

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO.11 OF 2019

ANTONIO BARNARDO
COSTA

....APPLICANT

Versus

GUNAVATI JAGANATH
KHANDEPARKAR (DEC)
THROUGH HER LRS. & 3 ORS.

....RESPONDENTS

**Mr. A.F. Diniz, Senior Advocate with Mr. Vivek Rodrigues,
Advocate for the Applicant/Review Petitioner.**

CORAM: M. S. SONAK, J.

DATE : 3rd FEBRUARY 2023

ORAL ORDER :

1. Heard Mr. A.F. Diniz, learned Senior Counsel, who appears along with Mr. Vivek Rodrigues for the review petitioner.

2. This is a case where the Mamlatdar, the Revisional Court and the learned Single Judge of this Court have held that the original respondent has established that he was a mundkar protected under the provisions of the Goa, Daman and Diu (Protection from Eviction of Mundcars, Agricultural Labourers and Village Artisans) Act, 1971 (said Act). The said Act is a beneficial legislation made for the protection of Mundkars, Agricultural Labourers and Village Artisans.

3. Mr. Diniz, in support of the review petition, submits that there are at least three errors apparent on the face of the record in the detailed judgment and order dated 25.10.2018, delivered by the learned Single Judge of this Court upholding the orders of the Mamlatdar and the Revisional Authority.

4. Mr. Diniz points out that the petitioner's argument about watch and ward activities for agricultural operations having to be undertaken by the landlord was inadvertently never considered. He points out that there were no pleadings to this effect.

5. Secondly, Mr. Diniz pointed out that the learned Single Judge has referred to Section 10(2) of the 1971 Act to conclude that the burden of proof was inverse, that is on the landlord. However, Mr. Diniz submits that this point was never taken up by the respondent and, therefore, the petitioner/landlord had no opportunity of dealing with this point.

6. Thirdly, Mr. Diniz points out that the learned Single Judge erred in concluding that there was no definition of the expression “rustic”. He pointed out that the learned Single Judge should have referred to the first paragraph of the legislative Diploma No.1952, which according to him, had been referred to in the oral arguments to point out that “rustic” means “rural”. He submitted that the dwelling house in this case was not situated in the rural area.

7. Having considered the submissions of the learned Senior Advocate, I am not convinced that a case for review is made out. The review jurisdiction is extremely limited and the points urged by the learned Senior Advocate hardly constitute any errors apparent on the face of record.

8. Firstly, the pleadings by a person claiming a mundkar have to be construed liberally and not pedantically. From the tenor of the pleadings it is evident that respondent had pleaded and finally has proved that his activities of either watch and ward or agricultural operations were for the landlord. There is accordingly no merit in the first contention.

9. The second contention about reversal of burden of proof, was a contention based on legal provision. The submission that this was never argued cannot be accepted. In any case, the evidence on record has been appreciated by the Mamlatdar, the Revision Authority and the learned Single Judge in great detail. The point raised hardly constituted any error much less an error apparent on the face of record.

10. The last contention based on the definition of the word “rustic” is quite misconceived. Firstly, such a contention admittedly was never raised before the Mamlatdar or the Revision Authority. Such a contention involves investigation into questions of fact. Besides, even

now, no definition as such of the expression “rustic” is pointed out from the Diploma. Accordingly, this can hardly be called an error, much less an error apparent on the face of the record.

11. This review petition is entirely misconceived. Therefore, the same is dismissed.

12. However, there shall be no order for costs.

M. S. SONAK, J.

NITI K
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