

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.499 of 2015**

Mrs. Heniriqueta D'Souza
(Deceased through her
legal representative)
Mrs. Isabel D'Souza,
Housewife, wife of Mr. Jeffry
D'Souza,
Major aged about 48 years
Residing at House No.153,
Siolim, Bardez-Goa .. Petitioner

Versus

1. Shri Mangesh D. Mishal,
Major of age, Married,
Businessman, Resident of
Ansabhat, Mapusa,
Bardez- Goa. 403 507.
2. The President,
Administrative Tribunal of Goa,
Panaji-Goa 403 001.
3. The Collector,
North Goa District,
Panaji, Goa 403 001.
4. The Joint Mamlatdar of Bardez,
Office of the Mamlatdar,
Mapusa, Bardez, Goa 403 507 .. Respondents

Mr. J. P. Mulgaonkar and Ms. A. Kaisukar, Advocates for the petitioner.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. V. Palyekar, Advocate for the respondent no.1.

Mr. A. Prabhudessai, Additional Government Advocate for the respondent no.3 and 4.

CORAM :- S. B. SHUKRE, J.

Date : 22nd January, 2016.

ORAL JUDGMENT :

Heard.

2. Rule. Rule, made returnable forthwith. Heard finally, by consent of the learned Counsel for the parties.

3. The controversy involved in this petition has witnessed quite a tumultuous journey. The matter has been travelling from one forum to another forum and then to the High Court and once again back to the original forum or the revisional forum or the appellate forum. At the centre of the controversy is a question – whether the petitioner is entitled to be declared as a mundkar in view of Section 3 of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (hereinafter referred to as “the Act”, for short) or in view of definitions contained in Section 2(p) and Section 2(n) of the Act. So far as Section 3 is concerned, the controversy has been set at rest by the judgment delivered on 18/12/2013 in W.P.Nos.457/2010 and 266/2008, when the issue was referred to it by the learned Single Judge. The Division Bench has taken a certain view with regard to heritability of right of

mundkar by a person under Section 3 and the section has been read down to include some conditions with the aid of Section 2(n) of the Act and also the objects of the Act.

4. After reference was answered as above by the Division Bench on 18/12/2013, respective writ petitions were directed to be placed before the appropriate Bench to examine the rival contentions of the parties in the light of the view taken by the Division Bench. Thereafter, one of the writ petitions which was earlier filed by the petitioner in this case, came up for final hearing before the learned Single Judge of this Court, when the learned Single Judge, by an order passed on 28/07/2014, remanded the matter back to the Tribunal. The relevant portion of the operative order reads thus :

- “(1) The impugned order passed by the Tribunal dated 07/01/2009 is quashed and set aside. The learned Tribunal is directed to decide the revision afresh after hearing the parties in accordance of law.*
- (2) All contentions of both the parties are left open.*
- (3) Considering the facts and circumstances of the case, the Tribunal is directed to decide such revision within three months from the receipt of this Court.*
- (4) Rule is made absolute in the above terms.”*

5. In para 7 of the order, the learned Single Judge has

stated reasons for remanding back the matter to the Tribunal. The learned Single Judge has found that though the fact finding authorities have recorded finding that there is no material produced by the petitioner that she was residing along with deceased Matilda during her lifetime, the fact remains that these Courts examined the said material only in the context that the petitioner could not inherit the rights as a mundkar for the reason that Ms. Matilda was not declared as a mundkar. The learned Single Judge, therefore, felt that the Tribunal would have to examine the question as to whether or not any right of mundkarship has devolved upon the petitioner on the basis of the material adduced by the petitioner in the light of the observations made in the judgment of the Division Bench passed in the aforesaid two writ petitions. The relevant observations of the learned Single Judge appearing in para 7 are reproduced thus:

“On the background of the above, the Tribunal will have to examine as to whether any right of mundkarship has devolved upon the petitioner on the basis of the material adduced by the petitioner in the light of the observations of the said judgment of the Division Bench of this Court.”

6. This is how the matter once again went before the Tribunal and the Tribunal by an order passed on 11.11.2014

dismissed the Revision Application holding that the petitioner could not seek any declaration as mundkar of the dwelling house of the respondents.

7. I have heard learned Counsel for the petitioner as well as learned Senior Counsel for the respondent no.1 extensively, if not fully, not only on the question of complying with the order of this Court dated 28/07/2014, but also on some of the issues touching upon merits of the case to a large extent. After hearing both sides and perusing the impugned judgment and order with the assistance of the learned Counsel and the learned Senior Counsel appearing for the respective parties, it has become clear that the impugned order is primarily based upon the reasoning that there are no requisite pleadings either in the application filed by the petitioner seeking a declaration for her mundkarship or even in the evidence adduced by the petitioner and, therefore, there would be no further question of examining the material available on record.

8. Learned Senior Counsel for the respondent no.1 submits that no illegality in such an approach can be found as the law in this regard is well settled by the Hon'ble Apex Court which says that in the absence of necessary pleadings, evidence cannot be gone into by any Court. He also submits that even otherwise

consideration of the pleadings of the parties itself amounts to consideration of the material as required by this Court in the order dated 28/07/2014 and, therefore, there is neither any illegality nor any perversity in the impugned order.

9. I beg to differ with the learned Senior Counsel in his said submission. A bare perusal of the impugned order is enough to come to a conclusion that the learned Tribunal has not gone any farther than saying that there are no requisite pleadings made by the petitioner. In fact, as rightly submitted by the learned Counsel for the petitioner, the question as to whether law of pleadings as applicable to the proceedings to which provisions of Code of Civil Procedure are strictly applicable would also be applicable to proceedings taken for declaration of mundkar itself has to be considered appropriately by the Tribunal. This is because of the fact that the Mundkar Act is a Special Statute and it lays down certain procedure for trying the issue of mundkarship under Section 8A or the issue of registration as mundkar under Section 29 of the Act. Then, when this Court had directed the Tribunal to consider the issue of mundkarship on the basis of material adduced by the petitioner, it was incumbent upon the Tribunal to consider the entire material and examine the issue accordingly. One need not say that the word "material" in law means pleadings,

evidence, documents and other relevant circumstances. The Tribunal could not have said that there was no need to examine any other material barring the one relating to pleadings of the parties. Therefore, I find that the impugned judgment and order do not comply with the terms of the order passed on 28/07/2014 and there is a non-application of mind on the part of the Administrative Tribunal in giving obeisance to the order. Such an order, therefore, cannot be sustained in law and it must be quashed and set aside.

10. The dispute between the parties is very old and it is now time that it has to be adjudicated upon fully, finally and expeditiously. Therefore, it would be appropriate to issue a further direction for expeditious disposal of the matter, while remanding the case back to the Administrative Tribunal.

11. In the circumstances, the Writ Petition is allowed. The impugned judgment and order dated 11/11/2014 passed by the Administrative Tribunal, Panaji, Goa are hereby quashed and set aside. The matter is remanded back to the Administrative Tribunal for deciding the Revision Application in accordance with law in terms of the order passed by this Court on 28/07/2014 in W.P. No.457/2010. It is reiterated that the Administrative Tribunal shall examine the issue of devolving the right of

Mundkarship upon the petitioner on the basis of the material adduced by the petitioner in the light of the observations made by the Division Bench of this Court in its judgment dated 18/12/2013 delivered in W.P.nos.457/2010 and 266/2008. The Administrative Tribunal shall finally dispose of the case as expeditiously as possible and in any case, on or before 30/04/2016. Parties to appear before the Administrative Tribunal on 29/01/2016 at 10.30 a.m. In case the present President of Administrative Tribunal is unable to take up the matter for hearing and disposal for any reason, the matter be referred to Competent Court having jurisdiction at the earliest.

12. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

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