

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 924 OF 2017

BHARAT TUKARAM HOBLE AND 2 ORS., ... Petitioners

Versus

ANNETTE RIVA PO AND 14 ORS., ... Respondents

Mr. Suresh Palkar, Advocate for the petitioners.

Coram:- C. V. BHADANG, J.

Date:- 6th November 2017

P.C.

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 12/06/2017, passed by the learned Administrative Tribunal, whereby application for condonation of delay in filing an appeal has been dismissed.

2. The learned Deputy Collector and Sub Divisional Officer at Panaji, by an order dated 12/06/2013, had allowed the application filed by the respondent no.1 Smt. Annette Riva Po for partition and demarcation of plot no.16. The petitioners happen to be the owner of plot no.15. The petitioners intended to challenge the said order dated 12/06/2013, passed by the learned Deputy Collector, in which there is a delay of two years and 30 days. It was, in these circumstances, that the petitioners filed an application for condonation of delay before the learned

Administrative Tribunal.

3. The only ground raised in the application for condonation of delay was that the petitioners were not aware of the order passed by the learned Deputy Collector. It was contended that no notice/ intimation of the said partition case was served on the petitioners and the impugned order came to the knowledge of the petitioners only when the petitioner no.1 applied for certified copy of the said partition case under Right to Information Act on 30/03/2015, which information was received by the petitioner no.1 on 08/05/2015. It was, thus, contended that the appeal came to be filed within a period of 60 days from the date of knowledge / receipt of the certified copy and the appeal is within limitation.

4. The learned Administrative Tribunal has held that the father of the petitioners namely Tukaram Hoble was a party to the partition proceedings. Secondly, the Administrative Tribunal found that the petitioner no.1 has filed Regular Civil Suit No.112/2014/C against the respondent no.1 on 30/09/2014 and in paragraphs 3, 4 and 5 of the plaint, the petitioners have mentioned that the respondent no.1 has effected mutation and partition of the said plot, which has now been allotted Survey No.23/3-I of Village Cujira in Tiswadi Taluka. Thus, the Administrative Tribunal found that the ground that the petitioners were not aware of the order passed in the partition

case, was false to their own knowledge. Principally, on this ground, the learned Administrative Tribunal has refused to condone the delay.

5. On hearing the learned Counsel for the petitioners and on perusal of the record, I do not find that any exception can be taken to the impugned order.

6. As noticed earlier, the father of the petitioner, namely Tukaram Hoble was a party to the partition proceedings. Furthermore, paragraphs 3, 4 and 5 of the plaint in RCS No.112/2014/C read thus:

"3. The plaintiff is residing in H. No.409, along with his family members which is surveyed under Survey No.23/3 of Village Cujira in Tiswadi Taluka and is regularly paying house tax in the Village Panchayat of Mercas. The plaintiff has purchased his mundkarial plot no.15, admeasuring 390 sq. mts of Survey No.23/3 of village Cujira in Tiswadi Taluka, vide Deed of Sale dated 18.5.2012, bearing Book-1 Document, Registration No.PNJ-BK1-01338-2012, CD No. PNJD15 on date 21.5.2012. The said plot is bounded as under :

East : by 6 meters wide access road;

West : by 6 meters wide access road;

North : by plot no.14 of the same property;

South : by plot no.16 of the same property.

4. The Defendant no.1 who is residing at Caranzalem, Tiswadi, Goa, has purchased adjoining plot no.16, admeasuring 252 sq. mts. vide deed of sale dated 8.1.2013, bearing Book-1 Document, registration No.PNJ-BK1-00074-2013, CD No.PNJD19 on date 8.1.2013. Said plot is bounded as follows :
 - East : by 6 meters wide access road;
 - West : by 6 meters wide access road;
 - North : by plot no.15 of the same property;
 - South : by plot no.17 of the same property.
5. The defendant no.1 has also done mutation and partition of the said plot and has now been allotted new survey number bearing Survey No.23/3-I of village Cujira in Tiswadi Taluka, which is hereinafter referred to as the 'suit plot'. The suit plot falls under ward no.11 of Village Panchayat of Mercas."

Thus, it can be clearly seen that the petitioner no.1 was aware of the mutation and partition of the said plot at least from the year 2014. It is significant to note that the petitioner no.1 is one of the attesting witness to the Sale Deed dated 21/05/2012, under which plot no.16 was sold by Smt. Aurora Tereza and her husband Mr. Mathias Vaz to Krishna Belgaonkar and his wife

Mrs. Runuka Belgaonkar. Thus, the ground that the petitioners were not aware of the partition cannot be accepted in the face of the contents of the plaint in a suit filed by the petitioner no.1 and more particularly, paragraph 5 thereof. The impugned order does not suffer from any infirmity, so as to require interference. The petition is without any merit and is, accordingly, dismissed.

C. V. BHADANG, J.

SMA