

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.936 OF 2017**

Shri Sandesh Datta
@ Dattaram Salgaonkar,
Son of late Datta Salgaonkar,
39 years of age,
r/o. Ussap, Latambarcem,
Bicholim-Goa.

... Petitioner

versus

Shri Vithal Vasu Mayekar,
since deceased through his LR's

- (a) Shri Satyavan Vithal Mayenkar,
Major of age,
r/o. Bhatwadi Nanora,
Ussap, Bicholim-Goa.
- (b) Smt. Satyavan Mayenkar,
Major of age,
r/o. Bhatwadi Nanora,
Ussap, Bicholim-Goa.
- (c) Shri Dayanand Vithal Mayenkar,
Major of age,
r/o. Bhatwadi Nanora,
Ussap, Bicholim-Goa.
- (d) Smt. Savita Vithal Mayenkar,
Major of age,
r/o. Assgaowada, Mandrem,
Taluka Pernem, Goa.
- (e) Sanjay Mahadev Hadfadkar,
Major of age,
r/o Assgaowada, Mandrem,
Taluka Pernem, Goa.
- (f) Smt. Sangeeta Vithal Mayekar,
Wife of Rama Raghuvir Dhargalkar,
r/o. Gogalwada, Siolim,
Bardez-Goa.
- (g) Rama Raghuvir Dhargalkar,
Major of age,
r/o. Bhatwadi Nanora,

Ussap, Bicholim-Goa.
(h) Smt. Rukmini Vithal Mayenkar,
Major of age,
r/o. Bhatwadi Nanora,
Ussap, Bicholim-Goa. ... Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.
Ms. Darshana V. Kapdoskar, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :- 10th AUGUST, 2018

Pronounced on :- 14th AUGUST, 2018

JUDGMENT :

Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties. Learned Counsel appearing for the respondents waives service.

2. This petition under Article 227 of the Constitution of India takes exception to the order dated 16/12/2015 passed by the Deputy Collector and SDO, Bicholim pursuant to which the Deputy Collector dismissed the appeal and maintained the order passed by the Mamlatdar of Bicholim. The parties would be referred to as the petitioner and the respondents for brevity's sake hereinafter.

3. Heard Shri A.D. Bhobe, learned Advocate for the petitioner who submitted that the short point for

determination in this petition was whether the purchase proceedings could be decided on the basis of the registration under Section 29 of the Mundkar Act, 1975, 'the Act' for short hereinafter. It was his contention that a declaration under Section 8A of the said Act was a precondition for initiating purchase proceedings and in that context placed reliance in **Shri Vassudev Pandurang Naik & Anr. V/s. Shri Krishna Vithoba Xete Tilve (deceased through LR's) [2006 (3) ALL MR 481]** to substantiate his contention. He adverted to the impugned order and submitted that the respondents had moved an application under Section 29 of the Act and pursuant thereto the learned Mamlatdar had been pleased to allow the application registering the original respondent as a Mundkar of the dwelling house no.91 situated at Latambarcem. The petitioner had preferred an appeal before the Deputy Collector and SDO, Bicholim under Section 24 of the Act but the Deputy Collector had dismissed the appeal pursuant to the judgment dated 16/12/2015.

4. The learned Deputy Collector and SDO, Bicholim gave erroneous findings that the petitioner had not challenged in appeal the order of the Mamlatdar who had declared the

respondent no.1 as a Mundkar of the dwelling house and on that premise proceeded to allow the respondent no.1 to carry on with the purchase proceedings of the dwelling house. There never was a declaration of mundkarship in favour of the respondent no.1 who was merely registered as a Mundkar under Section 29 of the Act. He next adverted to the order of this Court dated 08/11/2017 pursuant to which he was allowed to raise the ground that in the absence of a declaration under Section 8A of the Act, the proceedings for purchase were not competent. This was a fit case to allow the petition and to quash and set aside the order of the Deputy Collector.

5. Ms. D. Kapdoskar, learned Advocate for the respondent no.1 submitted that the respondent no.1 was registered as a mundkar in 1982 and that he had filed purchase application in 1998. The petitioner had filed an appeal in 2007 which was decided on 16/12/2015 in which there were clear findings against the petitioner that the proceedings were filed only to cause harassment to the respondent and that there was a mammoth delay at his instance. She however, did not have any answer to the judgment of this Court in **Shri Vassudev**

Pandurang Naik (supra).

6. I have heard Shri A.D. Bhobe, learned Advocate for the petitioner and Ms. D. Kapdoskar, learned Advocate for the respondents. The short point arising for determination in this petition is whether the respondents on the basis of a mere registration as a Mundkar are entitled to pursue the purchase proceedings before the Mamlatdar in terms of the provisions of the Act. In **Shri Vassudev Pandurang Naik** (supra), a learned Single Judge of this Court clearly held that the scope of an application under Section 8A and under Section 29 of the Act is entirely different. The entries made under Section 29 of the Act are only presumptive in nature, while a declaration under Section 8A concludes the rights of the parties finally. In view of this it is clear that the mere fact that a person has been registered as a Mundkar, cannot be taken as conclusive until that person is declared as a Mundkar in respect of the dwelling house. It is pertinent to note that the application which was before the Mamlatdar was one for declaration under Section 8A of the Act and therefore the Mamlatdar was obliged to hold an inquiry in terms of Rule 14, sub-rules 7,8 & 9 of the Mundkar Rules.

7. The question whether the applicants could be declared as mundkars of the respondents ought to have been decided only after holding an inquiry as provided under the Act and the Rules. This judgment in clear terms supports the contention of Shri A.D. Bhobe, learned Advocate for the petitioner that in the absence of any declaration, the respondents are not entitled to pursue the purchase proceedings before the Mamlatdar. Even assuming at the highest that the petitioner had to challenge their registration as a Mundkar and there was failure in that regard, still there was no bar to challenge the purchase proceedings in the absence of any declaration in favour of the respondents as Mundkars. The impugned order therefore cannot be allowed to stand. In the result, i pass the following

ORDER

The Writ Petition is allowed and the impugned order is quashed and set aside. Rule is made absolute in the aforesaid terms.

NUTAN D. SARDESSAI, J.

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