

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1042 OF 2019

1. Mr. Wilbur Ticlo,
of major age,
Son of Mr. Vito Ticlo
Indian National,
Resident of H. No. 382/2, Carrem,
Socorro, Bardez, Goa.
2. Melchier P. Rosario
H. No. 373, Carem,
Sucorro, Bardez Goa.

..... Petitioners

V e r s u s

1. Mr. Pravinkumar Bhomchand Jain,
Aged 47 years, son of Mr. Bhomchand
Jain, Married, Indian National,
Resident of H. No. 382, Kharrem,
Socorro Bardez, Goa.
2. Mr. Hasmukraj Vardhan
Aged 48 years,
Son of Mr. Dungarlalji Vardhan
Indian National,
Resident of H.No. 382, Carrem,
Socorro, Bardez, Goa.
3. The Village Panchayat of Socorro,
Through its Secretary,
Socorro, Porvorim,
Bardez, Goa.

..... Respondents

Mr. B. Pacheco, Advocate for the Petitioners.

Mr. Nikhil Dhumatkar, Advocate for Respondent nos. 1 and 2.

Mr. Wilbur Menezes, Advocate for Respondent no.3.

Coram:- M. S. SONAK, J.

Date: 13th July 2021

ORAL JUDGMENT

1. Heard Mr. B. Pacheco, learned Counsel for the Petitioner, Mr. N. Dhumatkar, learned Counsel for the Respondent nos. 1 and 2, and Mr. Wilbur Menezes, learned Counsel for the Respondent no. 3.

2. Rule.

3. The rule is made returnable forthwith at the request and consent of the learned Counsel for the parties. Learned Counsel for the Respondents waive service.

4. The challenge in this Petition is to the order dated 08.07.2019 made by the District Judge-I at Mapusa, setting aside Additional Director of Panchayat's order dated 22.06.2017, by which, the Additional Director had

condoned the delay of 36 days in an institution of appeal before him and posted the Appeal for final disposal.

5. The learned District Judge has now set aside the Additional Director's Order dated 22.06.2017 and remanded the matter to the Additional Director for fresh consideration of the application for condonation of delay. The learned District Judge has reasoned that the Additional Director made/recorded the order dated 22.06.2017 in the roznama and no separate order was passed. Secondly, even before the application for condonation of delay was disposed of, a number was given to the main Appeal, and, thirdly, the order dated 22.06.2017 contains no reasons.

6. According to me, none of the reasons, with respect to the learned District Judge, are tenable and some substantial grounds for setting aside the Additional Director's order or for remanding the matter to the Additional Director for fresh consideration on Petitioner's application seeking delay of 36 days in instituting the appeal.

7. The circumstance that the Additional Director transcribed his order in the roznama and not separately, is certainly not a ground to set aside the Additional Director's order. There is no legal prohibition to transcribe an order in the rozanama.

8. The circumstance that a number was given to the Appeal even before the application for condonation of delay was disposed of, is again, not some substantive infirmity to warrant interference to the Additional Director's order. Each Court or Authority may have its own procedures. However, as long as there is no infirmity in the substance of the order, the same cannot be interfered with at such trivial procedural grounds.

9. Finally, from the perusal of the Additional Director's order dated 22.06.2017, it cannot be said that the same is unreasoned. The order was made upon hearing the parties. The order accepts the cause shown by the Petitioner. The order also refers to a precedent. Merely because the order does not contain any elaborate reasons, it cannot be stigmatized as an unreasoned order.

10. Mr. Dhumatkar, however, submitted that the delay, in this case, was not merely 36 days but it was more than 60 days. He further submitted that there were misstatements made in the application seeking condonation of delay and even the medical certificates produced by the Petitioner do not inspire any confidence.

11. Accordingly, I have considered the aforesaid submissions. The delay has been calculated after excluding the time spent for obtaining the certified copy. There is no basis to hold that the delay was of over 60 days and not merely 36 days. In any case, even if the delay is held to be of 60 days, sufficient cause has been shown in the application to explain even this delay.

12. There is no basis to hold that any misstatements were made or that the two medical certificates produced by the Petitioners were doubtful. The delay, in this case, was hardly 36 or at the highest 60 days. Detailed reasons have been set aside in the application seeking condonation of delay and the same is backed by medical certificates and also prescriptions. Accordingly, a case was made out for condonation of delay and the learned District Judge

erred in interfering with the Additional Director's order and once again ordering a remand. In such matters, remands are not to be lightly ordered because they unduly prolong the litigation. The cause shown was very much before the learned District Judge and the same should have been considered rather than the remand.

13. Mr. Dhumatkar, the learned Counsel, pointed out that in the meanwhile, the Respondent nos. 1 and 2 have already obtained regularisation and even occupancy. This circumstance is not a ground to withhold relief in this Petition where it is found to be due. The regularisation orders or the orders of occupancy will be subject to the final decision in the Appeal now that the impugned order made by the District Judge is being set aside and the order of the Additional Director dated 22.06.2017 condoning the delay is being upheld.

14. In a matter of this nature, however, the Additional Director should have imposed some costs upon the Petitioner because, it is not proper to forget the opposite party altogether even where an applicant, may have

shown sufficient cause for seeking condonation of delay. The interest of justice will be met if the petitioner is directed to pay costs of ₹ 5,000/- in favor of Respondent nos. 1 and 2 on one hand and further ₹ 5,000/- in favor of Respondent no.3-Panchayat. Such costs will have to be paid/deposited before the Additional Director within four weeks from today. The condonation of delay will be subject to payment of such costs. If the costs are not paid within the time now indicated, this Petition will be deemed to have been dismissed.

15. However, if the costs are paid/deposited, the parties to appear before the Additional Director on 24.08.2021 at 3.00 p.m. and file authenticated copy of this order.

16. The Additional Director of Panchayat to then proceed to dispose of the Petitioners' appeal in accord with law and on its own merits.

17. The Additional Director to dispose of the appeal within four months from the date the parties file authenticated copy of this order.

18. The Rule in this Petition is made absolute to the aforesaid extent.

19. All concerned to act based on an authenticated copy of this order.

M. S. SONAK, J.

ANDREZA PEREIRA Digitally signed by ANDREZA
PEREIRA
Date: 2021.07.14 15:18:38 +05'30'