

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO.68/2020
IN
STAMP NUMBER (MAIN) NO.1357/2019 (F)**

FELIX GERALD RODRIGUES. ... APPLICANT

Versus

VILLAGE PANCHAYAT OF
UCASSAIM PALIEM PUNOLA
THR. ITS SECRETARY. ... RESPONDENT

Mr G. Agni with Mr K. Kavlekar, Advocates for the Applicant.

CORAM: M. S. SONAK, J.

DATED: 21st DECEMBER 2023

P.C.:

1. Heard Mr Gaurish Agni for the applicant.
2. Misc. Civil Application No.68 of 2020 seeks condonation of delay of eleven months and eighteen days for recalling/setting aside the Registrar's order dated 13.04.2018 by which the Registrar refused to admit the Writ Petition bearing Stamp No.2257/2017 because the applicant, despite several intimations, did not bother to remain present before the Registrar or clear the office objections.

3. The Registrar's order dated 13.04.2018 reads as follows:-

“The Memorandum of Appeal is presented on 19.07.2017. The office has scrutinized and raised the office objections. As per order of the Assistant Registrar dated 21.07.2017, the matter is notified on Registrar's Board. However, since then, neither the petitioner and his Advocate remained present nor they have removed the office objections.

Today, the petitioner and his advocate are absent. None of the office objections are removed. Hence, the matter is refused to admit to register.”

4. Despite the above order, an application for restoration/revision was filed after a delay of eleven months and eighteen days. The usual reasons which inspire no confidence whatsoever have been set out both in the application seeking condonation of delay as well as the revision to question the Registrar's order.

5. In several cases that come before this Court, petitions are filed to question orders made by the authorities under the Panchayat Raj Act for the demolition of illegal constructions. Many times, such petitions are kept pending by not clearing the office objections or other reasons. Based upon such petitions' pendency, the demolition orders' implementation is opposed or delayed. This Court gathers the impression that this is one such case.

6. The petitioner's illegal construction was ordered to be demolished by the Village Panchayat after full compliance with

the principles of natural justice and fair play. This demolition order was made by the Panchayat on 27.10.2014. After that, the petitioner instituted an appeal before the Additional Director of Panchayats. Again, after full opportunity, the Additional Director dismissed the appeal by order dated 21.01.2016. The petitioner instituted revision before the ad hoc District Judge-1 at Mapusa, which was also dismissed on 12.04.2017.

7. To challenge the concurrent orders of the Panchayat, Additional Director of Panchayats and the District Court (Revisional Authority), a Writ Petition bearing Stamp No.2257/2017 (F) was instituted with several objections which were pointed out by the registry. The matter was fixed from time to time before the Registrar. However, neither did anyone appear before the Registrar despite intimations nor were the office objections cleared. The Registrar was left with no alternative but to dismiss the main petition for non-clearance of office objections.

8. As if this was not sufficient, restoration by instituting a revision was applied for after a delay of eleven months and eighteen days. It is clear that all this while the implementation of the demolition order issued way back in 2014 was delayed. As noted earlier, in such matters, it has become almost a practice to delay the implementation of demolition orders, which may have attained finality by pointing out that some proceedings are pending before this Court by not pursuing those proceedings or obtaining any interim orders.

9. The application seeking condonation of delay on oath asserts that the applicant has been diligently pursuing the matter and that the delay was neither intentional nor deliberate. At least in the present case, these averments do not deserve any acceptance whatsoever. Statements were made that the advocate was unaware of the order, and the applicant was under the bonafide belief that the matter was pending for registration for want of certain documents as mentioned in the office objections. If necessary intimations are issued, but there is no appearance, it can hardly be said that the advocate was unaware of the passing of the order. No sufficient cause is shown for condoning the delay of almost eleven months in seeking restoration. The circumstances suggest that the applicant only wanted the proceeding to be pending so that the implementation of the demolition order could be deferred by citing pendency even though no interim relief was ever granted.

10. However, even if some indulgence were to be shown to the applicant and the matter was to be restored, there is really nothing on merits to interfere with the demolition order made by the Panchayat and affirmed by the Additional Director of Panchayats and the District Court (Revisional Authority). Accordingly, Mr Agni was heard on merits so that the petitioner does not get the impression that he lost by default.

11. Mr Agni submitted that the construction was in pursuance of the partition between the family members and based upon permission issued by the Panchayat on 21.10.1980. He submitted that the construction is quite old and since the same

was based upon the permission of 21.10.1980, no demolition order could have been issued. Mr Agni quite fairly admitted that the permission of 1980 referred to a plan which, in turn, referred to an area of 62.75 sq. meters. He admitted that the construction at the site was about 150 sq. mtrs.

12. The three authorities have considered all these defences and quite correctly found no merit. They have concluded that an entirely new structure was put up without obtaining any permission from any authority. The structure is illegal, and no attempt was made to satisfy the authorities that the structure was otherwise within the permissible rules and regulations.

13. No nexus is established between the illegal structure and the permission of 1980. This is a handwritten permission, which refers to a plan that the Panchayat approved. Even this important plan is not annexed to this permission. There is correspondence showing that the authorities found that the construction was 150 sq. mtrs. as against the approval for 62.75 sq. meters. The only explanation offered to the authorities by the petitioner was that because the place was insufficient, the plinth exceeded up to 150 sq. meters. In any case, there are concurrent findings that the structure, which is now ordered to be demolished, has no nexus with the permission of 1980 or the encroachment carried out dehors such permission.

14. The concurrent findings of fact recorded by the three authorities suffer from no perversity. Therefore, it is apparent that this petition was instituted only to delay the implementation of

the demolition orders, which had attained finality. Further, it is also apparent that the entire idea was to keep this petition pending and, based on its pendency, delay the implementation of the demolition order.

15. Otherwise, it is inconceivable that a party who is suffering a demolition order would file a petition but would not deliberately clear off objections or otherwise move for interim relief. It is also inconceivable that such a party would delay by almost a year to apply for restoration by citing reasons which inspire no confidence whatsoever. The Petitioner, perhaps being aware of the deficient case on merits, attempted to take chances and delay for several years the implementation of the demolition orders that have attained finality.

16. For the above reasons, Misc. Civil Application No.68/2020 and, consequently, the Civil Revision Application are liable to be dismissed and are hereby dismissed. Further, as noted above, even if this Misc. Civil Application or the Civil Revision were to be allowed, on examining the merits of the Writ Petition, it is found that no case was made out for interfering with the concurrent orders made by the Panchayat, Additional Director of Panchayats and the District Court (Revisional Authority).

17. For all the above reasons, the Misc. Civil Application No.68/2020 and Civil Revision Application No.1357/2019 (F) are hereby dismissed.

18. The Registry should send this order to the Village Panchayat of Ucassaim, i.e. respondent no.1, within the next fifteen days. The Panchayat must take steps to implement its demolition within three months and file a compliance report in this Court. The Panchayat Secretary must file the compliance report with photographs. A copy must be furnished to the complainant.

M. S. SONAK, J.

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