Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.646 OF 2018

1 Smt. Kamala Narayan Pujari,
Aged 58, housewife, and her husband,

2 Shri Narayan Swami Pujari,
Aged 64, unemployed, both residents of
H.No.52/B Cuelim, Cansaulim Goa. … Petitioners

Versus

1 Shri Rajan Naguesh Lotlikar, aged 50,
Business and his wife,

2 Smt. Pratibha Rajan Lotlikar,
Aged 42, housewife,

3 Shri Ravindra Naguesh Lotlikar,
Aged 44, and his wife,

4 Smt. Sujata Ravindra Lotlikar,
Aged 43, housewife,

5 Smt. Vasanti Naguesh Lotlikar, aged 77,
Widow, all residing near Apsara Hotel,
Margao Goa and all represented by their
Power of Attorney Mr Wilson Isidorio Vaz,
Aged 41, married, resident of H.No.11,
Velsao, Cansaulim, Goa.

6 Shri Prito Petrik Antao,
Major in age,
Son of Francisco Xavier Antao,
Bachelor, Seaman, resident of New Vaddem,
Vasco da Gama. (Dismissed as per order
dated 01.08.2022 passed by this
Hon'ble Court.) …Respondents

Mr Vivek Rodrigues, Advocate for the Petitioners.
Mr Balkrishna Sardessai and Mr Vishwanath Gadnis, Advocates for Respondent Nos.1 to 4.

CORAM: M. S. SONAK, J

Reserved on : 25th JANUARY 2024
Pronounced on : 1st FEBRUARY 2024

JUDGMENT

1. Heard Mr Vivek Rodrigues, learned counsel for the Petitioners and Mr Balkrishna Sardessai with Mr V. Gadnis, learned counsel for Respondent Nos. 1 to 4.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. The challenge in this petition is to the following judgments and orders:

(a) Judgment and order dated 28.04.2014 made by the Joint Mamlatdar dismissing the Petitioners' claim of mundkarship under the provisions of Goa Mundkars (Protection from Eviction) Act, 1975 (Mundkar Act);

(b) Judgment and order dated 20.04.2016 passed by the Deputy Collector dismissing the Petitioners' appeal against Mamlatdar's judgment and order dated 28.04.2014;

(c) Judgment and order dated 27.10.2017 passed by the Administrative Tribunal dismissing the Petitioners' revision against the Deputy Collector's judgment and order dated 20.04.2016.

4. Thus, the challenge in this petition is to the concurrent judgments and orders rejecting the Petitioners' claim of mundkarship under the provisions of the Mundkar Act.

5. Respondent Nos. 1 to 5 are admittedly owners of the property surveyed under No.21/7 at Xendo, Cuelim or Barca Xendo, Cuelim or Xendo Cuelim, Cansaulim Goa. On 16.10.2004, the owners instituted Regular Civil Suit No.81/2004/B in the Court of Civil Judge Senior Division, Vasco da Gama, Goa, alleging that the Petitioners, under an agreement dated 03.10.1988 were permitted to temporarily reside in a shed in the said property, to take care of the plants and trees in the said property. Respondent No.6 has subsequently purchased a portion of the said property from the owners and therefore, was impleaded as a party in the proceedings before the Joint Mamlatdar.

6. In the suit, it was alleged that the agreement was terminated w.e.f. 01.12.2003. However, since the Petitioners refused to vacate the shed, the suit was filed *inter alia* seeking a declaration that the Petitioners were trespassers and that they be evicted from the suit shed.

7. The Petitioners claim that they were mundkars of the suit shed. Accordingly, an issue was cast, and the same was referred to the Mamlatdar for adjudication under the Mundkar Act. As noted above, the Joint Mamlatdar, by judgment and order dated 28.04.2014, dismissed the Petitioners' claim of mundkarship. The Petitioners' appeal before the Deputy Collector failed on 20.04.2016. Further, the revision to the Administrative Tribunal was dismissed on 27.10.2017. Hence, the present petition questioning the concurrent orders made by the Joint Mamlatdar, Deputy Collector and the Administrative Tribunal rejecting the Petitioners' claim of mundkarship in respect of the suit shed.

8. The record bears out that this petition was dismissed against Respondent No.6 on 01.08.2022 for failure to take steps to effect service. Besides, in the meantime, Regular Civil Suit No.81/2004/B was also decreed by the Civil Judge Senior Division, Vasco da Gama, vide judgment and decree dated 02.11.2018. The Petitioners instituted no appeal against the said decree.

9. Accordingly, on 10.02.2023, this Court took cognisance of the above two developments and made the following order: -

> *"P.C.*
>
> *1. The Petition is already dismissed against Respondent No.6 who, according to the learned Counsel for Respondents No.1 to 4, was the main party. Accordingly,*

Mr Gadnis, learned Counsel for Respondents No.1 to 4 submits that this Petition will not survive against the remaining Respondents. Mr Gadnish also states that the suit in which the mundkarship issue was raised, has already been decreed on 2/11/2018 and no appeal has been filed against the said decree by the Petitioners.

2. At the request of Mr Malik, the matter is adjourned, by way of last chance, to 2nd March 2023. No further adjournment will be granted since, this is a case where three authorities have rejected the Petitioners' plea of mundkarship. Further, the Petition also stands dismissed against Respondent No.6 who, according to Mr Gadnis, was the main party in this matter and as reported by Mr Gadnis, the suit is also decreed and no appeal against such decree has been filed by the Petitioners."

10. On 02.03.2023 however, the learned counsel for Respondent Nos. 1 to 4 stated that his statement made on 10.02.2023 was not accurate and was made on account of a bonafide miscommunication. He clarified that the portion of the larger property in respect of which the Petitioners claim relief was not alienated. However, the learned counsel maintained that his statement about the dismissal of the petition against the sixth Respondent and factum of the suit being decreed on 02.11.2018 was correct.

11. Accordingly, on 02.03.2023, this Court made the following order: -

"P.C. :

1. Mr. Gadnis, the learned Counsel for respondent nos.1 to 4, states that the statement made by him on 10.02.2023 is not accurate and the same was made on account of a bonafide miscommunication. He clarified that the portion of the larger property in respect of which the petitioner frames reliefs is not alienated. However, he maintains that his statement about dismissal of the petition against respondent no.6 or other statements about the suit being decreed on 02.11.2018 and no appeal being filed against the said decree, are correct.

2. Mr. Malik states that instructions would be obtained within two weeks. Accordingly, further opportunity is granted and the matter is adjourned to 30.03.2023."

12. Instead of going into the issue of whether this writ petition survives against Respondent Nos. 1 to 5 after the dismissal of the petition against Respondent No.6 or the effect of Regular Civil Suit No.81/2004/B being decreed on 02.11.2018, Mr Rodrigues learned counsel for the Petitioners and Mr B. Sardessai, learned counsel for Respondent Nos. 1 to 5 were heard on the merits. Upon so hearing the learned counsel for the parties, I am satisfied that no case is made out to interfere with the concurrent findings of fact recorded by the Joint Mamlatdar, Deputy Collector and Administrative Tribunal and this Petition deserves to be dismissed on merits. The reasons for this conclusion are discussed hereafter.

13. Mr Rodrigues first submitted that evidence of Petitioner No.2, who was examined as AW3, was not at all considered by the three authorities. He submits that non-consideration of such vital evidence vitiates findings recorded by the three authorities.

14. Mr Rodrigues then submitted that in the cross-examination of one of the landlords (Bhatkar), an admission was elicited that the Petitioners were staying in the suit shed in 1980 as opposed to Bhatkar's case about the Petitioners staying in the suit shed only with effect from 03.10.1988. Mr Rodrigues submits that this admission exposes the falsity of Bhatkar's case, and the three authorities did not consider this aspect.

15. Mr Rodrigues submitted that the three authorities did not consider the evidence of Pedro Colaco as AW4 who had clearly deposed that the Petitioners were staying in the suit shed from 1976. He submitted that even this crucial aspect was not adequately considered by the three authorities.

16. Mr Rodrigues submits that the Petitioners were illiterate persons, and they had deposed about the signing of blank papers at the instance of Bhatkar and for getting amenities to the suit shed. He submitted that even this aspect of evidence was not adequately considered by the three authorities.

17. Mr Rodrigues submitted that the findings of fact recorded by the three authorities suffer from perversity because the material evidence which excluded from consideration and inferences drawn are impermissible in law. He submitted that the conclusions drawn by the three authorities are contrary to the weight of evidence on record.

18. For all the above reasons, Mr Rodrigues submitted that the impugned judgments and orders made by three authorities warrant interference.

19. Mr Sardessai submitted that the three authorities have considered threadbare oral and documentary evidence on record. The findings of fact recorded by the three authorities are concurrently supported by such oral and documentary evidence. Therefore, based upon the reasoning and findings of fact concurrently recorded by the three authorities, Mr Sardessai urged the dismissal of this petition. He submitted that there was no perversity in the concurrent findings of fact, and this Court, in the exercise of its supervisory jurisdiction, should not be called upon to re-appreciate or re-evaluate the evidence on record.

20. The rival contentions now fall for determination.

21. The contentions raised by Mr Rodrigues are nothing but an invitation to re-appreciation or re-evaluation of oral and documentary evidence on record. This is not an exercise that the Court undertakes

under Article 227 of the Constitution of India or in the exercise of its supervisory jurisdiction under Article 227 of the Constitution.

22. In ***Shalini Shyam Shetty and another Vs Rajendra Shankar Patil***[1] **,** the Hon'ble Supreme Court has held that the High Court, in the exercise of its jurisdiction of superintendence**,** can interfere in order only to keep the tribunals and Courts subordinate to it, "*within the bounds of their authority*". The Court held that the High Court could interfere in the exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. The Court held that an improper and frequent exercise of power will be counterproductive and will divest this extraordinary power of its strength and vitality.

23. Similarly, in ***Puri Investments Vs Young Friends and Co. and others***[2], the Hon'ble Supreme Court has held that the High Court, in the exercise of its supervisory jurisdiction under Article 227 of the Constitution**,** cannot revisit the factual aspects of the dispute. Nor can High Court re-appreciate evidence to assess the quality thereof particularly when the same was already considered by the two fact finding fora. The Court held that finding on facts or questions of law

[1] (2010) 8 SCC 329

[2] 2022 SCC OnLine SC 283

could be interfered with in exercise of supervisory jurisdiction, only when any perversity was involved.

24. The Court held that three situations could be spelled out to regard finding on facts or questions of law to be perverse: -

(i) Erroneous on account of non-consideration of material evidence, or

(ii) Being conclusions which are contrary to the evidence, or

(iii) Based on inferences that are impermissible in law.

25. The Hon'ble Supreme Court noted that the High Court had correctly stated the principles of law on the scope of interference by the supervisory Court on decisions of the fact-finding forum. However, the Hon'ble Supreme Court held that the High Court overstepped the boundary and in its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, the High Court re-appreciated the evidence itself. The Hon'ble Supreme Court held that the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India had gone deep into the factual arena to disagree with the final fact-finding forum. The Hon'ble Supreme Court held that this was not permissible and therefore, set aside the High Court's order which was under appeal.

26. As noted above, the contentions raised by Mr Rodrigues on behalf of the Petitioners were nothing but an invitation to this Court to

re-appreciate or reevaluate the evidence on record even though no less than two fact-finding authorities and one revisional authority had recorded clear and cogent findings that the Petitioners had failed to establish that they were staying in the suit shed before 1976 or appointed date under the Mundkar Act.

27. In ***Cyril Sequeira Vs Victor Joao Baptista Sequeira Alias John Baptist Sequeira***[3], the coordinate Bench (Bharat P. Deshpande, J.) considered the issue whether a person who was inducted in the dwelling house after the appointed date and had a fixed habitation can claim mundkarship. After discussing the statement of object and reasons of the Mundkar Act and the provisions contained in the Mundkar Act, it was held that such a claim was misconceived and not maintainable. The Court held that the Mundkar Act neither create nor was intended to create mundkarial right in favour of a person who may have been inducted into the dwelling house after the appointed date i.e. 12.03.1976. After considering several precedents on the subject, the Court held that the status of a person of mundkar has to be determined as of 12.03.1976. This means that the persons who were inducted in the dwelling house after the appointed date cannot claim the status of mundkarship.

28. This is a case where the Petitioners signed an agreement dated 03.10.1988, in which they acknowledged their status of caretakers of

[3] (2023) 1 Goa CC 539

the coconut saplings in the property. The agreement acknowledges that it is the owners who were paying the second Petitioner ₹150/- per month to take care of the coconut saplings/trees by watering them regularly. The record also shows that this agreement was terminated effective from 01.12.2003. Because the Petitioners refused to vacate the suit shed, Regular Civil Suit No.81/2004/B was instituted seeking the Petitioners' eviction. The contention about illiteracy has been rejected by the three authorities, and with a good reason. This defence was taken as a matter of convenience. There were contradictions about why the Petitioners signed this agreement in the presence of a Notary Public.

29. To establish mundkarship, the Petitioners had to prove that they were, with the consent of the Bhatkar or the person acting or purporting to act on behalf of the Bhatkar, lawfully residing 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 a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer's residence or a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a caretaker of the said house or for purposes of maintaining it in habitable condition. The Petitioners had to establish that they were residing in the said shed on or before the appointed date i.e. 12.03.1976.

30. The agreement dated 03.10.1988 clearly sets out that the Petitioners started residing in the suit shed in 1988. The oral evidence of both the Petitioners is, to some extent, contradictory. Petitioner No.1 deposed that she started residing in the suit shed after her marriage, which was sometime in 1982 or thereabouts. Petitioner No.2 (AW3) vaguely deposed that Petitioner No.1 used to come to the suit shed sometime before 1980 but without even claiming that they started to reside in the suit shed before 12.03.1976.

31. The contention about Petitioner No. 2's evidence as (AW3) not being considered is quite misconceived. The authorities have considered AW3's evidence, though authorities may not have believed AW3 on the material aspects. The oral and documentary evidence on record establishes that the Petitioners entered the suit shed based upon an agreement dated 03.10.1988 and not before. Based upon some of the suggestions put up to OW1, it cannot be said that Respondent Nos. 1 to 5 admitted residence in or around 1980. However, even by some strained interpretation, if this was so still, the Petitioners cannot claim mundkarship without establishing their stay with fixed habitation prior to 12.03.1976.

32. The material on record includes not only a notarised agreement dated 03.10.1988 but also vouchers bearing the signature of the second Petitioner on the amount received by him for taking care of coconut saplings/trees from the owners of the property. Incidentally, Petitioner

No.2's signature on the said voucher was identified by his wife, i.e. Petitioner No.1. The Respondents, apart from leading evidence in this petition, also examined independent witnesses like Victorino Vaz. Even this independent witness fully supported the owners' case. All this is sufficient to reject the contention that the findings of fact recorded by three authorities are contrary to the weight of evidence on record.

33. All three authorities have considered oral and documentary evidence and recorded concurrent findings of fact. No case of perversity on the grounds of either exclusion of material evidence or inferences impermissible in law is made out. The findings of fact are well supported by oral and documentary evidence on record. The two fact-finding authorities have appreciated the oral and documentary evidence on record. The revisional authority also did not find any merit in the Petitioner's case. From the arguments made in this petition, it is apparent that not even an attempt was made to suggest that three authorities exceeded the bounds of their jurisdiction. The findings of fact, as noted above, suffer from no perversity whatsoever. There was not even an allegation that the three authorities misapplied the legal provisions. Thus, no case is made to interfere in the exercise of supervisory jurisdiction under Article 227 of the Constitution. The test in *Puri Investments (supra)* is far from fulfilled.

34. Mr Sardessai pointed out that the Regular Civil Suit No. 81/2004/B was decreed on 02.11.2018, and the Petitioners have not bothered to appeal the same.

35. For all the above reasons, this petition is liable to be dismissed and is hereby dismissed.

36. There shall be no order for costs.

M. S. SONAK, J