

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 197 OF 2019

1. Director of Settlement and Land Records,
Govt. of Goa, Panaji & anr. ...Petitioners
Versus
1. Mahesh Gajanan Nagarsekar & 3 Ors. ...Respondents

**Mr. Pravin Faldessai, Additional Government Advocate for
the Petitioners.**

Ms. Gautami Kamat, Advocate for Respondent No. 1.

**Mr. J. E. Coelho Pereira, Senior Advocate with Ms Saganika
Majumdar, Advocate for the Respondent no. 5.**

CORAM: M. S. SONAK, J
DATED: 27th July 2021

ORAL ORDER

1. Heard Mr. Pravin Faldessai, learned Additional Government Advocate for the Petitioners, Ms. Gautami Kamat, learned Counsel for the Respondent no.1, and Mr. J. E. Coelho Pereira, learned Senior Advocate for the Respondent no.5.

2. This Petition challenges the order dated 31.01.2007 made by the Administrative Tribunal dismissing Misc. Appln. No. 1/2004/REVIEW in Land Revenue Appeal No. 6 of 1997.

3. *Ex facie*, there is an inordinate delay of almost 12 years in instituting this Petition. Therefore, some explanation was necessary explaining this inordinate delay of almost 12 years in instituting this Petition.

4. The only explanation, if at all, it can be called as an explanation, is to be found at Para 20 of this Petition, which reads as follows :

“20. There are no laches/delay in approaching this Hon'ble Court. The Petitioners have approached this Hon'ble Court well within time. The Petitioners state that delay if any in approaching this Hon'ble Court, is unintentional and therefore ought to be condoned by this Hon'ble Court.”

5. According to me, the aforesaid is not an explanation at all. In any case, this is not an explanation to explain the inordinate delay of 12 years in instituting a Petition.

6. Mr. Faldessai, learned Additional Government Advocate for the Petitioners, submits that laches is not mere physical running of time. He submits that apart from some parties carrying out mutation, there is no change in circumstances at the site. He submits that decision was taken to file this Petition way back in the year 2007 itself, for some reason, no Petition was filed for the last 12 years.

7. On the previous occasion, this matter was adjourned after pointing out that the explanation in paragraph 20 of the Petition hardly constitutes any explanation at all. Despite the adjournments, neither was any leave applied to amend the Petition nor were any affidavits filed to explain the inordinate delay.

8. The contention now raised by Mr. Faldessai, is not backed by any pleadings whatsoever. That apart, Mr. J. E. Coelho Pereira, learned Senior Advocate, refers to the affidavit filed on behalf of Respondent no.5 in which it is stated that apart from the various Sale Deeds and mutations that have been carried out, some developments have also taken place at the site. He pointed out that this Petition seems to selectively target Respondent no.5 in this Petition even though this Respondent is a bonafide purchaser possessed of only a portion of the property for since last several years. He submits that such selective targeting after inordinate delay and laches ought not to be permitted.

9. Mr. Faldessai, learned Additional Government Advocate, relied on *The State of Jharkhand & Ors. vs. Brahmputra Metalics Ltd., Ranchi & anr.*¹ in Civil Appeal Nos. 3860-3862 of 2020 decided on 01.12.2020 to submit that delay and laches cannot be a ground to defeat the Writ Petition.

10. On perusal of this decision, it is apparent that the Hon'ble Apex Court has nowhere held that delay and laches is not a ground for dismissal of Writ Petition. Rather, the Hon'ble Apex Court has held that where the issue of delay or laches was never raised before the High Court in the first instance, the same will not ordinarily be permitted to be raised for the first time in Special Leave Petition before the Hon'ble Supreme Court. To the same effect, are the observations in *Hindustan Petroleum Corporation Ltd. & anr. vs. Dolly Das*² relied upon by Mr. Faldessai. Besides, in both the cases, the Hon'ble Apex Court

¹ Civil Appeal Nos. 3860-3862

² (1999) 4 SCC 450

found that the delay of the Respondents in filing the Writ Petitions was not such as to suggest that the State, in the meantime, had altered its position.

11. Rather, in *University of Delhi vs. Union of India & Ors.*³ the Hon'ble Supreme Court has held that in the absence of any sufficient cause or a reasonable or acceptable explanation, the delay should not be condoned. In this case, there is no explanation whatsoever for the inordinate delay of about 12 years in instituting this Petition.

12. Having regard to the inordinate and entirely unexplained delay of 12 years in instituting this Petition, I do not think that it would be appropriate at this point of time to entertain the present Petition. Respondent No. 5 has pleaded to the steps taken by him and others in the long interregnum. There is also no explanation why no proceedings are taken out in respect of the remaining portion of the larger property and only the case against Respondent No. 5 is being pursued belatedly. The reasons, if any, for the inordinately belated Petition are not forthcoming on record despite adjournments. Accordingly, this Petition is dismissed only on the grounds of inordinate and unexplained delay and laches.

M. S. SONAK, J.

3 (2020) 13 SCC 745