

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.491 OF 2013****WITH****WRIT PETITION NO.510 OF 2013****WITH****WRIT PETITION NO.76 OF 2014**

1. M/s Sycamore Growmore Pvt. Ltd.
a Company duly registered under the
Indian Companies Act, 1956

2. M/s Organ Realty Pvt. Ltd.
a Company duly registered under the
Indian Companies Act, 1956

3. M/s Conifer Textiles Pvt. Ltd.
a Company duly registered under the
Indian Companies Act, 1956

4. M/s Walflower Agri Tech Pvt. Ltd.
a Company duly registered under the
Indian Companies Act, 1956

5. M/s Pyramid Sec. & Cons. Pvt. Ltd.
a Company duly registered under the
Indian Companies Act, 1956

all represented herein by their duly constituted
power of attorney

Shri Jayant E. Jadhav,
major of age, resident of "Rajash",
66/3, Thambatkarmala, near
Mamata Gas Company,
Admednagar, Maharashtra

... Petitioners.

VERSUS

Mr. Lourenco Fernandes,
Azosssim, Ilhas Goa
(since deceased)
through his legal heirs
(1) Mr. Santano Fernandes
(2) Mrs. Joaquinha Fernandes
(3) Mr. Hermino Fernandes
(4) Mrs. Carmina Fernandes
(5) Mr. Alexander Fernandes
All r/o house no.87,
Corpir, Azzossim,
Ilhas, Goa,
All are major.

... Respondents.

Mr. V. A. Lawande and Mr. P. Redkar, Advocates for the Petitioners.
Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate for the
Respondents.

Coram: M. S. SONAK, J

Date: 25th February 2021

ORAL JUDGMENT

Heard Mr. V. A. Lawande, learned counsel for the
Petitioners in all these petitions. Mr. S. D. Lotlikar learned Senior
Advocate appears along with Ms. S. Kenny for the contesting
Respondents in all these petitions.

2. The learned counsel for the parties agree that these three
petitions can be disposed of by a common judgment and order.

3. In Writ Petition No.510 of 2013, the challenge is to the order dated 25th July 2012 by which the Administrative Tribunal (Tribunal) has condoned the delay of 4 years and 194 days in filing an appeal to question the conversion sanad dated 2nd June 2006 issued in favour of the Petitioners.

4. In Writ Petition No.491 of 2013, the challenge is to the order dated 19th March 2012 by which the Tribunal has granted leave to the contesting Respondents to institute appeal to question the conversion sanad dated 2nd June 2006.

5. In Writ Petition No.76 of 2014, the challenge is to the order dated 4th July 2013 by which the Tribunal after granting leave and condoning the delay in instituting an appeal against the conversion sanad dated 2nd June 2006 has stayed the operation of such sanad dated 2nd June 2006. Given the aforesaid circumstances, it is only appropriate that all these petitions are taken up and disposed of by a common judgment and order.

6. The first question which arises for determination is whether the contesting Respondents had shown sufficient cause for seeking condonation of delay of 4 years and 194 days in instituting an appeal against the conversion sanad dated 2nd June 2006.

7. In the application seeking condonation of delay, the contesting Respondents had pleaded that they were old, sick, and illiterate. They pleaded that the conversion sanad dated 2nd June 2006 was procured by practicing fraud on the Revenue Authorities. Above all, they pleaded that they were not aware of the conversion sanad dated 2nd June 2006 and they acquired knowledge about such sanad only in the first week of February 2011, and the application for condonation of delay was filed on 14th February 2011.

8. The averments concerning awareness or knowledge of the conversion sanad dated 2nd June 2006 are to be found in paragraphs 10 and 11 of the application for condonation of delay and the same read as follows:-

“10. The applicant states that she is a illiterate and 75 years old sick and weak person residing/hailing in rustic village of Azossim and absolutely had no source of information or knowledge regarding the impugned conversion sanad dated 02-06-2006 procured by the respondents, by practicing fraud on the revenue authorities. The applicant was only able to know about the grant of sanad to the respondents, when her advocate after discreet inquiries was able to know and provided with a copy of the Sanad by another co-tenant, who was the petitioner in Hon'ble High Court, as stated earlier.

11. The applicant being not aware of the conversion sanad dated 02.06.2006 granted to the respondents, could not file appeal earlier and only after the knowledge of the grant of sanad in the first week of February 2011 or their about she became aware of the said Sanad and thereafter on the advice

of her advocate, has filed the accompanying appeal under the Land Revenue Code, 1968.”

9. The aforesaid means that the contesting Respondents had taken up a specific plea that they were not aware of the conversion sanad dated 2nd June 2006 at any time before the first week of February 2011. They have also taken a specific plea that they came to know about the grant of sanad when their Advocate *“after discreet inquiries was able to know and provided with a copy of the sanad by another co-tenant, who was the Petitioner in Hon'ble High Court.....”*

10. In response the Petitioners by filing a reply opposing the condonation of delay, *inter alia*, pointed out that the contesting Respondents have filed several proceedings concerning this very property before the Revenue Authorities, Tenancy Authorities, Civil Courts, and High Court. As such, the contention that the contesting Respondents were precluded from exercising their rights on account of old age, sickness or illiteracy is completely misconceived. Thereafter, the Petitioners pointed out that the contesting Respondents along with another party had together instituted Civil Suit No.3/2009 in the Court of District Judge-III at Panaji Goa concerning this very property and therein applied for interim relief to restrain the contesting Respondents from undertaking any development.

11. The Petitioners pointed out that in Civil Suit No.3/2009,

the Petitioners/Defendant Nos.5 to 9 had filed a written statement in which they had not only answered the vague allegations of fraud but in paragraphs 29 and 30 made specific reference to their obtaining conversion sanad dated 2nd June 2006 on payment of conversion fees of ₹13,28,000/-. They pointed out that this conversion sanad was referred to at serial no.15 in the list of documents and even a copy of the conversion sanad was filed along with the said written statement in Civil Suit No.3/2009.

12. Now the relevant paragraphs of the written statement in Civil Suit No.3/2009 disclosing very clearly obtaining a conversion sanad dated 2nd June 2006 are to be found in paragraphs 29 and 30 of the written statement, which read as follows:-

“29. These defendants have purchased the said property by taking all the precautions including investigation of the title and publishing the notices in the English and Marathi dailies inviting objections from the public if any, the said public notices in the newspaper is dated 30.11.1994. Thereafter to the said advertisement the Plaintiffs along with others wrote a letter dated 22.8.1997 to the director of defendant No.9 herein, that if these defendants are still interested in purchasing the upper portion of the property bearing survey No. 66/1 only, of which the Plaintiffs claimed to be the Tenants, then the Plaintiffs herein would like to have settlement of their demands.

30. Defendants state that these defendants have on payment of conversion fees amounting to Rs.13,28,000/- and after due approval from Town and Country Planning Department obtained conversion Sanad dated 2nd June 2006 from the Deputy Collector with respect to the

property bearing survey No. 66/2 of the Village “combiem” situated at Azossim, Tiswadi Ilhas Goa for residential purpose.”

13. In rejoinder, the contesting Respondents contended that though it may be true that the fact about obtaining of conversion sanad dated 2nd June 2006 was disclosed by the Petitioners in their written statement filed way back on 12th June 2009, the contesting Respondents being old, sick and illiterate persons had not noticed the same or that same was not brought to their notice by their Advocate. They contended that for the fault of the Advocate they should not be made to suffer particularly since the Petitioners have practiced fraud in obtaining a sanad.

14. Today, in this Court as well Mr. S. D. Lotlikar, learned Senior Advocate for the contesting Respondents has reiterated the aforesaid contentions. He has submitted that there was no misstatement or suppression on the part of the contesting Respondents. He has submitted that in this case there was no necessity of seeking condonation of delay since this is a case of fraud and any act which is a practice of fraud can even be questioned in collateral proceedings. He relied on *Om Prakash Navani and others Vs Herebert Joseph Pereira and others*¹(paras 15 to 18) and *S.P. Chengalvarya Naidu Vs Jagannath*² in support of his contentions.

1 Chamber Summons No.1479 of 2002 in Suit No.1538 of 1983 (MANU/MH/0259/2003)

2 AIR 1994 SC 853

15. Mr. Lawande, learned counsel for the Petitioners submits that this is a very clear case where the contesting Respondents made a false statement in the application for seeking condonation of delay and making of the false statement was itself sufficient to non-suit the contesting Respondents. He pointed out that the attempts in the rejoinder to renege from false statements ought not to have been accepted by the Tribunal to condone the inordinate delay of 4 years and 194 days. He also pointed out to the letter dated 22nd August 1997 addressed by the contesting Respondents offering a settlement in case the Petitioners wish to purchase the property bearing Survey No.66/1 of which they claim to be agricultural tenants.

16. On the issue of condonation of delay, it is more than apparent that the contesting Respondents came out with a patently false case before the Tribunal claiming that they acquired awareness or knowledge of the conversion sanad only after their Advocate made discreet inquiries with another co-tenant who was the Petitioner before this Court and obtaining a copy of the sanad from him. The contesting Respondents made a patently false statement that they were unaware of the conversion sanad dated 2nd June 2006 at any time before the first week of February 2011.

17. The record very clearly bears out that in the suit filed by the contesting Respondents themselves together with another party who also

claims to be co-tenant, the Petitioners had, in no uncertain terms not only referred to the conversion sanad dated 2nd June 2006 but also placed on record a copy of this very conversion sanad.

18. The explanation in the rejoinder that the contesting Respondents are old, illiterate, sick, and rustic persons or that their Advocate did not bring this fact to their notice, are hardly believable. This is not a matter where the contesting Respondents are pursuing this single matter. The record bears out that the contesting Respondents concerning this very dispute of this very property have instituted and are parties to several proceedings before the Revenue Authorities, Tenancy Authorities, Civil Courts, and this Court.

19. The old age, illiteracy, or lack of legal advice has not disabled these very contesting Respondents in pursuing several litigations before several forums concerning this very property. As such, the statements in the rejoinder, once, the falsity was exposed, that Advocate did not bring this fact to the notice of the contesting Respondents, is unbelievable and ought not to have been so lightly accepted by the Tribunal.

20. Mr. Lotlikar submitted that the contesting Respondent was 74 years old and an illiterate person and these facts are also relevant. As noted earlier, this circumstance has not prevented the original applicant

from pursuing multiple cases before the Mamlatdar and other forums concerning this very property. Therefore, the plea of old age or illiteracy is a plea that is only conveniently put up in the rejoinder to redevelop from the false statement made in the application seeking condonation of delay.

21. In *Pundlik Jalam Patil Vs Executive Engineer, Jalgaon Medium Project and another*³ relied upon by Mr. Lawande, the Hon'ble Supreme Court has held that it is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay and the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. In that case, the Hon'ble Supreme Court found that the applicant seeking condonation of delay, in this application the applicant had made an incorrect submission that it had no knowledge of the award passed by the Reference Court. After it was discovered that the applicant had such knowledge, the Hon'ble Supreme Court held that the High Court exercised its discretion on wrong principles and exercising of discretion by the High Court was unsustainable.

3 (2008) 17 SCC 448

22. The Hon'ble Supreme Court further held that where the condonation of delay is sought for based upon a false statement then, there is no question of exercising discretion in favour of such an applicant. The application for condonation of delay can be dismissed on this ground alone without going into the merits as to whether any case was made out for condonation of delay.

23. In *Pundlik Patil* (supra) the Hon'ble Supreme Court considered its earlier decision in *N. Balakrishnan Vs M. Krishnamurthy*⁴ on which considerable reliance was placed by Mr. Lotlikar, learned Senior Advocate for the contesting Respondents. The Hon'ble Supreme Court after quoting certain passages from *N. Balakrishnan* (supra) observed that the decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. The Hon'ble Supreme Court also observed that the Court should not forget the opposite party and law of limitation is not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The Hon'ble Supreme Court also held that based on vague allegations of collusion or fraud, the condonation of delay cannot be applied for or granted.

24. Mr. Lotlikar also submitted that this Court in the exercise of jurisdiction under Article 227 of the Constitution of India should not

⁴ (1998) 7 SCC 123

interfere with the discretion exercised by the Tribunal in condoning the delay of 4 years and 194 days. Ordinarily, this submission would deserve acceptance. However, where the discretion is exercised perversely and the fact that a patently false statement was made by the contesting Respondents has been downplayed, is sufficient ground to interfere with the exercise of such discretion.

25. The contesting Respondents cannot disown their Advocate whenever it is convenient to them. Such casual disowning, in a belated attempt to justify a patent false statement, ought not to have been accepted by the Tribunal, in such a casual manner.

26. In *Salil Dutta vs T.M. and M.C. Private Ltd*⁵ the Hon'ble Supreme Court has held that the advocate is the agent of the party. His acts and statements made within the limits of authority given to him are the acts and statements of the principal, i.e., the party who engaged him. Though it is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanor of the advocate where it finds that the client was an innocent litigant, there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations in *Rafiq Vs Munshila*⁶, where the Court had observed

5 (1993) 2 SCC 185

6 (1981) 2 SCC 788

that no party should suffer for the mistake of his Advocate, must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

27. At least in the facts of this case, at least on the part of the contesting Respondents to blame their Advocate that too by filing a rejoinder once falsity of their case was detected cannot be a valid consideration to condone the delay of 4 years and 194 days.

28. The contention that there was a serious fraud involved in the issue of conversion sanad dated 2nd June 2006 and therefore, the law of limitation does not even apply, is too broad a contention, at least in the facts and circumstances of the present case. Besides, if memo of appeal, application of leave to appeal and the application for condonation of delay are perused, it cannot be said that there are any clear pleadings about fraud. Rather, perusal of this indicates that the contesting parties sought for condonation of delay, by making a patently false statement that they acquired knowledge about the conversion sanad dated 2nd June 2006 hardly a week before the institution of the appeal. As noted earlier, the record indicates that the contesting Respondents had knowledge about issuance of this conversion sanad almost two years before they instituted the appeal.

29. The only case pleaded by the contesting Respondents was

that the property bearing survey No.66/0 was bifurcated fraudulently into survey Nos.66/1 and 66/2, not by the Petitioners herein but by the previous owners. This bifurcation order was set aside. It is the case of the contesting Respondents that the Petitioners, without disclosing the fact that this bifurcation order has been set aside applied for and obtained conversion sanad in respect of property bearing survey No.66/2. Further, it was the case of the contesting Respondents that while sanad was applied for in respect of the property admeasuring 34,000 square metres or thereabouts, the Collector, issued conversion sanad in respect of an area of 66,400 square metres.

30. Now Mr. Lawande, learned counsel for the Petitioners has made it clear that no sanad was ever applied for or granted in respect of portion of the property bearing survey No.66/0 which was earlier surveyed under No.66/1 and in respect of which, the contesting Respondents have a claim of tenancy. Besides, he pointed out that the contesting Respondents vide their letter dated 22nd August 1997 in response to a public notice issued by the Petitioners had themselves made it clear that they were open to talks of settlement subject to their demand being met. Mr. Lawande submits that there was no fraud involved.

31. The fraud, indeed vitiates solemn proceedings. However, to establish fraud, there have to be clear and cogent pleadings followed by

proof. In the present case, the pleadings are not sufficient to make out a case of fraud. In any case, the material on record indicates that before the purchase of the suit properties, the Petitioners had taken precautions like issuance of public notices in news papers and obtaining of title investigation report. The public notices were published in English and Marathi dailies inviting objections for the purchase. The contesting Respondents vide letter dated 22nd August 1997 addressed to one of the Directors of the Petitioners had stated that in case the Petitioners were desirous of purchasing property bearing survey No.66/1 of which they were claiming to be agricultural tenant, then, the contesting Respondents were open to talks of settlement subject to their demand being met.

32. Mr. Lotlikar, however tried to urge that even the letter dated 22nd August 1997 is a fraud and forgery. At least based on material now placed on record, it would be too hasty to jump to the conclusion that everything which the Petitioners have done amounts to a fraud and everything that the contesting Respondents have indulged into, is some bonafide exercise. In this matter itself, at least the statement of the contesting Respondents that they were unaware of the conversion sanad upto first week before instituting the appeal, was found to be neither bonafide nor made in good faith. Even the defences of old age, illiteracy and transfer of blame on the Advocate were not found to be bonafide, particularly because such old age and illiteracy is not disabled these very

contesting Respondents from instituting various proceedings before various forums against these very Petitioners and in respect of very same suit properties. These contesting Respondents have done by engaging Advocates.

33. Therefore, based on such allegation of fraud, there was no question of Tribunal condoning inordinate and unexplained delay of 4 years and 194 days. It is true, that length of delay is not only determinative factor. The quality of cause shown is most important factor. In this case, even the quality of cause shown was deficient since, same was based on a patently false statement. The Tribunal therefore exercised discretion perversely, ignoring the decisions of the Hon'ble Supreme Court in such matters.

34. Mr. Lotlikar did urge that this Court under Article 227 of the Constitution should not interfere with the discretion exercised by the Tribunal. Ordinarily, such a submission, could be accepted. However, in this case, there is perversity in the exercise of discretion. Further, this is a case where the contesting Respondents made a patently false statement and upon falsity being discovered, attempted to offer explanations, which were equally false and lacking in good faith. The contesting Respondents attempted to downplay their false statement and all these relevant factors were ignored by the Tribunal.

35. Even if the impugned order dated 25th July 2012 was not to be interfered with, this was certainly not a case where the Tribunal could have proceeded to grant the stay on the operation of the conversion sanad dated 2nd June 2006. This is because in the main tenancy proceedings before the Mamlatdar, the contesting Respondents had applied for interim relief which has been dismissed. Such dismissal was upheld by both the Appellate Authority as well as the Revisional Authority. In this Court, some limited relief was granted in the matter of felling of trees. However, upon detailed consideration, at least three Authorities had held that no case was made out by the contesting Respondents for any interim relief in the main proceedings. If this was a position, the Tribunal in the proceedings to challenge the conversion sanad instituted after 4 years and 194 days should not have granted a blanket stay. The order granting a stay is also vitiated by perversity in as much as most of the relevant considerations had been excluded by the Tribunal.

36. Mr. Lotlikar submitted that the interim relief was denied by the three Authorities to the contesting Respondents by holding that the property bearing Survey No.66/0 had been bifurcated and the name of the Petitioner was not appearing in the records as a tenant in respect of property surveyed under No.66/2 for which the sanad was applied for. He submits that since the bifurcation had already been set aside, the grant of sanad was nothing but a fraud. The interim relief ought not to

have been refused by three Authorities based on these grounds.

37. On the perusal of the orders, it cannot be said that this was the only basis for refusing interim relief. There is on record a letter addressed by the contesting Respondents themselves that they were willing to negotiate for the sale of the property bearing Survey No.66/1. This is even though the contesting Respondents claim to be agricultural tenants in respect of the suit property. Besides, there was other relevant material taken into account by the Authorities for concurrently denying the interim relief to the contesting Respondents.

38. In any case, if the contesting Respondents succeed in establishing that they are agricultural tenants in respect of the suit property then obviously, the conversion sanad dated 2nd June 2006 will be rendered vulnerable because there can be no conversion of the properties which are vested in agricultural tenants under Goa Land Use (Regulation) Act, 1991. Therefore, even if the contesting Respondents do not succeed in their challenge to the conversion sanad dated 2nd June 2006, if they ultimately establish that they are agricultural tenants in respect of suit property then the conversion sanad to the extent of established claim of the contesting Respondents will be rendered vulnerable and even invalid.

39. Now that order dated 25th July 2012 made by the Tribunal

is set aside, the orders impugned in Writ Petition Nos. 491 of 2013 and 76 of 2014 also do not survive and are required to be formally set aside. In the judgment and order dated 18th February 2021 in Writ Petition No.751 of 2012, this Court partly allowed the petition instituted by the contesting parties and continued restraint upon felling of trees until the Mamlatdar disposes of agricultural tenancy case No. TNC/9/2001 instituted by the contesting Respondents seeking a declaration of tenants. Further, the Mamlatdar of Tiswadi Taluka was directed to expeditiously dispose of the tenancy case No. TNC/9/2001 within one year.

40. For all the aforesaid reasons, the orders impugned in these petitions are hereby set aside. The rule is made absolute to the aforesaid extent. There shall be no order as to costs.

M. S. SONAK, J.

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