

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 317 OF 2014

SANGAPPA VIRAPPA TENGINAKAI	... Petitioners
Versus	
OLIVIYA CONCEPTION MENEN D'MELLO AND ANR.,	... Respondents

Petitioner in Person.

Coram:- C. V. BHADANG, J.

Date:- 4th April, 2016

ORAL ORDER:

Heard the petitioner in person. The petitioner had filed an application for declaration as mundkar before the Joint Mamaltdar of Bardez at Mapusa in respect of house No.E-116/12 situated in property bearing Chalta No.48 of P.T. Sheet No.102 of City Survey Mapusa. The said application was registered as Mundkar Case No.MND/SR-8A/MAP/3/96.

2. The Mamlatdar had called for a report from the Talathi which showed that the petitioner was not staying in the joint dwelling house. A perusal of the order sheet before the Mamlatdar which has been produced along with the petition shows that on 22/10/2002, the Mamlatdar had noticed that the case was pending without any hearing and hence notice was issued to both the parties. Thereafter, there was no appearance on behalf of the petitioner or the respondent

on 18/11/2002, 31/12/2002, 21/1/2003 and ultimately on 27/1/2003. It was on 27/1/2003 that the learned Mamlatdar after noting the continued absence of the petitioner and the report of the Talathi had dismissed the application. This was challenged by the petitioner before the Dy. Collector in Case No.DC/MND/TRF/8/2008. The learned Dy. Collector by the judgment and order dated 2/2/2011 dismissed the appeal. While doing so, the learned Dy. Collector has observed that the appellant can always file a fresh application before the Mamlatdar with proper documents. The learned Dy. Collector also noticed that the Mamlatdar having conducted an inquiry through the Talathi of Mapusa and after considering the report had rightly dismissed the application. The petitioner persisted further and challenged the order before the Administrative Tribunal in Mundkar Revision Application No.13/2011. The Administrative Tribunal by the judgment and order dated 16/4/2014 has dismissed the revision application, affirming the findings of the Mamlatdar and the learned Dy. Collector. That is how the petitioner is before this Court.

3. I have heard the petitioner in person. He submits that he was away at his native place and could not attend the matter before the Mamlatdar. He submits that in such circumstances, the Dy. Collector ought to have restored the application before the Mamlatdar by setting aside the order. He has placed reliance on the decision of this Court in the case of M/S. REGAL TALKIES AND ORS. VS. STATE BANK OF INDIA, reported in (2011(1) AIR R 358, the

decision of the Hon'ble Supreme Court in the case of LAJPAT RAI AND OTHERS VS. STATE OF PUNJAB, reported in AIR 1981 SCC 1401. He has also placed reliance on the case of BANK OF BARODA V.S DEEPAK RAGHUVIR WAGLE, reported in AIR 2007 (NOC) 1635 (BOM).

3. I have considered the submissions made and I do not find that any case for interference is made out. The order sheet of the Mamlatdar shows that there was continued absence of the petitioner and that apart, there was also a report of the Talathi which was taken into consideration. The Dy. Collector as well as the Administrative Tribunal have refused to interfere with the order. The Dy. Collector has also observed that the petitioner can file a fresh application along with documents. In such circumstances, no case for interference in the extraordinary jurisdiction of this Court with the concurrent finding recorded is made out.

4. In the case of BANK OF BARODA (supra), whatever is discernible from the NOC, the matter was rejected for non removal of the office objections. In the case of M/S. REGAL TALKIES (supra), the question was whether an application under Order 9, Rule 13 for setting aside the ex parte decree would lie where the defendants had not filed the written statement nor led any evidence. The judgment of the Hon'ble Apex Court in the case of LAJPAT RAI AND OTHERS (supra), arose out of the Punjab security of land and it is difficult to

envisage as to how the same would be applicable in the present case.
In the result the writ petition is hereby dismissed.

C. V. BHADANG, J.

ap/-