

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 262 OF 2014

Dr. Alvaro Alberto Mousinho de Noronha Ferreira,
Major, married,
Resident of 'La Campala Residential Colony',
Miramar, Panaji, 403 001.

... Petitioner

V e r s u s

1. State of Goa,
through the Secretary (Revenue),
having Office at the Secretariat Complex,
Porvorim, Bardez, Goa.
2. Deputy Collector (Revenue),
Revenue Section,
Office of the Collector of South Goa District,
Government of Goa,
Margao, Goa.

... Respondents

Mrs. A. Agni, Senior Advocate with Mr. C. Padgaonkar and Ms. Aditi Kamat,
Advocates for the Petitioner.

Mr. D. Lawande, Government Advocate, for the Respondents.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Judgment reserved on : **11th August, 2016**
Judgment pronounced on : **13th October, 2016**

JUDGMENT (Per F. M. Reis, J.)

Heard Mrs. A. Agni, learned Senior Advocate appearing for the
Petitioner and Mr. D. Lawande, learned Government Advocate appearing for
the Respondents.

2. The above Petition, inter alia, prays for a direction to quash and set aside the communication dated 19.09.2013 of the Deputy Collector directing the petitioner to pay conversion fees in terms of the Goa Land Revenue Code (Amendment) Act 2013 and accordingly direct the Respondents to recalculate the fees payable by the Petitioner on the basis of the area of conversion at the rates applicable on the date of making of the application dated 08.03.2013 with further direction that the excess fees recovered from the Petitioner towards conversion fees be refunded with interest at the rate of 12% per annum thereof.

3. Briefly, it is the case of the Petitioner that the Petitioner along with the other co-owners of the property, had applied for permission under Section 32 of the Goa Daman and Diu Land Revenue Code 1968 to convert use of part of the land surveyed under chalta nos. 4, 5 and 9 of P. T. Sheet no. 92 of City Survey Margao, admeasuring 16014 square metres on 08.03.2013. It is further contended that on 29.04.2013, the Deputy Collector issued, more than one and half months after it was inwarded, an acknowledgment of the receipt of such application. The inspection was thereafter carried out on 15.05.2013 of the proposed site for conversion. The Mamlatdar of Salcete forwarded his report dated 16.05.2013 to the Deputy Collector (Revenue). The Town and Country Planning Authorities forwarded his report on 21.05.2013 and the office of the Deputy Conservator of Forests, Margao, forwarded his report on 04.06.2013. The office of the

Mamlatdar subsequently furnished the information called for by the Office of the Deputy Collector on 15.07.2013 and an affidavit cum indemnity bond was signed on 19.07.2013 in the office of the Deputy Collector (Revenue). There was correspondence exchanged between the parties and ultimately on 19.09.2013, the Deputy Collector directed the Petitioner to deposit conversion fees as per the Goa Land Revenue Code (Amendment) Act 2013. The Petitioner thereafter requested the Deputy Collector on 24.09.2013 to amend the Memorandum dated 13.08.2013 so as to include the open space of 9354.50 square metres in addition to the applied area of 16014 square metres and a challan was thereafter issued on 04.10.2013. The Petitioner addressed a letter reserving his right to challenge the levy of fees in term of Notification dated 22.05.2013 in appropriate proceedings and submitted a Bankers Cheque for a sum of Rs.61,19,040/- towards payment of the conversion fees. Consequently, the conversion Sanad was issued on 19.11.2013. Thereafter, the Petitioner filed the above Petition seeking aforesaid reliefs.

4. The Respondents did not file any reply to the above Petition.

5. Mrs. A. Agni, learned Senior Advocate appearing for the Petitioner has submitted that part of the land was already converted way back on 28.01.2003 wherein two buildings were constructed known as “Ferreira Garden – Phase I and “Ferreira Garden – Phase II. It is further

pointed out that whilst carrying out such development of area of 8940 square metres of the property bearing Chalta nos. 4, 5 and 9 of P. T. Sheet no. 92, the area of open spaces was shown as 9354.50 square metres calculated roughly at 15% of the total area of the property. It is further submitted that vide communication dated 29.04.2013, (wrongly indicated as 29.04.2012), the Deputy Collector (Revenue) issued more than one and half months after it was inwarded the receipt of the said application informing that the application was being referred to the Mamlatdar. It was also pointed out that an inspection was intended to be held on 15.05.2013 and accordingly an inspection was held also by the other concerned authorities, and by letter dated 16.05.2013, the Mamlatdar forwarded his report to the Deputy Collector and likewise the Town and Country Planning Department, also submitted their report dated 21.05.2013. It is further pointed out that an affidavit cum indemnity was forwarded on 19.07.2013 by the Petitioner as required by the Office of the Deputy Collector. It is further submitted by the learned Senior Advocate that the Petitioner was informed about some confusion in the office of the Deputy Collector of the area as the Town and Country Planning Department had recommended conversion of an area of 43350 square metres. The learned Senior Advocate further pointed out that whilst assessing the amount of conversion fees payable by the Petitioner, such fees were assessed on the basis of the Goa Land Revenue Code (Amendment) Act 2013 which came to be published in the Official Gazette dated 22.05.2013 whereby the fees were substantially increased depending

upon the categories such as residential, commercial and industrial. The learned Senior Advocate further pointed out that admittedly, in the present case, the application of the Petitioner was filed on 08.03.2013 much before the coming into force of the said revised rates and, consequently, the Petitioner is entitled to pay the conversion fees in force on the date of the application. The learned Senior Advocate further pointed out that the Respondents without any justification gave the acknowledgment of receipt of the application dated 08.03.2013 only on 29.04.2013. Learned Senior Advocate further pointed out this conduct of the Respondents itself is unjustified, arbitrary and unfair to the Petitioner. It is further pointed out that in terms of the Goa Land Revenue Code, such applications have to be disposed of within a period of sixty days. Sub-rule (3) of Section 33 of the Land Revenue Code provides that the Collector shall take a decision on the application within a period of sixty days from the date of receipt of the applicant and in case of his failure to do so, the person shall have a right to make an Appeal to the Secretary (Revenue). It is further pointed out that this itself suggests that the application of the Petitioner had to be disposed of on or before 08.05.2013 which the Deputy Collector without any justification has delayed such consideration. Learned Senior Advocate further pointed out that there was no reason to refuse the conversion sought by the Petitioner and, as such, the delay on the part of the Respondents cannot in any way affect the rights of the Petitioner to pay conversion fees as on the date the Petitioner filed an application for such conversion. Learned Senior Advocate

further pointed out that additional area sought to be converted was in any event at the instance of the Town & Country Planning Authority and is in continuance of the application filed by the Petitioner on 08.03.2013 and, as such, the action of the Respondents to charge conversion fees based on the amendment which came to be published only on 22.05.2013 is unjustified, arbitrary and has no legal sanction. Learned Senior Advocate further pointed out that on going through the amendment to the Goa Land Revenue Code, it cannot be applied to pending applications which were already scrutinised and under consideration before the Collector. Learned Senior Advocate further pointed out that action on the part of the Respondents in claiming the fees based on the Amendment is without any legal sanction and, consequently, the Respondents be directed to re-calculate the conversion fees based on the rates applicable as on the date of the application and direct the Respondents to refund the excess amount together with interest at the rate of 12% per annum.

Learned Senior Advocate in support of her submissions has relied upon the Judgments of the Apex Court reported in **(2005) 10 SCC 203** in the case of ***Union of India and anr. vs. Mahajan Industries Ltd. & anr., (1991) 1 SCC 63*** in the case of ***Union of India & Ors. vs. Dev Raj Gupta & Ors.*** and as well as the Judgment of the Delhi High Court reported in **74 (1998) DLT 152** in the case of ***Ansal & Saigal Properties (P) Ltd. & Ors. vs. L. & D. O. & Ors.***

6. On the other hand, Shri D. Lawande, learned Government Advocate appearing for the respondents, has pointed out that in terms of Section 32 of the Goa Land Revenue Code, the assessment of charges are calculated only after the Collector takes a decision to grant the change of user and in the present case, such decision was taken only after the amendment came into force and, consequently, the Collector is justified to charge conversion fees as applicable on the date of taking such decision. Learned Government Advocate has thereafter taken us through the provisions of Section 32 of the Goa Land Revenue Code as well as the relevant rules to point out that the Petitioner is liable to pay the conversion fees as applicable on the date of the decision and not on the date of the application. Learned Government Advocate has further pointed out that the question of relying upon the provisions of Section 32(3) of the Land Revenue Code would not at all arise as admittedly the Petitioner did not avail of his right of Appeal, if any, before the Revenue Secretary and, consequently, it is not open to the Petitioner to contend that the application ought to have been decided within a period of sixty days. Learned Government Advocate further pointed out that the Respondent has rightly claimed conversion fees as applicable on the date of the decision and, as such, the Petition deserves to be rejected.

In support of his submissions, the learned Government Advocate has relied upon the Judgment of the Division Bench of this Court in ***Writ Petition no. 126 of 2006*** in the case of ***Mrs. Rose Mary Fernandes vs. The***

Administrator of Comunidades & Ors. and ***AIR 1981 SC 711*** in the case of ***State of Tamil Nadu vs. M/s. Hind Stone.***

7. We have considered the submissions of the learned Counsel. We have also gone through the records. Section 32 of the Land Revenue Code provides that an occupier of the land who desires to use the land for non-agricultural purpose can apply to the Collector for permission in accordance with the form prescribed. In the present case, it is not disputed that in fact the Petitioner submitted such application in the form prescribed on 08.03.2013. Sub-Section (2) of Section 32 of the Revenue Code provides that the Collector has to acknowledge the receipt of such application within seven days. But, however, in the present case, though the application was submitted on 08.03.2013, the receipt of acknowledgment was sent vide letter dated 29.04.2012 which is stated by the Petitioner to in fact be read as 29.04.2013. There is no explanation by the Respondent no.2 for such inordinate delay in acknowledging the receipt of the application where the Land Revenue Code itself provides that such receipt has to be issued within seven days. The records further reveal that in fact a site inspection was conducted by all the concerned authorities including the Mamlatdar and the Town And Country Planning Department somewhere around 16.05.2013 and the report was submitted on 21.05.2013. All the requisite formalities for granting the conversion as prayed for by the Petitioner were duly completed with apparently on 21.05.2013. Thereafter,

the Respondent no.2 stated that there is discrepancy with regard to the area sought for conversion which was shown in the application as 16014 square metres whereas in the recommendations of the Town and Country Planning Department, the area was shown as 23350. The Petitioner thereafter sought permission even for the remaining area of 9350.50 square metres and ultimately the Respondents issued a challan for the payment of the conversion fees based on the amendment published on 22.05.2013. The basic point for consideration is whether the Respondents are justified to apply the revised conversion fees when admittedly the application filed by the Petitioner was pending for consideration and all the formalities were duly complied with much before the coming into force of such amendment.

8. As already pointed out herein above, the application had to be decided by the Respondent no. 2 on or before 15.05.2013 much before the coming into force of the revision of the conversion fees by the Respondents. The fact that the application was not returned by the Respondents in terms of Section 32(2)(b) of the Land Revenue Code would itself suggest that the application was duly completed and all the requisite requirements were duly furnished by the Petitioner. The Apex Court in the case of **Union of India and anr. vs. Mahajan Industries Ltd. & anr.**, (supra) has observed at Paras 9, 11 and 12 thus :

“9. The High Court came to the conclusion that both these points were concluded

by a judgment of the Division Bench of the High Court of Delhi in *Ansal & Saigal Properties (P) Ltd. v. L.&D.O.* In the said case, it has been held that “crucial date” for calculating the conversion charges has to be the date of the receipt of the application for conversion. Point (b) formulated by the High Court, referred to above, was also concluded by the judgment in *Ansal & Saigal Properties (P) Ltd. v. L.&D.O.*

10. ...

11. Learned counsel Shri Aaroahi Bhalla, appearing for the Union of India tried to persuade us to take the view that the application filed by Respondent 1 on 25-3-1981 for change of land use stood rejected finally on 21-1-1984 which cannot be accepted. The fact that the application filed on 25-3-1981 was still pending and had not been finally disposed of was not disputed before the High Court. This was a finding on facts and if the appellant was aggrieved against the said finding being incorrect, inasmuch as that no such concession was made by the counsel before the High Court, then, the appellant should have filed a review application before the High Court stating that such a concession had not been made by the learned counsel appearing on behalf of the appellant before the High Court. Even in the special leave petition it has not been stated that this finding has been incorrectly recorded. This apart, we have perused the letters dated 4-5-

1982, 18-5-1982, 28-6-1982 and 21-1-1984 (Annexures P-4 to P-6 and P-8 to the special leave petition) written by the appellant to Respondent 1. In neither of these letters it has been written that the application filed by Respondent 1 on 25-3-1981 stood rejected. In this view of the matter, we uphold the finding recorded by the High Court that the application filed on 25-3-1981 was still pending and had not been finally disposed of.

12. Counsel for the appellant has not disputed the correctness of the law laid down by the High Court of Delhi in *Ansal & Saigal Properties (P) Ltd. v. L.&D.O.* in which it has been held that the crucial date for calculating the conversion charges has to be the date of receipt of application for conversion of land use. Since we have held that the application filed on 25-3-1981 for conversion of land use from residential to multi-storeyed complex is still pending, the appellant is bound to grant the permission for change of land use by charging the rates prevalent as on the date of the filing of the application i.e. 25-3-1981.”

9. Taking note of the said observations, the crucial date to charge conversion fees is the date of the receipt of the application. In the present case, the date of the receipt of the application is 08.03.2013 when admittedly

the application was inwards. Even assuming the date of the acknowledgment by the Respondent no. 2 is accepted, the fees as on 29.04.2013 were also the same and not revised. As such, the question of charging the Petitioner at the rates which were notified in the Official Gazette on 22.05.2013, would not be tenable nor justified. Even in the case of ***Union of India & Ors. vs. Dev Raj Gupta & Ors.*** (supra), the Apex Court has observed at Paras 7 and 10 thus :

“7. The main challenge in the petition was to the base year for the calculation of the charges for conversion of the land from the residential to the commercial purpose. It was the contention of the petitioners that since they had applied to the respondents for permission to convert the user on February 15, 1978, they were liable to pay charges calculated with reference to the said date and not as the respondents had done with reference to May 25, 1981. Their second contention was that for the same reason no charges for the misuse of the land could be levied after February 15, 1978 and their third contention was that no interest could be charged on the alleged additional premium which was calculated by taking into consideration May 25, 1981 as the base date. The High Court accepted all the said three contentions by holding that the date with reference to which the conversion charges had to be calculated was February 15, 1978 when according to the court the

respondents had duly applied for conversion of the user. The High Court also held that in fact there was no need to make any such application for conversion after September 1962 when the Master Plan was prepared by the Delhi Development Authority declaring the region in which the leased land was situate as a commercial zone. According to the court, there was an automatic and statutory conversion of the use of the land from residential to commercial purpose and hence there was no question of either payment of conversion charges or the misuse charges. In this view of the matter the court held that the demand which had been made by the appellants for conversion charges calculated on the basis of the rate prevalent in April, 1981 instead of the rate prevalent on February 15, 1978 was not in accordance with law and the respondents were not obliged to make the payment pursuant to an invalid demand. The High Court, therefore, quashed the demand for conversion charges contained in the appellants letters dated January 12, 1984 and June 12, 1987 and directed the appellants to recompute the additional premium and other charges within a period of six months in accordance with law and in accordance with the observations made by it. It is this decision which is challenged in this appeal.

8. ...

9. ...

10. There is no explanation given by the appellants as to why the application made by the respondents of February 27, 1981 was not replied to till January 12, 1984. Hence in the absence of anything else on records, it will have to be held that the date with reference to which conversion charges have to be counted is 27th February, 1981.

The authority has calculated additional premium with reference to May 27, 1981 on the footing that the outer limit for granting permission was three months from the date of the receipt of the application. There is no justification for the authority to hold thus, for they are expected to process the application as early as possible and not to wait till the end of three months. Unless there are valid reasons for them to do so or the delay is caused on account of an omission or commission on the part of the applicants, it is not proper to take the end of the three months as the date with reference to which the conversion charges should be calculated.

We are, however, informed that in the present case it makes no difference whether the charges are calculated with reference to 27th February 1981 or May 27, 1981. Hence, the difference in dates is immaterial for our purpose.”

10. Even the Division Bench of Delhi High Court in the case of ***Ansal & Saigal Properties (P) Ltd. & Ors. vs. L. & D. O. & Ors.***(supra), has observed at Para 33 thus :

“.....Thus, the question which is important and has lot of significance for deciding the above factor is what is the right point of time which should be considered as the basis for grant of permission because undoubtedly time factor is of utmost importance in deciding the above issue. This very question came up for consideration before the Supreme Court in case Union of India and Ors. v. Dev Raj Gupta and Ors. 42(199) DLT566 and the Supreme Court in the above said case had held that the additional premium has to be calculated on the basis of the rates which were prevalent on the date the application for the change of user was made.”

11. The contention of Mr. Lawande, learned Government Advocate appearing for the Respondents that the said observations of the Apex Court accepting the view taken by the Judgment of the Division Bench of Delhi High Court is on different facts of the case cannot be accepted. The observations referred to herein above clearly suggest that the Division Bench of Delhi High Court had in fact relied upon the Judgment of the Apex Court to hold that the premium to be calculated has to be on the basis of the rates which were prevailing on the date of the application for change of user. The

other observations referred to in the said Judgment are to consider an additional ground to come to such conclusion. In such circumstances, considering the ratio laid down by the Apex Court, we find that the conversion rates have to be calculated on the basis as prevailing on the date of the application.

12. The Judgment of the Division Bench of this Court in the case of ***Mrs. Rose Mary Fernandes vs. The Administrator of Comunidades & Ors.*** (supra) relied upon by learned Government Advocate, is not applicable to the facts of the present case. The observations therein clearly point out that the Division Bench has taken note whilst distinguishing the applicability of the Judgment in the case of ***Union of India & Ors. vs. Dev Raj Gupta & Ors.***(supra) by observing at Para 17 that the question therein was as regards to the base year for calculating of the charges for conversion of land from residential to commercial purpose and not regarding the illegality of the lease granted by the Government. The Judgment of the Apex Court in the case of ***State of Tamil Nadu vs. M/s. Hind Stone*** (supra), relied upon by Shri D. Lawande, learned Government Advocate, is also not applicable to the facts of the present case as the Mining Concession Rules itself envisages a specific procedure and the conditions for grant of a Mining Lease which is not the situation in the above case. Admittedly, as pointed out herein above, all the formalities were duly completed by the Petitioner in March 2013 much before the amendment came into operation and the revised rates were made

applicable and, as such, we find that the Petitioner is liable to pay conversion fees as applicable on the date of the application to the extent of the area as mentioned therein. It would also be appropriate to note that Respondent no. 2 decided the application of the Petitioner based on the form prevailing in March 2013 and not the form as prescribed by the Amendment Act 2013.

13. A fiscal statute shall have to be interpreted on the basis of the language used therein and not dehors the same. No words ought to be added and only the language used has to be considered so as to ascertain the proper meaning and the intention of the legislature. The Court is to ascribe natural and ordinary meaning of the words used by the legislature and the Court ought not under any circumstances, substitute its own impression and ideas in place of the legislative intent. A construction which favours the assessee has to be adopted but in cases of exemption notification, it is for the assessee to show he comes within the purview of the exception. The language used in the amendment notified/published on 25.05.2013, does not in any way, provide that such revised rates would also be applicable to the pending application wherein the rights of the Applicants had crystalised to pay at a specified rates as in force on the date of the application. Fiscal statute legislation imposing liability are generally governed by the normal presumption that it is not retrospective. In such circumstances, the amendment to the Land Revenue Code which creates new obligations has to be prospective only.

14. In the Judgment reported in **2012 SCC OnLine Calcutta 10759** in the case of **M/s. Seven Hill Bytes Pvt. Ltd. & Anr v/s The State of West Bengal & Ors.** in very similar circumstances, it has been observed as under :

Suppose ten applicants applied for identical reliefs before the concerned authority on a particular day when 2007 notification was in force and prayer of eight of such applicants were allowed before the 2011 notification was issued by applying the provision of 2007 notification, then if the remaining two applicants' prayer which could not be considered before issuance of 2011 notification for any reason whatsoever, are allowed by applying the provision of 2011 notification then there will be unreasonable discrimination amongst the equally circumstanced applicants as the additional payment which the applicants are required to pay for allowing their prayer, cannot be realized from the other eight applicants whose application were earlier allowed, even though they submitted their applications along with those two applicants for an identical relief on a same day. As such, this Court hold that in such fiscal matter notification cannot be given effect retrospectively as retrospective effect to such notification will create a class within a class which amounts to

discrimination by imposition of additional burden upon those unfortunate applicants who were not favoured by the State respondent by taking prompt action on their applications. That apart since the legislative body and the implementing authority are the same in the present case, the reasons for the delay in considering the petitioner's application for such permission, will also play a pivot role on the issue regarding applicability of this 2011 notification in the facts of the instant case. No reason for such delay in considering the petitioner's application is forthcoming from the State respondents. As such, this Court is of the view that the application of 2011 notification in the instant case, is not at all justified.

15. In view of the above, we find that as far as the area of 16014 square metres which was the subject matter of the original application filed by the petitioner on 08.03.2013, the petitioner would be liable to pay the conversion charges as applicable on the said date of such application. But however, as far as the remaining area of 9354.50 square metres is concerned, as such application for additional area which came to be included separately by a separate addendum to the original application after amendment came into force, the petitioner would be liable to pay at the revised rates in terms of the amending Notification on 22.05.2013.

16. In view of the above, we pass the following :

O R D E R

- (I) The petition is partly allowed.
- (ii) The impugned communication dated 19.09.2013 stands quashed and set aside.
- (iii) The respondents are directed to calculate the conversion fees payable by the petitioner in the light of the observations made herein above and refund the excess amount, if any, to the petitioner together with interest thereon at the rate of 8% per annum from the date of such payment up to the actual payment.
- (iv) Rule is made absolute in the above terms.
- (v) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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