
(2000) 07 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 310 of 1997

Teresinha Coelho and Others

APPELLANT

Vs

Inacio Pio Jesus De Sa Or Inacio Sa

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 125(6),
13, 13(2), 13(3), 2

Citation : (2002) 2 ALLMR 77 : (2001) 3 MhLj 863

Hon'ble Judges : V.C. Daga, J; F.I. Rebello, J

Bench : Division Bench

Advocate : R.B. De Sa, for the Appellant; F.J. Colaco, for the Respondent

Judgement

V. C. Daga, J.—Difference of opinion on a question of law having arisen between two learned Benches of Single Judges of this Court, the Hon"ble the Chief Justice has in these circumstances ordered this petition to be placed before the Division Bench, to resolve the difference.

QUESTION TO BE RESOLVED

The question giving rise for difference of opinion between the two learned Judges, which has been referred for our consideration, is framed in the following terms:--

"Whether the decision of Mamlatdar u/s 32(2)"of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (hereinafter referred to as "Mundkar Act or Act" as context may require) on an issue being referred to it u/s 32(1) of the said Mundkar Act is subject to an Appeal u/s 24 of the said Act or not? in other words, whether the decision given by the Mamlatdar attains finality as the Civil Court is bound by it and later on, so far as right of appeal is concerned, it having been given under the CPC in respect of all the issues that might be arising in the suit, the decision of the Mamlatdar even under the said

Mundkar Act can also be decided by an appeal by appropriate forum under Code of Civil Procedure, ("C.P.C." for short)".

BACKGROUND FACTS

The Respondent herein, as Plaintiff, filed a Civil Suit bearing No. 242/ 79/B before the Civil Judge, Junior Division, Panaji for eviction of the petitioners on the ground that the licence given by the petitioner No. 1 was lawfully terminated and that the petitioners herein were trespassers in the suit house bearing No. 79 situated at Fondvem, Ribandar and also for mense profits. The present petitioners/original Defendants (hereinafter referred as "petitioners" for short) contested the suit, inter alia by stating that the houses was given by the Respondent/plaintiff to the original Defendant No. 2 late Mariano Coelho to reside therein as a mundkar without any compensation. Consequently, the learned Civil Judge on 1st October, 1982 framed issues, inter alia, issue No. 3, namely, whether the Defendants prove that they are mundkars in respect of the suit dwelling house, and, by Order dated 28th June, 1983 referred the said issue to the Mamlatdar u/s 32 of the Mundkar Act for his decision.

2. The learned Mamlatdar, Panaji, by his Judgment and Order dated 31st July, 1992 answered the reference in negative and held that the Respondents were not mundkars of the suit house and further directed that the judgment be forwarded to the Civil Judge, Junior Division, Panaji after the appeal period was over. Aggrieved by the said Judgment and Order of the learned Mamlatdar, the petitioners herein preferred an Appeal to the learned Collector, Panaji, who as already stated by the impugned Judgment and Order dated 18th March. 1996 allowed the Appeal and declared the petitioners as mundkars of the suit house.

3. Aggrieved by the aforesaid Judgment and Order of the Collector, Panaji, Respondent herein preferred revision petition before the Administrative Tribunal, Goa at Panaji. The main controversy which was raised in the revision was regarding applicability of section 32(2) of the Mundkar Act to the proceedings in question viz. whether there was at all a right of appeal against the decision of the learned Mamlatdar in reference made to him by the Civil Court u/s 32(2) of the Mundkar Act. The Administrative Tribunal, Goa, while dealing with the said question considered various provisions of the Mundkar Act, and relying upon the decision of the Apex Court in the matter of Noor Mohd. Khan Chouse Khan Saudagar v. Fakirappa Bharmappa Machenahalli and others, "held that section 32(2) of the Mundkar Act being mandatory in nature, it cast a mandate upon the Mamlatdar to decide an issue and the Mundkar Act does not provide for any right of appeal or revision to the Appellate Authority or to the Administrative Tribunal under the said Act against a decision of Mamlatdar or Collector given under the provisions of section 32(2) of the said Act. Consequently, the Administrative Tribunal allowed the revision and set aside the order of the learned Collector and restored the order of the Mamlatdar with directions to communicate his decision to the Civil Court.

4. The petitioners invoked the jurisdiction of this Court to assail the order of the Administrative Tribunal, Goa, dated 31st March, 1997 and prayed for setting aside the Order dated 31st March, 1997 made in Mundkar Revision Application No. 13/1996 by the Administrative Tribunal, Goa.

BACKGROUND FOR REFERENCE

5. The aforesaid petition came up for hearing before the learned Single Judge who was pleased to grant Rule and ad-interim relief in terms of prayer clause (b) by his Order dated 19th September, 1997 and subsequently on 4th December, 1998 delivered a Judgment recording his dissent with the earlier decision in the matter of Suresh Shirodkar v. Administrative Tribunal and others, wherein, it has been held that the decision of the Mamlatdar in a reference u/s 32 of the Act is subject to appeal and revision u/s 24 of the said Mundkar Act. The Hon'ble the Chief Justice has in the above circumstances ordered reference to the Division Bench to resolve the difference on the applicability of section 32 of the Act.

RIVAL VIEWS

6. An important question of interpretation of right of appeal given under the Mundkar Act is thrashed out before us in the wake of two rival views holding the field. One view is to the effect that though there is provision in section 32 of the Mundkar Act for referring the issue and further making a decision given by the Mamlatdar or the Collector, as the case may be, binding on the Civil Court, it will not so bind the Civil Court unless all the remedies of appeal and revision available under the Mundkar Act are exhausted. (The said view is hereinafter referred to as the First View for the sake of clarity and ready reference).

7. The other view is that the Civil Court is bound by the decision given by the Mamlatdar and later on, so far as appeal is concerned, it having been given under the CPC in respect of all the issues that might be arising in the suit, the decision of the Mamlatdar even under the said Mundkar Act, can also be decided in an appeal by appropriate forum under Civil Procedure Code. The said view is hereinafter referred to as the Second View for the sake of clarity and ready reference.

8. We need not trace the history of legislation, but may conclude the same for the present purpose by stating that with the intention to provide for better protection of the mundkars against eviction from the dwelling houses and to grant them right along with the land at a reasonable price and to abolish the system of free service which was rendered by the mundkars to their bhatkars as understood when the initial legislation on the subject was enacted and to make certain other provisions connected thereto, the said Mundkar Act was enacted and was brought into force w.e.f. 12th March, 1976 which is called as "the appointed day" under the said Act.

The break-up of the relevant statutory provisions, placed for our consideration, are as under

(a) The said Mundkar Act is divided into provisions regarding its extents, date of enforcement of the Mundkar Act and regarding the definitions of the terms and expressions used in the said Mundkar Act. The second chapter deals with rights and liabilities of the mundkars and bhatkars under the said Mundkar Act. The third chapter is in relation to power and functions of various authorities under the Mundkar 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.

(b) The relationship of mundkar and bhatkar is peculiar to this State. The word "bhatkar" is defined in section 2. clause (f) of the Mundkar Act reading as under:--

"Bhatkar" means a person who owns the land on which the mundkar has a dwelling house."

(c) The word "mundkar" is defined in section 2, Clause (p) of the said Mundkar Act. Likewise, the word "Mamlatdar" is defined in section 2 clause (m) and "Collector" is defined in section 2, clause (h) of the said Mundkar Act.

(d) The expression "dwelling house", is defined u/s 2(i) to mean a house in which the mundkar resides with a fixed habitation. The rights of mundkar in his dwelling houses are heritable, but not transferable. The provision in that regard has been made in section 3 of the said Act. A mundkar cannot be evicted except as provided under the said Act. 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 water and customary easement.

(e) If any person is entitled to any right under the said Act, he can seek necessary declaration regarding such right from the Mamlatdar in terms of the provisions contained in section 8A of the said Act. Section 8A thus reads as under:--

"Declaration of Right.-- If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

2. On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he considers fit."

(f) At the time when the Mundkar Act came into force, it was envisaged that there might be suits pending in the Civil Court and likewise appeals pending execution of decrees or orders and other proceedings for the eviction of a mundkar. Apart from this even when a person in the said suit or proceedings has claimed to be mundkar that situation is also dealt with u/s 13 of the said Mundkar Act. All these pending matters are required to be transferred to the Mamlatdar within whose jurisdiction the dwelling house is situate. Thereafter

under sub-sections (2) and (3) of the said section 13, further proceedings are initiated. The Mamlatdar, on receipt of the file in view of sub-section (2), is expected to first decide whether the person to be evicted is a mundkar or not and if he decides that ne is not a mundkar, the suit or proceedings shall be re-transferred to the Court. As per sub-section (3), if a decision is in the affirmative, he has to declare that the suit has abated and thereafter the bhatkar has to make a fresh application under the Mundkar Act, if the bhatkar so desires. Obviously, the application referred to herein is an application for eviction of mundkar.

(g) There is also a provision in section 32 for referring an issue to the Civil Court when the Issue that has arisen before the Court involves a question which is required to be settled, decided or dealt with by the Mamlatdar or Collector under the said Mundkar Act. The said provision in this behalf reads as under:--

"Section 32. Suits involving issues required to be decided under this Act.--(1) If any suit Instituted in any Civil Court involved any issues which are required to be settled, decided or dealt with by the Mamlatdar or 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 the suit in accordance with the procedure applicable thereof."

(h) The Bar of jurisdiction of the Courts is to be found u/s 31 sub-section (2). It specifically lays down that no Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any manner which is by the Mundkar 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. It further says that no order passed by such authorities shall be questioned in any Civil or Criminal Court. The text thereof is reproduced hereIn below:--

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

(1) No suit, prosecution or other legal proceeding shall be against any officer for anything in good faith, done or intended to be done under this Act.

(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."

(i) The provision for challenging the order passed by the Mamlatdar is to be found in section 24 which reads as under :--

"Section 24. Appeal.-- From every original order, other than an interim order, passed by the Mamlatdar or the Collector under this Act, an appeal shall lie to the Collector or the Administrative Tribunal respectively, and the order of the Collector or the Administrative Tribunal, as the case may be, shall subject to revision if any, u/s 25 of this Act, be final."

(j) The perusal of the aforesaid provision would show that except for interim order every original order of the Mamlatdar is made appealable. Same is the situation with regard to the original Order of the Collector. Subject to revision as provided u/s 25 of the Mundkar Act, the Order of the Collector or the Administrative Tribunal in appeal is declared to be final.

RIVAL CONTENTIONS CONTENTIONS OF PETITIONERS.

9. The learned counsel for the petitioners contends that the decision rendered by the Mamlatdar u/s 32(2) of the Mundkar Act is subject to all the remedies of appeal and revision available under the Mundkar Act. In his submission though there is a provision u/s 32 of the Mundkar Act of referring the issue and further making a decision made by the Mamlatdar, it will not so bind the Civil Court unless the appellate and revisional remedies under the Mundkar Act are exhausted. It is further contended that the word "original order" referred to in section 24 of the Mundkar Act shall mean, the order made by the first authority under the Act. The word "original order" will have to be understood in contrast to the other order referred to in section 24 itself, i.e. an interim order. In his submission the order which is not an interim order shall have to be treated as "original order". While elaborating his submission, he contends that all the orders which are not interim orders are expected to be treated as original orders as per the scheme of the Act. According to him, if this meaning is given to the word "original order" then in that event the various provisions of the Act can be harmonised.

10. The learned counsel for petitioners has further taken us through the provision of section 8A of the Mundkar Act which says that any person claiming right of Mundkar Act may move the Mamlatdar for declaration of such a right. The Mamlatdar after prescribed enquiry has to pass an order as he considers fit. It is further pointed out that the order passed u/s 8A can be a subject matter of appeal. The learned Counsel for petitioners has also taken us through the text of section 32(1) of the Act. Section 32(1) makes it obligatory for the Civil Court to stay the suit and to refer the issue of mundkarship to the Mamlatdar, or to the Collector, as the case may be for determination.

11. The learned counsel for petitioners, while drawing our attention to sections 8A and 32(1) of the said Act, has submitted that while section 32(1) makes it obligatory for the Civil Court to make reference to mundkarship to the Mamlatdar, at the same time section 8A of the said Act permits the person to approach directly to the Mamlatdar for declaration of his right of Mundkarship. If it is interpreted that the decision of the Mamlatdar on reference u/s 32 is not

appealable, even then the decision u/s 8A cannot be taken out of the purview of being subjected to appellate review u/s 24 of the said Act. In case of reference, on such an interpretation 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 8A by the Mamlatdar will be subjected to an appeal u/s 24 and further revision u/s 25 of the said Act. In case decision u/s 32 is held to be final under the Act but subject to appeals under CPC and in a case one u/s 8A, the finality thereto is subjected its approval by the Appellate Authority under the said Act, then in that event, the possibility of contradictory decisions cannot be ruled out, which is bound to lead to conflicting decisions.

12. The learned counsel for the petitioners in the aforesaid backdrop contends that it should be the endeavour of the Court to interpret the provisions of the Act in such a way so as to make the Act uniformly workable in all the circumstances and at the same time to see that all the parties litigating under the Act gets a similar treatment and equal opportunity. In this submission any interpretation resulting in discrimination or discriminatory treatment has to be avoided.

13. It is further pointed out to us from the text of sub-section (3) of section 13 show that if the Mamlatdar decides that a person to be evicted is a mundkar, then he has to declare the suit to be abated and has to direct the bhatkar to make a fresh application under this section if bhatkar so desires. In his submission the sweep of this sub-section (3) is so devastating that it has an effect of declaring suit as having been abated without there being any appeal or revision against the order of the Mamlatdar holding that the person to be evicted is a mundkar. It is further contended that in several cases the Apex Court has held that right of appeal is a gesture of statutory fairness in disposal of the cases. Our attention is also drawn to the ruling in the matter of Jyoti Pershad v. Union Territory of Delhi, and Ganesh Beedi Work v. Union of India and other cases bearing the necessity of right of appeal as an incident of fair hearing. It is thus submitted that while interpreting the provisions of the Act it should be broadly interpreted so as to advance the applicability of the principles of natural justice.

14. It is further submitted that the Mundkar Act is a self-contained Code. It expressly provides rights and liabilities, provides remedies by way of appeal and revision, excludes the jurisdiction of the Civil Court. The decision of the Mamlatdar is final between the parties. It is, therefore, contended that the right of appeal should be read against each and every order other than interim Order of the Mamlatdar.

15. The learned counsel for the petitioners in the backdrop tried to support the first view taken by the learned Single Judge on the spectrum of the provisions of the Act. He further pointed out that right from the promulgation of the Mundkar Act, all the findings recorded by the Mamlatdar, even on reference made by the Civil Courts, were treated as final subject to the provision of appeal and revision

and the view that the order of the Mamlatdar is subject to appeal and revision has not only been holding field since more than two decades but has been recognised by the learned Single Judges of this Court in the matter of Suresh Shirodkar v. Administrative Tribunal (supra). The said view was earlier followed by the learned Judge of this Court taking the second view in the matter of Shri Peter Paul D'Souza v. Ramkrishna Kandolkar. Whilst taking the second view, no reference is made to this Judgment. Thus, in the submission of the learned Counsel, the provisions of the Act had always been interpreted in the manner stated above by the High Court consistently and it would not be proper to disturb the course of decisions and settle position of law by interpreting the provision differently after about two decades. The reliance was placed on the Judgments of the Apex Court in the matter of B. Lakshmi pathi Naidu v. Distt. Educational Officer and others; Raj Narain Pandey and others u. Sant Prasad Tiwari and others and Janba (dead) through L. Rs. v. Gopikabai.

16. The learned counsel for the petitioners also brought to our notice the judgment in the case of Shevantabai Maruti Kalhatkar v. Ramu Rakhamaji Kalhatkar and another, wherein the Apex Court while examining the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, found that section 36(A) of the Act had excluded the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under the Act required to be settled, decided and dealt with by the State Government, Officer or any authority. The Apex Court while interpreting the provisions of the said Act held that it was not open to the First Appellate Court, being a Civil Court, to go behind the order passed by the competent authority under the said Act. Thus the thrust of the submissions advanced by the petitioners are that the First View taken by the learned Single Judge in the matter of Suresh Shirodkar v. Administrative Tribunal (supra) and reiterated by the learned Single Judge in the matter of Peter Paul D'Souza v. Ramkrishna Kandolkar (supra) should be approved and accepted and accordingly the reference should be answered in favour of the petitioners.

CONTENTIONS OF THE RESPONDENT

17. The learned counsel appearing for the Respondent opposing the aforesaid submissions tried to support the second view that no appeal lies pursuant to an Order u/s 32 of the Mundkar Act, by the Mamlatdar and, decision given by him shall be final subject to appeal arising out of decree rendered in a suit. The basis of the said submissions is the words "the procedure applicable thereof" employed in Section 32(2) which according to him would mean appeal arising out of decree rendered in a suit.

18. The learned counsel appearing for the Respondent also placed reliance on the decision of the Supreme Court in the matter of Noor Mohd. Khan Ghouse Khan Saudagar and Anr. v. Fakirappa Bharmappa Machenahalli and Ors. (supra) and contended that sections 132 and 133 of Kamataka Land Reforms Act are in pari materia with the provisions contained in sections 31(2) and 32 of the Mundkar

Act, wherein Their Lordships have held that the jurisdiction of the Civil Court 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 Civil Court has to record the Judgment on such finding. The Appeal to the Civil Courts shall be according to the CPC under the circumstances has not been excluded.

19. The learned Counsel for the Respondent sought to borrow support from another decision of the Apex Court in the matter of *Mathevan Padmanabhan v. Parmeshwaran Thampi and others*, wherein the Apex Court has observed that on receipt of the decision of the Land Tribunal referred to by the Civil Court for the purpose of appeal must be deemed to be the part of findings of the Civil Court and the said findings shall be subject to appeal as provided under the Code of Civil Procedure. He also brought to our notice the recent Judgment of the Supreme Court reiterating the same view in the matter of *Thomas Antony v. Varkey Varkey*.

20. The learned Counsel for the Respondent further submitted that the words "original order" used in section 24 of the Act would mean the order passed by the authorities under the Act in the proceedings which are initiated under the provisions of the Act by presenting original petitioner's application and not the orders passed on the reference made by the Civil Court. A decision on a reference it is contended is not an original order.

21. The learned counsel for the Respondent lastly submitted that the wrong interpretation of the provision holding the field prior to the decision of the Judgment in the matter of *M/s. Teresinha Coelho v. Dr. Inacio De Sa (supra)* (Per R. M. S. Khandeparkar, J.) should not waive with the Court as in his submission wrong practice does not create law. He therefore, prayed for confirmation of the second view in the matter of *M/s Teresinha Coelho v. Dr. Inacio De Sa (supra)* and to answer reference accordingly in favour of the Respondent.

CONSIDERATION OF RIVAL CONTENTIONS

22. In the aforesaid break drop of sharp rival submissions, the question for determination formulated above is taken up for consideration, in the present Petition which primarily turns on the scope and the extent of exclusion of exclusive jurisdiction of the Civil Courts under sections 32 read with 31(2) of the said Act and interpretation thereof.

23. Section 32(2) specifically excludes the Jurisdiction of the Civil Court to settle, decide and deal with any question which is by or under the Act required to be settled, decided or dealt with by the Mamlatdar or the Collector under the Act and no order passed by such authority under the Act can be questioned in any Civil or Criminal Court.

24. In order to resolve the controversy one has to bear in mind that the Constitution intends to herald an egalitarian social order by implementing the goals of socio-economic justice set out in the preamble of the Constitution. In

that regard, the Constitution created positive duties on the State in Part IV towards individuals. The Parliament and the State Legislatures made diverse laws to restructure the social orders, created rights in favour of the citizens, conferred power and jurisdiction on the hierarchy of tribunals or the authorities constituted thereunder and gave finality to their orders and decisions and divested the jurisdiction of the established Civil Courts expressly or by necessary implication. The Mundkar Act is a step in that direction as a part of Land Reforms. Therefore, departure in the allocation of the Judicial functions would not be viewed with disfavour for creating the new forums and entrusting the duties under the statutes to implement socio-economic and fiscal laws. The Legislature made this departure for the reason that the tradition bound Civil Courts gripped with rules of pleadings and strict rules of evidence and tardy trial, four tier appeals, endless revisions and reviews under the CPC are not suited to the needed expeditious dispensation. The adjudicatory system in the new forum is cheap and rapid. The procedure before the Tribunal is simple and not hide-bound by the intricate procedure of pleadings, trial, admissibility of the evidence and proof of facts according to law. Therefore, there is abundant flexibility in the discharge of the functions with greater expedition and inexpensiveness.

25. In order to find out the purpose in creating the Tribunals under the statute and the meaning of particular provisions in social legislation, the Court would adopt the purposive approach to ascertain the social ends envisaged in the Act to consider scheme of the Act as an integral whole and practical means by which it was sought to be effectuated to achieve them. The dynamics of the interpretative functioning is to reflect the contemporary needs and prevailing values consistent with the constitutional and legislative declaration of the policy envisaged in the statute under consideration.

26. Seen from the above angle, as already observed the Mundkar Act is an integral part of the scheme of Land Reforms adopted by the State of Goa. It determines the pre-existing rights of the mundkars and envisaged grant of protection against eviction from the dwelling houses and to grant them right to purchase such houses at a reasonable price and to abolish the system of free service which was being rendered by the mundkars to their bhatkars and to make certain other provisions connected therewith. It created various authorities under the Act. It created appellate and revisional forums and declared finality to the orders passed by the Tribunals and expressly excluded the jurisdiction of the Civil Court and allowed the findings recorded by forums under the Mundkar Act to prevail.

27. The consideration as to the exclusion of the jurisdiction of the Civil Court is no longer *res integra*. This Court has from time to time recognised the exclusion of the jurisdiction of Civil Court even under Mundkar Act. May be to a limited extent in the descending view in the field. When the statute creates a right or liability or right to be dealt with by the Tribunals constituted in that behalf and further lays down that the questions about the said right and liability shall be

determined by the Tribunals or authorities so constituted, it becomes clear that the normal remedy provided by way of Civil Suits in the Civil Courts is barred. In the instant Mundkar legislation the Civil Court's jurisdiction to try the suits has been specifically barred u/s 32(2) of the Act and accordingly the Civil Court are enjoined and jurisdiction has been given to the Mamlatdar to decide the question of Mundkarship either on the application u/s 8A or pursuant to reference by Civil Court.

28. In the matter of Muddada Chayana v. Karnam Narayana, while dealing with a case u/s 56(1)(c) of the Andhra Pradesh (Andhra Area) (Abolition of Conversion into Ryotwari) Act, 1948, the Apex Court while answering the question as to who shall be the authority to decide lawful ryot in respect of any holding, held that the said Act is a self-contained Code in which a provision was also made to decide various types of disputes arising therein by specially constituted Tribunals. On the general principles, it was held that the special Tribunals constituted by the Act must necessarily be held to decide the dispute entrusted by the statute for their adjudication and further observed that when the Act provides machinery to discover who the lawful ryot was, it was not for the Court to denude the Act of all meaning on the ground of contextual interpretation. Interpretation of a statute, contextual or, otherwise must further and not frustrate the object of the statute and recognise the dictum of Lord Tenterden, C.J. reading as "where an Act creates an obligation and enforces the performance in a specified manner we take it to be a general rule that performance cannot be enforced in any manner".

29. Thus, the glimpse of the object of Mundkar Act, scheme, scope and operation thereof clearly manifest that the Mundkar Act is a self contained code expressly provided rights and liabilities; prescribed procedure, remedies of appeal and revision, excluded the jurisdiction of the Civil Court. The decision of such authorities are made final and conclusive between the parties or persons claiming right, title or interest through them. If the purpose of providing the adjudicatory system is cheap and rapid. If the procedure before the Tribunal is simple and not hide-bound by the intricate procedure of pleadings, trial, admissibility of the evidence of facts according to law and if there is abundant flexibility in the discharge of the functions with greater expedition and inexpensiveness then in that event the question would be, would it be proper to exclude all these considerations while interpreting section 31(2) r/w section 32 of the Mundkar Act. In our considered view, aims and objects of the Act should guide the interpretation of section 32 of the Mundkar Act. If the Mundkar Act is a self-contained Code and the findings recorded therein by the Mamlatdar are held to be conclusive and final then in that event, considering the aims and objects we do not think that the Legislature intend was to exclude remedies of appeal and revision against such findings of decisions recorded in exercise of the powers under the Act.

30. The contention that the decision given by the Mamlatdar attains finality and the Civil Court is bound by it and later on the decision of the Mamlatdar given

even under the Mundkar Act can also be challenged in appeal by appropriate forum under the CPC is accepted then the consequence should be that the said decision of the Mamlatdar shall have to go through stringent and intricate procedure of pleadings, trial and shall have to stand to the test of provisions of the Evidence Act. In other words, the decision of the Mamlatdar shall be tested on the stringent provisions of law which were never invoked by the parties and applied by the Mamlatdar while deciding the issue whether the person is a mundkar or not. The application of two different tests and yardsticks by two different forums with different standards with the application of different laws would definitely produce disastrous results which may not have been contemplated even by the Legislature while legislating the said Act. Thus, the very attempt of the social legislature to provide cheap, rapid and expeditious simple adjudicatory system would be frustrated if second view is held to be correct.

31. The Mundkar Act simultaneously provides two streams to the suitor, who claims to be a mundkar under the Act. He may move the Mamlatdar by an application for declaration for such a right u/s 8A of the Act and he can also in a suit filed for his eviction in a Civil Court raise a plea that he is a Mundkar and, therefore, cannot be evicted in proceedings filed before a Civil Court or that the Civil Court cannot hear and decide an issue that has to be decided under the Mundkar Act. If the Mundkar decides to move an application for declaration of his rights under the provisions of the Act by moving an application then such application would be subjected to the provisions of section 8A of the Act and in the event of filing suit in any Civil Court the said suit shall be subjected to the provisions of section 32 of the Act. In such event, the Civil Court will have to make a reference to the Mamlatdar u/s 32(1) of the Mundkar Act.

The rights will, therefore, be adjudicated in proceedings under the Mundkar Act. However, insofar as appeal is concerned against the orders, on one hand according to the alternate submissions canvassed no appeal is available under Mundkar Act, however, the Civil Courts in the entire hierarchy under CPC shall be free to entertain first appeals, second appeals and revisions as the case may be and, on the other hand, at the same time, the authorities who are mentioned in the Mundkar Act will also be free to entertain the appeals in their own way against the orders passed u/s 8A of the Act. This will thus create a situation where the Courts under the CPC on one hand and any of the authorities under Mundkar Act, on the other can give contrary or conflicting findings on one and the same point. There is, therefore, every possibility of inconsistent Judgments. Further, the order confirmed under the Act would be final by virtue of section 31(2). It cannot be called in question in a Civil Court. We do not think that we would be justified in allowing such disastrous effect to take place by adopting the second view which is canvassed before us. In our view, this was certainly not the object for exclusion of jurisdiction of Civil Court and of creating a special forum under the provisions of the Mundkar Act.

32. If we turn to the provisions of section 13 of the Mundkar Act then it would be clear that all suits, appeals, execution of decrees or order of a mundkar or a person who has therein claimed to be a mundkar or for the curtailment or enjoyment of right in sub-section (I) of section 6, pending in any Court on the appointed date shall stand transferred to the Mamlatdar within whose jurisdiction the dwelling house, from which the eviction is sought, is situated. Thereafter, in sub-sections (2) and (3) of the said section 13, further provisions are made. In sub-section (2) it is expected from the Mamlatdar on receipt of the file, suit or proceedings first to decide whether a person to be evicted is a mundkar or not and if he decides, in negative the suit shall be transferred to the Civil Court. As per sub-section (3), if the decision is in the affirmative, he has to declare that the suit is abated and then the bhatkar has to make a fresh application. If he so desires. Obviously, the application referred to herein is an application for eviction of mundkar. The application of sub-section (3) of section 13 and the result produced therefrom from the finding holding that the person to be evicted is a mundkar then in that event, the suit itself has to be declared as abated. At this juncture, we must take a judicial note of the fact that howsoever sound or wise individual may be, being an authority of the first instance, he or she is not infallible. We cannot countenance a view that a party's rights are extinguished on the sole decision of the Mamlatdar when he orders the suit to abate. In the same proceeding the person claiming to be a Mundkar, if the second view is accepted still has the right to challenge the decision in First Appeal before the Civil Court. It is not possible to contemplate a situation where the Legislature provides a remedy by way of appeal to one person but denies to another in the same proceeding. In such a situation Article 14 of the Constitution will intervene. Courts avoid to hold such a provision unconstitutional, if it can be read down or on Interpretation is possible which will remove it from the vice of Article 14. This can be avoided by accepting the first view. In our considered view, the acceptance of second view canvassed by the Counsel for the Respondents cannot be accepted considering the principles of interpretation and far reaching consequences on the right of the person f whose benefit the Act was enacted.

33. An appeal has been provided u/s 24 of the Mundkar Act. Section 24 contemplates that the findings recorded by the Collector or the Administrative Tribunal, as the case may be, shall be subject to revision, if any, u/s 25 of the Act and shall be final. If the second view, is accepted that the reference decided by the Mamlatdar is not subject to appeal under the Mundkar Act but under the Code of Civil Procedure, obviously, the element of finality will disappear. If at all, it be there, finality will be linked up with the outcome of appeal under the CPC and that may be from any of the hierarchical Courts as per the Code of Civil Procedure. Needless to mention that finality has to be provided under the provisions of the Act like the Mundkar Act, and cannot be left as to what forum was chosen. In order to have a harmonious construction of all the provisions including section 24 of the Act which brings about finality, the decision given by way of answer to a reference u/s 32 of the Act shall also be treated for finality

purposes.

33A. The consequences of accepting the second view also is full of imponderables. Let us take an illustration. On a reference u/s 32(1) the matter is heard and decided by the Mamlatdar. The Mamlatdar holds the Defendant to be a Mundkar whereupon he has to declare the suit as abated. The plaintiff who had come to the Court on the ground that the defendant was a trespasser then had preferred an appeal to the Collector in terms of the law as then understood, The appeal is allowed and the Order of the Mamlatdar is set aside. In subsequent proceedings this order also stands confirmed. Based on that, the Civil Court has proceeded and allowed the reliefs in the suit. At the stage of execution, the defendant contends that the decree is a nullity. The ground being that once the Mamlatdar had come to the conclusion that Defendant was a Mundkar, the suit stood abated and, therefore, proceedings in the hierarchical order under the Mundkar Act were without jurisdiction and similarly the decree passed by the Civil Court was also without jurisdiction. Such a possibility and other possibilities which we cannot visualise at the moment, are bound to arise.

Take another illustration u/s 29 of the Mundkar Act that there is a provision for maintaining a register of Mundkars. Any person aggrieved by the order of the Mamlatdar has an appeal under sub-section 29(f). The Order passed under sub-section (9) has a presumptive value. Any order which has a presumptive value can always be substituted according to law. What that contemplates would be that even in a case of maintaining the register a person aggrieved including an owner of the land would have preferred an appeal. However, the second view is accepted, insofar as the main proceedings are concerned the owner is totally deprived of any remedy. We cannot countenance such a situation.

34. We may also refer to one more" submission advanced by the Respondent wherein the contention was that the appeal u/s 24 is against the Original Order. Attempt was made to assign meaning to the words "Original Order" as to mean an order passed on an application filed under the provisions of the Mundkar Act itself. In the submission of the learned Counsel for the Respondents "Original Order" means an order other than the order made on the reference made by the Civil Court. Therefore, in his submission, the appeal provided u/s 24 shall not be available against the decision of the Mamlatdar, given by him while deciding the reference made by the Civil Court. We feel that the said argument is misplaced. The Legislature itself has made it clear while enacting section 24 as to which order would be "Original Order". Considering the section 24 itself any order other than interim Order shall be "Original Order". If we do not attach this meaning to the words "original order" then in that event, the consequences would be far reaching and will have the effect of depriving the right of appeal to a Mundkar against the decision of the Mamlatdar which in our opinion would frustrate the object of the Act.

35. Approaching the matter from different angle, our aforesaid view taken by us also gets support from the views expressed by the Land Reform Committee

appointed by Government of Goa, Daman and Diu wherein the Land Reforms Committee had submitted its report on 7th November, 1970 had specifically recommended a fresh legislation and it was mentioned therein in particular that the Mamlatdar should be the competent authority to determine that a person is or is not a mundkar. The Committee was of the view that the Mamlatdar should be given jurisdiction to settle, decide or deal with any question between an owner and mundkar and the respective decision should be made appealable before the Administrative Tribunal or any other authority which the Legislature may deem fit. It was also specifically mentioned therein that there should be an express bar to the jurisdiction of Civil Court in respect of such questions entrusted to the jurisdiction of the Mamlatdar.

The Committee also felt that it is required to be provided that if any suit instituted in a Civil Court, involves an issue for determination whether any party to the suit is or not a mundkar, the Civil Court shall stay the suit and refer the suit to the Mamlatdar for such determination. It was also recommended therein that the decision of the Mamlatdar on the issue should be appealable before the same Appellate Authority which is competent to hear the appeals regarding questions between an owner and the Mundkar. In this behalf, we can do no better than to reproduce the extract of the said recommendation.

"The Committee feels also that the Mamlatdar should be the competent authority to determine whether a person is or not a Mundkar. Under the present law, the Mamlatdar who is at present in place of the former administrator has got jurisdiction to deal with the cases of eviction of a Mundkar but, as regards other matters between an owner and Mundkar there is no provision to give the Mamlatdar the respective jurisdiction. Under the previous law dated 24-8-1901, all questions regarding the juridical relations between the owner and Mundkar were to be decided and caused to be executed by the respective administrator of concelho. The Committee is of the view that such a salutatory provision should be restored and the respective Mamlatdar should be given jurisdiction to settle, decide or deal with any question arising between an owner and a Mundkar, the respective decision being appealable before the Administrative Tribunal or any other authority which the Legislature may deem fit. There should be also an express bar to jurisdiction of Civil Court in respect of such questions entrusted to the jurisdiction to the Mamlatdar.

The Committee feels also that it is required to be provided that, If in any suit instituted in any Civil Court, involves an issue for determination whether any of the parties to the suit is or not a Mundkar, the Civil Court shall stay the suit and refer such issue to the concerned Mamlatdar for such determination. On receipt of such reference from the Civil Court, the Mamlatdar shall deal with and decide such issue" in accordance with the provision of such law in force and shall communicate its decision to the Civil Court, and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. The decision of the Mamlatdar on the issue should be appealable before the same

Appellate Authority which is competent to hear the appeals regarding the question between an owner and Mundkar."

It is needless to mention that it is permissible to refer to the report of the Committee which preceded the enactment of a Legislation. The Apex Court has also approved the assistance of external aids in the following words:--

"The basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction."

36. A reference was made to the decisions of the Supreme Court in the matter of Noor Mohd. Khan Chouse Khan Saudagar and Anr. v. Fakirappa Bharmappa Machenahalli and Ors. (supra) and Thomas Antony v. Varkey Varkey (supra) by the learned counsel for the respondent. In our opinion, none of the said judgments are applicable to the facts in the case in hand. In the case of Thomas Antony, the Supreme Court was dealing with Sub-section (6) of Section 125 which contains a provision that decision of the Land Tribunal on the question referred to it shall, for the purpose of appeal, be deemed to be part of the finding of the Civil Court. No such specific provision is to be found in the Mundkar Act. Even otherwise ratio decidendi can be applied if both Acts are in pan materia. Merely considering a section and then contending that they should be so read, will not be the correct view, even if they be cognate legislation. Under these circumstances, it is not possible to place reliance on the sated judgments to interpret the provisions of the Mundkar Act.

37. Thus, taking into account the various aspects of the matter from various angles and considering the provisions of the Act and the circumstances under which the said legislation was enacted and also taking into account the public interest which is implicit considering the nature of legislation and looking to the objects and reasons and the report on which the said legislation was based, we are of the view that the decision given by the authority on a reference u/s 32 of the Mundkar Act is appealable under the provisions of the Mundkar Act and accordingly, we answer the reference in terms of the first view taken by the learned Single Judge in the matter of Suresh Shirodkar v. Administrative Tribunal (supra) and direct the Registry to fix this petition for hearing before a Single Judge for its disposal in accordance with law.