

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.250 OF 2022

Kamlakant Bablo Korgaonkar thr. Const. ... Petitioners
Attorney Petitioner No.3 and 2 Ors.

Versus

Ramdas K. Uskaikar And 3 Ors. ...Respondents

Mr Ashwin D. Bhohe with Ms Shaizeen B. Shaikh,
Advocates for the Petitioners.

Mr Amay A. Phadte, Advocate for Respondent No. 1 and 2.

CORAM: M. S. KARNIK, J
DATED: 16th MARCH 2023

ORAL ORDER:

1. Heard learned counsel for the parties.
2. The challenge is to an order dated 17.01.2022 at Exhibit D-106 passed by the Civil Judge Junior Division 'G' Court, Mapusa. The trial Court dismissed the application at Exhibit D-106. The application was made by the defendants no.2 and 3 to strike off the issue no.3 which was one of the issues framed by the trial Court. The application for striking of the issue no.3 was made on 27.12.2021. The issue no.3 reads thus:-
"Whether the Plaintiff proves that the Judgment and order passed in case No.MND/REG/Verte/01/91 dated 27.03.1991 is null and void?"
3. The suit is filed by the present respondent no.1-original plaintiff for declaration and permanent injunction against the

defendants. The petitioner (original defendant no.2) had, in his favour, an order dated 27.03.1991 passed by the Mamlatdar holding him to be a Mundkar under the provisions of Goa, Daman And Diu Mundkars (Protection from Eviction) Act, 1975 (for short 'the said Act'.)

4. Learned counsel for the petitioner submitted that having regard to the provisions of the said Act, the Civil Court has no jurisdiction to decide the issue as it is only the authorities under the said Act which are empowered to deal with the issue no.3 which has erroneously been framed by the trial Court.

5. Learned counsel for the respondents on the other hand supported the order passed by the trial Court. The provisions of Section 31(2) of the Act, which has a bearing on the controversy reads thus:-

'31.

(1)..

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector of the Government or the Administrative Tribunal and no order passed by such authority under this act shall be questioned in any Civil or Criminal Court.'

6. It is thus seen that in terms of sub-section 2 of Section 31 the mandate of the Act is that no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector of the Government or the Administrative Tribunal and no order passed by such authority under this act shall be questioned in any Civil or

Criminal Court.

7. The Mamlatdar has passed the order under the Act way back on 27.03.1991 holding the petitioner(original defendant no.2) to be a Mundkar in respect of the property. Having regard to the provisions of sub-section 2 of Section 31, in case the respondent no.1 is aggrieved by the order dated 27.03.1991 passed by the Mamlatdar under the said Act, the remedy is to file appropriate proceedings in terms of what is contemplated by the said Act and the Civil Court will not have jurisdiction to decide the issue as framed. It is the Mamlatdar who has held that the petitioner (original defendant no.2 is a Mundkar under the provisions of the said Act. The Civil Court, therefore, does not have the jurisdiction to decide or deal with the issue no.3 as framed. The writ petition deserves to be allowed in terms of prayer clause (a).

8. It is, however, made clear that I have not made any observations on the merits of the issue no.3 as framed. It is open for the respondent no.1-original plaintiff to resort to appropriate remedy in case he is aggrieved by the order of 23.07.1991 passed by the Mamlatdar in accordance with law subject to limitation.

9. The impugned order dated 17.01.2022 is set aside. The application at Exhibit D-106 is allowed. The issue no.3 is struck off.

10. The petition is disposed of. No costs.

M. S. KARNIK, J