

(2012) 10 BOM CK 0248
In the Bombay High Court
Case No : Writ Petition No. 130 of 2009

Shri Ramnath Bablo Umeraskar

APPELLANT

Vs

Shri John Carasco (Since Deceased) and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2013) 2 ALLMR 392

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : S.D. Lotlikar and Mr. P.S. Lotlikar, for the Appellant; J.P. Mulgaonkar Advocate, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioner and Shri J.P. Mulgaonkar, learned Counsel appearing for the respondents. The above petition challenges the orders passed by the Authorities below whereby an application for registration as a mundkar filed by the petitioner came to be rejected.

2. Briefly, the facts of the case are that the petitioner filed an application for registration of a mundkar under the Goa, Daman & Diu Mundkars (Protection from Eviction) Act, 1975. It is the contention of the petitioner that he is occupying the dwelling house existing in the property belonging to the respondents from the year 1970 with a fixed habitation. It is further his case that they have been occupying the suit premises with the consent of the bhatkar/respondents.

3. The respondents disputed their claim and contended inter alia that the petitioner is the tenant of the suit premises. The learned Mamlatdar after holding an inquiry and recording of evidence by judgment dated 6/01/ 1992 dismissed the application for registration. An appeal came to be filed by the petitioner before the learned Deputy Collector which appeal also came to be dismissed by judgment dated 27/10/1997.

4. Being aggrieved by the judgment passed by the Authorities below the petitioner preferred a revision before the Administrative Tribunal which came to be disposed of by judgment dated 13/07/2007 whereby the revision came to be rejected.

5. Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioner has assailed the impugned order essentially on the ground that the Authorities below have come to the conclusion that the petitioner is a tenant of the dwelling house on the basis of two documents produced at the appellate stage. The documents are private documents namely the letter addressed by the respondents to the concerned Municipality and/or assessment by the Municipality of house tax as rental premises. The learned Senior Counsel further pointed out that the Authorities below were not justified to rely upon the said documents without giving an opportunity to the petitioner to cross-examine on the said documents. The learned Senior Counsel further pointed out that the said documents have been executed by the respondents behind the back of the petitioner and in any event such documents are not binding on the petitioner. The learned Senior Counsel further pointed out that the respondents have not produced any lease agreement nor any rent receipts to contend that the petitioner is a tenant of the dwelling house. The learned Senior Counsel further pointed out that the material on record suggests that the petitioner is in occupation of the suit premises since the year 1970 and in any event at least in the year 1975 and thereafter and, as such, the Authorities below have not considered the impact of deemed consent under the Mundkar Act. The learned Senior Counsel has taken me through the impugned judgment passed by the Authorities below and pointed out that the Authorities have misconstrued the provisions of the Mundkar Act and have erroneously come to the conclusion that the petitioner cannot be registered as a mundkar of the dwelling house.

6. On the other hand, Shri J.P. Mulgaonkar, learned Counsel appearing for the respondents has supported the impugned judgment. The learned Counsel has initially taken me through the judgment of the learned Mamlatdar and pointed out that the learned Mamlatdar on appreciating evidence on record has come to the conclusion that the petitioner has not established that he was occupying the dwelling house as a mundkar. The learned Counsel has thereafter taken me through the judgment of the Deputy Collector and pointed out that the learned Deputy Collector on the basis of the public documents produced by the respondents has come to the conclusion that the petitioner is a tenant of the dwelling house. The learned Counsel has also taken me through the judgment of the Tribunal and pointed out that the learned Tribunal has rightly come to the conclusion that the petitioner is a tenant of the dwelling house. The learned Counsel has further pointed out that the suit premises were originally leased to one Mrs. Anusuya and there is no material to establish in what capacity Mrs. Anusuya has permitted the petitioner to occupy the dwelling house and as such the contention that the petitioners are mundkars of the dwelling house is misplaced and as such registration in favour of the petitioner would not arise.

7. I have carefully considered the submissions of the learned Counsel appearing for the respective parties and have also gone through the impugned order and with the assistance of the learned Counsel, I have gone through the relevant material on record. On perusal of the findings arrived by the Authorities below one aspect which is established is that the petitioner is occupying the dwelling house either from the year 1970 or at least from the year 1975 in view of the electoral roll produced on record. The Authorities below have failed to consider the effect of such occupation in the context of deemed consent as provided in the Mundkar Act. Apart from that, the documents relied by the Authorities below to come to the conclusion that the petitioner was a tenant of the dwelling house were produced only at the appellate stage and the petitioner did not get an opportunity to cross-examine on the said documents. Not allowing such opportunity to the petitioner itself vitiates the judgment passed by the appellate Authorities. Considering that the documents are disputed by the petitioner and as the petitioner is not the author of such documents the contents of the documents would have to be duly proved by the respondents. As such considering that the Authorities below have come to the conclusion that the petitioner is a tenant of the dwelling house on the basis of such document, I find that the Authorities below have not proceeded to decide the application for registration filed by the petitioner in accordance with law. By permitting the production of such documents without giving an opportunity to the petitioner to cross-examine on the said documents vitiates the orders of the Authorities below as it has caused prejudice to the petitioner. Without going into the rival contentions on merits as to whether the petitioner is a mundkar of the dwelling house and whether the petitioner is entitled to be registered as a mundkar of the dwelling house, I find it appropriate that the matter be remanded to the learned Mamlatdar to decide the application for registration afresh after hearing the parties in accordance with law. The impugned judgment dated 29/05/1990 passed by the learned Mamlatdar as well as the judgment dated 12/03/1991 passed by the Collector and judgment dated 13/07/2007 of learned Tribunal deserves to be quashed and set aside and the learned Mamlatdar be directed to hear the application filed by the petitioner afresh after hearing the petitioner and permitting the respondents to produce the said documents and give an opportunity to the petitioner to cross-examine on the said documents, in accordance with law. In view of the above, I pass the following order:

ORDER

- (i) The impugned judgment dated 6/01/ 1992 passed by the learned Mamlatdar, the order dated 27/10/1997 of the Deputy Collector and the judgment dated 13/07/ 2007 passed by the Administrative Tribunal are quashed and set aside.
- (ii) Case No. MND/KAS/SR-39/83 is restored to the file of the learned Mamlatdar.
- (iii) The learned Mamlatdar is directed to decide the said registration application afresh in the light of the observations made herein above in accordance with law.

- (iv) Liberty to the parties, if so advised, to lead evidence, if any.
- (v) Rule is made absolute in the above terms.
- (vi) The petition stands disposed of accordingly.
- (vii) The parties are directed to appear before the learned Mamlatdar on 4/12/2012 at 3.00 p.m.