

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 102 OF 2018**

1. Fabrica De Chapel Guirdolim,
Represented by its Attorney,
Mr. Santano Cardoz,
s/o Salvador Cardoz,
Attorney for Fabrica de Chapel De Guirdolim,
R/O House No. 356,
Moll-1 Guridolim, Chandor,
Salcete- Goa. Petitioner

V e r s u s

1. Mr. Joao Sebastiao Fernandes,
s/o Late Minguel Antonio Fernandes,
age 46 years,
Resident of House no.24/1,
Macazana Sorla, Salete, Goa.
2. Fabrica De Igreja de Chandor,
(Fabrica of the Church of Chandor)
Our Lady of Bethlehem Church,
Chandor-Goa.
3. Smt. Conceicao Cardozo,
d/o Late Domingos Cardozo,
Aged 73 years of age,
Resident of House no.24,
Sorlavaddo, Macazana,
Salcete-Goa.
4. Diago Vincent Cardozo,
s/o Late Domingos Cardozo,
Age 72 years,
Original r/o near the Chapel Guridolim,
and presently residing at A/603,
Star Residency Evershine City,
Vasia East, Taluka Vasai,
District Thane, Maharashtra. Respondents

Adv. Anthony D'Silva with Adv. Ms. C. Fernandes for the Petitioner.

Adv. Vishwadh V. P.Sardessai under legal aid for Respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 4th February 2019.

ORAL JUDGMENT:

The learned counsel for the petitioner seeks leave to amend the cause title to substitute Article 227 in place of Article 226 of the Constitution of India. It is submitted that the impugned order which is a quasi judicial order is being challenged under Article 227 of the Constitution of India. Considering the submission, leave as prayed is granted. Necessary correction to be carried out forthwith.

2. Rule, made returnable forthwith.

The learned counsel for the first respondent, who alone is the contesting respondent waives service. Heard finally by consent of parties.

3. The first respondent had filed an application under sections 7A and 14 of the Goa Daman and Diu Agricultural Tenancy Act 1994 (The Act, for short) against the respondent nos.2 to 4 before the Mamlatdar of Salcete at Margao for declaration as a tenant in respect of the land bearing survey

no.212/1 of village Guirdolim. The case made out in the application is that; the grandfather of the first respondent, Domingo Cardozo was a tenant in respect of the said land and that tenancy rights have been inherited by the petitioner along with his mother and uncle. There is a specific recital in para 3 of the application that although in survey record the property is recorded in the name of Fabrica De Igreja de Capela de Guirdolim, (which is a chapel) it has been wrongly shown in the name of the chapel. The second respondent herein Fabrica de Igreja de Chandor (which is a church) gave no objection and on the basis of the same, the Mamlatdar granted a declaration of tenancy in favour of the first respondent on 24/7/2013.

4. It appears that the copy of the said order was sought to be produced in Mutation Proceedings no.63409 before the Mamlatdar when according to the petitioner, the order for the first time came to its knowledge. It, however, appears that the petitioner continued to contest the Mutation proceedings and there was a delay in taking steps for challenging the order dated 24/7/2013, (which order was the very basis of seeking the mutation). Be that as it may, the petitioner applied for a certified copy of the order on 3/2/2016 and the copy was delivered on 14/3/2016. The appeal along with an application for condonation of delay was sought to be filed before the learned District Judge on 7/7/2016 and by that time there was a delay of three years, 11 months and 7

days in filing the appeal. The petitioner prayed for condonation of delay in circumstances of the case and particularly relying on the fact that the petitioner was not made a party to the proceedings before the Mamalatdar, although the survey record stood in its name.

5. The application was opposed on behalf of the first respondent.

6. The learned District Judge by the impugned order dated 26/7/2017 has dismissed the application. The learned District Judge has noticed that the period for preferring an appeal as per the provisions of the Act is 60 days and even assuming that the petitioner had no knowledge of the order, as it was not made a party to the proceedings, from the date of knowledge i.e. August 2015, also no steps were taken immediately for filing the appeal.

7. I have heard the learned counsel for the petitioner and the learned counsel for the first respondent. With the assistance of the learned counsel for the parties I have gone through the record.

8. As I am inclined to allow this petition, in order to ensure that none of the parties are prejudiced in the appeal before the learned District Judge, I would confine the observations, for the limited purpose of the application for

condonation of delay. Prima facie it appears that survey record in respect of the suit property stands in the name of the petitioner, which is a chapel. The second respondent, which is a Church is a independent an distinct entity and its name does not figure in the survey record. A bare perusal of the recitals in the application would show that even the first respondent was aware that in the survey record it was the name of the petitioner which was shown. Admittedly, the petitioner was not made a party in the application for declaration. Thus, the learned District Judge would be right that the limitation would be reckoned from the date of knowledge, which in the present case would be around August 2015. Now computing from the said date also, there is a certain amount of delay which in my considered view cannot be said to be out of any negligence or lack of diligence. The petitioner did not stand to gain by approaching the court late, particularly when, it was facing an order of declaration of tenancy passed behind the back of the petitioner.

9. The learned counsel for the petitioner contended that the order of the Mamlatdar has been obtained behind the back of the petitioners when even the first respondent was aware that the name of the petitioners is shown as an occupant in Form No. I and XIV of the suit property. It is pointed out that admittedly the second respondent (Church) was not shown as the occupant in the Revenue record and the order by the Mamlatdar is based on a concession

by the second respondent. It is submitted that this is a case where the application was clearly misleading if not by way of a fraud on the Court. Reliance is placed on para 21.11 of the judgment of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others (2013) 12 SCC 649**, which reads thus:

“2.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation”.

10. As noticed earlier, I do not propose to record any final finding of any fraud or otherwise as has been noticed by this Court that it would be for the learned District Judge to hear and decide the appeal on its own merits.

11. Considering the overall circumstances, I do find that a case for condonation of delay is made out by the petitioner, as the petitioner has made out sufficient cause. In the result the petition is allowed. The impugned order is hereby set aside. The delay in filing the appeal is hereby condoned.

12. In view of the Amending Act No.12 of 2017, the appeal will now have to be heard by the Collector or his nominee. In such circumstances, the appeal is remitted back to the Collector who shall cause it to be registered

and shall decide it 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/-