

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.313 OF 2024

FRANCISCO XAVIER
PACHECO

... PETITIONER

Versus

STATE OF GOA, THR. CHIEF
SECRETARY AND 3 ORS. ... RESPONDENTS

Mr S. Vales, Advocate for the Petitioner.

Mr S.G. Bhobe, Public Prosecutor for Respondent Nos.1 and 2.

Ms Amira Razaq, Standing Counsel for Respondent No.3.

**CORAM: M. S. SONAK &
VALMIKI MENEZES, JJ.**

DATE: 27th MARCH 2024

ORAL ORDER : (*Per M.S. Sonak, J.*)

1. Heard Mr Vales for the petitioner. Mr S.G. Bhobe, learned Public Prosecutor appears for respondent nos.1 and 2 and Ms A. Razaq appears for respondent no.3.

2. This petition was mentioned for urgent circulation yesterday, i.e. on 26.03.2024 by submitting that if no interim relief is granted, the reassessment proceedings pursuant to notice dated 25.01.2024 issued by the third respondent would conclude by 31.03.2024.

- 3.** The petitioner's case is that the crime branch (respondent no.2) has seized certain documents, computers, hard disks, etc. from the petitioner and until all this is released, the petitioner would not be in a position to effectively respond to the notices of reassessment.
- 4.** Accordingly, the petitioner prays for the following reliefs in this petition:

"(a) By way of appropriate writ of mandamus direct the respondent no.2 and respondent no.3 to release all the seized documents, data, articles as per the seizure memo/panchanama which they have in their possession and as per the Order dated 6th February 2018 passed by the Judicial Magistrate First Class, D Court at Margao in case no.Cri. Misc. Appln. No.559/2017/D and further till such time all the seized documents, articles, data are released to the petitioner, the respondent no.3 be ordered to desist itself from proceeding ahead with the de-novo assessment as ordered by the ITAT vide its Order dated 30th August 2022 passed in IT(SS) A nos. 63 to 69/PAN/2018 (Assessment year 2008-09 to 2014-2015);

(b) By way of interim relief, stay all further de-novo assessment proceedings before the respondent no.3 initiated vide the abovesaid 7 notices at Exhibit – C (colly) above.

(c) Ad-interim relief in terms of prayer (b) above.

(d) Such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

- 5.** Mr Vales, learned Counsel for the petitioner, submitted that until the second respondent releases all seized articles, data, in terms of the

seizure memo/panchanama as directed by the Judicial Magistrate by her order dated 06.02.2018, the tax authorities, must be restrained from proceeding with the de novo assessment as ordered by the ITAT vide its order dated 30.08.2022 and in pursuance of the notice dated 25.01.2024.

6. After having extensively heard Mr Vales, Mr Bhobe and Ms Razaq, we are satisfied that the very institution of this petition amounts to abuse of the judicial process.

7. The Judicial Magistrate, First Class, by her order dated 06.02.2018, had indeed directed the second respondent to release all the seized documents, data, articles, etc. subject to the following conditions:

“(a) The applicant shall furnish an indemnity bond of Rs.10,000/-.

(b) The applicant shall produce the said hard disks, from 8 CPUs computers, before the Court and/or police as and when required.

(c) The applicant shall not change the appearance, colour, shape or carry out any alteration of the said hard disks, from 8 CPU computers until further orders.

(d) Applicant to inform the Court in the event of any contingency to the hard disks, from 8 CPU computers.”

8. There is a vague and omnibus statement in the petition that the petitioner pursued the matter with the second respondent for release in

terms of the JMFC's order dated 06.02.2018. However, this vague and omnibus statement is not backed by any material, documents, etc.

9. There is no averment in the petition about furnish of any indemnity bond. Orally it was attempted to submit that the indemnity bond must have been given at some time after the JMFC made her order dated 06.02.2018. Thus, it is apparent to us that the petitioner, even after securing the order dated 06.02.2018, has not pursued the matter for the last about six years with the necessary seriousness and just because the tax authorities are proceeding with the reassessment proceedings, this petition has been instituted. This petition is nothing but an attempt to stall the reassessment proceedings without any justifiable cause.

10. On the ground that the seized documents have not been released the petitioner succeeded in securing a remand from the Income Tax Appellate Tribunal (ITAT). This is evident from the order dated 30.08.2022 made by the ITAT. The ITAT, after granting an opportunity to the petitioner remanded the reassessment proceedings or the block assessment proceedings to the ITO for de novo assessment. The petitioner was also directed to comply with the notices in respect of the assessment proceeding and be diligent by avoiding to take any adjournments. This order was made on 30.08.2022.

11. Despite the order of 30.08.2022, there is nothing on record to indicate that the petitioner took any serious steps for obtaining the documents/material/hard disks from the second respondent. The only

letter produced on record is dated 21.02.2024, when, in fact, even the IT notice was issued on 25.01.2024. Thus, it is very apparent that the petitioner simply wants to stall the reassessment proceedings or the de novo proceedings at any cost. The writ Court cannot assist the petitioner in such endeavours.

12. Accordingly, we decline to entertain this petition and dismiss it with costs of ₹25,000/- (Rupees Twenty-Five Thousand only). Such costs should be paid within two weeks to the Goa State Legal Services Authority.

VALMIKI MENEZES, J.

M. S. SONAK, J.

NITI KISHOR
HALDANKAR

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