

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.581 OF 2023

SITARAM SHIRVOIKAR,
Aged 51 years, Indian National
H.No.20/412/1,
Near Lia Maria Restaurant
Caranzalem- Tiswadi
Goa.

..... Petitioner

v/s.

1. SANDEEP HANUMANT SHIRVOIKAR
H. No.413,
Near Rosary Convent,
Maddin Wado
Caranzalem – Goa.

2. THE COMMISSIONER,
Corporation of City of Panaji,
Panaji- Goa.

3. THE SECRETARY
Urban Development
Secretariat, Porvorim, Goa.

....Respondents

Mr. Vibhav Amonkar, Advocate for the Petitioner.

Mr. Vithal Naik, Advocate for Respondent No.1

Mr. S. Karpe with Mr. Anand Shirodkar, Advocates for Respondent No.2.

Ms. Sulekha Kamat, Additional Government Advocate for Respondent No.3.

CORAM: BHARAT P. DESHPANDE, J

RESERVED ON: 15th February, 2024

PRONOUNCED ON: 22nd February, 2024.

JUDGMENT: (Per Bharat P. Deshpande,J)

1. Rule. Rule is made returnable forthwith.
2. Heard finally at the admission stage with consent.
3. Heard Mr. Vibhav Amonkar, learned Counsel for the petitioner, Mr. Vithal Naik, learned Counsel for respondent No.1, Mr. S. Karpe with Mr. Anand Shirodkar, learned Counsel for respondent No.2 and Ms. Sulekha Kamat, learned Additional Government Advocate for respondent No.3.
4. By way of present petition, the petitioner is challenging the impugned order dated 19/08/2021 passed respondent No.2 as well as the order in Municipal Appeal No.122 of 2021 decided on 02/05/2022 by respondent No.3.
5. The petitioner is claiming to be a Mundkar of a structure of 20 square meters existing in Chalta No.74 of PT sheet No.174 of Caranzalem Village. It is the contention of the petitioner that the said mundkarial house though initially was only 20 sq.mtrs was extended and the petitioner is entitled to purchase existing mundkarial structure along with the surrounding area which include Chalta No.74 of PT Sheet No.174 and Chalta No.77 of PT Sheet No.174. However, on a complaint filed by respondent No.1, a show cause notice was issued to the petitioner and thereafter vide judgment and order dated 19/08/2021, the respondent

No.2/Commissioner directed the petitioner to demolish the illegal extension of dwelling house existing in Chalta No.77 of PT Sheet No.174 identified in the Transgression Report within a period of 15 days. The petitioner filed an appeal against the said order bearing Municipal Appeal No.SEC/UD/122/2021 before the Secretary for Urban Development/ Appellate Authority vide order dated 02/05/2022 respondent No.3 dismissed the said appeal.

6. Mr. Amonkar would submit that first of all both the orders passed by the authorities are perverse, illegal and deserve to be quashed and set aside. He submits that the petitioner is a mundkar of the existing structure and therefore once he is declared as mundkar, he is entitled to purchase the mundkarial house as well as the surrounding area. He submits that the so-called extension is an old structure which is equipped with water and electricity connection provided by the authorities and occupied by the family of the petitioner. He would further submit that such extension was carried out on the basis of a license issued by the concerned authorities and therefore it cannot be termed as an illegal structure. He claimed that in the year 1978-79, the then Panjim Municipal Council issued a license for reconstruction of the house at Caranzalem and the total plinth area was shown as 60 sq.mtrs. He would further submit that even the plan was approved, the copy of which is placed on record.

7. Mr Amonkar would then submit that even if it is considered that the structure is allegedly illegal construction, the petitioner who is occupying it along with his family members be permitted to ask for regularization as no prejudice is going to cause to the respondents. He claimed that both the authorities failed to consider the license and the plan on the precise ground that such documents are not available with CCP at present. Finally, Mr. Amonkar would submit that in any case the petitioner who is entitled to purchase the mundkarial house and the land appurtenant to it, would be the owner of such house and the land and thereafter he will be able to seek regularization of such structure has claimed to be illegal by the authorities. He claimed that a drastic step of demolition of such illegal structures could be avoided as it would cause great hardship to the petitioner and his family members.

8. Mr. Vithal Naik appearing for respondent No.1 would submit that the petitioner who applied for registration of mundkar, clearly discloses that he is having a structure of 20sq.mtrs. that too in Chalta No.74 of PT Sheet No.174. The petitioner was registered as mundkar in the year 2003 of a structure 20 sq.mtrs. only. He would then submit that there was no structure existing in Chalta No.77 of PT Sheet No. 174 when the petitioner was registered as mundkar; however subsequently illegal structure was erected adjacent to the original mundkarial structure thereby expanding the area by around 74 sq. mtrs., apart from the original structure of 20 sq.mtrs.

9. Mr. Naik would then submit that first of all the contention of the petitioner that there was license issued by the Municipal Council, is doubtful as there are no proper details of such documents to show that it is authenticated document. He submits that the plan which the petitioner is now trying to rely upon was never produced before the Municipal authorities or before the appellate authority. Even otherwise such a plan cannot be relied upon as it does not show proper details including the survey number in which such structure is shown.

10. Mr. Naik would then submit that the petitioner by illegally extending his house and by encroaching in Chalta No.77 is now claiming such property for which he was not registered as a mundkar. The authorities considered all these aspects and accordingly rejected the contentions of the petitioner which require no interference.

11. Mr. Karpe appearing for respondent No.2 would submit that after the complaint was received, inspection was carried out and a transgression report was prepared which clearly depict that there was encroachment carried out by the petitioner. Earlier mundkarial area of 20 sq.mtrs. has been separately shown which existed in Chalta No.74 whereas remaining structures are existing in Chalta No.77 for which the petitioner was never considered as mundkar. He would submit that the license which the petitioner has relied upon nowhere show the stamp of the Municipal Council and other details. Even otherwise such a license

issued on 18/12/1978 is for reconstruction of a house in mud situated at Caranzalem. The license nowhere disclosed the Chalta Number or other details of the property except the name of the father of the petitioner.

12. Rival contentions fall for determination.

13. The petitioner claimed that he is the mundkar of the house in question and therefore the orders passed by the authorities for demolition of such a structure are illegal. The application for registration of mundkar has been filed by one Dhaku M. Gauns, who is claimed to be the father of the petitioner. This application was filed somewhere in the year 2002. The judgment and order passed by Mamlatdar, Tiswadi dated 28/02/2003 shows that the application was filed under Section 8A of the Mundkarial Act claiming that the applicant be declared as mundkar in respect of dwelling house bearing house No.16/308(old) and C-29/412(new) at Panaji Municipal Council situated in the property belonging to opponents surveyed under PT sheet No.174 of Chalta No.74 of village Caranzalem, Tiswadi Taluka.

14. The operative part of the said order shows as under :

“Shri Dhaku M. Gauns alias Dhaku Shirvaikar son of late Monu Gauns residing at house No.C-20/412 situated at Caranzalem in the property belonging to the opponents surveyed under P.T. Sheet No.174 of Chalta No.74 of Panaji City Survey is hereby declared as mundkar in respect ofr

his dwelling house. I also order that name of Shri Dhaku M. Gauns be entered in the Register of Mundkars maintained by this Court.”

15. The above order of declaration of mundkar together with the contents of such application would go to show that the house existed in PT Sheet No.174 of Chalta No.74. Admittedly, the house existing in Chalta No.74 of PT Sheet No.174 is only 20 Sq.Mtrs.

16. The contention of the petitioner that he was granted license in the year 1978-79 by Panjim Municipal Council, first of all nowhere shows in Chalta number or PT Sheet number of the property in question. It is no doubt true that the license is issued in the name of Dhaku M. Gauns on 18/12/1978. Schedule -II attached to the license is signed by Dhaku Gauns; it also nowhere shows the property details. The Total plinth area mentioned in the said schedule is 60 sq.mtrs. The estimate/actual cost of construction is shown as Rs.2,000/-. The permission was for reconstruction of the house in mud. Thus, it is clear that this license of 1978-79 is only with regard to reconstruction of houses in mud. However, the application for declaration of mundkar was filed somewhere in the year 2002. Except disclosing house No.C-29/412(new) existing in PT Sheet No.174 of Chalta No.74 of village Caranzalem, Tiswadi Taluka, no other details are disclosed including the area of the house.

17. When a question was put to Mr. Amonkar as to when such reconstruction was carried out and whether any Occupancy Certificate was issued by the Panaji Municipal Council, he was unable to answer positively. The plan which he has placed on record now is proposed reconstruction. The survey number or even the place where such reconstruction was scheduled, is not disclosed in the said plan. Even otherwise the said plan shows a structure having a single storey with a varanda, living room, bed room, kitchen and bathroom and toilet. The other details including the area covered by square meters is not disclosed. Though there is rubber stamp of Panaji Municipal Council, the date and the technical report number is blank. Thus it is difficult to accept the contention of the petitioner that such plan is of the suit house or the house which is ordered to be demolished. The question remains as to why the area of this house which was allegedly constructed in the year 1978 itself was not disclosed when an application for registration of mundkar was filed in the year 2002. The so called construction license placed at page no.45 of the petition cannot be considered as authenticate as it does not appear the same or even the property details.

18. Besides, the petitioner or his father was declared as a mundkar of a structure which existed in Chalta No.74 and not in other Chalta number. Thus, the right which has been created in favour of the father of the petitioner is only with regard to a structure which was existing in Chalta No.74 of PT Sheet No.174 and not in connection with any other structure.

19. The contention of the petitioner that he re-constructed the house, is again doubtful for the simple reason that Section 7 of the Mundkar Act though permit the mundkar to reconstruct, rebuild his dwelling house, it restrict such reconstruction only on the existing plinth area of the demolished house. Thus, if the father of the petitioner is declared as mundkar of a structure existing in Chalta No.74 of PT Sheet No.174, it has to be considered that such structure was having the plinth of only 20 sq.mtrs. This fact is further fortified by the transgression report prepared by the Municipal Council in the year 2013 along with the plan. The report reads thus:

REPORT

Case No: MA/IND/PUR/CARANZALEM/36/2003

With reference to above, I the undersigned visited the site in question i.e. Chalta No. 74 & 77 (Part) of P. T. Sheet No. 174 of Panaji City of Tiswadi Taluka on 13.02.2013 at 10:30a.m. Applicant Shri Dhaku M. Gauns alias Shirvoikar and the son of Opponent No. 2 remained present.

The demarcation of Mundkarial plot is done as per the option of 200 Sq. mts of the applicant and the area available on the site.

There are two small coconut trees existing within the demarcated plot area.

AREA CALCULATION

<i>Area of Mundkarial dwelling house under Chalta No. 74 of P. T. Sheet No. 174 of Panaji City</i>	<i>20.00 Sq. mts</i>
<i>Area of extended part of dwelling house under Chalta No. 77 (part) of P. T. Sheet No. 174 of Panaji City</i>	<i>43.00 Sq. mts</i>
<i>Area of hut under Chalta No. 77 (Part) of P.T. Sheet No. 174 of Panaji City:</i>	<i>30.50 Sq. mts</i>

<i>Area of surrounding land portion under Chalta No. 77 (part) of P. T. Sheet No. 174 of Panaji City</i>	<i>71.50 Sq. mts</i>
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<i>TOTAL PLOT AREA</i>	<i>165.00 Sq. mts</i>
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*sd/-
Office of the Mamlatdar
of Tiswadi Taluka*

20. The plan attached to this report also shows that the original area of the structure/mundkarial house existing in Chalta No.74 of PT Sheet No.174 is only 20 sq.mtrs. The extended part of such a dwelling house exists in Chalta No.77 of PT Sheet N.174 to the extent of 43 sq.mtrs. The area of the hut existing in Chalta No.74 is 30.50 sq.mtrs. Thus, it is clear from the record that the original house for which father of the petitioner was declared as mundkar is only 20 sq.mtrs in Chalta No.74 of PT Sheet 174. The father of the petitioner was not having any structure in Chalta No.77 of PT Sheet No.174 though both Chalta No.74 and 77 owned by respondent No.1. Once the father of the petitioner was declared as a mundkar of structure existing in Chalta No74, it has to be accepted that any structure or extension of the mundkarial house beyond 20 sq.mtr and that too without obtaining permission/license from the competent authorities is illegal.

21. The petitioner is not only trying to claim additional area of the extended house and hut existing in Chalta No.77 which is around 73.50 sq.mtrs existing in Chalta No.77, but would be claiming the right to purchase 5 meters around this extended structure. Admittedly, the father

of the petitioner was declared mundkar only on the original structure of 20 sq. mtrs which is still existing in Chalta No.74 of PT Sheet No.174 of Panaji City. At the most, the petitioner is entitled to purchase the original house of 20 sq mtrs and the area of 5 meters around it. However, by illegally constructing/expanding the mundkarial house, the petitioner cannot be permitted now to claim the original structure as well as extended structures as mundkarial house and then lodge his claim of purchase of land around it.

22. The claim of the petitioner with regard to reconstruction license and the plan cannot be considered at all since both these documents nowhere disclose the property details and specifically the Chalta numbers. Only because the petitioner or his father extended the mundkarial house illegally, they cannot be permitted to take any advantage of it. The original application for registration of mundkar was in respect of a structure only in Chalta No.74 of PT Sheet No. 174. Such a structure even as of today is only 20 sq.mtrs. The remaining extended part as viewed in the transgression report is neither part of the mundkarial structure nor having supportive legal documents.

23. Both the authorities considered these aspects and accordingly directed the petitioner to demolish the illegal structure.

24. The contention of Mr. Amonkar that the plan under license is not found in the Municipal records would not mean that such documents are forged or fabricated, cannot be looked into since it is observed that these documents nowhere disclose the Chalta number or other details of the properties and even if such permission was granted to the father of the petitioner, there was no record that such reconstruction was carried out and thereafter Occupancy Certificate was issued by the competent authorities.

25. Reliance to the decision of the Apex Court in the case of **Syed Muzaffar Ali and others v/s. Municipal Corporation of Delhi** [1995 Supp (4) SCC 426], is of no help to the petitioner. The observations of the Apex Court in paragraph 4 is in respect of the facts of the matter and cannot be considered as a dicta. First of all there is no discussion with regard to the provisions of the Municipal planning area. Even otherwise the facts remain that the petitioner has miserably failed to demonstrate before the concerned authorities that the extended area is having legal documents. The burden is certainly on the petitioner which he failed to discharge. Once it is found that the extended structures are not having license or other documents, such structures need to be demolished.

26. Having said so, the petition is having no substance. Accordingly, the petition stands dismissed.

27. Rule stands discharged.

BHARAT P. DESHPANDE, J

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BHOIR

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