

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 598 OF 2023.

MOHAN NARAYAN PARANJAPE AND 2
ORS.Petitioners.
VS
SHANKAR JANARDHAN NAIKRespondent.

Mr. A. R. Kantak, Advocate for the petitioners.
Mr. Rui Gomes Pereira, Advocate for respondent.

CORAM: PRAKASH D NAIK, J

DATED: 2nd November 2023

ORAL ORDER.:

1. The Administrative Tribunal vide order dated 9.1.2020 allowed Mundkar Revision Application no.4 of 2019 preferred by respondent and set aside judgment and order dated 8.8.2018 passed by Deputy Collector and S.D.O. Ponda,Goa setting aside the order dated 9.12.2014 passed by the Joint Mamlatdar in Mundkar Case no.JM/III/MUND/DEC/Bor/1/2012 and remitted the matter to Joint Mamlatdar-II Ponda for fresh decision in accordance with law.
2. Petitioners challenges the aforesaid orders by invoking Article 227 of the Constitution of India.
3. Brief facts necessary for adjudicating the issues involved in this petition are as under:-

(i) Respondent filed an application before Joint Mamlatdar Ponda on 21.6.2012 seeking declaration that the respondent be declared mundkar in respect of house no.159 situated in the property surveyed under No. 168/o of village Borim Ponda Goa.

(ii) Application was opposed by the petitioners by filing reply dated 8.8.2012.

(iii) Affidavit in evidence of respondent was filed on 18.8.2012. Respondent also deposed on oath before Joint Mamlatdar and examination in chief of respondent was recorded. He was cross examined by opponent. Cross examination was completed on 12.9.2012. Depak Tiru Naik Borkar was examined. His examination in chief was recorded and his evidence on oath was recorded.

4. Vide judgment and order dated 9.12.2014 Joint Mamlatdar-II Ponda directed that the issue no. 3 referred to this Court by Ad-hoc District and Assistant Sessions Judge in Civil Suit No. 62/2011 is answered in the affirmative. Applicant Shankar Naik was declared as mundkar of the suit structure bearing H. No. 159, surveyed under No. 168/o of village Borim of Ponda Talauka.

5. Judgment dated 9.12.2014 was challenged before the Court of Deputy Collector & Sub Divisional Officer, Ponda by preferring an appeal by the petitioners. Vide judgment dated 8.8.2018 appeal was allowed. Judgment dated 9.12.2014 was set aside.

6. Judgment and order dated 8.8.2018 was challenged by preferring appeal before the Administrative Tribunal by respondent. The Administrative Tribunal vide judgment dated 9.1.2020 allowed the Revision Application. Judgment dated 8.8.2018 and 9.12.2014 were set aside.

7. Learned Advocate for the petitioners submits that Administrative Tribunal has committed a grave error in setting aside orders passed by Mamlatdar and Appellate Authority. Tribunal has travelled beyond the scope of revision while setting aside the well reasoned orders. Order of Administrative Tribunal reflects non application of mind. There was no reason to set aside the order of Joint Mamlatdar and Deputy Collector. Impugned order shows non application of mind. Tribunal has not taken into consideration evidence on record. There was no reason to disturb concurrent findings of two authorities. Tribunal failed to take into consideration that Section 32(2) of the Mundkar Act prescribed that Mamlatdar had to decide the issue referred by the Civil Court in accordance with provisions of Mundkar Act, it could not have been intervened. Section 20 of the Act or Rule 14 of Mundkar Rules should not be followed. Section 20 of the Mundkar Act, did not restrict any party from submitting pleadings or from producing any documents. It is not the case of the respondent that he was precluded from producing any pleadings or documents. Tribunal has given undue importance

to the presumption under Section 105 of the Land Revenue Code. Information furnished by village panchayat of Borim indicated the house number which belonged to the father of the respondent and it is not the case of the respondent that any house number of his father is his house. The issue was whether the respondent proves that he is a mundkar and not whether the respondent proves that he had inherited mundkarship rights from his father. Tribunal has erroneously invoked Section 105 of the Land Revenue Code without adverting to the facts of the case. Respondent in his deposition had specifically mentioned that house no. 159 claimed by him is not shown in the survey plan which in clear terms indicates that the said house was not in existence at the time of doing survey operations. Respondent was enable to prove the existence of house no. 159 at the time Mundkar Act came into force. Respondent could have never claimed mundkarship, he was below 18 years of age at the time when Mundkar Act came into force. Order of the Tribunal is contrary to law. Tribunal has relegated the petitioners to litigation for another 10 years without there being any substance.

8. Learned Advocate for the respondent supported the order of Tribunal. Revisional Court has assigned reasons for interfering in the orders which were set aside. It was within the power of revisional Court to pass such order. Revisional Court has interfered in the order passed by the Lower Authority on three counts. Lower Authority has

ignored material on record. Section 8A of the Act was brought into force by way of amendment. No grounds are made by the petitioners for setting aside judgment dated 9.11.2020.

9. Learned Advocate for the respondent has relied upon following decisions:-

(i) *Shri Alberto Fernandes Vs Shri Mathews Fernandes*,¹

(ii) *Mitra of Archdiocese of Goa and Daman Vs Mr. K. Vijayadharan*,²

(iii) *Smt. Gulabi SAngtu Devidas and others Vs Smt. Prema Govind Gaonkar and others*,³

10. Petitioners filed Civil Suit No. 62/2011 in the Court of Principal District Judge, North Goa against respondent and others. The suit was for injunction. Petitioner sought declaration that defendant no.1/respondent be restrained from carrying out any further construction in the property either as an addition to the suit construction or for that matter any other construction whatsoever in the property bearing survey nos. 168/O and 169/O of village Borim. Defendant no.1/respondent be directed to demolish and remove the suit construction carried out by him in the said property and other defendants be directed to take necessary action and demolish the suit

1 1995(2) Goa L. T. 166

2 1999(2) Goa L.T. 97

3 1995(1) Goa L. T. 154.

constructions carried out by the respondent no.1. It was also proposed that respondent no.1 be directed to restore the encroached area to its original condition and deliver the vacant possession of the same to the plaintiffs. Defendant no.1/respondent filed Written statement on 9.7.2011.

11. Learned Ad-hoc District Judge framed following issues vide order dated 19.9.2011 which are as follows:-

1. *Whether the plaintiffs prove that they are the owners of the suit property?*
2. *Whether the plaintiffs prove that defendant No.1 has erected a new structure in March 2011 ?*
3. *Whether the defendant No.1 proves that he is a Mundkar in respect of the suit structure ?*
4. *Whether the defendant No.1 proves that the relief (b), (c), and (d) are barred by limitation ?*
5. *Whether defendant No.1 proves that the suit is bad for nonjoinder of necessary parties ?*
6. *Whether defendant No.1 proves that the Court has no jurisdiction to try this suit ?*

12. Thus one of the issues was whether the defendant no.1/respondent proves that he is a mundkar in respect of the suit structure. District Court not having jurisdiction to decide the issue of mundkarship, the same was referred by the District Court to Mamlatar of Ponda Taluka and the suit before Adhoc District Judge was kept pending. Since issue being referred to the Mamlatdar,

respondent filed an application for a declaration under section 8A of the Mundkar (Protection from Eviction) Act 1975. Joint Mamlatdar Ponda vide order dated 9.12.2014 answered issue no. 3 referred by the Ad-hoc District Judge in the affirmative. Respondent was declared as mundkar of the suit structure. Judgment dated 9.12.2014 was challenged by the petitioners before the Deputy collector and SDO Ponda by preferring an appeal. Vide judgment dated 8.8.2018 appeal was allowed and the order dated 9.12.2014 was set aside. Order passed by the Appellate Authority was challenged by the respondent before the Tribunal and Tribunal vide its judgment dated 9.1.2020 has set aside both orders passed by the Courts below and remanded the matter back to the first authority for fresh consideration.

13. Judgment passed by the Tribunal in the Revision Application reflects non application on mind. It was observed that respondent is claiming right through his father. It is imperative for revisional authority to consider the material evidence on record in order to find out whether such evidence is not considered by the authority below. The conclusion arrived at by the authority below runs contrary to the material on record. There is no evidence to support the conclusion of the subordinate authorities. The reasons given by the subordinate authorities are absolutely perverse. Finding is such that no authority would come to such conclusion and the findings of fact is given on the

wrong premises of law and the orders of subordinate authorities are manifestly unjust. Although Tribunal has referred to the aspects where revision court can exercise its power, none of the circumstances stipulated therein were in existence in present case. Administrative Tribunal ought to have decided the revision application on merits. There was no reason to set aside the order passed by the Appellate authority on the ground as spelt out in the impugned order. Tribunal referred to certain decisions. Tribunal has also stated that issue of mundkarship was referred by the learned Ad-hoc District Judge. Issue was framed by Ad-hoc Judge on the pleadings filed in the said civil suit. Therefore, it is necessary to consider the plaint and written statement filed before the Civil Court. Evidence adduced by the parties had to be in consonance with the pleadings. Both the parties have not placed on record the plaint and written statement. Conclusion is apparently erroneous for non placement of written statement and plaint before the Mamlatdar or Appellate Authority. Impugned order reflects non application of mind which is required to be set aside and the matter needs to be sent back to the Administrative Tribunal for fresh consideration. Reasons of the Administrative Tribunal that for deciding an issue referred by the Civil Court it is necessary to consider the plaint and the written statement filed before the Civil Court is contrary to section 32(2) of the Goa Daman and Diu Mundkar (Protection from Eviction) Act

1975. Section 32(2) of the said Act prescribes that Mamlatdar has to decide the issue referred by the Civil Court in accordance with the provisions of Mundkar Act. Section 20 of the Mundkar Act does not restrict any party from submitting any pleadings, or from producing any documents. It was not the grievance of the respondent that he was precluded from producing any documents and for bringing any pleadings or documents. In the event respondent had any documents he could have produced the same to indicate the existence of his house no. 159 claimed for mundkarship since 1972 or 1975. The order passed by the Tribunal is required to be set aside and matter needs to be remitted back to the Tribunal as said order reflect complete non application of mind.

ORDER

- (i) Impugned order dated 9.1.2020 passed by the Administrative Tribunal, Panaji in Mundkar Revision Application No.4/2019 is quashed and set aside. Matter is remanded back to the Administrative Tribunal.
- (ii) Administrative Tribunal shall hear the revision application afresh and decide the same in accordance with law without being influenced by previous order.
- (iii) Revision application may be decided expeditiously within a period of six months from the date of receipt of this order.

(iv) Parties shall produce the order before the Administrative Tribunal for its compliance.

(v) Writ Petition stands disposed of.

PRAKASH D NAIK, J.

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS NAIK
Date: 2023.11.18 17:45:04 +05'30'