
(1985) 01 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 166 of 1983

Santana Furtado Dias

APPELLANT

Vs

Smt. Uttam Tari and others

RESPONDENT

Date of Decision : 24-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1985) MhLj 211

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

Bench : Single Bench

Advocate : M.S. Usgaonkar, for the Appellant; G.K. Sardesai, For respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

G.F. Couto, J.—Petitioner challenges in this writ petition, filed under Articles 226 and 227 of the Constitution, the judgments and orders dated 28th April 1979, 18th September 1979 and 20th August 1983 passed by the Mamlatdar of Bardez, Additional Collector of Goa and the Administrative Tribunal, respectively.

2. The material facts may be stated. The petitioner filed a civil suit for the eviction of the first two respondents on the ground of non-payment of rent alleging them to be her tenants. This suit was resisted by the said respondents inter alia, raising the mundkarship issue. Therefore, pursuant to the provisions of Section 13 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, hereinafter called the Act, the suit was transferred to the file of the Mamlatdar with jurisdiction in the area where the suit house is situate, namely the Mamlatdar of Bardez. By his judgment and order dated 28th April 1979, the learned Mamlatdar declared the said respondents to be Mundkars of the suit house. This declaration was affirmed by the Additional Collector of Goa in an appeal preferred by the petitioner against the aforesaid order of the Mamlatdar of Bardez by judgment dated 18th September 1979. Again, the said declaration was confirmed by judgment of the Administrative Tribunal, the fifth respondent

herein, dated 20th August 1983 in a revision application filed by the petitioner against the order of the appellate authority dated 18th September 1979.

3. Petitioner assails the above referred judgments and orders on the sole ground that the first two respondents are not Mundkars of the suit house in view of the definitions of Mundkar and dwelling house given in the Act.

4. Elaborating this ground of challenge, Mr. M. S. Usgaonkar, Learned Counsel appearing for the petitioner, invited my attention to the definition of Mundkar given in Section 2(p) of the Act. He submitted that, according to the said definition, Mundkar is 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 include the persons mentioned therein. He submitted that one of the ingredients of the definition of mundkar is that (sic), person should have a fixed habitation in a dwelling house, and as such, it is necessary and essential to advert to the definition of dwelling house given in Section 2 (i) of the Act. One of the ingredients of the definition of dwelling house is that the house has to be constructed by the Mundkar himself, whether at his own expense or at the bhatkar's expense or with financial assistance from the bhatkar. This being so, he urged, if any of the ingredients of the definition of mundkar or of dwelling house is not satisfied, a person who occupies a house permanently or with fixed habitation, cannot be held to be a mundkar. In spite of this, clear position of the law, the Mamlatdar, the Appellate Authority and the Administrative Tribunal held a different view and observed that the accent is on the occupation of the house with a fixed habitation and that as such, it is not important to find who actually has constructed the house. The Learned Counsel then invited my attention to the definition of mundkar in the Diploma Legislative No. 1952 as well as to the definition of dwelling house given in Section 2(c) of the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971. He submitted that in the Diploma Legislative No. 1952, mundkar was defined as being a person who resides with a fixed habitation" in a rustic property belonging to others, specially for the purpose of agriculture or watch and ward duties, irrespective of the fact that the dwelling house was constructed at his own cost or at the cost of bhatkar or landlord, receiving or not from the latter any assistance in cash or kind for its construction and establishment. This definition was maintained in the 1971 Act, above referred to, he observed, but in its Section 2(c), dwelling house is stated to mean (1) in relation to a mundkar, the fixed habitation in a property in which he resides and (2) in relation to an Agricultural labourer or a Village Artisan, a homestead erected by him on land forming part of a property with the permission of a person in lawful possession of such land, with or without any obligation to pay rent, or a hut situated on such land and which is being occupied by him with the permission of the person in lawful possession of the land with or without obligation to pay rent. The word "hut" used in the definition is explained to mean any structure constructed for the purpose of dwelling, at a cost not

exceeding four hundred rupees or could have, at the time of construction, yielded a monthly rent not exceeding four rupees. The Learned Counsel then submitted that, while enacting the Act, the legislature had in view to bring into the definition of mundkar several categories of persons who were not coming within the meaning of mundkar in Diploma Legislative No. 1952 but were requiring protection from eviction of their dwelling houses, namely, agricultural labourers or Village Artisans and even those tenants, who on account of the lease, were residing in structures constructed by them in the rented property. Thus, while enlarging the definition of mundkar, the legislature have on one hand dropped the requirement of the obligation to render services to the bhatkar and on the other, have deliberately imposed the condition that the dwelling house should be constructed by the mundkar himself. He contended that this becomes clear from the circumstance that a hut not erected by the agricultural labourer or village artisan is included in the definition of dwelling house given in the 1971 Act, provided however, its value does not exceed four hundred rupees. The Learned Counsel also submitted that the legislature had taken recourse to the Kerala Land Reforms Act and, therefore, it would be pertinent to advert to the relevant provisions of the said Kerala Act. In the said Act, "Kudikidappukaran" is defined as meaning a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality, or five cents in any other municipality, or ten cents in any panchayat area or township, in possession, either as owner or as tenant, on which he could erect a homestead and who has been permitted, with or without an obligation to pay rent, by person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead, or who has been permitted by person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in such land. This definition corresponds broadly to the definition of mundkar in the Act. Therefore, according to the Learned Counsel, it is manifest that the requirement of the dwelling house being constructed by the mundkar himself is relevant and cannot be ignored in the definition of mundkar. The Learned Counsel thus contended that the definition of mundkar in Section 2(i) of the Act has basically two requirements, namely, (1) that a mundkar resides in the house with fixed habitation and (2) that such house was constructed by the mundkar himself. The factum of at whose expense the construction was done is not at all relevant, for what is material is that the house has to be constructed by the mundkar himself and that he is residing in the said house with fixed habitation. Hence, if in a given case, the house was not constructed by the mundkar, then the person who occupies such house cannot be said to be a mundkar under the Act.

5. Joining issue, Mr. G.K. Sardesai, the Learned Counsel appearing for the first two respondents, contended that, as rightly held by the Mamlatdar, the Additional Collector and the Administrative Tribunal, the accent in the definition of dwelling house is on a fixed habitation and the word "whether" that occurs in Section 2 (i) of the Act is linked to the expression "at his own expense or at the

bhatkar's expense or with financial assistance of the bhatkar". According to the Learned Counsel, the word "whether" has the meaning that irrespective of the fact that the house is built at the expense of the person who resides in the house or at the bhatkar's expense or with financial assistance of the bhatkar, such person will be a mundkar, provided he resides therein with fixed habitation. He further contended that the Act is a beneficial piece of legislation and, therefore, a liberal and extended meaning should be given to the definition of dwelling house in order to bring within it all the persons who the legislature had in view to protect. He urged that while interpreting the Act, one has to bear in mind its scheme, its spirit and its provisions in general in order to find the intention of the legislature. Hence, if such intention is defeated by a particular definition, the same has to be construed in such a manner that the intent of the legislature, while enacting it, is saved. Reliance was placed in this connection in the decision of the Kerala High Court in Kuriakose Kurian Vs. Saramma Chacko and Others, . This being so, the Learned Counsel further contended, it is necessary to see what was the intention of the legislature while passing the Act. He invited my attention to the explanation to the clause (i)(b) of the definition of dwelling house wherein it is laid down that, for the purpose of the said clause, "house" means an entity in itself and shall not include a Dharmashala or any other building belonging to or in possession of a religious or charitable institution and is used for temporary accommodation and such other building as may be meant for letting out on hire and a portion of which has been let out, and submitted that the said explanation goes to show that whenever the legislature intended to exclude from the definition of dwelling house a structure not built by the mundkar, an express provision had been made therefor. He also invited my attention to Section 15 of the Act which deals with the right of the mundkar to purchase the dwelling house, particularly to its second proviso and submitted that it is apparent from the said proviso that a mundkar can be permitted to occupy the dwelling house by the bhatkar. Therefore, since by implication it appears that such house was already in existence, this shows that there is no legal requirement of the house being built by the mundkar himself for a person becoming a mundkar.

6. Section 2(p) of the 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 include the persons mentioned therein. The definition clearly shows that to come within the definition of mundkar a person should (1) reside with a fixed habitation in a dwelling house and (2) this residence should be with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar. One of the ingredients is therefore, a fixed habitation in a dwelling house and hence, what is the meaning of dwelling house becomes of material importance for determining whether or not a person is a mundkar. Section 2(i) defines dwelling house as meaning a house in which the mundkar resides with a fixed habitation, whether such house was constructed by the

mundkar at his own expense, or at the bhatkar's expense or with financial assistance from the bhatkar. A plain reading of this definition shows that, basically, two are the requirements for a house to be considered as a dwelling house under the Act. Such requirements are (1) that the house is occupied by the mundkar as his fixed habitation and (2) that this house was constructed by the mundkar himself. No doubt, the word "whether" is used just before the expression "such house was constructed by the mundkar" but manifestly the word "whether" does not qualify the said expression but it qualifies the expressions "at his own expense, or at the bhatkar's expense, or with the financial assistance from the bhatkar". The learned Tribunal has observed, and correctly I may say, in paragraph 6 of the impugned judgment that a plain reading of Section 2 (i) of the Act itself indicates that the dwelling house should be constructed by the mundkar himself. However, thereafter, the Tribunal held the view that such interpretation would unnecessarily and without any purpose limit the ambit and scope of the beneficial legislation. I find it rather difficult to accept this view of the learned Tribunal. No doubt, the Act is a beneficial piece of legislation and as far as possible, should be interpreted in a manner which is favourable to a person intended to be protected. However, while having this in mind, one cannot ignore the language of the law and cannot also ignore the words used in a particular section only in order to give a beneficial interpretation to the said provision of law. In fact, every word used in the law has a meaning, having been introduced by the legislature for a particular reason. Therefore, while construing a provision of law, one has to be alive to the fact that every word used therein is not superfluous and could not, as such, be ignored. Now, in order to accept the submissions of Mr. Sardesai and the view of the Administrative Tribunal, it will be necessary to ignore the expression "was constructed by the mundkar" occurring in the definition of dwelling house. In construing the provision of Section 2(i) of the Act in the manner suggested by the Learned Counsel and actually done by the said Tribunal, the expression "was constructed by the mundkar" would become absolutely superfluous and without any meaning. Thus since the legislature has introduced that expression in the definition, it necessarily follows that that was done for a particular reason. What is that reason, is therefore, the question to which I have to address myself.

7. It will be useful for this purpose to make a reference to the provisions of law which were in force prior to the Act. The first of such provisions is Article 2 of the Diploma Legislative No. 1952. It defines mundkar or dweller as being a person who resides with a fixed habitation in others' rustic property, mainly for the purpose of agriculture or watch and ward duties, whether such dwelling house was constructed at his own expense or at the expense of the bhatkar or landlord, receiving or not any assistance in cash or in kind for its construction or establishment. Under this definition of mundkar, clearly, what was essential was that a person was residing with a fixed habitation in others' property for the purpose of agriculture or watch and ward duties. Whether the house was constructed by him or not was not at all relevant. Thereafter, the 1971 Act was

passed and the definition of mundkar given in the said Diploma Legislative No. 1952 was maintained. However, in its Section 2(c), dwelling house was defined as meaning in relation to a mundkar, the fixed habitation in a property in which he resides, and in relation to an agricultural labourer or village artisan, the homestead erected by him on land forming part of a property or a hut situated on such land and occupied by him with the permission of the person in lawful possession of the land. The 1971 Act, therefore, made it clear that dwelling house in relation to an agricultural labourer or a village artisan could be a hut already existing in the property and, therefore, not erected by him, provided the value of the said hut was not exceeding four hundred rupees as clarified in the explanation. In the meanwhile, the Agricultural Tenancy Act came into force and some protection from eviction of their residential houses was given to the tenants who were staying in structures constructed by them. The 1971 Act was substituted by the Act and mundkar was newly defined bringing within its ambit not only the mundkar as defined in the 1971 Act but also the agricultural labourers and the village artisans, as well as the above referred to tenants. The requirement of rendering services to the bhatkar was dropped but at the same time, it was laid down that the house should be built by the mundkar. This being so, it is rather difficult to understand why the said requirement was introduced, if it is not at all relevant whether the dwelling house is or not built by the mundkar. I already said that Mr. Sardesai contended that the construction of the definition of dwelling house given by the petitioner under which the house has to be built by the mundkar himself is against the scheme and the spirit of the Act, and, therefore, such construction should not be accepted and a meaning which is in consonance with the intention of the legislature should be adopted. I am afraid that the submission of the Learned Counsel, so far as he contends that the petitioner's interpretation of the definition of dwelling house will render it against the spirit of the Act, is not correct, for as rightly pointed out by Mr. Usgaonkar, it is clear from the Preamble of the Act that the same was enacted with a view to provide for better protection to mundkars against eviction from their dwelling houses and for granting them the right to purchase the same. If this is the professed purpose of the legislature in enacting the Act, it becomes exceedingly clear that the definition of dwelling house is relevant and the whole Act is subject to the definitions of mundkar and dwelling house.

8. I may refer, at this stage, to the Kuriakose's case, relied upon by Mr. Sardesai. In the said case, the Kerala High Court recorded that the Supreme Court has observed in *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself, and if the words used are capable of one construction only, then it would not be open to courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. It was also noted that the Supreme Court had further observed that the words used in the material provisions of the statute must be interpreted in their plain

grammatical meaning, and it is only when such words are capable of two constructions, that the question of giving effect to the policy or object of the Act can legitimately arise. Thus, it is only in such a case, when two constructions are possible, that the one which is likely to defeat or impair the policy of the Act should not be adopted and the Court should prefer the one which is likely to assist the achievement of the said policy. This authority of the Kerala High Court in no manner helps the case of the respondents, since the expression "constructed by the mundkar" occurring in Section 2 (i) of the Act is not capable of two constructions. The expression is clear and its plain grammatical meaning is that the house has to be constructed by the mundkar. It is possible that the above interpretation may not give relief to some people who are residing with fixed habitation in houses built by the bhatkar. However, this circumstance cannot come on the way of the petitioner, since the Court has to interpret the law as it stands. I am supported in this view by the authority of the Supreme Court in *Har Charan Singh Vs. Shiv Rani and others* AIR 1981 SC.1284 In that case, Tulzapurkar, J. speaking for himself and for A.P. Sen, J. observed as follows:-

"The two rival constructions raised a question of construction of a sub-section in a statute primarily enacted as can be culled out from the long and short title of the Rent Act, being regulation of letting and rent and arbitrary eviction of tenant from the premises to which the Rent Act would apply. It is a socially beneficent statute and in construing such statute certain well recognized canons of construction have to be borne in mind. Undoubtedly, the dominant purpose in construing the statute is to ascertain the intention of the legislature. This intention, and, therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of legislature (see *inland Revenue Commissioners Vs. Hinchy*, 1960, AC 748, H.L. at 767 : (1960)1 ALL ER 505 at 512). In approaching the matter from this angle, it is a duty of the Court to give fair and full effect to statute which is plain and unambiguous without regard to the particular consequence in a special case. Even while giving liberal construction to socially beneficent legislation, if the language is plain and simple, the making of a law being a matter for the legislature and not Courts, the Court must adopt the plain grammatical construction (see *River Wear Commissioners Vs. Adamson*) (1977) 2 AC 743 and 765). The Court must take the law as it is. And, accordingly, it is not entitled to pass judgment on the propriety or wisdom of making a law in the particular form and further the Court is not entitled to adopt the construction of a statute on its view of what Parliament ought to have done."

I already said that the words "was constructed by the mundkar" are plain and unambiguous. They are not capable of two different meanings, and thus, have on the above authority of the Supreme Court to be read in their plain grammatical meaning.

9. Mr. Sardesai no doubt sought support in the second Proviso to Section 15 of the Act to contend that the spirit of the Act is to protect the raundkars in general and that the dwelling house is not required to be constructed by the mundkar himself. In order to properly understand this submission of the Learned Counsel, it will be necessary to advert to the said proviso. It reads as under:-

"Provided further that:-

(a) When a mundkar has been permitted to occupy the dwelling house by the bhatkar for the purpose of cultivation of, or for the purpose of watching and protecting, an agricultural land of the bhatkar and is actually rendering such service and continues to render such service with or without remuneration; or

(b) Where a mundkar is an agricultural labourer or a village artisan; or

(c) Where the annual income of a mundkar, being a person belonging to Scheduled Castes or the Scheduled Tribes and not falling under clause (a) or clause (b), from all sources does not exceed rupees three thousand and six hundred;

then the purchase price payable by such mundkar and a member of his family shall be twenty per cent of the market value payable."

It would appear from the expression "that the mundkar has been permitted to occupy the dwelling house by the bhatkar" occurring in Clause (a) that a person who occupies a house of the bhatkar which was not built by him can be a mundkar and as such, the submission of Mr. Sardesai is correct. Dealing with this argument, Mr. Usgaonkar however submitted that the said proviso has merely in view giving a reduction in the purchase price to the agricultural labourers or village artisans and to those who had been permitted to occupy a dwelling house by the bhatkar for the purpose of cultivation or for the purpose of watch and ward duties. He submitted that if the interpretations given by Mr. Sardesai were to be accepted, then the agricultural labourers or village artisans and the members of Scheduled Castes and Scheduled Tribes mentioned in Clause (c) would not get the benefit given in that proviso. Besides, Mr. Usgaonkar further contended, a mundkar who had built his house would not be benefited by the proviso. As I already observed, it would appear prima facie that the above submission of Mr. Sardesai has some force. However, considering the background of the new definition of mundkar and the circumstance that the legislature have intended to include in the said definitions not only the mundkars as they were defined in the 1971 Act but also the agricultural labourers and village artisans as well as the tenants who had built their own dwelling houses, it becomes clear that the argument has no merit. In fact and first of all, as rightly pointed out by Mr. Usgaonkar, the proviso is enacted to give a benefit in the payment of the price to some categories of mundkars, namely, (1) those who are agricultural labourers or village artisans; (2) those who belong to a Scheduled Caste or a Scheduled Tribe and are within the income ceiling given in clause (c); and (3) those who are occupying a dwelling house for the purpose of cultivation or for

the purpose of watching and ward duties and are actually rendering services to the bhatkar for, in such cases, a benefit in the quantum of the purchase price has been given in the said proviso. Now, if clause (a) were to be interpreted in the manner suggested by Mr. Sardesai, then obviously the mundkar who had built his own house for purposes of cultivation or has been permitted to build a house for the purpose of watch and ward and who was actually rendering services to the bhatkar would not be benefited by the proviso. Similarly, those agricultural, labourers, village artisans and members of Scheduled Castes and Scheduled Tribes would not be benefited by the said proviso if they had built their dwelling houses. This manifestly was not intended by the legislature and hence, the submission of the Learned Counsel cannot be accepted. The said proviso has, thus, to be construed in such a manner that the benefit given therein is extended to all those mundkars who were permitted by the bhatkar to occupy the land with the dwelling house for the purpose of cultivation or for the purpose of watch. Therefore, in a true construction of the said clause (a), the expression "permitted to occupy the dwelling house by the bhatkar", occurring therein, does not mean that a mundkar within the meaning of the Act can reside with fixed habitation in a house built by the bhatkar, and not by him.

10. This being the position and considering the circumstance that the expression "constructed by the Mundkar occurring in Section 2 (i) of the Act is not capable of two interpretations, it necessarily follows, on the authority of the Supreme Court in Har Charan Singh's case, that the grammatical meaning thereof is to be adopted. Such meaning clearly is that the house has to be constructed by the mundkar, being irrelevant whether such construction was done at his own expense or at the bhatkar's expense or with financial assistance from the bhatkar. Thus, the requirements of dwelling house under the Act are two, namely, (1) that the mundkar resides therein with fixed habitation and (2) that the house was constructed by the mundkar himself. The Act defines mundkar as being the person who with the consent of the bhatkar lawfully resides with fixed habitation in a dwelling house. Since, the dwelling house has to be constructed by the mundkar himself, it also necessarily follows that if the house was not built by him, he is not a mundkar, as defined by the Act. The Mamlatdar, the Additional Collector and the Administrative Tribunal failed to appreciate the above aspects of the case and hence, wrongly held that the expression "was constructed by the mundkar" occurring in the definition of the dwelling house was to be ignored. In doing so, the Courts below had committed a material error which vitiates their decisions and fully justifies the interference by this Court in exercise of its writ jurisdiction.

11. The result, therefore, is that this petition succeeds. Accordingly, the rule is made absolute and the impugned orders are hereby quashed. There will be no order as to costs.