

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 981 OF 2017****ALLEN VALLES.,****... Petitioner****Versus****RAMA LAXMAN SHIRODKAR AND ANR., ... Respondents**

Adv. Vivek Angelo Rodrigues for the Petitioner.

Adv. Purushottam R. Karpe R-2(a)(i, ii & iii), 2(b)(i)(ii) and 2(c)

Coram:- C. V. BHADANG, J.

Date:- 27th June 2019.

O R D E R:

This petition arises out of a judgment and order dated 27/2/2004 passed by the Mamlatdar of Tiswadi, thereby granting an application for purchase filed by the respondent nos.1 and 2 under section 16 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act, for short). That order has been confirmed by the learned Deputy Collector vide judgment and order dated 12/5/2016 and subsequently by the Administrative Tribunal, by a judgment and order dated 26/4/2017 in Mundkar Revision Application No.14/2016.

2. Indisputably the respondent no.1 had obtained an order of registration of their mundkarial rights under section 29 of the said Act vide order dated

20/2/1983 and subsequently they have also been declared as mundkars under section 8A of the said Act by an order dated 21/10/1985. Both these orders have not been challenged by the petitioners and they have attained finality.

3. The application for purchase was filed on 8/11/1996 and has been allowed by the Mamlatdar which order has been confirmed by the Deputy Collector and the Administrative Tribunal.

4. I have heard Mr. Rodrigues, the learned counsel for the petitioners and Mr. Karpe the learned counsel for the respondents. Perused record.

5. Shri Rodrigues, the learned counsel for the petitioners has raised two contentions (i) that the application for purchase filed under section 16 (1) of the Act was barred by limitation as it was not filed within three years of the declaration of the Mundkarial status of the respondent nos.1 and 2. It is submitted that an application for purchase under section 16 of the Act would be governed by Article 137 of the Limitation Act which prescribes a period of limitation of three years from the time when the right to apply accrues and (ii) that the respondents had earlier sought a declaration of the mundkarial rights in Case No.Mund/18/72, which application was dismissed by the Mamlatdar on 19/2/1973. That was sought to be challenged by the respondent

nos.1 and 2 in a Revision Application before the Collector, wherein there was a delay. The learned Collector had refused to condone the delay by an order dated 12/7/1976 and thus the order dated 19/2/73 had attained finality. It is contended that the subsequent claim by the respondent nos.1 and 2 for their registration/declaration as mundkars was barred by principles of res judicata. The learned counsel, however, did not dispute that this ground was not raised before any of the Courts below and is being raised for the first time before this Court. He, however, submitted that it being a pure question of law which goes to the root of the matter can be allowed to be so raised. Except these, there are no other contentions raised.

6. Mr. Karpe, the learned counsel for the respondent has submitted that the earlier application for declaration in Case No.Mund/18/72 was filed under the Goa, Daman and Diu (Protection from eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 (Old Act) and the definition of a mundkar as contained in the old Act and the new Act is different and therefore the rejection of the earlier application cannot operate as res judicata.

7. In so far as the contention, based on Article 137 of the Limitation Act, is concerned, the learned counsel has placed reliance on the decision of this

Court in the case of **Janardhan I. Shinkre Vs. Mrs. Ana Francisca Fernandes and others 1993 (2) Bom.C.R 186**, where this Court has held that there is no time limit fixed by the Act for making an application for registration. One of the reasons for so holding is that the provisions of the Act are beneficial in nature. He submits that the ratio in the decision would apply with equal force to an application for purchase also.

8. I have considered the circumstances and the submissions made.

9. There is a serious doubt whether an application under section 16 (1) of the Act would be governed by the limitation as provided in Article 137 of the Limitation Act. The Act of 1975 in itself does not provide for any limitation for filing an application for purchase. On the contrary, section 16 only prescribes for the procedure for purchase under section 15. Section 15 is a substantive provision, which confers a right on the mundkar to purchase the dwelling house. The said section opens with a non obstante clause and provides that, notwithstanding anything to the contrary contained in any law for the time being in force, a mundkar shall subject to the provisions of the Act have the right to purchase the dwelling house occupied by him. The Mundkar Act being a special Act intended at protecting the right of a mundkar from eviction and being a beneficial legislation would override the

provisions of the Limitation Act. That apart, the substantive right and the status of a mundkar is granted by a declaration under section 8A of the Act and the purchase proceedings are only consequential in nature. This Court in the case of **Janardhan (supra)** has inter alia held that there is no limitation for the mundkar to file an application for registration. Thus it is not possible to accept the contention raised on the basis of Article 137 of the Limitation Act.

10. This takes me to the second contention based on the order passed by the Mamlatdar in the earlier case being Case No.Mund/18/72. Admittedly that was an application filed by the respondent nos.1 and 2 under the old Act, where the definition of a 'mundkar', is different than the one contained in the said Act of 1975. This ground was also not raised before any of the Courts below either in the purchase proceedings or in the earlier proceedings where the respondents were initially registered and subsequently declared as mundkars. Thus I decline to entertain the same in this petition, particularly in view of the fact that the respondent nos.1 and 2 have been registered and declared as mundkars in the year 1985 and those orders have attained finality for want of challenge. A perusal of the order passed by the Mamlatdar on 28/2/1985 in an application under section 29 of the Act shows that the status of the respondent no.1 as a mundkar was admitted by the opponent therein.

The respondent nos. 1 and 2 have already deposited the purchase price of Rs.14,800/- on 12/3/2018. Thus it is not possible to accept the contention at this distance of time and that too, in a challenge to an order arising out of the purchase proceedings. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/