

(2009) 12 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 218 of 2009

Shri Roque Fernandes (since deceased) through Legal Heirs (Francisco Xavier Fernandes and Others) APPELLANT

Vs

Dempo Properties and Investments Pvt. Ltd. and Joint Mamlatdar, Mormugao Taluka RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 16, 8A

Citation : (2010) 2 BomCR 802

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

Bench : Single Bench

Advocate : G. Shirodkar, for the Appellant; S. Kamat Wagh, for the Respondent

Judgement

R.M. Savant, J.—This Petition can be conveniently disposed of at the admission stage. Hence, Rule made returnable forthwith with the consent of the parties.

2. This Petition takes exception to the Order dated 26.11.2008 passed by the Administrative Tribunal in Mundkar Revision Application No. 147/2003. The said Mundkar Revision Application has arisen out of the purchase application filed by the Predecessor of the Petitioners herein, before the Joint Mamlatdar, Mormugao, with respect to dwelling house in the property surveyed under chalta No. 13 P.T. Sheet No. 91 of City Survey, situated at Vasco da Gama. The said application was filed by the Predecessor of the Petitioners u/s 16 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Control Act, 1975, (for short, "Mundkar Act, 1975"). The said application was considered by the Joint Mamlatdar and was partially allowed and direction was issued to the Court Surveyor to demarcate the area taking into consideration the external outer wall of the dwelling house of the Applicants. In so far as the purchase price is concerned, the Joint Mamlatdar directed that the same will be done after the demarcated plan is confirmed by both the parties. The Applicants i.e. the Petitioners herein, were aggrieved by the said direction issued by the Mamlatdar in respect of the demarcation of the

property taking into consideration the external walls of the dwelling house of the Applicant. They, therefore, filed an Appeal before the Deputy Collector/S.D.O, Mormugao, which Appeal in so far as the issue of demarcation was concerned, was held to be premature and, therefore, dismissed. Thereafter, the Respondent No. 1 filed the Mundkar Revision Application No. 147/2003, before the Administrative Tribunal, Goa, which Revision came to be allowed and the Order of the Mamlatdar came to be set aside and the Tribunal issued a direction to the Joint Mamlatdar to demarcate the area of the dwelling house considering the location and the area of the dwelling house shown in the Survey Plan. The direction, therefore, which is in operation i.e. the demarcation of the dwelling house in terms of the Mundkar Act, 1975, has to be as per the Survey Plan.

3. Both the learned Counsel for the Petitioners Shri Shirodkar and learned Counsel for the Respondent No. 1, Ms. Kamat, i.e. the Bhatkar, have no objection if the Order of the Administrative Tribunal is impleaded. A grievance is made on behalf of the Respondent No. 1 by Ms. Kamat, that the Petitioner has encroached further in the said property and, therefore, the Petitioners should be given the liberty to raise contention in that behalf before the Mamlatdar. Since the Mamlatdar is vested with the necessary powers under the Mundkar Act, 1975, it would be open for the parties to make their respective submissions before the Mamlatdar in respect of the alleged encroachment.

4. An issue is also sought to be raised on behalf of the Respondent No. 1 that the right of the Petitioners to purchase only ensures if a declaration is issued u/s 8-A of the said Mundkar Act, 1975 and mere registration as a Mundkar, confers no such right. In support of the said submission, reliance is placed on a Judgment of the Division Bench of this Court reported in 1995 (1) G L. T. 154, in the matter of Smt. Gulabi Sangtu Devidas and Ors. v. Smt. Prema Govinda Gaonkar and Ors.

5. Since admittedly the Petitioners have not been declared as Mundkars pursuant to any proceedings u/s 8-A of the Mundkar Act, 1975, therefore, though the demarcation as ordered by the Administrative Tribunal is allowed to be carried out, the right eventually of the Petitioners, would hinge upon the declaration, that would be issued in that favour u/s 8-A. The learned Counsel for the Petitioner does not dispute the said position. The Petition is, therefore, disposed of in the following terms:

(1) That the demarcation of the dwelling house will be carried out in terms of the impugned Order of the Administrative Tribunal dated 26.11.2008.

(2) The right of the Petitioners to purchase the demarcated area would ultimately hinge upon the declaration if any that would be issued u/s 8A of the Mundkar Act, 1975.

(3) The Petitioners would therefore take steps to apply for such declaration within two months from date. If such an application is filed, the same would be decided by the concerned Mamlatdar on its own merits and in accordance with law.

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