

IN THE HIGH COURT OF BOMBAY AT GOA.
LETTER PATENT APPEAL NO.4 OF 2013.

1. Mrs. Agnela Figueira
Major of age, Indian National,
And her husband
2. Mr. Noel Dias Sapeco
Both residents of House No.E-60,
Segundo Bairo, Santa Cruz, Goa. ... Appellants.

Versus

1. Shri Vassant Krishna Palyekar
and his wife
2. Smt. Vanita Palyekar,
Both major, residents of House
No.264, Sorvem, Guirim, Bardez Goa. ... Respondents.

Mr. C. A. Ferreira, Advocate for the Appellants.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

Coram : N.M. Jamdar &

Prithviraj K. Chavan, JJ.

Date : 25 September 2018.

ORAL JUDGMENT (Per N. M. Jamdar, J).

The learned Single Judge of this Court has by the impugned

Judgment and order set aside the order passed by the Administrative Tribunal Goa in Mundkar Revision Applications filed by the Respondents and directed that the application filed by the Respondents under Section 8A of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 be decided expeditiously. By this Letter Patent Appeal, the Appellant has sought to question the correction of the decision of the learned Single Judge.

2. The Administrative Tribunal had held against the Respondents on the ground that once a finding that the Respondents is not a mundkar was rendered against the Respondents in the proceedings under Section 29 of the Act, the Respondent is barred from filing an application under Section 8A of the Act.

3. The predecessor of the Respondents had filed an application for registration as mundkar before the Mamlatdar, Bardez, Mapusa. The Respondent appeared before the Mamlatdar and informed that the predecessor had expired in the year 1980. The Mamlatdar passed an order that the application stood abated for failure to bring the legal heirs on record. The widow and mother of the Respondent filed an application for registration as mundkar. By order dated 29 December 1992, the Mamlatdar held that she was not a mundkar, but a care

taker of the dwelling house and dismissed the application for registration. An appeal was filed before the Collector. The appeal was dismissed by Judgment and order dated 24 September 1996. The revision application filed before the Tribunal was dismissed by the Administrative Tribunal so also a Writ Petition by this Court on 20 April 2001. The Appellant filed Special Civil Suit no.248/1998 in the Court of Civil Judge, Senior Division Mapusa for eviction against the heirs of the original Appellant as well as the respondents. The suit was decreed on 9 November 2001. The Respondent filed an application before the Mamlatdar of Bardez at Mapusa under Section 8A of the Act for declaration in their favour of mundkarial rights in respect of house bearing Nos.42/2(old) and 268(new).

4. In the application under Section 8A of the Act, the Appellants raised preliminary objections that the application filed by the Appellants under Section 8A of the Act is barred by principle of *Res Judicata*, and it is beyond limitation. The preliminary objections were rejected by the Mamlatdar by an order dated 30 September 2002. The Appellants filed two revisions before the Collector. The Collector allowed the preliminary objections by an order dated 27 April 2005. The respondents filed revision applications before the Administrative Tribunal. The Administrative Tribunal dismissed the revision

applications by the common judgment and order dated 5 September 2006. The respondents being aggrieved by this order, filed Writ Petition No.573 of 2006 in this Court.

5. The learned Single Judge F. M. Reis, J, after considering the decision of the Division Bench in the case of *Smt. Gulabi Sangtu Devidas & ors Vs. Smt. Prema Govinda Gaonkar and ors.*,¹ concluded that the application under Section 8A of the Act filed by the Respondents could not have been dismissed at the threshold. The learned Single Judge held that the inquiry under Section 29 of the Ac, being a summary inquiry the findings rendered therein will not operate *Res Judicata* for registration of the application under Section 8A of the Act to be dismissed on the ground of maintainability. The learned Single Judge held that orders passed by the Collector and Administrative Tribunal not being legal and proper are required to be set aside. By the impugned order the learned Single Judge set aside the order and directed the Mamlatdar to dispose of the application under Section 8A of the Act.

6. We have heard Mr. C. A. Ferreira, learned Advocate for the Appellants and Mr. J. P. Mulgaonkar, learned Advocate for the

1 1995 (1) Goa L. T. 154

Respondents.

7. A preliminary objection is raised by Mr. Mulgaonkar, to the maintainability of the Letter Patent Appeal. On merits, Mr. Ferreira, submitted that the learned Single Judge ought to have considered that the Division Bench in *Gulabi* had rendered decision in different context and different set of facts and that decision could not have been directly made applicable. Mr. Ferreira, submitted that the law laid down in *Gulabi* will apply only to the facts and circumstances, and not as a general principle governing all situations. Mr. Ferreira, submitted that in *Gulabi*, the inquiry conducted before the Mamlatdar under Section 29 of the Act was in fact a summary inquiry and it is in that context that the Division Bench held that an application under Section 8A of the Act was maintainable. Mr. Ferreira, relied upon the decision of the Apex Court in the case of the *Regional Manager and another Vs. Pawan Kumar Dubey*,² to contend that this decision of the Court will have to be understood in the facts of the each case and the ratio will have to be understood in the factual backdrop of each case. Mr. Ferreira, submitted that in the present case Mamlatdar carried out full fledged inquiry, which is contemplated under Rule 14 of the Act and had come to a categorical finding that the Respondents

² (1976)3 SCC 334

are not the mundkars. He submitted that once a full fledged inquiry was conducted, findings therein will operate as *res judicata*. It is contended that the Respondents never challenged the order passed by the Mamlatdar under Section 29 of the Act as being without jurisdiction on the ground that a full fledged inquiry was held.

8. Mr. Mulgaonkar, supported the impugned order and submitted that the decision rendered by the Division Bench in *Gulabi* has answered all the contentions advanced by the Appellants. There is no distinct features in the present case to distinguish the decision in the case of *Gulabi* which has considered the scope of inquiry under Sections 29 and 8A of the Act and has found that they are different in scope and ambit. He submitted that the law laid down in the case of *Gulabi* is holding the field for last 25 years.

9. As regards the maintainability of the appeal is concerned, the appeal filed prior to the The Goa High Court (Hearing of Writ Petitions by Division Bench and abolition of Letters patent Appeals) Act, 2013 coming into force of the notification dated 1 January 2014. The petitioner before the learned Single Judge had invoked provisions of both Articles 226 as well as 227 of the Constitution of India. The learned Single Judge has reversed the order passed by the Collector and

Tribunal and has directed the Mamlatdar to hold an inquiry a fresh. This was not an exercise under Article 227 alone. Even otherwise, we have considered the merits of the challenge by assuming the Letter Patent Appeal is maintainable and have found it to be untenable for the following reasons.

10. Since the learned Single Judge has not rendered any finding on merits of the rival contentions and has directed the Mamlatdar to consider the application under Section 8A of the Act on its own merits, we do not intend to adjudicate the factual position more than necessary for decision of the question raised before us.

11. The Goa, Daman and Diu Mundkars (Protect from Eviction) Act, 1975 was enacted by the Goa Legislature to provide for better protection to mundkars against eviction from their dwelling houses and for granting them the right to purchase the same. The dominant object of this enactment is to give better protection to the Mundkars, which the Goa Legislation identified as a vulnerable section of the society. This is thus a beneficial piece of legislation, and has to be treated as such for the matters of interpretation of its provisions and to analyse its scheme.

12. Section 2 of the Act of 1975 contains the definitions. Chapter II deals with Rights and liabilities of Mundkars and Bhatkars. Chapter III deals with power, functions, appeals, etc. and maintenance of registers. Chapter IV contains miscellaneous provisions. Section 8A falls in Chapter II and Section 29 falls in Chapter III. The rights and liability are dealt with in a different chapter than the maintenance of Registers. There is clear demarcation between the two aspects by placing these provisions in different Chapters.

13. Section 8A of the Act in the Chapter II is inserted on the statute book by amendment Act 1978. Section 8A of the Act read thus:-

“8A. Declaration of right.—(1) If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

(2) On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he considers fit.”

Section 8A of the Act is placed immediately after Section 8 which confers right on the mundkar to use dwelling house for business etc. Section 8A of the Act is a part of the legislative scheme to balance the substantive rights of the parties.

14. Maintenance of Registers of mundkar is contemplated under Section 29 of the Act falling under Chapter III. Section 29 of the Act reads thus:-

“29. Register of mundkars.—

- (1) In respect of every village, the Government shall cause a register of mundkars to be prepared and maintained in the prescribed manner.*
- (2) The register shall contain the following particulars, namely:—*
 - (a) the particulars and description of the dwelling house;*
 - (b) the location of the dwelling house;*
 - (c) the name and address of the bhatkar;*
 - (d) the name and address of the mundkar;*
 - (e) the nature and extent of service, rendered to the bhatkar or the amount of ground rent if any paid;*
 - (f) the occupation of the mundkar;*
 - (g) the rights referred to under section 6; and*
 - (h) such other particular as may be prescribed.*
- (3) The register shall be prepared and maintained by the Mamlatdar after such inquiry as may be prescribed.*

*Manual of Goa Laws (Vol. III) –240—Mundkars
(Protection from Eviction) Act & Rules*

- (4) The Mamlatdar shall, before the preparation of the register, publish a notice, in every revenue village inviting applications from the mundkars for registration and to be presented before such date as may be specified in the notice or such*

further time as may be allowed by him:

Provided that if, at any time after the publication of the notice, it is found that a mundkar has failed to apply for registering his name the talathi within whose jurisdiction the dwelling house is situated may, after making such inquiry as he considers necessary, propose to the Mamlatdar to enter the name of such mundkar in the concerned register of mundkars and the Mamlatdar shall dispose of the same as provided under subsection (5).

13[Explanation.— The expression ‘revenue village’ includes villages in the municipal areas.]

- (5) On receipt of the application within the time specified in the notice or within such further time as may be allowed by him, the Mamlatdar shall, give notice to the bhatkar and any other person interested in the land in which the dwelling house situate calling upon them to file objections, if any and requiring them to appear at a time and date specified in the notice for inquiry into the application.*
- (6) On the dates specified in the notice or any other date to which the enquiry may be adjourned, the Mamlatdar shall hear such of the persons who appear and after such inquiry as may be prescribed, register the mundkar or reject the application.*
- (7) The order of the Mamlatdar under sub-section (6) shall be served on the interested persons and shall also be published in the notice boards of the village Office of the village in which the*

dwelling house is situate.

- (8) Any person aggrieved by the registration of a mundkar or by the refusal to register a person claiming to be a mundkar may, within sixty days from the date of registration or refusal, as the case may be, file an appeal to the Collector.*
- (9) On receipt of an appeal under sub-section (8) the Collector may call for the records of any proceeding under sub-section (6) and may make such inquiry or cause such inquiry to be made and may pass such orders thereon as he deems fit: Provided that no order prejudicial to any person shall be passed without giving him a reasonable opportunity of being heard.”*

Section 30 states that any entry made in the Register of Mundkars will have presumptive value and the entry thereunder shall be presumed to be true unless a contrary is proved or until a new entry is lawfully substituted.

15. In the case of *Gulabi* inter-play between Sections 29 and Section 8A of the Act squarely arose for consideration of the Division Bench. In *Gulabi* also after the proceedings under Section 29 of the Act came to end, the mundkar therein had sought a declaration by making an application under Section 8A of the Act. This was opposed on the ground that once the inquiry was concluded under Section 29

of the Act, the application under Section 8A of the Act was not maintainable. The Division Bench in *Gulabi* negated this contention observing at paragraph 6 thus:-

“6.The object of maintaining a register of mundkar under Section 29 of the Act and the effect of the order passed by the Mamlatdar under Section 29 is required to be borne in mind before concluding that the order of the Mamlatdar bars the right of the mundkar to seek a declaration under Section 8-A of the Act. The entries made in the register of mundkars under Section 29 of the Act are not conclusive but have merely presumptive value as set out under Section 30 of the Act. The specific wording of Section 30 provides that the entries made under Section 29 shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereafter. The expression 'until the contrary is proved' clearly sets out the intention of the Legislature that the entries made after the inquiry conducted by the Mamlatdar under Section 29 of the Act do not conclude the right of the parties in respect of mundkarship. The fact that it is open for the party who is aggrieved by the entry in the register to prove that the entry is incorrect clearly establishes that the decision of the Mamlatdar under Section 29 is not the final verdict. The perusal of Section 29 makes it clear that the inquiry conducted by the Mamlatdar is only for the purpose of making entries in the register and though the order of the Mamlatdar and the entries made in consequence thereof have

presumptive value, such exercise does not conclude the right of an aggrieved party to seek a declaration. Section 8-A confers a substantive right upon a party to seek declaration of a right conferred by the Act and the substantive right cannot be ousted by reference to the inquiry made by the Mamlatdar for making entries in the register.

.....It is obvious that the Mamlatdar conducting inquiry under Section 8-A of the Act will bear in mind the order passed while disposing of application under Section 29 of the Act. The provisions of Section 30 of the Act makes it clear that the entries made in the register in pursuance of order passed under Section 29 of the Act have presumptive value and the Mamlatdar while holding inquiry under Section 8-A of the Act will presume that the entries made in the register in pursuance to the inquiry under Section 29 of the Act are correct and true until the parties seeking declaration under Section 8-A of the Act prove contrary. The burden upon the party who seeks a declaration under Section 8-A of the Act after an adverse order is passed in proceedings under Section 29 is quite substantive and heavy but the right to seek declaration is not lost merely because an adverse order is passed under Section 29 of the Act. It is possible that a person may seek a favourable order of being a mundkar under Section 29 of the Act because the bhatkar may not be able to appear in the proceedings but in such cases it is open for the bhatkar to seek a declaration under Section 8-A of the Act though the entries made

under Section 29 are not correct and a negative declaration should be granted that a person claiming mundkarship is not entitled to that right. There is one more circumstance which is required to be noticed. Section 30 of the Act provides that the entries made in the register shall be presumed to be true until a new entry is lawfully substituted. Both the Counsel state that there is no provision under the Act which entitles the Mamlatdar to substituted the entry already made in the register in pursuance of proceedings under Section 29 of the Act. Such eventuality arises of substituting the entry when the Mamlatdar gives a declaration under Section 8-A of the Act which is contrary to the order passed under Section 29 of the Act against which case Mamlatdar would be required to substitute a new entry in place of the entry made earlier while disposing of the application under Section 29 of the Act. In our judgment the view taken by the learned Single Judge that the application under Section 8-A of the Act for declaration of right is not maintainable after an order is passed by Mamlatdar under Section 29 is not accurate. It is not correct to suggest that the only remedy of an aggrieved party against the order passed by the Mamlatdar under Section 29 of the Act is to file an appeal. The fact that the aggrieved party has not resorted to filing an appeal does not conclude the right to seek a declaration under Section 8-A of the Act.”

Thus, the Division Bench concluded that the inquiry under Section

29 of the Act is a summary inquiry only for the purpose of making an entry. The proceedings under Section 8A of the Act are not summary proceeding. There is a higher burden on the party who seeks declaration under Section 8A of the Act after an adverse order, under Section 29 of the Act, but the right to make an application under Section 8A of the Act, is not lost.

16. Rule 14 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules 1977 deals with the manner of conducting an inquiry. This Rule states that provisions of this Rule will apply to all proceeding under the act except in cases where summary inquiries are prescribed under these Rules. Procedure for summary inquiry is provided for under Rule 16. The inquiry for maintenance of Registers under Section 29 of the Act, is a summary inquiry, therefore, procedure under Rule 16 is to be followed for that purpose.

17. The contention of Mr. Ferreira, is that in *Gulabi* inquiry was a summary inquiry which is not so in the present case. This however, will not make a difference as far as position of law laid down is concerned. Merely because Mamlatdar conducted a detailed inquiry akin to an inquiry under Rule 14, will not convert the order passed under Section 29 of the Act to an declaration, as it will remain only an

order as to an entry in the Register. As contained in Section 30 of the Act, the entry will only have presumptive value till it is replaced. By holding a full fledged enquiry under Section 29 of the Act, when it is not warranted the right conferred by the legislature under Section 8A of the Act, cannot be taken away. In fact to prevent such a mischief that the legislation has specifically provided for a comprehensive procedure for declaration of the right. Mr. Ferreira, the learned Counsel for the Appellants then contended that we should take a different view or refer the decision of Gulabi to the larger Bench because of the hardship that is caused to the bhatkar from the unscrupulous claimants, who after litigation spanning several decades, again seek to re-agitate the concluded claim resorting to Section 8A of the Act. Firstly we do not find any reason to take a different view. Secondly, the decision in *Gulabi* was rendered in the year 1995 and its holding field for last 23 years and a settled position ought not to be disturbed.

18. Second ground urged by Mr. Ferreira, is that Section 30 will not come into play in the present case as there is no entry in favour of the Respondents. He submitted that if there is any entry then only there can be a presumptive value and then only there can be substitution of a entry. He submitted that when an application is rejected under

section 29 of the Act by language of Section 30 of the Act recourse cannot be taken under Section 8A of the Act.

19. This submission cannot be accepted. Going by the plain language of Section 8A of the Act, we do not find any such embargo placed on the right of the mundkar. Section 8A of the Act in a clear unequivocal terms state that if any person is entitled for any right under the Act, he may move to Mamlatdar for declaration of such right. The application under Section 29 of the Act cannot be considered as one for declaration of any substantive right. Section 8A of the Act is incorporated to confer a right of declaration apart from the summary adjudication for entry in the Register.

20. The enquiries under Section 8A of the Act and Section 29 of the Act operates differently. Various enactments provide for both summary and full fledged enquiries. An adverse decision in summary enquiry may place higher burden on those who seek a declaration subsequently, but it cannot be contended that an application for declaration is barred.

21. Consequently there is no merit in the challenge to the order passed by the learned Single Judge. The Letter Patent Appeal is

dismissed. Inquiry under Section 8A of the Act be concluded within a period of one year from today.

22. At this stage the learned Counsel for the Appellants seeks continuation of the ad-interim order passed in the Civil Application on 17 July 2013. Considering the facts and circumstances the interim order is extended for a period of two months from today.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.