

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.182 OF 2021**

Cyril Sequeira  
married, retired,  
Resident of House No.41/5,  
Golna, Pomburpa,  
Bardez- Goa- 403 523.

... Petitioner

*Versus*

Victor Joao Baptista Sequiera,  
alias John Baptist Sequeira,  
Thr. Attorney,  
Mr. Anthony Francis Lobo,  
Resident of House No.485/1,  
Cottarbhat, aldona,  
Bardez- Goa 403 508

... Respondent

Mr. Sudin Usgaonkar, Senior Advocate with Mr. Sukra Usgaonkar,  
Ms. T. Mashelkar and Ms.Pooja Naik, Advocate for the Petitioner.

Mr. Dhaval Zaveri, Advocate for the Respondent.

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| <b>CORAM:</b>        | <b>BHARAT P. DESHPANDE, J.</b>        |
| <b>RESERVED ON :</b> | <b>16<sup>th</sup> February, 2023</b> |
| <b>PRONOUNCED</b>    | <b>2<sup>nd</sup> March, 2023</b>     |
| <b>ON :</b>          |                                       |

**JUDGMENT:**

1. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel appearing for the parties the matter is taken up for final disposal at the admission stage.

2. The petitioner is hereby challenging the judgment and order dated 18/10/2019 passed by the learned Administrative Tribunal in Mundkar Revision Application No.17/2018 wherein the learned Tribunal rejected revision and confirmed the impugned judgment passed by the authorities below.

3. An interesting question cropped up in the present petition which reads thus:

*“Whether a person who was lawfully inducted in the house after the appointed date and had a fixed habitation, can claim mundkarship?”*

#### **FACTS OF THE CASE:-**

4. In nutshell, few facts which led to the present petition are thus:

5. The property known as 'GOLNA' survey No.39/5 exist in village Pomburpa at ward Golna. There is residential house in this property bearing No.41/5. Originally this property was belonging to Rev. Fr. Pactricio Sequeira who was also known as Patrick Sequeira. The said Patric Sequeira was a clergyman and therefore a bachelor. He expired on 22/10/2002. The petitioner is the nephew of the said Patrick Sequeira. The respondent Victor Sequeira is the brother of the petitioner and also a nephew of said Patrick.

6. It is specific case of the petitioner that Fr. Patrick Sequeira inducted the petitioner in the said house on 31/12/1989 and since then the petitioner along with his family members is residing and occupying the said house and also enjoying the suit property. Subsequently, the

respondent/brother of the petitioner by name Victor, claiming ownership of the said house on account of a Will dated 18/11/1993 executed by Fr. Patrick Sequeira in his favour, filed a suit bearing Regular Civil Suit No. 108/2003 claiming relief of permanent and mandatory injunction against the petitioner. The petitioner appeared before the Civil Court and filed his written statement thereby raising a plea of mundkarship. Accordingly, the learned Civil Court framed the issue of mundkarship and referred it to the Mamlatdar of Bardez at Mapusa.

7. The Joint Mamlatdar – III of Bardez, Mapusa vide its judgment dated 23/06/2015 answered the issue of mundkarship in negative. The petitioner therefore filed an appeal before the Deputy Collector and SDO, Mapusa. The said appeal was dismissed vide judgment and order dated 18/07/2018, thereby confirming the order of the learned Joint Mamlatdar. The petitioner thereafter preferred a revision before the Administrative Tribunal who by its impugned judgment and order dated 18/10/2019 rejected the revision thereby confirming the orders of the authorities who negated the claim of mundkarship of the petitioner.

#### **SUBMISSIONS OF THE PETITIONERS:-**

8. Mr Usgaonkar, learned Senior Counsel appearing for the petitioner first of all claimed that all the authorities erred in concluding that since the petitioner was not inducted prior to 1976, when the Mundkar Act came into force, such claim cannot be entertained. He forcefully submitted that after the amendment of 1976, there was a major change in the definition of “Mundkar” which clearly goes to show that there was no prohibition of

creating mundkarship or inducting any person as mundkar by the landlord even after the Act came into force. According to him, the conditions incorporated in the Act required to be fulfilled. Firstly, mundkar must have fixed habitation. He is not covered under the exceptions and that the landlord has inducted him in the house. He then stated that once these conditions are fulfilled and the petitioner is not coming within the exceptions, there is restriction to eviction of mundkar and a Civil Court will not have jurisdiction to grant any relief.

**9.** Mr Usgaonkar then would submit that apart from Goa, there is similar concept of mundkar in Kerala. He would submit that there is absolutely no prohibition for inducting in person as mundkar subsequent to the said Act of 1976 coming into force. In this respect he referred to Section 2(p) of the Mundkar Act and claimed that if the conditions are fulfilled, the petitioner could be considered as mundkar of the suit house.

**10.** Mr Usgaonkar then claimed that as far as explanation to Section 2(p) which only widens the scope and therefore the amended provision will have to be construed accordingly. According to him, there is vast change from the time of legislative order No.1952 issued by Govt. Gazette No.48 Series I, dated 26/11/1959 when the concept of mundkar in Goa for the first time was given some protection. The claim of mundkarship is not restricted only to the date when the law came in force. Even if the mundkar is having another house at different place, his claim cannot be rejected on that ground, subject to the condition that he prove fixed habitation in the house in which he is claiming mundkarship rights.

When there is expressed consent of the landlord to induct a person without paying any rent or rendering services, even though such person is a relative/blood relation, the claim of mundkarship will have to be accepted for the simple reason that such legislation is a beneficial legislation so as to protect the mundkars against the eviction from their dwelling houses and to grant them right to purchase such houses.

**11.** Mr Usgaonkar placed reliance on the following decisions:

1. **Km. Sonia Bhatia V/s State of U.P. And others<sup>1</sup>**
2. **S. Sundaram Pillai and Others v/s. V.R. Pattabiraman and others<sup>2</sup>**
3. **Shantaram Babani Xete Curtorkar v/s. Vishnu Babani Xete Curtorkar<sup>3</sup>**
4. **Baburao Vishnu Naik v/s. Ramchandra Vishnu Naik and another<sup>4</sup>**
5. **Monica Fernandes Versus Suresh Shirodkar and Others<sup>5</sup>**
6. **Shri Vishnu Ganesh Tandel Versus Anusuya and Others<sup>6</sup>**
7. **L.Mary Yohannan Versus Sreekumaran Nair and another<sup>7</sup>**
8. **Union of India and Others Versus Dhanwanti Devi and Others<sup>8</sup>**
9. **Vidhyadharan Versus Sivadas<sup>9</sup>**

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1 (1981) 2 SCC 585

2 (1985) 1 SCC 591

3 [(1989 DGLS(Bom) 40]

4 1989 Mah LJ 407

5 1991 (4) Com CR 325

6 Writ Petition 205/91

7 AIR 1992 KERELA 36

8 (1996) 6 SCC 44

9 2001 KHC 466

10. Kum. Maria Eliza Marques Versus Madhukar M Moraskar & Others<sup>10</sup>
11. Maniyan v. Ramachandran<sup>11</sup>
12. Rajbir Singh Dalal Versus Haudhari Devi Lal University, Sirsa and Another<sup>12</sup>
13. R.S. Jiwani (M/S.), Mumbai Versus Ircon International Ltd., Mumbai<sup>13</sup>
14. Union of India and Others Versus S.K.Kapoor<sup>14</sup>
15. Heniriqueta D'Souza Versus Mangesh D. Mishal and Others<sup>15</sup>
16. Heniriqueta D'Souza Versus Mangesh D. Mishal and Others<sup>16</sup>

**SUBMISSIONS OF RESPONDENT:-**

**12.** Per contra, the learned Counsel Shri Zaveri appearing for the respondent vehemently submitted that three authorities rejected the claim of the petitioner by giving cogent and convincing reasons and thus there is no substance or ground on which this Court should interfere with.

**13.** Mr.Zaveri then claimed that the petitioner and the respondent are real brothers. Fr. Patrick Sequeira was the uncle of the petitioner and the respondent. He was a bachelor and a priest. Initially, he requested the petitioner to stay in the house only with an intention that the said house

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10 1997 SCC OnLine Bom 496

11 1999 (2) KLJ 492

12 (2008) 9 SCC 284

13 2010 (1) Mh.L.J.

14 (2011) 4 SCC 589

15 2013 DGLS (Bom) 59

16 2016 DGLS (Bom) 80

should remain in habitable condition. At that time, the petitioner and the respondent were legal heirs of Fr. Patrick and therefore the intention of Fr. Patrick was to allow the petitioner to reside in the said house so that the house would remain in habitable condition and the same could have been bequeathed to the petitioner. However, the petitioner failed to stand to the expectations of Fr. Patrick and accordingly he executed Will dated 18/11/1993 thereby bequeathing the said property along with the house to the respondent. Fr. Patrick then expired on 22/10/2002. The respondent became owner of the property and the suit house on the basis of Will and accordingly he filed a suit against the petitioner for permanent and mandatory injunction. The petitioner raised the plea of adverse possession at the initial stage but then he amended the written statement and claimed the plea of mundkarship. The Civil Court then framed issue and referred the matter to Mamlatdar. All the three authorities rejected the claim of mundkarship.

**14.** Mr Zaveri then pointed out that initially the petitioner came to India in the year 1968 and thereafter got married and having three children, all are borne in Margao. Therefore, the petitioner was having a fixed habitation along with his family members at Margao only. He then submitted that the letter/legal notice issued by Fr. Patrick to the petitioner nowhere shows that he was inducted in the suit house as a mundkar but his intention was only to keep the said house in habitable condition. The intention of Fr. Patrick was clear and simple and the petitioner being his nephew, he was allowed to reside in the said house so that the house could be maintained and remain in habitable condition. There was no intention

of Fr. Patrick to induct the petitioner in the suit house by giving him any status and not the status of mundkar at all. According to Mr Zaveri, the petitioner was only given permissive use to use the house and nothing more. The claim of mundkarship is only an abuse of process of law which has been negated by the authorities below.

**15.** Mr. Zaveri then would submit that not only the definition of “Mundkar” alone is required to be looked into, the definition of “Dwelling house” as found in Section 2(i)(a) and other sections in the Mundkar Act wherein the words “**On the appointed date**” have significance and so the intention of the legislature. He submitted that a person who is only appointed as caretaker of the house does not become a mundkar. He then submitted that 1976 Act is enacted by the legislature to give protection to the persons who were residing in the dwelling houses in the property of Bhatkar's, from illegal evictions. This Act nowhere permit creation of new right as mundkar. The said Act only protect the rights created as on the appointed date. He submitted that there is no deeming provision in the Mundkar Act as found in the Agricultural Tenancy Act wherein on the tillers day a tenant is deemed to be considered as owner of the land.

**16.** Mr Zaveri then would submit that only consent of the landlord to allow any one to reside in the house subsequent to 1976 Act cannot, by any stretch of imagination gives permission to such person to claim mundkarship. He would submit that the decisions of the Kerala High Court are distinguishable as Kerala Act is having a deeming provision which is found absent in the Goa Act. Finally he claimed that the petitioner is

only a caretaker without any fixed habitation in the suit house, and therefore has been rightly not considered as a mundkar.

17. Mr Zaveri placed reliance on the following decisions:

1. Mrs. Baldy Palmira Domentina Graciase Miranda v/s. Antonio Fernandes and others<sup>17</sup>

2. Smt. Josepha Fernandes v/s. Aulio Joaquim Vaz and others<sup>18</sup>

3. Smt. Esmeralda Rosario and others v/s. Shri Cornelio Pereira and another<sup>19</sup>

4. Krishna Vithoba Xete Tilve and others v/s. Vassudev Pandurang Naik<sup>20</sup>

5. Sadanand Vithal Naik and others v/s. Smt. Rashmi Dinesh Naik and others<sup>21</sup>

**REJOINDER BY PETITIONERS:-**

18. In rejoinder, Mr Usgaonkar forcefully submitted that all the Courts below failed to consider the defence of the petitioner regarding the fixed habitation and creation of rights in favour of the petitioner from the year 1989. According to him, letter/notice issued by Fr. Patrick clearly shows that the petitioner was inducted in the suit house to take care of the said house which means that the house remain in habitable condition but not as a caretaker simpliciter. He then submitted that this ground of caretaker or habitable condition were not raised before all the Courts below by the respondent and therefore such ground cannot be raised before this Court

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17 1994 SCC OnLine Bom 204

18 1994 SCC OnLine Bom 261

19 1996 SCC OnLine Bom 505

20 Writ Petition No.605 of 2010

21 2010 4 AllMR 83

for the first time. He would submit that written statement filed by the petitioner before the Civil Court clearly shows that he was inducted with fixed habitation. The status as a mundkar from the year 1989 is therefore established.

**19.** Mr Usgaonkar then would submit that even blood relations claimed mundkarship and such claim has been affirmed by this Court in the earlier decisions. He referred to cases of **Baburao** and **Curtorkar**(supra). He then claimed that there must be substantial degree of permanency for fixed habitation and it cannot be taken as literally meaning. According to him, the exception to Section 2(p) is only additional benefits but could not prove the consent of the landlord. According to him the protection and benefits are available from the appointed date which nowhere prohibit creation of mundkarship or raising a plea of mundkarship from the subsequent date. Finally he claimed that such aspect has not been decided by any Court and therefore it is necessary now to consider such claim in greater detail.

**20.** Rival contentions fall for the determination of this Court.

### **LEGISLATIVE HISTORY:-**

**21.** First of all the history of mundkar needs to be taken into consideration. Legislative Order No.1952 published into Government Gazette No.48 Series I, dated 26/11/1959 would show that the law which codified the uses and practices presiding over the juridical relations between proprietors of rural properties and the individuals who may occupy therein

a parcel of plot for permanent residence is over half a century old (Decree of 24/08/1901). There was need to lay down regulations regarding such relations recognizing usefulness for the betterment of the rural property and for the well being of the labourers community who constitute a basic element of the rural and social economy of the State. Accordingly, the Governor General of the State in exercise of the powers conferred by Article 151, promulgated the said order wherein it was provided that the juridical regime of plot tenement in the rural properties of others, for the purpose of permanent resident, shall be governed, in the absence of written agreement, by the clauses of the said order.

**22.** Article 2 which defines “Mundkar” or “Occupant”, is the individual, who resides with fixed habitation in a rural property of others, specially with the purpose of cultivation or watch and protection, may such habitation be constructed on his own, or may be constructed on the batcar's or not with or without any help in money or material for construction of such habitation.

**23.** In order to understand relevant provisions, the object and reason of the Goa Mundkars Act, 1975 would be of much relevance. The section 2(i) defines “dwelling house” whereas Section 2(p) defines “Mundkar” which reads thus:

*“Section 2:-*

*(i) “dwelling house” means the house in which mundkar resides with a fixed habitation and includes—*

(i) (a) the land on which the dwelling house is standing and the land around and appurtenant to such dwelling house, subject to a maximum limit of five meters, if the land is 2[on the appointed date] within the jurisdiction of a village panchayat, and two metres, if it is not within such jurisdiction, from the outer walls of the dwelling house:

*Provided that, where the distance between the outer walls of the dwelling house of the mundkar and of the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house or houses of one or more mundkars, is less than double the aforesaid limit the land appurtenant to such dwelling house shall be half of the land lying between the outer walls of the dwelling house of such mundkar and the bhatkar or between the outer walls of the dwelling house of such mundkar and the outer walls of the dwelling house or houses of such other mundkar or mundkars, as the case may be; or*

(b) three hundred square metres of land including the land on which the dwelling house is standing:

*Provided that where 3[on the appointed date] the dwelling house is within the jurisdiction of a municipal council, the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing:*

*Provided further that where there is on the appointed date in the property of the bhatkar, the house of the bhatkar or a dwelling house of one or more than one mundkar, and the total extent of the land is inadequate to provide each of them the extent indicated in this clause, the dwelling house shall include, in the absence of any agreement, the land apportioned in equal shares, as far as practicable, by the Mamlatdar.*

*Explanation I.— The option contemplated under this clause shall be exercised by the Mundkar in the manner prescribed.*

*Explanation II.— For the purpose of this clause “house” means an entity in itself and shall not include a Dharmashala or such other building belonging to or in possession of a religious or charitable institution and is used for temporary accommodation and such other building as may be meant for letting out on hire and a portion of which has been let out.*

*Section 2:-*

*(p) "mundkar" means a person who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include—*

*(i) a person paying rent to the bhatkar for the occupation of the house;*

*(ii) a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer's residence;*

*(iii) a person employed in a mill, factory, mine, workshop or a commercial*

*establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine workshop or commercial establishment; and*

*(iv) a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a care-taker of the said house or for purposes of maintaining it in habitable condition.*

*Explanation.— A person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person.*

**24.** In order to effectively decide the question framed in paragraph 3 above it is expedient to consider the objects and reasons appearing in the bill of 1973 and the intention of the legislature.

**25.** The basic concept of enacting the said law is itself mentioned in the title which shows as under:

*“The Goa, Daman and Diu Mundkars (**Protection from Eviction**) Act, 1975”.*

**26.** The statement of objects and reasons while introducing the bill of 1973 specifically highlights the existence of said system as a Mundkar, which was for the first time considered for regulating conflicts arising between the mundkar and the bhatkar(landlords) by enactment of the first legislation in the form of Decree dated 24/08/1901. subsequently in the year 1959 (pre-liberation) as there was need for revision of the decree enforced in order to secure reciprocal rights and duties on the basis of requirements and conditions. Accordingly legislative diploma No.152 of 26/11/1959 was enacted thereby repealing the original decree dated 24/08/1901.

**27.** Both the above decrees of 1901 and 1959 show that there was need to streamline the relationship between bhatkars and mundkars. Once Goa, Daman and Diu were liberated from the Portuguese Rule on 19/12/1961 and became part of India, there was further need felt to bring about an equitable social justice. In the year 1971, a temporary enactment was enacted to provide for protection from eviction of the mundkars, agricultural labourers and village artisans. It is under this context, the bill of 1973 was prepared in a more just, humane and equitable manner with the object as under:

*“The mundkar system, though centuries old, has undergone successive changes, not only because the seccessors of the original*

*mundkars have raised their standard of life through education, change in the occupation etc. and as such they do not render at present any service, though continuing to reside in the dwelling house, but also because, in some cases, the bhatkars started to consent, to reside on the land. without any duty to render any service to them. It is taking in view these different categories of persons that the term "Mundkar" has been defined in this Bill in such a way to cover all possible cases deserving equal protection.*

*Respective duties and responsibilities of the bhatkar and mundkar have been laid down and provision has been made to abolish free services rendered by mundkars and to substitute the same into remunerated ones.*

*While the right of the mundkar against arbitrary eviction has been safeguarded, the bhatkar has also been given the concession to secure the shifting of his mundkar to another site, in case the property held by the latter is required by the bhatkar for building purposes for himself or any member of his family or for locating the dwelling house of the mundkar in a convenient place, provided the bhatkar gives an alternative site of his own, of the same size, within 5 kms. of the old dwelling house to the mundkar, for construction of a new dwelling house."*

**28.** There was further need to amend 1975 Act and accordingly another Bill (amendment Bill) of 1976 was also introduced. The statement of object and reasons of the Bill of 1976 provide that after passing of bill of 1975 many amendments were carried out and as such certain consequential amendments remained to be carried out which necessitated the amendment Bill of 1976.

**29.** Certain provisions of the Act of 1975 are required to be taken into account. Apart from the definition of "dwelling house" and "mundkar" as quoted above which speaks of "**on the appointed date**". Explanation appended to the definition of Mundkar also refers to the appointed date.

**30.** The scheme of the Act is found in Chapter II which deals with rights and liabilities. Though rights of a mundkar in his dwelling house are heritable but not transferable. There is restriction to evict the mundkar from his dwelling house as found in Section 4. It starts with non-obstante clause and postulate that notwithstanding anything to the contrary provided in any custom, usage, contract, decree or order of any court or tribunal or in any law no mundkar shall be evicted from his dwelling houses except in accordance with the provision of said Act.

**31.** Sub-section 2 of Section 4 again speaks about the appointed date and provide this:

*“(2) Any mundkar, who was in occupation of a dwelling house on the 4th February, 1971 and was evicted from such dwelling house thereafter but before the appointed date, shall be entitled to the restoration of such dwelling house, if–*

*(i) he makes an application to the Mamlatdar, in the prescribed form, within one year from the appointed date, for the restoration of such dwelling house; and*

*(ii) the bhatkar is not able to prove that–*

*(a) the mundkar was evicted from the dwelling house in execution of an order of the Mamlatdar or the Administrative Tribunal or a Civil Court; or*

*(b) the mundkar was paid by the bhatkar any consideration in cash or kind or given an alternative site for the construction of a dwelling house or an alternative dwelling house; or*

*(c) the dwelling house has been destroyed, dismantled or removed.*

*Explanation.– For the purposes of sub-clause (c) if it is proved to the satisfaction of the Mamlatdar that the dwelling house was destroyed, dismantled or removed in order to defeat the purposes of this Act, the bhatkar shall be liable to provide a similar dwelling house at his own*

*cost in the same property and if not possible in his own nearest property.”*

**32.** Similarly Section 4(3) again refers to appointed date wherein it has been stated that any mundkar, who is in possession of a dwelling house on the appointed date but is evicted thereafter in contravention of the provisions of this Act, may, within one year from the date of his eviction, apply to the Mamlatdar in the prescribed form, for the restoration of his dwelling house.

**33.** Sub-section 5 to 9 of the Section 4 provide other remedies and power of Collector including punishment of such Bhatkar who fails to restore possession of the dwelling house.

**34.** Section 5 is dealing specifically with the cases of threatened wrongful dispossession of any mundkar contrary to the provisions of this Act wherein the Mamlatdar is empowered to safeguard the rights of such mundkar.

**35.** Section 6 deals with the right of mundkar to enjoy supply of power or water or any customary easement while enjoying the mundkarial dwelling house.

**36.** Section 7 deals with rights to repair, maintain and improve his dwelling house. Section 7 A was introduced by the amendment Act No.2 of 1993 which gives right to the mundkar to reconstruct, rebuild his dwelling house using the same existing plinth of his old demolished house, without producing the NOC from the Bhatkar.

**37.** Section 8 gives right to a mundkar to use his dwelling house for business and other purposes apart from residential use and more specifically without shifting his residence.

**38.** Section 8 A was introduced by the amendment Act of 18 of 1978 which specifically deals with declaration of right of mundkarship. On filing of such application, the Mamlatdar after holding necessary enquiry is entitled to declaration of a person as mundkar of the dwelling house. Section 9 deals with a situation where the bhatkar transfers the property. In such situation the rights of mundkar in the dwelling house are protected by saying that such transfer in any way shall not affect the right of mundkar.

**39.** When a person not being a member of the family of a mundkar and found in occupation of a part of the dwelling house on the appointed date, he shall be deemed to be a tenant of the mundkar, as provided in Section 10 of the Act of 1975. In such a case, the provisions of the law governing the relationship of landlord and tenant of residential premises in force at the relevant time shall apply to such tenant. By Section 11 of the said Act, free services rendered by the mundkar to the Bhatkar were stand abolished, from the appointed date.

**40.** The grounds on which a mundkar could be evicted from his dwelling house are spelt out in Section 12. Sub-section 1 mention that mundkar shall not be liable to be evicted from his dwelling house, except on any one or more of the following grounds:—

(a) that he has transferred his interest in the dwelling house after the appointed date;

(b) that neither the mundkar nor any member of his family has been residing in the dwelling house for a continuous period of two years;

**41.** Section 13 deals with transfer of pending suit or other proceedings for eviction to the Mamlatdar wherein a mundkar or a person who has therein claimed to be a mundkar is raised. There is provision to surrender right of mundkar as provided in Section 14.

**42.** Right of mundkar to purchase the dwelling house and the procedure for purchase are found in Sections 15 and 16 of the said Act.

**43.** Section 17 deals with mundkar's right to alienate wherein it is specifically prescribed by stating that mundkar shall not be entitled to alienate by sale the dwelling house purchased by him in pursuance of the provisions of this Act, within a period of three years from the date of issue of certificate of purchase and any transaction made in contravention thereto shall be null and void.

**44.** Sub-Section (2) of Section 17 further deals with a period after three years from the date of issue of certificate of purchase when mundkar intends to sell the dwelling house purchased by him. In such situation, the mundkar is duty bound to give notice of his intention to the bhatkar in the prescribed manner and shall specify the price at which the sale is to take place and call upon him to state within ninety days of the receipt of the notice whether he is willing to buy the dwelling house at the price specified.

The bhatkar on receipt of such notice and within a period of 90 days is entitled to show his readiness to purchase the land at the price mentioned in the notice and thereupon a contract to purchase the land at the said price shall be deemed to have been concluded between the bhatkar and the mundkar. However in case bhatkar fails to give his acceptance within a period as specified in sub-section (2) and (3), the mundkar shall be free to sell the dwelling house to any person at the price not lower than set out in the notice. Sub-section (5) of Section 17 protects the bhatkar when a sale is effected by a mundkar to any person other than bhatkar without giving the notice required under sub-section (2) or before the expiry of the period of the said notice or at a price lower than that set out in the notice as the case may be, nullifying such deed of sale as void.

**45.** Chapter III of the Act of 1975 deals with Powers, functions, appeals etc. and maintenance of registers. For deciding the present issue, Section 29 is relevant which deals with register of mundkars. In this respect a duty is cast on the Government to prepare a register of mundkars in respect of every village, in a prescribed manner which shall contain the following particulars:

- (a) the particulars and description of the dwelling house;
- (b) the location of the dwelling house;
- (c) the name and address of the bhatkar;
- (d) the name and address of the mundkar;
- (e) the nature and extent of service, rendered to the bhatkar or the amount of ground rent if any paid;

- (f) the occupation of the mundkar;
- (g) the rights referred to under section 6; and
- (h) such other particular as may be prescribed.

**46.** The Mamlatdar is duty bound to prepare and maintain such register and for that purpose he was required to publish a notice in every revenue village inviting applications from the mundkars for registration before such a date as may be prescribed in the notice or such further time as may be prescribed by him. Proviso to Section 29 explains that if, at any time after the publication of the notice, it is found that a mundkar has failed to apply for registration of his name to the talathi within whose jurisdiction the dwelling house is situated may, after making such inquiry as considers necessary by the Mamlatdar, enter the name of such mundkar in the prescribed register.

**47.** Similarly, the procedure of receipt of notice within a time prescribed in the publication, is provided under sub-section (5) of Section 29 onwards. Said procedure clearly shows that it was not an empty formality but inquiry was required to be conducted by giving notice to the bhatkar or any other person interested in the land in which dwelling house is situated. The order of Mamlatdar while disposing of such application of the Bhatkar for inclusion of his name in the register, was required to be served on the interested parties and also to be published in the notice boards of the village office of the village in which the dwelling house is situated. In case any person is grieved by the registration of a mundkar or by refusal to

register a person claiming to be a mundkar is entitled to file appeal to the Collector within sixty days from the date of such order. Section 30 gives a presumptive value of the record of such register. It specifically provide that entry made in the register of mundkars is prepared in accordance with the provisions of the Act and the rules made thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereafter.

**48.** Section 38 gives overriding effect of other laws and shows that the provisions of this Act shall have effect notwithstanding anything in any other law or any custom or usage or decree or order of a Court, or any agreement or contract, express or implied, inconsistent with the provisions of the Act. Exemptions is provided under Section 39 which shows that nothing in this Act shall apply to the land owned or held by Government, Government of any other state of India, Government of India, a local authority or Provendoria da Assistencia Publica. Finally, Section 41 deals with repeal and saving. By this Act a Diploma of 1952 stands repealed. Similarly the Section 17 of the Agricultural Tenancy Act, also stands repealed. The Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971, also stands repealed.

#### **CASE LAWS:-**

**49.** In the case of *Sonia Bhatia*(supra), wherein the Apex Court has observed in paragraph No.24 that it is well settled that an explanation

merely widens the scope of the main section and is not meant to carve out a particular exception to the contempt of the main section.

**50.** In the case of *S Sundaram Pillai* (supra), the Supreme Court in paragraph No. 53 observed thus:

*“Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-*

*(a) to explain the meaning and intendment of the Act itself,*

*(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*

*(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*

*(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*

*(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”*

Thus, it is settled that explanation to a statutory provision has to be construed as discussed in paragraph 53 by the Supreme Court as above.

**51.** The explanation to Section 2(p) of the Act of 1976, therefore, needs to be construed as only clarifying a position of a person who lawfully resides with the consent of the bhatkar in a dwelling house for a period exceeding one year prior to the appointed date and such bhatkar have not initiated

proceedings to evict such person on a ground that he is a trespasser and having failed to obtain decree for such eviction, as on the **appointed date**, shall be deemed to be lawfully residing in the dwelling house as a mundkar. The deeming provision found in the explanation is only with respect to such person who resides lawfully and with consent of the bhatkar in a dwelling house for a period exceeding one year prior to **the appointed date**. Thus explanation is again necessarily to be read along with Section 29 which deals with register of mundkars and Section 8 A which deals with declaration of the rights of mundkar.

**52.** In such circumstances, one thing is quite clear that words “**appointed date**” as found in the said Act and defined in Section 2(e) is quite significant for the purpose of considering whether a person ought to be considered as mundkar from that date. This Act nowhere intend to create any new mundkarial right in favour of any person after the **appointed date**. The entire Act is totally silent about the scenario when anyone claiming mundkarial right specifically after the appointed date in connection with dwelling house, is concern.

**53.** In the case of *Shantaram Babani Xete Curtorkar*(supra), a suit in the year 1973 was instituted for eviction of Shantaram by his brother Vishnu/ respondent which was dismissed by the trial Court, but decreed by the Appellate Court in the year 1988. When the decree of eviction was sought to be executed in the year 1988, Shantaram raised a ground that he was mundkar and sought stay of the execution proceeding as well as reference of the issue relating to mundkarship to the Mamlatdar. The

learned Executing Court rejected such application which was challenged by way of revision before this Court.

54. Similarly, the petitioners also instituted proceedings before the Mamlatdar for declaration that they are mundkars in respect of the same premises. In such proceedings the petitioner sought an interim order restraining the bhatkar. The Mamlatdar who rejected interim such application which made the petitioners to move the Collector, who granted interim relief restraining the bhatkar from executing decree of eviction. The petitioner armed with such order of interim relief, approached the Executing Court requesting to suspend the warrant of possession. The Executing Court rejected such application, which gave rise to second revision application, both were decided by the common order by this Court. The observations of this Court in the above case though refers to the conflict between two brothers will not help the petitioner in any manner, as plea was raised in execution though, occupation of house was much prior to 1976.

55. In the case of ***Baburao Vishnu Naik***(supra), the learned Single Judge of this Court was called upon to decide as to whether the expression “dwelling house” as defined under Section 2(i) of Act of 1975 connotes a separate and independent structure or building, or whether it also brings within its fold a part or a portion of a building where a person who alleged to be a mundkar resides with fixed habitation. In that case Baburao filed a suit on 08/07/1977 for recovery of possession of part of the house as identified in the plan claiming that house owner is in possession of the

dwelling house and at or about June 1970 respondent No.1 was given temporary shelter in a part of the said house consisting of two room on request since he had no place to stay at that time with an understanding that respondent would vacate the premises within six months and that he failed to vacate inspite of repeated requests. The respondent resisted the said suit claiming that the petitioner is not owner in possession of the suit house. He also denied of any temporary shelter given to him in two rooms of the said house with an understanding that he would vacate within six months. The respondent- Ramchandra resisted such a claim. The suit filed by Baburao for possession was decreed by the Trial Court. Ramchandra unsuccessfully filed an appeal before the District Court. When the matter was taken up for execution of decree for possession, Ramachandra raised a plea of mundkarship of two rooms. In that context, this Court observed that even part of the house including two rooms having separate entry and exit and having fixed habitation needs to be considered as a dwelling house as defined in the Mundkar Act. Even the Executing Court is required to frame an issue referring to the Mamlatdar. However, in that case proceedings clearly show that Ramchandra was inducted in said two rooms somewhere in 1970.

**56.** In the case of *Monika Fernandes*(supra), respondent Suresh Shirodkar filed a civil suit against Monika in the year 1980 for eviction from the dwelling house. The said property was originally belonging to one Joaquim Caetan D'Sa and by sale deed dated 03/4/1978 was purchased by the Suresh Shirodkar – respondent. It was admitted fact that prior to the Sale Deed Monica Fernandes was occupying the house. Suresh Shirodkar

after the purchase of the suit house issued notice calling upon Monica to vacate the house on the ground that she forced herself in the suit house and was a trespasser. Monica raised a plea of mundkarship and accordingly the issue was framed and referred to the Mamlatdar. The issue framed and forwarded to the Mamlatdar was answered in negative on the ground that Monica claimed to be staying in the suit house from November, 1974. She filed an appeal before the Collector. The appeal was allowed thereby declaring Monica as a mundkar. Revision was filed before the Administrative Tribunal. The said revision was allowed thereby setting aside the order of Collector and confirming the order of Mamlatdar. In these circumstances, Monica preferred Writ Petition before this Court. While dealing with the said matter and more specifically in paragraph 8 this Court observed that the matter could be disposed of by deciding as to whether a consent has to be obtained in writing or it could be a deemed consent for staying in a dwelling house. In that case Monica was staying in the suit house from March, 1977 i.e. when the property was owned by the earlier owner Joaquim Caetan D'Sa respondent Suresh purchased the property somewhere in 1978. In fact, Monica claimed that she was occupying the suit house since 1974. however according to the Mamlatdar, she failed to prove such aspect but established that she was staying from 1977. While dealing with this aspect, this Court observed that the Mamlatdar as well as Administrative Tribunal committed gross error of law and also of fact by failing to consider the question of consent of Bhatkar in the residence in the suit house and therefore the matter was remanded back to the Mamlatdar who adjudicate afresh and to decide whether Monica is

or not mundkar within the meaning and definition and legal requirements provided in the Act. Thus this case/decision will not be helpful to the petitioner as the matter was remanded for fresh decision.

**57.** In the case of *Vishnu Tandel*(supra), this Court while deciding the petition filed by Vishnu challenging the order of the Administrative Tribunal in Mundkar revision application by which the order of the authorities below was reversed, observed that proceedings were initiated under Section 8A of the Mundkar Act, filed by the original applicant Jaidev /deceased respondent claiming declaration that he is the Mundkar of the dwelling house and paying house tax. The Mamlatdar declared Jaidev as mundkar. Vishnu then filed an appeal before the Additional Collector to reverse the order of Mamlatdar. The legal heirs of Jaidev then preferred revision before the Tribunal in which the order of Mamlatdar was maintained and the appellate order was reversed. In that matter, the record shows that Jaidev paid house tax. In the month of May 1968 for 3 years commencing from 1965 to 1969 and the house also stands registered in his name in the Panchayat. In this context, the Single Judge of this Court observed in paragraph 7 merely the original applicant have to secure his livelihood had to go to Bombay cannot deprive him of a right conferred on him by law, if he otherwise satisfied the requirements. The question of fixed habitation was therefore answered in favour of Jaidev.

**58.** In the case of *Kum. Maria Eliza Marques*(supra), the Division Bench of this Court was dealing with bunch of petitioners wherein a challenge was to the constitutionality of the Goa, Daman and Diu

Mundkars (Protection from Eviction)(Amendment) Act, 1985, whereby Section 2(1) of the said Act has been amended. Basically, this amendment this amendment was carried out to Section 2(i) wherein dwelling house is defined, on the basis of earlier decisions of this Court. While dealing with the said amendment, the Division Bench of this Court considered the statement of object of the original Act, in paragraph 3 and thereafter observed that as many as 41000 families has found by the committee, had no protection from eviction as mundkar, agricultural labourers and village artisans, from their dwelling houses. Finally, the Division Bench of this Court up held the constitutionality of the amended Act of 1985 and dismissed all the petitions filed against it. For the purpose of deciding this matter, the observations regarding observations and reasons of the main Act as well as the amended Act are very much relevant. In paragraph 33, the Division Bench of this Court observed that the part of the building if otherwise is separate entity in itself shall be 'dwelling house' within the meaning of Section 2(i).

**59.** In the case of *Vidhyadharan* and *Maniyan* (supra), the Hon'ble Kerala High Court while dealing with Kudikidappu, which is similarly placed as mundkar in Goa, can raise a plea of Kudikidappu even after 01-01-1970. There is a deeming provision in Section 2(25) of Kerala Land Reforms Act, 1963, which is not present in our Act. Therefore, though similar contentions were raised in the present petition, in view of the specific provision under Kerala Land Reforms Act, which is not found in the Mundkar Act, the same cannot be made applicable to the matter in hand.

**60.** In the case of *Sadanand Vithal Naik*(supra), the learned Single Judge of this Court specifically observed in paragraph No. 17 that the Mundkar Act was meant to be a measure of protection and not creation of new rights.

**61.** In the case of *Henriqueta D'Souza*(supra), the learned Division Bench of this Court was called upon to consider the extent of heritability of a right of a mundkar in a dwelling house in terms of Section 3 of the said Act. While dealing with this aspect, it was observed in paragraph 16 that the right of the mundkar does not create an interest in an immovable property but only gives a status which is protected under the Act of 1975, such status can be extended by succession to any persons similarly placed as a mundkar.

**62.** In the case of *Mrs. Baldy Palmira Domentina Graciase Miranda*(supra), the learned Single Judge of this Court was dealing with the aspect of fixed habitation of the dwelling house and it has been observed in paragraph 8 that the requirement of law as far as definition of 'mundkar' is concerned being the lawful occupation of the dwelling by the person in the property of the bhatkar, with his consent, coupled with the fact that this occupation should be permanent one i.e. with a decree of permanency as a fixed habitation.

**63.** In the case of *Smt. Josepha Fernandes*(supra), the learned Single Judge of this Court was again asked to decide about the fixed habitation.

64. In the case of *Smt. Esmeralda Rosario and others* (supra), the Division Bench of this Court while deciding the Letters Patent Appeal was called upon to decide the ingredients for a person to claim mundkarial right within the definition, in connection with the deeming clause. However, observation in paragraph 7 had material which reads thus :

7. *The contention of learned Advocate Shri Kantak is that the appointed date will have relevancy only for the purpose of the deeming clause as contained in Explanation to section 2(p). We do not find any force in the said contention of learned Advocate Shri Kantak. The appointed date on which the status of a person as mundkar has to be determined is 12-3-1976 and if a person on that day satisfies the requirements contained in section 2(p), he is entitled to get registration as a mundkar in terms of section 29(4) of the said Act. On the appointed date the respondent No.1 did satisfy the said requirements and as such was certainly lawfully residing with the consent of the bhatkar with a fixed habitation in the dwelling house. The contention of learned Advocate Shri Kantak that in view of Agreement dated 17<sup>th</sup> November, 1969, the residence of the respondent No. 1 in the suit house cannot be considered to be 'lawful' within the meaning of the term 'lawfully residing' in the said Act, is devoid of substance. Section 4 of the said Act clearly provides that no mundkar shall be evicted from his dwelling house except in accordance with provisions of the said Act irrespective of any custom, usage, contract or decree or order of any Court or Tribunal to the contrary. Being so, notwithstanding the conditions in the said Agreement dated 17<sup>th</sup> November 1969 permitting the respondent No. 1 to reside in the barrack constructed by him for 15 years, only at the end of which the said barrack would belong to the appellants, the occupation of the said barrack by the respondent No. 1 as on 12th March, 1976 and thereafter would be that of a mundkar and, therefore, he would be entitled to register himself as mundkar of the said barrack under section 29(4) of the said Act. Accordingly, we do not find any force in any of the contentions advanced before us by learned Advocate Shri Kantak.*

*(Emphasis supplied)*

65. The above observations clearly goes to show that the appointed date on which the status of a person as a mundkar has to be determined is 12/03/1976 and if a person on that day satisfies the requirement contained

in Section 2(p), he is entitled to get registration as a mundkar in terms of Section 29(40) of the Act. These observations are also applicable to application for declaration of mundkarial right under Section 8(A) as amended subsequently, for the simple reason that the Act at many places as quoted earlier refers to the appointed date.

**66.** In the case of *Krishna Vithoba Xete Tilve*(supra), the learned Single Judge of this Court was dealing with the aspect as to whether the mundkar registered in terms of Section 29 of the Act in respect of the particular dwelling house is entitled to have another fixed habitation in the city. While deciding this aspect and taking into consideration the definition of habitation of “habitation” as found in Black's law, it was observed that a person may have many residences but he can only have one fixed habitation at a particular period of time. Similarly, it was observed in paragraph 8 that even the preamble of the Mundkar Act does not suggest that the protection under the said Act would extend to one Mundkar in two dwelling houses.

**67.** With the above decisions of this Court and that of Kerala Court wherein the contempt of Mundkar is existing, it is necessary to look into the facts of the matter and the decisions of all the authorities which has been challenged before this Court.

### **FINDINGS:-**

**68.** Thus from the specific reading of the Act, the objects and reasons as provided in the Bill of 1973, and the decisions referred above, one thing is

clear that reference to “on the appointed date” found in various places is having specific significance. As earlier stated, the title of the Act shows protection from eviction of the mundkars, coupled with the objects and reasons for providing better protection against eviction from the dwelling house and granting them right to purchase the same amongst others.

**69.** A conjoint reading of the above provisions, objects and reasons and specifically the definitions of the dwelling house and mundkar, one thing is crystal clear that the legislature intended with clarity to protect mundkars as on the appointed date from eviction etc. and for granting them right to purchase.

**70.** The appointed date is defined in the Act under Section 2(e) which reads thus:

“appointed date” means the date on which this Act comes into force.”

**71.** The Act of 1976 came into force in Goa w.e.f. 12/03/1976 by Notification No.RD/MND/ACT/241/66-76 dated 10/03/1973. thus for all purposes the appointed date is 12/03/1976. If a person claiming to be mundkar is occupying the dwelling house as on the appointed date i.e. 12/03/1976, he is protected from eviction and also having a right to purchase.

**72.** The entire Act deals with the existing mundkars as on the appointed date whether accepted by the Bhatkar or not. However the condition to

claim mundkarship is the occupation of the dwelling house as on 12/03/1976, or earlier to it.

**73.** Similarly, a person occupying the dwelling house on 04/02/1971 but evicted from such dwelling house thereafter but not before the appointed date shall be entitled to the restoration of such dwelling house as provided in Section 4 of the said Act. This further shows that the intention of the legislature is to protect a person who was residing in a dwelling house as on 04/02/1971 and was evicted from such dwelling house thereafter but before the appointed date.

**74.** The explanation to Section 2 (p) wherein mundkar is defined, also having significance to the above aspect. The said Section is quoted earlier which explains that a person shall be deemed to be lawfully residing with the consent of Bhatkar in a dwelling house if such person resides in it for a period of exceeding one year prior to the appointed date and the Bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through the competent Court of law, on the ground that such a person was a trespasser or, having so initiated, does not succeed in obtaining a decree for the eviction of such person. Thus the explanation to Section 2(p) of the Act clarifies that a person lawfully residing with consent of the bhatkar in a dwelling house for a period exceeding one year prior to the appointed date, is protected from eviction otherwise than the one provided in the Act.

**75.** Thus the contention of Shri Usgaonkar that a definition of “Mundkar” is independent and after the conditions therein are fulfilled

even after the appointed date, such person can be declared as Mundkar, cannot be accepted for the simple reason that such definition of “Mundkar” is connected with the definition of “dwelling house” wherein there is clear reference to Section 2(e) of the said Act. Similarly, the explanation to the definition again refers to the words “the appointed date”. Therefore, it is sine qua non for the mundkar to prove that he was occupying the dwelling house on the appointed date either with the consent or otherwise of the Bhatkar and fulfills other conditions as well found in the definition of mundkar, specifically which are found in (i) to (iv). Such submissions are also against the objects and reasons of the Mundkar Act which clearly show that only existing rights as on appointed date of the Mundkar are protected.

**76.** The learned Counsel Shri Usgaonkar heavily placed reliance on the notice dated 16/05/1995 which was addressed to the petitioner by the Advocate of Fr. Patrick Sequeira wherein it has been disclosed that said Fr. Patrick somewhere in 1989 due to advance age accommodated himself at a Clergy Home in Porvorim as there was no one to look after him. The notice further show that the petitioner along with his family members was residing at Margao in his own house. Said Fr. Patrick earlier executed a Will by which he bequeathed the said house and the property in favour of the petitioner with an expectation that the petitioner would look after him and arrange for his needs specifically in his advanced age. The notice further shows that when Fr. Patrick started residing at the Clergy Home, the petitioner's wife visited and requested Fr. Patrick that the petitioner would come and reside in the said house. Similarly, the petitioner also later on visited the Clergy Home on various occasions and assured Fr. Patrick that

the petitioner would come and reside in the house so that the house would remain in a habitable condition. Fr. Patrick then considering his relationship with the petitioner and that he had already executed Will bequeathing said house in favour of the petitioner thought it convenient to allow the petitioner to reside in the said house. The notice further shows that the petitioner along with his family then shifted to the said house and started residing therein. It further shows that since the petitioner failed to live up to the expectations of Fr. Patrick and failed to honour promises and assurances, he revoked the Will and executed a new Will in favour of both of the petitioner i.e. the respondent herein. In this context Fr. Patrick asked the petitioner to vacate the said house.

**77.** The petitioner sent a reply to this notice which is dated 20/07/1995, through his Advocate. The petitioner claimed that Fr. Patrick repeatedly came to his house at Margao and persisting the petitioner and his wife to come to Pomburpa. With great reluctance the petitioner and his wife decided to accept the offer and to go and reside at Pomburpa. It was further claimed that the petitioner and his wife desired to reside in the suit house in the context that the said house is not sold to others as Fr. Patrick repeatedly told them that in case they did not come to reside at Pomburpa he would be compelled sale the house. The petitioner then claimed that it was the great scarifies for the petitioner and his wife to shift from Margao to Pomburpa. He then claimed that he spent large some of money on the maintenance of the said house. He then claimed that Fr. Patrick was free to change his Will. Finally, the petitioner stated in the notice as under:

*“I, therefore, inform you that I am unable to vacate the said house unless your client compensates us adequately for all the above losses, damages and inconvenience caused by him to us.”*

**78.** First of all the petitioner admits that Fr. Patric was is unable whereas the respondent is his brother. It is also admitted in this reply notice that Fr. Patrick executed a Will thereby showing his intention to bequeath the suit house in favour of the petitioner but subsequently he changed his Will. In the said reply, first of all there is no mention as to when the petitioner shifted his residence from Margao to the suit house at Pomburpa and whether it was his fixed habitation.

**79.** After the death of Fr. Patrick, respondent became the owner of the suit house on the basis of Will. Since the petitioner being the brother of respondent was occupying the suit house, as suit was filed by the respondent before the Mapusa Court for grant of permanent injunction bearing Regular Civil Suit No.108/2003/A. The respondent claimed that he is a owner in possession of the suit is on the basis of Will and that the petitioner approached him and presented with his desire of residing in the said house which the respondent refused and thereafter the petitioner started threatening. In this context the respondent prayed for grant of permanent injunction claiming therein that the petitioner be restrained from interfering with peaceful possession of the suit house.

**80.** The petitioner contested the suit by filing written statement, wherein preliminary objection has been raised regarding jurisdiction of the Civil Court on the ground that the petitioner is a Mundkar of Fr. Patrick. The

trial Court then framed issues and issue No.3 regarding mundkarship claim, was referred to Mamlatdar which reads thus:

*“Whether the defendant proves that he is in possession of the suit property as mundkar”*

**81.** The matter was taken up before the Joint Mamlatdar-III at Mapusa bearing Case No.JM-III/MND/Civil-Issue/1/08. The judgment was passed by the learned Mamlatdar after conducting detailed inquiry and by order dated 23/06/2015, the issue of mundkarship is answered in negative. Basically, the learned Mamlatdar observed that the petitioner is also having house of his own at Margao and his children were born in Margao and the evidence shows that even in the year 2003 the petitioner was not residing in the suit house but was residing at Margao. The learned Mamlatdar also observed that the claim raised by the petitioner shows that he was not residing in the suit house on the pointed date and therefore his claim regarding mundkarship has been rejected.

**82.** The petitioner therefore challenged the above position before the Appellate Court and the Deputy Collector, SDO Mapusa vide its judgment and order dated 18/07/2018 which dismissed the appeal and confirmed the order of the learned Mamlatdar. Finally the revision No. 17 of 2018 filed by the petitioner before the Administrative Tribunal was also rejected. This shows that three authorities concluded against the petitioner on the ground that on the appointed date, he was not occupying the suit house and therefore he cannot be declared as Mundkar.

83. The provisions which are discussed earlier in detail clearly goes to show that the appointed date as found mentioned in most of the provisions is having significance. The object of the said Act is to protect the mundkarial rights of the person who were occupying the dwelling houses as on the appointed date or even prior to it. The decisions discussed earlier also refers to the appointed date and it clearly shows that the Act is only with regard to protection of the mundkarial rights and not for creation of additional rights. In the case of **Sadanand Vithal Naik**(supra), the learned Single Judge of this Court observed in paragraph 17 as under:

*17. The plaintiffs have clearly stated that the farm house itself was constructed in the year 1977. Similarly, the plaintiffs stated that the defendants entered the suit house in May 1988. The defendants have not specifically denied the said statements as required in terms of Order 8, Rule 3, of Civil Procedure Code and, therefore the said statements that the suit house was built in the year 1977 and the defendants entered it in May, 1988 are deemed to be admitted. The defendants without specifically denying the said statements have vaguely stated that they were allowed to reside in the suit house little prior to 1970. If the suit house was built in the year 1977, no plea of mundkarship would have been available to the defendants after coming into force of the Mundkar Act on 12-3-1976. The Mundkar Act was meant to be a measure of protection and not creation of new rights. If the plaintiffs succeed in their claim that they constructed the farm house in the year 1977, then the plea of the defendants is bound to fail. That apart, the plea taken by the defendants in respect of the entire house appears to be totally dishonest and mala fide with a view to prolong the litigation. On facts of the case, the pleas taken by the defendants have to be considered as vague, frivolous and dilatory.”*

84. The above findings are not mere observations which can be ignored while deciding the similar matter by the subsequent Bench. Even the Division Bench of this Court in the case of **Kum. Maria Eliza**

*Marques*(supra), while considering the object and reasons of the original Act, discussed in detail the definition of the dwelling house and intention of the legislature to give protection to the existing mundkars from eviction of their houses. Thus, it is quite clear that the petitioner who claimed to be a mundkar somewhere from the year 1989, cannot be considered or declared as mundkar for the reason that such claim is after appointing date. Secondly, the petitioner being the relative of Fr. Patrick and the real brother of the respondent could not have claimed mundkarship of the suit house only because he was inducted by Fr. Patrick with an intention to keep the house in habitation. Even otherwise the petitioner comes of the exception of care-taker for the suit house. The petitioner is having his own house at Margao wherein he was residing with his wife and children. Therefore, the very purpose of the Mundkar Act to grant protection from eviction is misused by raising such claim of mundkarship by the petitioner who is having his own dwelling house with fixed habitation at Margao. No doubt after shifting to Pomburpa, he was also residing in the said house but authorities below negated such contentions.

**85.** While assailing such orders under Article 227 of the Constitution, it is not permissible to reassess the entire evidence. The authorities below discussed in detail the material placed before it. The reasoning are not found to be illegal or perverse so as to interfere with the supervisory jurisdiction.

**86.** Having said so, the petition deserves to be rejected.

**ORDER**

The petition stands rejected.

Parties shall bear their own costs.

**BHARAT P. DESHPANDE, J**

MEENA  
VISHAL  
BHOIR



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by MEENA  
VISHAL BHOIR  
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