

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 1055 OF 2016**

SHRI. CHRISTOVAM AGNELO PIRIES,  
THR. CONST. ATTORNEY MR. JORGE  
DE MENEZES E SA., .... Petitioner

Versus

CONFARIA DE NOSSA SENHORA DE  
ROSARIO DE IGREJA DE SANTA  
CRUZ, REP. BY FR. ALEXANDRE P.  
PARISHANDANR., .... Respondents

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Shri Vivek Rodrigues, Advocate for the Petitioner.

Shri F.E. Noronha, Advocate for the Respondents.

**CORAM:- C. V. BHADANG, J.**

**DATE:- 13<sup>th</sup> FEBRUARY, 2017**

**ORAL ORDER:**

The challenge in this petition is to the order dated 14.09.2016, passed by the learned District Judge at Panaji, in Tenancy Revision Application No.176/2015. By the impugned order, the learned District Judge, while allowing the revision application has set aside the order dated 06.08.2012, passed by the learned Joint Mamlatdar and remanded the matter to the learned Civil Judge Junior Division at Panaji (on account of the transfer of jurisdiction), for deciding the application for

condonation of delay and then to decide the application for reopening of the evidence, if the delay is condoned.

2. The brief facts are that the petitioner filed an application for transfer of the land bearing Survey No.423/21 and 40/1 in his name, under Section 14 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short). It so happened that the learned Joint Mamlatdar, closed the evidence of the petitioner on 08.10.2009, on account of absence on behalf of the petitioner. On 09.06.2011, the petitioner filed an application for reopening of the evidence alongwith an application for condonation of delay.

3. Both these applications were opposed on behalf of the respondents. The learned Joint Mamlatdar by an order passed in the roznama on 06.08.2012, allowed both these application with the following order:

*"Matter called out before me today. Adv. S. Lobo present for opponent no.1. Applicant absent. Order pronounced on application to reopen the evidence of applicant and for condonation of delay in the interest of justice and to enable the Court to decide the matter in merits and to avoid multiplicity of proceedings. Matter fixed for*

*evidence of applicant on 22.08.2012 at 10:30 a.m."*

4. Feeling aggrieved, the petitioner challenged the same before the Deputy Collector, which revision application was transferred to the learned District Judge (on account of the conferral of jurisdiction on the District Judge to entertain the revision application), being Tenancy Revision Application No.176/2015. The learned District Judge by the impugned order has partly allowed the revision, directing the Mamlatdar to hear and decide the application afresh, as aforesaid. Hence, this petition.

5. I have heard Shri Rodrigues, the learned Counsel for the petitioner and Shri Noronha, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have perused the order passed by the learned Mamlatdar and the impugned order passed by the learned District Judge.

6. It is submitted by Shri Rodrigues, the learned Counsel for the petitioner that the revision as framed and filed, was not maintainable. The learned Counsel pointed out that

under Article 47(1) of the General Statutes of Confraternities, the authority to represent the Confraternity in Courts of Law, is with the Attorney of the respondent. It is submitted that the revision filed at the instance of the President/Ecclesiastical Moderator, was not competent. The learned Counsel pointed out that the President/Ecclesiastical Moderator discharges duties of religious/spiritual nature and under Article 74(5), although he can attend the meeting of the Governing Council as well as of the General Assembly, the President is not entitled to vote. In other words, it is submitted that the powers of President/Ecclesiastical Moderator, are limited and the revision filed by the President was not maintainable. The learned Counsel submitted that this ground was urged before the learned District Judge, which has not been considered.

7. It is next contended that the learned District Judge was in error in setting aside the order of the learned Joint Mamlatdar in the exercise of the limited revisional jurisdiction. It is submitted that the order of the learned Joint Mamlatdar cannot be said to be unreasoned, as the Mamlatdar has observed that the condonation of delay and reopening is necessary in the interest of justice and to avoid multiplicity of

proceedings. It is submitted that the learned District Judge exceeded in his jurisdiction in interfering with the order of the learned Joint Mamlatdar in the absence of any compelling reasons.

8. The learned Counsel submits that the provisions of the Act are a piece of beneficial legislation and do not envisage adherence to strict Rules of procedure. It is submitted that the Act has to be interpreted in favour of the tenants and thus, once the order of reopening was passed, there was no reason to interfere with the same.

9. On the contrary, it is submitted by the learned Counsel for the respondents that the revision at the instance of the President cannot be said to be not maintainable. The learned Counsel has referred to the letter dated 05.02.2014 from the Secretary, Confraternities and Fabricas/Cofres to the Governing Council, in which the act of filing of tenancy revision has been ratified. It is submitted that this is in pursuance of a resolution dated 04.03.2013 and assuming that there is an irregularity in filing the revision application, the same stands cured.

10. Insofar as merits are concerned, it is submitted that the Mamlatdar had passed a cryptic order without any reasons, worth the name. It is submitted that the order was passed after inordinate delay of one year and two months, after the arguments were heard and the learned District Judge was justified in placing reliance on the decision in the case of **Shri Pradeep K.R. Sangodker Vs. State of Goa & Another, 2006(2) Goa L.R.343** and **Mr. Michael Anthony William Gareth & Another Vs. Mrs. Maria do Rosario Da Fatima A.L. Faria e Alvares @ Fatima Alvares & Another, 2010(2) Goa L.R.594 (Bom)(PB)**. It is submitted that the learned District Judge was justified in sending the application/s for reconsideration and no interference is called for.

11. In reply, the learned Counsel for the petitioner states that the copy of the resolution dated 04.03.2013, is not produced and the alleged ratification made subsequently, cannot cure the defect.

12. I have carefully considered the rival circumstances and the submissions made. A perusal of the revision memo shows that the revision application is filed in the name of

“Confraria” represented by its President Father Alexandre Pereira, Parish Priest of Holy Cross Church and the revision memo is signed by the Advocate for the respondent-Confraria. The revision application was filed on 07.03.2013 and was decided on 14.09.2016. In the meantime, during the pendency of the revision application, by letter dated 05.02.2014, the Secretary wrote to the Governing Council (making reference to resolution dated 04.03.2013, passed by the Governing Council), authorising and ratifying the filing of the tenancy revision. Thus, it appears that there is ratification of the filing of the revision application, during its pendency. For these reasons, I do not find that the objection on behalf of the petitioner to the maintainability of the revision application, can be accepted.

13. Coming to the merits, a perusal of the order passed by the Joint Mamlatdar would show that except saying that the delay is condoned in the interest of justice and to decide the matter on merits and to avoid multiplicity of proceedings, there are no other reasons forthcoming in the order. It is undisputed that the order is passed after a period of a year and two months. That apart, the order of Mamlatdar does not show consideration of the rival contentions of the parties, insofar as

the aspect of condonation of delay and the consequent reopening of the evidence, are concerned. It is the basic requirement of any judicial or quasi judicial determination that the order should reflect the basic consideration of the rival contentions and the reasons for accepting one view or the other, which is not forthcoming in this case.

14. The case made out by the petitioner is that as he was required to go outside Goa, he had authorised his Power of Attorney Mr. Jorge Menezes to look after the case, who had appointed Advocate Shri Phadte to represent the petitioner. The case made out is that on account of the lapse of the Advocate, the petitioner had suffered the order of closure of the evidence and therefore, the petitioner had approached another Advocate, who after going through the file advised to apply for certified copy and then to file an application for reopening of the case alongwith the application for condonation of delay.

15. This case of the petitioner is countered in the reply filed by the respondent. It was in such circumstances, necessary for the Joint Mamlatdar to record reasons for granting the application/s, which is absent in this case.

16. I have carefully gone through the impugned order of the learned District Judge and all that it does is to send the application/s back to the Mamlatdar, for reconsideration, in accordance with law. Such an order cannot normally be said to result into any manifest injustice, which is one of the reasons why no interference is called for in the impugned order. It is now well settled that the supervisory jurisdiction under Article 227 of the Constitution of India is meant to ensure that the Courts/Tribunals below, act within the bounds of their authority and to avoid any manifest injustice on account of any order passed.

17. For these reasons, I do not find that any case for interference is made out. The petition is accordingly dismissed with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions of the parties.

**C. V. BHADANG, J.**

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