



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 584 OF 2024

Atmaram Anant Shetgaonkar
(Since deceased through his legal heirs)
a. Mr. Uday Atmaram Shetgaonkar,
Age 65
b. Mr. Anil Atmaram Shetgaonkar,
Age 62
c. Smt. Hemlata Atmaram Shetgaonkar,
Age 77,
R/o Morjim, Pernem, Goa.

...Petitioners

Versus

Mr. Navso Bablo Salgaonkar
(Since deceased through his legal heirs)
a. Laximan Navso Salgaonkar
b. Mr. Bablo Navso Salgaonkar
Both R/o -H. No. 828, Varchawada,
Morjim, Pernem - Goa.

2. Mr. Vishram Dattaram Shetgaonkar
(Since deceased through his legal heirs)
a. Mr. Ratnakar V. Shetgaonkar
b. Mr. Dattaram V. Shetgaonkar
Both resident of the Housing Board,
Mapusa, Bardez - Goa

3. Mr. Raghunath Vithal Shetgaonkar
(since deceased through his legal heirs)
a. Mr. Madhukar Raghunath Shetgaonkar
b. Mrs. Snehalata Madhukar Shetgaonkar
c. Mr. Prasannakumar alias Nitin
Madhukar Shetgaonkar

- d. Mrs. Nisha Prasannakumar Shetgaonkar
- e. Mr. Nilesh Madhukar Shetgaonkar
- f. Mrs. Varsha Nilesh Shetgaonkar
All resident of Bhatiwado,
Morjim, Pernem-Goa.

- 4. Mr. Anant Vithal Shetgaonkar
(Since deceased through his legal heirs)
- a. Santosh Vijaysingh Shetgaonkar
R/o - H. No. 124, Naroji Wada,
Morjim, Pernem-Goa.
- b. Pingal Santosh Shetgaonkar
R/o - H. No - 124, Naraoji Wada,
Morjim, Pernem-Goa.

...Respondents

Mr. Ankur Kumar, Advocate for the Petitioners.

Mr. Vishnuprasad A. Lawande with Mr. Parimal Redkar and Ms. Smita Gawas, Advocates for Respondents.

CORAM : VALMIKI MENEZES, J.
DATED : 12TH FEBRUARY, 2025.

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution of India assails a Judgment dated 23.08.2023, passed by the Administrative Tribunal of Goa, dismissing a Mundkar Revision Application bearing No. 9/2021. The Mundkar Revision was filed by the Petitioner to impugn a Judgment dated 15.07.2019, passed by the Deputy Collector, Pernem in an Appeal under the Goa Daman and Diu Mundkar(Protection

from Eviction Act, 1975) (Mundkar Act), whereby the Appeal of the Petitioner against an original order allowing the Respondent's application bearing No. JM/I/MUD/8/2000 under Section 8A of the Mundkar Act, for declaration of his status as a Mundkar was allowed by the Mamlatdar of Pernem; the order of declaration dated 17.07.2009, was passed in the original proceeding after considering the evidence led by both parties to this petition.

2. In the application for a declaration of his status as a Mundkar, Respondent Nos.1(a) and 1(b)/original Applicants claimed status of Mundkar with respect to a House bearing No. 828, standing on the property under Survey No. 80/1 and 80/2, situated at Warchawada, Morjim, Pernem, Goa. It was the Applicant's case that the House bearing No. 828 partly existed in land under Survey No. 80/2 of which the Applicants were owners, while the other part of the House was situated on the land under Survey No. 80/1, which land was owned by the Petitioners/original opponents. The status of Mundkar was claimed with respect to the said House, and in relation to the portion occupied by the Applicants, situated in Survey No. 80/1.

3. In para 1 of the reply to the application under Section 8A of the Mundkar Act, the defence taken by the Petitioners was that the Applicants were not in occupation of the House claimed

by them on the appointed date and further at para 4 of the reply, Petitioner's denied that the Applicants have carried out reconstruction of the dwelling House to the extent that it fell within the area falling in Survey No.80/1, with the consent of the Village Panchayat.

4. Evidence was led by the parties during which a Government Survey Plan depicting the area under Survey No.80/2 and 80/1 was produced. The relevant Survey records in Form I and XIV were also produced in which, the entry in the Occupant's column of land under Survey 80/2 stood in the name of the Applicant while in the Occupant's column of Survey No.80/1 the name of the Petitioner's were entered and in the other rights column of this record, the name of the Applicant stood recorded. After considering the evidence led by the parties, the Mamlatdar concluded that the Applicants had proved their case for a declaration as their status as Mundkar and accordingly declared them as Mundkar's of the dwelling House bearing No. 828 situated on Survey No. 80/1 and 80/2 of village Morjim.

5. Apart from the oral evidence considered by the Mamlatdar, the Mamlatdar has placed reliance on the presumptive effect of an order dated 14.04.1982 of registration of the Applicant's right as a Mundkar. Considering the effect of the presumptions to be attached to an order of registration under

Section 29 of a Mundkar Act, coupled with the documentary evidence produced by the Applicants to evidence their residence with fixed habitation, such as Electricity Bills, House Tax receipts and Water Bills, the Mamlatdar arrived at a specific finding that the Applicants were in fact Mundkars of the said House.

6. Whilst rendering the aforesaid findings, the Mamlatdar also considered the evidence of a Surveyor examined by the Petitioners on the location of, what the Petitioners considered to be two Houses in existence and in occupation of the Applicant, situated on Survey No. 80/1 and 80/2, and has discarded this Surveyor's evidence as not believable; the evidence of the Surveyor was found contrary to promulgated Survey Records and the Survey Plan, in whose favour presumptions under Section 105 of the Land Revenue Code were attached.

7. In Appeal, the Collector has reconsidered the evidence led by the parties and has confirmed the aforementioned findings of fact arrived at by the Mamlatdar.

8. In the Mundkar Revision Application before the Administrative Tribunal, though strictly not called upon to reappreciate the evidence led by the parties in its Revisional jurisdiction, the Tribunal has in fact, on consideration of the

entire evidence specifically confirmed the concurrent findings of facts arrived at by the original and the Appellate Courts.

9. Shri. Ankur Kumar, learned Advocate for the Petitioners has advanced the following submissions:

- (a) That the Survey Plan itself was fraudulent and a misrepresentation of the factual position at site and did not depict the two separate Houses at the location on Survey No. 80/1 and 80/2.
- (b) That the findings of facts arrived at were perverse and contrary to the records since, the Mamlatdar and the Appellate Court have misconstrued the contents of the NOC issued by the Panchayat on 09.05.1991, in favour of the Applicant; he submits that the licence/NOC was for extension of a House and a compound wall in Survey No. 80/2 and not for the House claimed, existing in Survey No. 80/1.

10. On going through the records, it is quite clear that three Courts on considering the evidence, consistently and concurrently have arrived at the factual findings that the Applicants were in possession of House No. 828 situated on the land under Survey No. 80/1 and 80/2, with fixed habitation since the appointed date. These findings are based upon the

documentary evidence on record and are supported by the legal presumptions under Section 29 of the Mundkar Act and Section 105 of the Land Revenue Code. There appears to be no cogent evidence led by the Petitioners before the Mamlatdar to rebut these presumptions. The findings of facts, can, therefore not be upset.

11. As to the new grounds raised that the Survey Records are fraudulent and do not reflect the correct position at site, there is neither evidence led by the Petitioner before the Mamlatdar to substantiate the allegation, nor are any objections raised to the promulgated Survey Records/drafts/index of lands prior to such promulgation. There is, therefore no evidence to support the contention raised by the Petitioners for the first time before this Court.

12. Consequently, the petition is dismissed since no interference is called for in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

13. All applications pending in the petition stand disposed of as a consequence of rejection of this petition. No order as to costs.

VALMIKI MENEZES, J.