

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 25 OF 2019****IN****WRIT PETITION NO. 478 OF 2016****ANTHONY JOAO FERNANDES (DEC) THR.
LRS.,****... Applicant****Versus****ROSA BARRETO (DEC) THR. LRS. AND 5
ORS.,****... Respondents**

Adv. Prasheen Lotlikar for the Applicants.

Adv. Ashwin D. Bhoje Respondent nos. 1(a),2,3,4,5 & 6

Coram:- C. V. BHADANG, J.**Date:- 10th April 2019.****P.C.:**

This is an application for recall of the order dated 23/2/2018 in Writ Petition no. 478 of 2016 and to take up the said petition for fresh hearing.

2. Writ petition no.478/2016 was filed by the petitioner challenging the concurrent findings of the three Courts below, dismissing the objection raised by the applicant to the demarcation of the mundkarial house of the the respondents. There were two contentions raised in the said petition on behalf of the applicant. Firstly, it was contended that no prior notice about the demarcation proceedings was given to the petitioner and secondly, the distance between the house of the bhatkar and the mundkar is not in

accordance with the proviso to section 2(i)(i)(a) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (the Act, for short).

3. On behalf of the respondent it was contended that the demarcation was not in breach of the proviso to section 2(i)(i)(a) of the Act. In so far as the other contention is concerned, it was contended that there was a report dated 28/8/2007 from the field surveyor to show that now deceased Anthony Fernandes was present at the time of the demarcation proceedings.

4. This Court by an order dated 23/2/2018 upholding the contentions raised on behalf of the respondent, dismissed the petition.

5. The applicant feeling aggrieved, filed Civil Application (Review) no.30 of 2016, which was also dismissed on 5/10/2018. Now the applicant has filed the present application seeking recall mainly on the ground that the record before the Mamlatdar does not show that there was any report dated 28/8/2007 called or submitted by the field surveyor.

6. I have heard Mr. Lotlikar, the learned counsel for the applicant and Mr. Bhobe, the learned counsel for the respondents. Perused record.

7. Mr. Lotlikar, the learned counsel for the applicant has taken me through the copy of the Roznamas before the Mamlatdar and in particular, the roznamas dated 21/7/2007, 2/8/2007, 13/8/2007, 21/8/2007 and 29/8/2007. It is submitted that none of these roznamas indicate that there was any report dated 28/8/2007 which was received from the field surveyor.

8. Shri Bhobe, the learned counsel for the respondent on the contrary has pointed out the order dated 20/11/2007 passed by the Mamlatdar which refers to the say of the field surveyor in which the field surveyor has stated that she visited the site in question on 18/7/2007 at 3p.m. The respondent (the applicant before the Mamlatdar) directed her to the site. The original opponent Anthony Fernandes, who was staying in the neighboring house, inquired as to what was going on when the field surveyor told that the demarcation was being done as per the order of the Joint Mamlatdar. From the said aspect also it is pointed out that the original opponent, Anthony Fernandes was aware about the demarcation proceedings. The order also refers to the demarcation report of the said case which was signed by the advocate for the original opponent, Anthony Fernandes.

9. I have considered the circumstances and the submissions made. It is not possible to go into the disputed question at this length of time. However,

the order of the Mamlatdar indeed refers to the report of the field surveyor which shows the presence of the original opponent, Anthony Fernandes.

10. A query was made to the learned counsel for the applicant as to whether there was specific ground raised before any of the Courts below or in the writ petition that the observation in the aforesaid case made by the Mamlatdar were not borne out of the record. In reply it is submitted by the learned counsel for the applicant that there is a general denial of the presence of the original opponent at the time of demarcation. It can thus be seen that a specific ground about the observations and the finding of the Mamlatdar being incorrect, not being borne out of the record is not raised anytime before. This is a second application which is filed under the garb of seeking recall of the order. Thus no case for recall is made out. The application is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

ap/-