(1997) 11 BOM CK 0064

Bombay High Court (Goa Bench)

Case No: Writ Petitions No''s. 135 of 92, 162 of 89, 234 of 91, 389 of 91, 430 of 91, 431 of 91, 416 of 91 and 90 of 92

Kum. Maria Eliza Marques		APPELLANT
	Vs	
Shri Madhukar M. Moraskar and others		RESPONDENT

Date of Decision: Nov. 19, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 25, 26, 27, 34
- Constitution of India, 1950 - Article 13, 14, 19(1), 31
- Goa, Daman and Diu Agricultural Tenancy Act, 1964 - Section 17
- Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 - Section 2, 8

Citation: (1998) 2 ALLMR 703 : (1998) 3 BomCR 36

Hon'ble Judges: R.M. Lodha, J; R.K. Batta, J

Bench: Division Bench

Advocate: S.S. Usgaonkar, S.S. Kantak, E.P. Lobo, for the Appellant; S.M. Lotlikar, S.D. Lotlikar, L.V. Talaulikar, Miss Sulekha Kamat and V. Menezes, for the Respondent

Judgement

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R.M. Lodha, J.

The group of eight writ petitions was taken up together for hearing and is disposed of by this common judgment since in all the writ petitions the petitioners have challenged the constitutionality of Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1985, whereby section 2(i) of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 has been amended.

2. We propose to take the common question relating to constitutional validity of Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1985 (for short ''Amendment Act'') first.

3. Some aspects of tradition and modern trends of the society in Goa have been dealt with by Mr. S.R. Phal in his book "Society in Goa". Chapter 3 in the said book deals with the Mundkars of Goa. According to the author, Mundkar is a Konkani term applied to a person in Goa who resides in a house built in the property of landlord, for watching and protecting the property of the landlord. The house is either provided by the landlord himself or the Mundkar is given consent by the landlord to build a house in his property. The term "Mundd" means that the landlord would grant a loan free from any interest, a certain amount in cash or kind and the said term "Mundd" gave the name "Mundkar" to the person who took it. The origin of the system of Mundkars, according to the author, is said to be shrouded in mystery and despite the studies undertaken from time to time and even the Committee appointed by the Government of Goa in 1966 to study the problem of Mundkars, the history of Mundkarism could not be traced. A reference has been made to the book "A Short History of Goa" written by C.F. Saldanha wherein it is recorded "Land could also be owned by private owners called Bhatkars or landowners, who had several royts called roits or mundkars. These mundkars lived in feudal tutelage of the land of the landlord." 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''). 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 17-2-1976. The preamble ol Mundkars Protection Act, 1975 shows that it was enacted to provide for better protection to Mundkars against eviction from their dwelling houses and for granting them the right to purchase the

same and to make other provisions connected therewith. The Legislature thought it fit that the system of free service rendered by Mundkars should be abolished. Mundkars Protection Act, 1975 defines ''agricultural labourer'', bhatkar'', ''dwelling house'', ''mundkar'' and member of the family'', amongst other expressions, in section 2. Rights and liabilities of Mundkars are provided in Chapter II which makes the rights of the dwelling house of a Mundkar heritable, though not transferable. It empowers the Mundkar to enjoy supply of power or any customary easement and also to have right to repair, maintain and improve his dwelling house and to use the dwelling house for business etc. The Act provides remedy to the Mundkar from threatened wrongful dispossession and also for declaration of his rights under the Act. The Act also provides the grounds on which a Mundkar can be evicted from his dwelling house. A Mundkar has been conferred right to purchase the dwelling house in accordance with sections 15 and 16 of the Act. Chapter III of the Mundkars Protection Act, 1975 deals with the power, functions, appeals and revisions under the Act before various Authorities. By section 41 of Chapter IV, on and from the appointed date, the Diploma of 1952 stood repealed and so also section 17 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, Act of 1971 also stood repealed.

4. Section 2(i) of Mundkars Protection Act, 1975 originally defined ''dwelling house'' thus:

"dwelling house" means the house in which mundkar resides with a fixed habitation, whether such house was constructed by the mundkar at his own expense or at the bhatkar''s expense or with financial assistance from the bhatkar and includes---

(i) (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 land is within the jurisdiction of a village panchayat, and two meters, 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 ol the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house of 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 meters of land including the land on which the dwelling house is standing:

Provided that where the dwelling house is within the jurisdiction of a municipal council, the dwelling house shall include two hundred square meters 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 the clause, the dwelling house shall include, in the absence of 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.

(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."

5. There is no dispute that Mundkars Protection Act, 1975 is included in Ninth Schedule under Article 31-B at Entry No. 187 of the said Schedule and, therefore, its legality and ''constitutionality is beyond challenge in view of the provisions contained u/s 31-B of the Constitution of India which provides that none of the Acts and Regulations specified in the Ninth Schedule nor any other provisions thereof shall be deemed to be void or ever to have become void on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III of the Constitution of India.

6. A plain reading of section 2(i) defining ''dwelling house'' reflected the clear object and the intent of the Legislature when it provided that ''dwelling house'' under the Mundkars Protection Act, 1975 means the house in which the mundkar resides with a fixed habitation whether such house was constructed by the mundkar at his own expense or at the bhatkar''s expense or with financial assistance from the bhatkar. Therefore, under the definition of section 2(i), the residence of a mundkar with fixed habitation was dwelling house irrespective of whether such house was constructed by the mundkar at his own expenses or at the expense of the bhatkar or with financial assistance from the bhatkar.

7. However, in Writ Petition No. 156 of 1983, Santana Furtado Dias v. Smt. Uttam Tari and others, 1985 Mah.L.J. 211, filed before this Court, a plea was raised that for a person to be mundkar u/s 2(p) of the Mundkars Protection Act, 1975, the dwelling house must be constructed by mundkar himself and not otherwise. In Santana Furtado Dias (supra) decided on 24-1-1985, the learned Single Judge of this Court

agreeing with the contention of the petitioner did hold that for a person to be a mundkar, the dwelling house must be constructed by the mundkar himself and not otherwise. The learned Single Judge apparently did not attach importance to the expression ''whether such house was constructed at the bhatkar''s expense or with financial assistance from the bhatkar occurring in section 2(i). The construction made by the learned Single Judge was found to be not in consonance with the object and the intent of the Legislature by the Legislature and it decided to amend the definition of section 2(i). The State Government, accordingly, brought the Goa, Daman and Diu Mundkars (Protection for Eviction) (Amendment) Bill, 1985. The Statement of Objects and Reasons appended thereto reads thus :--

"Section 2(i) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, defines "dwelling house" as meaning the house in which mundkar resides with a fixed habitation, whether such house was constructed by the mundkar at his own expense or at bhatkar''s expense or with financial assistance from the bhatkar.

2. The High Court of Judicature at Bombay, Panaji Bench has recently considered the scope of the said expression "dwelling house" in Writ Petition No. 166 of 1982- Smt. Santana Furtado Dias v. Smt. Uttam Tari and others and vide their judgment dated 24-1-1985 held that dwelling house has to be constructed by the mundkar himself.

3. The effect of the judgment is that a large number of mundkars will be deprived of the benefit conferred by the Act.

4. Though a Letters Patent Appeal against the said order has been filed in the Panaji Bench of the Bombay High Court, it is considered that it will be appropriate to suitably amend the definition of the expression "dwelling house" so as to bring the same in conformity with the real intention.

5. It is considered that the aforesaid interpretation of the High Court is not in conformity with the original legislative intention. It is, therefore, proposed to amend the definition of the expression "dwelling house" given in the said section 2(i) of the Act with a view to bring it in conformity with the real intention and objective of the Act and to cover within its sphere all dwelling houses occupied by the mundkars irrespective of the fact whether these were constructed by them or by the bhatkar,"

8. The said Gill was passed and, accordingly, by the Goa, Daman and Diu Mundkars (Protection from Eviction) (Amendment) Act, 1985, section 2(i) was amended and the words "whether such house was constructed by the mundkar at his own expense or at the bhatkar''s expense or with financial assistance from the bhatkar" were omitted. The said Amendment was made retrospective, which deemed to have come into force on 12th of March. 1976. The constitutionality of the said Amendment is under challenge in the group of these writ petitions.

9. Mr. S.S. Usgaonkar, the learned Counsel appearing for one of the petitioners, challenged the constitutionality of the Amendment Act on grounds: (i) the

Amendment offends Articles 300-A and 31-A of the Constitution of India and , therefore, is ultra vires the Constitution; (ii) mere fact of the occupation of the house owned by bhatkar by the alleged mundkar would not justify divesting the bhatkar of his or her ownership by extinguishing his or her rights and creating acquisition in favour of the alleged mundkar since such action would not be justified under Article 31-A of the Constitution of India; and (iii) there is no case of agrarian reform involved and , therefore, Article 31-A has no application.

10. Mr. S.S. Kantak, the learned Counsel appearing for some of the petitioners, adopted the arguments of Mr. Usgaonkar and further submitted that by this Amendment, two classes of mundkars have been created, first is the class of those mundkars who have constructed the houses from their own expenses and the other class of mundkars in the occupation of dwelling houses which were constructed by bhatkars and therefore, the Amendment is violative of Article 14 of the Constitution of India.

11. We are afraid the contentions raised by the learned Counsel for the petitioners challenging the Constitutional validity of the Amendment Act, 1985 are wholly misconceived and without any substance. Right to property is no longer a fundamental right under the Constitution of India. Articles 31 and 19(1)(f) which made the right to property a fundamental right were deleted by the 44th Amendment in the Constitution. Clause (1) of Article 31 as was obtaining prior to its deletion now forms Article 300-A in Part XII of the Constitution of India: of course Article 300-A is not fundamental right. Laws inconsistent with or in derogation of the fundamental rights in the Constitutional scheme of things can be declared void. Article 13 of the Constitution of India forbids the State from making any law which takes away or abridges the rights conferred by Part III (fundamental rights) and any law made by the State in contravention and derogation of Part III of the Constitution of India is void to the extent of its contravention and derogation. Right to property, as we have held, is no longer a fundamental right and is not a right covered by Part III of Constitution of India and, therefore, under Article 13 of the Constitution of India cannot be declared to be void.

12. Even otherwise, 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 reforms. 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 kudikidappu 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. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc., and the Constitutional Bench of the Apex Court considering the provisions, held :-

"43. 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 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.

44. The problem posed by the presence of hordes of kudikidappukarans and the tenants of kudiyiruppu and the pressure on the land thus caused have engaged the attention of legislature for many years past as mentioned in the counter affidavit of the State, and it is also apparent from a number of decisions of the Madras and

Kerala High Courts. We may mention the case of Arumugha Konar Vs. Sanku Muthammal, where a tenant claimed to be entitled to purchase the landlord''s right in kudiyiruppu u/s 33 of the Malabar Tenancy Act (Act XIV of 1930). A similar question fell for consideration in Saimya Umma v. Kunhammad, ILR 1957 Ker. 815. In that case it was held that a vacant site not attached to a building will not become kudiyirappu. The construction of any kind of a building on such a site will not also make it a kudiyirappu. Reference was made to the observations of the Kerala High Court in Mariam v. Ouseph Xavier, 1971 Ker. L.T. 709 wherein referring to the provisions for kudikidappukaran etc. it was said :

"The legislative perspective of this provision (section 2(25)) will throw light on its scope and sweep. In a community, essentially agrarian, with large chunks of the population engaged in Agricultural labour and accommodated by, or with the leave and licence of the owners in tiny tenements dotting the farms and the fields where or near where they work, feudal fashion, a certain special equilibrium is maintained. But the pressure of population and consequent increase in the number of shacks or kudis on the one hand and the tempting rise in the price of produce and of lands appetising the landlords to vacate the occupiers of homesteads who sometimes and on the sly, may help themselves to the income from the land on the other gave rise to a social phenomenon of many evictions of these homeless in the world.... The play of these social forces explains the legislative insulation of Kudikidappus punctuated by further ameliorative changes in the law calculated to plug the loopholes exploited by the land owners and brought to light by judicial decisions. .....

"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 for reason I have already stated. Since a permission to occupy was an essential ingredient of a kudikidappu, by definition, this 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."

45. 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."

13. 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.

14. 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 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.

15. The contention raised by the learned Counsel for the petitioners that the said Amendment Act of 1985 offends Article 31-A and, therefore, ultra vires of the Constitution is difficult to be appreciated. 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 as has been sought to be canvassed by the learned Counsel for the petitioners.

16. 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. In the present case, it is not the case of the petitioners that the State had no competence to enact the Amendment Act of 1985. The Amendment Act, 1985 has been enacted by the State which was competent to do so and, therefore, the question of the said Amendment Act offending Article 300-A does not arise.

17. Moreover, it would be seen that while defining ''dwelling house'' u/s 2(i) of the Mundkars Protection Act, 1975, the Legislature made it clear that ''dwelling house'' means the house in which the mundkar resides with a fixed habitation whether such house was constructed by the mundkar at his own expense or with the bhatkar''s expense or with the financial assistance of the bhatkar. A plain reading of section 2(i) defining ''dwelling house'' in the Mundkars Protection Act, 1975 originally clearly sets out the object and the intent of the Legislature and it admitted of no ambiguity. Yet and despite the plain reading of section 2(i) defining ''dwelling house'', the learned Single Judge in this Court in Santana Furtado Dias v. Smt. Uttam Tari and others (supra), took the view that for a person to be mundkar, the house must be constructed by mundkar himself. Thus, the Learned Single Judge overlooked the other part of the expression contained in section 2(i), which reads: "or at the bhatkar''s expense or with financial assistance of the bhatkar." The construction adopted by the learned Single Judge of this Court was found by the Legislature to be clearly inconsistent with the object and intention of the law. What was obvious under the original definition of section 2(i) defining ''dwelling house'' has been made clear and loud by the Legislature by omitting the words "whether such house was constructed by the mundkar at his own expense or with the bhatkar''s expense or with the financial assistance from the bhatkar." The amendment in section 2(i), therefore, brings out only the object and intention of the Legislature free from ambiguity which was already there when the Act of 1975 was enacted.
18. We, therefore, have no hesitation in holding that the Amendment Act of 1985 does not suffer from any vice of constitutionality and the said provision cannot be declared unconstitutional.

19. We shall now take the writ petitions individually since facts and orders are different in each case.

20. Writ Petition No. 389/91 and Writ Petition No. 430/91.

As regards Writ Petitions Nos. 389 of 1991 and 430 of 1991, Mr. S.S. Kantak, the learned Counsel appearing for the petitioners, fairly conceded that the only issue involved in the said two writ petitions related to the constitutional validity of the Amendment Act, 1985 and that the Orders are not challenged on merits at all. Thus, Writ Petitions Nos. 389/91 and 430/91 are not required to be dealt with further and are liable to be dismissed.

21. Writ Petition No. 135/92.

The only contention raised by the learned Counsel for the petitioner, Mr. Usgaonkar, in this case is that according to the respondent No. 1 herein, her mother was care-taker and in possession of the disputed hut as such and, therefore, the respondent No. 1 could not have been declared as mundkar.

22. We find that in his deposition the respondent No. 1 herein (applicant before the Mamlatdai) deposed that his mother was given the suit house by the petitioner to reside peacefully as mundkar. He and his mother were doing the work of the petitioner herein of digging the property, watering the coconut saplings and doing the other work of the bhatkar. In cross-examination his statement has been slightly inconsistent, but the fact remains that the respondent No. 1 herein was not at all cross-examined about the fact that her mother was also doing the work of the bhatkar (Petitioner herein) of digging the property, watering the coconut saplings and doing other work. Though the Mamlatdar held the view that the respondent herein (Applicant before the Mamlatdai) could not be declared as Mundkar, the Appellate Authority upon due appreciation of the evidence on record, held that the finding of the Mamlatdar Court could not be sustained and that from the evidence on record, it was established that the mother of the respondent No. 1 was inducted as mundkar. The Administrative Tribunal considered the finding recorded by the Appellate Authority in the light of the available material and did not find any merit in disturbing the said finding of fact. We also find that the finding of fact recorded by the Appellate Authority and duly affirmed by the revisional authority that the respondent No. 1 herein (Applicant before the Mamlatdai) that his mother was residing in the suit house as mundkar, does no call for interference by this Court in extraordinary jurisdiction. The finding recorded by the Appellate Authority and affirmed by the revisional authority is concluded on facts warranting no interference. Writ Petition No. 135/92, accordingly, has no merit and is liable to be dismissed.

23. Writ Petition No. 162/89.

Mr. S.S. Kantak, the learned Counsel appearing for the petitioner in this writ petition, on facts urged that the occupation of the respondent No. 1 was unlawful and illegal and, therefore, he could not have been declared as mundkar by the authorities below. The contention is based on the ground that the respondent No. 1 was inducted by the father of the petitioner while he was minor. After the petitioner attained his majority, he filed the suit in 1971 that the lease entered into with the respondent No. 1 herein be declared null and void and not binding upon him.

24. We find the contention raised by the learned Counsel for the petitioner wholly devoid of any merit. Suffice it to observe that the petitioner attained his majority in the year 1964. No steps were taken by him as soon as he attained majority or immediately thereafter. Rather, year after year for the 7 years, the rent from the respondent No. 1 was accepted though, according to the petitioner, by his father. However, the fact is that for a period of 7 years after the petitioner attained

majority, no action was taken against the respondent No. 1. In this fact situation, the finding recorded by the authorities below that the petitioner acquiesced in the possession of respondent No. 1 and that in the circumstances, the respondent No. 1 cannot be held to have been inducted unlawfully, cannot be faulted.

25. It may be observed here that in the suit filed by the petitioner against the respondent No. 1 and his father Laxman Gopal, the plea was taken by the petitioner that respondent No. 1 herein was inducted as tenant in the land by his father while the petitioner was minor. The matter, ultimately, went right upto the Judicial Commissioner and it has been held in the said suit that the respondent No. 1 herein was not the tenant. Obviously, the said finding only related with regard to the land and has nothing to do with the disputed house because it was not the case of the petitioner in that suit that the respondent No. 1 herein was inducted as tenant in the suit house. As we have already observed, the petitioner attained majority in the year 1964 and even after attaining majority no steps were taken by the petitioner regarding eviction of the respondent No. 1 and it was only in the year 1971 that the suit was filed. In our view, therefore, the finding recorded by the Administrative Tribunal affirming the judgment of the Additional Collector does not require any interference. The writ petition is, accordingly, liable to be dismissed.

26. Writ Petition No. 234/91

Mr. S.S. Kantak, the learned Counsel appearing for the petitioner, submitted that the respondent No. 1 was in occupation only of the part of the building which was also capable of letting out and, therefore, was not a dwelling house within the meaning of section 2(i) of the Mundkars Protection Act, 1975 and, therefore, the respondent No. 1 could not have been declared mundkar by the Tribunal.

27. It would be seen that the respondent No. 1 herein made an application on 16-6-1980 u/s 8-A of the Mundkar Protection Act, 1975 before the Mamlatdar that he along with his family members are residing in the house bearing No. 158/9 situated in the town of Mupusa as mundkar, for the last about 18 years and, therefore, he be declared as mundkar and the owner be directed to sell the house to him. In defence, a plea was set out by the petitioner that the said house was in 3 blocks. One block in occupation of the respondent No. 1 had been let out to him as tenant on a monthly rent of Rs. 5/-. Other two portions had similarly been let out to others. Accordingly, it was submitted that the application was liable to be dismissed since it was not covered within the definition of section 2(i) of the Mundkars Protection Act, 1975. After holding the enquiry, the Mamlatdar declared the respondent No. 1 as mundkar of the suit premises bearing No. 158/9 belonging to the present petitioner by order dated 9th of July 1981. The petitioner carried the matter in appeal and the Additional Collector set aside the order of Mamlatdar and consequently dismissed the application made by respondent No. 1 herein. The order passed by the Additional Collector on 24-7-1982 came to be challenged by the respondent No. 1 herein before the Administrative Tribunal and the Tribunal upon consideration of

the available material and the definition of ''dwelling house'' in section 2(i) found the view taken by the Additional Collector unsustainable and, accordingly, allowed the Revision Application, set aside the order of the Additional Collector and restored the order of the Mamlatdar.

28. The learned Single Judge of this Court in Baburao Vishnu Naik v. Ramchandra Vishnu Naik and another, 1989 (1) G.L.T. 175 was seized of the question whether the part of the house which constituted an entity by itself is dwelling house within the meaning in section 2(i) of the Mundkars Protection Act, 1975 or not and in paras 12, 13 and 14 of the Report it was held thus:-

"12. The definition of "dwelling house" given in section 2(i) of the Act is clearly inclusive. It indeed postulates that dwelling house means the house in which the mundkar resides with a fixed habitation and includes also not only the land mentioned in Clauses (i) (a) and (b) but also the cattle shed, stable, pig-sty, workshop etc. and the customary easement, if any. The accent in the definition is however, on the premises in which the mundkar resides with fixed habitation. It lays down that "dwelling house" means the "house" in which the mundkar resides with fixed habitation, and hence, what is sought to be defined in partly included in the definition itself. This was naturally bound to create ambiguity or obscurity and therefore, the Legislature felt it necessary to clarify by introducing an Explanation what is the meaning of the word "house" occurring in the said definition, namely that for the purpose of the aforesaid definition house means an entity in itself. It becomes thus necessary and pertinent to find what is the meaning of an entity.

13. The Act does not define entity. I am, therefore, bound, as rightly pointed out by Mr. Khandeparkar, to understand that word as used in common parlance and to give to it the dictionary meaning which is more harmonious with the purpose for which the Act was enacted.

"Entity" means says the Webster''s-Third New International Dictionary, "being, existence; independent, separate or self-contained existence; something that has objective or physical reality and distinctness of being and character; something that the independent or separate existence; something that has a unitary or self-contained character". In common parlance also, an entity connotes something that is independent and separate; something that constitutes a thing by itself.

This undoubtedly may, at the first glance, appear to give some support to the view taken by Mr. Usgaokar, but on a deeper and more careful consideration, it is manifest that it is not so. The Act was enacted, as stated in its preamble, to provide for better protection to mundkars against eviction from their dwelling house and for granting them the right to purchase the same and to make certain other provisions connected therewith. The Act is therefore a beneficient piece of legislation. As observed by the Madras High Court in R.S. Mani Vs. A. Palanimuthu Pillai and Another, in interpreting the words used in such kind of legislation, one has to adopt

the course which leads to the most harmonious interpretation with the context and which promotes in the fullest manner the policy and the objects of the legislation.

The Act envisages a better protection to the mundkars against eviction from their dwelling houses. In other words, the Act was enacted to better safeguard the rights of mundkars as regards the premises where they reside with fixed habitation and which constituted the house where they dwell.

Hence, if a mundkar resides in a house or independent structure with fixed habitation, such house or structure will, of course, come within the meaning of dwelling house as defined in section 2(i). Similarly, if he resides in a part of a house with fixed habitation, a harmonious interpretation which will promote the very purpose of the Act requires that such part of house also falls within the same definition which otherwise does not postulate that the house where the mundkar resides with fixed habitation has to be an independent building or structure. It does not exclude a part of a house, the dominant aspect being the "fixed habitation". Therefore, the word "house" used in the definition of dwelling house in section 2(i) merely connotes the idea of "place" or "premises" where the mundkar has his fixed habitation.

Residentiality, the Supreme Court observed in S.P. Jain Vs. Krishna Mohan Gupta and Others, depends for its sense on the context and purpose of the statute of the project promoted, and quoting from "Corpus Juris Secundum". Vol. 28, pgs. 604-605, and from "Words and Phrases Legally Defined", Vol. 2 2nd Edn. pg. 127, noted that "dwelling house" means a building used or constructed or adapted to be used wholly or principally for human habitation and includes any part of a house when that part was occupied separately as dwelling house.

Thus, there can be no manner of doubt that a part of a house which is used separately for dwelling can be, and is, generally a dwelling house. I have, therefore, no hesitation to hold that the house where the mundkar resides with fixed habitation, as referred to in definition of dwelling house in section 2(i), embraces both an independent building and a part thereof. This interpretation promotes the purpose of the Act and is fully supported by its Explanation II. I may mention that an Explanation to a provision of law, as rightly pointed out by Mr. Khandeparkar, is meant only to clarify some doubts or some gaps which give cause to some obscurity or vagueness made in the enactment. Indeed, in Sundaram Pillai v. V.R. Pattabiraman, A.l.R. 1985 S.C. 582 the Supreme Court observed that it is now well-settled that an explanation added to a statutory provision is not a substantive provision in any sense of the terms, but as the plain meaning of the word itself shows, it is merely meant to explain or clarify certain ambiguity which may have crept in the statutory provision. The object of an explanation to a statutory provision is :---

a) to explain the meaning an intendment of the Act itself;

b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve;

c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;

d) an Explanation cannot in any way interfere with or change the enactment of any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

It was seen that in the definition of ''dwelling house" the Legislature utilized the word "house" and the use of this word was bound to create some ambiguity or obscurity. By the said Explanation II that ambiguity is sought to be removed by clarifying that dwelling house is the premises where the mundkar resides with fixed habitation which by itself constitutes an entity. In other words, the Explanation makes it clear that even a part of a house occupied by a mundkar for his fixed habitation will be a house for the purposes of the definition of "dwelling house", provided such part of the house constitutes an entity itself.

14. It was already said that in order to strengthen his contrary view, Mr. Usgaokar placed strong reliance on the decision of the Full Bench of the Kerala High Court in Muhammad''s case (above).

In my opinion, the aforesaid authority of the Kerala High Court is however, of no assistance. As rightly pointed out by Mr. Khandeparkar, the Full Bench of the Kerala High Court arrived at the finding that a hut and a homestead in the Act which was under a consideration had necessarily to be an independent structure and not part or portion of a larger building in the context of the definitions given in the aforesaid Act to hut and homestead. In both definitions, the said Act has established a link between the hut/homestead and the land where that structure stands unlike what happens in the definition of "dwelling house" given by the Act. That apart, it is also pertinent to note that also unlike the definitions of hut and homestead given in the Kerala Act which speaks a structure built on the land, the definition of "dwelling house" in the Act is inclusive. No doubt, Mr. Usgaokar urged that this inclusive definition,- specially Clause (i) (a) to section 2(i) of the Act, clearly indicates that the ''dwelling house" defined in the said provision of law must necessarily be an independent structure, since in its proviso it lays down that where a distance between the outer walls of the dwelling house of the mundkar and the house of the bhatkar is less than double of the limits laid down in the clause the land

appurtenant to the dwelling house shall be half of the land lying between the outer walls of the dwelling house of the mundkar and those of the bhatkar. But there is no merit in this submission, it was already seen that the definition of "dwelling house" is inclusive and includes land surrounding and appurtenant to the house. The proviso to the aforesaid Clause (i) (a) merely deals with a situation which may occur where appurtenant land as laid down in the said clause is not available, and thus, is of no assistance for the determination of the meaning of the word "house" occurring in the body of section 2(i).

I, therefore, find no force whatsoever in the submission of Mr. Usgaokar that "dwelling house" as defined in section 2(i) of the Act connotes necessarily an independent structure. In my view, it does include also a part of a house, provided however, that this part of the house constitutes an entity in itself."

29. We find ourselves in agreement with the view taken by the learned Single Judge in Baburao Naik''s case (supra). According to us, also, if a part of the house is an entity by itself, it would be covered within the definition of "dwelling house" u/s 2(i). The emphasis of the Legislature is that house to be ''dwelling house'' must be entity in itself, whether it is full house or part of the house.

30. In view of the legal position which we are taking that the part of the building if otherwise is separate entity in itself shall be ''dwelling house'' within the meaning of section 2(i), in our view the finding recorded by the Revisional Authority that the block in possession of the respondent No. 1 herein was a separate entity in itself and therefore covered under ''dwelling house'' in section 2(i), does not suffer from any infirmity.

31. Mr. Kantak, the learned Counsel for the petitioner, also sought to contend that even if it is an entity in itself, if capable of letting out, it would cease to be a dwelling house within the meaning of section 2(i). In this connection, Mr. Kantak sought to rely upon Explanation II appended to section 2(i) which reads thus:---

''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."

32. Once it has been held that a portion of the house which is an entity in itself would be covered as ''dwelling house'' u/s 2(i), obviously, such house would not be covered under the expression "a portion of which has been let out". If a house has more than one portion and each portion is an entity in itself, even if the other portion is let out, the portion which is an entity in itself and in occupation of mundkar shall not be excluded from the definition of ''dwelling house''. By appending the Explanation II, the Legislature has made the meaning of the expression "house" clear by amplifying that it means an entity in itself. Once that

portion of the house is an entity in itself, it is a dwelling house and, therefore, merely because the other portion has been let out, shall not take away that portion of the house, which is an entity in itself, outside the purview of the ''dwelling house'' u/s 2(i). We, therefore, do not find any infirmity in the order passed by the Tribunal and, accordingly, the writ petition has to be dismissed.

33. Writ Petition No. 416/91.

Mr. Lotlikar, the learned Counsel appearing for the petitioners, submitted that the order passed by the Tribunal suffers from error of jurisdiction inasmuch as the Administrative Tribunal exceeded in its jurisdiction in interfering with concurrent Orders passed by the two Authorities below by holding that in its revisional power u/s 25 of the Mundkars Protection Act, 1975, the Administrative Tribunal can appreciate the facts and its powers are not part materia with the powers that may be exercised by the Court of revision u/s 115 of the Code of Civil Procedure.

34. In Para 8 of the Order, the Tribunal observed thus:--

"8. We have carefully considered the arguments raised and have gone through the record of the case. Before we proceed further, we may briefly state that section 25 of the said Act which deals with revision provides wider power than those u/s 115 of C.P.C. in as much as section 25 r/w 26 of the said Act have empowered this Tribunal to satisfy itself as to the legality or propriety of any order passed as also the regularity of the proceedings and to pass such order thereon as deemed fit or which may be legal and just in accordance with the said Act.

In view of the decision reported in Rai Chand Jain Vs. Miss Chandra Kanta Khosla, , therefore this Court can examine the legality and propriety of the order of the Appellate Court and in an appropriate cases examine the correctness of the findings."

35. The Tribunal, therefore, after appreciation of the evidence on record, found that the finding recorded by the Additional Collector was also not in accordance with the evidence and, therefore, the said finding was vitiated.

36. Sections 25, 26 and 27 of the Act read thus:--

"25. Revision.- (1) From every order, other than an interim order, passed in appeal u/s 34 or under sub-section (2), a revision shall lie to the Administrative Tribunal or the Government, respectively and the order of the Administrative Tribunal or the Government, as the case may be, on such revision shall be final.

(2) Save as otherwise expressly provided under this Act, where no appeal lies under this Act, the Collector may, on his own motion or on an application made by an aggrieved person, or on a reference made in this behalf by the Government, at any time, call for the record of any inquiry or proceedings of any Mamlatdar for the purpose of satisfying himself as to the legality or propriety of any order passed by

the Mamlatdar and as to the regularity of the proceedings and pass such order thereon as he deems fit:

Provided that no such record shall be called for, after the expiry of six months from the date of such order and no order of such Mamlatdar shall be modified, annulled or reserved unless reasonable opportunity has been given to the interested parties to appear and be heard.

26. Extent of powers in appeal or revision.-- (1) The Collector or the Administrative Tribunal or the Government in appeal or in revision, may, confirm, modify or rescind the order in appeal or revision, or may pass such order as may be legal and just in accordance with the provisions of this Act.

(2) The orders passed in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar under this Act.

27. Powers of Civil Courts to be exercised in conduct of inquiries and proceedings under this Act.- The Mamlatdar, the Collector, the Administrative Tribunal or the Government shall exercise in all inquiries, proceedings, appeals or revisions, the powers as are exercised by the concerned trial Court, Appellate Court or a Court exercising revisional jurisdiction, under the Code of Civil Procedure, 1908."

37. It would be thus seen that u/s 25(i), revision lies to the Administrative Tribunal or the Government, as the case may be, from final order passed in appeal u/s 24 or under sub-section (2) of section 25. Sub-section (1) of section 26 provides the extent of powers of the appellate and revisional authority and, accordingly, the revisional authority may confirm, modify or rescind the order impugned and may pass such order as may be legal and just in accordance with the provisions of the Act. Section 27 of the Act, however, provides that the power of revision shall be exercised by the concerned authority as is exercised in revisional jurisdiction under the CPC of 1908. Obviously and apparently, therefore, the exercise of power of revision by the Administrative Tribunal is restrained in terms of section 115 of the Code of Civil Procedure, which in turn, means the revisional Court can exercise power of jurisdiction if the authority below has committed an error of jurisdiction, namely, (i) exercised the jurisdiction not vested in it by law; (ii) failed to exercise the jurisdiction vested in it and (iii) exercised the jurisdiction with illegality and material irregularity. The Revisional Court, therefore, is not empowered to re-appraise and reassess the facts and cannot go into the question of facts. The Administrative Tribunal''s jurisdiction of revision carries with it the same constraints which are applicable to the High Court exercising the power u/s 115 of the Code of Civil Procedure.

38. In Shri SHANKER Fatarpenkar (Since deceased) v. Joint Mamlatdar of Bicholim, 1991(2) G L.T. 23, the learned Single Judge of this Court considered the scope of power of revision that may be exercised by the Administrative Tribunal with reference to sections 26 and 27 and held thus :-

"... It follows therefore that the Administrative Tribunal when exercising revisional jurisdiction has to exercise its powers in terms of section 115 of C.P.C.. It is no doubt an express command. The provision does contemplate a situation which enables the Tribunal to act under the C.P.C. It is not that the powers of revision under the Act are to be exercised in addition to the powers conferred u/s 26. On the contrary from the express terms of section 26 it flows that the powers of revision conferred on the Tribunal are to be discharged in accordance with the provisions of the Act, namely its section 27, without however overlooking that the reference to the words "legal" and "just" as well as the expression "in accordance with the provisions of this Act" found in the body of sub-section (1) of section 26 are clearly connected not with the impugned order under challenge in revision but instead with the very order to be passed by the Administrative Tribunal itself while adjudicating the revision on its merits. In this view of the matter it is obvious that one cannot find any fault in the judgment of the Administrative Tribunal and no grievance against it is to be made by the petitioners."

39. The view taken by the learned Single Judge in Shri Shankar Fatarpenkar''s case (supra) is in conformity with the view which we have taken and expressed above.

40. In the circumstance, the order passed by the Administrative Tribunal has to be quashed and set aside and sent back to the said Tribunal for fresh decision in accordance with law keeping in view the aforesaid observations and the constraints of revisional jurisdiction which we have already explained.

41. Writ Petition No. 90/92.

Mr. E.P. Lobo, the learned Counsel appearing for the petitioner in this writ petition, urged that the respondent NO. 1 was neither rnundkar nor was the disputed house covered by the definition of "dwelling house" and, therefore, the Order passed by the Tribunal cannot be sustained.

42. We find on perusal of the judgment of the Tribunal that the argument raised on behalf of the petitioner before the Tribunal was that the house to be covered by the definition of ''dwelling house'' u/s 2(i) of the Act must be structure specifically built tor the purpose of mundkar and if the said house is not built for the purpose of mundkar, such house would not be covered u/s 2(i). The Tribunal negatived the said contention raised by the petitioner by observing that u/s 2(i) of the Act it was not necessary that the structure must have been specifically built for the purpose of mundkar. Upon careful reading of section 2(i) we also do not find that there is any requirement under the law that the house to be ''dwelling house'' within the meaning of section 2(i), must be a structure specifically built for the purpose of mundkar. The Tribunal has taken into consideration the entire evidence and found that though the suit house was earlier used as store-room for coconuts, but later on it was used as residence by the respondent NO. 1 and the respondent NO. 1 was covered under the definition of mundkar as provided in section 2(p). We find that

the two Courts below, namely the Appellate Authority and the Administrative Tribunal have considered the evidence on record and the legal position in right perspective and reached the correct findings that the respondent NO. 1 has established the facts which entitles him for declaration as mundkar u/s 2(p) and that the suit house occupied by him was dwelling house u/s 2(i). The order passed by the Administrative Tribunal, therefore, does not call for an interference by this Court.

43. Writ Petition No. 431/91.

Mr. Kantak, the learned Counsel appearing for the petitioner, took us through the findings recorded by the Tribunal and submitted that it has been found from facts that the respondent No. 1 was care-taker of the house and, therefore, according to the learned Counsel, he could not have been declared as mundkar.

44. Upon perusal of the judgment of the Administrative Tribunal we find that the Tribunal has observed that the respondent No. 1 herein himself deposed that he was asked to look after and take care of the main house situated in the same compound. However, the tribunal held that since the respondent No. 1 herein was looking after the sister of the petitioner herein who was suffering from epileptic fits, he could be declared as mundkar. Section 2(p) defines mundkar thus:

" "mundkars" 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 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."

45. Sub-section (iv) excludes a person in occupation as care-taker of the said house or for the purpose of maintaining it in habitable condition. There is no dispute and rather it in the testimony of the respondent No. 1 himself that he was asked to look after and to take care of the main house situated in the same compound and was in occupation of the suit house as such and, therefore, in our view, the respondent No. 1, being care-taker, could not have been declared as mundkar. Merely because the

respondent No. 1 was looking after the ailing sister of the petitioner herein, his status of being care-taker covered under sub-section (iv) shall not be done away with. For any of the persons covered under sub-sections (i), (ii), (iii) and (iv) who are not included in the definition of mundkar, the factum of rendering the service to the bhatkar or any of the members of his family is irrelevant. If a person is excluded under any of the Clauses (i), (ii), (iii) and (iv), ex facie, he shall not be included in the definition of mundkar merely because he renders any services to the bhatkar or to any of the members of his family. We, therefore, find force in the contention of the learned Counsel for the petitioner that on admitted facts the respondent No. 1 could not have been held mundkar since he was only care-taker. This writ petition, accordingly, deserves to be allowed.

46. In the result, Writ Petition Nos. 389/91, 430/91, 135/92, 162/89, 234/91 and 90/92 are dismissed with no order as to costs and rule in these writ petitions is discharged. Writ Petition No. 416/91 is allowed and the order passed by the Administrative Tribunal on 28th of August, 1991 is quashed and set aside and Mundkar Revision Application No. 15/90--''Vitorino Medonca v. Shri Lawrie de Souza and others''-- is sent back to the Administrative Tribunal, Goa, Daman and Diu at Panaji for fresh decision of the said Revision Application in accordance with law. Since the matter is quite old, the Administrative Tribunal is expected to hear and decide the Revision Application as early as possible and in no case later than 6 months from the date of the production of the order of this Court and appearance of the parties. Writ Petition No. 431/91 is allowed. The order passed by the Administrative Tribunal dated 10th of June, 1991; the order passed by the Additional Collector, North Goa District, Panaji on 17th of May, 1989 and the order dated 25th of January, 1988 passed by the Joint Mamlatdar of Bardez are quashed and set aside and, consequently, the application made by the respondent No. 1 herein bearing Case No. MUN/MAPUSA/ 398/78-Shri Dinanath Narayan Prabhu v. Shri Roque Felix Souze''-- Stands dismissed. No order as to costs.