

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 37 OF 2019**

**ELIAS BARRETTO, REP. BY CONST.
ATTORNEY, GAJENDRANATH VAMAN
RATABOLE AND 5 ORS.,**

... Petitioners

Versus

**BERTHA BARRETO (DEC) THR. HER LRS.
AND 2 ORS.,**

... Respondents

Adv. A Shirodkar for the Petitioners.

Adv. Rui Alberto Gomes Pereira for Respondent nos.1(a,b,c&d)

Coram: DAMA SESHADRI NAIDU, J.

Date: 20th January 2020

Oral Order:

Amongst the co-owners the partition proceedings began in 1984; those proceedings were before the Inspector of Survey and Land Records (ISLR). The original parties were the predecessors of the petitioners and the respondents. Pending the partition proceedings, the respondents' father died in July 1997. Then their mother, in her 70s, brought herself on record. Though she had been represented by an advocate and prosecuted the case for a while, one particular day, neither her counsel nor she was present. Then, the Primary authority set the respondents' mother *ex parte*, proceeded further, and concluded the partition proceedings. It all happened in 2000.

2. In 2008, by then in her 80s, the respondents' mother filed an appeal with a delay of about eight years. The Deputy Collector, as the Appellate authority, refused to condone the delay. Further aggrieved, the respondents'

mother took the issue of delay condonation before the Administrative Tribunal.

3. The Administrative Tribunal accepted the plea of the respondents' mother and condoned the delay. This time, it was the petitioners' turn to complain. They filed a writ petition before this Court and contended that the Tribunal had given them no opportunity of hearing. On a concession made by the respondents' counsel, this Court remanded the matter to the Tribunal. Then, on the merits the Tribunal reiterated its earlier order and condoned the delay, through the impugned order, dated 28.9.2019. Now, assailing that order, the petitioners have filed this writ petition.

4. Shri Shirodkar, the petitioners' counsel, has taken me through the record and has argued that the respondents' mother had been arrayed as a party to the partition proceedings. But she has pleaded in her application for delay condonation that after her husband's death, she did not know about the partition proceeding. According Shri Shirodkar, since the respondents' mother pleaded falsely in her delay condonation petition, this Court, as a matter of equity, should reverse the Tribunal's finding and set aside the impugned order.

5. On the other hand, Shri Pereira, the learned counsel for the respondents, has submitted that the respondents' mother has never pleaded that she had not been a party to the pleadings. To elaborate, he has submitted that on a particular day, the counsel was absent. And, therefore, she was unaware of the orders the Primary Authority has passed.

According to Shri Pereira, in the absence of both the party and her counsel, the proceedings before the Primary Authority remained *ex parte* and the order, too, was *ex parte*.

6. At any rate, Shri Pereira submits that, first, no party should suffer for the fault of his or her counsel; second, the courts are always willing to have the matters decided on the merits rather than let them perish on the altars of technicality; and third, this Court may not upset the discretion exercised by the Administrative Tribunal, especially, by exercising this Court's supervisory jurisdiction under Article 227 of the Constitution of India.

7. Heard Shri Shirodkar, the learned counsel for the petitioners, and Shri Pereira, the learned counsel for the respondents.

8. Indeed, the delay is inordinate. That said, I may also pay attention to the attending circumstances. When the respondents' predecessor died, their mother was brought on record. By then, she was in her seventies. She initially prosecuted the case. On one particular day, she was absent; that day, her counsel, too, was absent. Then, the Primary Authority proceeded with the matter *ex parte*. The respondents' mother pleaded in her delay condonation application that when she visited the office of the Inspector of Land Records, she came to know that the records were mutated in the petitioners' name. Therefore, she enquired and, then, appealed against the orders passed in 2000. When the appellate authority refused to condone the delay, the respondents' mother approached the Administrative Tribunal. As I

have already noted, after the initial remand from this Court, the Appellate Tribunal, through its order, dated 20.12.2017, condoned the delay. The order, a speaking one, has discussed the issue elaborately. As rightly contended by the respondents' counsel, the Administrative Tribunal has exercised its discretion and condoned the delay. This Court, in its supervisory jurisdiction under Article 227 of the Constitution of India, will be averse to interfering with the Tribunal's discretion unless it is perverse and results in miscarriage of justice, I see neither here. The only fall out in the face of the impugned order—that is, with the delay condoned—is that eventually the matter may be decided on the merits.

9. Under these circumstances, I refuse to interfere with the impugned order. I, therefore, dismiss the writ petition with no order as to costs.

Now the learned counsel for both agree that the parties will appear before the Superintendent of Survey and Land Records on 24.2.2020. On their appearance, the Appellate Authority will proceed with the matter and dispose it of expeditiously.

DAMA SESHADRI NAIDU, J.

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