

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1071 OF 2016**

Shri Pradeep V. Salelkar,
S/O Mr. Vassant Salelkar,
Major of Age, Indian National,
Resident of Colva,
Salcete, Goa.
(Registered Address)

..... Petitioner

V e r s u s

1. The Deputy Collector & SDO
Margao, Salcete, Goa.

2. Agostinho Fernandes,
S/o Mr. Lourence Ferandes,
Major of Age, Indian National,
Resident of 4th Ward,
Colva, Salcete, Goa.
(Registered Address)

..... Respondents

Shri J. Supekar, Advocate for the Petitioner.
Ms. P. Sawant, Additional Government Advocate for
Respondent no.1.
Shri G. Teles, Advocate for the Respondent no.2.

CORAM: C. V. BHADANG, J.
DATE: 6th February, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. Learned counsel
for the respective respondent waive service. Heard finally by
consent of parties.

2. There was an order directing the respondent no.2 to demolish the subject structure which was admeasuring 66 sq.mtrs standing on land survey no.32/9, Village Colva of Salcete Taluka. The second respondent had given an undertaking on 10/10/2013 in Writ Petition No.295/13 that he will "demolish the structure admeasuring 66 sq.mtrs identified in the Checklist dated 15/7/2004" submitted by the Mamlatdar of Salcete.

3. It appears that the petitioner filed Contempt Petition No.70/2013 alleging breach of the undertaking. The contempt petition was disposed of by this Court on 11/6/2014 permitting the petitioner, if he so desires, to get his grievance redressed about the non-compliance of the undertaking, namely, demolition of 66 sq.mtrs of the structure. The petitioner in consequence, moved the Deputy Collector. The Deputy Collector called the report of the Mamlatdar on 2/12/2014 and 13/7/2015 which showed that the structure admeasuring 46.33 sq.mtrs has been demolished and is covered on three sides by corrugated

sheets. The learned Dy. Collector, however, came to the conclusion that the entire structure has been demolished completely and dismissed the application by order dated 24/7/2015. The petitioner obtained the certified copy of the order on 4/9/2015 and challenged the same before this Court in Writ Petition No.894/2015. On 10/2/2016, the Division Bench of this Court while permitting the petitioner to withdraw the petition granted liberty to the petitioner to resort to alternate remedy. The Division Bench specifically stipulated that in case an application for condonation of delay is filed (while resorting to alternate remedy), the concerned authority shall examine such application on its own merits considering section 14 of the Limitation Act and in accordance with law. Within 12 days of the withdrawal of the petition, the petitioner approached the Administrative Tribunal by filing an appeal along with an application for condonation of delay which was filed on 22/2/2016. The delay was said to be of 146 days.

4. The Tribunal by the impugned order dated

2/9/2016 has dismissed the application.

5. The learned counsel for the petitioner has pointed out that the Tribunal while dismissing the application has gone on merits of the appeal which was not permissible. Secondly it is contended that once this Court had granted liberty to take recourse to the alternate remedy and stipulating that if an application for condonation of delay is filed the concerned authority shall have due regard to section 14 of the Limitation Act, it was impermissible for the Tribunal to hold that there was no finding recorded by this Court that the writ petition was filed before a Court having no jurisdiction. He submits that the petitioner had approached the Tribunal within 12 days of the withdrawal of the writ petition.

6. On the contrary, the learned counsel for the second respondent submits that the structure has been demolished completely. It is contended that although the certified copy of the order dated 24/7/2015 was obtained on 4/9/2016, the

petitioner had filed the writ petition on 30/10/2015 and there is no explanation for the delay.

7. I have carefully considered the rival circumstances and the submissions made. A bare perusal of the impugned order passed would indicate that the Tribunal although held that the merits cannot be gone into at the stage of condonation of delay, has indeed adverted to some of the facts which turn on merits. Secondly, once this Court has given liberty to the petitioner to take recourse to the alternate remedy, it cannot be said that in the absence of a finding that the writ petition was not maintainable, the petitioner was not entitled to benefit under section 14 of the Limitation Act. In any event the petitioner after withdrawal of the writ petition has approached the Administrative Tribunal with expedition and in such circumstances, it would be appropriate if the Administrative Tribunal decides the appeal on merits after condoning the delay. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The delay in filing the appeal is hereby condoned. The

Tribunal shall decide the appeal on its own merits and in accordance with law. The parties to appear before the learned Tribunal on 2/3/2017 at 10.a.m. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/