

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.112 & 470 OF 2011

Mr. Carlos Francisco Monteiro
r/o Escrivao Vaddo,
Opposite Viva Goa Restaurant
Candolim, Bardez Goa.

... Petitioner

Versus

1. Josefina Baptista
(since deceased,
Through her legal representatives)
Alex Baptista (since deceased
Through his legal representatives)
 - a) Mary Baptista
 - b) Domingos Sebastian Baptista
 - c) Ritina Baptista
 - d) Antonio Francis Baptista
 - e) Natvidade Baptista
 - f) Gregory Baptista,
 - g) Adelina Baptista
 - h) Jerry Baptista
 - i) Clara Baptista
2. Jose Maria Baptista
3. Mary Baptista
4. Rosy Baptista
All r/o Escirao Vaddo,
Candolim, Bardez Goa.
 - 4a) Shri Caitano Baptista,
major, married,
 - 4b) Ms. Rosie Baptista,
Major, w/o Caitano Baptista
 - 4c) Shri Bonaventure Baptista
Major, married,
 - 4d) Ms Elizabeth Baptista
Major, w/o Bonaventure Baptista

All the respondents 4a to 4d,
residing at, 128K D'Mello compound
Somnath Lane Hill Road,
Bandra – West, Mumbai – 400050

4e) Shri Daniel Baptista,
major, married,

4f) Ms Carmen Baptista
major, w/o Daniel Baptista,

Both respondents residing at :
Cobra Vaddo,
Calangute, Bardez Goa.

... Respondents

Mr. V. P. Thali, Advocate for the Petitioner.

Mr. Nitin Sardesai, Senior Advocate with Ms. G. Kamat, Advocate for
the Respondents.

Coram:- M. S. SONAK, J

Date:- 22nd January, 2021

ORAL JUDGMENT

Heard Mr. V. P. Thali, learned counsel for the Petitioner and
Mr. Nitin Sardesai, learned Senior Advocate who appears along with
Ms. G. Kamat for the Respondents in both these petitions.

2. Considering the connection between the two petitions, it is
only appropriate that both these matters to be disposed of by a common
judgment and order. In Writ Petition No.112 of 2011, the challenge is
to the demarcation order made by the Joint Mamlatdar of Bardez
purporting to demarcate the mundkarial area of the dwelling house
occupied by the Respondents. As against the Joint Mamlatdar's order

dated 27th October, 2009, the Petitioner instituted a revision before the Deputy Collector, Mapusa. By the judgment and order dated 3rd November, 2010, the Deputy Collector dismissed the revision application. The Petitioner then instituted yet another revision application before the Administrative Tribunal. The Administrative Tribunal vide its order dated 6th December, 2010 declined to entertain the revision application by observing that in terms of Section 24 of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (the said Act) such revision would lie to the Government and not the Tribunal. The Petitioner in Writ Petition No.112 of 2011 has challenged all these orders fundamentally on the ground that unless and until the Respondents were declared as mundkars in respect of the dwelling house, there was no question of entertaining any application on their behalf seeking to purchase the dwelling house or to undertake any demarcation of mundkarial area of the dwelling house.

3. Possibly during the pendency of Writ Petition No.112 of 2011, the Joint Mamlatdar vide order dated 12th July, 2011 proceeded to allow the Respondents' application dated 20.10.1997 for purchase of dwelling house. The Petitioner, without availing the remedy of appeal and revision provided under the said Act instituted Writ Petition No.470 of 2011 to challenge the Joint Mamlatdar's order dated 12th July, 2011.

4. Mr. Thali, relying on the following decisions has contended that no application for purchase of mundkarial dwelling house would be maintainable until and unless the party making such an application has applied for and obtained a declaration under Section 8A of the said Act to the effect that he is indeed mundkar in respect of the dwelling house.

1. *Shri Roque Fernandes (since deceased through LRs) & Ors. Vs M/s. Dempo Properties and Investments Pvt. Ltd., & Ors.*¹;
2. *Keshav Bablo Gawde & Ors Vs Ramakant Khandeparkar & Ors.*²;
3. *Smt. Gulabi Sangtu Devidas and others Vs Smt. Prema Govinda Gauncar and others*³;
4. *Shri Vassudev Pandurang Naik & Anr. Vs Shri Krishna Vithoba Xete Tilve (deceased through Lrs.)*⁴ and
5. *Shri Sandesh Datta @ Dattaram Salgaonkar Vs Shri Vithal Vasu Mayekar*⁵.

5. Mr. Sardesai, learned Senior Advocate appearing for the Respondents submitted that the Writ Petition No.112 of 2011 ought not to be entertained since there is no jurisdictional error or legal infirmity in the view taken by the Administrative Tribunal that no revision is maintainable before it in terms of Section 24 of the said Act. He submits that the Petitioner had a remedy before the Government and if the Petitioner has chosen not to avail of the same then there is no question of entertaining the present writ petition. Mr. Sardesai points out that in any case a simple order of demarcation does not in any

1 2010 ALL MR (Supp.) 349

2 1998(3) ALL MR 391

3 1994(3) Bom. C.R. 328

4 2006(3) ALL MR 481

5 WP No.936 of 2017 decided on 14th August, 2018

manner prejudice the rights of the Petitioner or visit the Petitioner with any civil consequences. He therefore submits that the Writ Petition No.112 of 2011 ought to be dismissed.

6. Mr. Sardesai submits that the Writ Petition No.470 of 2011 ought to be dismissed because against the order of Joint Mamlatdar made on 12th July, 2011, the Petitioner had alternate and efficacious remedy available under the provisions of the said Act by way of appeal and revision. He submits that the Writ Petition No.470 of 2011 was admitted on the basis of the submission that the Writ Petition No.112 of 2011 was pending before this Court when in fact the Writ Petition No.112 of 2011 was admitted only in the year 2018. Mr. Sardesai submits that since the Petitioner had alternate and efficacious remedy available to him under the provisions of the said Act, this petition ought to be dismissed.

7. Mr. Sardesai submits that even otherwise the impugned orders are legal and valid and warrant no interference.

8. The rival contentions now fall for my determination.

9. There is a great merit in the submission of Mr. Sardesai that the Petitioner has alternate and efficacious remedy available to him and therefore the petitions of this nature ought not to have been filed in

the first instance before this Court. However, these petitions are pending since 2011 and therefore, at this point of time, it may not be appropriate to relegate to the Petitioner to the alternate remedy.

10. That apart, some of the decisions referred to by Mr. Thali do suggest that an application for purchase of dwelling house cannot be made by a person unless he is declared as a mundkar in terms of Section 8A of the said Act. The impugned order in Writ Petition No.470 of 2011 has allowed the Respondent's application for purchase of the dwelling house even though, there was no declaration that the Respondent was indeed a mundkar in respect of the dwelling house.

11. In *Sandesh Salgaonkar* (supra), this Court relying on its earlier decision in *Vassudev Naik* (supra) has observed as follows :-

“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.”

(Emphasis supplied)

12. On the aforesaid short point, it will be appropriate that the order dated 12th July, 2011 made by the Joint Mamlatdar which is impugned in Writ Petition No.470 of 2011 is set aside. The consequence of setting aside of this order is that even the order dated 27th October, 2009 made by the Joint Mamlatdar loses its efficacy for the present and the same will also have to be set aside and is hereby set aside.

13. Although, these two orders are set aside, the Respondents in

the peculiar facts of the present case cannot be left in a lurch. The Respondents will have a liberty of applying to the competent Mamlatdar for a declaration in terms of Section 8A of the said Act and if they succeed in obtaining such a declaration and thereafter they will certainly be entitled to apply for purchase of the dwelling house as provided under the said Act.

14. Mr. Sardesai, learned Senior Advocate appearing for the Respondents without prejudice to the rights of the Respondents states that such an application seeking declaration will be filed before the competent Mamlatdar within a period of one month from today. If such an application is indeed filed, then, in the peculiar facts and circumstances of the present case, it will be only appropriate to direct the concerned Mamlatdar to dispose of such application for declaration on its own merits and in accordance with law and as expeditiously as possible and in any case within a period of one year from the date of its filing. Needless to add that the Mamlatdar has to issue notice to the opposite party i.e. the Petitioner herein and thereafter dispose of such application in accordance with law and on its own merits.

15. The learned counsel for the parties state that they will cooperate with the Mamlatdar in the matter of expeditious disposal of the application for declaration once the same is filed. Mr. Thali on behalf of the Petitioner states that no unnecessary adjournments will be

applied for and even necessary replies will be filed expeditiously.

16. Rule in both these petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

17. All concerned to act on the basis of the authenticated copy of this order.

M. S. SONAK, J

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TARI AMRUT
NAGESH

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