

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 300 OF 2017

MR. AMANULLA KHAN, REP. THR. HIS POA, MR. IFRAN H. KHAN.,	... Petitioner
Versus	
SHRI. GURUDAS BABANI GAONKAR (DEC) THR. HIS LRS. AND 7 ORS.,	... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Coram:- M. S. SONAK, J.

Date:- 20th April, 2017

P.C.

Heard Mr. Bhobe for the petitioner.

2. The challenge in this petition, is to the orders dated 31/07/2012 and 16/06/2016, by which the Deputy Collector (Appellate Authority) and Administrative Tribunal (Revisional Authority) have declined to condone the delay of approximately 18 years in instituting an appeal against order dated 10/06/1992, made by the Mamlatdar permitting the respondent an agricultural tenant to purchase the tenanted property.

3. Mr. A. Bhobe, the learned Counsel for the petitioner submits that the length of the delay is not material. What is important is the quality of explanation. He submits that in the roznama before the Mamlatdar, it was incorrectly recorded that the

petitioner/ respondent no.5 was present on 25/09/1991. Mr. Bhobe submits that the previous entry dated 28/08/1991 clearly records that no service was effected upon the petitioner since he resides abroad. Further, even the Tribunal has accepted that the impugned order was not served upon the petitioner, since the petitioner was residing at Valpoi in Gangchem. On such basis, Mr. Bhobe submits that the roznama entered marking the petitioner's presence is completely wrong and could never have been relied upon. Mr. Bhobe submits that there is ample material on record to establish that the petitioner was in service at Dubai. This is, therefore, a case, where the petitioner was neither served with the original proceedings nor has he remained present in the original proceedings. He submits that the record also bears out that the impugned order was never served upon the petitioner. Mr. Bhobe submits that, therefore, this was a case, in which, delay could have been condoned.

4. From the perusal of the record and the concurrent findings recorded by the Appellate and Revisional Authorities, this is not a case in which interference is warranted under Article 227 of Constitution of India. The roznama does record and mark the presence of the petitioner in the proceedings before the Mamlatdar. The petitioner never bothered to take out any proceedings before the Mamlatdar for correction of record, if at all there was some error in the record.

5. In the case of CENTRAL BANK OF INDIA Vs. VRAJLAL KAPURCHAND GANDHI AND ANOTHER; (2003)6 SCC 573, the Hon'ble Supreme Court has held that the statements of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to cull the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before the Supreme Court to the contrary.

6. The aforesaid decision placed to show what is recorded in the roznama is to be accepted unless the party approaches the very Court within reasonable period for correction. For a moment, even if we are to accept Mr. Bhobe's contention that there is some error, it must be noted that in this case, the impugned order was made on 10/06/1992. The appeal was lodged before the Appellate Authority after an unprecedented delay of 18 years. In the memo of appeal, the petitioner has himself admitted that the property in respect of which, the purchase order has been made, was being managed by

respondent nos.2 to 8 and their family members, who are again the co-owners and relatives of the petitioner. Admittedly, neither respondent nos.2 to 8 nor any other parties, who are admittedly served before the Mamlatdar, have chosen to impugn the order dated 10/06/1992. The petitioner has himself admitted that he was serving in Dubai, he would come down to Goa periodically. In such circumstances, this is inconceivable that for a period of 18 long years, the petitioner had no knowledge of whatsoever of the impugned order dated 10/06/1992.

7. The Appellate Authority or the Revisional Authority have concurrently recorded finding of fact with regard to service upon the petitioner and the presence of the petitioner before the Mamlatdar in the purchase proceedings. The two authorities have also recorded concurrent findings of fact with regard to knowledge of the impugned order being imputed to the petitioner. There is really no perversity in the record of such findings of fact. The findings of fact are sufficiently borne out from the material on record. The circumstances on record also suggest that the petitioner has not at all been diligent in the matter. There is really no sufficient cause to explain the inordinate delay of 18 years.

8. For the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

M. S. SONAK, J.

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