

(2009) 11 BOM CK 0140
In the Bombay High Court
Case No : Writ Petition No. 233 of 2004

Mrs. Satyawati Shirodkar (since deceased through her legal heirs) (Shri Narayan Raghunath Shirodkar, Mrs. Laxmi Narayan Shirodkar, Dilip Raghunath Shirodkar and Mrs. Divyashri D. Shirodkar) APPELLANT

Vs

Dr. Avinash Kamat Dhakankar, Mrs. Nayan Avinash Kamat Dhakankar, Mr. Raghunath Narayan Shirodkar and The Administrative Tribunal of Goa RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Mundkar Act, 1975 — Section 12

Citation : (2009) 11 BOM CK 0140

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : S.D. Lotlikar and G. Xettigar, for the Appellant; V.K. Bodke, for the Respondent

Judgement

R.M. Savant, J.—This petition takes exception to the order of the Administrative Tribunal dated 20.08.2003 by which order the Mundkar Revision Application No. 101/2002 filed by the petitioner came to be dismissed.

2. The controversy in the present petition lies in a narrow compass. The respondents herein filed an application before the Joint Mamlatdar, Tiswadi, Panaji for a declaration that the petitioner and the respondent No. 3 are not the mundkars of the suit house and for eviction of the petitioner and the respondent No. 3 from the suit house in the event, the Court comes to a conclusion that the petitioner or one of them is the mundkar of the suit house u/s 12 of the Mundkar Act 1975. In the said application, the petitioner filed an application raising a preliminary objection as regards the jurisdiction of the Mamlatdar to issue the said negative declaration as also the jurisdiction of the Mamlatdar to evict her under the Mundkar Act unless the applicants specifically admit that the respondents are the mundkars of the suit house. The said preliminary objection

was considered and the Mamlatdar by order dated 04.07.2000 held that he had the jurisdiction to issue a negative declaration as sought by the applicants and by observing that the petitioner herein was seeking adjournment on one ground or the other, closed the evidence of the petitioner in the said case.

3. The petitioner aggrieved by the order passed by the Mamlatdar dated 04.07.2000 filed an appeal before the Deputy Collector and SDO, Panaji. The said Authority confirmed the findings of the Mamlatdar in so far as the issue No. 1 is concerned i.e. as regards the jurisdiction of the Mamlatdar to issue a negative declaration. But in so far as the second issue is concerned has observed as follows in the second last paragraph of the said order:

Section 12 of the Act lays down the grounds on which a mundkar can be evicted from his dwelling house. A plain reading of Section 12 makes it apparent that it is applicable only in cases where the person to be evicted is a mundkar. Section 12 has no application when the person sought to be evicted is a trespasser, encroacher or unauthorised occupant. Thus it is obvious that Section 12 is not attracted at this stage of the proceedings. Therefore the strategy of the respondent to seek an alternate relief, which is without prejudice to their main concern i.e. seeking a negative declaration from the Mamlatdar cannot be faulted on any count. It would come into picture only if the Court comes to the conclusion, after recording evidence, that the Appellants are mundkars in respect of the said house. Moreover, it has the advantage of avoiding multiplicity of litigations.

4. After so observing, the Appellate Authority set aside the order of closure of evidence and directed the Mamlatdar to continue with the proceedings by providing reasonable opportunity to both the parties to lead evidence. The petitioner aggrieved by the said order passed by the Appellate Authority filed Mundkar Revision Application No. 101/2002 before the Administrative Tribunal, Goa. The said Revision Application was considered by the Tribunal and by the impugned order dated 20.08.2003 the said application came to be dismissed. Resultantly, the order of the lower Court in respect of the jurisdiction to issue negative declaration as well as the order of the Deputy Collector in respect of the jurisdiction as well as the jurisdiction of the Mamlatdar to evict the petitioner was upheld.

As indicated above, it is this order which is impugned in the present petition.

5. On behalf of the petitioner it is submitted by learned Senior Counsel Mr. S.D. Lotlikar that in so far as the first issue is concerned, the petitioner would submit to the jurisdiction of the Mamlatdar. However in so far as the second issue is concerned, the learned Senior Counsel submitted that the objections of the petitioner would still stand. The question therefore, arises is whether the said issue as to whether the Mamlatdar would have the jurisdiction to evict the petitioner in a proceeding wherein a negative declaration is sought is required to be considered by this Court.

6. It would be pertinent to note that in the second last paragraph of his order, the Deputy Collector has observed that Section 12 under which, the eviction of the mundkar can be ordered is not attracted at this stage as the Mamlatdar would be deciding the issue of the negative declaration which is sought by the applicant at the first instance and the said second issue of eviction of the petitioner would come into picture to use the phraseology used by the Deputy Collector, only if the Court comes to a conclusion, after recording evidence, that the petitioner is a mundkar in respect of the said house. Obviously, the consideration of the issue on the issuance of a negative declaration would encompass a decision on the issue as to whether the petitioner is a mundkar or not. In view of the observations of the Deputy Collector which have been confirmed by the Administrative Tribunal, in my view, it would not be necessary to consider the second aspect of the matter, namely, as to whether the Mamlatdar could order the eviction of the petitioners in the proceedings initiated for a negative declaration at this stage.

7. The learned Counsel for the respondents accepts that the said issue of negative declaration would have to be decided by the Mamlatdar at the first instance as observed by the Collector and upon it would hinge the proceedings in so far as the second issue is concerned.

8. In terms of the Mundkar Act 1975, any decision of the Mamlatdar one way or the other, would be susceptible to a challenge in the higher forum and the proceedings in respect of the second issue would therefore, be subject to such challenges. In that view of the matter, in view of the concession made on behalf of the petitioner by the learned Senior Counsel whereby the petitioner accepts the jurisdiction of the Mamlatdar in so far as the issue as regards negative declaration is concerned, without going into the second aspect of the matter, this petition is disposed of by directing the Mamlatdar to decide the said issue of negative declaration sought by the applicants in the first instance and subject to the observations made herein above, the second issue could be tried. Parties through their Counsel agree to appear before the Mamlatdar on 11.01.2010.

Rule is accordingly made absolute in the above terms with parties to bear their respective costs.