



LEGISLATIVE ASSEMBLY OF THE STATE OF GOA

**The Goa Mundkars (Protection from  
Eviction)(Amendment) Bill, 2004**

(Bill No. 8 of 2004)

<sup>As</sup>  
~~to be~~ introduced in the Legislative Assembly of the State of Goa)

GOA LEGISLATURE SECRETARIAT  
ASSEMBLY HALL, PORVORIM  
FEBRUARY, 2004

# The Goa Mundkars (Protection from Eviction) (Amendment) Bill, 2004

(Bill No. 8 of 2004)

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BILL

*further to amend the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.*

BE it enacted by the Legislative Assembly of Goa in the Fifty-fifth Year of the Republic of India  
05 as follows:—

1. *Short title, extent and commencement.*— (1)  
This Act may be called the Goa Mundkars  
(Protection from Eviction) (Amendment) Act, 2004.

(2) Section 2 of this Act shall be deemed to  
10 have come into force on the 27th day of  
September, 1995, and section 3 and 4 of this Act  
shall be deemed to have come into force on the  
16th day of April, 1993.

2. *Amendment of section 2.*— In item (i) of  
15 clause (i) of section 2 of the Goa, Daman and Diu  
Mundkars (Protection from Eviction) Act, 1975  
(Act No. 1 of 1976) (hereinafter referred to as the  
"principal Act"),—

(a) in sub-item (a), after the expression "if  
20 the land is" and before the expression "with  
the jurisdiction", the words "on the appointed  
date" shall be inserted;

(b) in first proviso to sub-item (b), after the  
word "word" and before the expression "the  
25 dwelling house", the words "on the appointed  
date" shall be inserted.

3. *Amendment of section 15.*— In sub-section (3) of section 15 of the principal Act, after the words "house purchased" and before the words "and the improvement thereon", the words "as prevailing on the appointed date" shall be inserted. 05

4. *Validation of notices, inquiries, disputes, orders, etc.*— Notwithstanding anything contained in any Judgement and or order passed by any Court, all notices given, inquiries held, disputes decided, orders taken or made and all acts done and all proceedings taken by the concerned authorities in exercise of the powers conferred under the principal Act, from the 16th day of April, 1993, in respect of the exercise of the right of purchase of the dwelling house by a mundkar, shall be deemed to be and always to have been validly done, given, held, decided, taken, made or executed, as the case may be, in accordance with the principal Act. 15 20

### Statement of Objects and Reasons

In order to enable the mundkars living within such Village Panchayat areas which were to be merged with Municipal Council, to get a fair deal, section 2 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act 1 of 1976), was amended vide the Goa Mundkars (Protection from Eviction) (Amendment) Act, 1955 (Goa Act 2 of 1996), so as to provide that the crucial date of determination of the area to be allotted to the mundkar should be the "appointed date" which is defined in section 2 (e) of the said Act, i.e. 12-3-1976. This was done to protect the rights of the mundkars living in panchayat areas which are merged with a Municipal Council.

Further it was noticed that some of the Mamlatdars/Joint Mamlatdars, while determining the purchase price payable by mundkars for dwelling house, had taken into consideration the basis of the market value prevailing in the vicinity of the locality at the time of fixing the said price. The aforesaid approach did not appear to be on sound footing since the appointed date when the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act 1 of 1976), came into force was 12-3-1976 and the right of the mundkars to purchase dwelling house came into existence on that date and hence the purchase price had to be as on the appointed date i.e. 12-3-1976 and consequently the market value thereof was required to be determined as prevailing on that date. Hence, Section 15 of the said Act, 1975, was similarly amended vide the Goa Mundkars (Protection from Eviction) (Amendment) Act, 1993 (Goa Act 6 of 1995).

By Judgement dated 16-12-2003, the Hon'ble High Court of Bombay at Goa in Write Petition No. 86/1997 held that the said Amendment Acts of 1993 and 1995 are ultra virus Article 14 read with Article 13(2) of the Constitution of India and inter alia observed as follows:- "..... the record clearly establishes that the assertion made by the petitioner (Dr. Vasudeo R. Deshprabhu) that both the Amendment Acts are neither included in Ninth Schedule to the Constitution, nor have received the assent of the President of India has remained uncontroverted. In our view that position is indisputable. As a consequence, the Amendment Acts will not receive protection for either under Article 31 A, Article 31 B or Article 31 C of the Constitution of India. It is well settled that mere inclusion of the principal Act in the Ninth Schedule does not automatically result in extending the protection of Article 31 B of the Constitution, on the ground that the amendments were ancillary or incidental to the principal provision. Whereas, inclusion of even the Amendment Acts in the Ninth Schedule to the Constitution, which are passed after the Principal Act was inserted in the Ninth Schedule to the Constitution, is an imperative." Considering that the mundkar Act of 1975 is a beneficial piece of legislation aimed at protecting the mundkars from eviction from their dwelling house and is also a feature of agrarian reform, so also with a view to restore to the mundkars the benefits as were provided to them under the said quashed Goa Acts 2 of 1996 and 6 of 1995, it is felt necessary that the said quashed Amendment Acts i.e. Goa Acts 2 of 1996 and 6 of 1995 are reintroduced as a fresh Bill and passed for the purpose of obtaining Presidential assent and for its inclusion in the Ninth Schedule to the Constitution of India

through an Act of Parliament so that the defects as observed by the Hon'ble High Court of Bombay at Goa in its judgment in said Writ Petition No. 86/1997 are removed and this amendment is rendered immune from judicial scrutiny.

This Bill seeks to achieve the above objects.

### **Financial Memorandum**

No financial implications are involved in this Bill.

### **Memorandum Regarding Delegated Legislation**

No delegated legislation is envisaged in this Bill.

Panaji-Goa  
9th Februray, 2004.

**PANDURANG MADKAIKAR**  
Minister for Revenue

Assembly Hall,  
Porvorim, Goa  
9th Februray, 2004.

**S. A. Narvekar**  
Secretary (Legislature)

A N N E X E U R E

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**Extract of Section 2 and Section 15 of the Goa  
Mundkars (Protection from Eviction) Act, 1975 as  
it stood prior to Amendments of 1995 and 1996**  
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Section 2. (i) "Dwelling house" means the house in which mundkar resides with a fixed habitation 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 metres, if the land is within the jurisdiction of a village panchayat, and two metres, if it is not within such jurisdiction, from the outer walls of the dwelling house.

Provided that, where the distance between the outer walls of the dwelling house of the mundkar and of the house of the bhatkar, or between the outer walls of the dwelling house of a mundkar and of the dwelling house or houses of one or more mundkars, is less than double the aforesaid limit the land appurtenant to such dwelling house shall be half of the land lying between the outer walls of the dwelling house of such mundkar and the bhatkar or between the outer walls of the dwelling house of such mundkar and the outer walls of the dwelling house or house of such other mundkar or mundkars, as the case may be, or

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

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

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

*Section 15.— Right of mundkar to purchase the dwelling house.*— (1) Notwithstanding anything to the contrary contained in any law for the time being in force, a mundkar shall, subject to the provisions of this Act have the right to purchase the dwelling house occupied by him.

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

(3) The purchase price payable by the mundkar for his dwelling house shall be the market value of the dwelling house purchased and the improvement

thereon, other than the improvement, if any, belonging to the mundkar:

Provided that, when the house, hut or any structure with its materials belong, wholly or partly, to the mundkar, the corresponding value shall be deducted from the market value and, in such case, the purchase price shall be the balance left after deducting the corresponding value from the market value:

(1) Provided further that —

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

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

(c) where the annual income of a mundkar, being a person belonging to Scheduled Castes or the Scheduled Tribes and not falling under clause (a) or clause (b), from all sources does not exceed rupees three thousand and six hundred;

then, the purchase price payable by such mundkar and a member of his family shall be twenty percent of the market value payable.

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

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

(b) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes

or tribal communities as are deemed under article 342 of the Constitution to be Scheduled Tribes in relation to the Union territory of Goa, Daman and Diu;

(4) The purchase price payable under sub-section (3) in respect of the dwelling house shall be paid in not more than ten equal annual instalments;

Provided that, it shall be open to the mundkar to pay the entire purchase price in lumpsum, in which case, the amount payable shall be only ninety per cent of the purchase price.

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