
(2014) 06 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 115 of 2011

Telma Gonsalves

APPELLANT

Vs

Namdev Babuso Chodankar

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Citation : (2014) 6 ALLMR 543 : (2015) 5 BomCR 390 : (2015) 1 MhLj 381

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

Bench : Single Bench

Advocate : M.B. D'costa, Sr. Advocate and K. Betquekar, Advocate for the Appellant; Mahesh Amonkar, Advocate for the Respondent

Judgement

F.M. Reis, J.—Heard Shri M. B. D'Costa, learned Senior Counsel appearing for the Petitioner and Shri Amonkar, learned Counsel appearing for the Respondent. During the course of the hearing of the above Writ Petition, a point came for consideration as to whether the revision preferred by the Respondent which resulted in the impugned Order before the learned Administrative Tribunal, was itself maintainable in law.

2. The records reveal that it is not in dispute that the proceedings initiated by the Respondent was for registration of Mundkar in terms of Section 29 of the Goa Daman and Diu Mundkars (Protection from Eviction) Act, 1975, (hereinafter referred to as the said Act). The application for registration came to be allowed by the learned Mamlatdar. Being aggrieved by the said Order, the Petitioner preferred an Appeal before the learned Addl. Dy. Collector in terms of Section 29(8) of the said Act. The Dy. Collector allowed the Appeal preferred by the Petitioner by an Order dated 21.10.1998. Being aggrieved by the said Order, the Respondent preferred a revision before the learned Administrative Tribunal which came to be allowed by the impugned Order dated 29.07.2010. The Petitioner being aggrieved by the said Order, preferred the above Writ Petition.

3. In order to examine the said point involved in the above Writ Petition with

regard to the jurisdiction of the learned Administrative Tribunal to exercise the revisional powers in terms of the said Act, it would be appropriate to note the relevant provisions of the said Act. Section 25 of the said Act, reads thus:

"Section 25 - Revision - (1) From every order, other than an interim order, passed in appeal under section 24 or under Sub-section (2), a revision shall lie to the Administrative Tribunal or the Government, respectively and the order of the Administrative Tribunal or the Government, as the case may be, on such revision shall be final.

(2) Save as otherwise expressly provided under this Act, where no appeal lies under this Act, the Collector may, on his own motion or on an application made by an aggrieved person, or on a reference made in this behalf by the Government, at any time, call for the record of any inquiry or proceedings of any Mamlatdar for the purpose of satisfying himself as to the legality or propriety of any order passed by the Mamlatdar and as to the regularity of the proceedings and pass such order thereon as he deems fit:

Provided that no such record shall be called for, after the expiry of six months from the date of such order and no order of such Mamlatdar shall be modified, annulled or reversed unless reasonable opportunity has been given to the interest parties to appear and be heard."

4. On plain reading of the said provision, a revision to the Administrative Tribunal would lie against Orders passed in Appeal under Section 24 or under Sub-section (2) of the said Act. In the present case, the Order impugned before the learned Tribunal was an Order passed in an Appeal in terms of Section 29(8) of the said Act. As such, the revision preferred by the Respondent was itself not maintainable in law and, consequently, the exercise of jurisdiction by the learned Tribunal in such revision is erroneous.

5. Without going into the rival contentions on merits, on this point alone, the impugned Order dated 29.07.2010 passed by the learned Administrative Tribunal cannot be sustained and deserves to be quashed and set aside. All contentions of both the parties on merits are left open. For the aforesaid reasons, Rule is made absolute in terms of prayer clause (a) with no Orders as to costs.