

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.910 OF 2017

Maria Joaquina Pereira,
major in age, residing at H.No.831,
Kadeabag, Cacora,
Curchorem, Goa.

... Petitioner

V e r s u s

1. STATE
Through its Chief Secretary,
Secretariat,
Porvorim, Goa.

2. The Collector,
North Goa, Panaji-Goa.

2. The Collector,
South Goa, Margao-Goa.

... Respondents

Shri Sudin Usgaonkar, Senior Advocate with Shjri Ashwin Naresh Ramani, Advocate for the Petitioner.

Ms. Priyanka Kamat, Additional Government Advocate for the Respondents.

Coram:- C. V. BHADANG, J

Date :- 23 August, 2018.

ORAL JUDGMENT

1. Rule, made returnable forthwith. Ms. Kamat, learned Additional Government Advocate, waives service on behalf of the respondents. Heard forthwith by consent of the parties.

2. The petitioner is challenging the judgment dated 25.01.2016 passed by the Administrative Tribunal in Land Revenue Appeal No.60 of 2014 by which the Tribunal has dismissed the appeal filed by the petitioner challenging the order dated 20.08.1974 passed by the learned Collector. The learned Collector by the order dated 20.08.1974 has directed the reversion of the land which is subject matter of dispute to the Government.

3. According to the petitioner, his grandmother one Joaquina da Silva Pereira was granted Alvara no.1242 in respect of the subject land. She continued to be in possession of the land for a period of more than ten years i.e. till her death somewhere in the year 1963. It is contended that as such the grant of the land by Alvara had become absolute.

4. It appears that the Collector initiated proceedings for reversion of the land in the year 1973. A show cause notice dated 16.10.1973 was issued apparently in the name of one Shri Joaquim da Silva Pereira. The Talathi reported that the notice to Shri Joaquim was not served as Shri Joaquim was dead. In such circumstances, the Collector directed the service of the notice by pasting, in accordance with Section 173 of the Goa Land Revenue Code. There is a panchanama

placed on record on behalf of the respondents showing that the notice was pasted at the Village Panchayat office as also at a conspicuous place at the agricultural land which is subject matter of the dispute. The Collector therefore proceeded further and by the order dated 20.08.1974 directed reversion of the land.

5. According to the petitioner, she secured a copy of Form I and XIV somewhere on 24.09.2014 from the website of the Director of Settlement of Land and Record for the purpose of carrying out mutation in her name. It is at this stage that the petitioner for the first time found that the name of the respondent was shown in the occupant's column instead of the name of her grandmother i.e. late Joaquina da Silva Pereira. In such circumstances, the petitioner approached the Administrative Tribunal in an appeal which was filed on 08.12.2014. It appears from the perusal of the impugned judgment dated 20.01.2016 passed by the Administrative Tribunal that the Tribunal had granted an opportunity to the petitioner to file an application for condonation of delay and an application for leave to file appeal. However, that opportunity was not availed of. The Tribunal after appreciation of the facts as obtaining from the record came to the conclusion that the appeal is presented beyond the period of limitation and it not

being accompanied by an application for condonation of delay, is liable to be dismissed. It is this order which is subject matter of challenge in this petition.

6. I have heard Shri Sudin Usgaonkar, learned Senior Advocate appearing for the petitioner and Ms. Priyanka Kamat, learned Additional Government Advocate appearing for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment of the learned Administrative Tribunal.

7. It is pointed out by the learned Additional Government Advocate appearing for the respondents that apparently the order passed by the Collector is sought to be challenged after a period of 40 years.

8. On hearing the learned Counsel for the parties and on perusal of record, it appears that there is a dispute as to whether the petitioner can be said to be the successor of Joaquina da Silva Pereira. The learned Additional Government Advocate has pointed out from the death and burial certificate of Joaquina da Silva Pereira that she died a spinster (shown in the certificate as a bachelor) and, on the contrary, the learned Senior Counsel for the petitioner has placed reliance on a

baptism certificate dated 28.09.2011 in order to submit that the petitioner is the successor of Maria Joaquina Pereira. There is also a dispute as to whether the petitioner learnt about the passing of the order for the first time somewhere in the year 2014. The sole ground on which it is contended on behalf of the petitioner that there was no need to file an application for condonation of delay, is that from the date of knowledge the appeal is filed within limitation. It can thus be seen that both these questions as to whether the petitioner can be said to be a Successor of Joaquina Pereira and whether the petitioner for the first time came to know of the passing of the order in September 2014 are questions which need to be gone into and decided. It was for this reason that the Administrative Tribunal had granted opportunity to the petitioner to file an application for condonation of delay which unfortunately was not availed of.

9. Be that as it may, Shri Sudin Usgaonkar, learned Senior Advocate, at this stage, on instructions, states that the petitioner shall file a properly constituted application for leave to appeal, as well as an application for condonation of delay by way of abundant caution before the Administrative Tribunal. It is submitted that this is a case where the land is directed to be reverted even without she being afforded an opportunity of

hearing as the order passed by the Collector was passed behind her back and presumably of a service being affected on one Joaquim (and not Joaquina, the grandmother of the petitioner) who is not to be shown to be the concessionaire under the Alvara and who was reported to be dead when the order was passed by the Collector. It is trite that all these issues pertain to the merits of the appeal filed by the petitioner before the Administrative Tribunal.

10. Considering the overall circumstances, I find it appropriate that the petitioner is afforded an opportunity to file an application for leave to appeal as well as an application for condonation of delay within a period of four weeks from today. The impugned order is accordingly set aside. If such applications are filed, the Tribunal shall decide both these applications on their own merits and in accordance with law. The rival contentions of the parties are left open.

11. Rule is made absolute in the aforesaid terms with no orders as to costs.

C. V. BHADANG J.

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