

(1994) 11 BOM CK 0037
In the Bombay High Court
Case No : Writ Petition No. 4 of 1991

Shri Gabriel de Sa

APPELLANT

Vs

Shri Babuso Pednekar and Others

RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

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

Citation : (1996) 5 BomCR 204

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : F. Rebello, for the Appellant; S.D. Lotlikar, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Chandrashekhara Das, J.—The short question that arises in this writ petition is as to whether the order passed by the appellate and revisional authorities declaring that the respondent No. 1 is a mundkar in respect of the disputed house and that he is entitled to the benefit under the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (hereinafter called the Act). As is discernible from the preamble of the Act the sole purpose of bringing such an enactment is to protect the mundkar against eviction from the dwelling house and from granting him the right to purchase the same and also to abolish the system of free services rendered by mundkars. The provisions of an enactment whenever certain difficulties arise for understanding and interpreting the same, emphasis should be to its objects that are to be achieved. In this case provisions should be interpreted in favour of the mundkars.

2. Now coming to the facts emerge in this case. It has been established before the authorities below that the petitioner has been residing in the disputed house even before 12th March, 1975, the relevant date to be reckoned for the purpose of maintaining an application under the Act by the mundkars. Though the original authority has dismissed the application on the ground that the house in question has not been constructed by the mundkar, both the appellate authority and

revisional authority, on facts, found that the finding of the original authority was baseless and therefore set aside that order. As facts proved in this case, the house in dispute satisfied the definition of dwelling house as the construction of the house irrespective of the facts that the house might be constructed either by the mundkar or by the owner. According to the appellate authority and the revisional authority with the definition of mundkar petition satisfies the definition of mundkar.

3. I have heard the counsel for the petitioner, bhatkar. He strongly argues that the respondent is not entitled to the benefit of mundkar for the reason that he is a caretaker in respect of both the property and of the house. Therefore he will come under the exclusion clause (iv) of section 2(p) of the Act. I do not think that the contention of the learned Counsel is sustainable.

4. Mundkar is defined u/s 2(p) of the Act. Four categories of persons have been expressly excluded by the statute in clauses (i) to (iv) of section 2(p) which are extracted below:---

"(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 caretaker of the said house or for purposes of maintaining it in habitable condition.

Explanation.---A person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent Court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person."

Under Clause (iv) of section 2(p) a person who is dwelling in a house is not entitled for the benefit of being a mundkar if he is or was a caretaker of the suit house. As found by the Joint Mamlatdar it has been established that the petitioner is a caretaker of the property also. Therefore, indisputable conclusions which were arrived at by the appellate authority and the revisional authority is that the respondent is a caretaker of the property also. Then the question therefore would be whether he will really come within the ambit of the exclusion clause (iv) of section 2(p) of the Act. My answer is in the negative.

5. It is a general rule of literal construction that nothing is to be added to or taken from a statute unless there are sufficient reasons. It is a very serious thing to read into an Act of Legislature words which are not there. Also, by following the well known maxim "Expression unius exclusio alterius", it is not justified that exclusion clause (iv) of section 2(p) will also take in a caretaker of landed property. One cannot forget the principle underlying above maxim that when a legislature expressly excludes a particular category of thing or person under the purview of a particular section the person or thing enumerated in the section alone are excluded and all others are deemed to be not excluded. Based on this cardinal principle of interpretation of statute, the Act intended only to exclude the caretaker of the house and not caretaker of a property. A person who is acting as a caretaker of a house as well of the property is another category of person who, of course, is not excluded by express words by the statute. Therefore viewing the sections particularly, with object that is to be achieved by the enactment, a broader interpretation should be given in order to rope in as many persons as having resemblance of characteristic of "mundkar" is envisaged under the statute.

6. In view of the above discussions, I am of the view that the conclusion arrived at by the appellate authority and the revisional authority are perfectly justified and needs no interference by this Court. The contention raised by the counsel for the petitioner therefore cannot be accepted. Since no eviction proceedings are pending or intended against the respondent as envisaged under Explanation to section 2(p) the respondent is entitled to all the benefits of mundkar conferred under the Act.

7. In the result the writ petition is dismissed.

In the circumstances of the case there shall be no order as to costs. Rule discharged.