



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.194 OF 2024**

Cummunidade of Tivim, Tivim, Bardez-Goa. Through its Attorney, Mr. James D'Souza, Son of Shri. Joseph D'Souza, Aged about 44 years, Indian National and R/at H. No. 520, Compremwado, Tivim, Bardez, Goa-403502. Petitioner.

Versus

- 1 State of Goa,
Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Bardez, Goa.
- 2 Administrator of Communidades
North Zone, Having office at
Mapusa, Bardez, Goa.
- 3 Mr. Bicu Narayan Vaigankar,
Aged 68 years, bachelor,
agriculturist,
- 4 Mr. Vithal Narayan Vaigankar,
Aged 56 years, married,
agriculturist,
- 5 Mrs. Anita Vithal Vaigankar,
Aged 53 years, married,
housewife, All r/o H. No. 4,
Galvan, Damedem, Tivim,
Bardez, Goa.
- 6 Mrs. Laxmi Narayan Malji, Aged
59 years, married, housewife.
- 7 Mr. Narayan Rajaram Malji,
Aged 67 years, married,

businessman, Both resident of H.
No. 6/2, Galvan, Damedem,
Tivim, Bardez, Goa.

- 8 Mrs. Manisha Manohar Surlekar,
Aged 61 years, married,
housewife,
- 9 Mr. Manohar Vithal Surlekar,
Aged 61 years, married, Both
resident of H. No. 190/S-4,
Central Horta, Talaulim,
Navelim, Salcete, Goa.
- 10 Mrs. Pramila Satish Kauthankar,
Aged 45 years, married,
housewife,
- 11 Mr. Satish Digambar
Kauthankar, Aged 48 years,
married, Both resident of H. No.
1176, Volconem, Tivim, Bardez,
Goa.
All represented by their Power of
Attorney Holder
Mr. Bicu Narayan Vaigankar, the
Respondent No. (3) hereinabove,
Major, bachelor, Resident of
Galwan, Thivim, Bardez, Goa.Respondents.

Mr. S. S.Kantak, Senior Advocate with Mr D. Gaonkar, Ms S. Dessai, Advocate for the petitioner.

Mr S. P. Munj, Additional Government Advocate for respondent nos.1 and 2.

Mr A. R. Kantak, Advocate for respondent nos. 3, 4 and 5.

Mr A. D. Bhobe and Ms S. Shaikh, Advocate for respondent nos. 6, 8, 10 and 11.

CORAM:

BHARAT P. DESHPANDE, J

Reserved on :

11th July 2024

Pronounced on:

6th August, 2024

JUDGMENT

1. Heard Mr S. S. Kantak, learned Senior Counsel along with Mr D. Gaonkar, learned counsel for the petitioner, Mr A. R. Kantak, learned counsel for respondent nos. 3, 4 and 5, Mr A. D. Bhobe, learned counsel for the respondent nos. 6, 8, 10 and 11 and Mr S. P. Munj, learned Addl. Govt. Advocate for respondent nos. 1 and 2.
2. Rule. Rule is made returnable forthwith. Matter is taken up for final disposal at the admission stage with consent.
3. Petitioner/Comunidade of Tivim being aggrieved by order passed by the Administrative Tribunal dated 13.4.2023, preferred the present petition.
4. By the impugned order, learned Administrative Tribunal refused to grant permission to Comunidade and private respondents to compromise proceedings filed under Goa Agricultural Tenancy Act 1964.
5. Mr Kantak would submit that resolution was passed by the petitioner's General Body meeting that matter pending between Comunidade and the respondents need to be disposed of by filing consent terms. However, since Code of Comunidades and more

particularly Article 154(3) requires permission of the Administrative Tribunal, an application was filed for grant of permission to compromise proceedings. Respondents also agreed to decide the said proceedings by filing consent terms. However, learned Administrative Tribunal rejected such prayer by misdirecting itself and failing to consider the best interest of the Comunidade.

6. Mr Kantak disclosed that terms of compromise clearly goes to show that it will be benefiting the Comunidade as it will retain 40% of the land for its own use whereas the remaining 60% will be considered as the land belonging to the respondents.

7. Mr Kantak would further submit that even the Administrator of Comunidade agreed for such compromise terms and recommended that the matter could be compromised.

8. Mr Kantak would further submit that respondents filed proceedings before the learned Magistrate under Agricultural Tenancy Act wherein ex parte order was passed thereby declaring the respondents as tenants of the property mentioned therein. Comunidade then decided to challenge such order and accordingly, an appeal is filed before the Appellate Court. However, General Body of the Comunidade discussed the issue and opined that for the best interest of the Comunidade to file consent terms thereby agreeing to

give up to 60% land and to retain 40% with it. Such a proposal of the Comunidade was then put before the respondents who immediately agreed and accordingly the matter was referred to the Administrator. The Administrator of Comunidade by giving his consent, referred the matter to the Administrative Tribunal for grant of permission under Article 154(3) of the Code of Comunidades.

9. Mr Kantak would submit that terms discussed and agreed between the parties would clearly suggest that Comunidade will be benefited if such consent terms are agreed and permitted or otherwise entire land will be considered as tenanted land and will have to be allotted to the respondents.

10. Mr Kantak while arguing the matter, would submit that decision of the Administrative Tribunal ought to have been exercised looking to the best interest of the Comunidade as agreed terms would clearly go to show that Comunidade is going to retain 40% of the land in question. He submits that the learned Administrative Tribunal failed to consider this aspect only on the ground that terms disclose exclusive free right from any tenancy claim, being against the provisions of the tenancy Act. He submits that unless rights are given to the parties, the question of making it as a free hold land would be difficult.

11. Mr A. R. Kantak and Mr A. D. Bhobe appearing for the private respondents supported the contentions of Mr Kantak, learned Senior Counsel for the petitioner.

12. Mr Munj, learned Addl. Govt. Advocate appearing on behalf of the State while opposing such prayer and supporting the contentions and observations in the impugned order would submit that procedure which has been adopted by Comunidade along with private respondents would be clearly against the provisions of Agricultural Tenancy Act. He would submit that the claim of tenancy of private respondents was already decided by Court of law and therefore, such private respondents are now the tenants/deemed owner of the said property. He further submits that by filing consent terms, parties are trying to quash and set aside the order of tenancy Court and instead of it are trying to give free hold right to the private respondents to be used for any purpose. He submits that when a tenanted land is considered for the purpose of deciding whether a party is a tenant, it cannot be used for any other purpose. He would further submit that Comunidade by retraining 40% of the land is trying to use it for other purposes than the agricultural purpose, which cannot be permitted by filing such compromise.

13. Mr. Munj, while relying upon the decision of the Division Bench of this Court in the case of ***Raghupati R. Bhandari Vs***

Comunidade of Bandora,¹ and in the case of *Pilerne Citizens Forum Vs State of Goa through its Chief Secretary and ors,*² would submit that the order passed by the Administrative Tribunal is perfectly justified and needs no interference.

14. Rival contentions fall for consideration.

15. Private respondents filed Tenancy Application no. 71/2016/B on 8.12.2016. Tenancy Court declared private respondents as tenants of survey nos. 448/o and 440/o. Area of both these survey holdings is 2,98,170 sq. mts. Judgment passed by the tenancy Court is dated 1.9.2017. It shows that petitioner/Comunidade was duly served in the said Tenancy Application No. 71/2016/B, however, no one appeared for and on behalf of the petitioner and thus matter proceeded ex parte.

16. Tenancy Court allowed private respondents to lead evidence and thereafter decided the matter on merits by examining the documents placed on record which has been clear from paragraph no. 20 and by assessing/evaluating oral evidence led by the tenants and their witnesses. Finally, the Tenancy Court observed that private respondents proved their case and accordingly, they are declared as

1 MANU/MH/0354/2021

2 (2010) 6 Bom Cr 594

tenants of the suit properties bearing survey no.440 and 448 of village Tivim, Bardez Goa.

17. The petitioner then filed an appeal i.e Tenancy Appeal no 5/2018 before the First Appellate Court which is still pending adjudication. In the meantime, Extraordinary meeting of the petitioner was called somewhere in the year 2021 wherein some resolution was passed vide Agenda no.6 wherein it is discussed that private respondents have been declared as tenants and an appeal is pending before the First Appellate Court. After deliberation whether to continue with litigation, it was decided to amicably settle the dispute by considering a proposal for compromise. It was opined that advantage to the Comunidade would be to get back possession of some portion of the said land then facing the risk of losing the entire land to the tenants. Discussion further shows that the private respondents would be consented and thereafter the matter could be discussed further. Two proposals were suggested and discussed including one to settle the matter in the ratio of 60:40 i.e 60% of the land to the tenant and 40% of the land to the Comunidade and it was agreed by members of Gaonkars that such proposal would be in the best interest of the Comunidade as they will be able to retain 40% of the land instead of conceding entire land. It was also decided to file compromise terms by following all the procedures.

18. Proposal was accepted by private respondents and accordingly, in the next Extraordinary General Body meeting held in October 2021 it was decided to file consent terms before the Appellate Court by obtaining permission from the consent authority. Terms were drawn and the same were placed before the Administrator who forwarded it with approval to the Administrative Tribunal for grant of consent.

19. Chapter V of the Code of Comunidades deals with the Administrative Tribunal. Article 154 states about the powers of the Administrative Tribunal which includes sub clause 3 which reads thus:-

“Article 154(3) “Grant permission to the Comunidades to file suits in accordance with Article 9, save in what is provided in the Article 353, paragraph 3 of Article 380 and Article 388 and Article 305 of the Portuguese Civil Procedure Code to withdraw, admit and compromise, as well as authorise the respective expenditure”

20. It is thus clear that permission of the Administrative Tribunal is required for the purpose of filing compromise terms in a suit wherein Comunidade is a party.

21. The above provisions will have to be read along with Article 9 which provides that the Comunidade are not entitled to file any civil suits without permission of the Administrative Tribunal, save in cases where civil suit is merely of preventive relief or of executive nature

or the delay in its filing may result extinction of the right or any guarantee, in which case the sanction of the administrator be enough.

22. Article 30 deals with powers of the Comunidade wherein clause (g) provides regarding institution, admissions, withdrawal and compromise of any civil suit or legal proceedings. However, such Article though deals with powers of Comunidade, it provides that Comunidade shall elect every three years itself ordinary attorneys and its substitute, Appoint a special attorneys, when necessary, opine on the statement of income and expenditure,to deliberate on:(g) Institution, admissions, withdrawal and compromise of any civil suit or legal proceedings.

23. Thus, Article 30(4) empowers Comunidade to deliberate on aspects of admission, withdrawal or compromise of any civil suit or other legal proceedings.

24. Article 125 of the Code of Comunidades deals with powers of the Administrator and includes in it to grant permission or to authorise Comunidade to file suit under the terms of Article 9 as well as authorise necessary expenses.

25. Article 349 appearing in chapter VIII deals with permission for filing of suit and provides that when the Comunidade decides to file a suit in terms of Article 9, the attorney shall explain, with indication of the probable expenditure with the suit, with para wise pleadings in fact and law supported by documents and addressed to the Administrative Tribunal, through the respective administrator, who shall put his remarks on it. The Administrative Tribunal shall decide, independently of the approval without circulation to other members, with exception that of the Ministerio Público, and if the permission is granted to file the suit, it shall sanction the expenditure to be incurred for the purpose.

26. Article 350 then provides that the procedure under Article 349 shall be adopted when the Comunidade requests permission to withdraw, admit and compromise the suit. Thus it is clear that a power of Comunidade is to deliberate upon the terms of compromise as provided under Article 30(4)(g) and then forward it along with necessary documents and proposal to the Administrative Tribunal through respective Administrator along with his remark.

27. Present matter would go to show that Extra Ordinary meeting conducted by the Comunidade/petitioner discussed in detail as to why there is need to compromise the appeal filed by them challenging declaration of tenancy in favour of the private respondents and to

save part of the land to be used for the Comunidade. Such proposal was then put forth before the private respondents who agreed and thereafter the entire proposal for compromise was forwarded to the Administrative Tribunal through the respective Administrator with his remark. It does show that petitioner has followed the entire procedure as provided under the Code before filing an application for permission to compromise the proceedings.

28. Though private respondents agree for such compromise terms, power and duty of the Administrative Tribunal is clearly independent and discretionary and thus only because both the parties are ready to compromise, the matter would not in any manner compel the Administrative Tribunal to pass the order of granting permission to compromise.

29. In the present matter, the learned Administrative Tribunal deliberated upon terms and conditions from paragraph no. 13 onwards and clearly observed that permission to file the consent terms cannot be granted as it would be effectively negating the tenancy in respect of both the survey numbers and more particularly the balance land which Comunidade is now trying to retain.

30. Tribunal also observed that such compromise is clearly against the provisions of Agricultural Tenancy Act and by signing such

compromise a tenant cannot give up his right of tenancy. Procedure for giving up tenancy right is clearly separate and distinct and as provided under the Agricultural Tenancy Act, which cannot be circumvent.

31. Such findings of the Tribunal are challenged in the present petition on the premise that such a compromise is beneficial to the Comunidade as it would be retaining 40% to the land for its own use instead of allowing the entire land to be allotted to the private respondents as tenants.

32. In ***Raghupati R Bhandhari*** (supra), decided by the Division Bench of this Court on 8.12.2021 the dispute is similar. Petition was filed by Comunidade challenging the order passed by the Administrative Tribunal rejecting the application under Section 350 of the Code and refusing permission to compromise the dispute. While considering this aspect, the learned Division Bench of this Court observed in paragraph no. 59, 60 as under:-

"59 According to us, in terms of Article 350 of the said Code, a Comunidade cannot, without seeking prior approval of the Administrative Tribunal, withdraw or compromise any suit instituted by it or admit any claim or compromise a suit in which it is impleaded as the defendant. The Comunidade in such case will have to follow the same procedure as is prescribed in Article 349 of the said Code in the matters of applying for and obtaining the

approval of the Administrative Tribunal. However, it will not be correct to say that obtaining such approval from the Administrative Tribunal before a Comunidade withdraws a suit instituted by it or admits a claim or compromises a suit instituted by or against it is only some directory requirement. In this regard, it must be remembered that the Comunidade in terms of Article 5 of the said Code is under the administrative tutelage of the State, and in terms of the said Code, there are statutory restrictions when it comes to disposal of properties of Comunidades. One such salutary restriction is to be found in Article 350 of the said Code. Neither usurpers of Comunidade properties nor Comunidades can bypass this provision with impunity by styling the same as directory.

- 60 *Ultimately, in such matters, we cannot forget the origins of the institution of Comunidades and the interests which the communities have in the institution of Comunidades and its properties.*

Rui Gomes Pereira in the introduction to his book “GOA – Gaunkari, the old village associations, (1981)” has noted:-

“GAUM is village, GAUNKAR was its freeholder and GAUNKARI his associations, cooperatives, a small Republic. The Portuguese called them COMUNIDADES, because the gaunkars jointly held, administered and enjoyed the village lands. This word got into the vernacular language and it is by that name that those associations are commonly known. Hence they shall be referred to in this book as COMMUNITIES.””

33. After considering the scheme of Code of Comunidades and the purpose of it, it is further observed in paragraph 70 as under:-

“70 All this suggests that even though the Comunidades may be the owners of their lands,

still the Comunidades hold such lands or manage such lands in trust for the village communities. Therefore, there is an obligation upon the Managing Committees of such Comunidades to ensure that the Comunidade lands are not frittered away for some private gains but that dealings with the Comunidade lands are guided to achieve the best interests of the Comunidades and its members. This is the reason why certain fetters are imposed on Comunidades when it comes to dealing with their properties. The Government and the Administrative Tribunal has to be alive to this position even while considering the request from the Comunidades for disposal of its properties or for approval to admit any claims or enter into any compromises which will affect the land rights of the Comunidades.”

34. The Division Bench further observed in paragraph 72 as under :-

“72 For all these reasons, it is not possible to hold that the provisions of Article 350 of the said Code are only directory or that no approval was necessary from the Administrative Tribunal before the erstwhile president of the Comunidade admitted the claim of the Appellant herein when such admission resulted in the Comunidade practically giving up its established rights in respect of the suit properties admeasuring 1,42,720 square meters. Thus, apart from the elements of fraud and collusion, we feel that the very filing of the three-paragraph written statement dated 29th October 1994 by the erstwhile president of the Comunidade in the 1994 suit purporting to admit the fraudulent claim of the Appellant was an unauthorized act under the said Code since the Comunidade or its Managing Committee had not obtained any approval from the Administrative Tribunal before admission of such claim. Since, the decree dated 24th

November 1994 was based entirely on this unauthorized act on the part of the president of the Comunidade, the decree dated 24th November 1994 was quite correctly declared as null and void by the civil Court in the 1999 suit instituted by the Comunidade.”

35. In the case of **Pilerne Citizens Forum** (supra), the Division Bench of this Court while considering the similar issue about the approval of the Administrative Tribunal observed in paragraph 27, 28, 29 and 30 as under:-

“27 The earlier part of the said order notes that in respect of tenancy of the said Hadfadkar, Revision Application No. 24/2001 filed by the said Comunidade before the Administrative Tribunal was pending. The compromise noted by the Administrative Tribunal is that Hadfadkar had agreed to give up his right or claim of tenancy in respect of land surveyed under Survey No. 211/1. The Tribunal was made aware of the fact that there was already a purchase certificate granted in favour of the said Hadfadkar in respect of the said land. In fact, the Administrative Tribunal permitted compromise by which there was virtually a surrender of tenancy by the said Hadfadkar in respect of one of the two lands in respect of which he was declared as a Purchaser. The purported giving up of tenancy by the said Hadfadkar was after purchase certificate was

granted in his favour. The Tenancy Act prohibits surrender of Tenancy in this manner. In fact there cannot be a surrender after the vesting under section 18-A of the Tenancy Act. The Tenancy Act prohibits a tenant purchaser from transferring the land vested in him without prior permission of the Mamlatdar, Thus, on the face of it, the compromise was illegal and even in exercise of administrative powers of sanctioning compromise, the Administrative Tribunal ought not to have sanctioned such compromise which is completely in breach of provisions of the Tenancy Act. The Administrative Tribunal cannot permit compromise which is per se contrary to law. As stated earlier, the Tenancy Act has been brought on the statute book as a part of agrarian reforms. Therefore, under the Tenancy Act, there is no provision permitting a deemed purchaser to surrender his rights. The tenancy of an ordinary tenant can be determined only in accordance with the provisions of the Tenancy Act. All these protections are made a part of the Tenancy Act with a view to ensure that tenants are not either tempted or forced to give up their rights under the Tenancy Act. Any compromise or agreement recorded by any Court or Tribunal by which a tenant or a tenant who is a deemed purchaser surrenders or gives up his right, title or interest is without jurisdiction. And non est

28 *The matter does not rest here. In the consent terms filed in the Civil Court, it is provided as under:*

"5. That the defendants shall withdraw their claim of Tenancy which are pending before the Mamlatdar of Bardez at Mapusa and accordingly shall withdraw the Tenancy cases bearing Nos.TNC/PUR/PLN/38/93, TNC/PUR/PLN/39/93 and any other application for declaration of Tenancy, forthwith on execution of this Consent Terms. Accordingly, the Revision Applications pending before the Administrative Tribunal shall also be withdrawn by the plaintiff.

6. That the defendants shall be entitled to partition the respective portion of land, which have been allotted to them and also seek Mutation of the same.

7. That the name of the plaintiff appearing in the Occupant's Column and the name of Krishna Bhaichandra Hadfadkar, the defendant No. 1 appearing in the Tenant's Column in Form I and XIV of Survey No. 212/1 of

Village Pilerne shall stand deleted and the names of the defendants and other legal heirs of late Bhaichandra Hadfadkar who have signed these Consent Terms shall be deleted from the Tenant's Column in Form No. I and XIV of the property bearing Survey No. 211/1 of Village Pilerne.....”

- 29 *In terms of compromise, the Civil Court passed a consent decree on 16th November, 2006. The consent terms record that Hadfadkar and Nazareth shall withdraw their claim of tenancy. The jurisdiction of the Civil Court to decide the issue of tenancy was ousted by section 58(2) of the Tenancy Act. Even the exclusive jurisdiction to grant a negative declaration that a person is not a tenant vests in the Mamlatdar under section 7 of the Tenancy Act. What has been permitted under the compromise is surrender/relinquishment of tenancy by the said Hadfadkar which in law is completely prohibited by the Tenancy Act. Surrender could have been permitted only by the Mamlatdar in accordance with section 10 of Tenancy Act and the jurisdiction of the Civil Court was completely ousted. Thus, the so called compromise recording surrender or relinquishment by Hadfadkar is null and void*

and whether it is challenged or not, it has no legal effect in the eyes of law. The provisions of Tenancy Act which is a part of agrarian reforms cannot be allowed to circumvented by such methods.

- 30 *The effect of the so called settlement is that the land surveyed under Survey No. 211/1 remains with the Communidade and the land bearing Survey No. 212/2 was divided between Hadfadkar and Nazareth. There is a drastic consequence of such compromise assuming that it is valid. In view of section 2 of the Land Use Act, both the lands which vested in Hadfadkar under the Tenancy Act, under no circumstances could have been used for non-agricultural purpose. If the said Hadfadkar was not willing to purchase the said lands in accordance with the Tenancy Act, the same would have been resumed by the Mamalatdar and it could have been allotted only to the category of persons named by the Tenancy Act. By the modus operandi adopted by the parties not only the said Hadfadkar purported to sell his 50% of land Surveyed under Survey No. 212/1, but the purchasers converted the same for non-agricultural use. Thus, not only the provisions of Tenancy Act, but the provisions of the Land Use Act have been circumvented and nullified by this modus operandi This method has been adopted to get rid of the complete prohibition on non-agricultural use imposed by*

section 2 of the Land Use Act. The object of the Land Use Act is to ensure that the land vesting in the tenant in accordance with the provisions of the Tenancy Act shall not be used for any non-agricultural use under any circumstances. The said provision has been given overriding effect over the statutes like the Town and Country Planning Act and the Land Revenue Code. By adopting the aforesaid modus operandi, the parties have successfully got rid of the prohibition imposed by section 2.

36. Matter in hand though not similar, it gives the colour of allowing Comunidade and the private respondents use the respective land as of their own without any hindrance or objection.

37. Tenancy Court has already decided in favour of the private respondents declaring them as tenants of the entire survey holding bearing survey nos. 448 and 444. Such proceedings were admittedly not contested by Comunidade even though notice were served on them. Thus, a competent Court declared the private respondents as tenants of the entire land. Once declaration exists, private respondents are required to be considered as tenants of the entire land and accordingly, to be considered as deemed owner on the tillers day.

38. Compromise terms agreed between the parties would clearly go to show that there is no consensus with the order passed by the tenancy Court and more specifically declaring the private respondents as tenants will have to be quashed and set aside. Besides, terms further show that parties are ready to divide the said land in 40:60 ratio between Comunidade and the tenants. It also shows that private respondents are considered as the absolute owner of 60% and not as the tenant. Thus, it is clear that compromise terms would suggest that without conducting the proceedings for purchase of the land under the Agricultural Tenancy Act private respondents will be declared as absolute owners of the 60% of the land. Other consequences of such compromise would be clearly giving away of the tenancy right of the remaining 40% of the land in favour of the Comunidade, which cannot be permitted by filing consent terms as there is specific procedure under the Agricultural Tenancy Act for giving away the right of a tenant

39. Both the parties, by agreeing to the terms and conditions are therefore trying to avoid or to bypass the procedure which is mandatorily required to be followed under the Agricultural Tenancy Act. Similarly, terms would further show that the private respondents will be entitled to use their 60% of the land with full ownership rights and free of any encumbrance. This further would mean that private respondents as well as Comunidade would be entitled to wipe up the

tenancy right and more particularly use of such land other than agricultural purposes.

40. It is no doubt true that Comunidade will be retaining 40% of the land; however, terms and conditions do nowhere suggest that both parties agree to use such land only for agricultural purposes.

41. In the case of ***Pilerne Citizens Forum***(supra), the Division Bench has clearly observed that compromise cannot be permitted when it is completely in breach of provision of Agricultural Tenancy Act.

42. Learned Administrative Tribunal is therefore, fully justified in rejecting such a claim. Decisions passed by the Division Bench of this Court in the case of ***Raghupati R. Bhandari and Pilerne Citizens Forum*** (supra) are not only applicable to the matter in hand but also binding being delivered by the larger Bench.

43. Thus, no infirmity or illegality is found in the impugned order. Accordingly, the petition must fail and the same stands dismissed.

44. Rule stands discharged. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.