

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 249 OF 2015

SHRI LUIS FERNANDES.

... Petitioner

Versus

SMT. JEBELINA PEREIRA (SINCE
DECEASED) THROUGH HER LEGAL
REPRESENTATIVES AND 2 ORS.,

... Respondents

Mr. Premanand Anand Kholkar, Advocate for the petitioner.

Coram:- F. M. REIS, J.

Date:- 23rd November, 2016

P.C.

The petitioner takes exception to an judgment/order passed by the Administrative Tribunal in Land Revenue Appeal No.28/1996 dated 22.9.2010 whereby the appeal preferred by the respondents was partly allowed and the matter was remanded to the learned Deputy Collector.

2. Mr. Kholkar, learned Counsel points out that the appeal itself had abated, as according to him, two of the appellants had expired and the legal representatives were not brought on record.

It is further pointed out that as such, as the judgment of the appellate authority itself is a nullity, the impugned judgment/order deserves to be quashed and set aside. The learned Counsel further submits that the application to recall the judgment/order filed before the learned Tribunal came to be

erroneously rejected by an order dated 23.1.2015 on the ground that the application is not maintainable. The learned Counsel, as such points out that the impugned judgment/order passed by the learned Tribunal be quashed and set aside.

3. The proceedings wherein the impugned judgment/order came to be passed by the learned Tribunal is for a conversion of land use sought by the respondents in respect of their own property. In the course of proceedings apparently the respondents were directed to pay a penalty, as the change of user was carried out without obtaining the requisite permission for conversion under Land Revenue Code. The learned Tribunal by the impugned judgment/order directed the Deputy Collector to examine such application afresh in accordance with law. It is not disputed that out of 8 co-owners, only two of the co-owners had expired. In such circumstances, there was substantial representation of the estate of the deceased and as such, the question of abatement would not arise.

4. In such circumstances, the petitioner can raise what ever objections he is entitled in law on merits in the proceedings before the learned Deputy Collector and consequently, there is no failure of justice to the petitioner in case the impugned judgment/order is allowed to stand which calls for interference under Article 227 of the Constitution of India.

5. Petition stands accordingly rejected.

F. M. REIS, J.

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