

(1999) 03 BOM CK 0098

In the Bombay High Court

Case No : Letters Patent Appeal No. 6 of 1997 with Cross Objection

Shri Uttam Pednekar (since deceased through his legal representative and his widow)

APPELLANT

Vs

Shri Atul Pundalik Bandekar and others

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 2, 29, 30

Citation : AIR 2000 Bom 178 : (1999) 3 BomCR 622

Hon'ble Judges : R.M.S. Khandeparkar, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : S.D. Lotlikar, for the Appellant; M.B. D"Costa, for the Respondent

Judgement

N.P. Chapalgaonkar, J.—This Letters Patent appeal challenges the order of a learned Single Judge of this Court (R.K. Batta, J.) in Writ Petition No. 430/1992 (reported in 1997 (2) G.L.T. 303) which holds that registration of mundkar u/s 29 of Goa, Daman & Diu Mundkars (Protection from Eviction) Act, 1975 pertains to villages only and the provision does not extend to the dwelling houses which fall within the Municipal limits.

2. The appellant who claims to be a mundkar, filed an application before the Mamlatdar of Bardez Taluka u/s 29 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (hereinafter called as "the Mundkar Act" for the purpose of brevity) praying that he be registered in the Register of Mundkars for a dwelling house situated in the property of the opponent, alleged to be a bhatkar, described in Chalta Nos. 59 and 60, P.T. Sheet No. 122 of City Survey Mapusa. There is no dispute that the property is within the jurisdiction of Municipal limits of Mapusa. It is the case of the applicant/appellant that one Bobot Bandekar, permitted the ancestor of the appellant to construct a small hut in the property and since about 40 years, his family is residing in the said house. It is the case of the respondent/bhatkar that the appellant was allowed to reside

as a care-taker, to keep the house in a habitable condition and, therefore, he is not a mundkar. The Joint Mamlatdar of Bardez Taluka was pleased to allow this application in Case No. MND/REG/Mapusa/151/85, vide his order dated 5-4-1998 and directed that the applicant's name be registered in the mundkars' register for the said house. An appeal u/s 24 of the Mundkar Act was filed by the respondent/bhatkar before the Collector of North Goa. The said Appeal bearing No. 4-88 MUND/APL/88 came to be dismissed by the Collector of North Goa, confirming the findings recorded by the Joint Mamlatdar dated 18-7-1988. A revision application u/s 25 of the Mundkar Act was filed before the Administrative Tribunal at Panaji. The Tribunal reappreciated the whole evidence and was pleased to set aside both the orders challenged and the application for registration as mundkar, came to be dismissed. The Tribunal's order proceeds on the basis that the applicant was a care-taker, only duty to look after the house, to keep it in a habitable condition and, therefore, he is not entitled for protection under the Mundkar Act. This order of the Tribunal dated 24-6-1992 was challenged before the learned Single Judge of this Court under Articles 226 and 227 of the Constitution of India in Writ Petition No. 430/92. The learned Single Judge was pleased to observe that the tribunal had no jurisdiction to go into the evidence and re-appreciate it and, he, therefore, struck down that part of the order of the tribunal. The learned Single Judge observed that:

"I am, therefore, of the opinion that the order passed by the Mamlatdar was not only based upon the material on record, but it had also taken into consideration all aspects in correct perspective and the Administrative Tribunal in the exercise of revisional jurisdiction was not entitled to interfere with the said finding, even if it was of a different view than the view taken by the Mamlatdar unless it could be said that the findings of the two courts below were perverse. The findings of the two courts below can by no stretch of imagination be said to be perverse and, as such, the Administrative Tribunal was not entitled to interfere with the decision of the two courts below on merits."

Therefore, the findings recorded by both, the Joint Mamlatdar and the Collector were confirmed by the learned Single Judge and the observations of the Tribunal in this regard, were set aside. However, the learned Single Judge came to the conclusion that the provision of registration of the mundkar u/s 29 of the Mundkar Act is applicable only if the dwelling house is situated in a village and it does not apply to a dwelling house which is situated in a Municipal area and such mundkars have no right to get themselves registered. It is these findings which are challenged in this Letters Patent Appeal before us. By way of cross objection, the part of the order of the learned Single Judge which sets aside reappreciation and reversal of the finding of facts by the Administrative Tribunal, is also challenged before us.

3. Section 29 casts a duty on the Government to call register of mundkars to be prepared in respect of every village and maintained in the prescribed manner. In sub-section (4), the Mamlatdar has to issue a public notice in every revenue

village calling applications from the mundkars for registration. The applications and objections, if any, are to be heard, the order of the Mamlatdar is to be published and a person aggrieved by registration of mundkar or by refusal to register a person's name in the register of mundkars, may appeal to the Collector. Section 30 of the Mundkar Act gives presumptive value of the record maintained u/s 29. Therefore, it can be seen that section 29 is one of the important provisions under the Mundkar Act. It is a statutory record of the rights under the Act. Since section 29 speaks about the register for every village and since sub-section (4) of the said section requires that the Mamlatdar shall publish a notice in every revenue village inviting applications, the respondent's Counsel contends that a registration possible u/s 29 is only in respect of the mundkars who are in possession of a dwelling house situated in a village. In effect, the respondent's contention is that the rights of the mundkars are there to the persons who are residing in a dwelling house and those rights are not available to the persons who are residing in the dwelling houses which are in the Municipal areas.

4. Use of the word "village" as it appears in section 29 will have to be understood in the context of other provisions of the Mundkar Act and looking to the purpose for which the Act is made. The Mundkar Act was enacted to give better protection to the mundkars against eviction from their dwelling houses and to grant them the right to purchase such houses with the sites where such houses have been built and to absolve them the duty to render free services, as the Preamble of the Act would show. A dwelling house has been defined by section 2(i) to mean:

"(i) the house in which 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 and includes-

(a) the land on which the dwelling house is standing and the land around and appurtenant to such dwelling house, subject to a maximum limit of five metres if the land is within the jurisdiction of a village panchayat and two metres, if it is not within such jurisdiction, from the outer walls of the dwelling house;

(b) three hundred square metres of land including the land on which the dwelling house is standing;

Provided that where the dwelling house is within the jurisdiction of a Municipal Council, the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing."

5. The portion of the definition of the dwelling house which we have extracted above would conclusively show that the dwelling houses, the eviction from which is prevented, are both, the dwelling house situated in the village as well as the dwelling house situated in the municipal areas. It is from these dwelling houses, the mundkar has right to live and he has also right to purchase the dwelling house for a reasonable price. The mundkar as defined in section 2(p) to mean:

"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-..."

6. The dwelling house referred to in the definition of the "mundkar" under Clause (p) of section 2 is the dwelling house which is defined under Clause (i) of the said section. It, therefore, follows that the persons residing in the dwelling houses fulfilling the conditions in the definition, are the mundkars, irrespective of the fact whether such dwelling house is in a village or is in a municipal area.

7. It is in this light, we will have to interpret the meaning of the word "village" as it occurs in section 29.

8. A village has been defined by Black's Law Dictionary, sixth edition, as under:

"Traditionally, word "village" has connoted an area possessed of some attributes of a community, and is not a technical word, or one having a peculiar meaning, but is a common word in general usage and is merely an assemblage or community of people, a nucleus or cluster for residential and business purposes, a collective body of inhabitants, gathered together in one group."

It is true that in common parlance, the village is a small group of houses as distinct from town or a city. We do not find any intention of the legislature to exclude the mundkars in municipal limits from the benefit of registration and the consent benefit of having their entry in the official record and the presumptive value attached to it. There is nothing in the Act or the Rules made thereunder which would exhibit the intention of the legislature and the State Government to exclude the mundkars in municipal areas from the protection of the Act. The Mundkar Act is a legislation applicable to all the mundkars as a class and exclusion of mundkars in the municipal limits is impermissible looking to the object of it. When the learned Single Judge disposed of the Writ Petition No. 430/92 by his order dated 17-2-1997, (reported in 1997(2) Goa L.T. 303), it appears that his attention was not invited to the definition of the "dwelling house" and other provisions of the Act with which section 29 will have to be read. According to the learned Single Judge, the village has a specific meaning being a small habited area as compared to the town and city. We respectfully disagree.

"The words of statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language; nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained."

These are the observations from Maxwell on the Interpretation of Statutes, which were quoted with approval by the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and also in the case of *The*

State of Uttar Pradesh Vs. C. Tobit and Others, . In latter case, the Supreme Court further observed:

"In order, therefore, to come to a decision as to the true meaning of a word used in statute, one has to enquire as to the subject matter of the enactment and the object which the Legislature had in view."

We also find that the same observations from Maxwell's Interpretation of Statutes were relied upon in the case of Santa Singh v. The State of Punjab, AIR 1976 S.C. 2386 wherein the Supreme Court took the view that the words "hear the accused" would not only include hearing oral submissions, but it also intended to give an opportunity to the prosecution and the accused to place before the Court various facts and material relating to various factors having bearing on the question.

9. Shri D"Costa, the learned Counsel for the respondent/bhatkar further contended that since it was felt by the legislature that the mundkars in the municipal areas are not covered by section 29 as it originally stood, the legislature came with an amendment adding explanation to section 29, by Amending Act No. 4 of 1998. The legislation added reads as under:

"Explanation- The expression "revenue village" includes village in the municipal areas."

This amendment came into effect on 19-1-1998. Shri D"Costa submits that since the amendment has come into effect on this day, this will have to be read to be prospective and before that the "revenue village" will not include any village in the municipal areas. We do not accept the submission. Section 1 of the said Amending Act provides that it shall be deemed to have come into force on the appointed date. The appointed date has not been separately defined in the Amending Act. Therefore, the expression "appointed date" will have to be construed as defined in the original Act. The appointed date has been defined by section 2(e) to be the date on which the Act came into force. The Mundkar Act came into force with effect from 12-3-1976. Therefore, the explanation also shall be deemed to have been incorporated in the Act from the date when the Principal Act itself came into operation and not from the date when the Amending Act came into existence. The date of operation of an amendment in a statute will have to be read in the context of the provisions of the Amending Act. If the Amending Act so provides, it will relate back to the date when the Principal Act had become operative. Even in the absence of such an explanation, we are the view that prior to the amendment also, the Mundkar Act was not, in any way, excluding the mundkars residing in the dwelling houses which were in the municipal areas. What the Amending Act has done is to make the things more clear. It is likely that the view taken by the learned Single Judge in the impugned Judgment and some other pronouncements also might have been taken a note of and the explanation might have been thought necessary.

10. Therefore, the word "village" in section 29 of the Mundkar Act will have to be

given wide meaning and it will have to be held that it includes even the towns and the cities. We do not find anything in the statute which excludes the mundkars residing in the dwelling houses which are situated in municipal areas from the protection of the Act and it is in this context, we are inclined to hold that the word "village" used in section 29 of the Mundkar Act will have to be read in wider sense.

11. In the result, the Letters Patent Appeal stands allowed. The order of the learned Single Judge dated 17-2-1997 in Writ Petition No. 430/92 is set aside, so far as it holds that the application of the appellant/ Mundkar is not maintainable. We allow the application for registration of mundkar filed by the appellant/ applicant and restore the orders passed by the Joint Mamlatdar of Bardez and the Collector of North Goa, Panaji and direct consequential action. The cross objection filed by the present respondent/bhatkar stands rejected. In the facts of the case, we leave the parties to bear their costs.

12. Letters Patent Appeal allowed.