
(1998) 03 BOM CK 0055

In the Bombay High Court

Case No : Letters Patent Appeal No. 13 of 1996

Shri Cabriel de Sa

APPELLANT

Vs

Shri Babuso Pednekar

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 2

Citation : (1998) 3 BomCR 867 : (1998) 3 MhLj 528

Hon'ble Judges : R.M.S. Khandeparkar, J;N.J. Pandya, J

Bench : Division Bench

Advocate : N. Sardessai, for the Appellant; S.D. Lotlikar, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—This Appeal arises from the judgment of the learned Single Judge in Writ Petition No. 4/91 passed on 10th November, 1994, whereby the said writ petition filed against the judgment of the Administrative Tribunal confirming the declaration of the respondent No. 1 as mundkar, was dismissed. The only question that is sought to be raised in the present appeal for our consideration is whether a person lawfully residing in a house with the consent of the owner thereof, but admittedly caretaker of the property in which the said house exists cannot be a mundkar within the meaning of the term "Mundkar" u/s 2(p) of the Goa, Daman and Diu (Protection From Eviction of Mundkars) Act, 1975, hereinafter called as the "Mundkar Act", particularly in view of Clause (iv) of section 2(p) of the Mundkar Act.

2. The facts in brief relevant for the decision of this case are that the respondent No. 1 herein filed an application claiming to be mundkar in respect of the house in question. The respondent No. 2 however, by Order dated 15th June, 1983, dismissed the said application and the respondent No. 1 aggrieved by the same, preferred an appeal before the respondent No. 3, who by his Order dated 4th July, 1984, set aside the Order of the respondent No. 2 and allowed the appeal and held respondent No. 1 to be mundkar in respect of the house in question. An attempt by the appellant to get the order of the respondent No. 3 set aside in the

revision application before the respondent No. 4 proved futile, as respondent No. 4 dismissed the revision application by Order dated 5th August, 1990 and thereby confirmed the order of respondent No. 3 declaring respondent No. 1 as mundkar in respect of the suit house. The writ petition by the appellant did not yield successful result and hence this appeal.

3. Before we proceed to consider the rival contentions in the matter, it is pertinent to note that the respondent No. 2 had dismissed the application of the respondent No. 1, solely on the ground that the respondent No. 1 had admitted that he was residing in the suit house which was built by the ancestors of the appellant herein. In other words, the fact that the house in question was originally built by the ancestors of the appellant was not in dispute and in view of the provisions contained in section 2(i) of the Mundkar Act at the relevant time, the respondent No. 2 held that the respondent No. 1 was not entitled to claim the benefits under the Mundkar Act since the house did not constitute dwelling house within the meaning of the said term u/s 2(i) of the Mundkar Act. Indeed, till 1985 the term "dwelling house" meant a house in which the mundkar was residing with 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. In other words, prior to the amendment to the Mundkar Act in the year 1985, it was necessary that the house ought to have been constructed by the mundkar and in the instant case the admitted position was that the house was constructed by the appellant, i.e. bhatkar. By virtue of the Goa, Daman and Diu (Amendment) Act, 1985, the expression, "whether such house was constructed by the mundkar at his own expense or with the financial assistance of the bhatkar, in section 2(i) of the Mundkar Act was deleted and therefore, the "dwelling house" under the Mundkar Act, as it stands now includes any house constructed either by the mundkar or by the bhatkar.

4. Undisputed facts which are relevant for the decision in the matter are that the respondent No. 1 has been staying in the suit house for a period of 40 years and there had been no proceedings initiated against him by the appellant or the ancestors of the appellant, within the period of one year prior to the appointed day for the eviction of the respondent No. 1 from the suit house. On perusal of the orders passed by the fact-finding authority as well as the Appellate Authority and the Revisional Authority, it is evident that the materials on record disclose that the respondent No. 1 had been staying in the suit house as the care-taker of the property wherein the suit house is situated, but there is no material on record to show that the respondent No. 1 has been staying in the suit house as the caretaker of the suit house itself. Being so, and considering the provisions contained in Clause (iv) of section 2(p) of the Mundkar Act, the learned Single Judge in the impugned judgment has observed that the Mundkar Act intends to exclude only the caretaker of the house in which the person claiming to be mundkar resides.

5. The contention of Shri Sardessai is that the house forms part of the property

and in that sense the finding of the fact-finding authorities being that the respondent No. 1 was caretaker of the property, therefore, it should be construed that the respondent No. 1 was also caretaker of the house and, therefore, was not entitled to claim to be the mundkar in respect of the said house, cannot be accepted in view of the clear definition of the term "mundkar", given in section 2(p) of the Mundkar Act. One cannot overlook the fact that the Mundkar Act is a beneficial legislation and the exception carved out in Clause (iv) of section 2(p) relates only to a person residing as a caretaker of the house itself. Merely because a person happens to be a caretaker of the property in which the house exists, that by itself will not give any benefit to the bhatkar to claim that the person residing in such a house would not be a mundkar and would fall under the exception Clause (iv) of section 2(p).

6. Indeed, the learned Single Judge being fully conscious about the cardinal principles of interpretation of statutes observed that the Act intends only to exclude the caretaker of the house in which the person claiming to be mundkar resides. The exception carved out in Clause (iv) of section 2(p) of the Mundkar Act is not extended to a person who happens to be a caretaker of the property in which the house which is the subject-matter of dispute exists. To hold otherwise would amount to reading down something in the said Clause which actually does not exist therein. The observation of the learned Single Judge that, "a person who is acting as a caretaker of a house as well as of the property is another category of person who, of course, is not excluded by express words by the statute", have to be understood in the above context. Clause (iv) of section 2(p) specifically refers to a person who is a caretaker of the house itself. It is another thing that such person may also be caretaker of the property in which such house exists. However, that fact would be immaterial for the decision about the applicability of Clause (iv) of section 2(p). What is material to claim benefit by the bhatkar under Clause (iv) of section 2(p) is that he has to establish that the person residing in the house is as a caretaker of the house in which the person claiming to be mundkar resides. Merely because the house happens to exist in a property of which a person residing therein is a caretaker, that itself will not entitle the bhatkar to deny mundkarship right to the person occupying the house in such a property.

7. Since the records in no way disclose that there is any piece of evidence even to suggest that respondent No. 1 has been residing in the suit house as the caretaker of the house itself, nor there has been any finding to that effect either, by the fact-finding authority, or the Appellate Authority, we find no illegality committed by the learned Single Judge in dismissing the writ petition. No case is made out for interference in the impugned order.

8. In this view of the matter, the appeal is liable to be rejected and is hereby dismissed. There shall be no order as to costs.

9. Appeal dismissed.