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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 602 OF 2014
WITH
CIVIL APPLICATION NO. 37 OF 2017
WITH
MISC. APPLICATION NO.636 OF 2023 (F)
IN
WRIT PETITION NO.602 OF 2014

1) Madhukar V. Khandeparkar
(Since Deceased) By Legal Representatives

- 1a) Smt. Manik Madhukar Khandeparkar;
- 1b) Mr. Ramdas Madhukar Khandeparkar;
- 1c) Mrs. Rashmi Ramdas Khandeparkar;
- 1d) Mr. Pandurang Madhukar Khandeparkar;
- 1e) Mr. Naresh Madhukar Khandeparkar;
- 1f) Babush Madhukar Khandeparkar;
- 1g) Mr. Nisiket Atmoo Satordekar;
- 1h) Mrs. Rajani Nasiket Satordekar;
- 1i) Mrs. Shanti Ulhas Naik;
- 1j) Mr. Ulhas Babuli Naik;
- 1k) Mrs. Vaman Vasant Kerkar;
- 1l) Mrs. Varsha Vaman Kerkar;

All of major age, Indian Nationals,
Residents of Odlem Bhat,
Taleigao, Ilhas-Goa.

2. Smt. Madhukar Khandeparkar,
of full age, housewife, Indian National,
Resident of Odlem Bhat, Taleigao,
Ilhas-Goa.

PETITIONERS

VERSUS

1) Smt.Cleta Lobo (Since Deceased)
Indian National, Landlady, Resident
of Mapusa, Bardez-Goa.

2) Shri Luis Francisco Lobo,
aged about 60 years, landlord, Indian

**National, Resident of Mapusa,
Bardez-Goa, presently residing at Kuwait.**

- 3) Shri Antonio J. B. Lobo,
aged about 59 years, landlord,
Indian National, resident of Mapusa,
Bardez, Goa.**
- 4) Shri Fernando Jose Lobo,
age about 56 years, Indian National,
landlord, resident of Mapusa,
Bardez-Goa, Presently residing at Kuwait.**
- 5) Shri Mario Francisco Lobo,
aged about 54 years, Indian National,
landlord, resident of Mapusa,
Bardez-Goa.**
- 6) Shri Antonio Orlando Lobo,
aged about 84 years, landlord, Indian
National, Advocate-cum-Notary,
Resident of Fr. Agnelo Road of
Panaji-Goa.**
- 7) Smt. Ligia Lobo, (Since Deceased)
age 74 years, Indian National,
Resident of Fr. Agnelo Road of
Panaji-Goa.**

(Registered Addresses).

...RESPONDENTS

Mr. S.D. Lotlikar, Senior Advocate with Mr.Terance Sequeira, Ms. S. Keny and Ms. P Valvoikar, Advocate for the Petitioners.

Mr. Vilas P Thali, Mr. Rasik Borkar and Mr.Rajdeep Prabhugaonkar, Advocate for the Respondents.

CORAM : PRAKASH D. NAIK , J.

**RESERVED ON : 2nd NOVEMBER 2023
PRONOUNCED ON : 25th APRIL 2024**

JUDGMENT:

1. The Petitioners have challenged the Judgment and Order dated 27th January 2014, passed by the Administrative Tribunal, Goa, at Panaji, in Mundkar Revision Application No. 33 of 1988 by which the Tribunal has allowed the Mundkar Revision Application filed by Respondent Nos.1 to 5 and set aside the judgment and order dated 3rd March 1983 passed by the Additional Collector, Panaji in Case No. MUND/AC/APL/87/83 and order dated 31st May 1983 passed by the Mamatdar of Tiswadi in Case No. MUND/JM(II)/7/78.

2. The Regular Civil Suit No.267 of 1975 was filed by Mr.Jose Leles Lobo and Respondents against Mr.Madhukar Khandeparkar and his wife Ms.Manik Khandeparkar in the Court of Civil Judge, Senior Division at Panaji, Goa on 15th December 1975, for eviction and possession of the suit house bearing No.525 situated at Village Talegao, Ilhas-Goa on 1st December 1975, (hereinafter referred to as “suit house”).

3. The case of the Plaintiffs in the suit is that, the suit house was constructed by one Oidem and Radhabai Khandeparkar and she was residing there as “licensee” without any consideration. She died in the month of March 1975, without leaving any descendants or any other heirs. After her death, the suit house remained closed. On or about 28th

July 1975, the Petitioners/defendants, who were residing in house No.560, suddenly started occupying and residing in the suit house. They were called upon to vacate the suit house by the Plaintiffs. They refused to vacate. The plaintiff No.3 filed criminal case against defendant No.1 with Panajim Police Station. The Petitioners had no right to occupy the suit house. Decree was sought from the Court to direct the defendants to vacate the suit house and give vacant possession thereof, to the Plaintiffs.

4. The defendants filed written statement and raised plea that, they are “Mundkars” in respect of the suit house within the meaning of expression, as defined in the Goa, Daman and Diu, (Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 and therefore, Civil Court has no jurisdiction to deal with the matter.

5. The Civil Court framed issues as to whether the defendants were staying in the suit house as “Mundkars” and transferred the file to Mamlatdar of Tiswadi Taluka to decide the issue.

6. The Mamlatdar of Tiswadi Taluka upon reference of the Mundkarship issue made by Civil Judge under Section 32 of the said Act, vide order dated 31st May 1983 declared Mr.Madhukar

Khandeparkar and Smt. Chandrabhaga M. Khandeparkar to be the Mundkars to the suit house No.52 situated in the property known as "Marte" in the village of Taleigaon in Tiswadi Taluka.

7. The Judgment and Order dated 31st March 1983 passed by the Mamlatdar was challenged by Respondents by preferring Appeal before the Additional Collector, North Goa. Vide Judgment and Order dated 3rd March 1988, the Appeal preferred by Respondents was dismissed by the Additional Collector and order dated 31st May 1983 passed by Mamlatdar of Tiswadi Taluka was maintained.

8. The Respondents challenged the aforesaid order dated 3rd May 1988 by preferring Mundkar Revision Application No.33 of 1988 before the Administrative Tribunal, Goa. The Administrative Tribunal vide judgment dated 11th October 1991 allowed the Revision Application and set aside the Judgment and Order dated 31st May 1983 passed by Mamlatdar of Tiswadi Taluka and order dated 3rd March 1988 passed by Additional Collector, North Goa. The issues referred by Civil Court as to whether the respondent therein is a mundkar in respect of suit house was answered in negative. The Mamlatdar was directed to return the file to the Civil Court with the same findings on the issue.

9. The Judgment and Order dated 11th October 1991 was challenged by the Petitioners before this Court by preferring Writ Petition No.55 of 1992. Petition was admitted by this Court by issuing Rule vide order dated 23rd January 1998. However, the proceedings in Regular Civil Suit No. 267 of 1975 were not stayed and it was directed that in the event Respondents succeed in obtaining decree, the house shall not be demolished until the petition is disposed off. Proceedings in RCS/267/1957 were continued.

10. The suit bearing RCS No.267 of 1975 was decreed by the trial Court vide Judgment and Order dated 24th September 1996 and Defendants, Madhukar Vishnu Khandeparkar and Smt. Khandeparkar were directed to vacate the suit house to hand over the possession to the Plaintiffs.

11. The Petitioners filed Regular Civil Appeal No.60 of 1996 before the Additional District Judge, Panaji challenging the decree dated 24th September 1996. Vide judgment and order dated 29th March 2003 passed by learned Additional District Judge Panaji, the appeal was dismissed.

12. Vide order dated 23rd January 1998 this Court allowed the Writ Petition No. 55 of 1992. Order of the Administrative Tribunal passed in

Revision Application was set aside and the matter sent back to it to decide the Revision Application afresh keeping in mind that it has to exercise its power within the scope of Section 115 of the Code of Civil Procedure. The Administrative Tribunal was directed to dispose of the matter within a period of one year.

13. Pursuant to order dated 23rd January 1998, the Administrative Tribunal proceeded to re-hear the parties in the Revision Application. Vide order dated 4th January 1999, the Administrative Tribunal allowed the Mundkar Revision Application No. 33 of 1988. The order dated 3rd March 1988 passed by Additional Collector and order dated 31st May 1983 passed by Mamlatdar of Tiswadi Taluka were set aside. It was also held that, the issue of Mundkarship which was referred by the Civil Court to the Mamlatdar is answered in the negative. The Mamlatdar of Tiswadi Taluka was directed to return the file to the Civil Court.

14. The petitioners challenged the order dated 4th January 1999 passed by Administrative Tribunal before this Court by preferring Writ Petition No. 282 of 1999. While dismissing the said petition it was observed that, vide judgment and order dated 14th November 2008 the petitioners have not made out any case for interference with impugned order. It was held that the finding recorded by Administrative Tribunal that petitioners have not proved that they are Mundkars in respect of

Suit house cannot be faulted. The findings recorded by Tribunal that the evidence led by petitioners that they were staying in suit house for a number of years is contrary to the pleadings in the written statement cannot be faulted. Parties are bound by their pleadings and no amount of evidence led by party which is *de hors* the pleadings, would entitle a party to prove the fact which is contrary to pleadings. Although, the petitioners have taken plea of Mundkarship by inheritance in Written statement, no evidence has been led by them as to how they have inherited Mundkarship from Radhabai. Late Madhukar was son of late Vishnu and not of Vithal or Babusso. Late Madhukar claimed Mundkarship by inheritance from Radhabai and her two brothers Vithal and Babusso. If the petitioners cannot be termed as Mundkars in terms of Section 2(p) of the Act, the petitioners cannot be termed as Mundkars being legal heirs of Radhabai. No evidence led nor any arguments were advanced before authorities below. There is no evidence on record that the petitioners were only legal heirs of Radhabai and her brothers.

15. Order dated 14th November 2008 passed by learned Single Judge of this Court was challenged by the petitioners by preferring Letters Patent Appeal No. 02 of 2009. Vide Judgment and Order dated 6th March 2013 the Division Bench of this Court set aside the order dated 14th November 2008 passed by learned Single Judge in Writ Petition

No.282 of 1999 and order dated 4th January 1999 passed by Administrative Tribunal in Mundkar Revision Application No.33 of 1988. The matter was remanded back to the Administrative Tribunal to decide the Mundkar Revision Application No.33 of 1988 afresh.

16. While passing order dated 6th March 2013 in Letters Patent Appeal No.02 of 2009 it was observed that, the order passed by the Tribunal was set aside by this Court and the matter was sent back to the Tribunal to decide the Revision Application afresh by keeping in mind that it has to exercise its power within the scope and ambit of Section 115 of the CPC. However, Tribunal has committed the same mistake and the order is re-production of the of the previous order. The evidence on record on the issue of Mundkarship was to be discussed to find out whether the finding of the Additional Collector and the Mamlatdar, to the effect that the defendants are Mundkars, was perverse. The Tribunal ought to have proceeded to find out whether there was variance between the evidence brought on record by the defendants and the pleadings.

17. On remand, the presiding officer of the Tribunal proceeded to re-hear the parties in Revision Application. Vide Judgment and Order dated 27th January 2014 the Revision Application was allowed and the order dated 3rd March 1988 and 31st May 1983 passed by the Mamlatdar of Tiswadi Taluka and the Additional Collector, North Goa, were set aside.

18. The learned Senior Advocate Mr.Lotlikar for the Petitioners submitted that, the Administrative Tribunal has committed an error in interfering with the concurrent findings of Mamlatdar of Tiswadi Taluka and Additional Collector, North Goa. The orders passed by said authorities were passed on appreciation of the entire evidence and the findings of facts that the Petitioners were residing in the suit house before appointed date and the case set up by the Respondents that petitioners had entered the suit house forcibly in the year 1975, was not correct. The Tribunal has over-stepped the limitation of its revisional jurisdiction and committed error of jurisdiction. The Tribunal did not adhere to the direction and observations contained in the judgment of this Court dated 23rd January 1998 passed in Writ Petition No.55 of 1992 and Judgment dated 6th March 2013 passed in Letters Patent Appeal No.02 of 2009. The Presiding Officer of the Administrative Tribunal has adopted the same approach as was adopted by his predecessors. The Tribunal has acted as First Appellate Court and indulged in the exercise of re-appreciation of evidence by setting aside the findings of facts rendered by the Mamlatdar and the Additional Collector which exercise was totally impermissible. The Tribunal did not confine itself to the limits of Section 115 of the CPC. and travelled beyond the parameters of Section 115 of the CPC. There was nothing perverse in the findings rendered by the Additional Collector and

Mamlatdar which warranted interference by the Tribunal. The evidence relied upon by the Petitioners in the proceedings before the Mamlatdar could not be disbelieved or discarded on the ground that it was in variance with the pleadings before the Civil Court. When the matter remitted to the Mamlatdar after framing of issue by the Civil Court, the Mamlatdar cannot enter into the legality or propriety or competence of Civil Court to frame the issue and has to proceed from the stage following the framing of issue and he could not have embarked into the inquiry as to whether there were sufficient pleadings to justify framing of the said issue. The only course available to Mamlatdar was to allow the parties to lead evidence on the issue and based on the evidence return the finding on the issue. The material for deciding the issue of “Mundkarship” was whether the petitioners were residing with fixed habitation in the suit house on or prior to the appointed date with the consent of the “Bhatkar”. The Mamlatdar and Additional Collector gave concurrent findings that the petitioners were residing in the suit house long before the coming into force of the Goa, Daman and Diu, Mundkars (Protection from Eviction) Act, 1975.

19. It is further submitted that, the question of pleadings does not arise at the stage of proceedings before the Mamlatdar. The parties led evidence based on the issue and not pleadings. The residence of the

petitioners in the suit house prior to appointed date was admitted fact. The case as regards fixed habitation is established. The Deputy Collector has considered all the aspects. The Respondents had put up suggestions saying that the petitioner No.1 was residing in the suit house till the age of 20 years. Suit was filed by the co-owners. One of the plaintiffs had filed complaint with the police. He did not step in the witness box. The Petitioner No.1 was given *tolluk* by the Respondents towards the end of 1975 after he was staying in the suit house. Giving of *tolluk* itself shows that the lawful consent was given to him.

20. Learned Advocate Mr.Lotlikar for Petitioners has relied upon the following decisions:-

- (i) Laxman Dhanu Laman and Ors. Vs. Maharashtra Revenue Tribunal and Ors.¹
- (ii) Smt. Maria Conceicao D'souza and Ors. Vs. Shri. Jaganath Savoikar and Ors.²
- (iii) Mrs.Ana Maria Augusta D'mello and Anr. Vs. Smt. Ladu Shetkar and Ors.³

21. Learned Advocate Mr.Thali for Respondents submitted that, there is no infirmity in the impugned Judgment and Order dated 27th January

¹ 2002 (2)ALL MR 834

² 1989 (2) GLT (72)

³ 1989 (2) GLT (64)

2014. The petitioners have not established that they are Mundkars. Suit filed by Respondents have been decreed in favour of Respondents. Appeal preferred by the petitioners challenging the decree has been dismissed. The order passed by Mamatdar and the Additional Collector were erroneous. The orders were contrary to evidence on record. The Tribunal has not over-stepped the powers or limitation under Section 115 of C.P.C. Order of the Tribunal was cryptic. Order of the Additional Collector was mechanical. The petitioners have invoked the jurisdiction and power of superintendence of this Court under Article 227 of the Constitution of India. The petitioners have not shown as to how and in what manner is constitutional rights are violated. No grounds are available in the present case for interference in the order passed by the Tribunal. The impugned order does not contain any error on the face of record. The Regular Civil Suit No.267 of 1975 in which the Mundkarship issue had arisen, was itself decreed by judgment and decree dated 24th September 1996 thereby directing the petitioners to vacate the suit house and hand over the vacant possession of the same. The petitioners had challenged the said decree by filing appeal before the District Court. The appeal has been dismissed vide order dated 29th March 2003. The petitioners did not challenge the said decree before the First Appeal Court and the same become final. The Respondents have filed application for execution of decree. The plea of Respondents

in the Civil Suit was that the Oidem or Radhabai was licensee. In written statement, the defendants partly admitted, the pleadings of the plaintiff and partly denied the same. According to the petitioners, Smt.Radhabai and her two brothers were Mundkars. In the pleading, the plaintiff had pleaded that Oidem died without descendants or heirs in March 1975. The claim of the defendants in written statement is that, Oidem/Radhabai was survived by nephew. The plaintiff has pleaded in the plaint that, after the death of the Oidem, the house remained closed. Whereas in the written statement, the defendants had stated that house was never closed. The contention of the petitioner No.1 would indicate that, he was unmarried till the age of 21 years and after marriage he stayed at different place. The plaintiff had pleaded that, defendants started occupying the house from 26th July 1997. Complaint was filed against them. The Defendants have not specifically pleaded that they are Mundkars by inheritance. Radhabai died in March 1975. Vitthal died after 1951. No record was produced as regards the death of Babusso. Petitioner No.1 had claimed to be nephew of Radhabai. On the date of deposition, the age of Madhukar Khandeparkar was 47 years which shows that he was born in the year 1931. According to him, he resided in the suit house since childhood upto the age of 20 years. Thereafter, he resided in the suit house till 1951. Then he was married and went to other house. From the pleadings it appears that, the

petitioners are independently claiming as Mundkars, wherein in the evidence it was stated that the father of Petitioner No.1 was staying in the house. It was built by his father. They brought Radhabai in that house after her husband died. The facts and evidence are contrary to pleadings. For proving the claim to be Mundkar, the person has to establish his lawful residence, fixed habitation and the consent of Bhatkar. The pleadings in the written statement of the Petitioners are to be read together. According to him, they were with Radhabai during her last days of illness. Till the age of 20 years, the Petitioner No.1 was with Radhabai and thereafter, he went to another place but allegedly never lost contact. Learned Mamlatdar has observed that, it is proved that the Petitioner No.1 was in the house with fixed habitation. These findings are erroneous. There has to be an intention of staying with fixed habitation. The petitioners did not plead about consent at all. There was no consent. Explanation to Section 2(p) does not help the petitioners. The petitioner No.1 did not stay for more than one year prior to appointed date. His claim was that, he was accompanying Radhabai in her last days. Fixed habitation is not pleaded. The aspects of consent is not considered at all by the trial Court as well as Appellate Court. The Petitioners had claimed that the father of petitioner No.1 had constructed the suit house and he brought Radhabai in the said house. There should be an intention to return when the person leaves. The

Judgment of Mamlatdar is cryptic and without any reason. The concurrent findings are not binding when they are perverse. When there is variance in pleadings and evidence, later should not be considered. Assuming that the *tolluk* was granted to the petitioner, it does not establish his Mundkarship. Hence, petition may be dismissed.

22. Mr. Thali has relied upon the followings decisions:-

- (i) Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil⁴;
- (ii) Shri Alberto Fernandes Vs. Shri Mathews Fernandes and Ors.⁵;
- (iii) Mitra of Archdiocese of Goa and Daman Vs. Mr. K. Vijayadharan⁶;
- (iv) Mrs. Baldy Palmira Domentina Graciase Miranda Vs. Antonio Fernandes and Ors.⁷
- (v) Henriqueta D'Souza Vs. Mangesh D. Mishal and Ors.⁸
- (vi) Hindoostan SPG. And WVG Mills Ltd Mumbai Vs. Hindustan Crown Mills Siddhivinayak Kamgar Karmachari Sngharsha Sanghatana and Ors.⁹
- (vii) Mohd. Yunus Vs. Mohd. Mustaquim and Ors.¹⁰
- (viii) Smt. Josepha Fernandes Vs. Aulio Jaoquim Vaz and Ors.¹¹

23. The Respondents filed suit for eviction being Suit No.267 of 1975 before the Court of Civil Judge, Senior Division at Panaji wherein, Shri.Madhukar V. Khandeparkar and his wife Manik Khandeparkar were

4 (2010) 8 SCC 329

5 1995 (2) Goa L.T. 166

6 1999 (2) Goa L.T. 97

7 1995 (2) Bom C.R. 166

8 2014 (2) Mh.L.J. 441

9 2007 (5) MhLJ 801

10 (1983) 4 SCC 566

11 1995 (1) Bom. C.R. 620

the defendants. In the suit it was pleaded that, there exists house in the village Panchayat No.525. The suit house was constructed by one Oidem Radhabai Khandeparkar with the permission of the family of the plaintiffs. She was licensee of the plaintiffs without any consideration. She was residing along in the suit house. She died in March 1975 without leaving any descendants or heirs. After the death of Oidem, the suit house remain closed. On 28th July 1975, the defendants were residing in their house bearing village panchayat No.560 situated at Vaddo started occupying the residing in the suit house. The plaintiffs asked defendants to vacate the suit house. They refused. Plaintiff No.3 lodged the criminal complaint against defendant No.1 in Panjim Police Station. Vide letter dated 4th September 1975, the Police informed the plaintiff No.3 that the dispute is of civil nature. The defendants have no right whatsoever to occupy the suit house. The plaintiffs are entitled to get decree of eviction of defendants. The written statement was filed by defendants Mr.Madhukar Khandeparkar and Ms.Manik Khandeparkar. In the written statement it was pleaded that, issue involved is whether or not the defendants are Mundkars in respect of the suit house and it is admitted by the plaintiffs that, the suit house is dwelling house within the meaning of the Goa, Daman and Diu, (Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971, issue will have to be decided by Mamlatdar. Civil Court has no jurisdiction to deal with

the matter. It was denied that Smt.Oidem or Radhabai Khandeparkar was merely the licensee of plaintiffs without any consideration. It was submitted that, Smt.Radhabai was Mundkar along with her two brothers viz. Vitthal and Babusso. Since the deceased was residing in the suit house which is dwelling house of Mundkar in respect of the property.

24. Learned Civil Judge framed the issue and sent the matter to the Court of Mamlatdar of Tiswadi Taluka to determine whether the defendants were Mundkars. The issue No.6 framed by the Civil Judge was whether the defendants proved that they are staying in the suit house as Mundkars. Mr.Madhukar Khandeparkar and Chandrabhaga Khandeparkar were examined before the Mamlatdar. The other witnesses Anant Kerkar, Uttam Kerkar, Raghu and Baskar Rane were also examined. The Petitioner No.1 Madhukar Khandeparkar deposed that, he has Mundearial house in the property of the opponent No.1 and the said house constructed by his father about 20 years back and he was residing in the said house since his childhood. He knows one Radhabai Khandeparkar. He was residing in the suit house. He was supported her. Radhabai is the sister of his father. All the repairs of the house were carried out by his wife Chandrabhaga Khandeparkar. She staying in the suit house since her marriage. Statement of other witnesses are similar. They stated that, they know the applicants therein as well as

opponents and the house where the applicants residing, was constructed by applicant's father and that the applicant with his family are residing in the suit house. They also stated that, they know Radhabai, who was residing with the applicant till her death and that the applicant was supporting her. The witness Bhaskar Rane stated that, he knows the applicants but he does not know the names of the opponents. However, he had seen two persons, who used to come to pluck the coconuts in the capacity of landlords. The applicant (petitioner No.1) resides along with his wife and children in the said house. The evidence of opponents also recorded. According to the opponents, the house was occupied by Oidem. After her death in the year 1975 nobody was staying in the house. Mr.Madhukar broke open the lock and entered the house. The Mamlatdar observed that, the contention of the opponents that, the said house belongs to Radhabai also known as Oidem, was admitted by the opponents to be their Mundkar. The opponents claimed that, the applicants had entered into the house forcibly since the applicants are residents in the said house prior to the appointed date as envisaged in the Mundakar Act, 1975 with fixed habitation in the dwelling house constructed by his father. The learned Mamlatdar proceeded to pass order that the applicants were Mundkars of house.

25. Order of Mamlatdar is cryptic. There is no analysis of evidence. There is no finding as to why the learned Mamlatdar has come to the

conclusion that the applicants therein were residing in the suit house prior to the appointed date as envisaged in the Mundakar Act, 1975 with fixed habitation in the dwelling house constructed by his father. The applicants did not produce any evidence. Their claim is based on deposition before the Mamlatdar which was contrary to the deposition of respondents. The Mamlatdar has mechanically accepted the version of applicants therein.

26. The order passed by Mamlatdar was challenged before the Additional Collector by preferring Appeal. The appeal was preferred by Respondents herein. The Appellate Court confirmed the order of Mamlatdar. The appellant had contended that, the respondents therein were asked to vacate the house which is admitted fact as it is reflected in written statement in the civil proceedings. Suit of eviction was filed on 1st December 1975. The Mundkar Act came into force on 12th March 1976. It is therefore, to be presumed for all the purposes that the respondents were trespassed. Since the notice to quit was issued to the Respondents and the civil suit was filed prior to the appointed date, the relationship, if any, that might have existed between the appellants and the respondents stood terminated. The reliance was placed on Section 2(p) of the Mundkar Act. On the appointed date, a person claiming to be Mundkar should have consent to reside in the dwelling house.

Explanation to Section 2(p) creates a deeming fiction by which the consent is deemed to have been granted, if any, person resides in dwelling house for a period exceeding one year prior to the appointed date and the Bhatkar has no intention in proceeding during the said period of one year to evict such person from the house in a competent Court on the ground that such person is a trespasser. The trial Court committed mistake in holding that Radhabai was sister of father of respondent. Trial Court has also committed an error in holding that the Respondent No.2 therein is residing in the suit house for a period of 12 years prior to the appointed date. Whereas on behalf respondent it was pleaded that, Mamlatdar has come to the conclusion that the house was constructed by the father of the Respondent No.1 therein that he was residing in the said house with fixed habitation for atleast 12 years. The respondents therein raised several other contentions. The Appellate Authority has observed that, the respondents had proved that, they are Mundkars of the suit dwelling house and the appellant has failed to prove that, the Respondents are trespasser. It was also observed that, the appellants had tried to establish the resident of respondents in house No. 560 by production of extracts from the electoral role. The document does not proved that the respondent was the resident having fixed habitation in the said house.

27. The suit filed by respondents proceeded. The decree has been passed in the suit. Suit is decided by decree dated 24th September 1996. The Judgment dated 24th September 1996 refers to the fact that the case of the defendant (petitioner) in the civil suit is that, they are residing in the suit house is the dwelling house within the meaning of Mundkar Act and the said issue has to be decided by the Mamlatdar. Smt.Radhabai was Mundkar along with her two brothers namely Vitthal and Babusso and they were residing in the suit house. Smt.Radhabai and her two brothers are survived by the nephew and his wife i.e. defendants, who are legal heirs of the estate left behind by Smt.Radhabai, Vitthal and Babusso and the suit house never remained closed after the death of Radhabai and her brothers. The Civil Court observed that, the plaintiffs (respondents) examined one of the plaintiff and produced documentary evidence. On the basis of evidence led in the civil proceedings, it was observed that it can be safely inferred that, Radhabai had no brother by name Vishnu. There are no pleading in the written statement that Vishnu was the brother of Radhabai. The defendants have not brought on record any documents like inventory proceedings, succession deed to show that the defendants are heirs of Radhabai. The defendants have not taken any pains to examine any independent witnesses to prove that the defendants were allegedly heirs of Radhabai. The issue No.3 was whether the plaintiff proved that, after the death of Radhabai and her

two brothers, the suit house never remained closed. The defendants allegedly occupied in the suit house on about 21st August 1975 while dealing with the said issue. The Civil Court had observed that in paragraph 7 of the written statement the defendants have stated that suit house never remained closed after the death of Radhabai and till illness of Radhabai and Babuso, the defendants were living with them to look after them and they were frequently visiting Radhabai to help her in her old age. The defendants have also admitted that, the plaintiff had asked them to vacate the suit house but they refused to do so. This being the admission on the part of defendants, the said issue stands proved by the plaintiff. The suit was decreed and the defendants were directed to vacate the suit house and hand over the possession of the same to plaintiffs. The Civil Court did not deal with the issue of Mundkar as no arguments were advanced on that issue and probably since the proceedings relating to the said issue pending before the Civil Court. Appeal preferred by defendant/respondent is dismissed by the Additional District Judge, Panaji vide Judgment and order dated 29th March 2003. On perusal of the said Judgment, it can be seen that the defendants had denied that Oidem alias Radhabai Khandeparkar is merely licensee and it was their claimed that Radhabai and her two brothers viz. Vithal and Babaso and their families were residing in the suit house as Mundkars. The defendant (Petitioner No.1) claimed to be

the nephew of said Radhabai and her two brothers. Defendant No.1 being the nephew and defendant No.2 being wife of defendant No.1, claimed to be the heirs to the estate of Radhabai, Vithal and Babuso. They denied that the suit house had remained closed after the death of Radhabai and her brothers. They also claimed that they were living with and looking after Radhabai and Babuso and defendant No.1 had spent his childhood in the suit house and stay with Radhabai and Babuso till he was about 20 years of age and only after his marriage, he started residing in neighbouring house. He had not lost contact with Radhabai and her brothers. He was frequently visiting them. The learned Additional District Judge, while adjudicating the said appeal has observed that, the trial Court has held that the plaintiffs had proved that Radhabai was living alone in the suit house and the defendants had failed to establish that they are the legal heirs of Radhabai. The trial Court also held that, in view of finding given by Mamlatdar, the defendants had not right to continue residing in the suit premises and the suit was decreed. The Appellate Court held that, the suit house was constructed by Oidem alias Radhabai with the permission of family of plaintiffs. It was further observed that, in paragraph 7 of the written statement, the defendants have averred that they have started residing separately after their marriage. The defendants had stated that, they are frequently visiting Radhabai to help her in her old age. On the basis of

of these assertions, the learned Judge has observed that the pleading clearly indicate that the defendants were residing in separate house. It was further observed that, the plaintiffs have proved that the defendants had started residing in the suit house only after the death of Oidem.

28. I am the conscious of the fact that, this Court vide order dated 23rd January 1998 passed in Writ Petition No. 55 of 1992 and order dated 6th March 2013 passed in Letters Patent Appeal No.02 of 2009 had set aside the order passed by Administrative Tribunal and remanded back to decide the Revision Application afresh on the ground that, the Tribunal has exceeded revisional powers while adjudicating the issue.

29. I have perused the record which includes the plaint, written statement, evidence and various orders passed by this Court as well as sub-ordinate Authorities.

30. Section 2(p) of the Goa, Daman and Diu, (Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 reads as follows:-

"Section 2(p)- "mundkar" means 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 the 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-

(i) a person paying rent to the bhatkar for the occupation of the house;

(ii) 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;

(iii) *a person employed in a mill, factory, mine, workshop or a commercial establishment, and is residing in the premises belonging to the owner or person in charge of such mill factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine workshop or commercial establishment; and*

(iv) *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 care-taker of the said house or for purposes of maintaining it in habitable condition.*

Explanation – A person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent Court of law, on the ground that such person was a trespasser or, having so initiated such proceedings does not succeed in obtaining a decree for the eviction of such person.”

31. The Mamlatdar and Additional Collector held that, the petitioners were the Mundkars of the suit house on the ground that, they had proved that they were residing in the suit house at least for 12 years prior to the appointed date. The Authorities also observed that, the suit house was constructed by the father of petitioner No.1 and Radhabai was residing with him and was also supported by him. It is also held that, the petitioners were residing in the house with fixed habitation. The Additional Collector also considered the fact that the petitioner No.1 given *tolluk* towards the end of 1975 which proves that he was Mundkar in respect of the suit house. The Tribunal vide order dated 27th January 2014 has set aside the orders passed by Mamlatdar and the Additional Collector.

32. The Tribunal while passing impugned order was conscious of the fact that the High Court by order dated 23rd January 1998 set aside the order dated 11th October 1991 passed by Administrative Tribunal and remanded the case to Administrative Tribunal with direction to decide the matter afresh. Vide Judgment and order dated 4th January 1999, the Administrative Tribunal allowed the Revision Application. Order was again challenged by petitioners before this Court. Vide order dated 6th March 2013, the High Court set aside the order of Tribunal and again remanded back to the Administrative Tribunal. The primary grievance of the petitioners is that the Tribunal has again repeated the same mistake which were committed an error. While adjudicating the Munkar Revision Application in spite of observation of this Court about the limitation of Revisional Authority while determining the issue relating to appreciation of evidence. The impugned order dated 27th January 2014 indicate that, both the sides were heard at length. The Tribunal noted that the High Court while deciding the Letters Patent Appeal had observed that the Tribunal in its order dated 11th October 1991 referred to statement of defendant No.1 that he was residing in the suit house along with his father, two uncles and aunt. His father brought Radhabai to the suit house after the death of her husband. The Court also observed that, the Tribunal had held that the case set up in evidence by the defendants was totally at variance and contrary to the one set up in

the pleadings and was not accepted. The trial Court also noted that the High Court observed that the said findings of the Administrative Tribunal was set aside by the High Court on 23rd January 1998 in Writ Petition No.55 of 1992 and the matter was sent back to the Administrative Tribunal to decide the Revision Application afresh by keeping in mind that it has to exercise its powers within the ambit of Section 115 of CPC. and that since the main pleadings of the defendants that they are Mundkars of the suit house. The question whether house was built by father of the defendant or by Radhabai was not of much relevance and in any case it was duly considered by Mamlatdar and Collector, which are fact finding of Courts. The High Court had also observed that, the Tribunal ought not to have gone into question in view of limitation on exercise of powers in Revision Application and after the remand the Tribunal ought not to have gone into the same exercise of powers. It was finding of variance between the evidence and pleadings. In the impugned order dated 27th January 2014, the Tribunal has noted that the variance which was considered by the Tribunal in the orders which were set aside was about the statement of defendant No.1 that, he was residing in the suit house along with his father etc. and they brought Radhabai to the suit house and therefore, the Tribunal would not consider the said variance. It is true that, the criticism of the High Court was not qua particular issue but it was observed that the

revisional jurisdiction to be exercised in consonance with Section 115 of CPC.. In the impugned order it is observed that, the written statement in the civil suit are to be considered as the case of defendants. The plaintiff raised issue about non specific nature of pleadings as regards their claim through the said Radhabai. The appointed date for the Mundkar Act is 12th March 1976. Radhabai had expired in March 1975. Therefore, the issue of whether Radhabai was Mundkar and whether the defendant can claim through her, cannot be arise as she had expired prior to appointed date. Therefore, the issue to be considered was whether defendants are Mundkars of the plaintiffs with respect to the suit dwelling house as on appointed date i.e. 12th March 1976. The explanation to Section 2(p) of the Mundkar Act, stipulates that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent Court of law. In the instant case, civil suit was filed against the defendants in December 1975 for their eviction. Consequently, the defendants cannot be deemed to be lawfully residing with the consent of bhatkar in their dwelling house. Mr. Lotlikar however, submits that Section 2(p) has to read as entirety and in the event, there is evidence of consent and since the

defendant No.1 was given *tolluk* which amount to consent for occupying premises. The requirement of Section 2(p) stands satisfied. Assuming that *tolluk* was given to the petitioner No.1 it does not mean that, the petitioners were committed to occupy the premises and to consider as Mundkar of the dwelling house.

33. In the impugned order dated 27th January 2014 it was further observed that, the respondents (petitioners) averred that the petitioner No.1 was unmarried till the age of 20 years and then he got married and left the suit house but he never lost contact with Radhabai and her two brothers. The defendants had pleaded that during the last illness of Radhabai and her brothers the defendant No.1 and family members were living with them and had to look after them. The said assertion has been disputed by the plaintiff. There is no pleading as regards consent of Bhatkar. A person claiming to be Mundkar has to be proved by consent of Bhatkar, lawful residence and fixed habitation. There is no pleading as regards fixed habitation as on the appointed date and consequently there is absence of pleading of lawful consent and fixed habitation. The Tribunal also observed that, the pleadings should be specific. In the context of the provisions of Mundkar Act the mandatory procedure prescribed under C.P.C. is not applicable. Tribunal rejected the submission of the petitioners that the evidence is led based on the

issue and not pleadings on the ground that the issue cannot arise unless material fact or law is affirmed and denied. In the present case, the consent with respect to the dwelling house was given to Smt.Oidem or Radhabai. The respondent No.2 (petitioner) themselves pleaded that, they came to reside with Radhabai during her last days. There is no pleading that after the death of Radhabai. The defendants continued to reside in the suit house with the consent of plaintiff. The specific pleading is only that they were living with Radhabai and Babuso during the last days. The backdrop of the fact that, admittedly, the defendant No.1 had left the suit house at the age of 20 years i.e. 1951. thus, there is no pleading as regards consent or fixed habitation. The Mamlatdar has neither considered the pleading nor evidence on record. The Mamlatdar loaded the applicants (plaintiffs) with burden to prove forcible breaking of the lock by the defendants. The Additional Collector has discarded the fact of cryptic order of Mamlatdar and failed to exercise the jurisdiction vested him. The Additional Collector imports the concept of proving beyond reasonable doubt when he holds that the witnesses of the defendants have proved beyond reasonable doubt the case of respondents therein. The Appellate Authority holds that the respondents therein have proved that the house was constructed by his father, who died when 20 years and the Respondents was residing in the same house since childhood along with his father, uncles and Radhabai.

The suit house was closed for three months. The Additional Collector held that the applicant has not proved that the Respondent has not supporting Radhabai and there is no evidence on record to show that the respondent was not staying in the suit house prior to the death of Radhabai. The Additional Collector without analysis and reasons held that documentary evidence which is electoral roll with respect to house No.560 does not prove that the respondent was residing having fixed habitation in house No.560. The Additional Collector propounds the theory of possibility or probability. The Additional Collector has failed to exercise the jurisdiction vested in him and material irregularity.

34. I do not find that the order of the Tribunal has exceeded the norms of jurisdiction or it has passed order by exceeding limits under Section 115 C.P.C.. Even otherwise on perusal of the record, I am of the considered opinion that the Mamlatdar and Additional Collector has committed competent error while passing impugned orders. The Authorities has drawn adverse inference which are unsupported by material. Both the authorities have ignored factual aspect and material produced by the plaintiff.

35. The findings recorded by the Mamlatdar and Additional Collector that the father of Madhukar Khandeparkar constructed the suit house

and Madhukar Khandeparkar and his wife were staying in the suit house with fixed habitation for a period of over 12 years prior to the appointed date, are contrary to the pleadings. The order of Mamlatdar and Additional Collector disclose that, the petitioner No.1 was declared Mundkar on the ground that the suit house was constructed by his father and he was residing in the suit house along with Petitioner No.2 for 12 years prior to the appointed date. The petitioners have taken plea of Mundkarship by inheritance in the written statement but no evidence has been led as to how they have inherited Mundkarship from Radhabai. In the suit it is held that, the plaintiff has proved that Radhabai was residing along with her two brothers in the suit house till her death in March 1975 without leaving any descendants or heirs. The Civil Court in the suit has observed that, the defendants apart from have not taken any pains to examine any independent witnesses to prove that the defendants were allegedly heirs of Radhabai. Thus, the petitioners cannot be declared Mundkar in terms of Section 2(p) or on the basis of the claim of the petitioners reflected in written statement that they are legal heirs of estate left behind by Smt.Radhabai, Vithal and Babuso as they have not led any evidence in support of the fact pleaded. There is no evidence on record that the petitioners are the only legal heirs of Radhabai and her two brothers.

36. Considering the aforesaid circumstances, I do not find any reason to interfere with the impugned order dated 27th January 2014 passed by Administrative Tribunal, Goa.

37. In the case of **Henriqueta D'Souza Vs. Mangesh D. Mishal and Ors.** (supra) the Division Bench of this Court held that, in order to qualify to be a Mundkar, the person has to lawfully reside with fixed habitation in a dwelling house. The object of the Goa, Daman and Diu, (Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 is to protect the person residing with the dwelling house from being evicted. Legal successor of a Mundkar, who is residing in the dwelling house at the time of the opening of inheritance along with Mundkar is entitled to inherit the right of a Mundkar to a dwelling house. *Sine qua non* for obtaining such right is that the person concerned must satisfy requirements of being a Mundkar by living in the dwelling house with the fixed habitation. Statements of objects and reasons can be used as an aid to ascertain the contest, background and the objective behind such statute when the Court particularly wants to ascertain the original intent of the enactment of such statute.

38. In the case of **Smt. Josepha Fernandes Vs. Aulio Joaquim Vaz and Others** (supra) it was observed that, legal presumption made available for those claiming Mundkarship rights in the explanation to

section 2(p) to show that a person had fully discharged the burden cast upon her/him to prove that he/she is living in the suit house as a Mundkar. However, if this explanation helps her only as far as the requirement of lawful occupation of the premises is concerned, by virtue of the presumption of deemed consent by the landlord which it creates, provided that the person as pleaded or proved that besides this lawful occupation, he/she was leaving in the suit premises as his/her fixed habitation. The person as to make such plea and lead evidence in this regard. It was required to be proved that the suit structure was only residential abode and there was no other house available to the person.

39. In the case of **Mrs.Baldy Palmira Domentina Graciase Miranda Vs. Antonio Fernandes and Ors.** (*supra*), this Court has held that, the requirement of law as far as the definition of 'mundkar' is concerned being the lawful occupation of the dwelling house by the person in the property of the bhatkar, with his consent, coupled with the fact that this occupation should be a permanent one.

40. In the case of **Mitra of Archdiocese of Goa and Daman Vs. Mr. K. Vijayadharan** (*supra*), this court has held that, in the absence of disclosure of all the ingredients of the definition of the term 'mundkar' it can be said that the party has raised a plea of mundkarship. In the fact

of that case it was observed that there was no plea nor it was disclosed in the original pleadings with the occupation of the Respondents in the suit house was of fixed habitation. The respondent therein had not disclosed the exact date of the year 1975 since when he had been occupying the suit house. The explanation clause clearly specifies that the occupation has to be for a period of one year prior to the appointed date. In order to avail benefit under the explanation clause, the person claiming to be mundkar should have been staying from the date prior to 12th March, 1975. In the absence of disclosure of all the ingredients of the definition of the term 'mundkar' it cannot be said that the party has raised a plea of mundkarship. Mere reference to the year 1975 by itself cannot disclose that the respondent had been residing to prior to 12th March, 1975.

41. In the case of **Shri Alberto Fernandes Vs. Shri Mathews Fernandes and Ors.** (*supra*), the court was dealing with the order passed by Administrative Tribunal, Goa in Mundkar Revision Application. One of the contention of the petitioner was that the Tribunal had not jurisdiction to interfere with the finding of fact recorded by the Collector and the Mamlatdar. Scope of revision before the Tribunal was very limited only to consider the question of exercise of jurisdiction as provided under Section 115 of C.P.C. and therefore, the

Tribunal could not be interfered with the findings of fact recorded by two authorities. It was also contended that the petitioner had proved that he has mundkar. This Court adjudicated on the issue whether the Tribunal has right to interfere with the impugned order of trial Court or Appellate Court. The court made reference to sections 25, 26 and 27 of the Mamlatdar Act. The court also dealt with the contention that in view of Section 27 of the Act, the power of revisional court is like power of revisional court under Section 115 of C.P.C. The counter argument was that the revisional court under the Act has ample powers in view of Section 26(1) of the Act and it is not limited or confirmed to the powers of revisional Court under Section 115 of the code of Civil Procedure. This Court then observed that, under Section 115 of C.P.C. the High Court can interfere if the lower court has exercised jurisdiction not vested in it by law or failed to exercise jurisdiction so vested or to have acted in exercise of its jurisdiction illegally or with material irregularity. If in a particular case, the lower Court gives perverse finding of fact or gives a finding of fact by ignoring material evidence, then, it amounts to exercise of jurisdiction with material irregularity and therefore, the revisional Court gets jurisdiction to interfere under Section 115 of the CPC. to correct the error. The court referred to the decisions of the Apex Court in the case of **Vinod Kumar Arora Vs. Smt. Surjit Kaur** reported in *AIR 1987 S.C. 2179* and another decision in the case of **Masjid Kacha**

Tank, Nohan Vs. Tuffail Mohammed reported in *AIR 1991 S.C. 455*, and it was observed that the High Court is empowered to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the courts below. It was further observed that, in the background of the law being on the point as discussed above, whether the Tribunal has acted within the four corners of the powers of revisional Court under Section 115 of C.P.C. or it has acted beyond such jurisdiction and therefore, order is liable to be interfered with. The Tribunal was conscious of the limitations where about its limited powers and considering this aspect the Tribunal has observed that there was jurisdictional errors on the point of law committed by both the Courts. This Court then observed that order passed by the Tribunal does not required inference.

42. In the present case, I find from the impugned order that the Tribunal was conscious of the limitation of its powers of revision. The Tribunal has interfered with the impugned order. Considering the error committed by both the authorities below, the impugned order cannot be said to be beyond the revisional jurisdiction of the Tribunal. Even analysing the material on record, I find that the orders of Mamlatdar and Collector were bad in law.

43. In the case of **Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil** (*supra*), it was observed that, an improper and a frequent exercise of this power under Article 227 will be counter-productive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised on equitable principle. This reserved and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

44. In the case of **Smt. Maria Conceicao D'souza and Ors. Vs. Shri. Jaganath Savoikar and Ors.** (*supra*), it is observed that, the revisional Court is not entitled to go to the extent of assessment of evidence, unless findings of courts below are not supported by evidence or proceed on the basis of presumptions and facts not on record.

45. In the case of **Mrs. Ana Maria Augusta D'mello and Anr. Vs. Smt. Ladu Shetkar and Ors.** (supra), it is observed that, section 2(p) of the Act defines Mundkar as being 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 dwelling house with or without obligation to render any services to the bhatkar. In the explanation, it is said that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed day and the bhatkar has not initiated any proceedings during the said period of one year to evict such person from the dwelling house through a competent court of law on the ground that such person was a trespasser or having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person. Therefore, it is clear from the explanation that if a person had been found residing in premises for a period exceeding one year prior to the appointed day, such occupation of the premises is to be deemed to be lawful with the consent of the bhatkar, if no proceedings for eviction on the ground that such person is a trespasser had been initiated within the said period of one year or having so initiated the bhatkar had not succeeded to get a decree for eviction. If the bhatkar has already initiated proceedings for eviction of a person occupying the premises belonging to him on the

ground that such person is a trespasser, there is no question of initiating afresh proceedings within the period of one year preceding the appointed day.

46. In the case of **Laxman Dhanu Laman and Ors. Vs. Maharashtra Revenue Tribunal and Ors.** (supra), it is observed that, the competent authority has to decide the issue in accordance with provisions of Act. In the said case it was observed that the Tribunal could not have been interfered with the order passed by Revenue Authority on the ground that the issue of pendency does not arise from the pleadings in the written statement of the petitioners.

47. In the light of observation made hereinabove, the factual matrix of this case, law relating to Mundkar and the evidence on record, I do not find any reason to set aside the order dated 27th January 2014 passed by Administrative Tribunal and the petition is required to be dismissed.

ORDER

- (i) Writ Petition No.602 of 2014 stands dismissed.
- (ii) In view of disposal of Writ Petition, Civil Application No.37 of 2017 and Misc. Application No.636 of 2023(F) do not survive and is accordingly disposed off.

[PRAKASH D. NAIK, J.]

48. At this stage, learned Advocate for the petitioners seeks eight weeks time to vacate the subject premises. The prayer is opposed by learned Advocate for respondents.

49. Considering the request of learned Advocate for the petitioners, eight weeks time is granted to vacate the premises.

[PRAKASH D. NAIK, J.]

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