

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 610 OF 2016

Shri Joaquim D'souza (since deceased), through his legal representatives:

- 1 Mrs. Joan Mathias, married to Godfrey Mathias, of major age, Indian National, resident of Anjuna, Bardez-Goa.
- 2 Mrs. Mary D'Souza, major of age, resident of House No.655, St. Anthony Vaddo, Anjuna, Bardez, Goa. Through POA Joan Mathias. Petitioners.

Versus

- 1 Smt. Piru Ganesh Tulaskar, (since deceased), through legal representatives at Serial Nos.2 to 3(a).
- 2 Ms. Kanti Ganesh Tulaskar, daughter of late Ganesh Tulaskar, major of age, agriculture business;
- 2a Mr. Prashant G. Agarwadekar, son of Gajanand Agarwadekar, major, resident of Anjuna, Bardez-Goa.
- 3 Ms. Shanti Ganesh Tulaskar, daughter of late Ganesh Tulaskar, major of age, agriculture, business, resident of House No.172, St. Anthony's Praias Vaddo, Anjuna, Bardez-Goa.
- 3a. Shri Raju Laxman Lakhaneya, son of Laxman Lakhani, major, resident of Anjuna, Bardez-

Goa.

4. Ms. Laxmi Ganesh Tulaskar, daughter of late Ganesh Tulaskar, major of age, agriculture, business, resident of House No.172, Priasvaddo, Anjuna, Bardez-Goa.
5. Mrs. Jean Marshall, married to Thomas Marshall, of major age, Indian National, resident of Valsad, Gujrat.
6. Mrs. Jacinta Sainanee, married to Mr. Deepak Sainanee, resident of San Francisco, U.S.A. (deleted as per order dated 28/07/17)
7. Mr. Joseph D'Souza, married to Mrs. Fabiola D'Souza, resident of Anjuna, Bardez-Goa.
8. Mrs. June Noronha, married to Mr. James Noronha, resident of Anjuna, Bardez-Goa.
9. Mr. John D'Souza, married to Mrs. Sherita D'Souza, resident of Anjuna, Bardez-Goa. Respondents.

Shri Rohit Bras De Sa, Advocate for the Petitioner.

Shri Deepak Gaonkar, Advocate for the Respondents.

CORAM: NUTAN D. SARDESSAI, J.

Reserved on : 15th September 2017

Pronounced on : 12th October 2017

JUDGMENT:-

1. Heard Shri Rohit Bras De Sa, learned Advocate for the Petitioner and Shri Deepak Gaonkar, learned Advocate for the Respondents.

2. This petition takes exception to the order dated 29/01/2016 passed by the Administrative Tribunal in Mundkar Revision Application No. 30/2017 pursuant to which the learned Tribunal dismissed the revision petition filed by the petitioners arising from the Judgment of the learned Deputy Collector, Mapusa dated 19/07/2017.

3. It was the contention of Shri Rohit Bras De Sa, learned Advocate for the petitioner that the Administrative Tribunal had observed at paragraph 15 that "The Applicants have filed an application for negative declaration. Till the mundkar issue is finally decided, the suit dwelling house and the optional area provided under the Act which is subject matter of the said proceedings is required to be protected. If the injunction is not granted then great prejudice shall be caused to the Respondents." The revision petition was dismissed as the application for negative declaration filed by the petitioner was

pending. The negative declaration was granted to the petitioner vide the order dated 19/09/2016 and in view of the negative declaration the impugned order was required to be set aside. He adverted to the Section 5 of the Goa Mundkars (Protection from Eviction) Act 1975 and Rules, 1977 and submitted that the relief in certain case of threatened wrongfully dispossession was available to the mundkar in possession of his dwelling house, who apprehends that he may be dispossessed of the dwelling house by or on behalf of the bhatkar contrary to the provisions of this Act, may, in the prescribed manner, apply to the Mamlatdar for an order safeguarding his right to possession. Thereupon the Mamlatdar after holding such inquiry as may be prescribed, and on being satisfied that the applicant was entitled to continue in possession directed, by order, the bhatkar or the person acting or purporting to act on behalf of the bhatkar to refrain from disturbing the possession of the Mundkar otherwise than in accordance with the law. Since, the respondent has been declared not to be a Mundkar, the injunction would no longer survive. The respondent had filed an appeal with an application for the condonation of delay and, therefore, in such circumstances there was no basis to continue

the injunction order which was permitted by the learned Tribunal. The petition had therefore be allowed.

4. It was the contention of Shri Deepak Gaonkar, learned Advocate for the respondents that his father was registered as a mundkar in 1988 under Section 29(4) of the Act in respect of the suit structure. There was no challenge to the said order and which was followed by the purchase proceedings in the year 200. Pending such proceedings an application for negative declaration was moved by the petitioner under Section 8(A) of the Act while the respondents had invoked Section 5 and were secured by injunctory relief by the Mamlatdar on 18/08/2002. This order of the Mamlatdar was challenged by the petitioner in appeal before the Deputy Collector who allowed the appeal by the Judgment dated 19/07/2007. The petitioner had filed the revision giving rise to the impugned order. The order of negative declaration passed in favour of the petitioner was an ex-parte order and though the parties were directed to appear on 03/02/2015, the matter was taken on 02/02/2015. It was his contention that in view of the challenge to the order of negative declaration at the instance of the respondent, no question arose of setting aside the impugned order and that the

respondent would suffer undue prejudice in case the order of negative declaration was accepted. The Writ Petition had therefore to be dismissed.

5. Shri Rohit De Sa, learned Advocate in reply submitted that the matter was taken before the Court on 03/02/2015 and when the respondents had not participated in the proceedings. Besides, the respondents were Mundkars in respect of another house and not that of the petitioner. It was also not available to them to raise any objection to the said proceedings when they had been duly served and even filed their Written Statement in defence. The petition had therefore to be decided in his favour.

6. I have heard both the learned Advocates and considered their contentions in the factual matrix. No doubt the respondents had moved an application under Section 5 of the Act seeking the relief of injunction before the Mamlatdar and that the Mamlatdar by his order dated 18/08/2002 partly allowed the application for injunction restraining the opponent i.e. the petitioner herein from interfering with the suit access pending the disposal of the application for permanent injunction. The respondents preferred an appeal before the

Deputy Collector challenging the said order of the Mamlatdar and when the Deputy Collector allowed the appeal, quashed and set aside the order of the Mamlatdar dated 18/08/2002 and secured the respondents with the order of injunction restraining the petitioner herein from interfering with the suit access and also from raising any construction in the suit mundkarial dwelling house till the disposal of the application for permanent injunction by the Trial Court and remanded the matter to the Mamlatdar to decide the application for permanent injunction as per law. This order was challenged by the petitioner in revision before the Tribunal which was seized of the fact that the present petitioner had filed an application for negative declaration and in that context gave the benefit of a protective order in favour of the respondents by observing that till the mundkarial issue was finally decided the suit dwelling house and the additional area provided under the Act which was the subject matter of the proceedings was required to be protected and in that view of the matter dismissed the revision petition.

7. It was not particularly in dispute at the instance of the respondents that the application for negative declaration moved by the petitioners under Section 8-A of the Act came to

be decided by the Mamlardar by his Judgment and Order dated 19/09/2006 which held that the respondents were not declared to be mundkar of the suit property and the suit house. The learned Mamlatdar had clearly observed in his Judgment that the Administrative Tribunal while disposing of the Mundkar Revision No. 32/A/2007 had directed the parties to appear before the Mamlatdar on 03/02/2015, in the said Mundkar Application. The respondents as tenants in the said proceedings had filed the written statement and had preferred to remain ex-parte and only thereafter the matter came to be heard and a negative declaration came to be granted in favour of the petitioners. Therefore, it does not lie for the respondent to allege that the negative declaration was passed ex-parte when they did have knowledge of the said date, had filed the said Written Statement and had chosen to remain absent when the Mamlatdar ordered the proceedings ex-parte.

8. Coming to the contention of Shri Deepak Gaonkar, learned Advocate for the respondents, the respondents had filed an application for condonation of delay and allowing the appeal challenging the Judgment of the Mamlatdar dated 19/09/2016. The Notices of these proceedings had been issued to the

respondent therein i.e. the petitioner herein and which proceedings will take its own course. On that premise alone it cannot be heard on behalf of the respondents that the impugned order cannot be set aside. The respondents have to go through the rigmarole of first getting the delay condoned and thereafter of the appeal being heard on merits. The contention that the respondents would suffer undue prejudice in case the order of negative declaration is accepted cannot arise in their favour. Once such an order has been passed in the petitioner's favour after due notice to the respondent, such a plea of prejudice cannot be entertained at their instance. In view of thereof, i find merit in the petition which is hereby allowed.

NUTAN D. SARDESSAI, J.

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