

GOVERNMENT OF GOA

LAW COMMISSION

Proposal to enact an Act to provide for the abolition of proprietorship of lands granted to the Conde of Mayem by the Portuguese in the village of Mayem in the State of Goa

Report No. 16

September 2011

LAW COMMISSION, GOA

(REPORT No. 16)

Proposal to enact an Act to provide for the abolition of proprietorship of lands granted to the Conde of Mayem by the Portuguese in the village of Mayem in the State of Goa

Forwarded to the Chief Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the day of 26th September 2011.

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

The Commission consists of the Chairman, and the two Members.

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.

Secretarial Support

- 1. Shri Manohar Shetye, O.S.D. to Chairman/ Acting Secretary**

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Any enquiry relating to this Report should be addressed to the O.S.D. to Chairman/ Acting Secretary and sent either by post to the Law Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa or email to chairman-glc.goa@nic.in or rdkhalap@rediffmail.com

RECOMMENDATIONS

It is therefore suggested that an Act be enacted as per the Draft attached herewith providing for abolition of proprietary rights of Conde de Mayem in the Condade property situated in Mayem and its allotment to the villagers.

We recommend accordingly.

**(Ramakant D. Khalap)
Chairman**

**(Cleofato Coutinho)
Member**

**(Mario Pinto Almeida)
Member**

REPORT

Mayem is a picturesque village on the northern bank of River Mandovi in the Taluka of Bicholim. It was one of the few villages which were given in grant by the erstwhile Portuguese regime to its "nobles" who enjoyed the Title of Visconde, Conde, Marquez, etc. Village of Mayem was granted to the "Conde de Mayem" and has since remained the property of the Conde and his successors.

The property of the Conde was declared to be Evacuee Property and was entrusted to the Custodian of Evacuee properties under the Administration of Evacuee Properties Act 1966.

It is the contention of the villagers of Mayem that their lands were forcibly confiscated by the Portuguese Regime and granted to the Conde as "Condade"-a kind of vatan or Inam. The villagers who rose in rebellion against Conde and his Condade and therefore against the Portuguese could not succeed against the might of the Portuguese.

Villagers had hoped that after Liberation they would get their lands back. These hopes were belied. On the contrary, the Government of Goa enacted the Administration of Evacuee Properties Act 1966 and placed the entire Condade in the hands of the Custodian.

Meanwhile a wave of Land Reforms swept the Country. Several Acts were enacted by various State Governments abolishing all Titles, vatans, inams, and zamindaries. The erstwhile Princes, Rajas, and Maharajas were made commoners. Agricultural Tenancy Act and Land to the Tillers Act bestowed ownership rights upon the cultivators of land and occupants of homesteads. Goa Daman and Diu also had its share of Agrarian Reforms. In 1970 The Goa, Daman and Diu (Abolition of Proprietorship of Land in Diu) Act 1970 was enacted Under this Act the ownership and title of the landholders of Diu were extinguished and permanent occupancy rights were vested in the cultivators of such lands. Goa, Daman and Diu Agricultural Tenancy Act 1964 provided security of tenure to agriculturists and rent was not permitted to exceed 1/6 the of the produce. Later the Act was amended and made applicable to horticultural gardens as well. Finally, Land to the Tiller Act vested ownership rights upon the Tenants in respect of lands cultivated by them. Mundkar Protection Act was also enacted which protects Mundkars from eviction from their homesteads and also enables them to purchase their dwelling houses. The villagers of Mayem who were exempted from the benefits of these laws were sought to be protected vide Amendments to the Evacuee Properties Act which extended the Agricultural Tenancy Act and Mundkar Act to the Evacuees Properties. These amendments failed to provide succor to the villagers who feared a spate of unending

litigation to prove Tenancy and Mundkarial Rights before the Revenue Authorities. It also offended their perception regarding the tenure of land in Mayem. It was contended that the villagers were rightful owners whose lands were confiscated by the Portuguese. Tenancy and Munkarship would give credence to the perception that the Conde is the owner of the village-an anathema to the villagers conscience. The villagers thus continued to agitate. The wounds of injustice festered. There is a lurking fear of a fresh agitation springing up with severe consequences for all concerned unless the issue is resolved for all times to come.

The Law Commission suo moto decided to take up the challenge to settle the Mayem issue. Several rounds of discussions were held with the villagers who are organised under the organization called “Mayem Bhu-Vimochan Nagrik Samiti”. Pursuance to our appeal for views of the general public several villagers submitted their points of view and likely solutions. One Antonio J. C. Pereira, resident of Sawantwadda, Mayem who claims to be one of the legal heirs of the original Conde submitted a Memorandum to us on 8th September 2011. He appears to be willing to grant house sites to those who have their houses, whether legally constructed or not within Condade land in Mayem purely on humanitarian grounds subject to payment of ground rent. He is silent regarding agricultural properties cultivated by the locals.

It is obvious that had the Condade property not been declared an Evacuee property, the villagers would have benefited from the provisions of the Mundkar and the Tenancy Act like their counterparts in the rest of the State of Goa. Certainly the present claimants to the inheritance of the erstwhile Conde are not so naïve as not to understand this reality.

In these circumstances, it is our considered opinion that the best and easiest way to solve this imbroglio threatening to blow up into a violent agitation is to apply the principles of Zamindari Abolition Act to the Condade of Mayem. As in similar circumstances in Diu and in the rest of the Country we feel that it would be just and equitable to provide for (1) abolition of Title of Conde and proprietorship of all lands granted to him by the Portuguese Regime, (2) grant of land under occupancy rights to the villagers (3) Re-grant to the heirs of the Conde lands under their homesteads and under their personal cultivation and (4) payment of compensation of lands taken over by the Government to the rightful claimants of the Condade. A Draft Bill called “Condade de Mayem (Abolition of Title and Proprietorship) Bill 2011 is accordingly prepared and placed along with this Report. We hope that all concerned will stand to gain if the Bill is enacted into an Act and implemented as per its letter and spirit.

**The Condade de Mayem (Abolition of Title and
Proprietorship of lands in Mayem) Bill, 2011**

Bill No.... of

An Act to provide for the abolition of proprietorship of lands granted to the Conde of Mayem by the Portuguese in the village of Mayem in the State of Goa and for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa in the Twenty –first Year off the Republic of India as follows :-

1. Short title, extent and commencement-

(1) This Act may be called The Condade de Mayem (Abolition of Title and Proprietorship of lands in Mayem) Act, 2011

(2) It extends to all the areas within the jurisdiction of the village Panchayat of Mayem constituted under the Panchayat Act 1994 in the State of Goa

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions-

In this Act, unless there is anything repugnant in the subject or context,-

(a) “appointed date” means the date on which this Act comes into force;

(b) “Collector” means the Collector of North Goa appointed under the Land Revenue Code and shall include any subordinate officer appointed by the Collector to perform the functions under this Act.

(c) “Conde de Mayem” means the person so appointed by the Portuguese and shall include his successors, heirs and assignees and who holds land granted to him by the former Portuguese Government.

(d) “Codade de Mayem” shall mean all lands, buildings, shares, title and interest, waters, trees, etc granted to the Conde de Mayem by the Portuguese and shall include all improvements, addition, alterations made therein.

(e) “Custodian” means the Custodian appointed under the Administration of Evacuee Property Act, 1966.

(f) “prescribed” means prescribed by rules made under this Act;

3. Take over of lands granted to Conde de Mayem -

Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, or any law for the time being in force, with effect on and from the appointed date-

- (i) The title of “Conde de Mayem” shall stand extinguished and permanently cancelled.
- (ii) All rights, title and interest of the Conde in or in respect of all lands granted to Conde de Mayem by the Portuguese and now administered by the Custodian shall be deemed to have been extinguished;
- (iii) All such rights, title and interest in such lands shall stand transferred to and vest in the Government free from all encumbrances, and every mortgage, debt or charge on any such right, title and interest in or over such lands shall be a charge on the amount of compensation payable to the Conde under this Act;
- (iv) Where under any agreement or contract made before the appointed date any rent or other dues for any period after the said date has been paid to or compounded or released by the Conde or Custodian, the same shall, notwithstanding such agreement or contract, be recoverable from the Conde or the Custodian and may, without prejudice to any other mode of recovery, be realized by deduction from the compensation payable to the Conde under this Act.

4. Re-grant of certain lands to the Conde as occupant-

Immediately after vesting of the lands in the Government under section 3, the following lands shall be deemed to have been re-granted to the Conde from whom they had vested in the Government and the Conde shall hold them from the Government as an occupant and shall be liable to pay to the Government the land revenue as provided in section 6, namely:-

- (a) homesteads, buildings and structures together with lands appurtenant thereto in the occupation of the Conde.
- (b) Lands under the personal cultivation of the Conde.

5. Collector to take charge of lands, etc. vested in Government -

(1) The Collector shall take charge or possession of all lands and of all rights, title and interest therein of the Conde vested in the Government under section 3, and for this purpose the Collector or any officer authorized by him may take such steps or use force as may be necessary.

(2) Nothing in this section shall be deemed to authorize the Collector to take possession of any land of the Conde which may have been re-granted to him under section 4.

6. Grant of land under occupancy rights-

(1) As soon as may be after the appointed date and subject to the rules made in this behalf, and or a scheme for development of the village of Mayem duly prepared under the Town and Country Planning Act, the Government may grant land vested in it under this law for residential or agricultural purposes or for non agricultural purposes as may be specified in the order of grant.

(2) Such rules may provide inter alia for the following matters namely-

(a) the extent to which lands are granted for specified purpose

(b) occupancy price payable for the land and the mode of its payment

(c) cases in which no occupancy price may be charged or in which concessional price may be charged.

(d) order of priority to be observed when land is granted for agricultural purposes.

(e) conditions to which the land is granted

(f) the penalty for the breach of the grants

(3) The persons to whom the land is granted shall be entitled to hold land so granted in perpetuity but subject to such restriction on the rights to transfer as may be prescribed by rules.

(4) The provisions of the Land Revenue Code 1968 shall be applicable mutadis mutandis to all lands vested in the Government under this Act.

(5) The grant of land under clause (1) shall be on payment of compensation to the Government as determined by the rules prescribed.

7. Compensation to Conde-

The Conde whose rights, title and interest, in respect of his lands vest in the Government under section 3, shall be entitled to payment of compensation in respect of the lands which have vested in the Government and have not been re-granted to him under section 4.

8. Method of payment of compensation-

(1) Any person entitled to compensation under section 7 shall, on or before such date as the Government may specify in this behalf from time to time by notification in the

Official Gazette, make an application to the Collector in the prescribed form for payment of such compensation.

(2) On receipt of an application under sub section (1), the Collector shall, after making such inquiry as he thinks fit, determine the amount of compensation payable to such person.

Provided that where there are more persons than one entitled to such compensation, the Collector shall apportion the compensation among them.

Provided further that in cases of dispute regarding apportionment of compensation among the persons entitled to compensation, the Collector shall direct them to have their respective shares adjudicated upon by a competent civil court and the payment of compensation shall be in accordance with such adjudication.

9. Payment of compensation-

The compensation determined under section 8 shall, after deducting there from the dues, if any, referred to in clause (iii) of section 3, be paid in cash to the person or persons to whom it is payable.

10. Records to be delivered to the Collector-

Whenever the Collector or any officer authorised by him on his behalf so directs, the Conde or the Custodian shall deliver to him or such other officer as may be specified in this direction, the records relating to the land held by him as Conde or as Custodian.

11. Duties and Functions of the Collector-

The Collector shall-

- a) decide whether a person is a proprietor
- b) decide the amount of rent or dues recoverable under section 3
- c) decide the homesteads, buildings and structures with land appurtenant thereto and the lands under personal cultivation of the Conde which are deemed to be re-granted under section 4.
- d) determine the lands in respect of which occupancy rights are to be conferred under section 6.
- e) decide such other matters as may be referred to him by or under this Act.

12. Appeal-

Any person aggrieved by the decision of the Collector under any of the provisions of this Act may within 30 days of such decision appeal to the District Court whose decision shall be final and binding in all parties.

13. Bar of Jurisdiction-

No Court except the District Court in appeal shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Collector and no order of the Collector shall be questioned in any Court.

14. Protection of action taken under this Act -

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made there under.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of any provision contained in this Act or any rules made there under or by anything in good faith done or intended to be done in pursuance of this Act or any rules made there under.

15. Power to remove difficulty-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order make such provisions (not inconsistent with this Act) as appear to it to be necessary or expedient for removing the difficulty.

(2) Any order under sub section (1) may be made so as to be retrospective to any date not earlier than the appointed date:

Provided that no order under this section shall be made after the expiration of three years from the appointed date.

16. Power to make rules-

(1) The Government may by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly of Goa.

