

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 775 OF 2018**

Village Panchayat of Varca,
Through its Secretary,
Office of V. P. Varca,
Varca, Salcette, Goa.

.... Petitioners

V e r s u s

Mr. Amario Dias,
Residing at House no.687,
Zalor, Carmona,
Salcete, Goa.

..... Respondent

Shri Amit Palekar Advocate, for the Petitioner,

Shri C. A. Coutinho, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
Reserved on: 21/6/2019
Pronounced on: 24/6/2019.

JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of the parties.

2. The challenge in this petition is to the order dated 28/4/2017 passed by the learned Adhoc District Judge, South Goa at Margao in Civil Misc.

Application no.164/2016. By the impugned order, the learned District Judge has refused to condone the delay of 41 days in filing a revision application under section 201-B of the Goa Panchayat Raj Act 1994 (Act, for short).

3. The brief facts are that the petitioner/Village Panchayat had issued a demolition order dated 5/8/2010 of a structure belonging to the respondent which according to the petitioner is constructed in violation of the CRZ notification and the construction falls within the No Development Zone (NDZ). The subject matter of dispute is House No.687/687-A and 687/B in ward Zalor of Carmona village. The respondent challenged the same in an appeal under section 66 (7) of the Act before the Addl. Director of Panchayats, Margao. The Addl. Director found that the only issue which was involved in the appeal was whether the petitioner i.e Village Panchayat of Varca or the Village Panchayat Carmona was having jurisdiction over Zalor waddo. The learned Addl. Director of Panchayat found that the ward Zalor of Carmona village falls in the Village Panchayat of Carmona. In that view of the matter, the learned Addl. Director of Panchayat allowed the appeal, set aside the order of demolition and instead, directed the Village Panchayat of Carmona to carry out site inspection in terms of the CRZ Notification within thirty days and to “act according to law”.

4. Feeling aggrieved the petitioner proposed to challenge the same in a Revision application under section 201-B of the Act, before the learned District Judge, in which, there was a delay of 41 days. The petitioner filed an application for condonation of delay on the ground that the impugned order dated 20/4/2016 passed by the Addl. Director was communicated to the petitioner by registered post A/D on 1/6/2016. The matter was thereafter entrusted to an Advocate who drafted the revision application and it was filed on 1/7/2016, which was within thirty days. It was contended that the revision application was filed with a bonafide belief that it was filed within the period of limitation. However, subsequently on account of an office objection being raised, the application for condonation of delay as aforesaid came to be filed.

5. The application was opposed on behalf of the respondents.

6. The learned District Judge by the impugned order has dismissed the application.

7. I have heard Shri Palekar, the learned counsel for the petitioner and Mr. Coutinho, the learned counsel for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

8. The learned counsel for the petitioner has urged that a copy of the impugned order was served on the petitioner on 1/6/2016 and the revision application having been filed on 1/7/2016 was within limitation. It is submitted that even if there is a delay, which is only of 41 days, the same deserves to be condoned. It is submitted that there is a genuine dispute as to whether the petitioner/Village Panchayat or the Village Panchayat of Carmona is entitled to take action for illegal construction. It is submitted that the petitioner, Village Panchayat has been pursuing the matter since the year 2010 and the Village Panchayat of Carmona has not taken any action inspite of the direction of the Addl. Director of Panchayat asking the Village Panchayat of Carmona to conduct site inspection and to act according to law. It is submitted that the petitioner does not stand to gain by approaching the court late and looking to the extent of delay, the same may be condoned in the interest of justice.

9. Mr. Coutinho, the learned counsel for the respondent has strenuously urged that the advocates for both the parties were present on 29/3/2016, when the matter was adjourned and fixed for order on 20/4/2016. It is submitted that even on that date, the advocates for both the parties were present and the order was pronounced in the open court. It is thus submitted that the petitioner cannot fall back upon the alleged service of the order by the office

of the Addl. Director of Panchayat on 1/6/2016. It is pointed out that there is nothing on record to show that the office of the Addl. Director of Panchayat had sent a copy of the order to the petitioner. It is submitted that the petitioner has suppressed the fact of the presence of their advocate before the Addl. Director of Panchayat on 20/4/2016 and such suppression of material fact dis-entitles the petitioner from getting the delay condoned. It is submitted that the present case is governed by para 21.9 of the judgment of the Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others (2013) 12 SCC 649.**

10. I have carefully considered the rival circumstances and the submissions made and I have gone through the impugned order. It is true that the application for condonation of delay does not mention the presence of the advocate of the petitioner before the learned Addl. Director of Panchayats on 20/4/2016. The condonation of delay was sought only on the ground of the communication of the order on 1/6/2016. Paragraph 2 of the application for condonation of delay does not mention that it was communicated by the office of the Addl. Director of Panchayats. The learned District Judge has found that the registered cover under which the order was communicated has not been produced, in order to ascertain whether any such order was received by the petitioner on 1/6/2016 and was inwarded in the office of the petitioner.

In this view of the matter, the petitioner was directed to produce the inward register. A copy of the same is produced on record and was furnished to the learned counsel for the petitioner. The respondent in pursuance thereof has filed an affidavit dated 19/6/2019 stating that the relevant entry at serial no.270 is a manipulated entry. I have carefully gone through the register and the relevant entry and it is not possible to accept that the entry is manipulated or there is any insertion or interpolation subsequently made, in order to create a ground for condonation of delay. The learned counsel for the respondent also pointed out that there is nothing on record of the learned Addl. Director to show that a copy of the order was sent to the petitioner and that the relevant entry no.270 in the inward register mentions that the copy is received from the respondent. I have already noticed that para 2 of the application does not mention that a copy was sent by the Office of the Addl. Director of Panchayats. Even if we go by the record of the learned Addl. Director about the presence of the Advocate for the petitioner on 20/4/2016, I find that the same will not be sufficient to refuse the condonation of delay, which is of 41 days.

11. The Supreme Court in the case of **Esha Bhattacharjee (supra)** after taking a survey of several decisions holding the field has culled out the principals which are germane while considering a prayer for condonation of

delay. In para 21.9 it has been held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. The principles as set out in paragraphs 21 and 22 of the said judgment have to be applied in the context of the individual fact situation obtaining in each case. The basic principle is that there should be a liberal, pragmatic, and justice oriented approach while dealing with an application for condonation of delay. In my considered view the delay in the present case deserves to be condoned, at least on account of two principles which have been held to be germane by the Supreme Court in the case of **Esha Bhattacharjee (supra)**. The first is that there is a distinction between inordinate delay and a delay of short duration or few days and in respect of the former, the doctrine of prejudice is attracted, whereas to the latter i.e a case of delay of short duration, a liberal approach can be taken (see para 21.8). The delay in this case cannot be said to be inordinate and thus would require a liberal approach to be taken. Second, the State or a public body or an entity representing a collective cause is required to be given some acceptable latitude (see para 21.13.) .

12. The explanation offered in my considered view cannot be said to be concocted or fanciful. This is for the reason that in the inward register there appears to be an entry on 1/6/2016, when a copy of the impugned order has

been inwards in the office of the petitioner. The petitioner does not stand to gain by approaching the court late by about 41 days when it is pursuing the matter since the year 2010. Considering the over all circumstances, I find that this is a fit case where the learned District Judge ought to have condoned the delay. The petition is accordingly allowed. The impugned order is hereby set aside. The delay in filing the revision application is hereby condoned. The learned District Judge shall cause the revision application to be registered and shall decide the same on its own merits and in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/