
Goa, Daman And Diu Mundkars (Protection From Eviction) Rules, 1977

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Goa, Daman And Diu Mundkars (Protection From Eviction) Rules, 1977

Whereas certain draft rules which the Government intends to frame under the Goa, Daman and Diu Mundkars (Protection from Eviction)

Act, 1975 were published at page 75 of the Official Gazette No. 10, Series I dated 9-6-1977 under the Notification No. RD/MND/RLS/363/75-77 dated 3-6-1977 of the Revenue Department, Government of Goa, Daman and Diu, inviting objections and suggestions from all persons likely to be affected thereby till 15 days from the date of the publication of the said Notification in the Official Gazette; And whereas the said Gazette was made available to the public on 9-6-1977; And whereas objections and suggestions received from the public on the said draft have been considered by the Government; Now, therefore, in exercise of the powers conferred by sub-section (1) of section 40 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act No. 1 of 1976) and all other powers enabling him in that behalf, the Lieutenant Governor of Goa, Daman and Diu hereby makes the following rules, namely:-

1. Short Title And Commencement :-

(1) These rules may be called the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977.

(2) They shall come into force at once.

2. Definition :-

In these rules, unless the context otherwise requires,-

(a) "Act" means the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act 1 of 1976).

(b) "Form" means a form appended to these rules;

(c) "Section" means a section of the Act;

(d) Words and expressions used, but not defined in these rules shall have the meanings assigned to them in the Act.

3. Right Of Option By The Mundkar :-

A Mundkar desirous of exercising the right conferred on him under section 2 shall do so in writing at the time of applying to the Mamlatdar under sub-section (1) of section 16. The option once exercised shall be final.

4. Form Of Application For Restoration Of Dwelling House :-

Every application under clause (i) of sub-section (2) or sub-section (3) of section 4 for restoration of a dwelling house shall be in Form I.

5. Form Of Application And Mode Of Enquiry In Cases Of Threatened Wrongful Dispossession And Restoration Of

Supply Of Power Or Water Or Any Customary Easement :-

(1) An application under sub-section (1) of section 5 shall be in Form II.

(2) The Mamlatdar shall, on receipt of an application under sub-rule (1), hold a summary inquiry into the same in the manner prescribed under rule 16 and pass such order as he deems fit.

5A. Conditions For Obtaining Supply Of Electricity Or Pipe Water Or Other Facility Through The Property Adjoining The Dwelling House Of The Mundkar :-

(1) A Mundkar shall, for the purpose of obtaining supply of electricity or pipe water or any other facility under any scheme formulated by Government to his dwelling house, through the property adjoining his dwelling house, communicate to the owner or owners of such adjoining property and the Mamlatdar by an application about his intention of availing of such supply or facility and shall also explain the extent of the use involved of the adjoining property.

(2) On receipt of an application, the Mamlatdar shall cause an enquiry to be conducted in the matter, inspect the site and pass such order as he deems fit after giving due regard to the technical feasibility of making use of the adjoining property with minimum damage for the purpose of the supply of electricity, pipe water or any other facility formulated under any scheme by the Government."

6. Fixation Of Compensation For The Loss Caused To The Bhatkar :-

(1) A Bhatkar who is disturbed in the enjoyment of the adjoining property around the mundkars dwelling house as a result of enjoyment of any right of supply or customary easement by or on behalf of the mundkar may apply to the Mamlatdar in Form III within six months from the date of such disturbance.

(2) On receipt of such application the Mamlatdar shall hold a formal inquiry into the facts of the case, as far as practicable, in the manner prescribed in rule 14.

(3) If such application is allowed, the compensation payable under sub-section (5) of section 6 shall be fixed by the Mamlatdar having regard to the same factors which are prescribed under these rules to be taken into account for determining the market value under

rule 8.

6A. Fixation Of Compensation For The Loss Caused To The Owner Or Owners Of Property Adjoining The Dwelling House Of The Mundkar :- The compensation payable by the mundkar to the owner or owners of the property adjoining his dwelling house for the use of such property by the mundkar for obtaining supply of electricity, pipe water or any other facility formulated under any scheme by the Government, shall be fixed by the Mamlatdar having regard to the factors to be taken into account for determining the market value under rule 8".

7. Form Of Application For Eviction Of The Mundkar :-

An application under sub-section (2) of section 12 shall be in Form IV.

8. Determination Of Market Value Of The Dwelling House :-

(1) The Mamlatdar shall have due regard to the following factors while determining the market value of the purchase price payable by the Mundkar for his dwelling house under sub-section (5) of section 15:

(a) the prices of similar lands prevailing in the vicinity of the locality;

(b) the location of the dwelling house as to whether falling or within the jurisdiction of a village Panchayat or within an urban or in a Municipality area as the case may be;

(c) the expenses incurred by the Bhatkar, if any, towards construction of the dwelling house;

(d) the improvements, if any, made by the Bhatkar on the dwelling house or the site where the dwelling house stands; and

(e) any other factors which are generally taken into account in determining the market value of land under the Land Acquisition Act, 1894.

(2) Any agreement fixing the market value of the dwelling house entered into between the Bhatkar and Mundkar shall be ignored by the Mamlatdar while determining the market value under sub-rule (1).

9. Form Of Application For Purchase Of Dwelling House By The Mundkar :-

(1) An application under sub-section (1) of section 16 shall be in Form V shall contain the following particulars:

(a) the name, age, profession and place of residence of the Mundkar and the Bhatkar;

(b) a short description and situation of the dwelling house in respect of which the application is being made;

(c) the nature and value of improvements, if any, made by the Mundkar;

(d) statement whether the house, hut, or any structure with its materials belong, wholly or partly, to the Mundkar or the Bhatkar;

(e) where the applicant Mundkar claims the benefit of the second proviso to sub-section (3) of section 15, a statement to that effect containing facts in support of the claims;

(f) a statement whether the applicant is willing to pay the purchase price in instalments or in lumpsum;

(g) a statement of exercise of option contemplated under clause (i) of section 2; and

(h) a list of the applicants documents, if any, and of his witnesses and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing.

(2) Every application under sub-rule (1) shall be supported by a certificate of the extract of the register maintained under section 29 showing that the applicants name is entered in such register as Mundkar of the dwelling house in respect of which the application is made.

10. Procedure For Deposit Of Instalments With The Mamlatdar :-

(1) The Mundkar shall deposit the instalment of purchase price with the Mamlatdar.

(2) The notice of the deposit shall also be given by the Mundkar to the Bhatkar and the amount of the deposit shall be paid to the Bhatkar on his application.

(3) The Mamlatdar shall, as far as practicable, give notice to the Mundkar of the due date for deposit of instalments at least fifteen days prior to such due date. Provided that failure to give such notice shall not exempt the Mundkar from payment of interest prescribed under sub-section (9) of section 16 of the Act.

(4) In case the person entitled to receive the purchase price or the value of the encumbrances is a private trust or endowment or a minor or a person suffering from legal disability or a limited owner,

the amount shall be paid to the legal guardian of such a person or the trustees of the private trust or endowment, as the case may be.

11. Certificate Of Purchase By Mundkar :-

The certificate of purchase under sub-section (8) of section 16 shall be in Form VI.

12. Form Of Intimation Under Sub-Sections (2) And (3) Of Section 17 :-

An intimation under sub-section (2) or (3) of section 17 shall be sent by registered post acknowledgement due to the other party and the acknowledgement receipt thereof shall be the conclusive proof of satisfaction of the requirement of such notice. A copy of such intimation shall also be sent to the Mamlatdar.

13. Terms On Which A Loan May Be Granted Under Section 18 :-

A loan to be granted to a Mundkar under sub-section (1) of section 18, shall be on the following terms and conditions, namely:-

(a) the amount of loan shall not exceed seventy-five percent of the purchase price of the dwelling house and the land on which such dwelling house stands;

(b) the amount sanctioned as loan to the Mundkar shall be paid to the Bhatkar, in adjustment of the purchase price payable by the Mundkar, after obtaining due authorization from the Mundkar;

(c) the Mundkar shall mortgage the dwelling house and the land purchased by him to the President of India till the entire loan amount and the interest payable thereon is fully paid to the Government;

(d) the loan shall bear an interest of six percent per annum and shall be repaid in ten equal or nearby equal annual instalments before such date as may be fixed by the Collector; the first instalment shall be payable on the expiry of one year from the drawal of the loan;

(e) if an instalment of loan amount and the interest due thereon is not paid within the prescribed period, the Mundkar shall be liable to pay an interest of nine per cent per annum at the time of such delayed payment;

(f) the Mundkar shall not be entitled to transfer in any way his interest in the dwelling house till the loan amount and the interest due thereon is fully repaid;

(g) if the Mundkar commits any default in payment of any

instalment of the loan amount and the interest due thereon, the balance amount of the loan to be repaid shall become immediately recoverable and Government shall be entitled to sell the dwelling house in any manner deemed suitable by the Collector and the balance amount of the loan and the interest shall be recovered from the sale proceeds and the balance, if any, shall be handed over to the defaulting Mundkar.

14. Manner Of Conducting Enquiries :-

Subject to the provisions of the Act, the provisions of this rule shall apply to all the proceedings under the Act except in cases where summary inquiries are prescribed under these rules:-

(1) Any application to be presented to the Mamlatdar shall either be presented to him personally or to any other officer authorised by him in that behalf, in person, during office hours.

(2) Where the application does not contain any of the particulars specified in section 20 or in rule 9, as the case may be, the Mamlatdar shall forthwith examine the applicant on oath and ascertain from him such of the particulars specified in section 20 or rule 9, as the case may be, as are not clearly and correctly stated in the application and shall reduce the examination to writing in the form of an endorsement on an annexure to the application which shall thereupon be deemed to be part of the application. Where the applicant requires time to obtain any of the particulars specified in section 20 or rule 9, as the case may be, the Mamlatdar shall grant him such time as may under the circumstances appear reasonable.

(3) When the application is presented and has, if necessary, been treated in the manner specified in sub-rule (2), the Mamlatdar shall require the applicant to subscribe and verify the application in his presence in the manner following or the like effect -

"I, A.B. the applicant, do hereby declare that what is stated in this application is true to the best of my information, knowledge and belief".

(4) The Mamlatdar shall endorse the application to the effect that it was duly subscribed and verified. Where the applicant being illiterate cannot write, the verification may be written for him in the presence of the Mamlatdar and the applicant shall affix his mark or thumb impression in token of the authenticity of the verification and the Mamlatdar shall record that the verification was made in his presence at the request of the applicant and that his mark or thumb impression was so affixed.

(5) The Mamlatdar shall reject an application:-

- (a) Where the applicant declines to make a statement on oath under sub-rule (2); or
- (b) Where the applicant is willing to make or has made a statement on oath under sub-rule (2) but fails to furnish the particulars specified in section 20 or rule 9, as the case may be, within the time fixed under sub-rule (2); or
- (c) Where it appears upon face of the application-
 - (i) that the property or the relief claimed is not one of the kinds specified in the Act; or
 - (ii) that the application is barred by limitation;
- (d) where the applicant declines to subscribe or verify the application as required by sub-rule (3) or (4).
- (6) Where it appears to the Mamlatdar that the subject of the application is not within his jurisdiction he shall return the application to the concerned party to be presented before the Competent Authority having jurisdiction.
- (7) Where application is admissible, the Mamlatdar shall receive the same. He shall then fix a convenient day and place for trial of the case and shall issue, at the expenses of applicant, notice in the Form VII to the opponent. He shall require the applicant to appear with his documents, if any, and summon witnesses if any, to appear on the day and at the place fixed.

The date to be fixed for the enquiry of the case shall not be earlier than fifteen days nor later than thirty days from the day on which the notice is issued except for sufficient reason to be recorded in writing by the Mamlatdar or in cases of adjournments of the proceedings.

The place to be fixed for the enquiry of the case may be in the Mamlatdar's Office or at or near the scene of dispute or at any other spot that the Mamlatdar considers convenient.

- (8) Where either party requires any witness to be summoned to appear on the day and at the place fixed the Mamlatdar shall issue a summons in Form VIII for that purpose. Such summons shall be issued in duplicate, duly signed and sealed, and shall be served by delivering or tendering the copy to the person therein named or by sending it by registered post A. D. to his address or if such person cannot be found, then by affixing the copy to some conspicuous part of the place where he ordinarily resides or carries on business and on the Notice Board of the Mamlatdar's Office.

The Mamlatdar may issue, after recording his reasons in writing, a warrant in Form IX for the arrest of any such witness, if he fails to appear and the summons is proved to have been duly served in

time to admit of his appearance in accordance therewith and no reasonable excuse is offered for such failure.

The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be in force in regard to the attendance of witnesses in subordinate Civil Courts.

(9) Where the applicant fails to attend or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the application whether the opponent appears or not unless the opponent admits the claim.

Where the applicant attends, as required by sub-rule (7); but the opponent fails to attend and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the opponent and in sufficient time, to enable the opponent to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the application ex-parte:

Provided that if either party satisfies the Mamlatdar at any time within thirty days from the date of the rejection of an application or of an ex-parte decision that he was prevented by some unavoidable circumstances from attending or from producing his documents or from adopting measures to procure the attendance of his witnesses, as the case may be, the Mamlatdar may issue a notice in Form X, at the expense of the party concerned to the opposite party and if satisfied after hearing the opposite party that the party concerned was prevented as alleged, he may re-hear the case at such time and place, as he may then fix:

Provided further that nothing in the foregoing provisions shall prevent the applicant from withdrawing his application on payment of the opponents costs.

Explanation.- Where there has been an appeal against an order of rejection of an application or an ex-parte decision and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-rule.

(10) Where in the case, mentioned in sub-rule (9) the Mamlatdar is not satisfied from the evidence before him that the notice has been duly served on the opponent and in sufficient time to enable the opponent to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under sub-rule 7 to the opponent.

Where any witness who has been duly summoned or for whose

arrest a warrant has been issued under sub-rule (8) fails to attend on the day and the place fixed, the Mamlatdar may, if he considers there is sufficient reason after taking the evidence of those present, adjourn the hearing of the case, from time to time till the attendance of such witnesses can be enforced.

The Mamlatdar may for any other sufficient reason to be recorded, in writing adjourn the trial of the case for such time, as he thinks fit, but not ordinarily exceeding 10 days. The provisions of sub-rules (8) and (9) shall apply in respect of any day to which the trial of the case may be adjourned under this sub-rule as if such day were the day originally fixed for the trial.

(11) Subject to the provisions of the Act, a minor may sue or be sued, if he is duly represented by a natural or duly appointed guardian or next friend.

(12) The Mamlatdar may at any stage of the proceedings order that the name of any person to whom possession of the dwelling house or any part thereof may have been transferred or the addition of whom as a party appears necessary in order to enable the court effectually and completely to adjudicate upon the issues be added as an applicant or opponent as the circumstances of the case may require:

Provided that no person shall be added as an applicant without his consent: Provided further that in respect of any person so added not being a transferee pending the case, the case shall for the purpose of the Act, be deemed to have been instituted on the day, when his name was so added.

(13) In case of death of any party while the case is pending;

(a) if an application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and subject to the provisions of the Act shall enter on record the name of such representative;

(b) if no such application is made, the case shall abate as regards that party.

(14) Where the Mamlatdar orders the name of any person to be added as opponent or enters on the record the name of any person as the legal representative of the deceased party, he shall issue to such person a notice as provided in sub-rule (7) and the trial shall proceed on the date fixed in such notice.

(15) On the date fixed or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to sub-rule (9) proceed to hear all the evidence that is then and there before him and to try the relevant issues.

(16) The Mamlatdar may after due notice to and in the presence of the parties summon and examine, as a witnesses, any person who has not been summoned or produced by any party and may call for and cause to be proved any document which has not been applied for or produced by either of the parties where he considers it expedient in the interest of justice so to do, and may, if he thinks fit, make a personal inspection of the property, in the presence of or after due notice to the parties. He shall without unnecessary delay, record a memorandum after hearing the parties on the spot, if present, of the relevant facts observed at such inspection. The Memorandum shall form a part of the record of the case.

15. Mode Of Taking Evidence Under Rule 14 :-

(a) In all inquiries under rule 14 the evidence shall be taken down in full, in writing in English in the presence and under the personal superintendence of the Mamlatdar and shall be signed by him. The Mamlatdar shall read out or cause to be read out the evidence so taken to the witness concerned in the language understood by him and obtain his signature thereto in token of its correctness.

(b) In cases in which the evidence is not taken down in full in writing as aforesaid, the Mamlatdar shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes and such memorandum shall be written and signed by the Mamlatdar with his own hand, and shall form a part of the record.

(c) If the Mamlatdar is prevented from making a memorandum as required aforesaid he shall record the reasons of his inability to do so. Every decision of the Mamlatdar shall be, in writing, signed by him and shall contain a full statement of the grounds on which it is made.

16. Manner Of Conducting Summary Inquiries :-

(1) In all summary inquiries, the Mamlatdar shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English including the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same.

(2) Where the Mamlatdar findings upon the relevant issues is in favour of the applicant, he shall make such order not being in excess of the powers vested in him by or under the Act, as the circumstances of the case appear to him to require and where his

findings is in favour of the opponent he shall dismiss the case. In either case, the costs of the application including the costs of executions, shall follow the decision.

17. Procedure For Presentation And Disposal Of Appeals And Applications For Revision :-

(1) Every petition for appeal or revision shall be accompanied by a certified copy of the order to which the objection is made unless the production of such copy is dispensed with.

(2) (a) Every appeal or an application for revision made under section 24 or section 25, as the case may be, shall be made in the form of a petition addressed to the appropriate authority and shall be drawn up in concise intelligible language. It shall bear the signature or thumb impression of the applicant or his duly authorised agent and shall bear a Court Fee Stamp of such value as is prescribed thereof in rule 18.

(b) The appeal or application shall contain the following particulars, that is to say-

(i) the name of the appellant or the applicant, as the case may be;

(ii) his fathers name;

(iii) his occupation and place of residence and address;

(iv) the name of the respondent;

(v) his fathers name;

(vi) his occupation and place of residence and address.

(c) The appeal or application shall also contain a brief statement of facts on which the appellant or applicant relies in support of his appeal or application, and the grounds of his objection to the order or decision against which the appeal or application is made.

(3) (a) Appeals or applications for revision may either be presented to the appropriate authority in person or be forwarded to it by post.

(b) Where an appeal or application is sent by post, the postage on the cover containing it must invariably be fully pre-paid.

(4) Non compliance with the provisions of the preceding sub-rules in any material respect may render an appeal or application liable to be summarily rejected without enquiry into its merits.

18. Court Fees To Be Affixed To Every Application, Appeal Or Revision Made Under The Act :-

(1) Every application made under the Act to the Mamlatdar shall bear a court fee stamp of Rupee one.

(2) Every Memorandum of appeal or application for revision made

under the Act to the Collector, the Administrative Tribunal or the Government, as the case may be, shall bear a court fee stamp of Rupees two:

Provided that when an application or appeal under sub-rule (1) or sub-rule (2) is made by a member of a Scheduled Caste, specified in Part III of the Schedule to the Constitution (Scheduled Castes) Order, 1950 or of a Scheduled Tribe, specified in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 living in an area, notified by Government as backward area, the value of the court fee stamp shall be fifty per cent less.

19. Orders :-

Every order of the Mamlatdar, whether for rejecting or returning an application or whether for allowing or disallowing a claim, shall be read out by him in open court, either at once or on some future day, of which due notice shall be given to the parties.

20. Mode Of Execution Of The Orders Of The Mamlatdars :-

(1) An order of the Mamlatdar evicting the Mundkar from his dwelling house or restoring to him the possession or use of any land or dwelling house shall be executed in the following manner:

(a) by serving a notice on the person or persons in possession requiring them (with such time as may appear reasonable after receipt of the said order) to vacate the land or the dwelling house, and

(b) if such notice is not obeyed, by removing, or deputing a subordinate to remove, any person who may refuse to vacate the same, and

(c) if the officer removing any such person is resisted or obstructed by any person, the Mamlatdar may use such force as may be necessary, with the assistance of the police.

(2) An order of the Mamlatdar restoring to the Mundkar the enjoyment of the customary easement or supply of electricity or water shall be executed in the following manner:

(a) by serving a notice on the Bhatkar or any person acting or purporting to act on his behalf requiring him to restore to the Mundkar the enjoyment of the customary easement or supply of electricity or water (within such time as may appear reasonable after receipt of the said notice); and

(b) if the Bhatkar or person acting or purporting to act on his behalf has had the opportunity of obeying the notice and has wilfully failed to obey it, by the attachment of his property;

(c) where any attachment under sub-rule (b) has remained in force for six months, if the Bhatkar or the person acting or purporting to act on his behalf has not obeyed the order and the Mundkar applies to have the attached property sold, such property may be sold by public auction and out of the proceeds, the Mamlatdar may award to the Mundkar such compensation as he thinks fit, and shall pay the balance (if any), to the Bhatkar or the person acting or purporting to act on his behalf on his application;

(d) where the Bhatkar or the person acting or purporting to act on his behalf has obeyed the order, and paid all costs which he is bound to pay, or where at the end of six months from the date of the attachment, no application, to have the property sold has been made, or if made, has been refused, attachment shall cease;

(e) where such order has not been obeyed the Mamlatdar may in lieu of or in addition to all or any of the processes aforesaid direct that the act required to be done may be done, so far as practicable, by the Mundkar or some other person appointed by the Court, at the cost of the Bhatkar or person acting or purporting to act on his behalf and upon the act being done, the expenses incurred may be ascertained in such manner as the Mamlatdar may direct and may be recovered as arrears of land revenue.

21. Procedure For Preparation And Maintenance Of Register Of Mundkar Under Section 29 :-

- (1) The Mamlatdar shall be responsible for the preparation and maintenance of the register in all villages within his jurisdiction.
- (2) The Register shall be prepared and maintained in Form XI.
- (3) After the order of the Mamlatdar, under sub-section (6) of section 20, for registering the Mundkar has become final or his order rejecting the application has been reversed in appeal or revision and directions are given to register the applicant as Mundkar, the name of such person shall be entered in the register of Mundkars maintained under sub-rule (2).
- (4) The provisions of sections 96 and 97 of the Goa, Daman and Diu Land Revenue Code, 1968, and rules 9 to 14 of the Goa, Daman and Diu Land Revenue (Record of Rights and Register of Cultivators) Rules, 1969 regarding reporting of Acquisition of rights and register of mutations dealt with in those sections and rules, shall, as far as may be, apply to the mutations of entries in the Register maintained under the Act.