

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO. 28 OF 2019****IN****WRIT PETITION NO. 915 OF 2018**

Sylvester D'Souza ... Applicant
Versus
Goa Coastal Zone Management
Authority & 5 Others ... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate for the Applicant.

Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondent Nos. 1, 3, 4 and 5.

Mr. Nitin Sardessai, Senior Advocate with Mr. Neelesh Takkekar, Advocate for the Respondent No. 6.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 24th JANUARY, 2019

PRONOUNCED ON: 28th JANUARY, 2019

ORDER:

By this application, the applicant is seeking “extension of time period”, so as to enable the applicant to avail his remedy of appeal, before the National Green Tribunal (NGT, for short).

2. On 15.02.2013, respondent no. 1-Goa Coastal Zone Management Authority (GCZMA), had directed demolition of 18 structures existing in Survey No. 242/1 (part) of village Calangute belonging to the applicant. The applicant challenged

the same before this Court in Writ Petition No. 195/2012, which petition was dismissed by this Court (Nutan D. Sardesai, J.) on 22.03.2018, *inter alia* on the ground of availability of an alternate statutory remedy before the NGT. The applicant made an unsuccessful attempt to get the said order reviewed by filing Civil Application (Review) No. 8/2013, which was dismissed on 13.04.2013. The material ground on which the review was sought was that, while dismissing Writ Petition No. 195/2012, on the ground of availability of an alternate remedy, this Court had also made certain observations on the merits of the matter. This Court (Nutan D. Sardesai, J.), dismissed the application for review on 13.04.2013. The applicant challenged both these orders before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos. 13457-58 of 2018, in which, the Hon'ble Supreme Court has passed the following order on 25.05.2018:

“Heard learned counsel for the parties.

We are not inclined to interfere with the judgment of the High Court which is impugned in these special leave petitions.

We make it clear that in view of the order dated 15th February, 2012 passed by the Goa Coastal Zone Management Authority (Annexure P-26) holding that no prior permission has been taken in regard to the subject structures having become final, it will be open to the authorities to proceed on the basis of the said order in accordance with law.

While doing so, the authority may take into account the efficacy of Resolution dated 20th February, 2012 (Annexure P-27) passed by the Village Panchayat purporting to regularize the subject structure. The effect of that Resolution may be taken note of as per law.

Needless to observe that the authorities may give opportunity to both the parties, if necessary, as permissible in law.

The special leave petitions stand dismissed in the above terms."

3. After this, the respondent no. 1 has considered the efficacy of the resolution dated 20.02.2012, passed by the Village Panchayat and by an order dated 24.08.2018, had again directed demolition of the subject structures. That order was challenged by the applicant before this Court in Writ Petition No. 915/2018, wherein a specific preliminary objection was raised on behalf of the respondent no. 6, about the maintainability of the petition, in view of the availability of an alternate remedy before the NGT. This Court by an order dated 29.11.2018 has dismissed the petition, in view of the availability of an alternate remedy. At the instance of the applicant, this Court extended the ad-interim relief, which was already operating from 10.09.2018 for a period of six weeks. Now, the present application is filed by the applicant for "extension of time" to approach the NGT.

4. I have heard Mr. Lotlikar, the learned Senior Counsel for the applicant and Mr. Dhargalkar, the learned Additional Government Advocate for the respondent nos. 1, 3, 4 and 5 and Mr. Sardesai, the learned Senior Counsel for the respondent no. 6.

5. It is submitted by Mr. Lotlikar, the learned Senior Counsel for the applicant that this Court having relegated the petitioner to the alternate remedy before the NGT, can extend the period of limitation, which has already expired. It is submitted that after the order was passed on 24.08.2018, by the respondent no. 1, the petitioner approached this Court in Writ Petition No. 915/2018 on 07.09.2018, which was well within which an appeal needs to be filed before the NGT. It is submitted that the applicant was required to approach this Court in view of the fact that the impugned order was passed, as an offshoot of the earlier Writ Petition No. 195/2012 and secondly, there were certain observations made on merits, while deciding Writ Petition No. 195/2012. It is submitted that there is no absence of 'bonafides' on the part of the applicant in approaching this Court. It is submitted that the applicant was bonafidely prosecuting the petition before this Court, and by the time the said petition was decided on 29.11.2018, the period of limitation to approach the NGT had expired.

6. It is submitted that this Court had issued notice to the respondents and had also granted stay and once, this Court has refused to entertain the petition on the ground of the availability of an alternate remedy, the applicant cannot be left remediless.

On behalf of the applicant, strong reliance is placed on the decision of the Supreme Court in the case of **Danda Rajeshwari Vs. Bodavula Hanumayamma & Others, (1996) 6 SCC 199**, in order to submit that this Court while relegating the party to the alternate remedy, can direct or permit the party to avail of the remedy within the specific period.

Reliance is also placed on behalf of the applicants on the decision of the Supreme Court in the case of **Pala Jhangola Vikas Samiti & Another Vs. Custodian General of Evacuee Property & Others, (2008) 3 SCC 358** and on the decision of this Court in the case of **Madhav Atmaram Sahakari Vs. Aselmo Furtado & Others, 2018(1) ALL MR 120**.

7. The learned Additional Government Advocate for the respondent nos. 1, 3, 4 and 5 submitted that this Court may pass appropriate order as may be deemed fit.

8. Mr. Sardessai, the learned Senior Counsel for the respondent no. 6 has opposed the grant of extension of time as

prayed. It is submitted that this Court by writ of mandamus cannot direct the statutory Authority or Tribunal to act contrary to the statutory provisions. The learned Senior Counsel has pointed out that there is limitation of 30 days for preferring an appeal, which period can be condoned to the extent of 60 days and beyond that, there is no power of extension or condonation of delay. It is submitted that the act of the applicant, in approaching this Court in the second round of litigation particularly, when the earlier Writ Petition No. 915/2012, was not entertained in view of the availability of the statutory remedy, was not bonafide. The learned Senior Counsel has placed reliance on a Constitution Bench judgment of the Supreme Court in the case of **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani & Another AIR 1961 SC 1506.**

Reliance is also placed on the decision of the Supreme Court in the case of **Rabindra Nath Samuel Dawson (1973) 3 SCC 381, Hope Textiles Ltd. & Another Vs. Union of India & Others 1995 Supp (3) SCC 199, Union of India Vs. Kirloskar Pneumatic Co. Ltd. (1996) 4 SCC 453, Ouseph Mathai & Others Vs. M. Abdul Khadir (2002) 1 SCC 319 and Suryachakra Power Corporation Limited Vs. Electricity Department (2016) 16 SCC 152.** It is submitted that the

action of the applicant in approaching this Court lacks bonafide and this Court may not extend the time as prayed.

9. I have given my anxious consideration to the rival circumstances and the submissions made. Twice the applicant was relegated to approach the NGT under Section 16 of the National Green Tribunal Act, 2010 (NGT Act, for short) i.e. while deciding Writ Petition No. 195/2012 on 22.03.2018 and Writ Petition No. 915/2018 on 29.11.2018. The question is whether, this Court can and if yes, would indeed be justified in extending the time as prayed and the answer in my considered view has to be in the negative.

10. The period of limitation for filing an appeal under Section 16 of the NGT Act is 30 days. As per the proviso appended to Section 16 of the the NGT Act, the Tribunal may if, it is satisfied that the appellant was prevented by sufficient cause from filing the appeal, within the said period, allow it to be filed within a further period "not exceeding 60 days". It can thus be seen that as per the provisions of Section 16 of the NGT Act, the appeal has to be filed within a period of 30 days and the NGT is vested power to condone the delay, for a period not exceeding 60 days. Thus, beyond the said period, the statute does not

clothe the NGT to condone the delay under Section 16 of the NGT Act.

11. Mr. Lotlikar, the learned Senior Counsel for the applicant submitted that the applicant is not seeking exclusion of time under Section 14 of the Limitation Act and obviously, any such exclusion, cannot be claimed before this Court.

12. Now, in order to appreciate the rival contentions, it would be necessary to deal with the cases cited on behalf of the parties.

13. In the case of **A.V. Venkateswaran** (supra), the issue was whether, the Custom Authorities were right in assessing “fountain pens”, of which the nib, cap and clips were plated with gold, which were imported by the respondent fell under item no. 45(3) or item no. 61(8) of the Tariff Act. The Custom Authorities held that it was chargeable at 78.75%. As per Section 191 of the Customs Act, the person aggrieved by an order of the Collector of Customs could file a revision before the Central Government. The respondent, without resorting to this remedy approached this Court, which was resisted *inter alia* on the ground of availability of an alternate remedy. The learned Single Judge of

this Court came to the conclusion that the construction placed by the Custom Authorities on the relevant entries was unreasonable and perverse and therefore, the objection of availability of an alternate remedy was repelled. That was challenged by the Custom Authorities in an appeal before the Division Bench. The Division Bench was also of the view that the construction placed by the Custom Authorities, on the relevant entries in the schedule to the tariff was unreasonable, however, it came to the conclusion that merely on account of this, the order of the Custom Authorities would not be void for lack of jurisdiction. The Division Bench held that the interpretation of the Custom Authorities on the relevant items, might be erroneous, even grossly erroneous, but this error was one committed in the exercise of their jurisdiction and had not the effect of placing the order beyond their jurisdiction. The Division Bench disagreeing with the finding of the learned Single Judge, that the respondent (writ petitioner) was absolved from the normal obligation to exhaust his statutory remedy, set aside the order of the learned Single Judge. The matter went to the Supreme Court and the Constitution Bench by a majority judgment *inter alia* held that if the petitioner has disabled himself from availing of the statutory remedy, by his own fault, within the prescribed time, he cannot be permitted to urge, that as a ground for the Court dealing with

the petition under Article 226 of the Constitution of India to exercise discretion in his favour. This is what is held in para 11 of the majority view.

“The question that we have now to consider is has the discretion which undoubtedly vested in the Court been so improperly exercised as to call for our interference with that order. We might premise this discussion by expressing our opinion on two matters merely to prevent any misunderstanding. First we entirely agree with Chagla, C. J. that the order of the Assistant Collector of Customs in assessing duty at 78.3/4 per cent. or of the Collector of Customs in confirming the same, was not void for lack of jurisdiction. The interpretation they put on the relevant items in the Tariff Schedule might be erroneous, even grossly erroneous, but this error was one committed in the exercise of their jurisdiction and had not the effect of lacing the resulting order beyond their jurisdiction. Secondly, as we have already indicated, we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he, cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under

Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C. J. in Mohammad Nooh's case (AIR 1958 SC 86) with its reference to the right to appeal being lost "through no fault of his own" emphasizes this aspect of the rule."

14. The Hon'ble Supreme Court, however, on facts, as set out in para 12 of the judgment held that it was not necessary to interfere with the order of the Division Bench. However, the said refusal is clearly on account of peculiar facts as set out in para 12 of the judgment.

15. In the case of **Hope Textiles Ltd.** (supra), the Apex Court has held that under Article 226 of the Constitution of India, a writ of mandamus cannot be issued to the statutory authorities, to act contrary to the statutory provisions.

16. In the case of **Rabindra Nath Samuel Dawson** (supra), the question was whether, the plaintiff was entitled to the benefit of Sections 14 of the Limitation Act and it was held that the plaintiff, who persisted in the earlier suit, in spite of objection of the adversary, cannot be said to be pursuing the remedy bonafidely and therefore, there was no justification for the application under Section 14 of the Limitation Act. It is

necessary to note that the extension in the present case, is not sought for under Section 14 of the Limitation Act.

17. In the case of **Suryachakra Power Corporation Limited** (supra), the issue was of exclusion of time spent in prosecuting a review petition, in which, there was a delay, which was condoned. Subsequently, the review petition was withdrawn and the statutory remedy was availed of. On facts, the Hon'ble Supreme Court held that merely because the delay in filing the review petition was condoned, it cannot be said that there was due diligence.

18. In the case of **Ouseph Mathai** (supra), which arose out of the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, it was held that the petition under Article 227 of the Constitution of India cannot be treated as an extension of a statutory appeal or revision and stay granted in any such petition, does not confer a right upon the party and is always granted subject to the final outcome of the case and at the risk of the party in whose favour it has been granted. It has been held that the extension of a statutory protection cannot be claimed on the basis of the stay order.

19. Lastly, in the case of **Kirloskar Pneumatic Co. Ltd.** (supra), the question was whether, the High Court could have issued a direction to the Custom Authorities, not to reject the assessee's application for refund, on the ground of limitation and it was held that such a direction is unsustainable. This is what is held in para 10 of the judgment.

“According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. The learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the Authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several

authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr. Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.”

20. A reference may be made, at this stage, to the decisions cited on behalf of the applicant. The case of **Danda Rajeshwari** (supra) arose out of an election dispute under the A.P. Panchayat Raj Act. The High Court declined to interfere in the election dispute, under Article 226 of the Constitution of India, since the election was already held and the petitioner had an alternate remedy of filing an election petition under the

relevant statute. While directing the party to avail of the statutory remedy, within three weeks from the date of disposal of the writ petition, further directed the Election Tribunal not to go into the question of limitation and instead decide the matter on merits. It appears that before the Hon'ble Supreme Court, reliance was placed on the earlier decision in the case of **Kirloskar Pneumatic Co. Ltd.** (supra), in order to contend that no such direction could have been issued. The Hon'ble Supreme Court found that the case of **Kirloskar Pneumatic Co. Ltd.** (supra) was distinguishable on facts as in the case of **Kirloskar Pneumatic Co. Ltd.** (supra), rules prescribed limitation to claim refund and the application was filed after limitation and the High Court had directed refund ignoring limitation.

21. Mr. Sardesai, the learned Senior Counsel for the respondent no. 6 submitted that there is no bar similar to the one contained in proviso to Section 16 of the NGT Act, in the A.P. Panchayat Raj Act and the Rules framed thereunder. In other words, it is contended that there is no specific provision against the condonation of delay beyond 60 days, as found under Section 16 of the NGT Act and therefore, the decision in the case of **Danda Rajeshwari** (supra) will not be applicable.

22. In my considered view, the ratio in the case of **Danda Rajeshwari** (supra), would not apply on the ground of proviso as contained in the provisions of Section 16 of the NGT Act, by which, condonation of delay cannot be granted beyond a period of 60 days and in the absence of similar provision under the A.P. Panchayat Raj Act. In my considered view, the matter would be governed by the ratio as laid down in the case of **Kirloskar Pneumatic Co. Ltd.** (supra).

23. The decision in the case of **Pala Jhangola Vikas Samiti** (supra) arose out of the order passed by the Custodian General of Evacuee Property, wherein the High Court had dismissed the writ petition in view of the availability of statutory remedy of appeal, as disputed questions of fact were sought to be raised. The High Court while refusing to interfere had granted liberty to the petitioner to file appeal, directing the Appellate Authority to decide the appeal, without deciding the question of limitation. Here again, it is not shown that the relevant statutory provisions, under which the order was passed by the Custodian General of the Evacuee Property, there were similar provisions as contained under Section 16 of the NGT Act and second, the jurisdiction available to the Supreme Court under Article 142 of the Constitution of India is not available to this Court.

24. The case of **Madhav Atmaram Sahakari** (supra) arose out of an election to the Board of Directors of the Goa State Co-operative Milk Producers Union, in which, the Returning Officer had rejected the nomination papers of the respondent nos. 1 to 24 and declared the petitioners therein, as “elected unopposed”. The members whose nomination papers were rejected, challenged the same before the Division Bench of this Court. The Division Bench of this Court declined to entertain the petition as the petitioners had an alternate remedy available under Section 83 of the Goa Co-operative Societies Act, 2001 (Societies Act, for short) and the Division Bench granted liberty to the petitioners to invoke the appropriate remedy within one week. This order was passed on 02.03.2017 and the respondent nos. 1 to 24 filed an appeal under Section 83 of the Societies Act on 09.03.2017 i.e. within the time permitted by the Division Bench. The Tribunal on 07.04.2017, allowed the appeal and while setting aside the rejection of the nomination of respondent nos. 1 to 24 also set aside the election of the petitioners, directing the authorities to conduct fresh election in accordance with law. This order was challenged before the learned Single Judge of this Court. In the said case, one of the contentions raised on behalf of the petitioner was that even if the challenge which was registered as an “Appeal” could be tried as

a dispute under Section 83 of the Societies Act, admittedly, the same was delayed by about 9 days, as the dispute has to be raised within 30 days of the declaration of the result. This Court taking note of the decision of the Supreme Court in the case of **Danda Rajeshwari** (supra) and further having regard to the fact that the proviso to sub-section (1) empowers the Co-operative Tribunal to condone the delay and the fact that the Division Bench had granted one weeks time to the respondents to avail of the statutory remedy had repelled the objection. It can thus clearly be seen that the case turned on its own facts, particularly, when the Tribunal had authority to condone the delay under provisions of Section 83(1) of the Societies Act, unlike in the present case, where the NGT cannot condone the delay beyond the period of 60 days.

However, it is made clear that this Court has not examined the issue of exclusion of time under Section 14 of the Limitation Act as it is neither raised nor had arisen before this Court. The application is without any merit and it is accordingly dismissed, with no order as to costs.

25. At this stage, Mr. Lotlikar, the learned Senior Counsel for the applicant submitted that the applicant cannot be left remedyless and shall explore the appropriate remedy, which he

intends to take recourse to and in that view of the matter, the ad-interim relief may be continued for a further period of three weeks.

26. The learned Counsel for the respondent no. 6 has opposed the said prayer.

27. I have considered the submissions made and I find that the interim protection can be granted for a limited period of three weeks from today. It is made clear that no further extension shall be granted.

C.V. BHADANG, J.

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