

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.541 OF 2015**

1. Shri Narayan Krishna Arolkar
83 years of age,
married, Indian National,
Resident of Mainem, Pilerne,
Bardez, Goa.

2. Shri Rama Krishna Arolkar,
73 years of age,
Married, Indian National,
Resident of Mainem, Pilerne,
Bardez, Goa.

.... Petitioners

V e r s u s

1. Smt. Kumud alias Kusum
Yeshwant Bhobe, widow, major,
Resident of Mumbai,
Through her attorney,
Govind Usno Bhobe,
r/o Nerul, Bardez, Goa
(deceased through her Legal Representatives)

(1a) Mrs. Nalini Gurudas Sinai Talaulikar,
daughter of late Yeshwant Bhobe,
and step daughter of late Kusu Bhobe,
Major & married.

(1b) Mr. Gurudatta Sinai Talaulikar,
son in law of Yeshwant Bhobe,
Major in age, married,
Both Indian Nationals,
Resident of National Housing Colony,
Banner Road, Pune.

2. Shri Trivikram J. Bhobe,
Major, Resident of House No.154,
Jerbai Wadia Road, Parel,

- Mumbai 400 012,
Through his attorney,
Shri Rajiv Dalvi,
R/o Fotta Vaddo, Nerul,
Bardez, Goa.
3. Shri Siddesh Govind Bhobe,
Son of Govind Usno Bhobe,
Aged 39 years, Engineer,
Indian National,
r/o Nerul, Bardez, Goa.
 4. Shri Yogesh Vassudev Bhobe,
Son of Vasudev Usno Bhobe,
39 years of age, Indian National,
r/o Panaji, Goa.
 5. Shri Salil Vasudev Bhobe,
Son of Vasudev Usno Bhobe,
36 years of age, Indian National,
Resident of Panaji, Goa,
Both resident of Behind Baron
Showroom, Panaji, Goa.
 6. Smt. Nailini Gurudatta Sinai Talaulikar,
Daughter of late Yeshwant Bhobe,
Major and her husband
 7. Shri Gurudas Sinai Talaulikar,
Both resident of house no.137,
National Co-operative Housing Society,
Banner Road, Pune 411 007.

.... Respondents

(All the above addresses are registered
addresses for the purpose of service.

Ms. S. Linhares, Advocate for the Petitioners.

Shri Nitin Sardesai, Senior Advocate with Advocate Ms. G. Kakodkar for
the Respondent nos.1 (a), 1(b) and 2.

Mr. S. G. Desai, Senior Advocate with Adv. A. Gaonkar for the Respondent nos.3, 4, and 5.

CORAM: C. V. BHADANG, J.
DATE: 23rd February, 2017.

ORAL ORDER:

The petitioners are challenging the judgment and order dated 28/6/2012 passed by the Administrative Tribunal in Tenancy Revision Application No.40/2011. By the impugned judgment the revision application filed by the applicant under section 50 (2) of the Goa, Daman and Diu Agricultural Tenancy Act (Tenancy Act for short) has been dismissed, thereby confirming the order passed by the learned Dy. Collector as also the order passed by the learned Jt. Mamlatdar whereby, the application under section 7 of the Tenancy Act filed by the petitioners for declaration as a tenant has been dismissed for non prosecution.

2. The brief facts are that the petitioners had approached the learned Jt. Mamlatdar in the year 2006 with an application claiming a declaration that they are tenants in respect of the land which is subject matter of dispute. The said application has been dismissed by the learned Jt. Mamlatdar by an order dated 3/11/2009, which reads as under:

“Advocate Naik present for applicant and submits
that notices to be issued to the L.R's of deceased

op. No.1. Advocate Bhobe present for opponent and objects on the ground that the said party is already been represented by him and there is no need to issue fresh notice and also argued that the applicant is trying to avoid to file the affidavit in evidence. Upon perusal of the file it is seen that the applicant has failed to file affidavit in evidence for last more than one year and is just making frivolous applications. The intention of the applicant is very clear to drag the matter and to harass the opponent and also waste the precious time of the court. In view of above discussion the case filed by the applicant is dismissed for non-prosecution. Proceedings stand closed.”

3. It appears that the original respondent no.1 before the Mamlatdar had died during the pendency of the application and the legal representatives of respondent no.1, being the respondent nos.6 and 7 were already on record. Still an application was made on 3/11/2009 claiming issuance of notice to the respondents nos.6 and 7. That was objected to by the learned counsel on behalf of the respondent nos.6 and 7 on the ground that the said parties are already represented and there is no need to issue fresh notice. The learned Mamlatdar had also found that the petitioners had failed to file Affidavit in Evidence for more than a year and were just making frivolous applications. The learned Mamlatdar found that the intention of the petitioners was to drag

the matter. In that view of the matter, the application was dismissed for non prosecution. The petitioners unsuccessfully challenged the said order initially before the learned Dy. Collector and thereafter before the Administrative Tribunal.

4. The Administrative Tribunal has adverted to the facts and circumstances of the case in detail and has held that there was no case for interference made out. The reasoning of the learned Administrative Tribunal can be found in para 5 onwards of the impugned judgment. The Administrative Tribunal has found and to my mind rightly so that once the respondent nos.6 and 7 (who were also the legal representatives of respondent no.1) were already represented, there was no justifiable cause for insisting for issuance of notice to them.

5. The Administrative Tribunal has further noticed that the proceedings before the Mamlatdar were expedited under the orders of the Dy. Collector, who by an order dated 31/1/2008 had directed the Mamlatdar to dispose of the case within six months. The learned Administrative Tribunal has also noticed that in a civil suit filed by the respondents against the petitioners, it has been held that the petitioners had no right whatsoever in the suit property and the petitioners are trespassers. Indisputably, the said finding

has been upheld by this Court in Second Appeal No.27/2007 decided on 12/8/2014.

6. I have heard Smt. Linhares, the learned counsel for the petitioners, Shri N. Sardessai, the learned Senior Counsel for the respondent nos.1(a) and (b) and 2 and Shri S.G. Desai, the learned Senior Counsel for the respondent nos.3, 4 and 5. With the assistance of the learned counsel for the parties I have gone through the record.

7. It is submitted by the learned counsel for the petitioners that the proceedings before the Mamaltdar were got pre-poned at the instance of the respondents on 8/10/2009. It is submitted that this was without notice to the petitioners. It is submitted that in view of the fact that the proceedings were got preponed behind the back of the petitioners, the order dismissing the application for non prosecution could not have been passed.

8. In so far as delay in filing the writ petition is concerned, it is submitted that after the judgment of the Administrative Tribunal came on 20/6/2012, the petitioners applied for the certified copy immediately on the next date on 21/6/2012. However, the certified copy was delivered only on 6/12/2013. It is submitted that after the certified copy was obtained, the matter was entrusted

to Advocate Shri Kansar and on account of the circumstances as set out in paras 33A to 33P, the petitioners could not file the petition immediately. It is submitted that the delay has been properly explained. Reliance in this regard is placed on the decision of this Court in the case of **Sanjay Sadashiv Jadhve Vs. The Joint Director, Higher Education, Aurangabad Division and Others (2016) (1) ALL MR 256**, in order to submit that a liberal approach has to be adopted in the matter of consideration of question of delay and laches.

9. It is submitted that the petitioners would be rendered remedy- less if the application is not restored. The learned counsel points out that the Affidavit in lieu of Chief Examination was ready, however, it was not filed as the petitioners were under bonafide belief that a notice to the respondent nos.6 and 7 was necessary.

10. It is submitted by the Shri Desai, the learned Senior Counsel for the respondents that there is gross delay and laches in filing the petition which is not explained. It is pointed out that the circumstances in which the delay has occasioned were not part of the petition, as was originally filed. It is submitted that only on account of an objection being raised, certain grounds are brought on record by way of an amendment, which are an afterthought.

The learned Senior Counsel points out that the averments as made in paras 33A to 33P are not supported by an Affidavit of the petitioners nor of the counsel who was allegedly entrusted with the matter and as such they cannot be acted upon.

11. In so far as merits are concerned, it is submitted that the petitioners were not diligent in prosecuting the application before the Mamlatdar which was pending from the year 2006 and there were several adjournments sought. It is pointed out that a last chance was granted on 23/9/2009 and inspite of that the petitioners continued to file frivolous applications which were rejected by the Mamlatdar and those orders have been confirmed by the Dy. Collector and the Administrative Tribunal. It is submitted that in such circumstances the Administrative Tribunal has rightly found that the applications were frivolous.

12. The learned Senior Counsel has submitted that according to the claim of the petitioners, their father Krishna Arolkar was the original tenant in respect of the subject land and they have inherited the tenancy rights. It is submitted that Krishna Arolkar was only a caretaker as the respondent/landlords were staying at Mumbai. It is submitted that there was a gift deed executed in favour of Krishna Arolkar in the year 1969 by which the

land admeasuring 2000 sqmtrs. has been gifted to him. It is submitted that thus during his life time, Krishna Arolkar did not stake any claim of tenancy. It is submitted that Krishna Arolkar died in the year 1975. There was some interference with the possession of the land by the petitioners in the year 2000, when the civil suit was filed which was decreed against the petitioners holding that they are trespassers, which decree has attained finality on 12/8/2014 when the second appeal came to be dismissed. It is submitted that thus even otherwise the petitioners have no case.

13. Shri Sardessai, the learned Senior Counsel has made similar submissions. It is submitted that the amendment seeking to explain the delay is not supported by an affidavit of the petitioners nor the concerned counsel.

14. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. A perusal of the record clearly bears out that the petitioners were not diligent in prosecuting the application before the learned Mamlatdar. On the contrary, there are certain circumstances which indicate that some applications were filed which have rightly been found to be frivolous by the learned Tribunal. For instance, once the respondent nos. 6 and 7, who were the legal representatives of the respondent no.1 were represented, there was

no occasion for issuance of notice again to them. The learned counsel for the petitioners had submitted that in fact the Affidavit in lieu of Chief Examination was ready and if that be so, nothing prevented the petitioners from filing the same before the Mamlatdar, particularly when the proceedings were expedited by the learned Dy. Collector. There are concurrent findings on this aspect by the Courts below and in the absence of the findings being perverse, I do not find any reason to take a different view in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

15. The contention on behalf of the petitioners that the proceedings were preponed on 8/10/2009 will also have no bearing. This is because on 8/10/2009, the record does show that on an application filed on behalf of the respondents, the matter before the Mamlatdar was preponed and was fixed on 15/10/2009. The order sheet dated 15/10/2009 (at page 112) clearly shows that on that date, the applicant was represented by Advocate Kansar, who moved an application for carrying out amendment, which was allowed. It was thereafter that the case was adjourned to 3/11/2009 for filing affidavit in evidence, on which date, eventually the application was dismissed for non prosecution. Thus this is not a case in which the application was dismissed for non prosecution on a date on which it was preponed . Had the application

been dismissed on such a date, behind the back of the petitioners certainly it would have assumed significance. However, the record is otherwise.

16. This takes me to the question of delay. The record shows that the certified copy of the impugned order was delivered to the petitioners on 6/12/2013, while the petition is filed on 7/5/2015. The reasons for this delay were not part of the petition, as was originally filed. The reasons have been brought on record by way of an amendment by incorporating paras 33A onwards which are broadly on the ground that the matter was entrusted to Advocate Kansar, who had assured to file the proceedings to challenge the impugned order. In para 33F there is an averment that in the month of July 2014, Advocate Kansar had assured that he would file the petition, as soon as he recovers from his illness. The learned counsel for the respondent has pointed out from the judgment in Second Appeal No.27/2007, which was decided on 12/8/2016 that the petitioners were represented by Advocate Kansar and thus in all probability, Advocate Kansar had recovered from his illness in the month of August 2014. If that be so, there is no explanation forthcoming for not filing the petition till 7/5/2015. Paragraph 33-H states that the petitioners got the summons in the mutation case somewhere in September 2014, still the petition is filed only in May 2015. From the date of receipt of the certified copy, the total delay works out to 513 days which in

my considered view is not properly explained. The Affidavit of Advocate Kansar is not filed. Although it was submitted that the amendment in para 33 onwards is supported by a separate Affidavit of the petitioners, no such affidavit is produced on record.

17. In the case of **Sanjay Sadashiv Jadhav (supra)**, it was found that there were no laches which could be attributed to the conduct of the petitioners and the delay was not such which can be termed as inordinate. It can thus be said that in the facts and circumstances of that case, it was found that the delay was no material. It is trite that the question would depend on the facts and circumstances of each case. For the reasons as stated above, I do not find that the petitioners have satisfactorily explained the delay in filing the writ petition.

18. I have carefully gone through the orders passed by the Courts below and I do not see any reason to interfere with the same in exercise of the supervisory jurisdiction of this Court. In the result the petition is dismissed with no order to costs.

C. V. BHADANG, J.

Ap/