

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 848 OF 2016

MR. ABDUL ALI KARMALI (DECEASED)
THR. HIS LRS. ZARINA ABDUL ALI
KARMALI THR. POA MR. KARIM
TOBANI.,

... Petitioner

Versus

MR. TUKARAM BABAJI HALARNKAR AND
ANR.,

... Respondents

Shri Gaurish N. Agni, Advocate for the petitioner.

Coram:- F. M. REIS, J.

Date:- 14th December, 2016

ORAL ORDER:-

The challenge in the above petition is to a judgment dated 30.11.2015 passed in Mundkar Revision Application No.4/2010 whereby the revision preferred by the respondents was partly allowed and the impugned judgment and order dated 17.12.2009 in case no.PON/MUND/APL/13/2008 was set aside and the order dated 30.11.2000 in case no.JM/1/3/1993/Ponda was rectified whereby the sub division no. 3 of survey no.188 is corrected as sub division no.1.

2. Shri Agni, learned Counsel appearing for the petitioner submits that in the earlier declaration application the respondents themselves have contended that the dwelling house occupied by them was located in the property bearing sub division no.3 of

survey no.188 of Ponda Village. The learned Counsel further points out that proceedings were disposed off after detailed inquiry by the learned Mamlatdar who inter alia came to the conclusion that the respondents were munkars of the petitioners of a dwelling house located in the property bearing sub division no.3 of survey no.188. The learned Counsel further points out that while proceeding to file an application for purchase a correction of survey no.188/3 to 188/1 was sought on the ground that there was an error in mentioning such survey number. The learned Counsel further points out that the learned Mamlatdar rejected the contention of the respondents which was confirmed by the learned Deputy Collector. Th learned Counsel further points out that the learned Tribunal while passing the impugned order dated 30.11.2015 has erroneously come to the conclusion that the survey number of the property was 188/1 and not 188/3. The learned Counsel further submits that once the respondents have been declared as mundkar of the dwelling house property bearing survey no.188/3, the question of the learned Tribunal holding that such dwelling house is located in the property surveyed under No.188/1 is untenable in law. The learned Counsel has thereafter taken me through the impugned judgment to point out that the learned Judge has failed to consider that the respondents have failed to prove that they are mundkars of the dwelling house located in the property surveyed under no.188/1. The learned Counsel as such submits that the impugned order be

quashed and set aside.

3. I have carefully considered the submissions of the learned Counsel appearing for the petitioner and I have also gone through the records.

4. It is undisputed that the proceedings for declaration which attained finality were after a full fledged inquiry conducted by the Authority under the Mundkar Act. The fact that the respondents were mundkars of the property cannot be disputed. The only aspect to be considered is whether there was an error in referring to the survey number in the order passed for declaration. The learned Counsel fairly accepts the position that in the property surveyed under No. 188/3 which otherwise also belongs to the petitioner there is no dwelling house occupied by the respondents.

5. In such circumstances, the only conclusion which can be drawn is that the claim of the respondents that they were mundkars of the dwelling house in the property belonging to the petitioner has to be attributed to the property surveyed under no.188/1 wherein in dwelling house occupied by the respondents is located. As such, looking into the reasoning of the learned Tribunal while allowing the revision filed by the respondents there is no jurisdictional error committed by the learned Tribunal

while passing the impugned judgment which would call for interference of this Court under Article 227 of the Constitution of India. For the aforesaid reasons, there is no merit in the above writ petition which stands accordingly rejected.

F. M. REIS, J.

vn