

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 803 OF 2015

1. Late Mr. Minguel Caitan Lobo,
(Since deceased through legal heirs)
 - (a) Mrs. Maria Aspulqueta Lobo,
widow of late Mr. Minguel Caetano Lobo,
71 years of age, Indian National,
Agriculturist,
 - (b) Mr. Xavier Lobo,
Son of late Shri Minguel C. Lobo,
Age 40 years, Married, Indian National,
Agriculturist,
 - (c) Mr. Diogo Joao Lobo,
Son of late Shri Minguel C. Lobo,
Agriculturist, Age 46 years, Married,
Indian National.
 - (d) Mr. Saito Lobo,
Son of late Shri Minguel C. Lobo,
Agriculturist, Age 37 years, Married,
Indian National,
All Residing at House no. 7/175/A,
Sauntawaddo, Calangute, Bardez, Goa.

Petitioner no. 1(b) for self & as
duly constituted Power of Attorney
for Petitioner No. 1(a), 1(c) & 1(d) Petitioners

V e r s u s

1. Deputy Collector & S. D. O. Mapusa,
Bardez-Goa.
2. Goa Tourism Development Corporation
1st Floor, Paryatan Bhavan,
Patto, Panaji, Goa. Respondents

Mr. R. J. Pinto, Advocate for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for the Respondent no. 1.

Mr. D. Lawande, Government Advocate for the Respondent no. 2.

Coram :- C. V. BHADANG, J

Date : 22nd March, 2016

ORAL JUDGMENT

Rule, made returnable forthwith. The learned Addl. Government Advocate and the learned Government Advocate appearing for the respective Respondents, waive service. Heard finally, with the consent of the parties.

2. The brief facts are that the Petitioner had approached the competent authority for correction of the Revenue record which application was rejected by the learned Deputy Collector. The Petitioner challenged the said Order before the Administrative Tribunal in Land Revenue Appeal no. 4 of 2009. It appears that the said Appeal was allowed on 26.09.2011 in favour of the Petitioner. Goa Tourism Development Corporation, which was the second Respondent in the Appeal, filed Review Application no.11 of 2011. Indisputably, in the Review Application, the original cause title in Land Revenue Appeal no. 4 of 2009 was maintained as it is. It appears that during the pendency of the Review Application, the original Appellant Shri Minguel Caitan Lobo died on 12.05.2012. According to the second Respondent, an application for bringing the legal representatives of the original Appellant was filed on 03.08.2012. That was an application dated 01.07.2012. However, it was filed on 03.08.2012. It appears that the Administrative Tribunal issued notice to the proposed legal representatives who amongst other grounds

raised a contention that the application was barred by time and the Review Application abates. Under a belief that the Review Application had abated, the second Respondent filed an application on 29.04.2014 for condonation of delay and setting aside abatement. The said application was opposed by the proposed legal representatives of the Appellant. After hearing the parties, the learned President of the Administrative Tribunal by an Order dated 17.04.2015, allowed both the applications i.e. 01.07.2012 and the one dated 29.04.2014 thereby condoning the delay and setting aside the abatement. Feeling aggrieved, the legal representatives of the original Appellant are before this Court.

3. I have heard the learned Counsel appearing for the Petitioner and the learned Addl. Government Advocate appearing for the second Respondent. I have also heard the learned Government Advocate appearing for the first Respondent.

4. It is contended on behalf of the Petitioner that there was gross delay in filing the application for bringing the legal representatives on record, inasmuch as a copy of the said application dated 01.07.2012 was served only on 17.01.2013. The learned Counsel has taken me through the relevant Order sheets dated 17.01.2013 in order to submit that there is some interpolation and tampering with the Order sheet. The learned Counsel would submit that the application dated 01.07.2012 was never filed on 03.08.2012. It is submitted that the learned Administrative Tribunal failed to address itself about this aspect of tampering and erred in condoning the delay and setting aside abatement.

5. Learned Counsel appearing for the second Respondent submitted that the certified copy of the handwritten Order sheets dated 17.01.2013, will make it clear that the fact of the Original Appellant, having expired was recorded therein. It is submitted that, excluding the portion which is allegedly interpolated, the Order sheet records, that notice has been issued to the proposed legal representatives returnable on 02.04.2015. It is submitted that if that is so, the same would indicate that the application for bring the legal representatives was indeed filed before that, which would be within limitation of 90 days. It is submitted that in fact there was no abatement, as inasmuch as the application for bringing the legal representatives was filed within the period of 90 days and it was on account of the objection raised and by way of abundant caution that the application for condonation of delay and for setting aside abatement was filed. He has also invited my attention to the copy of the application to show that it bears an endorsement from the Administrative Tribunal about the application being in-warded at serial no. 2069 on 03.08.2012, (which is produced at page 67 of the compilation). It is submitted that the learned Administrative Tribunal has rightly exercised discretion in passing the impugned Order which does not need any interference.

6. I have considered the rival circumstances and the submissions made. Indisputably, the Appellant died on 12.05.2012 and the period of 90 days would expire sometime on or about 11.05.2012. The material question is whether application dated 01.07.2012 was filed before the Administrative Tribunal on 03.08.2012. It would be significant to note that the impugned Order passed by the learned Administrative Tribunal records that the said application was filed on

03.08.2012. It is true that there is a partial interpolation in the Order sheet dated 17.01.2013. However, a careful perusal of the copy of the handwritten Order sheet filed on record, would indicate that an Order was passed issuing notice to the proposed heirs which was made returnable on 02.04.2013. This part is not by way of any interpolation. Furthermore, the copy of the application which is produced at page 67 would make it clear that the application was shown to be in-warded in the office of the learned Administrative Tribunal at serial no. 2069 on 03.08.2012. The application also contains an endorsement dated 06.08.2012.

7. Thus, in my considered view, no occasion for abatement or for condonation of delay would arise. Even assuming that the application was not filed within time, the Administrative Tribunal by a detailed Order has condoned the delay whilst setting aside the abatement. That being a discretionary Order and in the absence of the exercise of discretion being shown to be either perverse or arbitrary, no case for interference in the exercise of extraordinary jurisdiction of this Court is made out.

8. In the result, the Writ Petition is dismissed. Rule is discharged with no Order as to costs.

C. V. BHADANG, J.

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