

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.603 OF 2016
AND
MISC. CIVIL APPLICATION NO.1803 OF 2021(F)**

1. Shri. Pundalik Gangadhar Sinai
Sanvordekar
(since deceased) through his legal
representatives

a. Shri. Chandrakant Pundalik Sinai
Sanvordekar,
Son of Pundalik Sanvordekar
Major of age,

b. Smt. Gauri Chandrakant Sinai
Sanvordekar,
Wife of Chandrakant Sanvordekar,
Major of age,
Both r/o H.No.420 (2)
Khamamol, Curchorem-Goa.

c. Shri. Hemakant Pundalik Sinai
Sanvordekar,
Son of Pundalik Sanvordekar
Major of age

d. Smt. Shobha Hemakant Sinai
Sanvordekar
Wife of Hemakant Sanvordekar
Both r/o house no.A-4/F-2,
Vijaynagar colony Corlim,
Tiswadi-Goa.

2. Dr. Upendra Sinai Sanvordekar

(since deceased) through his legal representatives

a. Smt. Leelavati alias Shilavatibai
Upendra Sanvordekar,
Daughter of Upendra Sanvordekar,
Major of age, r/o Moquim
Cuncolim, Salcete-Goa.

b. Dr. Chandrakant Kudchadkar,
Major of age, Both b & c residing at
H.No.4/2777 Shantai Bungalow,
Manuel Gomes Road,
Behind Sanchiyani, Vidyanagar
Margao-Goa, 403 601

c. Smt. Geeta Chandrakant Kudchadkar
Wife of Chandrakant Kudchadkar
Major of age

...Petitioners

Versus

1. Shri. Shankar Gopal Bhandari
(since deceased) through his legal
representatives

a. Smt. Parvati S. Bhandari
Daughter of Shankar Bhandari
Major of age

b. Shri. Satchit Shankar Bhandari
Son of Shankar Bhandari
Major of age

c. Smt. Sandya Satchit Bhandari
Wife of Satchit Bhandari
Major of age

d. Shri. Ulhas Shankar Bhandari

Son of Shankar Bhandari
Major of age

e. Smt. Nirmala Ulhas Bhandari
Wife of Ulhas Bhandari
Major of age

f. Shri. Narendra Shankar Bhandari
Son of Shankar Bhandari
Major of age

g. Smt. Lata Narendra Bhandari
Wife of Narendra Bhandari
Major of age

h. Shri. Vinay Shankar Bhandari
Son of Shankar Bhandari
Major of age

i. Smit. Chaya Vinay Bhandari
Wife of Vinay Bhandari
Major of age
A to e above residents of Dhadem
Sanvordem-Goa

2. Dr. Sandip alias Uday Upendra
Sanvordekar
Son of Upendra Sanvordekar
Major of age
r/o Moquim, Cuncolim, Salcete-Goa.

3. Smt. Smita alias Deepa Mahesh
Kudchadkar (since deceased) through her
legal representatives

a. Mr. Amey Purshutam Kudchadkar
Son of Purshutam Kudchadkar
Major of age, resident of Mungul
Margao-Goa

4. Mr. P.V.Kudchadkar alias Mahesh
 Kudchadkar
 Major of age, advocate
 Residing at Mungul, Margao-Goa. Respondents

Mr Shivan Desai, Mr A. Sardessai and Ms T. Menezes, Advocates for the Petitioners.

Mr S.S. Kantak, Senior Advocate with Mr Parikshit Sawant, Mr Preetam Talaulikar, Mr Simoes Kher, Ms Neha Kholkar and Ms Saicha Desai, Advocates for Respondent Nos.1(a) to 1(i).

CORAM: **M. S. SONAK, J.**

Reserved on: **6th OCTOBER 2023**
Pronounced on: **5th JANUARY 2024**

JUDGMENT:

1. Heard Mr Shivan Desai with Mr A. Sardessai and Ms T. Menezes for the petitioners. Mr S.S. Kantak learned Senior Advocate, appears with Mr Parikshit Sawant, Mr Preetam Talaulikar, Mr Simoes Kher, Ms Neha Kholkar and Ms Saicha Desai for respondent nos.1(a) to 1(i).
2. Rule. The rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties. Learned Counsel for the respondent nos.1(a) to 1(i) waive service.
3. This petition was dismissed by the coordinate Bench (*Coram: C.V. Bhadang, J.*) vide judgment and order dated 24.08.2016. However, the petitioners instituted Civil Application

(Review) No.30/2016 and the same was allowed by order dated 26.11.2019 (*Coram: C.V. Bhadang, J.*). Consequently, this Writ Petition was restored and directed to be placed for admission. After the matter was posted for admission, orders were made to list the matter for final disposal at the admission stage.

4. Accordingly, this petition was heard finally on 05.10.2023 and 06.10.2023 with the consent of and at the request of the learned Counsel for the parties. There was some talk of settlement between the parties, but eventually, it was reported that no settlement was possible and, therefore, the matter could be disposed of.

5. This petition challenges the judgment and order dated 30.12.2010 made by the Mamlatdar of Sanguem in case no.MAM/TNC/DECL/8/99 and judgment and order dated 13.04.2016 made by Ad hoc District Judge, FTC-II, South Goa, Margao, declaring the respondents as agricultural tenants of the suit property known as "Titapemol" surveyed under no.18/1 at Corranguinim, Sanguem, Goa. The suit property admeasures around 4,51,775 sq. metres or 45 hectares.

6. The original respondent, Shankar Gopal Bhandari, applied under the Goa Agricultural Tenancy Act, 1964 (said Act) for a declaration that he was the tenant of the suit property, of which the landlords were Pundalik Sanvordekar and Dr Upendra Sanvordekar. The petitioners are now the legal representatives

of the late Pundalik Sanvordekar, and the respondents are the legal representatives of Shankar Bhandari.

7. Shankar Bhandari had pleaded that he was inducted as the tenant of the suit property about fifty years before the institution of the tenancy case and that he would pay rent to the landlords "in kind" depending upon the yield. Shankar Bhandari also claimed that twenty years before filing the tenancy application, rent was paid in cash at the rate of Rs.200/- per year. However, it was further pleaded that the landlords issued no rent receipts.

8. The records bear out, and even otherwise, it was not disputed that an area of about 21,800 sq. metres or 2.81 hectares on the Western side of the suit property was sold by the Sanvordekars to Shankar Bhandari vide Sale Deed dated 04.11.1977 for a sum of Rs.4,000/-. Therefore, Shankar Bhandari claimed that after excluding this portion of 2.81 hectares, he continued in possession of the remaining area of 45 hectares as a tenant of the Sanvordekars. Shankar Bhandari claimed that he was cultivating the cashew trees in the suit property and extracting cashew juice, for which he had obtained an excise licence in his name. There are pleadings that just before the application seeking declaration was filed, a separate licence was obtained in Shankar Bhandari's son's name for the extraction of cashew juice and its distillation.

9. As noted above, the Mamlatdar, by order dated 30.12.2010, allowed the application and declared Shankar

Bhandari and, after him, his legal representatives as the tenants of the suit property. The Ad hoc District Judge dismissed the appeal vide judgment and order dated 13.04.2016 in Tenancy Appeal No.7/2015. Hence, the present petition.

10. Mr Desai submitted that the findings recorded by the Mamlatdar and the Ad hoc District Judge suffer from perversity, inasmuch as crucial documents have not been considered and some of the crucial documents have been misread. For example, he submits that the Mamlatdar and the District Court have placed excessive reliance on Form III and Form I and XIV (survey records) without appreciating that they primarily pertain to the area of 2.81 hectares, which was admittedly sold by the petitioners to Shankar Bhandari. He pointed out that the Sale Deed dated 04.11.1977 refers only to 2.81 hectares and land, which is a cashew plantation, and that this portion was purchased by Shankar Bhandari dehors the claim of the tenancy. He also referred to the recitals in the sale deeds where Shankar admitted that the Sanvordekars were the owners in possession of the remaining property of 45 hectares. He, therefore, submits that presumption, if any, was restricted only to the area of 2.81 hectares and not the entire property measuring almost 45 hectares. He submitted that this was one of the fundamental errors committed by the Mamlatdar and the Ad hoc District Judge.

11. Mr Desai submitted that most of the documentary evidence produced was irrelevant and could not support the

claim for tenancy. He pointed out that most of the documents were dated beyond the tiller day, that is, 20.04.1976. He submitted that if Shankar Bhandari were indeed the agricultural tenant, then, by the tiller day, he would have asserted his claim as the deemed purchaser. He submitted that there was no question of Shankar Bhandari purchasing any property, which was now claimed, was also a tenanted property by paying some price other than that prescribed under the Agricultural Tenancy Act. Mr Desai submitted that since this aspect was overlooked, the findings recorded by the two Courts suffer from perversity and the errors apparent on the face of the record.

12. Mr Desai submitted that the two Courts mechanically accepted the documents submitted on behalf of the respondents. He pointed out that the so-called excise licences or the distillery were, in fact, in the property which formed the subject matter of the Sale Deed and not the balance property regarding which tenancy was claimed. However, those documents were considered by the two Courts even though they did not pertain to the suit property.

13. Mr Desai submitted that the oral evidence led by the respondents was extremely sketchy. The case of payment of rent in kind or cash payments was not established. He submitted that it is inconceivable that agricultural property measuring almost 4,50,000 sq. metres. would be rented out for payment of unspecified rent in kind or for rent of Rs.200/- per annum. He submitted that since all these crucial aspects were not

appreciated, the impugned judgments and orders warrant interference.

14. Mr Desai relied upon *Trimbak Gangadhar Telang and Anr. V/s. Ramchandra Ganesh Bhide and Ors.*¹, *Chandavarkar Sita Ratna Rao V/s. Ashalata S. Guram*², *Ouseph Mathai and Ors. V/s. M. Abdul Khadir*³, *Management of Madurantakam Coop. Sugar Mills Ltd. V/s. S. Viswanathan*⁴, *General Manager, Electrical Rengali Hydro Electric Project, Orissa and Ors. V/s. Girishari Sahu and Ors.*⁵ and *M/s. Puri Investments V/s. M/s. Young Friends and Co. and Ors.*⁶ in support of his contentions.

15. Mr Kantak learned Senior Advocate for the contesting respondents at the outset submitted that there were concurrent findings of fact which were based upon oral and documentary evidence on record. He submitted that the scope of interference with findings of fact while exercising jurisdiction under Article 226 or 227 is extremely limited, and no case was made out for such interference.

16. Mr Kantak relied on *Shalini Shyam Shetty and Anr. V/s. Rajendra Shankar Patil*⁷, *Radhey Shyam and Anr. V/s. Chhabi Nath*

¹ (1977) 2 SCC 437

² (1986) 4 SCC 447

³ (2002) 1 SCC 319

⁴ (2005) 3 SCC 193

⁵ (2019) 10 SCC 695

⁶ 2022 SCC OnLine SC 283

⁷ (2010) 8 SCC 329

and Ors.⁸, Garment Craft V/s. Prakash Chand Goel⁹ and M/s. Puri Investments (supra).

17. Mr Kantak submitted that since the findings concurrently recorded by the two Courts are supported by the documentary and oral evidence on record, no case is made out to warrant any interference. He submitted that entries in the survey records have a presumptive value and such presumption was never rebutted by the Petitioners. He submitted that at one stage some objections were raised by Pundalik to the entries in the survey records, but such objections were ultimately withdrawn. This fortified the presumption favouring Bhandaris. For all these reasons, Mr Kantak submitted that this Petition be dismissed.

18. The rival contentions now fall for my determination.

19. From the perusal of the decisions of the Mamlatdar and the Ad hoc District Judge, it is apparent that the two authorities were swayed by the fact that Shankar Bhandari's name was recorded in the survey records as a tenant. However, from the perusal of the survey records, it does appear that there is at least *prima facie* merit in Mr Desai's contention that these survey records were not properly assessed or evaluated by the authorities. The thrust of the two orders is on the survey entries and the presumption arising therefrom. Therefore, closer, and critical scrutiny of the entries in the survey records was essential before

⁸ (2009) 5 SCC 616

⁹ (2022) 4 SCC 181

so much emphasis could be laid upon such entries in the survey records.

20. The Index of land (Form III) indeed refers to Shankar Bhandari's name in the tenant's column. However, there is a remark in this form reading "*cashew cultivation done by Shankar Gopal Bhandari*". Further, from the perusal of Form III, it does appear that the area under cashew cultivation was 28,100 sq. metres. or 2.81 hectares. The balance area of 4,51,775 sq. metres. was shown as "*bharad land*". Based upon this clear distinction, Mr Desai contended that Shankar Bhandari could have been presumed as a tenant only in respect of the cashew area under his cultivation, admeasuring 28,100 sq. metres. and not the larger uncultivable property of 4,51,775 sq. metres.

21. At this stage, it would not be appropriate for this Court to record any firm conclusion regards the contention now raised by Mr Desai on behalf of the petitioners. However, suffice to hold that the two authorities do not appear to have analysed or evaluated Form III before concluding that Shankar Bhandari was the tenant in respect of the suit property admeasuring 4,51,775 sq. metres. and not merely in respect of the area of 28,100 sq. metres. No credence has been given by the two authorities to the remark on Form III to the effect that Shankar Bhandari did cashew cultivation. Further, the area under cashew cultivation was only 28,100 sq. metres, not the balance of 4,51,775 sq. metres. This was a crucial aspect that did not seem to have been adequately considered by the two authorities.

22. The two authorities have held against the petitioners because the predecessor in title of the petitioners initially lodged his objections to the entries in Form III but later withdrew or abandoned such objections. The record indeed bears out that Pundalik Sanvordekar, on 14.04.1976, made an application for the deletion of Shankar Bhandari's name from the survey records. On 20.10.1976, Pundalik Sanvordekar made a statement on oath asserting that Shankar Bhandari's name was erroneously recorded. The same day, even Shankar Bhandari made a statement on oath that a major portion of the land was barren. On 29.10.1976, Pundalik Sanvordekar withdrew his objection.

23. From the above circumstance, the two authorities inferred that Pundalik Sanvordekar abandoned his objections to the record of Shankar Bhandari's name as a tenant of the entire property, that is, the cashew portion admeasuring 28,100 sq. metres. and balance bharad or uncultivable portion admeasuring 4,51,775 sq. metres. This inference, at least *prima facie*, was not justified and, again, was a result of not evaluating or analysing the documentary evidence on record.

24. Admittedly, in 1976, the survey records relating to the property surveyed under no.18/1 had not been promulgated. As noted earlier, the only adverse entry by which Pundalik Sanvordekar could be said to have been aggrieved was the entry about "*cashew cultivation done by Shankar Gopal Bhandari*". Unpromulgated survey records had specified that the cashew

cultivation was over an area of 28,100 sq. metres. Therefore, if Pundalik Sanvordekar withdrew or abandoned his objection to such entry, at least *prima facie*, the legitimate inference that could have been drawn was that Pundalik Sanvordekar acknowledged Shankar Bhandari cultivating the cashew portion of 28,100 sq. metres. Shankar's statement about the major portion of the land being barren was also not without significance.

25. Based on this withdrawal or abandonment, the two authorities, at *prima facie*, were not justified in recording a firm finding that Pundalik Sanvordekar acknowledged that Shankar Bhandari was the agricultural tenant in respect of the entire property, i.e. the cashew grove admeasuring 21,800 sq. metres and the balance bharad land admeasuring 4,51,775 sq. metres. There is accordingly merit in Mr Desai's contention that even the documentary evidence relating to the lodging of objections and withdrawal thereof was not properly evaluated and analysed by the two Courts.

26. If the above documentary evidence were to be considered in the context of oral evidence followed by the execution of the Sale Deed dated 04.11.1977, the findings rendered by the two authorities appear to be *prima facie* vulnerable. Sanvordekars deposed that a settlement was reached to sell the cashew grove to Shankar and that Shankar would lay no claim to the remaining property. Within about a year from the withdrawal of objections to the entry in survey records, Pundalik Sanvordekar, by a

registered Sale Deed, precisely sold an area of 28,100 sq. metres. to Shankar Bhandari for consideration of Rs.4,000/-. As noted earlier, the survey records did show that the area under cashew cultivation was 28,100 sq. metres. in respect of which there was an entry favouring Shankar Bhandari. Again, even this crucial aspect was not adequately considered by the two authorities.

27. The registered Sale Deed dated 04.11.1977 contains a recital in which Shankar Bhandari has acknowledged that Pundalik Sanvordekar, along with others, is the exclusive owner in possession of the entire property and by virtue of the Sale Deed only an area of 28,100 sq. metres. was being sold to Shankar Bhandari for consideration of Rs.4,000/-. Suppose Shankar Bhandari was indeed the agricultural tenant of the entire property, i.e. the area under cashew cultivation measuring 28,100 sq. metres. and the remaining bharad area measuring 4,51,775 sq. metres. In that case, it is unlikely that Shankar Gopal Bhandari would agree to a recital asserting that Pundalik Sanvordekar and others were the "*owners in possession of the entire property*", out of which only an area of 28,100 sq. metres. was being sold to Shankar Bhandari and that too for a consideration of Rs.4,000/-. The Sale Deed makes no reference to the provisions of the Agricultural Tenancy Act or the rates prescribed under the Agricultural Tenancy Act. The two authorities have again not properly evaluated or analysed the Sale Deed dated 04.11.1977 and the recitals therein before recording its findings.

28. Under the Agricultural Tenancy Act, every agricultural tenant became a deemed purchaser from the tiller day, i.e. 20.04.1976. Therefore, if Shankar Bhandari was confident of his claim as an agricultural tenant of the entire property, it is a little surprising why he would purchase 28,100 sq. metres. or acknowledge that the landlords Pundalik Sanvordekar and others were "*owners in possession*" of the balance portion of 4,51,775 sq. metres. (suit property), in a document executed well after the tiller's day. Again, even this aspect was not considered at all by the two authorities before recording their findings and declaring Shankar Bhandari as a tenant of the entire property.

29. The survey records were promulgated between 1977 and 1982 or thereabouts. Based on such promulgation, two Courts have drawn some presumptions. However, again, the promulgated survey entries have also not been analysed and evaluated. Rather, it appears that even the promulgated survey records have received cursory or superficial attention. Presumptions have been drawn based on such cursory or superficial attention. This vitiates the findings recorded because before recording such findings, the Appellate authority was expected to have critically evaluated the survey documents in the context of all other evidence led by the parties.

30. Mr Desai pointed out that Shankar Bhandari had, in fact, filed Special Civil Suit No.11/1987 before the Civil Court at Quepem and sought a permanent injunction to restrain Pundalik Sanvordekar and other landlords from interfering with the suit

property admeasuring around 4,80,000 sq. metres. Shankar Bhandari also sought a temporary injunction in the said suit. Mr Desai pointed out that by order dated 05.12.1988, the Civil Court dismissed the temporary injunction application by observing that at least *prima facie* the Sanvordekars were in possession of the property admeasuring 4,80,000 sq. metres. and not Shankar Bhandari. A Civil Revision Application filed by Shankar Bhandari was also dismissed by this Court on 15.11.1989.

31. Though orders made at the interim stage are hardly very relevant, such orders indicate that at least *prima facie* two Courts found that Sanvordekars possessed almost 4,80,000 sq. metres. Again, it was only in 1994 that Shankar Bhandari filed for a declaration before the Mamlatdar. All these aspects had to be at least considered by the Appellate authority before affirming the mamlatdar's judgement.

32. Thus, this appears to be a case where most of the crucial documents were not analysed and evaluated by the two authorities in their entirety. Rather, such crucial documents were misread by the two authorities or were, at the highest, superficially and cursorily considered. The inferences drawn based on such superficial consideration of the documentary evidence are therefore vulnerable. Since most of the findings are based upon such superficial and cursory consideration of the documentary evidence, a case is made out to warrant interference.

33. However, the interest of justice would require that the Appellate authority analyses and evaluates both the documentary as well as the oral evidence so that fair opportunity is available to both parties to make their detailed submissions based not only on the documentary evidence placed by them on record but also the oral evidence which is to be construed in conjunction with the documentary evidence. This would afford both parties a fair opportunity to have their respective versions tested and evaluated by the Appellate Authority.

34. The right of an appeal before the appellate authority is a valuable right. The appeal Court in this case, as noted above, failed to notice that the documentary evidence relied upon by the Mamlatdar was only cursorily or superficially analysed or evaluated. The Mamlatdar misread the documentary evidence. Crucial remarks in the survey entries or the recitals in the sale deed were also not adequately considered. Most of the documents were misread, and based upon such misreading, inferences were drawn, which are presently vulnerable. The Appellate authority also fell into the same error itself. Mere affirmation based on the same errors that Mamlatdar was alleged to have committed is not sufficient to confer absolute immunity to findings. The Appellate authority, as noted above, has not considered the most crucial aspects or contentions that were specifically raised before it. To this extent, the valuable right of appeal was denied to the Petitioner.

35. Mr Kantak submitted that the two Courts rightly drew an adverse inference against the petitioners for having objected to the survey records but for having withdrawn such objection. He made certain submissions regarding the promulgated survey records and pointed out how the oral evidence also supports rent payments in cash or in kind. Such contentions are not at all irrelevant. But they had to be considered by the Appellate authority in the first instance. For such a consideration, a critical and detailed analysis or evaluation of mainly the documentary evidence was a must and not merely a cursory or superficial consideration. Only a finding, mainly of affirmance, after critical scrutiny of the documentary and oral evidence, is mostly immune from interference and not otherwise.

36. Precisely, a remand to the appellate authority is proposed to grant even the respondents a fair opportunity. However, the appellate authority, on this occasion, will have to analyse and evaluate the documentary and oral evidence in detail and not cursorily or superficially. The appellate authority will also have to consider the impact of the fifth amendment to the Agricultural Tenancy Act. The appellate authority will also have to consider whether there was any liability to pay rents after tillers day, that is, on 20.04.1976 and the effect of the evidence about the alleged payment of such rent post the tillers day. All these aspects have missed the attention of the two authorities, and, therefore, the interest of justice requires interference with the appellate

judgment and the remand to the appellate authority for disposal of the appeal in accordance with the law.

37. In *Chandavarkar Sita Ratna Rao* (supra), the Hon'ble Supreme Court has held that the High Court, under Article 227 of the Constitution, could go even into the questions of fact or investigate evidence if justice so requires it or if there is any misdirection in law or perversity resulting in manifest in justice. In *General Manager, Electrical Rengali Hydro Electric Project, Orissa* (supra), the Hon'ble Supreme Court has held that the principle of "no evidence" extends to any case where evidence taken as a whole is not reasonably capable of supporting the findings or where no Tribunal could reasonably reach the conclusion on that evidence. Similarly, in *Puri Investments* (supra) the Hon'ble Supreme Court has held that the High Court can, under Article 227 of the Constitution, interfere where errors have crept in because of non-consideration of material evidence or where the consequences are contrary to the evidence or based on inferences that are impermissible in law.

38. In *Shalini Shyam Shetty and Anr.* (supra) relied upon by Mr Kantak, the Hon'ble Supreme Court has explained the distinction between Articles 226 and 227 of the constitution and how both these Articles stand substantially on a different footing and operate in different fields. However, even this decision holds that the High Court can interfere in the 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. The other decisions relied upon by Mr Kantak also do not lay down any propositions different from the decisions cited by Mr Desai and referred to above.

39. Thus, for all the above reasons, the impugned judgment and order dated 13.04.2016 made by the Ad hoc District Judge, FTC II, South Goa at Margao in Tenancy Appeal No.7/2015 is set aside, and the Tenancy Appeal No.7/2015 is restored/remanded to the file of the Principal District Judge, South Goa at Margao.

40. There have been some amendments to Section 49 of the said Act. As a result, there was no clarity on whether the District Court would now have jurisdiction to entertain appeals against the orders of Mamlatdars made under the said Act. When Tenancy Appeal No.7/2015 was decided, the District Court was constituted as the appellate Authority.

41. Accordingly, the parties are directed to appear before the Principal District Judge, South Goa, on 12.02.2024 at 10.30 a.m. and file an authenticated copy of this order. The Principal District Judge must consider the provisions of Section 49 of the said Act as amended and, after hearing the parties, makeover this appeal to the appropriate appellate authority. The appellate authority must dispose of Tenancy Appeal No.7/2015 in accordance with the law and on its own merits. In case any of the parties do not appear, the appellate authority must issue notices to them so that

all parties are duly served before the appeal is finally disposed of.

42. The Appellate Authority must dispose of Tenancy Appeal No.7/2015 in accordance with law and in the light of the *prima facie* observations made in this judgment and order. In particular, the Appellate authority must consider the documentary and oral evidence produced on record by both parties and draw necessary inferences in the context of the provisions of the Tenancy Act. The observations in this judgment and order are mainly in the context of justifying remand, and they are not meant to be some firm conclusions recorded by this Court. Therefore, it is clarified that the Appellate authority must dispose of the appeal in accordance with law and on its own merits without regarding the observations in this judgment and order as any firm findings by this Court.

43. The rule in this petition is accordingly disposed of in the above terms. There shall be no order for costs.

44. Misc. Civil Applications do not survive the disposal of this petition, and the same are also disposed of.

M. S. SONAK, J.

NITI K
HALDANKAR

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