

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 385 OF 2016**

MRS. AURA FERNANDES Petitioner

Versus

JOAO JOSE NEPOMOCENO COELHO
(SINCE DEC) THR. HIS LRS. AND 4 ORS., Respondents

Shri Guru Shirodkar, Advocate for the Petitioner.

Shri C.A. Coutinho, Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 19th JANUARY, 2017

ORAL ORDER:

The petitioner is challenging the judgment and order dated 11.02.2016, passed by the Administrative Tribunal, in Mundkar Revision Application No. 8/2013, by which the orders passed by the Collector and Mamlatdar, in respect of demarcation of the area to be purchased by the petitioner, has been confirmed.

2. It is not in dispute that the petitioner was declared as a Mundkar of the respondents. The petitioner had filed an application under Section 15 read with Section 16 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (the Act, for short),

for purchase of 200 square metres of land alongwith the dwelling house, a distillery and W.C. It appears that the Mamlatdar got a plan prepared. Presently, we are concerned with Plan-II, in which the area of 200 square metres was shown as under:

i. Area of the house	:	60.00 sqm.
ii. Area of extended house	:	24.00 sqm.
iii. Area of open space	:	<u>116.00 sqm.</u>
TOTAL	:	200.00 sqm.

3. The petitioner objected to this plan and the Mamlatdar got a re-demarcation done in terms of Plan-III, which is as under:

i. Area of existing house	:	60.00 sqm.
ii. Area of extended house	:	24.00 sqm.
iii. Area of other structure (Distillery)	:	30.00 sqm.
iv. Area of open land	:	<u>86.00 sqm.</u>
TOTAL	:	200.00 sqm.

4. Ultimately, the Mamlatdar confirmed Plan-II. The petitioner being aggrieved, unsuccessfully challenged the same initially before the Collector and thereafter, before the Administrative Tribunal. Thus, right now, there is a concurrent finding, confirming Plan-II. The material dispute is that the petitioner wants the distillery to be included in the demarcated area, which presently stands excluded.

5. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the impugned orders passed.

6. It is submitted on behalf of the petitioner that the reasons given by the Authorities below for not confirming Plan-III, cannot be sustained. It is submitted that the fact that the land of the Bhatkar would be fragmented could not be a reason for not confirming Plan-III. The learned Counsel for the petitioner has relied upon the decision of this Court in the case of **Janardhan J. Shinkre Vs. Mrs. Ana Francisca Fernandes & Others, 1993 (2) Bom.C.R.186**, in order to submit that the provisions of the Act are in the nature of a welfare legislation granting protection to a Mundkar.

7. On the contrary, the learned Counsel for the respondents has pointed out, the application filed by the petitioner for declaration of Mundkar under Section 8-A of the Act in the year

1997, in which the petitioner had described the mundkarial house in clause (C), which does not set out the existence of the distillery. Under clause (H), the only business activity shown by the petitioner was a piggery/store house alongwith the toilet. It is submitted that the petitioner was declared Mundkar of the dwelling house bearing old municipal house no. 134 (new municipal house no. 18/A), admeasuring an area of 76.22 square metres as on the appointed date, in the property surveyed under chalta no. 272 of P.T. sheet no. 155 of Vasco city. It is submitted that the respondents filed a civil suit in the year 2002, seeking demolition of the additional structure including the distillery. The suit was decreed and the order came to be confirmed initially, before the learned District Judge and thereafter, before this Court. It is submitted that once, the distillery was directed to be demolished, it could not have been included, as has rightly been held by the Administrative Tribunal.

8. I have carefully considered the rival circumstances and the submissions made. It is not in dispute that the petitioner is entitled to purchase an area of 200 square metres, including the

dwelling house to the extent of 76.22 square metres. Plan-II, as set out above, has permitted the petitioner to purchase the land to the extent of 200 square metres. The only dispute is regarding the distillery, which the petitioner wants to be included in the purchase area. Apart from the fact that Plan-III, which the petitioner wants to be confirmed, results into fragmentation of the land of the Bhatkar, one more reason articulated by the Tribunal for not interfering with the concurrent finding of the Mamlatdar and the Collector is that, the structure of the distillery is already directed to be demolished. I have gone through the judgment and order passed by this Court in Second Appeal No. 91/2009, which shows that except a partial modification to the extent of directing mesne profits, the order of demolition is not interfered with. The petitioner under Plan-II is entitled to purchase 200 square metres of land, including the dwelling house in respect of which, the petitioner is declared as a Mundkar. Thus, when the structure of the distillery is directed to be demolished, I do not find that any exception can be taken to the finding recorded by the Courts below, while confirming Plan-II. It is now well settled that when there is no jurisdictional error, resulting into manifest injustice, this

Court would not interfere under Article 227 of the Constitution of India. I do not find that the impugned orders suffer from any infirmity, requiring interference.

There cannot be any dispute that the provisions of the Act are a piece of beneficial legislation. However, on this basis, the petitioner cannot insist for a structure, which is directed to be demolished by the competent Court, to be included in the area to be purchased. The petitioner is not being deprived of her entitlement as to the total area, which is 200 square metres.

In the result, the petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

EV