



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1085 OF 2019

1) Shree Hari Gopal Naik (Since deceased)

Through his legal heirs

1.a) Smt. Ramabai Hari Naik,

1.b) Shri Gopal Hari Naik,

1.c) Mrs. Rajeshri Gopal Naik,

1.d) Shri Nagoji Hari Naik,

1.e) Mrs. Sneha Nagoji Naik,

1.f) Shri Vaman Hari Naik,

1.g) Mrs. Veena Vaman Naik,

All r/o Torsem, Pernem, Goa.

...PETITIONER

VERSUS

1) Shri Pandurang Kashinath Patkar(deceased)

r/o H.No.5/27/C, Altinho, Mapusa,

Bardez, Goa.

1(a) Mrs. Mohini Pandurang Patkar,

W/o. Late Mr. Pandurang Kashinath Patkar,

1(b) Mr. Siddhesh Pandurang Patkar,

S/o late Mr. Pandurang Kashinath Patkar,

1(c) Mrs. Deepa Siddhesh Patkar,

W/o Mr. Siddhesh Pandurang Patkar,

1(d) Mrs. Nivedita Kiran Patkar,

D/o late Mr. Pandurang Kashinath Patkar,

1(e) Mr. Kiran Patkar

1(f) Mrs. Nilambari Vira,

W/o Nilesh Vira

1(g) Mr. Nilesh Vira,

All residents of H.No. 5/27/C, Altinho,

Mapusa, Bardez, Goa.

2. Shri Jeetendra Deshprabhu(Deceased)

2(a) Mrs. Rupa Jitendra Deshprabhu,
w/o Shri Jeetendra Deshprabhu,
Major in age, Indian National,
R/o Nanerwada, Pernem-Goa.

2(b) Ms. Mrinalini Jitendra Deshprabhu
D/o Shri Jeetendra Deshprabhu,
major of age, Indian National,
R/o Nanerwada, Pernem-Goa.

3) Shri Devendra Deshprabhu,
Both residing at Nanerwada,
Pernem-Goa

4) Smt. Jaya alias Sitadevi Raghunath Rao/Deshprabhu
since deceased through Lrs

4.a) Mrs. Anjalica or Anjalika Raghunath/Deshprabhu

4.b) Mr. Satish Sripad Ugrankar,
Both r/o Ram Mahal J.N. Tata Road, Mumbai.

4.c) Mrs. Achaladevi alias Achala Raghunath Deshprabhu

4.d) Mr. Dilip Mahabal Kulkarni
Both r/o H.No. 23/B, New Neelsagar Co-op.
Housing Society, A/B Perry Cross Road,
Bandra (W) Mumbai

5)Smt. Sunita Devendra Deshpahbu
R/o Nanerwada, Pernem Goa.

6) Smt. Roopa Jitendra Deshprabhu,
R/o Nanerwada, Pernem-Goa

..RESPONDENTS

Mr. J. Godinho, Advocate for the Petitioner.

Mr. Parag Rao with Mr. Ajay Menon, Advocates for Respondents.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 08th August 2024

ORAL JUDGMENT.

1. Rule.

2. Rule is made returnable forthwith.
3. The matter is taken up for final disposal at the admission stage with consent.
4. Heard Mr. Godinho learned counsel for the Petitioner and Mr. Rao learned counsel for the Respondents.
5. The petition is filed challenging the three concurrent orders whereby claim of the Petitioner regarding tenancy is rejected.
6. Mr. Godinho appearing for the Petitioner would submit that the names of the Original Tenant was appearing in Form III of the survey records and more particularly in the suit property bearing survey number 143/1. However, such name was suddenly bracketed without following due process of law and without giving notice to the Petitioner.
7. Mr. Godinho would further submit that the Petitioner filed application under Section 7 of the Agricultural Tenancy Act for declaring him as a Tenant in the year 2004 and produced relevant evidence including the rent receipts along with the other documents. Even the witnesses were examined and clearly deposed that the Petitioner is the Tenant of the said land. However, concerned Mamlatdar

failed to appreciate such evidence and arrived at an incorrect finding.

8. He submitted that an appeal was filed before the Deputy Collector, however, the appeal was dismissed. The Petitioner then filed a revision before the Administrative Tribunal. However, such revision was also rejected.

9. Mr. Godinho submits that the part of said land was acquired by the Government and since the name of the Petitioner was appearing in Form III, he was paid compensation to that effect. According to him this fact clearly proves the possession of tenanted land by the Petitioner. However, all the authorities failed to consider it including that the fact that the name of Petitioner was appearing in Form III which was subsequently deleted without following due process of law.

10. Per Contra, Mr. Rao appearing for Respondent would submit that the Petitioner was unsuccessful before three authorities who appreciated the evidence and recorded finding of facts. Such observations of three Courts on facts cannot be re-appreciated while entertaining the petition filed under Article 227 of Constitution of India.

11. Besides Mr. Rao would submit that the evidence produced on record before the Mamlatdar would clearly go to show that the Petitioner was not the Tenant of the suit land and more particularly survey no.143/1. He submits that rent receipts are clearly of a different land which has been admitted by the Petitioner during cross examination. He submits that after carefully assessing the evidence, findings on fact is recorded that the land in question is a rocky land and consisting of forest trees including few cashew trees. The contentions of the Petitioner that he was cultivating the land for paddy crop is unbelievable.

12. Mr. Rao placed reliance on the following decisions:-**(a) *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329;* (b) *Radhey Shyam and Another Vs. Chhabi Nath and others, (2015) 5 SCC 423;* (c) *Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, (2010) 9 Supreme Court Cases 385 and (d) Surya Dev Rai Vs. Ram Chander Rai and others, (2003) 6 Supreme Court Cases.***

13. Petition is filed basically challenging three concurrent

decisions which are against the Petitioner. Admittedly, the application for declaration of tenancy rights was filed before the Mamatdar and after giving full opportunity to the Petitioner to produce evidence, it was rejected by a reasoned order. Such findings were challenged before the First Appellate Authority i.e. the Deputy Collector by filing appeal which again came to be rejected thereby upholding the order of the Mamatdar.

14. The Petitioner then filed a revision before the Administrative Tribunal which was finally disposed of on 13.06.2019. The Revisional Court observed that there is no illegality or perversity in orders passed by the two authorities. Thus, it is clear from the record that the three authorities considered the evidence produced by the Petitioner and found that such evidence is not sufficient enough to consider the Petitioner as a Tenant of the said property.

15. It is settled proposition of law that while considering such decisions under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the scope is very limited. It is not permissible to re-appreciate

evidence so as to assess the material produced by the Petitioner before the concerned authorities.

16. Only scope for interference is when the orders passed by the concerned authorities are found to be blatantly illegal and perverse.

17. The first ground which has been raised is that the name of the Petitioner was deleted from the survey records and more particularly from Form III.

18. Such contention is considered by all the Courts wherein it is found that the Petitioner himself in the cross examination admitted that it was not concerned with the suit property bearing survey no.143/1. Besides, such property is predominantly forest land having forest trees with a steep slope. All the authorities found that it is not coming within the purview of an agricultural land and more particularly wherein a paddy crop could be cultivated.

19. The Form III of the survey records was admittedly, a temporary arrangement till the survey is promulgated. It is admitted that the name of Petitioners is not appearing in Form I and XIV and the Petitioner never raised any objections about his name being not included in the Form I

and XIV. The presumption arises only with regard to the promulgated survey records.

20. The second ground is that the portion of the land was acquired and some part of compensation was paid to the Petitioner. This aspect is also considered by the Courts below and it was found that the evidence of the Petitioner clearly goes to show and more particularly, admissions on his part that the suit land bearing survey no. 143/1 was never in his possession as a tenant or otherwise.

21. Thus, once this aspect is admitted, the question of considering his name appearing in Form III, has no substance.

22. The learned Mamlatdar, the Deputy Collector as well as the Administrative Tribunal concurrently observed that no case is made out for declaring the Petitioner as tenant of survey no. 143/1. These findings of facts are based on the material which was placed before the learned Mamlatdar and appreciated by three authorities.

23. The observations of the Apex Court in the case of ***Shalini Shetty (Supra)*** and more particularly in paragraph 49 which reads thus:-

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High

Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and the principles in Waryam Singh have been repeatedly followed by Subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India*²¹ and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate- provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an

appropriate case, the power can be exercised suo motu.

(1) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

24. This observations would clearly apply to the matter in hand.

25. In the case of **Surya Devi(supra)** which is considered in the case of **Shalini Shetty(supra)** also required to be taken into account as far as exercise of

jurisdiction of this Court. The other decisions cited by Mr. Rao are already considered in the case of ***Shalini Shetty(supra)***.

26. From the above observations, the fact remains that the findings of facts arrived at by the Courts below cannot be re-appreciated in the present proceedings and more specifically when there is no blatant illegality in the orders passed by the authorities. Accordingly, the petition deserves to be rejected.

27. Accordingly, the petition stands dismissed. No costs.

BHARAT P. DESHPANDE, J.