

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.98 OF 2006**

Shri Allan Valles,
son of late Shri Cirano Valles,
major in age, residing at Bunglow 2/A,
Sea Rock Leisure, Machado's Cove,
Dona Paula-Goa.

.....Petitioner

V/s

1. Smt. Alka Atchut Teli,
major in age, married, widow,
resident of C-13, House No.295,
near Valles Building, St. Inez,
Panaji-Goa.
2. Ms. Mangala Atchut Teli,
daughter of Respondent no.1,
major in age, residing at C-13,
House No.295, near Valles Building,
St. Inez, Panaji-Goa.
3. Mr. Mahesh Atchut Teli,
son of Respondent no.1,
major in age, residing at C-13,
House no.295, near Valles Building,
St. Inez, Panaji-Goa.

4. Mr. Rajesh Atchut Teli,
son of Respondent no.1,
major in age, residing at C-13,
House no.295, near Valles Building,
St. Inez, Panaji-Goa.

5. Mr. Paresh Atchut Teli,
son of Respondent no.1,
major in age, residing at C-13,
House No.295, near Valles Building,
St. Inez, Panaji-Goa.

.... Respondents

Shri D. Pangam, Advocate for the Petitioner.

Shri A.D. Bhobe, Advocate for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 22nd JANUARY, 2015

ORAL JUDGMENT :

The petitioner challenges the order passed by the Administrative Tribunal, Goa, rejecting the revision application filed by him against the order passed by the Additional Collector, North Goa, dismissing the application for condonation of delay of 11 years in the appeal filed by the

petitioner. The appeal was filed by the petitioner challenging the order passed by the Deputy Collector allowing the application of the respondent no.1 as a heir of the original mundkar and entering her name as mundkar of the property.

2. The property is a dwelling house in city of Panaji. The father of the respondent no.1-Shabi Gurav had filed an application for registering himself as a mundkar in respect of the house. The Mamlatdar by order dated 21 January 1976, declared Shabi Gurav as a mundkar. Fransisco Silveira and his wife Lydia Valles Silveira, uncle and aunt of the petitioner, challenged the order declaring Shabi Gurav as a mundkar, by way of a revision. The revision was dismissed by order dated 14 January 1980. Fransisco Silveira and his wife Lydia Valles Silveira (Silveiras) filed a Civil Suit no.156/1972, which was dismissed by the Civil Court on the ground of lack of jurisdiction. Silveiras, thereafter, took no steps to challenge these orders and the orders attained finality.

3. Thereafter, an application was filed by Shabi Gurav under Section 29(4) of the new Act i.e. Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (the said Act) on 19 August 1978 for registering his name as a mundkar. Notices were issued to the parties in these proceedings. Respondent no.1 - Alka Teli appeared and informed the authority that her father - Shabi Gurav had expired. She made an application that she be made a party in the case and that she be registered as a mundkar. She placed on record the order passed by the Mamlatdar dated 21 January 1976 declaring her father as a mundkar. She deposed that she is residing in the dwelling house for last 28 years. Considering these facts, the Deputy Collector by his order dated 24 July 1985 entered the name of respondent no.1 - Alka Teli in the register of mundkar. Fransisco Silveira expired on 5 October 1989. Lydia passed away on 24 July 1993.

4. Eleven years after the order dated 24 July 1985, the petitioner, claiming to be inheritor of Silveiras, filed an appeal

on 5 September 1996. According to the petitioner he acquired rights in the property by a deed dated 5 April 1990 executed by Silveiras. In the appeal, the petitioner took out an application for condonation of delay. In the application for condonation of delay the petitioner averred that as per the judgment of the authority, Silveiras were not served with the proceedings of the case, and, therefore, they were unaware of the same. He contended that during the Civil Suit no.83/1996 filed by him, respondent no.1 – Alka Teli in the written statement placed on record the order passed on 24 July 1985 and that time he became aware of 24 July 1985 for the first time. On this ground, petitioner sought condonation of delay in filing appeal.

5. The Additional Collector considered the application for condonation of delay. The Additional Collector found that Silveiras were duly served with both the proceedings, the one instituted by Shabi Gurav and the one by respondent no.1, and they were fully aware of the same. The Additional Collector

refused to condone the delay of 11 years and dismissed the application for condonation of delay and, consequently, the appeal. Petitioner, thereafter, filed a Mundkar Revision Application No.134/1997 in the Administrative Tribunal, Goa. He reiterated his contentions raised before the Additional Collector. It was also additionally argued that the order passed on 24 July 1985 was not communicated to Silveiras. The contention that Silveiras were not aware of the proceedings, was reiterated.

6. The Tribunal considered the record of the case and came to the conclusion that at least 3 notices were received by Silveiras under the signature of Fransisco and they did not choose to remain present in the proceedings. Tribunal noted that even after the order was passed on 24 July 1985, Fransisco was alive for 4 years and Lydia Valles Silveira was alive thereafter for 8 years, however, no appeal was filed by them. The Tribunal held that the contention that Silveiras had no knowledge of the proceedings, was baseless, and the

Silveiras with full knowledge of the proceedings had chosen not to contest the matter. Tribunal held that in this background, the concluded proceedings cannot be reopened by petitioner after a lapse of 11 years. The Tribunal also went on to hold that in any case respondent no.1 is entitled to be declared as a mundkar, by way of inheritance and no useful purpose would be served by entertaining the appeal. Accordingly, by the impugned order dated 9 June 2005, the Tribunal dismissed the revision application.

7. I have heard Shri D. Pangam, the learned Counsel for the petitioner and Shri A.D. Bhobe, the learned Counsel for the respondents.

8. Shri Pangam primarily relied on Section 28 and 29 of the Act. According to Shri Pangam, as per Section 29(7) of the Act, the order passed by the Mamlatdar including the name of a person as mundkar in the register or otherwise, needs to be served on the interested person. According to him, as per the

provisions of Section 28, the limitation for filing an appeal or application or revision would commence from the date of communication of the order. He submitted that it is an admitted position that order dated 24th July, 1985 was not served on the Silveiras. Shri Pangam placed reliance on the decisions of the Apex Court in the case of ***Madan Lal V/s. State of U.P. & Ors.*** reported in (1975) 2 SCC 779 and in the case of ***Raja Harish Chandra Raj Singh V/s. The Deputy Land Acquisition Officer & Anr.*** reported in AIR 1961 SC 1500 and submitted that in any case as per principles of natural justice, a party against whom an order is passed is required to be communicated with the order. Shri Pangam also submitted that petitioner was not aware of what transpired before he came in the picture in 1990 and, therefore, the application for condonation of delay was made based on what was stated in the judgment of the authority below. Shri Pangam submitted that since it is recorded in the order that the Silveiras were not present and that Silveiras were never served with the order dated 24 July 1985, issue of limitation cannot be held against

the petitioner. Shri Pangam submitted that as regard the petitioner, his knowledge about the order was for the first time in June, 1996 when the respondent no.1 relied upon the order in the civil proceedings.

9. Though there is nothing placed on record by the respondent to contravene the submission made by Shri Pangam that Silveiras were not served with the order dated 24 July 1985, this fact will not be enough to allow the application for condonation of delay, as the factual matrix in which the proceedings have arisen would show.

10. The petitioner in the appeal memo has averred that he is universal heir of Lydia Silveira and his right accrued in the year 1990. Based on this right the petitioner seeks to reopen the proceedings. The application for condonation of delay proceeds on a simplistic basis. It is stated that Silveiras were not aware of the proceedings as they were not served. There is no other ground. It is not the case that notices were

received by Silveiras but they were not aware of the legal position or that they were unwell or that some other cause prevented them from appearing. It is also not the case that respondent no.1 committed a fraud or there was any collusion. In the revision memo, the stand is altered that the notices were received, but copy of the order dated 24 July 1985 was not served on the Silveiras. The foundation of the proceedings is the case made out in the application for condonation of delay.

11. The Tribunal disbelieved the case of the petitioner as the Tribunal found that notices of proceedings were in fact received by Fransisco on 21 August 1984 and 18 October 1984. I have perused the notices which are placed on record. In the arguments it has not been disputed and cannot be disputed that the notices dated 21 August 1984 and 18 October 1984 have been received by Silveiras. In fact the case made out in the application that Silveiras were not aware of the proceedings having been found to be false the matter

should end here with no further examination. However, the contention now raised regarding effect of the non-service of the order dated 24 July 1985, needs to be considered.

12. The notice received by Fransisco on 18 October 1984 put him to notice that the case will be heard on 14 November 1984. The notice also indicated that the application made by the respondent no.1 will be taken up for consideration and a copy of the application was annexed to the notice. It was categorically stated that if Silveiras remained absent the matter will be decided ex-parte. After duly receiving the notice dated 18 October 1984 Silveiras were aware that if they do not remain present, an ex-parte order will be passed in the matter. Still, they did not choose to remain present.

13. As it has been rightly contended by Shri Bhobe that it is not a matter of mere omission on the part of Silveiras, but having contesting the litigation earlier in respect of Shabi Gurav and lost, Silveiras had no further interest left in fighting

the litigation. After challenging the order dated 21 January 1976, by way of an appeal and a suit and failing, Silveiras had no inclination to contest the claim as regard mundkar of the property. With this frame of mind, when they were served with the application of Shabi Gurav on 19 August 1978 and the application made by respondent no.1, they appear to have consciously chosen not to pursue the matter. With the background of the unpursued litigation and not appearing inspite of notice that an ex-parte decision would be taken, the submission of Shri Bhobe that it was a conscious decision on the part of Silveiras, has to be accepted.

14. The submission of Shri Pangam based on Section 29 (6) of the Act is that the section is mandatory, irrespective of the fact situation. This submission cannot be accepted at the level it is pitched. Even if the provision is mandatory, it does not preclude a party from waiving it. Waiver can even be considered from the conduct of the party. The main object of this provision is to make the person aware that an adverse

order is passed against him, so that he can file further proceedings challenging the same. When Silveiras were clearly put to notice that if there is no contest an ex-parte order will be passed against them, and they consciously decide not to participate in the proceedings, having no desire left to contest the proceedings, then the issue of mandatory nature the notice cannot be raised subsequently by Silveiras, much less by the petitioners, the subsequent assignee.

15. The legal position laid down in the decisions of the Apex Court in the case of ***Madan Lal*** (supra) and ***Raja Harish Chandra Raj Singh*** (supra) cited by the learned Counsel for the petitioner does not arise in the factual matrix of the present case. In the case of ***Raja Harish Chandra Raj Singh*** (supra), Apex Court was considering provisions of the Land Acquisition Act as regards limitation period for challenging the award. The Apex Court held that the limitation period would run from the knowledge of the award. The contingency under consideration of the Apex Court was the one when the

claimant does not remain present when the award is made and, therefore is not aware of the proceedings. While construing these provisions, the Apex Court held that period of limitation would commence from intimation of the award. Though the requirement of communication of the orders is a part of principles of natural justice, it is trite that the principles of natural justice are not to be construed as a mathematical formula. In the present case, the Silveiras consciously chose not to remain present and were also aware that the order is going to be passed. Therefore, the principle laid down in the case of **Raja Harish** (supra) cannot be made applicable to the case. Even in the case of **Madan Lal** (supra) also peculiar facts of the present case that the party knew about the order to be passed and chose not to remain present were not present.

16. Therefore, in my considered opinion the issuance of notice under Section 29(7) of the Act cannot be held to be mandatory, irrespective of the fact situation. There is nothing

in the Act which indicates that a person is precluded from waiving the requirement of notice. Waiver can be construed from the conduct of the party. It is pertinent to note that the only case made out is non receipt of notice. It is not the case that the Silveiras were under some incapacity to attend the proceedings. If the party who had consciously chosen to remain absent and not to contest the matter further, with full knowledge, is allowed to reopen the proceedings after an inordinate delay on the ground that the order was not communicated to him, would be placing an artificial and hypertechnical construction on the section.

17. Further it is not the Silveiras who are trying to reagitate the issue but the petitioner, who appeared on the scene much subsequently in the year 1990. The petitioner cannot contest the litigation as if he is unconcerned with the stand of Silveiras. It cannot be that the subsequent purchaser starts the litigation all over again, taking new and fresh grounds, when his predecessors had chosen not to contest the issue. If

Silveiras had filed an application after 11 years on the ground that they were not aware of the proceedings and that they were not communicated with the order, such application on the face of it, could not have been entertained. If that is the position, the case of the petitioner cannot be placed on higher pedestal than the case of Silveiras.

18. Shri Pangam lastly submitted that it will be in the interest of justice that matter should be remanded back to the authorities for fresh consideration and no prejudice will be caused to the respondent. This was strenuously objected to by Shri Bhobe. Considering the beneficial object of the act, such course of action is not desirable. The proceedings concluded several years ago cannot be reopened merely on petitioner's notion of justice. One of the object of the Act is to provide security of tenure to the mundkar. Casual reopening of the concluded proceeding will defeat the object. Forcing a Mundkar to star the litigation all over again merely because the petitioner now desires to contest the matter, cannot be

permitted. It will certainly prejudice the respondent.

19. Shri Pangam then submitted that Tribunal has exceeded its jurisdiction on concluding the issue on merits by holding that in any case the respondent no.1 will have to be treated as a mundkar. Though the Tribunal ought not have observed on the merits of the matter as what was before it was an application for condonation of delay, the consequence of dismissal of revision and the appeal would be that the order dated 24 July 1985 remains on record. Shri Pangam submitted that during the pendency of the petition, the respondent no.1 proceeded directly under Section 15 of the Act to obtain a purchase certificate. He pointed out that when the respondent no.1 had filed an application under Section 15, this Court was moved for grant of an interim order. Shri Pangam drew my attention to the order passed on 1 December 2006 in the present proceedings. By the order dated 1 December 2006, the respondent was permitted to go ahead with the proceedings, however the outcome was made subject

to the result of the petition. Shri Pangam submitted that the respondent no.1 has directly obtained a purchase certificate without following the course of action specified in Section 8(A) of the Act.

20. The Division Bench of this Court in **1995 (1) GLT 154** in the case of **Smt. Gulabi Sangtu Devidas & Ors. V/s. Smt. Prema Govinda Gaonkar & Ors.**, held that the entry in the register maintained under Section 29 of the Act only provides a presumptive value for the purpose of declaration under Section 8(A). If it is the case of the petitioner that respondent no.1, during the pendency of the petition, has obtained a purchase certificate wrongfully, it is open to the petitioner to challenge the same as per law. Thus even if the present inclusion of the respondent no.1 in the register of mundkar is confirmed, it will only have presumptive value and the petitioner always can agitate the issue as regard the purchase certificate, as per law. This position of law is not controverted by both the Counsels.

21. Therefore, taking overall view of the matter, I am of the opinion that the delay of 11 years in challenging the order of 24 July 1985 was rightly not been condoned by both the appellate and revisional authority. Though Court generally takes lenient view in the matters in respect of condonation of delay, it is equally well settled that discretion has to be used keeping in mind the public policy of finality to litigations. More particularly, in the present case, where the owner consciously chose not to contest the litigation, which the subsequent assignee has chosen to reopen.

22. In the circumstances, no perversity or error of law is found in the decisions of the authorities in not condoning the delay. Writ Petition accordingly fails and is dismissed. Rule is discharged. No costs.

N.M. JAMDAR, J.

NH/-