

(2017) 07 BOM CK 0080
In the Bombay High Court
Case No : 389 of 2017

Shri Premanand Vithal Sawant

APPELLANT

Vs

Geeta Uday Muger, & Anr.

RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

Goa, Daman and Diu Mundkars (Protection From Eviction) Act, 1975, Section 25, Section 24,
Section 8A

Citation : (2017) 07 BOM CK 0080

Hon'ble Judges : C. V. Bhadang

Bench : SINGLE BENCH

Advocate : J. J. Mulgaonkar, Rama Rivankar

Judgement

1. Rule made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of parties.
2. This petition can be disposed off on a short count. The brief facts are that, the petitioner had filed an application under section 8A of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act 1975 (Act, for short) against the respondent for declaration as a mundkar. The learned Mamlatdar by an order dated 31/7/2014 granted that application declaring the petitioner as a co mundkar of the dwelling house bearing House no.408(1) and 408(2) in the property bearing survey no.10/1 of village Talaulim, belonging to the respondent no.1. The respondent no.1 challenged the said order before the learned Dy. Collector in an appeal in which there was delay. Hence the appeal was accompanied by an application for condonation of delay. The learned Dy. Collector by an order dated 22/12/2016 dismissed the application thereby refusing to condone the delay. The respondent no.1 challenged the said order before the learned Administrative Tribunal in Mundkar Appeal No.3/2016. The learned Administrative Tribunal by the impugned judgment and order has allowed the appeal, thereby condoning the delay in filing the appeal. Hence this petition.

3. It is submitted by Shri Mulgaonkar, the learned counsel for the petitioner that a second appeal at the instance of the respondent no.1 was not maintainable before the Administrative Tribunal. Reliance is placed on the provisions of Section 24 of the Act, in order to submit that a second appeal thereunder is not contemplated. The learned counsel has referred to the written notes of arguments filed before the Administrative Tribunal in order to point out that this ground was raised before the Administrative Tribunal. It is submitted that the same, however, has not been considered. The learned counsel, therefore prays that the matter be remitted back to the learned Administrative Tribunal.

4. The learned counsel for the respondent no.1 submits that although an appeal under section 24 of the Act may not be maintainable, the Administrative Tribunal was empowered to examine the impugned order in exercise of the revisional jurisdiction under section 25 of the Act. He, however, in all fairness has no objection for remitting the matter back to the Administrative Tribunal with a direction to register the challenge as revision application and then decide the same in accordance with law after hearing the parties. In the result the petition is disposed of in the following terms by consent of parties: Order:

(i) The impugned order is hereby set aside.

(ii) Mundkar Appeal No.3/2016 is restored to file of the learned Administrative Tribunal. The Administrative Tribunal shall proceed to register the said proceeding as a Revision application and then shall decide the same in accordance with law after hearing the parties.

(iii) The Tribunal shall decide the revision application as expeditiously as possible and preferably within two months from the date of receipt of this order.

(iv) Rule is made partly absolute in the aforesaid terms with no order as to costs.