

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.99 OF 2013**

Xavier Manuel Mascarenhas,
(since deceased), through his legal heirs,
1(a) Mrs. Maria Mascarenhas,
1(b) Mr. Jose Antonio Mascarenhas,
(through his attorney Ms. Maria Fernandes
Tereira Vaddo, Sodiem, Bardez, Goa)
43 years of age, son, service,
1(c) Mrs. Mauricia Mascarenhas,
wife of 1(b), 29 years of age,
housewife, All resident of
Bhatti-Vaddo, Morjim, Pernem, Goa
1(d) Mrs. Maria Fernandes, 49 years,
married, daughter, housewife,
1(e) Mr. Caetano Fernandes,
son in law, 56 years of age,
service, both residents of
Tereira Vaddo, Sodiem, Bardez, Goa.
1(f) Mrs. Lucia Angela Coelho,
married daughter, 29 years of age,
housewife,
1(g) Mr. Caetano Coelho, son in law,
35 years of age, service,
both residents of Juhu Koliwada,
Santa Cruz (West) Mumbai 49. Petitioners.

V/s.

1. Mrs. Juliana Antao Almeida,
Tontem Morod Arossim,
Cansaulim, Salcete, Goa.
2. Mr. Antonio Pedro Almeida,
Tontem Morod Arossim,
Cansaulim, Salcete, Goa.
(since deceased) through legal heirs,

- (a) Mr. Vincent Almeida, (son),
 - (b) Mrs. Patricia Almeida (wife of Vincent), both major, residents of Tontem Morod Arossim, Cansaulim, Salcete, Goa.
 - (c) Mrs. Luiza Fernandes (daughter)
 - (d) Mr. Anthony Fernandes (husband of Luiza), both major, resident of Church Street Ward, Cortalim, Goa
 - (e) Mrs. Priscila D'Souza (daughter),
 - (f) Mr. Rocky D'Souza (husband of Priscila), both major, resident of Bela Visto Vaddo, Sirsaim, Tivim, Bardez, Goa.
 - (g) Mrs. Merlyn Fernandes (daughter)
 - (h) Mr. Francis Fernandes (husband of Merlyn)- both major, resident of Modlo Vaddo, Morgim, Pernem Goa 403512 - (as per Order dated 9.1.14, passed by the Ld. Registrar resp. No.2(g) & (h) stands dismissed)
- Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the petitioners.

The respondents, though served – absent.

CORAM :- M. S. SONAK, J.

Date : - 08/05/2017.

ORAL JUDGMENT

Heard Mr. S. D. Lotlikar, learned Senior Advocate for the petitioner. The respondents, though served, are neither present,

nor represented.

2. The challenge in this petition is to the order dated 27th September, 2010 made by the Administrative Tribunal, Goa in Mundkar Revision Application No. 47/1996, instituted by the petitioners herein to question the Judgment and Order dated 1st November, 1996 made by the Collector of Goa, in Mundkar Appeal No.58-90-MUND/APL.

3. The operative portion of the impugned Judgment and Order dated 27th September, 2010 reads thus :

“The revision application is partly allowed. The impugned Judgment and Order dated 1.11.1996 passed by the Collector of Goa in case No.58-90-MUND-APL, is set aside. The Order dated 14.5.1990 passed by the Mamlatdar of Pernem in case No.MND/7/87, is also set aside. Matter is remanded to the Mamlatdar for hearing the arguments of the parties herein and the owners, proceed in accordance with law, and pass speaking order basically ascertaining the status of the Applicant in view of the provisions of the Tenancy Act, relevant rights, if any, and all other facts on record at the

background. Parties to appear before the Mamlatdar of Pernem on 18.11.2010 at 3 p.m.”

4. This petition concerns two houses bearing Nos. 82 and 83 together with other structures like *bhati*, toilet, well, pigsty, etc., allegedly appurtenant to such houses. The houses are situated in the property bearing Survey No. 59/10 of Village Morjim, (suit property) which was, admittedly, owned by one Lisboa Family. The petitioners contend that they are agricultural tenants in respect of the suit property and also they are *mundkars* in respect of the houses No.82 and 83.

5. By an application dated 7/12/1987, the petitioners applied for a declaration that they are the *mundkars* in respect of Houses No.82 and 83, together with the structures appurtenant thereto. To this application, the Members of Lisboa Family were impleaded as parties, being the Landlords of the suit property. By an order dated 14.5.1990, the Joint Mamlatdar, Pernem declared the petitioners as *mundkars* in respect of the Houses bearing Nos. 82 and 83. The respondents who claimed to be the *mundkars* in

respect of House No.83, appealed against the Joint Mamlatdar's Order dated 14.5.1990. This appeal was allowed and the Order of the Joint Mamlatdar was set aside in so far as declaration as *mundkars* in respect of House No.83 is concerned.

6. Being aggrieved, the petitioners instituted the Mundkar Revision Application No.47/96 before the Administrative Tribunal. By the impugned Judgment and Order, this revision application has been disposed of. The Administrative Tribunal has not only set aside the Judgment and Order dated 1.11.1996 made by the Collector of Goa, (Appeal Court), but also the Joint Mamlatdar's Order dated 14/5/1990 and remanded the matter to the Mamlatdar of Pernem for afresh adjudication and disposal of the petitioners' application dated 7/12/1987 to declare the petitioners as mundkars of both the houses bearing Nos. 82 and 83.

7. Some reference is also necessary to the litigation in relation to the suit property in which the two houses bearing Nos. 82 and 83 are located. The petitioners contend that they are the agricultural tenants in respect of the suit property. The landlords

i.e. the Lisboa Family instituted a suit against the petitioners upon purported termination of the lease in respect of the suit property. Pending the suit, the provisions of the Goa, Daman and Diu Agricultural Tenancy Act were amended so as to include the “coconut gardens” within the purview of the Tenancy Act. Since the property was alleged to be a coconut garden, the Civil Court held that it ceases to exercise the jurisdiction in the matter and, therefore, the suit was dismissed. In the appeal, instituted by the Members of Lisboa Family, the proceedings were stayed, since the issue of Constitutional validity of the Fifth Amendment to the Agricultural Tenancy Act was being considered by the Hon'ble Supreme Court.

8. On 24.1.1981, the respondents claiming to be the *mundkars* of House No.83, filed an application before the Mamlatdar of Pernem for declaration of their mundkarial rights. To such an application, the Members of Lisboa Family, as well as the petitioners herein were impleaded as parties. The petitioners objected to their impleadment as parties. The respondents, therefore, applied for dropping the petitioners as parties. This

application was dismissed by the Mamlatdar on 16/07/1984. The Additional Collector, in appeal, confirmed the Mamlatdar's Order dated 11th March, 1986. However, the revision petition against the Collector's Order was allowed. The matter was taken further in Writ Petition No.268/1986, which was dismissed. This Court, took the view that a tenant has no say in such matters and his interest in the land is quite different from the interest claimed by the respondents as mundkars of House No.83. It was also observed that in case the petitioners succeed in the suit filed before the learned Civil Judge, it would be open to the petitioners to oppose the declaration of mundkarship in favour of the respondents in respect of House No.83 and was not binding upon them.

9. The Administrative Tribunal, after taking cognizance of the aforesaid circumstances, has made the impugned Order, setting aside not only the Collector's Order dated 1.11.1996, but also the Mamlatdar's Order 14.5.1990 and directed the Mamlatdar of Pernem to consider afresh the petitioners' application for declaration as mundkars of Houses No.82 and 83.

10. Mr. S. D. Lotlikar, learned Senior Advocate for the petitioners submits that the issue before the Administrative Tribunal in Mundkar Revision Application No.47/96 was only, whether the Collector's order dated 1.11.1996 was in excess of jurisdiction or otherwise legal and proper. In such a revision application, the Administrative Tribunal could not have interfered with the Mamlatdar's Order dated 14.5.1990, at least to the extent to which such order had declared the petitioners as mundkars in respect of House No.82. Mr. Lotlikar further submits that if the reason for remand is to be taken as the acceptance of the petitioners' claim as the agricultural tenants, and thereafter, deemed purchasers of the suit property, then, the order dated 22.8.1988 by which the Mamlatdar had declared the respondents to be the mundkars of House No.83, is also required to be set aside, since, admittedly to the said proceedings the petitioners were not parties. Mr. Lotlikar submits that the impugned order, made by the Administrative Tribunal, in such circumstances, is required to be set aside.

11. The Administrative Tribunal has taken cognizance of several subsequent events, including the claim of the petitioners that they are agricultural tenants and, therefore, deemed purchasers in respect of the suit property. On the basis of such subsequent events which cannot, in the facts and circumstances of the present case, be said to be irrelevant, the Administrative Tribunal has deemed it proper to set aside not only the Collector's Order dated 1.11.1996, but also the Mamlatdar's Order dated 14.5.1990 and to direct the Mamlatdar to decide the matter, afresh, after taking cognizance of the subsequent developments. In the facts and circumstances of the present case, it is not possible to hold that the impugned order is either in excess of jurisdiction or that the impugned order is vitiated by any illegality, so as to warrant interference of this Court in its supervisory jurisdiction.

12. In so far as the Mamlatdar's Order dated 22.8.1988 is concerned, it is to be noted that the same is not the subject-matter of challenge in this petition. However, if cognizance is to be taken of the subsequent developments, then, the impact of such developments upon the order dated 22.8.1988, also will have to be

considered by the Mamlatdar in pursuance of the remand by the impugned order. This is because the petitioners were not parties at the stage when the order dated 22.8.1988 was made. The petitioners now claim to be the agricultural tenants and consequently, the deemed purchasers in respect of the suit property in which the house No.83 is situated. In fact, Mr. Lotlikar, learned Senior Advocate for the petitioners makes a statement that the petitioners have already been declared to be the agricultural tenants and deemed purchasers in respect of the suit property. All these are the matters which are required to be examined by the Mamlatdar in pursuance of the remand.

13. For the aforesaid reasons, there is no case made out to interfere with the impugned order. However, it is clarified that the Mamlatdar, in pursuance of the remand, shall consider the impact of the subsequent developments, upon the Mamlatdar's Order dated 22.8.1988, as well.

14. The petition is, accordingly, disposed of with the aforesaid clarification. There shall be no order as to costs.

M.S. SONAK, J.

ssm.