

(1986) 10 BOM CK 0028
In the Bombay High Court
Case No : Writ petition No. 223 of 1985

Joseph Alme"da and Another

APPELLANT

Vs

Krishnanath Harayan and Others

RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 — Section 2

Citation : (1987) 1 BomCR 731

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : B. Das Reis, for the Appellant; M.S. Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

G.F. Couto, J.—Generosity, kindness of heart and charity not always sow the seeds of goodwill and gratitude and not so seldom as desired but more often than expected, brook ingratitude and bring up the base sentiments in a human being. These thoughts come to mind as here is an eloquent and unfortunate example of it, a case where a fine humanitarian Act, dictated perhaps by those noble teachings to give shelter to those who have no roof under which to live or to give food to those who are hungry, is answered by utmost ingratitude. The petitioners indeed having given shelter to respondent No. 1 and his family in their hour of need, find now themselves in a strange situation of being deprived, due to the acts of the latter, of their ancestral house. The old story of the camel and the kind hearted Arab, who is driven out of his tent, is thus repeated. The petitioners, therefore, approached this Court with this writ petition seeking redress to their grievance.

2. The petitioners hail from Raia Daguale, Goa, where there ancestral house is situate. They had been living in Bombay and had requested their distant relative and neighbour, Mr. Remiza Fernandes, to look after the house. Accordingly, Remiza used to periodically open and clean the said house with the help of a

labourer. Somewhere in the year 1961, the mother of the first respondent approached Remiza with request to allow her to stay in the said house as her husband was ill and had been ordered to vacate the place where he was residing with his family. With the consent of the petitioners, Remiza permitted, purely on humanitarian ground, the mother of the first respondent to stay in the said house for a few months on the condition that she would vacate the same thereafter. As a result, the mother of the first respondent went to live in the house along with her family and this situation continued for a long period of time. Ultimately, somewhere in the year 1971, the petitioners requested respondent No. 1 to vacate the said house. However, the said respondent not only did not vacate the house but went to file an application before the Mamlatdar of Salcete on 23rd February, 1972, praying that he be declared as a Mundkar residing in the said property u/s 10 of the Goa, Daman and Diu Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisan Act, 1971 on the ground that he, along with his family, had been residing in the said dwelling house as Mundkar and looking after the said property and the trees existing therein.

3. This application was resisted by the petitioners on several grounds and particularly on the ground that the suit property and the house belong to their ancestors and is meant for their family's stay only and secondly, that the suit house was not given to the first respondent for the purpose of looking after the same. On the contrary, the house had been entrusted to Mr. Remiza Fernandes for the purpose of being looked after by her. Remiza, out of pity, had given licence to the hold mother of respondent No. 1, in or about 1961, to stay there for a few months on the condition that she along with her family would vacate the house thereafter. This was done by Remiza exclusively on humanitarian grounds. Thirdly, respondent No. 1 was called upon to vacate the suit house but he and his family managed to stay there unauthorisedly and illegally.

4. By his judgment dated 16th February, 1978, the Mamlatdar of Salcete observed that though the application for declaration of Mundkarship had been filed while the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 was in force, the fact remains that the said Act had been repealed and replaced by the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, pending the disposal of the said application and, therefore, the definition of "Mundkar" given in the 1975, Act was to be applied. Accordingly, the learned Mamlatdar held that respondent No. 1 was Mundkar of the suit property. Being aggrieved, the petitioners, approached in appeal the Additional Collector of Goa, who by his judgment dated 20th August, 1978, dismissed the same, affirming the judgment of the Mamlatdar. Again the petitioners approached in a Revision Application the Administrative Tribunal, Goa, Daman and Diu and here also they were unsuccessful. Hence this writ petition.

5. Mr. Reis, the learned Counsel appearing for the petitioners, contended that it

is common ground that the house in question is the ancestral house of the petitioners' family. The building is a palatial house, situated in a semi urban area, at Raia. Remiza had been looking after the said property and had allowed, on purely humanitarian ground, the mother of the first respondent to stay in the house for a few days, as she had been approached with the request to allow her to stay there as her husband, who was sick, had been given notice to vacate the house where he was staying with his family. The petitioners requested the respondent No. 1 to vacate the house. But instead of doing so, the first respondent filed an application to the Mamlatdar praying that he be declared Mundkar of the suit property. Admittedly, this application was made by the first respondent while the 1971 Mundkars Act was in force. Now, this being the position by virtue of the provision of section 41(c) of the 1975 Act, the Mamlatdar ought to have followed the 1971 Act for the disposal of the said application. However, though the Mamlatdar recorded a finding that the 1971 Act was to be applied, surprisingly, he gave the benefit of the definition of "Mundkar" given in the 1975 Act in order to hold that respondent No. 1 was Mundkar of the suit property. According to the learned Counsel, this action of the Mamlatdar is erroneous, as erroneous is the action taken by the Additional Collector as well as by the Administrative Tribunal. The learned Counsel further contended, placing reliance on a decision of the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, that when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full affect must be given to the statutory fiction and it should be carried to its logical conclusion. Now, according to the learned Counsel, the explanation to the definition of "Mundkar" in the 1975 Act is a deeming provision and, therefore, taking its logical conclusion., it has to be held that the house in question should be the house of the Mundkar and not the house of the bhatkar.

6. It has, however, been contended by M.S. Usgaonkar, the learned Counsel appearing for the first respondent, that though the proceedings for declaration of Mundkarship had been instituted under the 1971 Act, nonetheless, the changes in the law which were favourable to the Mundkar were to be considered as was rightly done by the Mamlatdar, the Additional Collector and the Administrative Tribunal. In this connection, reliance was placed on a ruling of the Supreme Court in *Qudrat Ullah Vs. Municipal Board, Bareilly*, The learned Counsel also contended that, as observed by the Supreme Court in *Syedabad Tea Company Limited Vs. State of Bihar*, , when the law says that something should be deemed to have been done in a given case, the said legal fiction should be carried to its logical end to achieve the desired result. Now, the desired result in the explanation to the definition of "Mundkar" given in the 1975 Act is that the Mundkar who is in occupation of a house with the consent of the bhatkar without any reaction of the latter, should be held a Mundkar. Therefore, in the facts of this case where respondent No. 1 and his family have been staying in the suit

house since 1961 with the consent of the petitioners themselves and where no proceedings were instituted to vacate them within the time stipulated in the said explanation, the effect of the said explanation was to be given to respondent No. 1. This being the case according to the learned Counsel, there is no reason whatsoever for this Court to interfere with impugned judgment.

7. The proceedings for the declared of the first respondent as a Mundkar had, admittedly, been instituted when the 1971 Act was in force. Section 2(e) of the said Act defined Mundkar as having the meaning assigned to it in the Legislative Diploma No. 1952 dated 26th November, 1959. Article 2 of the said Legislative Diploma was defining "Mundkar dweller as an individual who resides with a fixed dwelling in the rustic property of others specially for the purpose of agriculture or watch and ward duties be the dwelling, constructed on own account or on account of the bhatkar or landlord receiving or not from the latter any assistance in cash or kind for its construction and establishment." Therefore, under the 1971 Act, the Mundkar was a person who was residing with a fixed habitation in a rustic property belonging to others for the purpose of agriculture or watch and ward duties. This definition of Mundkar given in the 1971 Act was modified in the 1975 Act. Section 2(p) of the 1975 Act defines "Mundkar" as meaning a person, who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar, lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not includes a person paying rent to the bhatkar for the occupation of the house, domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employers residence, a person employed in a mill, factory, mine, workshop, etc., and a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house as a caretaker of the said house or for purposes of maintaining it in habitable condition, in the explanation to the aforesaid definition of "Mundkar" it is clarified that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceeding, during the said period of one year, to evict such person from the dwelling house, through a competent Court of law, on the ground that such person was a trespasser or having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person. Comparing the definition of "mundkar" given by the 1971 and 1975 Acts, it clearly flows that the requisite of occupying the house for the purposes of agriculture or watch and ward duties existing in the 1971 Act had been dispensed with in the 1975 Act.

8. Section 41(c) of the 1975 Act provides that the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourer and Village Artisan) Act, 1971 shall stand repealed and the provisions of sections 6 and 24 of the General Clauses Act, 1897, as applied to the Union Territory of Goa, Daman and Diu by the Goa, Daman and Diu General Act, 1965 shall apply to such apply to

such repeal. According to Mr. Reis, by virtue of this provision of law, the operation of the 1971 Act had been saved inasmuch as the proceedings instituted by the first respondent before the Mamlatdar for his being declared as Mundkar had been saved. I am, however, unable to agree with the learned Counsel. It is not indeed disputed that the Mundkars Acts, be it the 1971 or 1975 Act, are beneficial pieces of legislation and, therefore, the provisions of the said Acts are to be interpreted in a liberal manner. The definition of "Mundkar" as it was in the 1971 Act had been modified and replaced in the 1975 Act by deleting the requirement of residence for the purposes of agriculture or for duties of watch and ward. In other words, the Legislature intended to give protection from eviction to those persons who have their permanent residence in a house situated in others property and with the consent of the latter. A benefit had been, therefore, intended to be given to such persons. The new definition of "Mundkar" being thus favourable to the Mundkar is to be applied in all proceedings which are pending irrespective of their having been initiated under the 1971 or 1975 Act. In this connection, I may quote with advantage the decision of the Supreme Court in *Smt. Dayawati and Another Vs. Inderjit and Others*, to the effect that :---

"If the law speaks in language, which expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal may give effect to such law even after the judgement of the Court of first instance."

This view of the Supreme Court was quoted with approval in *L.N. Guin and others v. Niranjan Modak*, 1985(1) R.C. J. 152 . In the said case, Their Lordships of Supreme Court, after having quoted with approval their earlier decisions in *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, and in *Ram Sarup Vs. Munshi and Others*, approved the above quoted observations in *Dayawati's* case. In *Mst. Refiquunnisa's* case, it was observed that where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective, unless the provision in question relates merely to a procedural matter. It was also observed that the legislature is competent to take away vested rights by means of retrospective legislation and that similarly, the Legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties, but unless a clear and unambiguous intention is indicated by the Legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. Further, retrospective operation of a statutory provision can be inferred even in case where such retrospective operation to be clearly implicit in the provision construed in the context where it occurs. In other words, even when rights, had been accrued to a party, the Legislature may make a law with retrospective effect which effects the said vested rights. The only thing is that the intendment of the Legislation to that effect should be clear either by an express provision or by necessary implication. In the present case, I already observed that the 1975 Act has introduced some modifications in the 1971 Act,

one of them being the change in the definition of "Mundkar" by deleting therefrom the obligation that the fixed habitation in other property had to be for the purposes of agriculture or for watch and ward of the property. The 1975 Act is manifestly beneficial piece of legislation intended to benefit the Mundkar. It is thus clear that the intendment of the Legislature was to protect those who are living in a house situated in other's property with the consent of the owner of the property from eviction. Hence, on the strength of the aforesaid judgments of the Supreme Court, I hold that the definition of Mundkar given in the 1975 Act was to be applied, as actually was done, in the proceedings instituted by the first respondent before the mamlatdar for his being declared as Mundkar of the suit property.

9. Explanation to section 2(p) Mundkars Act provides that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent Court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person. Mr. Reis, placing reliance on the decision of the Supreme Court in Pandurang's case (supra), submitted that when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. According to the learned Counsel, the fiction existing in the explanation is that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date. Now, according to the learned Counsel, the petitioners had allowed the mother of the first respondent to reside in the house for a short period of time and they had further requested the first respondent to vacate the house and this was prior to the coming into force of the 1975 Act. Therefore, the logical conclusion is that the licence to occupy the house had already been terminated and as such, respondent No. 1 was not entitled to continue in the said house. It is not denied that in fact, respondent No. 1 and his family had been allowed to reside in the suit house for a temporary period somewhere in the year 1961. However, they continued to stay in the said house and at least upto 1972, no action was taken by the petitioners to evict them from the house. It was only in 1972 that proceedings were initiated by respondent No. 1 before the Mamlatdar to declare him to be Mundkar of the said house and that petitioners, at that time, raised the question that the licence had been terminated. However, in spite of the explanation given to the definition of "Mundkar" in section 2(p) of the 1975 Act, the petitioners failed to initiate proceedings for eviction of the first respondent from the house within one year prior to the appointed date. This failure is fatal to their case, for it has to be held

in view of the explanation that the first respondent had been lawfully residing in the house with the consent of the petitioners.

10. The learned Mamlatdar as well as the Additional Collector and the Administrative Tribunal held this much and therefore, declared the first respondent to be Mundkar of the suit house. There is no reason, in view of the clear position of the law, to interfere with the impugned judgments, although the plight of the petitioner has to be regretted. However, it may be out that, according to the petitioners, the suit property consists of a landed portion admeasuring 900 sq. mtrs., plus the house. It is thus clear that respondent No. 1 will be entitled only to the house with rights which are vested in a Mundkar under the 1975 Act.

11. The result therefore, is that this petition fails and is, consequently dismissed. The rule is, accordingly, discharged. There will be no order as to costs, in the circumstances of the case.