

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.666/2017

1. SHRI RAMCHANDRA
PUNDALIK KAMAT, son of late
Shri Pundalik Kamat, aged 80 years,
and his wife

2. SMT. SUFALA RAMCHANDRA
KAMAT, wife of Shri Ramchandra
Pundalik Kamat, both r/o
H.No.483, Mhalwada, Madkai,
Ponda - Goa.

... PETITIONERS

Versus

1. SHRI BHANU VITHAL NAIK
(since deceased) through LR'S

(a) Mr Nilesh @ Dilip Bhanu Naik,
s/o Late Bhanu Vithal Naik, Major
of Age, Self Employed, Indian
National, r/o H. No. 454,
Mhalwada, Madkai, Ponda - Goa.

(b) Mrs. Diksha Nilesh @ Dilip
Naik, w/o Nilesh @ Dilip Bhanu
Naik Major of Age, housewife,
Indian National, r/o H. No. 454,
Mhalwada, Madkai, Ponda - Goa.

(c) Ms Nutan Bhanu Naik, d/o Late
Bhanu Vithal Naik, Major of Age,
unemployed, Indian National, r/o
H.No. 454, Mhalwada, Madkai,
Ponda - Goa.

(d) Mr Prakash Bhanu Naik, s/o Late Bhanu Vithal Naik Major of Age, housewife, Indian National, r/o H.No. 454, Mhalwada, Madkai, Ponda - Goa.

2.SHRI RAOJI VITHAL NAIK
(since deceased) through LRs:

a. Mrs. Shrimati Raoji Naik, widow of late Raoji Naik, major in age, housewife, r/o H. No. 454, Mhalwada, Madkai, Ponda - Goa.

b. Mr. Arun Raoji Naik, s/o of late Raoji Naik, major in age, service, r/o H.No. 454, Mhalwada, Madkai, Ponda - Goa.

c. Mr. Deepak Raoji Naik, s/o of late Raoji Naik, major in age, service, r/o H.No. 454, Mhalwada, Madkai, Ponda - Goa.

d. Mrs. Karuna Deepak Naik, w/o of Deepak Raoji Naik, major in age , r/o H.No. 454, Mhalwada, Madkai, Ponda - Goa.

3. MR. PUNDALIK DAMODAR NAIK, s/o of late Raoji Naik, major of age, self employed, Indian National, r/o H. No. 454, Mhalwada, Madkai, Ponda - Goa.

4. MRS. SHOBHAVATI PUNDALIK NAIK, w/o Pundalik Damodar Naik major in age, housewife, Indian National r/o H.No. 454, Mhalwada, Madkai, Ponda - Goa.

5. MR. VAMAN PUNDALIK
KAMAT (since deceased) Through
LR's :

- a) Ganpati U. Kamat
- b) Shubangi G. Kamat,
both r/o H. No. 483, Malvada,
Madkai Goa
- c) Mr. Ajit V. Kamat
- d) Sarita A. Kamat,
both r/o Subhashirvad Building,
Flat No. DG-1, Vir bhat, Fatorda
Margao – Goa.
- e) Caliana @ Nutan Ambe,
- f) Chandranath Ambe,
both r/o T-3, block 1, Glorius Plaza,
Margao-Goa.

6. MR. DAMODHAR PUNDALIK
KAMAT, (since deceased)

6. (a) Mrs. Leena Kandekar,
d/o Mr. Damodar Pundalik Kamat,
Major of age, Married, Housewife
and her Husband.

(b) Mr. Nandakumar Kadnekar,
s/o Mr. Kadnekar, Both resident of
Vishwashanti Coop Hsg. Sty., Flat
No. 18. Shanty nagar, Ponda-Goa.

7. SHRI GURUDAS PUNDALIK
KAMAT (Since deceased) Through
LR's :

a. Mrs. Sudha Gurudas Kamat,
W/o Late Gurudas Pundalik Kamat,
Major of age, housewife, Indian
National

b. Mrs. Rupa @ Sanjana Sandip Pai,
d/o late Gurudas Pundalik Kamat,
major of age, housewife, Indian
National

c. Mr. Sandip Pai, Major of age, self
employed, Indian National,

All r/o Flat No. 5A and F-6, Near
Forest Department, Kurtarkar
Nagari, Santa Cruz, Ponda - Goa

d. Mrs. Swapna Nitin Nayak,
d/o late Gurudas Pundalik Kamat,
major of age, housewife, Indian
National

e. Mr. Nitin Nayak, Major of age,
service, Indian National, Both r/o
Ghodkiwada, Cuncolim, Mardol,
Ponda-Goa.

f. Mrs. Swati Vivesh Kamat,
d/o late Gurudas Pundalik Kamat,
major of age, housewife, Indian
National

g. Mr. Vivesh Dinesh Kamat,
s/o Dinesh Kamat, major of age,
service, Indian National, Both r/o
Martins Place Co-op. Housing
Society, Building A, C-2, Borbhat,
Taleigao, Tiswadi - Goa.

8. SHRI TULSHIDAS PUNDALIK
KAMAT (since deceased) Through
LR's :

a. Mrs. Mangal Tulshidas Kamat,
w/o late Tulshidas Pundalik Kamat,
major of age, housewife, Indian
National

b. Mr. Pritish Tulshidas Kamat,
s/o late Tulshidas Pundalik Kamat,
major of age, service, Indian
National,

c. Mrs. Sheerja Pritish Kamat,
w/o Pritish Kamat, major of age,
housewife, Indian National, Both
r/o Flat No. 1, 1st Floor, Wing II,
Super Market, Ponda – Goa.

d. Mr. Ritesh Tulshidas Kamat,
s/o late Tulshidas Pundalik Kamat,
major of age, business, Indian
National,

e. Mrs. Shrivina Ritesh Kamat,
w/o Ritesh Kamat, major of age,
lawyer, Indian National, Both r/o
Caranzal, Madkai, Ponda-Goa

9. MR. PRAKASH PUNDALIK
KAMAT, s/o late Pundalik Kamat,
major in age, retired

10.MRS. SUMITA PRAKASH
KAMAT, w/o Prakash P. Kamat,
major of age, housewife, Indian
National, All r/o Flat No. BF-1,
Radha Park, Bamon Waddo, Opp.
SFX School Siolim, Bardez-Goa.

11. MR. JAIWANT KAMAT (since
deceased) Through LR's :

a. Mrs. Suchita Jaiwant Kamat,
w/o late Jaiwant Pundalik Kamat,
major in age, housewife, Indian
National, r/o Flat No.F-04, Dr
Kudchadkar Complex, Behind
Commerce Centre, Tisk-Ponda,
Ponda-Goa.

b. Mrs. Sonali Vikas Mauzekar,
d/o late Jaiwant Pundalik Kamat,
major in age, housewife, Indian
National,

c. Mr. Vikas Vishnudas Mauzekar,
s/o Vishnudas Mauzekar, major in
age, business, Indian National, Both
r/o H. No. 875, Barazan, Usgao,
Ponda -Goa.

d. Mr. Sarvesh Jaiwant Kamat,
s/o late Jaiwant Pundalik Kamat,
major in age, business, Indian
National,

e. Mrs. Sushma @ Shreya S. Kamat,
w/o Sarvesh Kamat, major in age,
housewife, Indian National, Both
r/o Flat No. F-04, Dr Kudchadkar
Complex, Behind Commerce
Centre, Tisk-Ponda, Ponda-Goa.

f. Miss. Snehal Jaiwant Kamat,
d/o Jaiwant Kamat, major in age,
unemployed, Indian National, Both
r/o Flat No. F-04, Dr Kudchadkar
Complex, Behind Commerce
Centre, Tisk-Ponda, Ponda-Goa.

... RESPONDENTS

Mr Gaurish Agni with Mr Kishan Kavlekar, Advocates for the
Petitioners.

Mr J. J. Mulgaonkar, Advocate for Respondents No.1(A) to 1(D),
1.1 to 1.4.

CORAM: M. S. SONAK, J.

DATED: 24th March 2023

ORAL JUDGMENT:

1. Heard Mr Agni for petitioners and Mr J. J. Mulgaonkar for respondents 1(a) to 1(d).

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties. Even otherwise, parties had been put to notice that this matter would be finally disposed of.

3. The petitioner, by instituting this petition, has sought the following reliefs:-

A) For a Writ of Certiorari or any other appropriate writ, Order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings in Mundkar Revision Application No. 21/14 before the Administrative Tribunal, Panaji, Goa and upon examining the same for its legality and propriety quash and set aside the Order dated 16/11/2016 as being illegal, perverse and bad in law.

B) For a Writ of Certiorari or any other appropriate writ, Order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings in Mundkar Revision Application No. 18/14 before the Administrative Tribunal, Panaji, Goa and upon examining the same for its legality and propriety quash and

set aside the Order dated 16/11/2016 as being illegal, perverse and bad in law.

C) For a Writ of Certiorari or any other appropriate writ, Order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings in Case No. PON/MUND/APL/1/12 and Case No. PON/MUND/APL/3/ 2014 before the Deputy Collector and SDO, Ponda, Goa and upon examining the same for its legality and propriety quash and set aside the Order dated 25/06/2014 as being illegal, perverse and bad in law.

D) For a Writ of Certiorari or any other appropriate writ, Order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings in Case No.JM/MUND/REG/MAR/504/78 before the Mamlatdar, Ponda, Goa and upon examining the same for its legality and propriety quash and set aside the Order dated 17/01/1985 as being illegal, perverse and bad in law.

E) For a Writ of Certiorari or any other appropriate writ, Order or direction under Articles 226 and 227 of the Constitution of India calling for the records and proceedings in Case No.JM/MUND/PUR/MAR/2/2011 before the Mamlatdar, Ponda, Goa and upon examining the same for its legality and propriety quash and set aside the Order dated 18/02/2013 as being illegal, perverse and bad in law.

F) During the pendency of the hearing and final disposal of the present petition for stay of the operation, execution and implementation of the Order dated 17/01/1985 passed in

Case No. JM/MUND/REG/MAR/504/78 and Order dated 18/02/2013 in Case No. JM/MUND/PUR/MAR/2/2011.

G) For ex-parte ad interim relief in terms of prayer clause (F) above.

H) For ad interim relief in terms of prayer clause (F) and (G) above.

I) Any other order as this honorable Court may deem fit and necessary in the circumstances of the Case.

4. However, Mr Agni, based on instructions, does not press for relief in terms of prayer clauses (B) and (D). However, he submits that relief in terms of prayer clauses (A), (C) and (E) is liable to be granted.

5. The respondents applied for and obtained registration under the provisions of Section 29(4) of the Goa Mundkars (Protection from Eviction) Act, 1975 (said Act) vide Order dated 17.01.1985. This registration order was obtained qua Vaman Pundalik Kamat, the brother of the first petitioner. The petitioner sought leave to challenge Mamlatdar's Order dated 17.01.1985. Leave was granted, but the revision was dismissed on merits by judgment and Order dated 16.11.2016. Therefore, the petitioner, vide prayer clauses (B) and (D), sought relief of setting aside these

orders. However, the petitioner now does not press for relief in terms of prayer clauses (B) and (D). Therefore, the issue of registration appears to have attained finality.

6. Mr Agni, however, submits that the registration issue as a mundkar is irrelevant when it comes to a mundkar seeking to purchase the dwelling house from the bhatkar (landlord). He submitted that a purchase order could not be made based only on registering a person as a mundkar. He submitted that the scope of declaring a person as a mundkar and registering a person as a mundkar is quite different. Even the implications of both eventualities are quite different. He relies on *Shri Sandesh Datta @ Dattaram Salgaonkar v/s. Shri Vithal Vasu Mayekar (D) thr. His LRs & Ors. – 2019 (2) ALL MR 857* to submit that without any declaration, even registered mundkars are not entitled to pursue purchase proceedings before the Mamlatdar.

7. Mr Agni submits that the purchase orders made by the Mamlatdar on 18.02.2013 and confirmed by the Deputy Collector on 25.06.2014 and the Administrative Tribunal on 16.11.2016 are in excess of jurisdiction and contrary to the law laid down by this Court in *Sandesh Salgaonkar (supra)* and *Roque Fernandes (since deceased) through legal heirs v/s. M/s. Dempo Properties and Investments Pvt. Ltd. & Ors. –*

2010 (1) Goa L.R. 179. Therefore, Mr Agni submitted that relief may be granted in terms of prayer clauses (A), (C) and (E) of the petition.

8. Mr Mulgaonkar, learned counsel for the contesting respondents, defended the impugned orders. He submitted that the petitioner was the brother of Vaman, against whom the registration had been obtained. He offered that the petitioner had full knowledge of the registration proceedings. He pointed out that in the purchase proceedings, the petitioners were impleaded as parties as a matter of abundant caution. Still, the petitioners did not bother to file any reply or oppose such proceedings. Based on all this and the reasoning adopted by the Tribunal, Mr Mulgaonkar submitted that this petition may be dismissed.

9. The rival contentions now fall for my determination.

10. The Mamlatdar, the Deputy Collector and the Tribunal who have made the impugned orders and allowed the respondents to purchase the dwelling house did not have the benefit of the decision of the learned Single Judge of this Court in *Sandesh Salgaonkar (supra)*. Before the Tribunal, only the decision of *Roque Fernandes (supra)* was cited. The decision in *Roque*

Fernandes (supra) was based on a concession that since the petitioners in the said petition had not been declared as mundkars pursuant to any proceedings under Section 8-A of the said Act, no demarcation order could have been made.

11. In *Sandesh Salgaonkar (supra)*, the issue which squarely arose for determination was whether, in the absence of any declaration under Section 8-A of the said Act, could a registered mundkar insist upon purchasing the dwelling house based only on the factum of registration.

12. Learned Single Judge of this Court, by relying upon *Vassudev Pandurang Naik & Anr. vs. Shri Krishna Vithoba Xete Tilve ((d) thr. LR's) – 2006 (3) ALL MR 481* held that in the absence of any declaration, the respondents were not entitled to pursue the purchase proceedings before the Mamlatdar. Further, the Court held that even assuming at the highest that the petitioners had to challenge their registration as a mundkar, and there was a 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. Based upon this reasoning, the Court set aside the purchase orders.

13. The discussion in the above regard is contained in paragraphs 6 and 7. The contents of these paragraphs are transcribed below for the convenience of reference:-

"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. In the result, i pass the following Order:

The Writ Petition is allowed and the impugned Order is set aside. Rule is made absolute in the aforesaid terms."

14. As noted earlier, the Mamlatdar, the Deputy Collector and the Tribunal did not have the benefit of this Court's decision in *Sandesh Salgaonkar (supra)*. This decision supports Mr Agni's contention that purchase orders could not have been made without any declaration under Section 8-A.

15. Even though the petitioners may have been impleaded as parties in the purchase proceedings and the petitioners may have further failed to file a response in such proceedings, that by itself, is not sufficient to bar the petitioners from challenging the produce the orders on the ground that any declaration under Section 8-A of the said Act did not precede them.

16. In the case of *Gulabi Sangtu Devidas & Ors. vs. Smt. Prema Govinda Gaonkar & Ors. - 1995(1) Goa LT 154*, the Division Bench of this Court has explained the scope and difference between a registration as mundkar and a declaration as a mundkar. The Division Bench has explained how registration is ordered in summary proceedings, unlike a declaration under Section 8-A which contemplates deeper scrutiny and examination. Besides, in this Case, the petitioners were not even impleaded as respondents in the registration proceedings. Therefore, even though the registration orders need not be

interfered with, the purchase orders will warrant interference given the law laid down in *Sandesh Salgaonkar (supra)*.

17. For all the above reasons, the Rule is made absolute in terms of prayer clauses (A), (C) and (E). The impugned orders dated 18.02.2013, 25.06.2014 and 16.11.2016 are set aside. However, this shall not preclude the respondents from seeking a declaration and, based upon the outcome of such proceedings seeking to purchase the dwelling house. Suppose the respondents take out such proceedings. In that Case, it is clarified that such proceedings will have to be decided on their own merits without being influenced by any observations in this Order.

18. In the facts and circumstances of the present Case, there shall be no order for costs.

M. S. SONAK, J.

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