

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.102 OF 2023

Shri Dattaraj V. Salgaocar, 65 years of age, son of late V. M.Salgaocar, resident of Hira Vihar, Airport Road, Chicalim, Mormugao, Goa. Represented herein by his Constituted Attorney by Shri Richard Soares, son of late Mario L. Menezes Soares, aged 40 years, resident of H.o.43, Chapel Road, Patto-Ribandar, Goa

... Petitioner

Versus

1. Comunidade of Chicalim, Through its Attorney, Mr Raymond M. Carvalho, major of age, Office at Church Building, Chicalim, Mormugao, Goa.
2. The State of Goa, Through Revenue Secretary, Secretary, Porvorim, Goa.
3. The Collector, South Goa District, Office at 4th Floor, Mathany Saldanha Administrative Complex, Margao, Goa.

... Respondents

Mr Vikram Nankani, Senior Advocate *with Mr Ashwin D. Bhoje, Ms Janaki Garde and Ms Shaizeen B. Shaikh, Advocates for the Petitioner.*

Mr J. P. Mulgaonkar, Senior Advocate *with Ms Asmita Tirodkar, Advocate for Respondent No.1.*

Mr Deep D. Shirodkar, Additional Government Advocate *for Respondents No.2 and 3.*

CORAM: M. S. KARNIK, J

DATED : 18th JULY 2023

ORDER:

1. The challenge in this petition under Article 227 of the Constitution of India is to an order dated 21.01.2022 passed by the President, Administrative Tribunal, Goa, allowing the application for condonation of delay in filing the appeal under Section 188(c) of the Goa Land Revenue Code, 1968 (hereinafter referred to as 'the GLR Code', for short) against the conversion sanad dated 18.07.2017.

2. The conversion sanad dated 18.07.2017 was issued by the Collector for non-agricultural use to the petitioner (original respondent no.3) in respect of a portion of land admeasuring 2255sq.mts belonging to the respondent no.1 (original appellant). The appeal against the order of grant of conversion sanad was preferred before the Administrative Tribunal on 07.01.2022. The respondent No.1, Comunidade claimed to have gained knowledge of the conversion sanad on 03.05.2021 when its constituted attorney received a copy thereof from the office of the Collector. The Tribunal took into consideration the fact that the respondent No.1 had earlier approached this Court by way of writ petition filed on 14.06.2021. This Court had permitted the petitioner to withdraw the writ petition with liberty to file the appeal. The period spent in pursuing the writ petition, i.e. from 14.06.2021 to 14.12.2021 was excluded by the Tribunal

from computation of limitation period. According to the Tribunal, the respondent No.1 claimed to have gained knowledge of the impugned conversion sanad on 03.05.2021 and considering the period for which the respondent no.1 was pursuing the writ petition and the date of knowledge of the impugned order, the Tribunal held that there is no delay in filing the appeal.

3. Section 189(a) of the GLR Code provides that the first appeal shall not lie after the expiry of 60 days from the date of the order appealed against. The provisions relating to condonation of delay by showing sufficient cause under Section 5 of the Limitation Act are applicable to filing of appeals under the Code.

4. The Tribunal while allowing the application for condonation of delay has observed thus:-

'35. The appeal has been presented along with the application for condonation of delay on 07/01/2022 within 4 weeks from 14/12/2021. The Applicant claims to have gained knowledge of the Impugned Order on 03/05/2021 and considering the period for which the Applicant was pursuing the Writ Petition and the date of knowledge of the Impugned Order, it can be said that there is no delay in filing the appeal.

36. Section 189 of the Code contains provisions with regard to limitation of appeals. An appeal against the Impugned Order of conversion issued by the Collector in favour of the Respondent No.3 is appealable before this Tribunal under Section 188(1) (c) of the Code. Section 189(a) of the Code provides that a first appeal shall not lie after the expiry of 60 days from the date of the Order appealed against.

Thus, the limitation period to file first appeal under Section 188(1) of the Code is 60 days from the date of the Impugned Order in view of the provisions of Section 189 of the Code.

37. Section 195 of the Code provides that the provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of appeals or applications for revision and review under this Act. Thus, the provisions relating to condonation of delay by showing sufficient cause under Section 5 of the Limitation Act as well as the provisions in the said Act relating to bonafide prosecuting another proceeding before the wrong forum and the time taken for obtaining certified copy are applicable to the filing of appeals under the Code.

38. Even if it is held that there is delay in filing the appeal under Section 188 of the Code, the Applicant can present the appeal by seeking condonation of delay and showing sufficient cause as to why he could not file appeal within the prescribed time. Although Section 189 of the Code refers to the date of the Order, it must be held to include the date of knowledge of the Order.

39. The averments in the application supported by the Affidavit of the Applicant's Attorney, Mr. Raymond Carvalho indicate that the Applicant has shown sufficient cause for the delay. In other words, the delay has been satisfactorily explained. The Applicant has narrated in the application as to when his Attorney visited the Office of the Collector for the purpose of enquiry about the Applicant's property bearing Survey No. 10/1 of Village Chicalim. Although the Conversion Sanad was granted on 18/07/2017, the Applicant has stated that it was not aware of the passing of the Impugned Order until 03/05/2021. The contention of the Respondent No.3 is that the averments relating to the fact of the Applicant's Attorney's visit to the Office of the Collector and other connected facts stated by the Applicant are vague and that no details of the Clerk who informed the Attorney about the Impugned Order are given. The Respondent No.3 has also

contended that the Applicant has not relied upon any copy of application for obtaining copy of the Conversion Sanad. In my view, the Applicant has given sufficient details as regards the visit of its Attorney to the Office of the Collector, the purpose of the visit and the dates or approximate time when the Applicant's Attorney visited the Office and the source of knowledge of the Impugned Order. Acceptance of the contentions of the Respondents about the application being vague or that the same lacks details would amount to a hyper-technical approach. It is a well-settled position of law that an application for condonation of delay must be liberally granted when sufficient cause is shown and where there is no negligence, malafides and deliberate inaction on the part of the party intending to prefer the appeal.

40. I may usefully refer here to the several decisions relied upon by the Applicant and the Respondent No.3 wherein the principles for condonation of delay are set out.'

5. The Tribunal then relied upon the decision of the Supreme Court in ***Esha Bhattarcharjee v/s. Managing Committee of Raghunathpur Nafar Academy and others'***, and in paragraph 42 has observed thus:

'42. The Hon'ble Supreme Court in Esha Bhattarcharjee vs Raghunathpur Nafar Academy (supra) laid down the principles governing applications for condonation of delay, most of which are culled out from various authorities. It was observed thus:-

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1.(i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*

21.3.(iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4.(iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5.(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.'*

21.7.(vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9.(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10.(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such*

a litigation.

21.11. (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.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3.(c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

6. The Tribunal then in paragraph 56, 57 and 58 observed thus:-

'56. It is pertinent to note that the Conversion Sanad is not in the name of Murgao Co-operative Industrial

Estate Ltd., but in the name of the Respondent No.3 as an individual. The fact that the Applicant is the owner of the property is not denied or in dispute. The issuance of the Conversion Sanad in respect of the property owned by the Applicant would affect the interest of the Applicant. The Applicant has a vital interest in the matter and despite the same, the Applicant was not notified about the application for Conversion Sanad made by the Respondent no.3.

57. It is the case of the Applicant that it was not aware of the Conversion Sanad nor was it given any notice of the Conversion Sanad. It is also not the case of the Respondent No.3 that the Applicant was given notice of the proceeding preceding the issuance of the Conversion Sanad or that the Conversion Sanad was communicated to the Applicant immediately upon its issuance. As rightly submitted by Ld. Senior Advocate Shri J. Mulgaonkar for the Applicant, no notice of the Conversion Sanad itself amounts to sufficient cause. There is nothing on record to show that the Applicant had knowledge of the Conversion Sanad prior to 03/05/2021.

58. The Applicant's case is that the Attorney received a copy of the Impugned Order on 03/05/2021. There is no reason to disbelieve the said statement of the Applicant which is supported by the Affidavit of the Attorney. Non-production of any application for issuance of photocopy of Conversion Sanad would not mean that the Applicant was aware of the Conversion Sanad much prior to 03/05/2021 or that the Applicant's explanation is concocted. Further, it is material to note that when the Applicant approached the authorities such as the Planning & Development Authority and the Village Panchayat in connection with the alleged illegal construction, there was absolutely no reason for the Applicant to not approach the Collector if the Conversion Sand was within the Applicant's knowledge. The very fact that in the year 2017, the Applicant did not approach the Collector to enquire about conversion of land indicates that the Applicant had no knowledge of the Conversion Sanad in 2017. The Applicant would not gain anything by delay in approaching this Tribunal

or other authority in case it was aware of the Conversion Sanad.'

7. The Tribunal thus was of the opinion that in matters of condonation of delay it is well settled principle of law that condonation ought to be liberally granted where sufficient cause is shown. Having gone through the order passed by the Tribunal, I would have been slow in interfering with the impugned order condoning the delay, more so when on the basis of the materials, the Tribunal found that sufficient cause has been shown for such condonation.

8. I thought it otherwise in view of certain materials which were brought on record by the petitioner in this petition for the first time. In all fairness to the Tribunal, such materials were not placed before the Tribunal. Learned senior advocate Shri Mulgaonkar appearing for respondent No.1 was at pains to contend that the impugned order has to be tested on the basis of the materials placed for consideration before the Tribunal. I have no hesitation in accepting such contention of learned senior advocate Shri Mulgaonkar.

9. Shri Mulgaonkar, learned senior advocate relied upon the decision of this Court in the case of ***Jao Francisco Dias Thr. POA Catarina Vaz & Anr v/s. Josefina Fernandes & Ors²***. Paragraphs 14 and 15 are referred which read thus:-

'14. The Petitioners have explained how a written statement was prepared, but the same could not be finalized for want of documents. Therefore, If all these factors are cumulatively considered, a case is made out for condoning the delay and allowing the Petitioners to file a written statement. This should, however, be subject to payment of costs.

15. In *N. Balakrishnan v. M. Krishnamurthy*, the Hon'ble Supreme Court, has explained that in most cases where the condonation is applied, there is a likelihood of some lapse on the part of the party seeking condonation, However, even in this case, the Petitioners admitted a lacuna but claimed no Intended error. Therefore, unless the explanation for the delay smacks malafide or is put forth as a dilatory strategy, consideration must be shown to the party seeking condonation of delay. But, simultaneously, the Court must not forget the opposite party, which would suffer prejudice due to the condonation of delay.'

10. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of ***N. Balakrishnan v/s. M. Krishnamurthy***³, reference is made at paragraphs 9, 10, 11, 12 and 13 which read thus:-

'9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory, Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional

3 (1998) 7 SCC 123

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse, But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law remedy of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are 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 idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act substantial justice vide should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal*

Kumari and State of W.B. v. Administrator, Howrah Municipality.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.'

11. Reference is then made by Shri Mulgaonkar to the decision of the Supreme Court in ***Shalini Shyam Shetty & anr. V/s. Rajendra Shankar Patil***⁴, paragraph 49 of which reads thus:-

'(49) On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been

4 (2010) 8 SCC 329

discussed above.

(c) *High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with of the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.*

(d) *The parameters of interference by High Courts in exercise of their power of the superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and the principles in Waryam Singh have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

(e) *According to the ratio in High Court in exercise of Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".*

(f) *In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*

(g) *Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

(h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other*

words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed

for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.'

The principles on the exercise of High Court's jurisdiction under Section 227 of the Constitution are thus formulated by the Hon'ble Supreme Court in ***Shalini Shyam Shetty & anr. V/s. Rajendra Shankar Patil***(supra).

12. I am bound by the law laid down by the Hon'ble Supreme Court. It is in the facts of the present case and for the reasons stated hereinafter that I find it appropriate to remit the matter to the Tribunal to enable the Tribunal to consider the application for condonation of delay afresh on the basis of the materials placed for consideration before this Court. It is then for the Tribunal to consider the application afresh in the light of the decisions relied upon by learned senior advocate, Shri Mulgaonkar.

13. The respondent No.1 claimed to have gained knowledge of the impugned conversion sanad on 03.05.2021. The conversion sanad is dated 18.07.2017. Learned senior advocate Shri Nankani, appearing on behalf of the petitioner invited my attention to certain documents and correspondence on behalf of respondent No.1 post the issuance of the conversion sanad which, according to me, may have a material bearing while dealing with the aspect of delay

condonation.

14. Having regard to the nature of the documents, though I may not be understood to have expressed an opinion on the merits or otherwise, but in all fairness to the petitioner as well, these documents need to be considered while deciding the application for condonation of delay. The certified copies of these documents were obtained by the petitioner from the concerned authorities vide their application dated 30.03.2023. One such document is the vakalatnama of Ms Smita Shirodkar filed in the Court of Inspector of Survey & Land Records at Salcete, Margao, on behalf of the respondent No.1. in a proceeding against the Mormugao Industrial Estate where the plot is situated in respect of which the conversion sanad is granted. On record is an application dated 10.12.2018 preferred by advocate Smita Shirodkar to the Public Information Officer, Office of the Collector of South Goa, Margao, Goa for issuance of certified copies of the entire case file pertaining to conversion sanad dated 18.07.2017 viz., conversion sanad which is subject matter of challenge in the appeal. There is then a communication dated 22.10.2018 of the respondent no.1 to the Collector of South Goa made under the RTI Act, seeking information whether the Collector of South Goa or any delegate from the office has issued any sanad or sought for conversion of the said plot which is subject matter of the sanad impugned before the concerned authorities. Such documents are brought on record by the petitioner by way of a miscellaneous application filed in this

petition. These documents were obtained post the passing of the impugned order. Though in the reply to the miscellaneous application, the respondent no.1 did not deny making such application but denied that the said documents disclose that the respondent No.1 was aware of the conversion sanad. It is the stand of the respondent No.1 that the petitioner should have been vigilant and produced these documents before the Tribunal when the application for condonation of delay was heard and there is no justification why the documents are applied for at a later stage.

15. In my opinion, the respondent No.1 having taken a stand that they claimed to have knowledge of the impugned conversion sanad only on 03.05.2021 when its constituted attorney received a copy thereof from the office of the Collector, in all fairness, the factum of knowledge may also have to be considered on the basis of the aforesaid documents, as the application made in December 2018 indicates that what was applied for was a copy of the very same conversion sanad. As to whether the knowledge of the conversion sanad is to be inferred prior to 03.05.2021 on the basis of such documents is a matter which in my opinion needs to be considered by the Tribunal in the first instance as these documents were not before the Tribunal. The respondent No.1 has not made any reference to these documents in the application for condonation of delay. Considering the nature of the documents, it is not possible for me to completely ignore these documents merely because

they were not produced before the Tribunal. It is open for the petitioner to place the documents for the Tribunal's consideration. The respondent No.1 obviously shall have an opportunity to deal with the contentions of the petitioner. There is no prejudice to the respondent No.1 as I am inclined to remand the application for condonation of delay for reconsideration by the Tribunal. Hence, the following order:-

ORDER

(a) The appeal is partly allowed. The impugned order is set aside.

(b) The application for condonation is remanded back to the Tribunal for deciding the same afresh on its own merits and in accordance with law.

(c) The Tribunal to decide the application uninfluenced by the observations made in this order.

(d) The parties to appear before the Tribunal on 17.08.2023 at 11:00AM. The Tribunal may fix the further schedule of hearing.

16. The petition is disposed of in the above terms. No order for costs.

M. S. KARNIK, J.