

(1998) 12 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 310 of 1997

Mrs. Teresinha Coelho and Others

APPELLANT

Vs

Dr. Inacio Pio Jesus de Sa

RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 15, 16, 20, 22(1), 22(3)
Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : (2000) 1 BomCR 484 : (2001) 4 BOMLR 206 : (2001) 3 MhLj 863

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.D. Padiyar, for the Appellant; F. Colaco, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—This petition relates to the provisions contained in Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, hereinafter called as "the said Act". The point which arises for consideration is:-

"Whether the decision of a Mamlatdar u/s 32(2) of the said Act on an issue being referred to it u/s 32(1) of the said Act is subject to an appeal u/s 24 of the said Act or not? What is the scope and the extent of exclusion of jurisdiction of Civil Courts u/s 32 r/w 31(2) of the said Act?"

2. The respondents herein filed a suit bearing No. 242/79/B in the Civil Court for eviction of the petitioners on the ground that the petitioners were the licensees in the house bearing No. 79 situated at Fondvem, Ribandar, Goa, hereinafter called as "the suit house", and that their licence had been terminated and, therefore, they were trespassers in the suit house and hence, were liable to be evicted. The petitioners contested the suit inter alia claiming to be mundkars in respect of the suit house. Consequently, the Civil Court by its Order dated 1st October, 1982 framed necessary issue regarding the plea of Mundkarship by the petitioners and thereafter, by its order dated 28th June, 1983 referred the said

issue to the Mamlatdar of Tiswadi in terms of provisions contained in section 32(1) of the said Act for necessary decision of the Mamlatdar on the said issue. The Mamlatdar by its order dated 31st July, 1992 answered the reference in negative thereby holding that the petitioners are not the mundkars in respect of the suit house. Against the said decision, the petitioners preferred the appeal u/s 24 of the said Act which was allowed by the Deputy Collector who is the Appellate Authority under the said Act. The appeal was allowed by judgment and Order dated 18th March, 1996. The same was subjected to the revision application by the respondent before the administration tribunal u/s 25(1) of the said Act. The Administrative Tribunal while interpreting section 32(2) of the Act, relying upon the decision of the Apex Court in the matter of Noor Mohd. Khan Ghouse Khan Soudagar Vs. Fakirappa Bharmappa Machenahalli and Others, held that the said Act does not provide for any right of appeal to the Appellate Authority under the said Act against the decision of the Mamlatdar given in the reference u/s 32(2) of the said Act. In the challenge to the said decision of the Administrative Tribunal the above quoted questions are sought to be raised for determination in this petition.

3. Though, the point decided by the tribunal relates only to the right of appeal against a decision of the Mamlatdar in the reference u/s 32 of the Act, it is intimately connected with the point regarding the scope of the exclusion of the jurisdiction of the Civil Court u/s 31(2) of the said Act.

4. With the intention to provide for better protection to the mundkars against eviction from the dwelling houses and to grant them right to purchase such houses along with the land appurtenant thereto at a reasonable price and to abolish the system of free service which was being rendered by the mundkars to their bhatkar and to make certain other provisions connected therewith, the said Act was enacted and it came into force from 12th March, 1976 which is called as "the appointed day" under the said Act.

5. The said Act is divided into four chapters, the first one comprises of provisions regarding its extents, date of enforcement of the said Act and regarding the definition of the terms and expressions used in the said Act. The second chapter deals with rights and liabilities of the mundkars and bhatkar under the said Act. The third chapter is in relation to power and functions of various authorities under the said Act and provisions regarding appeals, revision applications and the maintenance of register of mundkars. The last and the fourth chapter deals with miscellaneous matters under the said Act.

6. The mundkars, under the said Act, as defined u/s 2(p) thereof, means 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 service to the bhatkar, and includes a member of the family of such a person. The person paying house rent, the servant occupying out-house, the commercial and industrial employee occupying premises of the owner on account of his employment and the person

residing as the caretaker of a house in his occupation or for the purpose of maintaining the house in habitable conditions cannot be a mundkar since such persons are excluded from the purview of the definition of the term "mundkar". A person is deemed to be lawfully residing with the consent of the bhatkar in the dwelling house if such a person had been residing in the house for a period exceeding one year prior to the appointed date and during such period the bhatkar had not initiated any proceedings in a competent Court of law for eviction of the said person from the dwelling house on the ground that such person was a trespasser, or having initiated such proceedings had not been successful in obtaining decree for eviction of the said person. This deeming provision is contained in the explanation clause to the definition of the term "mundkar".

7. Section 2(f) of the said Act defines the term "bhatkar" to mean a person who owns the land on which the mundkar has a dwelling house.

8. The expression "dwelling house" is defined u/s 2(i) to mean a house in which the mundkar resides with a fixed habitation. It is immaterial whether the house is constructed by the mundkar at his own expenses or at the bhatkar's expense or with the financial assistance of the bhatkar. The dwelling house includes the land on which the house stands as well as the land around and appurtenant to it, subject to the maximum limit of five metres in villages and two metres in places other than villages. A mundkar, however, can opt for a total area of 300 sq. metres in villages and 200 metres in municipal areas instead of 5 metres and 2 metres referred to above. A mundkar can exercise such option in the manner prescribed under the said Act. Accordingly, the option can be exercised at the time of purchase of the plot of land wherein the house in occupation of the mundkar exists.

9. The rights of a mundkar in his dwelling house are heritable, but not transferable. The provision in that regard has been made in section 3 of the said Act.

10. A mundkar cannot be evicted except otherwise provided under the said Act. Those mundkars who were or are evicted in contravention of the provisions of the said Act are entitled for restoration of possession of their dwelling houses. Accordingly, sub-section (1) of section 4 of the said Act provides that notwithstanding anything to the contrary provided in any custom, usage, contract, decree or order of any Court or Tribunal or law, no mundkar shall be evicted from his dwelling house except in accordance with the provision of the said Act. Sub-section (2) thereof provides that any mundkar who was in occupation of his dwelling house on 4th February, 1971 and was evicted thereafter but before the appointed date, shall be entitled for restoration of such dwelling house if he applies to Mamlatdar within one year from the appointed date. In cases of the mundkars who are evicted after the appointed day, can apply for restoration of the possession of their dwelling houses within a period of one year from the date of their dispossession. Such applications filed by the

mundkars for restoration of possession of their dwelling houses are to be decided after holding the necessary enquiry as is prescribed and the provisions in respect thereof are contained in sub-sections (4) and (5) of the said Act. The Collector is empowered to condone the delay in filing such applications in view of provisions contained in sub-section (6) Under sub-section (7) thereof, illegal eviction of a mundkar is made punishable with imprisonment of a term which may extend to one year and with fine which may extend to Rs. 2,000/- or with both in addition to the compensation to the concerned mundkar for loss suffered by him on account of his eviction. Sub-section (8) provides that any attempt to contravene or to abate the contravention of sub-section (1) of section 6 of the said Act shall be deemed to have contravened the said provisions. Sub-section (9) empowers Mamlatdar to impose penalty for non compliance of the order of restoration of possession to the mundkar.

11. The said Act also provides for injunctive relief in favour of a mundkar. Accordingly, a mundkar who apprehends his dispossession by his bhatkar or by any person acting on behalf of the bhatkar and contrary to the provisions of the said Act, can seek protection from Mamlatdar by way of injunctive relief u/s 5 of the said Act. Section 6 provides for right to mundkar to enjoy supply of power, water and customary easement.

12. The right to repair, maintain and improve the dwelling house without increasing the plinth area of the house is guaranteed to the mundkar u/s 7 of the said Act. A mundkar is entitled to use his dwelling house primarily for his residence but at the same time, he is also entitled to utilise a portion thereof, without shifting his residence, for any trade or vocation or business as may be permissible under the law in force from time to time and the provisions to that effect are to be found in section 8 of the said Act.

13. If any person is entitled to any right under the said Act, he may seek necessary declaration regarding such right from the Mamlatdar in terms of provisions contained in section 8-A of the said Act.

14. Any transfer of property by the bhatkar cannot affect the rights of a mundkar in respect of his dwelling house in the property transferred by the bhatkar, in view of the provisions contained in section 9 of the said Act.

15. In case, a person not being a member of the family of the mundkar is found to be occupying a part of the dwelling house on the appointed date, then he is to be considered as the tenant of the mundkar in terms of section 10 of the said Act. u/s 11, all mundkars are declared to be free from their obligation, if any, to render services to their bhatkar as the agricultural labourers or domestic servants or watch and ward and for every such service rendered by any mundkar, it is compulsory for the concerned bhatkar to pay necessary remuneration to the mundkar.

16. Section 12 of the said Act speaks about the grounds on which a mundkar can be evicted from his dwelling house and accordingly, if a mundkar transfers his

interest in the dwelling house after the appointed date, or neither the mundkar nor any member of his family resides in the dwelling house for continuous period of two years, then such a mundkar would be liable to be evicted from the dwelling house, provided that the bhatkar applies for the same within six months from the date of arising of the cause of action for such eviction of the mundkar.

17. Section 13 requires all the suits, appeals, proceedings in the execution of decree or order and other proceedings for the eviction of a mundkar or a person who has therein claimed to be a mundkar or for curtailment or for non enjoyment of any right mentioned in sub-section (1) of section 6 of the said Act pending in any Court on the appointed date, shall be transferred to the Mamlatdar within whose jurisdiction of the dwelling house, from which the eviction is sought, is situated. Under sub-sections (2) and (3) of section 13 of the said Act, the Mamlatdar is required to hold enquiry and to decide whether such a person sought to be evicted from the dwelling house is a mundkar or not, and in case of his decision in affirmative, the suit, appeal or other proceedings shall stand abated, otherwise in case of the negative declaration, the proceedings shall be re-transferred to the Court from which it was transferred to the Mamlatdar.

18. The circumstances in which a mundkar can surrender his rights in or to the dwelling house and provisions relating to the manner in which the right can be surrendered are to be found in section 14 of the said Act.

19. Section 15 of the said Act empowers a mundkar to purchase the dwelling house in the manner prescribed thereunder. The detail procedure for purchase of the dwelling house is, however, provided u/s 16 of the said Act. Section 17 prohibits a mundkar to alienate the dwelling house purchased by him for a period of three years from the date of issuance of the certificate of purchase under sub-section (2) thereof. A mundkar intending to sell the dwelling house after a period of three years has to give necessary notice to the bhatkar who enjoys right of pre-emption in such cases. However, the bhatkar has to signify his readiness to purchase the dwelling house within 90 days from the receipt of the notice. In case of failure to signify the acceptance by the bhatkar as provided in sub-section (3), the mundkar is free to sell the dwelling house to any person at the price not lower than one set out in the notice by the mundkar to the bhatkar and the provisions to that effect are to be found in sub-section (4) thereof. Sub-section (5) declares any sale by a mundkar without giving notice to his bhatkar or before the expiry of period of notice or at a price lower than specified in the notice, to be void. Section 18 deals with grant of loan by the Government to mundkars to purchase their dwelling houses. Section 19 excludes dwelling house of mundkar from the purview of attachment, seizure or sale in execution of a decree or order of a Civil Court.

20. Chapter III deals with powers and functions of the authorities. Section 20 specifies the details which are required to be included in an application under the said Act. Section 21 provides that the procedure to be followed in all enquiries under the said Act shall be as prescribed by the rules made under the said Act

and that such proceedings shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of Indian Penal Code. Section 22(1) provides that any sum payable under the said Act in terms of directions by the authorities shall be recoverable as arrears of Land Revenue. Sub-section (2) thereof provides that the order of such authorities under the said Act shall be executed in the manner prescribed and even by use of force as may be necessary.

21. Sub-section (3) of section 22 of the said Act states that an order or decision of a Mamlatdar in an execution proceedings under the said Act shall subject to appeal or revision, if any, be final. Section 23 empowers Collector to transfer proceedings from one Mamlatdar to another. Section 24 of the said Act provides that every original order of the Mamlatdar other than interim order shall be subject to revision application to the Tribunal. The explanation clause specifies that the interim order shall not include injunction order and the same shall be subject to appeal and revision. Section 25(1) of the said Act provides that every order other than interim order passed in an appeal u/s 24 as well as the order passed under sub-section (2) of section 25 shall be revisable by the Administrative Tribunal or the Government respectively. Sub-section (2) thereof provides that where no appeal lies from any order under the said Act, the Collector may on his own motion or an application by the aggrieved party or by reference made by the Government may call for record of any enquiry or proceedings before the Mamlatdar for the purpose of satisfying himself of the legality or the propriety of any order passed by the Mamlatdar as well as regarding the regularity of proceedings and, therefore, to pass an appropriate order. The proviso, however, prohibits calling of records after the expiry of six months from the date of order. Section 26 provides that in an appeal or revision, the concerned authority may confirm or modify or rescind the order under challenge and may pass an order as may be legal and just in accordance with the provisions of the said Act. Section 27 provides that the authorities exercising power under the said Act shall be entitled to exercise similar powers as are exercised by the concerned Trial Court, Appellate Court or Revisional Court under the Code of Civil Procedure, 1908. Section 26 provides for limitation for filing of appeal and revision applications as well as for payment of the Court Fees.

22. Section 29 of the said Act, makes it obligatory for the Government to prepare a register of mundkars in every village. It provides for the details which are required to be collected and the manner in which the same to be maintained in the form of a register. Section 30 gives a presumptive value to such record of register of mundkars prepared in accordance with the provisions of the said Act, unless and until the contrary is proved or a new entry is lawfully substituted in such records.

23. Chapter IV of the said Act deals with miscellaneous matters under the said Act. Section 31(1) prohibits suit and other proceedings against any Officer for anything done or intended to be done, in good faith under the said Act. Sub-section (2) thereof provides that no Civil Court shall have jurisdiction to settle,

decide or deal with any question or to determine any matter which is by or under the said Act required to be settled, decided or dealt with or determined by the Mamlatdar. Section 32(1) provides that whenever any issue arises in any civil suit which is required to be settled, decided or dealt with by the Mamlatdar under the said Act, the same shall be referred to the Mamlatdar and the suit shall be stayed. Sub-section (2) provides that on receipt of such reference, the Mamlatdar shall decide the issue and communicate his decision to the Civil Court and such Court shall thereafter decide the suit in accordance with the procedure applicable thereof. Section 33 prohibits pleaders from appearing in the proceedings under the said Act without the permission of the authorities. Section 32 deals with penalty for contravention of the Act or any rules made thereunder and provides that the offences under the said Act to be cognizable and that the same to be compoundable with the permission of the Court. Section 35 deals with the offences by the Companies. Section 36 deals with powers of the Government to give directions under the said Act and section 37 provides for delegation of powers by the authorities under the said Act to other authorities. Section 38 gives overriding effect to the provision of the said Act notwithstanding anything to the contrary in any other law or custom or usage or decree or order of the Court or any agreement or contract inconsistent with the provisions of the said Act. Section 39 exempts the land owned by Government and local authorities from the purview of the said Act. Section 40 empowers Government to frame rules under the said Act and section 41 is pertaining to repeal and savings.

24. The point for determination formulated above arises for consideration in the present petition basically on account of the provisions contained in section 31(2) and section 32 of the said Act. The same read as under:--

"31. Protection of action taken under the Act and bar of jurisdiction of courts: -

(1)

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.

32. Suits involving issues required to be decided under this Act.

(1) If any suit instituted in any Civil Court involve any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such Court

shall thereupon decide suit in accordance with the procedure applicable thereof."

25. It is said that a statute speaks for itself. It is well established that if the words of a statute are in themselves precise and unambiguous, then those words are to be understood in their natural and ordinary sense. In fact, the ordinary and natural meaning of a word in a statute cannot be ignored unless the legal context in which it is used warrants different conclusion. Natural and ordinary meaning of a word is one which it has in relation to the subject matter with reference to which and the context in which it has been used in the statute.

26. The Apex Court in *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, has held that in interpreting a statute the Court cannot aid the Legislature's defective phrasing of an Act nor can it add or amend and, by construction make up deficiencies which are left there. In *Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another*, the Apex Court has held that:-

"Where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the true basis of the so-called golden rule of construction that "Where the language of an Act is clear and explicit, we must give effect to it. - for in that case the words of the Statute speak the intention of the legislature." A Court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature."

27. The well established principle of law of interpretation that a statute and for that matter even a section in a statute has to be interpreted according to its plain words and without doing any violence to the language used by the Legislature has been reiterated by the Apex Court in *Colour-chem Ltd. v. A.L. Alaspurkar and another*, reported in 1988(3) S.C.C. 192. Simultaneously, it cannot be forgotten that the provisions contained in a statutory enactment or in the rules and regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule on a particular subject has received a special treatment, such a special provision will exclude the applicability of any general provision which might otherwise cover the said topic. The decision of the Apex Court in the matter of *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, is clear in that respect.

28. Bearing these general principles of law in mind, one has to consider the provisions contained in sections 31(2) and 32 of the said Act, against the background and in the light of remaining provisions of the said Act. There are various provisions, as seen above, in the said Act empowering Mamlatdar to give necessary protection to a mundkar in case of denial of the rights which a mundkar is otherwise entitled by virtue of various provisions of law contained in

the said Act. For example, if a person is entitled for any right under the said Act, he can seek declaration to that effect from the Mamlatdar u/s 8-A of the said Act. The injunctive relief against the threats of dispossession, either by the bhatkar or any other person acting under the bhatkar, from the dwelling house or any part thereof can be obtained from the Mamlatdar u/s 5 of the said Act. The status of a person as that of a mundkar can be decided only by the Mamlatdar u/s 8-A as well as on reference u/s 32 of the said Act. The restoration of possession of the dwelling house to a mundkar can be ordered by the Mamlatdar u/s 4 of the said Act. The title to the dwelling house can be conveyed by the Mamlatdar to the concerned mundkar under sections 15 and 16 of the said Act. These are some of the matters under the said Act which a Mamlatdar is empowered to deal with and decide. Therefore, the bar u/s 32(2) of the said Act to the jurisdiction of the Civil Court is to be understood in the context with the various provisions in the said Act which empowers the Mamlatdar to decide the specific matters and not each and every matter and in that sense that the bar to the jurisdiction of the Civil Court is limited to the issues and the matters which are specifically entrusted with the Mamlatdar under the said Act. It cannot be forgotten that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred and such exclusion must either be specifically expressed or clearly implied.

29. Coming to section 32 of the said Act, on plain reading thereof, it is clear that when any issue which is required to be decided by the Mamlatdar under the said Act arises in any suit before any Civil Court then, the Civil Court is duty bound to stay the suit and refer such issue to the Mamlatdar of the concerned taluka for his decision on the said issue. The Mamlatdar on receipt of such reference from the concerned Court has to decide such issue in accordance with the provisions of the said Act and has to communicate his decision to the Civil Court. On receipt of the decision of the Mamlatdar by the Civil Court, the latter has to decide the suit following the procedure applicable to the Civil Courts. Moreover, the Civil Court cannot proceed with the suit till and until the decision of the Mamlatdar on the issue referred to it is received from the Mamlatdar.

30. The most important provision of law in the said Act for the purpose of decision on the point formulated above is sub-section (2) of section 32 of the said Act. The said sub-section enumerates five distinct stages in the proceedings. They are:-

(i) Receipt of reference from the Civil Court by the Mamlatdar. (ii) Mamlatdar to deal with the issue. (iii) Mamlatdar to give his decision on the issue. (iv) Mamlatdar to communicate his decision to the Civil Court on the said issue, and (v) Civil Court to proceed with the suit in accordance with the procedure applicable thereof. On plain reading of the said provisions of law, it is apparent that in between the decision of the Mamlatdar on the issue referred to it and the communication of the said decision by the Mamlatdar to the Civil Court, there is no other stage or proceedings involved in the matter. At least, sub-section (2) of section 32 of the said Act does not disclose any intervening stage or proceedings

at that stage. The question of appeal to the Appellate Authority against the decision of the Mamlatdar can arise only at that stage. However, it is pertinent to note that the Mamlatdar is not obliged to postpone the communication of his decision to the Civil Court till the expiry of the period of limitation for an appeal under the said Act. Apparently, therefore, the decision of the Mamlatdar on the issue referred to it by the Civil Court is not made subject to an appeal under the said Act.

31. The relevant or rather the key words in the said sub-section (2) of section 32 of the said Act which inevitably lead to above conclusion are:-

"Mamlatdar shall deal with and decide the issue and shall communicate his decision to the Civil Court such Court shall thereupon decide with the procedure applicable thereof."

Accordingly, the decision on the issue is that of the Mamlatdar. The decision to be communicated to the Civil Court is of the Mamlatdar. The finality to such decision is not made subject to appeal or revision under the said Act and on the contrary the Civil Court on receipt of such decision from the Mamlatdar is empowered to proceed with the suit in accordance with the procedure applicable thereof. It is to the common knowledge that the procedure applicable to the Civil Court is one prescribed under the Code of Civil Procedure. Therefore, upon the receipt of the decision of the Mamlatdar, the Civil Court has to proceed with the suit in accordance with the procedure prescribed under Civil Procedure Code.

32. It is to be noted that section 24 of the said Act which deals with the provisions relating to the appeals against the orders passed by the authorities under the said Act, clearly provide that the appeals under the said section are to be filed in respect of the original orders passed by the Mamlatdar under the said Act. It specifically excludes the interim order being subjected to an appeal under the said section. The explanation clause to the said section further clarifies that the order of injunction shall not be an interim order for the purpose of an appeal under the said section. Added to this, section 32(2) itself provides that on receipt of communication of the decision of the Mamlatdar on the issue referred to it, the Civil Court shall proceed to decide the suit in accordance with the procedure applicable to the Civil Court. On plain reading of section 32 therefore, it is evident that the decision of the Mamlatdar on the issue referred to it has to form a part of the final judgment of the Civil Court in which the said issue had been referred to the Mamlatdar. Any such judgment of the Civil Court is naturally subject to an appeal under the CPC in terms of section 96 r/w Order 41 thereof.

33. The appeals u/s 24 are restricted to the original orders and the orders relating to injunctions passed under the said Act. An order can be said to be an original order when it is passed in a proceeding which has originated under the said Act. The proceedings for declaration of some right under sections 8-A, or for injunctive relief u/s 5, or for purchase of dwelling house under sections 15 and 16 of the said Act, with a proper application in terms of provisions contained in

section 20 of the said Act, are some of the instances of the proceedings which can be said to be original proceedings under the said Act before the Mamlatdar. The order passed by the Mamlatdar in any such proceedings would certainly be original order under the said Act for the purpose of the appeal u/s 24 of the said Act. A reference of an issue to the Mamlatdar by a Civil Court cannot be considered as the proceeding originated under the said Act. The proceedings u/s 32 of the said Act before a Mamlatdar therefore, cannot be said to be original proceedings under the said Act. Such proceedings are necessarily initiated before the Civil Court and on plea of Mundkarship being raised, such an issue is referred to Mamlatdar for his decision. The Mamlatdar, therefore, assumes jurisdiction u/s 32 of the said Act on account of reference of issue by the Civil Court and not independently from an application by an individual but for the decision under the said provision of section 32 of the said Act. The proceedings u/s 32 of the said Act, therefore, originate before the Civil Court and one of the issue therein is referred to the Mamlatdar for his decision. The Black's Law Dictionary defines the term "original" to mean primitive, first in order, bearing its own authority and not deriving authority from an outside source. Original jurisdiction implies jurisdiction to take cognizance of a cause at its inception. Undoubtedly, a Mamlatdar is not entitled to take cognizance of an issue of Mundkarship raised in a civil suit before the Civil Court unless the Civil Court refers such issue for his decision in terms of the provisions contained in section 32 of the said Act.

34. Similar to the provisions u/s 32 of the said Act are those u/s 13 of the said Act which also cannot be said to be original proceedings under the said Act before the Mamlatdar. Section 13 relates to the proceedings which was pending on the appointed day and wherein the issue of mundkarship was arising. Sub-section (2) of section 13 of the said Act reads thus:--

"(2) The Mamlatdar, to whom a suit, appeal, proceeding in execution or other proceeding is so transferred under sub-section (1), shall enquire into and first decide the question whether the person to be evicted is a mundkar or not and if his decision is that such person is not a mundkar, the suit, appeal, proceeding in execution or other proceeding shall be re-transferred to the Court from which it was transferred to the Mamlatdar."

Thus, if the Mamlatdar decides the person to be not a mundkar, then the proceedings are to be retransferred to the Civil Court. The order passed by the Mamlatdar u/s 13(2) of the said Act cannot be said to be an original order within the meaning of the said term u/s 24 of the said Act. It is mere a decision on an issue in the suit and not a final adjudication of the dispute between the parties to the suit. As already stated above, it is only the original order that is appealable u/s 24 of the said Act.

35. The above conclusion is also apparent from the provisions contained in section 22(3) of the said Act which reads thus:-

"(3). An order or decision of the Mamlatdar in execution proceedings shall

subject to appeal or revision, if any, be final."

It cannot be disputed that the execution proceedings are not the original proceedings. Such proceedings are initiated only to implement the order passed on final adjudication of the rights of the parties. The orders passed in such proceedings cannot be termed as the original orders. Being fully conscious of this situation, the Legislature in its wisdom has provided in sub-section (3) of section 22 that such orders shall be appealable and revisable. If all the orders passed by the Mamlatdar under various provisions of the said Act were to be appealable u/s 24 of the said Act, then there was no need for specific provision in relation to the orders passed in section 22(2) of the Mundkar Act to be made appealable.

36. It cannot be forgotten that the right of appeal is a creature of a statute and the question whether there is a right of the appeal or not has to be decided on interpretation of the provisions of the statute and not on the ground of propriety or any other consideration, as is held by the Apex Court in the matter of D.N. Taneja Vs. Bhajan Lal, . It has also been held by the Apex Court in M. Ramnarain Private Limited and Another Vs. State Trading Corporation of India Limited, that no party can file an appeal against any judgment, decree or order as a matter of course in the absence of suitable provision of some law conferring on the party concerned the right to file appeal against the judgment, order or decree. Again, in Special Military Estates Officer Vs. Munivenkataramiah and another, the Apex Court has ruled that the right of appeal is a substantive right conferred on a party by a statute and conferring such right is not circumscribed by the right being available at the time of the institution of the cause in the Court of the first instance. The right of appeal in a given situation may already be available at the institution of the cause in the Court of the first instance or may even be subsequently conferred but in either situation, without any distinction, such right is conferred by statute. The Apex Court has also held in Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, that the right to appeal is neither an absolute right nor an ingredient of natural justice, the principle of which must be followed in all judicial and quasi judicial adjudications, and the right to appeal is a statutory right and can be circumscribed by the conditions in the grant and that it is not the law that the adjudication by itself following the rules of natural justice would be violative of any right, constitutional or statutory without any right of appeal as such and that if the statute gives a right of appeal by certain conditions, it is upon the fulfilment of those conditions that the right becomes vested and exercisable to the appellant.

37. Section 24 specifically provides that only original orders and the order of injunction under the said Act are appealable under the said provision. By specifying what type of orders are appealable under the said section 24, it has impliedly excluded other types of orders from the scope of appeal under the said provision. Once a provision dealing with the appeal specifically provides for the categories of orders those can be subjected to the appeal under the said provision, it certainly excludes other types of orders from being made appealable

under the same provision of law. The decision of the Division Bench in Ebrahim Yusuf Lambe Vs. Abdul Razak Abdul Rahiman Mulla and Another, is clear to that effect.

38. On plain reading of various provisions of the said Act, they do not disclose any intention of the Legislature to provide any appeal to the appellate authority under the said Act against the decision of the Mamlatdar on an issue referred to it by the Civil Court in a civil suit in terms of the provisions contained in section 32 of the said Act.

39. In fact, the view that I am taking finds support from the decision of the Apex Court in the matter of Noor Mohd. Khan (supra) wherein the Apex Court has considered the scope of sections 132 and 133 of Karnataka Land Reforms Act which are in para materia with the provisions contained in sections 31(2) and 32 of the said Act. While interpreting the said sections 132 and 133, the Apex Court has observed that:-

27. Section 132 of the Act bars the jurisdiction of the civil courts:

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government in exercise of their powers of control.

(2) No order of the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal, or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

30. Section 133 requires that suits involving issues to be decided under the Act if instituted in any Civil Court should be stayed by the Civil Court and the issue referred to the Tribunal for decision. Section 133 runs as follows:-

"2(a). If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Tribunal, or any suit is instituted in any such Court for possession of or injunction in respect of an agricultural land on the allegation that the defendant has trespassed or is trying to trespass on such land and the defendant denies the said allegation and claims that he is in possession on the strength of a tenancy existing from prior to 1st March, 1974, then the Civil Court shall stay the suit and refer such issues or the claim, as the case may be, to the Tribunal for decision,

(b) On receipt of such reference, (the Tribunal) shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court which has made the reference."

31. Section 133 has been subsequently amended by Act 27 of 1976. u/s 133 the Civil Court shall stay the suit and refer such issues to the Tribunal for decision.

Issues that are required to be settled, decided or dealt with by the Tribunal and other claims which are enumerated in sub-section (2) should be stayed and the matter referred to the Tribunal for decision. It may be noted that this sub-section is applicable to suits only. The sub-section does not indicate that the provisions are applicable to execution proceedings or in appeals before Civil Courts. The jurisdiction of the Civil Court is taken away only in respect of the decisions of the issues in suits that are required to be referred to the Tribunal. On receipt of a communication from the Tribunal the Civil Court has to proceed with the trial of the suit and dispose it of according to law. Section 118 of the Act provides for appeals. By an amending Act 1 of 1974 against the decision u/s 133 or order passed by the Court an appeal was provided to the District Court which has been subsequently omitted by Act 23 of 1977. Sub-section (3) to section 118 provided for a reference to the High Court under certain circumstances. In the absence of express provision, when an issue has been referred by the Civil Court to the Tribunal and is received back and a decree passed in the suit, the provision of the CPC regarding appeals and revisions will be applicable. In such circumstance the Appellate Court will have to consider the correctness or otherwise of the issue, that has been decided by the Tribunal. Section 4(1) of the Mysore Act which is similar to section 133(2) of the Karnataka Act provided for stay of execution of decrees or orders and other proceedings for the eviction of tenant in applying section 133, therefore, the question that have to be considered are, whether the sub-section is applicable to execution proceedings and in appeals before civil courts.

40. The High Court ought to have also considered whether any restriction on the jurisdiction of the Civil Courts placed under the Act is applicable to the High Court also. The jurisdiction of the Civil Courts is not entirely barred as the Act only provides for reference of certain issues for decision before the Revenue Tribunal and after receipt of the finding on such issues to record a judgment on such finding. The appeal to the Civil Courts according to the Civil P.C. and the jurisdiction of the High Court in hearing appeals and revisions under certain circumstances have not been excluded."

Their Lordships have, therefore, held in the said judgment that the jurisdiction of the Civil Courts is not entirely barred as the Act only provides for reference of certain issues for decision before the Revenue Tribunal and after the receipt of findings on such issues to record a judgment on such finding. The Appeal to the Civil Court according to CPC under the circumstances has not been excluded.

40. The Apex Court in the matter of Mathevan Padmanabhan alias Ponnann (Dead) through Lrs. Vs. Parmeshwaran Thampi and Others, while dealing with the matter pertaining to the exclusion of jurisdiction of the Civil Courts under Kerala Land Reforms Act 1964 and in particular provisions contained in section 125 of the Act which provides for bar of jurisdiction of the Civil Courts to decide any question required to be decided by the Land Tribunal has held thus:-

".....if in any suit or other proceeding, any question regarding right of a tenant

etc. arises, the Civil Court should stay the suit or other proceeding and refer such dispute to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situated together with the relevant records for the decision of that dispute in question. Sub-section (1) in that behalf creates a total bar on the jurisdiction of the Civil Court enjoining that the Civil Court "shall have no jurisdiction" to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. On receipt of the decision of the Land Tribunal referred to by the Civil Court for the purpose of appeal, it must be deemed that the decision of the Land Tribunal be part of the finding of the Civil Court. Thereby, the Civil Court, is enjoined to accept the finding recorded by the Tribunal and dispose of the suit in the light of the finding recorded. But the findings recorded by the Tribunal form part of the record of the trial Court. As a consequence the Appellate Court gets power to go into that question, the High Court can decide that question or remit it for fresh decision....."

No doubt, in Kerala Land Reforms Act, 1964, there is a specific provision to the effect that the finding given by the Land Tribunal would form part of the judgment of the Civil Court. There is no such specific provision in the said Act. However, considering the scheme of the said Act and in particular section 31 r/w sections 13, 22(3) and 24 of the said Act, it is abundantly clear that the decision of the Mamlatdar on reference of issue u/s 32 on being communicated to the Civil Court who has to proceed with the matter thereupon in accordance with the provisions contained in CPC forms part of the final judgment of the Civil Court in the Civil Suit wherein the reference was made to the Mamlatdar u/s 32 of the said Act.

41. It is, therefore, clear that the jurisdiction of the Civil Court in relation to the issue of mundkarship arising in a civil suit is barred and the issue is required to be referred to the Mamlatdar for his decision u/s 32 of the said Act. It is to a limited extent as specified under the provisions contained in section 32 of the said Act, the jurisdiction of Civil Court is barred. But at the same time, the jurisdiction of appellate and revisional courts as regards the orders passed by Mamlatdar under reference u/s 32 is not barred. In that regard, the decision of the Apex Court in the matter of Noor. Mohd. Khan Ghouse Khan Saudagar v. Rakirappa Bharmappa Machenahalli and others (supra) is clearly attracted in the matter, and, therefore, there is no scope for any appeal u/s 24 to the appellate authority under the said Act against the decision of the Mamlatdar on reference of issue u/s 32(1) of the said Act.

42. The learned Advocate for the petitioner, however, did express apprehension that such a view may lead to conflicting decisions by the Mamlatdar on the same issue between the same parties in two different proceedings. Drawing my attention to section 8-A along with section 32(1) of the said Act, it was sought to be argued that while section 32(1) makes it obligatory for the Civil Court to refer the issue of Mundkarship to the Mamlatdar, at the same time section 8-A of the

said Act permits a person to approach directly to a Mamlatdar for a declaration for his right of Mundkarship. While the decision of the Mamlatdar on reference u/s 32 is held to be not appealable, the decision u/s 8-A cannot be taken out of the purview of being subjected to appellate review u/s 24 of the said Act. In case of reference, an aggrieved party would have no opportunity of testing the validity of the decision of the Mamlatdar by the appellate authority under the said Act whereas the decision on the same issue u/s 8-A by the Mamlatdar would be subjected to the appeal u/s 24 and revision u/s 25 of the said Act. In case the decision u/s 32 is held to be final and in case one u/s 8-A, the finality thereto is subjected to its approval by the appellate authority under the said Act, there is bound to be conflict of decisions.

43. In this regard, one cannot forget that once the Mamlatdar decides the issue of Mundkarship either in the proceedings arising from the reference u/s 32 or on the application u/s 8-A, the decision in any one of such proceedings would be certainly binding in any subsequent proceedings on the principle of *res judicata*. Therefore, once it is decided by the Mamlatdar that a person is a mundkar of the concerned bhatkar in respect of a particular dwelling house, the decision cannot be re-opened in other proceedings irrespective of the fact whether such proceedings are u/s 8-A or in a reference u/s 32. Once, such decision is delivered in any one of such proceedings, the same decision will hold good for all purposes. There is no doubt that in a case of a decision delivered by Mamlatdar u/s 8-A, it would be subject to appellate review u/s 24 of the said Act by the appellate authority under the said Act, whereas the decision u/s 32 of the said Act will not be subject to any appeal before the appellate authority under the said Act. But the same would be subject to appeal under the CPC since the decision of the Mamlatdar u/s 32 of the said Act would be a part of the decision of the Civil Court. In other words, the judicial review by the Appellate Court and the Revisional Court under the CPC is not excluded either expressly or by implication in cases of a decision of the Mamlatdar u/s 32 of the said Act. In this regard, it is to be borne in mind that a right of appeal cannot exist without the existence of the Court to which the appeal is to be taken. A litigant has no right to contend that a particular Tribunal should have jurisdiction to entertain his appeal. It is for the Legislature who is fully competent to enact the law necessary in that regard. The decision in the proceeding u/s 8-A as well as one u/s 32 is by the same authority. But as already seen above, the appellate review u/s 24 of the said Act is in relation to the final order passed in the proceeding originated under the said Act. Such proceedings originate directly before Mamlatdar. The order passed in other proceedings which do not originate under the Act before the Mamlatdar are by necessary implication excluded from the scope of section 24 of said Act. It has been held by our High Court in the matter of *Prabhakar Atmaram Kale Vs. Bharat and Another*, that finding of Rent Controller regarding the relationship of landlord and tenant operates as *res judicata* in the subsequent suit irrespective of the fact that the Rent Controller had no jurisdiction to try the subsequent suit. It cannot be forgotten that section 11 of CPC is not exhaustive in nature. The principle

which motivates that section 11 of CPC can be extended to the cases which do not fall strictly within the letter of law, where the issues involved in two proceedings are identical and arise between the same parties and the issue sought to be raised is decided finally by a competent tribunal; it does not matter that the earlier proceedings were not a suit, nevertheless the principle of res judicata would be applicable. The judicial pronouncement in this regard by the Apex Court is clear in the matter of Lal Chand (Dead) by Lrs. and Others Vs. Radha Krishan, . At this stage, it is also worthwhile to note that section 27 of the said Act provides for powers of the Civil Court to be exercised by the authorities in conduct of enquiries and proceedings under the said Act. The said section 27 reads thus:-

"27. Powers of Civil Courts to be exercised in conduct of enquiries and proceedings under this Act:---The Mamlatdar, the Collector, Administrative Tribunal or the Government shall exercise in all enquiries, proceedings, appeals or revisions, the powers as are exercised by the concerned trial Court, Appellate Court or a Court exercising revisional jurisdiction under the CPC 1908".

Being so, the apprehension that the view I am taking in the matter may lead to conflicting decisions by the Mamlatdar on the same issue is devoid of substance.

44. Moreover, the learned Single Judge of this Court in the matter of Suresh Shirodkar and others Vs. Administrative Tribunal, Goa, Daman and Diu and others, , has held that the decision of the Mamlatdar in a reference u/s 32 of the said Act is appealable u/s 24 of the said Act. With respect I am unable to agree with the said decision and the view expressed by the learned Single Judge in the said case. However, the judicial discipline requires that the matter be referred to the Division Bench to decide the matter finally on the said point. Hence, it is necessary to place the matter before the Hon"ble the Chief Justice for necessary Order. Registry to do the needful in the matter.

45. Matter placed before Chief Justice for necessary order.