act, 2006, through its Chairman /Collector, South Goa District,

Margao Goa.

2. The Goa Forest Development Corporation Ltd., A Government of Goa Undertaking, Through its Managing Director, Having office of 1 lift, 3rd floor, Junta House, Panaji, Goa.
3. The Range Forest Officer, Goa Forest Development Corporation, Quepem, Goa. ...Respondents

Mr A. D. Bhobe and Ms S. Shaikh, Advocate for the petitioner.
Mr S. P. Munj, Addl. Govt. Advocate for respondent no.1.
Ms M. Correia, Addl. Govt. Advocate for respondent nos. 2 and 3.

CORAM: B. P. DESHPANDE, J
DATED: 5th July 2024

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Matters are taken up for final disposal at the admission stage with consent.
2. Heard Mr Bhobe, learned counsel for the petitioner, Ms Maria Correia, learned Addl. Govt Advocate for respondent nos. 2 and 3 and learned Addl. Govt. Advocate for respondent no.1.
3. In all these petitions, petitioners filed their claim in the year 2016 itself claiming that they are entitled to the land as per Forest Right Act, 2006 and Rules framed thereunder. Their applications

were routed through village panchayat and thereafter Sub Divisional Level Committee and finally it was placed before the District Level Committee. In between, a spot verification report was carried out. Matter was posted for hearing on 5.8.2022, however Sub Divisional Level Committee produced one documents stating that the area claimed by the petitioner is already leased out to Goa Forest Development Corporation from the year 1974-77 and said Corporation is in possession of the land as well as trees i.e cashew trees and rubber plantation. District Level Committee disposed of said applications filed by the petitioners without giving them further opportunity to counter such a document.

4. Mr Bhobe appearing for the petitioners would submit that document produced on record shows that lease was executed in the year 1997 in favour of the Corporation and not in the year 1974 as claimed. He submits that the document was not furnished to the petitioners prior to the date of hearing and no opportunity was given to them to either counter such document or to produce further evidence. He therefore submits that findings based only on such document are perverse and hit by principles of natural justice. Mr Bhobe would submit that this is a fit case for remand to the concerned authority as inquiry was not conducted as required under the Rules.

5. Ms Correia, learned Addl. Govt. Advocate for respondent nos. 2 and 3 would submit that though applications were filed by the petitioners in the year 2016 Sub Divisional Level Committee did not recommend allotment of such land to the petitioners. She would submit that since sufficient opportunity was given to the petitioners to produce their document and impugned order also clearly show that their claim was rejected on other grounds and not only on the ground that the document produced by Sub Committee showing the lease granted in favour of the Corporation. She would submit that the inquiry was properly conducted and no interference is warranted.

6. Rival contentions fall for determination.

7. Claim of the petitioners is that in view of the specific provisions under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 they are entitled to hold land. Section 6 deals with Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof. It provides that the Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under said Act by receiving claims, consolidating and verifying them and preparing a

map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

8. Provisions of Section 6 further show that the State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

9. In the present matter applications filed by the petitioners were supported by the resolution passed by Gram Sabha and thereafter the same were routed through Sub-Divisional Level Committee, to the District Level Committee.

10. Rules 2008 framed by the Central Government clearly show that there is specific procedure which is required to be followed for the purpose of conducting inquiry including Gram Sabha, Sub Divisional Level Committee and the District Level Committee. Rule 12 A deals with process of recognition of rights wherein Sub Rule 11 provides that the Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in Rule 13

while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.

11. Rule 13 deals with Evidence for determination of forest rights which reads thus:-

“(1) The evidence for recognition and vesting of forest rights shall, inter alia , include-

(a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;

(b)Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;

(c)physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;

(d)quasi-judicial and judicial records including Court orders and judgments;

(e)research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law by reputed institutions, such as Anthropological Survey

of India;

(f)any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;

(g)traditional structures establishing antiquity such as wells, burial grounds, sacred places;

(h)genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;

(i)statement of elders other than claimants, reduced in writing.

(2)An evidence for Community Forest Rights shall, inter alia , include--

(a)community rights such as nistar by whatever name called;

(b)traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories or herbal practitioners;

(c)remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds.

(3)The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the abovementioned evidences in determining the forest rights.”

12. Impugned order clearly goes to show that the report of the Gram Sabha was in favour of the claim wherein the Sub Divisional Level Committee did not recommend the claim of the petitioners with regard to plot since it belongs to Goa Forest Development Corporation. Order further shows that as per directions of the Apex Court in Writ Petition No.108/2008 to grant personal hearing to the claimant, petitioners were called upon to remain present on 5.8.2022 at 3.30p.m with directions to produce/evidence to prove their cultivation in the claimed area.

13. The impugned order as well as record further shows that when the petitioners appeared before the District Level Committee on 5.8.2022, they were explained that as per the report of Sub Divisional Level Committee, cultivation claimed by them was in the area of plantation raised by the Goa Forest Development Corporation from the year 1974-77. The District Level Committee directed the Corporation to produce documentary evidence on record to prove their cultivation. Accordingly, Corporation produced a copy of the lease agreement on 5.8.2022 itself vide their order dated 4.8.2022.

14. Order impugned nowhere shows that copy of the such lease deed produced by the Corporation on 5.8.2022 was handed over to the petitioners or any opportunity was given to them to obtain their say on the said document.

15. The impugned order further shows that though the petitioners were called on 5.8.2022, in fact no hearing/opportunity was given to them as directed by the Apex Court. They were only told that the area claimed by them is in fact part and parcel of the area leased out to the Corporation. Thus, it is clear from the impugned order that the District Level Committee failed to give an effective hearing to the petitioners as directed by the Apex Court and thereafter the order was passed rejecting their claim.

16. A committee was duty bound to give an effective hearing to the petitioners. Producing a document on 5.8.2022 itself and thereafter passing an order cannot be considered as giving an opportunity of hearing to the petitioners. On this count alone impugned order needs to be quashed and set aside. Matter needs to be remanded to the District Level Committee to comply effectively with the directions of the Apex Court of giving personal hearing to the petitioners to produce document/evidence to prove their cultivation and as provided in Rule 13 as quoted above.

17. Impugned order dated 27.10.2022 is therefore quashed and set aside. Claim raised by the petitioners is restored before the District Level Committee with direction to give hearing to the petitioners to produce their evidence and then to decide it afresh in accordance with law, in a time bound manner.

18. Committee shall give an opportunity to the petitioners and to conclude the proceedings preferably within a period of three months by giving personal hearing to the petitioners.

19. Rule is made absolute in the above terms.

20. Petitions stand disposed of accordingly.

B. P. DESHPANDE, J