

**EVOLUTION GROWTH
AND TODAY'S
SCENARIO OF
MUNDKAR SYSTEM OF
GOA**

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CHAPTER 1

HISTORY

There exists in the district of Goa and the Union territory of Goa, Daman and Diu a peculiar system, named mundkarism which is centuries old. In the context of this system, there are two parties locally known as Bhatkar and Mundkar. Mundkar is a peculiar institution in the State of Goa.

The origin of this term is lost in antiquity. In common parlance the word used is mundkar. It is said that the word Mundkar is from the language of the “Kols” and ‘mundaris” who were reportedly the original settlers of Goa. “Mund “refers to the vernacular word “ Mul” which means the root of the tree. It also means the Mund or the head of an individual.

The Mundkar is a Konkani term applied to a person who lives in a dwelling house constructed on the land of Bhatkar with the consent of the latter and with a view to tender some services such as watch and ward over the land, supply of his or his family service to the Bhatkar, when required by the latter, as agricultural labourers and even sometimes without any obligation to render any service but allowed to reside on the land as a gesture of goodwill, though with the characteristics of sub-servience which is inherent in any one who is allowed to occupy his land as a matter of grace.

The mundkar and bhatkar are interdependent. However, the bhatkar being the boss and the mundkar, sort of a servant, the relationship continued at the pleasure of the Bhatkar. In other words, the mundkar never enjoyed the security of the tenure and

could be kicked out of the property at the whim and fancy of the bhatkar. The mundkar was a kind of bonded labourer.

With the passage of time, the number of mundkars increased and after the establishment of the Portuguese Rule in Goa, the Mundkar system was further expanded. Since the Portuguese believed in the feudal aristocracy and slavery, the Bhatkars began to treat the Mundkars like slaves. The Bhatkars also compelled the Mundkars to render free service to them and those Mundkars who did not obey their orders were forced to quit their property. The plight of Mundkars remained unattended for a number of years by the society governed by Portuguese and it was only in the year 1901 when the conditions of Mundkars became deplorable and treatment given to them by the Bhatkars unbearable, large number of Mundkars approached the Government and the Portuguese framed some Rules regarding the Mundkars by Decree dated 24-8-1901 which was subsequently amplified and modified in Legislative Order No. 1952 dated 26-11-1959 (for short 'Diploma of 1952'). This law defined the term mundkar and prescribed his duties and rights. For the first time in history the mundkar could not now be evicted, whimsically by the landlord.

Only after liberation, the Mundkars received some attention from the Government of Goa and in the year 1966 a Committee was appointed to submit its report about the enactment of some law for ameliorating the conditions of Mundkars on a rational basis. The Committee found that as many as 41,000 families of Mundkars in Goa and that till that time no effective steps were taken to improve the lot of Mundkars. In

order to provide for the protection from eviction of Mundkars, agricultural labourers and village artisans from dwelling houses occupied by them and for matters connected therewith, the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 was enacted which came into force from 2nd October, 1971. Subsequently, the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (for short, 'Mundkars Protection Act, 1975) was enacted which came into force on 12-3-1976. The preamble of Mundkars Protection Act, 1975 shows that it was enacted to provide for better protection to Mundkars against eviction from their dwelling houses. The scope of the word mundkar was widened. Any person living in the property of another with the consent of the original owner of the property and having a fixed habitation now became a mundkar whether or not he rendered any services to the owner of the property. Persons paying rent for the occupation of the house, domestic servants or chowkidars, and industrial and commercial workers staying in the house provided by the owner of the property were excluded from this definition.

The Act also provides that a mundkar could purchase his dwelling house by paying the market value of the house. There is however no compulsion upon the mundkar to purchase his dwelling house. The mundkar can continue to occupy the dwelling house indefinitely without any obligation to the owner of the property. He has a right to repair and reconstruct the house, to take water connection, telephone connection, and electricity connection and obtain other facilities. An attempt was made to restrict the price of the dwelling house as existing on 12th March 1976 whenever a mundkar

decided to purchase it. This Amendment Act was challenged as ultra vires in the writ petition Vasudev Deshprabhu v/s State of Goa¹ and was struck down by the High Court. However this judgement was set aside by the Supreme Court. The mundkar therefore has to pay the value of the dwelling house as on the 12th March 1976 whenever he decides to purchase it from the landlord.

The Mundkar system, though centuries old, has undergone successive changes, not only because the successive of the originals mundkars have raised their standard of living through education, change in the occupation etc. and as such they don't render at present any service, though continuing to reside in the dwelling house, but also because, in some cases, the bhatkar started to give their consent, to reside on the land, without any duty, to render any service to them. It is taking in view this different categories of persons that the term "mundkar" has been defined in the present Act in such a way to cover all possible cases deserving equal protection.

It is estimated that about 40,000 mundkar families will be benefitted with the present legislation and their relationship with the concerned bhatkar will be streamlined.²

¹ 2004(2) Goa L.R 134

² <http://goalawcommission.gov.in/reports/report1.pdf>

CHAPTER 2

The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975

The object of the act is to provide for better protection to mundkars against eviction from their dwelling houses and for granting them a right to purchase the same at a reasonable price and to make certain other provision such as, to abolish the system of free service rendered by mundkars and turn it into remunerated one. Section 1 of the act says the Act may be called the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.

DEFINITIONS

1. “Bhatkar” means a person who owns the land on which the mundkar has a dwelling house.³

2. “Dwelling house” means the house in which mundkar resides with a fixed habitation⁴ and includes—

(a) the land on which the dwelling house is standing and the land around and appurtenant to such dwelling house, subject to a maximum limit of five meters, if the

³ Section 2(f)

⁴ Section 2(i)

land is⁵ [on the appointed date] within the jurisdiction of a village panchayat, and two metres, if it is not within such jurisdiction, from the outer walls of the dwelling house: Provided that, where the distance between the outer walls of the dwelling house of the mundkar and of the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house or houses of one or more mundkars, is less than double the aforesaid limit the land appurtenant to such dwelling house shall be half of the land lying between the outer walls of the dwelling house of such mundkar and the bhatkar or between the outer walls of the dwelling house of such mundkar and the outer walls of the dwelling house or houses of such other mundkar or mundkars, as the case may be; or

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

Provided that where [on the appointed date] the dwelling house is within the jurisdiction of a municipal council, the dwelling house shall include two hundred square metres of land including the land on which the dwelling house is standing:

Provided further that where there is on the appointed date in the property of the bhatkar, the house of the bhatkar or a dwelling house of one or more than one mundkar, and the total extent of the land is inadequate to provide each of them the extent indicated in this clause, the dwelling house shall include, in the absence of

⁵ Inserted by the Amendment Act 2 of 1996. *However Hon'ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India. Thereafter same provisions were made by the Amendment Act 11 of 2005 and come into force on the day from which earlier amendment was made in to force.*

any agreement, the land apportioned in equal shares, as far as practicable, by the Mamlatdar.

Explanation I.— The option contemplated under this clause shall be exercised by the Mundkar in the manner prescribed.

Explanation II.— For the purpose of this clause “house” means an entity in itself and shall not include a Dharmashala or such other building belonging to or in possession of a religious or charitable institution and is used for temporary accommodation and such other building as may be meant for letting out on hire and a portion of which has been let out.

In Tato Dargalkar V. Ramakant Thale.⁶

It was held that when the mundkar opts for purchase of an area of 5mts around his house, 300sqmt cannot be ordered to be demarcated but only 5 meters around the house.

(ii) the cattle shed, stable, pig-sty, workshop or such other structure connected with the business or profession of the mundkar; and

(iii) the customary easement, if any, which the residents of the dwelling house have been enjoying for access to a public road or a well or any other place.

⁶ A decision in Goa law times

“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 a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family⁷

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

⁷ Section 2(p)

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.

In Gabriel de sa V. Babusa Pednekar.⁸

The court distinguished between the caretaker of the house and a caretaker of the property and held that a person lawfully residing in a house with the consent of the owner but admittedly take care of the property in which the said house exists can be declared as mundkar, the act is a beneficial legislation which intends to exclude the care taker of the house.

In this case the person was lawfully residing in the house for 40 years with the consent of the bhatkar. He admits that he is a care taker of the property in which the house is situated the contention of the bhatkar was that the house is form part of the property and in that sense it follows that he was also the care taker of the house and couldn't claim mundkarship. The court rejected the contention and laid down above mentioned contentions.

⁸ 1998 (1) GLT.403

In Jose Respicio das Neves Fernandes V. Maria Fernandes.⁹

Respondents in this case raised a plea that they were mundkars in respect of the house and that the civil court has no jurisdiction. The property in this case had been partitioned and divided by the deed of partition into 2 plots, one to the petitioner and other to the respondent. There was a house in the plot allotted to the petitioner. It was agreed that the occupation of the house which was with the parties shall continue for a period of five years and after five years the house shall be demolished and the materials shared by both the parties. Respondent didn't demolish the house and in the suit filed by the petitioner they took the defense of mundkarship.

It was held that the original property was jointly owned by both the parties and the house was also occupied by their respective families. The court held no person can claim to be the owner of property and at the same time claims to be a mundkar also. The trial court has to decide in such circumstances whether the issue of mundkarship is necessary.

⁹ 2002 (2) GLT. 550

CHAPTER 3

RIGHTS AND LIABILITIES

Chapter II of the Goa Daman and Diu mundkar (protection from eviction) act set's out the rights and liabilities of the mundkar. Following are the rights and liabilities of a mundkar.

1. Rights of a mundkar to be heritable.:- Sec 3.
2. Bar to eviction from a dwelling house and restoration of possession:- Sec 4.
3. Relief in certain cases of threatened wrongful dispossession:- Sec 5.
4. Right of mundkar to enjoy supply of power or water or any customary easement, etc:- Sec 6.
5. Mundkar to have right to repair, maintain and improve his dwelling house.:- Sec 7.
6. Mundkar to have right to use the dwelling house for business, etc- Sec 8.
7. Transfer of property by bhatkar.:- Sec 9.
8. Lease holder of a mundkar how to be dealt.:- Sec 10.
9. Free services by mundkars to be abolished.:- Sec 11.
10. Right of mundkar to purchase the dwelling house.: Sec 15.
11. Mundkar's right to alienate.:- Sec 17.

1.Rights of a mundkar to be heritable.—

The rights of a mundkar in his dwelling house shall be heritable and shall not be transferable. Mundkarial rights are heritable but they cannot be transferred.

In Joaquim D'Costa V. Anthony D' souza.¹⁰

The legal heir in this case were residing in Bombay and the lady who is a mundkar had her name registered in the voters list in Bombay. She was a permanent resident of a mundkarial house.

The court held that the right which was already vested in mundkar was heritable. Legal heirs of a mundkar without a fixed habitation in the mundkarial house are entitled to be registered as a mundkar.

2.Bar to eviction from a dwelling house and restoration of possession.—

(1)Notwithstanding anything to the contrary provided in any custom, usage, contract, decree or order of any court or tribunal or any law, no mundkar shall be evicted from his dwelling house except in accordance with the provisions of this Act.

¹⁰ 2002 (2) GLT. 521.

(2) Any mundkar, who was in occupation of a dwelling house on the 4th February, 1971 and was evicted from such dwelling house thereafter but before the appointed date, shall be entitled to the restoration of such dwelling house, if—

(i) he makes an application to the Mamlatdar, in the prescribed form, within one year from the appointed date, for the restoration of such dwelling house; and

(ii) the bhatkar is not able to prove that—

(a) the mundkar was evicted from the dwelling house in execution of an order of the Mamlatdar or the Administrative Tribunal or a Civil Court; or

(b) the mundkar was paid by the bhatkar any consideration in cash or kind or given an alternative site for the construction of a dwelling house or an alternative dwelling house; or

(c) the dwelling house has been destroyed, dismantled or removed.

Explanation.— For the purposes of sub-clause (c) if it is proved to the satisfaction of the Mamlatdar that the dwelling house was destroyed, dismantled or removed in order to defeat the purposes of this Act, the bhatkar shall be liable to provide a similar dwelling house at his own cost in the same property and if not possible in his own nearest property.

(3) Any mundkar, who is in possession of a dwelling house on the appointed date but is evicted thereafter in contravention of the provisions of this Act, may, within one year from the date of his eviction, apply to the Mamlatdar in the prescribed form, for the restoration of his dwelling house.

(4) On receipt of an application under sub-section (2) or sub-section

(3), the Mamlatdar shall, after holding such inquiry as may be prescribed, decide whether the applicant is entitled to the restoration of the dwelling house and may pass such order thereon as he deems fit. The Mamlatdar may also order that the bhatkar, who unlawfully evicted the mundkar, shall pay such compensation to the mundkar as is payable by the bhatkar to him under sub-section (7).

(5) No order under sub-section (4) shall be passed by the Mamlatdar, unless the person against whom the order is proposed to be passed has been given a reasonable opportunity of being heard in the matter.

(6) Notwithstanding anything contained in the foregoing provisions, where the Collector is satisfied that a mundkar has, for reasons beyond his control, omitted to take steps for restoration of possession within the time limit specified in sub-section (2) or sub-section (3), as the case may be, he may, on his own motion or on the application made by the mundkar, within one month from the date the omission is

known to him, condone the delay and direct the Mamlatdar to pursue the matter for the restoration of the dwelling house and he may after holding such inquiry as may be prescribed, pass such order thereon as he deems fit:

Provided that, no action shall be taken by the Collector under this sub-section, after a period of one year from the time limit specified in sub-section (2) or sub-section (3), as the case may be.

(7) Any person, who evicts or causes the eviction of a mundkar, in contravention of sub-section (1), or, in any manner, disturbs or interferes with the customary easement or other right which a mundkar is entitled to enjoy under section 6, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both and shall be liable also to pay compensation to the mundkar for the damages caused to him by his eviction, or the disturbance or interference with the customary easement or other rights which he is entitled to enjoy.

(8) Any person, who attempts to contravene or abets the contravention of the provisions of sub-section (1), of section 6, shall be deemed to have contravened the said provisions.

(9) Any person who does not restore the possession to the mundkar in pursuance of an order made under sub-section (4) or sub-section (6), shall, in addition to any other

penalty to which he may be liable, be summarily removed by the Mamlatdar, who thereupon, shall restore the possession to the mundkar.

3.Relief in certain cases of threatened wrongful dispossession.—

(1) Any mundkar in possession of his dwelling house, who apprehends that he may be dispossessed of the dwelling house by or on behalf of the bhatkar contrary to the provisions of this Act, may, in the prescribed manner, apply to the Mamlatdar for an order safeguarding his right to possession.

(2) On receipt of such application, if the Mamlatdar after holding such inquiry as may be prescribed, is satisfied that the applicant is entitled to continue in possession, he may, by order, direct the bhatkar or the person acting or purporting to act on behalf of the bhatkar to refrain from disturbing the possession of the mundkar otherwise than in accordance with the law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar, by affidavit or otherwise, that the bhatkar or the person acting or purporting to act on behalf of the bhatkar is threatening the mundkar with the aim of evicting him from his dwelling house, the Mamlatdar may, by order, grant a temporary injunction restraining the bhatkar or such person from evicting mundkar or threatening him or otherwise causing him injury, until the final disposal of the pending proceeding or until further orders.

(4) The Mamlatdar shall in all cases, except where it appears that the object of granting injunction would be defeated by the delay, before granting an injunction direct that notice of the application be given to the opposite party.

4.Right of mundkar to enjoy supply of power or water or any customary easement, etc.—

(1) (a) Notwithstanding anything contained in any law or in any contract, or in any judgement, decree or order of any court or tribunal, no bhatkar, either by himself or through any person acting or purporting to act on his behalf shall, without just or sufficient cause, cut off, withhold, or interfere with any supply of electricity or water or any customary easement enjoyed by the mundkar, immediately before the appointed date in respect of his dwelling house.

(b) If any such supply or easement is interrupted by any act or omission of the bhatkar, the mundkar, within six months from the date on which the cause of action arose, may make an application to the Mamlatdar for an order directing the restoration of such supply or customary easement and the Mamlatdar may, after holding such inquiry as may be prescribed, pass such order as he considers fit.

(2) When any mundkar apprehends that the bhatkar may act in contravention of the provisions of sub-section (1), he may apply to the Mamlatdar for the grant of an injunction restraining the bhatkar from so acting and, on such application, the

Mamlatdar if he is satisfied that it is so required in the interests of justice, grant an injunction or pass such order as he deems fit.

(3) If in any proceeding under this section it is proved to the satisfaction of the Mamlatdar by an affidavit or otherwise that an order of temporary injunction is required to be passed to prevent the contravention of the provisions of sub-section (1) the Mamlatdar may pass such order in the interest of justice.

(4) The Mamlatdar shall in all cases, except where it appears that the object of granting an injunction would be defeated by the delay, before granting an injunction direct notice of the application be given to the opposite party.

(5) In the enjoyment of any right of supply or customary easement, the mundkar shall not disturb the bhatkar in the enjoyment of the adjoining portion of his property around the mundkar's dwelling house. If the mundkar so disturbs the bhatkar, he shall be liable to pay to the bhatkar the compensation for the loss caused thereby as may be fixed by the Mamlatdar in the prescribed manner.

[Provided that the Mundkar may, subject to such conditions as may be prescribed, obtain electricity supply or supply of pipe water from any public source or any other facility under any scheme formulated by the Government though providing of such supply or facility involves use of the adjoining portion: Provided further that for any damage caused to such property by reason of such use, the bhatkar or such other person shall be entitled to such compensation as may be fixed by the Mamlatdar in the prescribed manner.]

5.Mundkar to have right to repair, maintain and improve his dwelling house.—

A mundkar shall have a right to maintain, repair, improve or reconstruct his dwelling house without, in any way, increasing the plinth area thereof. He shall have, also, the right to have electricity supply and supply of pipe water, on the same terms and conditions as are applicable to any owner of a house.

[**Explanation:—** The term “improve” shall include construction within the dwelling house like sump tank or overhead tank, water cistern, bathroom, toilet, septic tank, soak pit and the like subject to obtaining necessary permission from the concerned authorities.]

[7A. Mundkar to have right to reconstruct, rebuild his dwelling house.—

A Mundkar shall have a right to reconstruct, rebuild his dwelling house using the same existing plinth area of his old demolished house, without producing the N.O.C. from the Bhatkar.]

In Stefen Dsouza V. Mareken Fernandes¹¹

¹¹ 1998 (1) GLT 75

It was held that once the mundkarial rights are accepted no injunction will lie restrain a mundkar from reconstructing or repairing the house were the area is not exceeded.

In Rachel Rato Alias Rachael d'souza V. Inacina Carvalho.¹²

It was held that right to purchase the area around the dwelling house does not create any right in favour of the mundkar to cause extension or encroachment or construction in the same area until and unless a certificate of transfer of ownership is issued by the collector on payment of price.

In Keshav Gayde V. Ramakant Khandeparker¹³

It was held that the mundkar is entitled to remain where the dwelling house is within the plinch area he is entitled to construct/reconstruct the house. He cannot be forced to shift from the existing mundkarial house to another site.

6.Mundkar to have right to use the dwelling house for business, etc.—

A mundkar shall use his dwelling house primarily for his residence. However he shall have the right to utilise a portion of his dwelling house without shifting his residence, for any trade or vocation or business as may be permissible under the laws in force from time to time.

¹² 1998 (1) GLT 212

¹³ 1992 (2) GLT 48

[8A. Declaration of right.— (1) If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

(2) On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he considers fit.]¹⁴

7. Transfer of property by bhatkar.— If the bhatkar sells, exchanges, mortgages, or leases, or in any manner transfers, his property where the dwelling house is situated, the right of the mundkar in the dwelling house shall not, in any way, be affected by such transfer.

8. Lease holder of a mundkar how to be dealt.— Where a person not being a member of the family of a mundkar has been in occupation of a part of the dwelling house on the appointed date, he shall be deemed to be a tenant of the mundkar. In such cases, the provisions of the law governing the relations of landlord and tenant of residential premises, for the time being in force in the area in which the dwelling house is situated, shall apply to such tenant.

9. Free services by mundkars to be abolished.— Notwithstanding anything existing in any custom, usage, contract, decree or order of any court or tribunal or in any law in force, all mundkars shall, as from the appointed date, be free to render or not to render to the bhatkar any service as agricultural labourer, domestic servant,

¹⁴ Inserted by the Amendment Act 18 of 1978.

watch and ward or in any other capacity and, for every service so rendered the mundkar shall be entitled to be paid by the bhatkar such remuneration as may be mutually agreed upon by them.

10.Right of mundkar to purchase the dwelling house¹⁵.—

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, a mundkar shall, subject to the provisions of this Act have the right to purchase the dwelling house occupied by him.

(2) The maximum extent of land around or appurtenant to the dwelling house which a mundkar is entitled to purchase under this section shall be as indicated under sub-clause (i) of clause (i) of section 2.

(3) The purchase price payable by the mundkar for his dwelling house shall be the market value of the dwelling house purchased ¹⁶[as prevailing on the appointed date] and the improvement thereon, other than the improvement, if any, belonging to the mundkar: Provided that, when the house, hut or any structure with its materials belong, wholly or partly, to the mundkar, the corresponding value shall be deducted

¹⁵ Section 15

¹⁶ Inserted by the Amendment Act 6 of 1995. However Hon'ble High Court of Bombay at Goa in the Writ Petition No. 86 of 1997 by the Judgement dated 16th December, 2003 hold that the Act are ultravires Article 14 read with Article 13 (2) of the Constitution of India. Thereafter same provisions were made by the Amendment Act 11 of 2005 and came into force on the day from which earlier amendment was *made* in to force.

from the market value and, in such case, the purchase price shall be the balance left after deducting the corresponding value from the market value:

¹⁷[Provided further that—

(a) when a mundkar has been permitted to occupy the dwelling house by the bhatkar for the purpose of cultivation of, or for the purpose of watching and protecting, an agricultural land of the bhatkar and is actually rendering such service and continues to render such service with or without remuneration; or

(b) where a mundkar is an agricultural labourer or a village artisan; or

(c) where the annual income of a mundkar, being a person belonging to Scheduled Castes or the Scheduled Tribes and not falling under clause (a) or clause (b), from all sources does not exceed rupees three thousand and six hundred; then, the purchase price payable by such mundkar and a member of his family shall be twenty percent of the market value payable.

Explanation.— For the purposes of this sub-section—

(a) “Scheduled Castes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 of the Constitution to be Scheduled Castes in relation to the Union territory of Goa, Daman and Diu;

¹⁷ Substituted by the Amendment Act 8 of 1979

(b) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 of the Constitution to be Scheduled Tribes in relation to the Union territory of Goa, Daman and Diu.]

(4) The purchase price payable under sub-section (3) in respect of the dwelling house shall be paid in not more than ten equal annual instalments: Provided that, it shall be open to the mundkar to pay the entire purchase price in lumpsum, in which case, the amount payable shall be only ninety per cent of the purchase price.

(5) The market value of the dwelling house, shall be decided by the Mamlatdar, after making such inquiry as he deems necessary and in the prescribed manner.

Procedure for purchase under section 15.—

(1) A mundkar willing to purchase the dwelling house occupied by him shall apply to the Mamlatdar within whose jurisdiction the dwelling house is situated.

(2) An application under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) The Mamlatdar shall, after giving notice to the bhatkar of the land in which the dwelling house is situated and any other person interested in the land and after such inquiry as may be prescribed, pass such orders on the application as he deems fit

(4) An order under sub-section (3), allowing an application shall specify—

(i) the extent and measurement of land corresponding to the dwelling house which the mundkar is entitled to purchase;

(ii) the purchase price payable by the mundkar and the mode of payment;

(iii) the amount due to the bhatkar or other persons interested in the land;

(iv) the value of encumbrances subsisting or claims for maintenance or alimony charged on the land allowed to be purchased by the mundkar;

(v) the amount payable to the holder of the encumbrance or the person entitled to the maintenance or alimony and the order of priority in which amount is payable;

(vi) such other particulars as may be prescribed.

(5) Where the right, title and interest of the person in possession of the land in which the dwelling house is situated or any other person interested in the land form part of the security for any encumbrance or charge for maintenance or alimony the Mamlatdar shall, for the purpose of determining the value of the encumbrance or charge for the maintenance or alimony relating to the portion in respect of which purchase is allowed, apportion the entire encumbrance or charge for the maintenance

or alimony between the land in which the dwelling house is situated and the portion allowed to be purchased, in proportion to the value of the two portions.

(6) The purchase price payable by the mundkar shall be distributed according to the following provisions:—

(a) Where the right, title and interest of the bhatkar is subject to any encumbrance or charge for maintenance or alimony, the purchase price shall be first paid to such person interested in such encumbrance or charge for maintenance or alimony, in the order of priority fixed under clause (v) of sub-section (4) and the balance of the amount, if any, shall be paid to the bhatkar.

(b) If the total amount of such encumbrance, maintenance or alimony is more than the compensation payable to the bhatkar, the whole amount shall be reserved for payment to the holder of the encumbrance or the person entitled to the maintenance or alimony and no amount shall be paid to the bhatkar. After this is done, the dwelling house of the mundkar shall be declared free from any encumbrance or charge for maintenance or alimony.

(c) Where a person entitled to the purchase price or the value of the encumbrance, maintenance or alimony dies before it is paid to him it shall be paid to his legal representatives.

(d) Where the person entitled to receive the purchase price or the value of the encumbrance is a private trust or endowment or a minor or a person suffering from legal disability or a limited owner, the purchase price or the value of the encumbrance may, notwithstanding anything contained in any law for the time being in force, but subject to any general directions that the Government may give, be deposited for and on behalf of such person with such authority or bank as may be prescribed.

(e) Where before any court or other authority any suit or other legal proceeding is pending which directly or indirectly affects or is likely to affect the right of any person to receive the whole or part of the purchase price or the amount of encumbrance or maintenance or alimony payable under this section, the court or other authority may require the Mamlatdar to place at its disposal the amount so payable and thereupon the same shall be disposed of in accordance with the orders of such court or other authority.

(7) When an application under sub-section (1) has been allowed and the purchase price is determined by an order of the Mamlatdar under sub-section (3), the mundkar shall deposit with the Mamlatdar,

(i) where the purchase price is proposed to be paid in a lumpsum the entire amount due, within one year; or

(ii) where the purchase price is proposed to be paid in instalments, the first instalment thereof, within six months from the date on which the order of the Mamlatdar under sub-section (3) has become final. The second and subsequent instalment shall be deposited with the Mamlatdar with intervals of one year and in the manner prescribed: Provided that the Mamlatdar may, on application by the mundkar before the expiry of one year or six months, as the case may be, extend the period for making such deposit: Provided further that the Mamlatdar may, on application by the mundkar, before the expiry of one year or six months, as the case may be extend the period for making such deposit, so however that the period so extended shall not exceed three months.

(8) After the order of the Mamlatdar under sub-section (3) has become final and on the deposit of the last instalment of the purchase price or on the deposit of the purchase price in a lumpsum, the Collector shall issue a certificate of purchase in such form and containing such particulars as may be prescribed, and thereupon the right, title and interest of the bhatkar shall, in respect of the dwelling house allowed to be purchased, vest in the mundkar free from all encumbrances or charges.

[(9)Where a mundkar fails to deposit the first instalment or the subsequent instalments or the lumpsum, as the case may be, on or before the due date, the amount due shall bear an interest of six percent per annum.]

In Racheal Rato alias Rachel D'souza V. Inacina carvalho.¹⁸

It was held that the right to purchase the area around the dwelling house does not create any right in favour of the mundkar to cause extension or encroachment or construction in the same area until and unless a certificate of transfer of ownership is issued by the collector on payment of price.

In Keshav Gavde V. Ramakant Khandeparker¹⁹

It was held that the mundkar is entitled to remain where the dwelling house is within the plinch area he is entitled to construct/reconstruct the house. He cannot be forced to shift from the existing mundkarial house to another site.

In Peter fernandes V. Luizinha Pereira²⁰

It was held that unless the right of the mundkar in terms of section 15 are exercised and confirmed in terms of the procedure under section 16 mundkar cannot claim violation of any of his alleged right in respect of such area around or appurtenant to the house until and unless title or ownership right of the area has been conveyed in favour of the mundkar.

¹⁸ 1998 (1) GLT 212

¹⁹ 1992 (2) GLT 48

²⁰ Decision in Goa Law times

11. Mundkar's right to alienate.—

- (1) A mundkar shall not be entitled to alienate, by sale the dwelling house purchased by him, in pursuance of the provisions of this Act, within a period of three years from the date of issue of certificate of purchase and any transaction made in contravention thereto shall be null and void.
- (2) When mundkar intends to sell the dwelling house purchased by him after the expiry of the period mentioned in sub-section (1) he shall give notice of his intention to the bhatkar in the prescribed manner and shall specify the price at which the sale is to take place and call upon him to state within ninety days of the receipt of the notice whether he is willing to buy the dwelling house at the price specified.
- (3) The bhatkar may within ninety days of the receipt of the notice signify in the prescribed manner his readiness to purchase the land at the price specified in the notice and thereupon a contract to purchase the land at the said price shall be deemed to have been concluded between the bhatkar and the mundkar.
- (4) (4) If the bhatkar fails within the period specified in sub-section (2) to signify his acceptance as provided in sub-section (3), the mundkar shall be free to sell the dwelling house to any person at a price not lower than that set out in the notice.

- (5) (5) Any sale by a mundkar to a person other than the bhatkar without giving the notice required by sub-section (2), or before the expiry of the period of the said notice or at a price lower than that set out in the notice as the case may be shall be void

Grounds on which a mundkar can be evicted from his dwelling house²¹.—

(1) No mundkar shall be liable to be evicted from his dwelling house, except on any one or more of the following grounds namely:—

(a) that he has transferred his interest in the dwelling house after the appointed date;

(b) that neither the mundkar nor any member of his family has been residing in the dwelling house for a continuous period of two years;

(2) A bhatkar who seeks to evict the mundkar on any of the grounds specified in sub-section (1), shall, within six months from the date the cause of action arose, apply in the prescribed form to the Mamlatdar for an order of eviction against the mundkar.

²¹ Section 12

(3) On receipt of an application under sub-section (2), the Mamlatdar shall after issuing a notice to the mundkar and after holding an inquiry, pass such order thereon as he deems fit.

(4) The mundkar evicted from his dwelling house under this section shall be entitled to remove any material belonging to him and used in the dwelling house, unless the bhatkar, at any stage, offers to pay to the mundkar the value of such materials as may be fixed by the Mamlatdar or agreed upon between the bhatkar and the mundkar and pays such value in cash within six months from the date the order of eviction becomes final.

Surrender by mundkar.—

(1) Any mundkar may surrender his right over the dwelling house if the following conditions are satisfied:—

(i) it is made by the mundkar in writing and is admitted by him before the Mamlatdar;

(ii) it is made voluntarily and in good faith to the satisfaction of the Mamlatdar;

(iii) it is approved by the Mamlatdar.

(2) Where the Mamlatdar is of the opinion that the conditions mentioned in sub-section

(1) are not satisfied, he may, after giving a reasonable opportunity to the bhatkar to show cause against taking action under this sub-section, and after holding such inquiry as he may deem fit, by order, refuse to approve the surrender.

CHAPTER 4

Power, functions, appeals, etc. and maintenance of registers

Chapter 3 of the act lays down the powers of authorities, their functions, appeals and provides for maintenance of registers.

Following are the powers and functions of the authorities.

1. Power to transfer proceedings:-

Any proceedings can be transferred by the collector, which are pending before the Mamaltdar after giving notice to the parties, from such Mamaltdar to any other Mamlatdar and that mamlatdar will be exercise Jurisdiction.²²

2. Power to confirm, modify or rescind in appeal or revision:- collector administrative tribunal or government in appael or revision may confirm, modify or rescind the order of the lower authority and pass an order which is legal and just in accordance with act.²³

3. Power of civil courts in conduct of inquiries and proceedings:- The authorities under the cat exercise the power of civil court laid down in the code of civil procedure²⁴ in all inquiries, proceedings, appeals or revision.²⁵

4. Procedure to be followed:- the procedure will be as may be prescribed. Every decision or order passed under the act has to be recorded in the form of an

²² Section 13

²³ Section 23

²⁴ Section 26

²⁵ The authorities under this act are the Mamlatdar, collector, administrative tribunal or the government.

order which shall state the reasons.²⁶ Inquiries and proceedings before the authorities under the act are deemed to be judicial proceedings within meaning of section 193, 219 and 228 of the Indian penal code.

When any order has been directed to pay any sum, including cost awarded is recoverable from the person ordered to pay the same as arrears of land revenue. An order evicting or restoring any mundkar from his dwelling house is to be executed in such manner as prescribed.

5 Commencement of proceedings²⁷

Proceedings before the Mamlatdar is commenced by the application.

The application should contain the following particulars

- a. The name, age, profession and place of residence of both parties.
- b. A short description and situation of the dwelling house in respect of which the application is made
- c. The circumstances out of which the cause of action arose.
- d. List of documents, if any and witnesses and whether they are to be summoned to attend or whether the applicant will produce them on the day of the hearing
- e. Other particulars as may be prescribed.

²⁶ Section 21 (2)

²⁷ Section 20

Appeals

Every order other than interim order (interim order does not include injunction order) passed by the Mamlatdar or the collector, an appeal lies to the collector or the administrative tribunal. Subject to any revision the order passed by the appellant authority is final. Every²⁸ appeal or application for revision should be made within a period of sixty day from the date of communication of the order.

Registration of mundkar

The act provides for maintaining a register of mundkar by the government in respect of every village. The register contains the following particulars.

1. Particulars and description of the dwelling house.
2. Location of the dwelling house.
3. Name of the bhatkar.
4. Name and address of the mundkar.
5. Nature and extent of service rendered to the bhatkar and any rent if paid.
6. Occupation of the mundkar.
7. Rights referred to under section 6.
8. Any other particulars as may be prescribed.

The register is to be prepared and maintained by the mamlatdar. He has to publish a notice in every revenue village inviting application from the mundkars for

²⁸ Section 24

registration. On receipt of the application, the mamlatdar has to give a notice to the bhatkar or any person interested in the land in which the dwelling house is situated, calling them to file objections if any, and requiring them to appear at a time and date specified in the notice for inquiring into the application. After holding due inquiry the mamlatdar may either register the mundkar or reject the application. The aggrieved person either by registration of mundkar or refusal of application within sixty days, file an appeal to the collector. The collector after holding due inquiry pass an order he deems fit.

CHAPTER 5

KUDIKIDAPPUKARAN–CLASS SIMILAR TO MUNDKAR

What is known as 'Mundkar' in the State of Goa, a similar class by name 'Kudikidappaukaran' exists in Kerala. 'Kudikidappukaran' is a class in the State of Kerala which is permitted by the landowners to reside in their land in return for their services as watchmen of the parambas and coconut gardens and as agricultural labourers. Kudikidappukars work for the owner of the property in which the kudikidappu²⁹ is situated. A legislation for protection of Kudikidappukars was enacted by the Kerala Government, which ultimately, was subject-matter of consideration in *The Malankara Rubber and Produce Co. Ltd. etc. v. State of Kerala and others*³⁰ etc. and the Constitutional Bench of the Apex Court considering the provisions, held :- So far as kudikidappukarans or those who are deemed to be such under the Explanation to section 96 on estates are concerned, the direction for compulsory purchase in their favour cannot be questioned under Article 31-A. Substantially these provisions were contained in the Act of 1964 which received protection under Article 31-B by inclusion in the Ninth Schedule. The land reforms legislations in most of the States in India have conferred such rights on tenants and it is too late in the day to challenge such legislation on the ground of hardship or of inconvenience. The affidavit affirmed on behalf of the States goes to show that kudikidappukars have for very many years past been residing in the lands in return for

²⁹ ""kudikidappu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto.

³⁰ A.I.R 1972 S.C.2027

services which may be seasonal and they were by and large Agricultural labourers. The rights conferred on them in respect of kudikidappu cannot therefore be said to have transgressed a scheme of agrarian reform. With regard to the Explanation to section 96 that a kudikidappukaran or a tenant of a kudikidappukaran would be deemed to be a landless Agricultural labourer if he did not possess any other land is beyond challenge inasmuch as it was contained in the Act of 1964 which had the protection of Article 31-B read with the Ninth Schedule to the Constitution. When the legislature conferred immunity from eviction on occupiers of huts brought in by the permission of the land owner by and large, they were landless families working on the farms -- the tenancy to evict them through Court became noticeable Since a permission to occupy was an essential ingredient of a kudikidappu, by definition, the Court held that where consent was not extant in the sense of its having been withdrawn or not renewed, the right of kudikidappu also ceased to exist. Landlords could easily stultify the kudikidappu protection clause by unilaterally withdrawing permission to remain on the homestead and the flood gates of eviction would be thrown open. The legislature naturally reacted to this situation by providing, in the shape of an explanation, that any person in occupation of a kudikidappu on 11th April 1957 and continued on the hutment would be deemed to be there with permission required as under the clause. The obvious intendment of this Explanation (Explanation to section 2(25)) was to protect those who had come in by permission of the owner but who were sought to be removed by withdrawal of permission by the landowner. Once a person came to occupy a hut by permission he became a kudikidappukaran and acquired the right to fixity. . The above is sufficient to show

that the problem of kudikidappukaran has always been intimately connected with Agricultural land and can legitimately come within "agrarian reform." Historically they were allowed to come on the land because of the needs of an Agricultural population and scheme which envisages the improvement of their lot and grant of permanent rights to them would not transgress the limits of agrarian reform. The kerala land reform act had, as it appears to us three aims, firstly, to put a ceiling limit on the lands held, secondly, acquisition of the excess land by the state and thirdly recognising the rights of the kudikidappukarans as a class with regard to their social condition and their plight and to give them protection obviously, the kerala land Reform Act applied to the entire state of Kerala. Applying the aforesaid principles and the problem of mundkars which we have already noticed in the beginning of this judgment, it can safely be deduced that the State was seriously concerned with the problems of mundkars and their plight and, accordingly, came to the rescue by enacting laws protecting their eviction. Historically, mundkars were allowed to come on the land because of the needs of agricultural population and, therefore, the Act enacted by the State Government for eradication of their plight and granting them permanent rights under the Act is nothing but an Act relating to agrarian reform.

Mundkar act is protected under Article 31A of the constitution. Article 31-A saves certain laws enacted by the State which are covered under that Article. It provides that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is

inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution of India. Article 31-A, therefore, protects all those laws from being declared as void even if such laws suffer from the vice of Article 14 or Article 19 of the Constitution of India, if such laws are covered by Article 31-A. The Mundkars Protection Act, 1975 is an Act which seeks to completely terminate the right of the bhatkar in the 'dwelling house' as defined in the Act occupied by mundkar and enabling the mundkar to purchase the same and will be covered in the expression 'extinguishment of the rights in the estate' provided in Article 31-A of the Constitution of India. By this Act of 1975, the State has sought to extinguish or modify the rights of the bhatkar in the dwelling house defined under the Act and that Act being a legislation of social welfare and agrarian reforms is clearly protected under Article 31-A. After the Amendment was carried out in Article 31-A in the year 1955, all such laws which are agrarian law reforms and other social welfare legislations providing for subjects contained under Article 31-A are protected from being declared void even if they are in violation or inconsistent with the rights conferred by Article 14 or Article 19. Looking to the legislative history that we have already referred that led to the enactment of the Mundkars Protection Act, 1975, we entertain no doubt whatsoever that the said Act is a piece of legislation relating to agrarian reforms³¹. The Mundkars Protection Act, 1975 which received the assent of the President on 10th of February, 1976 and came into force from 17th of February, 1976 on its publication in the Gazette is part of Ninth Schedule and, therefore, has a protective

³¹ The word "agrarian" is specially related to the ownership and cultivation of farming land. It is promoting the interests of farmers, especially by seeking a fairer or more equitable basis of land ownership.

umbrella from any challenge to its constitutionality. However, the Amendment Act of 1985 is not a part of Ninth Schedule and, therefore, is not saved under Article 31-B. But the Amendment Act, 1985 is definitely saved under Article 31-A and, therefore, cannot be challenged being inconsistent or taking away or abridging the right conferred by Article 14. Article 31-A, as we have observed above, saves and protects certain laws from being impeached for violation of Article 14 or Article 19, but by itself, does not confer any right and, therefore, the question of offending Article 31-A does not arise. A law enacted by competent Legislature does not become unconstitutional by contending that such law offends Article 300-A of the Constitution of India. Article 300-A provides that no person shall be deprived of his property save by authority of law. This means that if a person is deprived of his property in accordance with law, such action cannot be said to be offensive of Article 300-A. Article 300-A prohibits the State from depriving a person of his property save and except by authority of law, but does not prohibit the State from enacting the law within its competence which results in deprivation of the property of a person. The State has power and competence to enact the law within the four corners of the Constitution and as permissible by enacting suitable laws which may deprive a person of his property and from holding the property and if such law is enacted by the State, by taking aid of Article 300-A, it cannot be contended that such provision of law is unconstitutional. An action not in conformity with law which results in deprivation of a property by a person is hit by Article 300-A and not the law enacted by the State depriving a person from his property when the law has been so enacted by the competent Legislature.

CHAPTER 6

CONCLUSION

Mundkars was an oppressed class with no legal protection to them and their survival and freedom was at the mercy of the bhatkars and therefore, with a view to give protection to mundkars the act is brought in the statute Book in 1975. In aggrieved bhatkar association v. State³² it was held that mundkar act is a legislation of social welfare and agrarian reform and is protected under article 31A of the constitution. It was observed that by this Act of 1975 the state has sought to extinguish the right of the bhatkars in the dwelling house defined in the Act. After considering the history and background and the relevant provisions came to a plausible conclusions that mundkar act was undoubtedly a piece of legislation relating to agrarian reforms.

Mundkar act is a specific legislation for protecting the class of mundkars as such against eviction from their dwelling houses and to grant them the right to purchase their houses. The mundkars as a class or institution of mundkars, if it can be said so, is in existence since before the times of Portuguese Regime in Goa. Admittedly, Portuguese rule in goa was for more than 400 years, therefore in any case “mundkars’ as a class in existence for more than 500 years. There is no distinction between mundkars in villages or mundkars in cities and towns but on the other hand mundkars are directly connected with bhatkars, who were the owners of land and who sought the services of the mundkars. Therefore, wherever there is land and wherever there is a

³² 2001(1) Goa L.T

bhatkar, then ordinarily there will be a mundkars. Such a system is in existence for more than 500 years whether the land of the bhatkar is in rural or urban area.

What the act aims is putting restraints on the rights of the bhatkars to oust mundkars according to their whims and fancies. This aim of the act is in total conformity with the objects that are sought to be achieved with reference to the plight of the mundkars during the last number of centuries. The mundkars were totally at the mercy and whim of the bhatkars and they could be ousted at any time by the bhatkars using their dominating position, status, muscle power and financial position. Therefore, mundkars, in other words, were a class who had shelter above their heads at the mercy of the bhatkars. Since this was a tool in the hands of bhatkars for exploitation, the Mundkars Act aims at taking away the right of the bhatkars to oust mundkars from their houses or to throw away mundkars from their shelters at the bhatkars fancies and whims. The act, therefore, seeks not to acquire but to extinguish the right of the bhatkars.

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