

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 364 OF 2019**

Catarina Tavares Dourado (Deceased)  
Thr. her LRs. .... Petitioners

Versus

The Village Panchayat of Velsao-Pale-  
Issorcim, Thr. its Secretary & 3 Others .... Respondents

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Mr. Vilas P. Thali, Advocate for the Petitioners.

Mr. Vishal Sawant, Advocate for Respondent No. 1.

Mr. Anthony D'Silva, Advocate for Respondent No. 2(a).

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

**DATE : 14<sup>th</sup> October, 2019**

**ORAL ORDER:**

The challenge in this Petition, is to the order dated 19.06.2018, passed by the learned District Judge, South Goa, Margao in Civil Miscellaneous Application No. 177/2017, refusing to condone the delay of 741 days in filing the revision application under Section 201-B of the Goa Panchayat Raj Act, 1994 (Act, for short).

2. The brief facts are that the Deputy Director of Panchayats, by an order dated 14.10.2008, had directed the petitioners [original respondent nos. 1(a) to 1(d)], to get the subject construction regularized by following proper procedure

in accordance with law, within a period of 90 days, failing which, the subject structure was directed to be demolished by the Village Panchayat. It appears that the petitioners did not apply for regularization after the said order was passed. In the meantime, the respondent no. 2, Dr. Olaf Dias (since deceased), challenged the order of the learned Deputy Director before the Additional Director of Panchayats. The learned Additional Director of Panchayats, by an order dated 28.07.2015, allowed the Appeal and directed the respondent no. 1, Village Panchayat (respondent no. 2 before the Additional Director of Panchayats), to demolish the subject structure within 30 days.

3. The petitioners challenged the same before the learned District Judge, in a revision application under Section 201-B of the Act, in which, there was a delay of 741 days. The petitioners sought condonation of delay on the ground that in the interregnum, the petitioners had approached the Mamlatdar under the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Mundkar Act, for short), seeking injunction.

4. The learned District Judge, by the impugned order dated 19.06.2018, has found that the petitioners cannot seek

exclusion of time under Section 14 of the Limitation Act, on the ground that in the meantime the petitioners had approached the Mamlatdar, under Section 5 of the Mundkar Act and the application for condonation of delay lack bonafides. The learned District Judge has found that the petitioners approached the learned Mamlatdar, seeking injunction, much after the order dated 28.07.2015 was passed by the learned Additional Director of Panchayats. In that view of the matter, the learned District Judge has refused to condone the delay.

5. I have heard Mr. Thali, the learned Counsel for the petitioners, Mr. Sawant, the learned Counsel for the respondent no. 1 and Mr. D'Silva, the learned Counsel for the respondent no. 2(a). Perused record.

6. It is submitted by Mr. Thali, the learned Counsel for the petitioners that the purchase proceedings, filed by the petitioners, under the Mundkar Act, are pending before the Mamlatdar and therefore, the petitioners were under a bonafide belief that they need not challenge the order passed by the learned Additional Director of Panchayats and instead, approached the Mamlatdar under Section 5 of the Mundkar Act. It is submitted that the time spent in prosecuting the said

proceedings, before the Mamlatdar has to be excluded. The learned Counsel pointed out that the subject construction is not in violation of the building regulations as such. However, it is submitted that the construction is effected without licence, for which, the petitioners have approached the Village Panchayat for regularization, by filing an application on 28.11.2017. It is submitted that recently, a similar application is filed by the petitioners before the Town and Country Planning (TCP) Department on 10.10.2019. He, therefore, submits that the application for condonation of delay may be allowed and the revision application may be directed to be registered and heard on merits.

7. Mr. Sawant, the learned Counsel for the respondent no. 1 submitted that the Village Panchayat cannot consider the application for regularization as per the applicable provisions and the petitioners have to approach the TCP Department for the same. He, however, did not seriously oppose the condonation of delay, as sought for, by the petitioners.

8. Mr. D'Silva, the learned Counsel for the respondent no. 2(a) has supported the impugned order. It is submitted that the original order of demolition is passed way back in the year

2008 and still remains to be complied. It is submitted that the exclusion of time, as sought for by the petitioners, has rightly been refused, as the petitioners cannot be said to have bonafidely prosecuting the remedy before a wrong forum. The learned Counsel has pointed out that the respondents no. 2(a) had approached the Division Bench of this Court in Writ Petition No. 123/2019, for directing the Authorities to implement the order of demolition. It is submitted that the said petition is disposed off on 29.07.2019, in which, the respondent no. 4, Village Panchayat is directed to execute the order dated 28.07.2015, within a period of 12 weeks, unless, in the meantime, the petitioners (respondent nos. 5(a) to 5(d) before the Division Bench) secure some interim relief from the appropriate Authority. It is submitted that the petitioners have not secured any interim relief since then. It is submitted that the petitioners have approached the TCP Department only after the dismissal of Writ Petition No. 123/2019 on 29.07.2019 and the action of the petitioners lack bonafides.

9. I have carefully considered the rival circumstances and the submissions made. There is a gross delay of 741 days in filing the revision application under Section 201-B of the Act. The Hon'ble Supreme Court in the case of **Esha**

**Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others (2013) 12 SCC 649** has *inter alia* held that in respect of such a gross delay, a strict view has to be taken, although, delay in respect of shorter duration, can be considered liberally.

10. I have carefully gone through the impugned order passed by the learned District Judge and in my considered view, the learned District Judge has rightly found that the action of the petitioners in approaching the Mamlatdar under the Mundkar Act is not sufficient to entitle the petitioners to claim exclusion of time, under Section 14 of the Limitation Act. It is significant to note that the original order was passed by the learned Deputy Director of Panchayats way back in the year 2008 and it was in the said order that the petitioners were permitted to go for regularization. The petitioners have applied to the Village Panchayat for regularization only on 28.11.2017, while the application to the TCP Department is recently made on 10.10.2019. Be that as it may, once, it is found that the petitioners are not entitled to claim exclusion of time, no exception can be taken to the impugned order refusing to condone the gross delay of 741 days.

11. It is necessary to note that the Division Bench had directed the Village Panchayat (respondent no. 4) to execute the judgment and order dated 28.07.2015, within a period of 12 weeks, unless, in the meantime, the petitioners (respondent nos. 5(a) to 5(d) before the Division Bench) are able to secure some interim relief from the appropriate authorities. At one stage, Mr. Thali, the learned Counsel for the petitioners submitted that the authorities may be directed to decide the application for regularization in a time bound manner and till that time, the subject structure of the petitioners may be protected. In my considered view, in the face of the order passed by the Division Bench, it is not possible to accede to the request as made, as the only issue involved in the present petition is as to whether, the refusal to condone the delay is legal and proper or not. I do not find that the impugned order suffers from any infirmity, so as to require interference. The Petition is without any merit and is accordingly dismissed.

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

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