

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 610 OF 2023
WITH
CIVIL APPLICATION NO. 113 OF 2023

Mrs. Jamina Aguiar ... Petitioner
Versus
1. Village Panchayat of Sancoale & Ors. ... Respondents

Mr. C. Fernandes, Advocate for the Petitioner.

Mr. Zeller D'Souza, Advocate for the Respondent no. 1.

**Mr. Pravin Faldessai, Additional Government Advocate
for the Respondent no. 2.**

**Mr. Bhargav Khandeparkar, Advocate for the Respondent
no.3.**

CORAM: PRAKASH D. NAIK, J
DATED: 14th SEPTEMBER 2023

ORDER

1. The Petitioner has preferred this Petition under Article 227 of Constitution of India challenging the Order dated 08.11.2022 passed by Adhoc District Judge, Margao, in Civil Misc. Application No. 110 of 2022, whereby the application for condonation of delay of two years seven months and twenty four days in filing Civil Revision Application against the Judgment and Order dated 23.07.2018 passed by Additional Director of Panchayats-II in Panchayat Appeal No. MAR/I/57/2016 was rejected.

2. The learned Advocate for the Petitioner submitted that the impugned order rejecting the application for condonation of delay is contrary to law. The Petitioner had shown sufficient cause to condone the delay. The learned District Judge did not appreciate sympathetically the grounds raised by the Petitioner seeking condonation of delay. The delay was not deliberate. The Petitioner had been diligently following the proceedings challenging the Order of demolition issued by the Respondents with various authorities. In the event delay is not condoned, grave prejudice will be caused to the Petitioner. The Petitioner is the mundkar of her dwelling house bearing House No. 23 assessed for the purpose of house tax by Respondent no.1, which is situated at Matvem, Dabolim, Sancoale, in the property of Respondent no.3 surveyed under Survey no. 201/1 of Village Sancoale, Taluka, Mormugao, Goa. The Petitioner inherited the mundkarial right upon the said house from her late husband Santana Aguiar, who was son of late Aurora Pereira. Francisco Aguiar was another son of Aurora Pereira. The Petitioner's husband and his brother inherited the mundkarial right upon the suit house. There had been land acquisition to widen the national highway in the year 1982 and at that time, part of the property under survey no. 201/1 was acquired and in the process of acquisition, part of the suit mundkarial house was acquired, occupied and possessed by Mr. Francisco Aguiar. He was compensated for the portion occupied by

him and he shifted his residence to another place after demolition of his portion. The Petitioner and her family continued to reside in the remaining portion of the mundkarial house. He paid the house tax and monthly bills of essential services like electricity and water connection. The Respondent had issued show cause notice dated 09.06.2014, which was replied by the Petitioner. Final notice dated 04.05.2015 was issued by Respondent no.1. The Petitioner filed appeal under the Goa Panchayat Raj Act, 1994, against the final notice. The entire house was not demolished and only the portion occupied by Francisco Aguiar was demolished. The Petitioner had repaired the remaining portion of the house. The contention of Respondent no.3 that the Petitioner had carried out new construction is false. The Block Development Officer had inspected the site and noted that the existing structure is old which is existing since last 45 years. The Petitioner's mundkarial right has not been adjudicated. The applicability of Section 8-A has not been decided. There is no order under Section 8-A for declaration of mundkarial right. The Petitioner had initiated proceedings to declare her as mundkar of the dwelling house before the Mamlatdar of Mormugao. The Petitioner had filed an application under Sections 4 and 5 of the Goa Mundkar Act, 1975, for injunctive reliefs. The Mamlatdar passed Order dated 08.11.2022 and restrained the Respondent from demolishing the mundkarial house till final disposal of declaration application under

Section 8-A. However, the appeal preferred by the Respondent no.3 challenging the said Order was allowed on 05.09.2023. The Petitioner had preferred Civil Revision Application challenging the Order dated 23.07.2018 along with application for condonation of delay. The application for condonation of delay was rejected. The Petitioner must be given an opportunity to challenge the impugned order on merits. The Court ought not to have adopted a rigid approach while deciding application for condonation of delay by not permitting the Petitioner to contest the proceedings on merits; irreparable damage would be caused to the Petitioner.

3. Learned Advocate for Respondent no.1 submitted that the appeal preferred by the Petitioner before the Additional Director of Panchayat-II, was dismissed on 23.07.2018. The Petitioner filed a Civil Revision Application along with application for condonation of delay on 17.10.2022. There was inordinate unexplained delay in challenging the said order. The learned Adhoc District Judge has rightly rejected the application for condonation of delay vide Order dated 08.11.2022. The Petitioner was relying upon the Order of Mamlatdar granting stay to the demolition which is also set aside. The Petitioner has been stalling the demolitions of the structure since long. In spite of opportunities being available to the Petitioner to challenge the impugned Order dated 23.07.2018, the Petitioner did not take immediate steps to challenge the said Order. The

Respondent no.3 was required to approach the High Court for seeking directions to demolish the subject structure and pursuant to orders passed by the Division Bench of this Court, the Petitioner has approached this Court challenging the Order dated 08.11.2022.

4. Learned Advocate for Respondent no.3 submitted that no interference is called for in the impugned Order dated 08.11.2022. The Order challenged by the Petitioner before the Adhoc District Judge was passed on 23.07.2018 wherein the appeal preferred by the Petitioner was dismissed. The Petitioner thereafter preferred the Civil Revision Application on 17.10.2022. There was huge unexplained delay which is not condoned by the Court below. The learned Judge has assigned reasons for not condoning the delay. The impugned Order is dated 23.07.2018. The thirty days time limit to file a revision under Section 201-B of the Goa Panchayat Raj Act, 1994, expired on 22.08.2018. The Petitioner filed the application before the learned Adhoc District Judge on 17.10.2022. Total number of days from 22.08.2018 to 17.10.2022 is 1516 days. Even if Covid-19 period from 15.02.2020 to 28.02.2022 is excluded, there is delay of 801 days i.e. two years, two months and eleven days. The husband of Petitioner had filed mundkarial case which was dismissed vide Order dated 01.09.1993 on the ground that the land where the dwelling house of the Petitioner was situated had been acquired and demolished by State Government under the Land Acquisition Act,

1894 and compensation was received by the party. The Petitioner built another structure in the property of Respondent no.3 in 2004. Complaint dated 23.07.2004 was filed by Respondent no.3 for taking action against illegal structure of the Petitioner. Vide final notice dated 04.05.2015, the Respondent no.1 directed Petitioner to demolish her structure within seven days. On 15.05.2015, the Petitioner filed an appeal before the Director of Panchayats challenging the final notice. The Respondent no.3 moved an application to be impleaded in the appeal which was contested by the Petitioner. The Respondent no.3 filed written arguments on 12.10.2017. The Appeal was dismissed vide Judgment dated 23.07.2018 on the ground that the Petitioner's mundkarial structure had been acquired and demolished by the State Government under the Land Acquisition Act and the subject matter of the appeal was newly constructed illegal structure which is required to be demolished. After the Judgment dated 23.07.2018, the Petitioner did nothing to stop the execution of demolition order. On 24.01.2020, the Block Development Officer issued requisition letter for requisitioning a demolition squad to demolish the illegal structure of the Petitioner. To avoid demolition, the Petitioner filed second mundkarial case along with an application for stay. This was done without challenging the Judgment dated 01.09.1993 in Mundkar Case No. MND/SANC/6/91. The Respondent no.1 issued letter dated

29.11.2021 to the Petitioner to remain present along with documents. Another letter dated 24.12.2021 was issued by Respondent no.1. The Petitioner did not challenge the impugned Judgment. Being frustrated by inaction of Respondent no.1 and evasive tactics of the Petitioner, the Respondent no.3 moved this Court by preferring Writ Petition No. 161/2022 for issuing mandamus to the local authorities to implement the demolition order. The Petition was disposed of vide Order dated 10.10.2022 by directing the authorities to demolish the structure of the Petitioner within eight weeks unless she produces any restraint order within four weeks. In the face of the High Court order and after having run out of all evasive and dilatory tactics, the Petitioner sought condonation of delay of two years two months and eleven days to challenge the judgment dated 23.07.2018. The Petitioner was always represented by the Advocate before Panchayat, Mundkar proceedings and before the High Court. The Petitioner has failed to show sufficient cause for the delay of two years two months and eleven days. The Petitioner was aware of the impugned judgment. Before the Adhoc District Judge, the Petitioner had taken a ground of ignorance of law which was belied by the fact that the Petitioner was always effectively represented by Advocate and she has effectively utilized all legal mechanisms available to her for delaying the demolition. The Respondent no.3 had filed Contempt Petition no. 6 of 2023 before this Court for non-compliance of the Order dated

10.10.2022 and enforcing the demolition order/final notice dated 04.05.2015. The Contempt Petition was disposed off vide order dated 22.08.2023 by accepting apologies of the concerned authorities who had assured that the demolition order will be enforced within four weeks from the date of the Order. The Petitioner filed Civil Application (Review) No. 11 of 2023 before this Court for review of Order dated 22.08.2023. The said review application was disposed off vide Order dated 04.09.2023. Submission of the learned Counsel for the Petitioner was recorded that two weeks time was sought by the Petitioner to remove the belongings from the structure. It was also submitted on instructions that after two weeks, no obstruction will be offered to the Panchayat implementing its demolition Order. This Court granted two weeks time to the Petitioner to remove her belongings from the structure in question. This Court directed that the demolition must be carried out after two weeks but before 09.10.2023. In spite of the aforesaid statement being made before this Court, the Petitioner has filed this Petition on 11.09.2023 challenging the Order dated 08.11.2022 passed by the Adhoc District Judge and Order dated 23.07.2018 passed by the Additional Director of Panchayat as well as the final notice dated 04.05.2015. This is another attempt to scuttle the demolition order. The conduct of the Petitioner requires to be deprecated as despite of giving assurance to the Court, the Petitioner is making all the attempts to stall the

process of demolition and to frustrate the Order passed by the Division Bench of this Court. Hence, this Petition may be dismissed.

5. On perusal of the documents on record and hearing the submissions of both the sides, it is apparent that the issue related to the demolition of the structure in question. Although the impugned Order dated 08.11.2022 passed by the learned Adhoc District Judge rejecting the application for condonation of delay is under challenge in this Petition, the Petition contains prayer challenging the Orders dated 23.07.2018 passed by Additional Director of Panchayat and final notice dated 04.05.2015 issued by Respondent no.1 for demolition of the structure. The Petitioner has also prayed by way of interim measures to stay the execution in Writ Petition no. 161/2022 and Contempt Petition no. 6/2023 in Writ Petition no. 161/2022. Apart from challenge to condonation of delay, the Petitioner has referred to various proceedings and her right in respect to subject property.

6. Vide Order dated 08.11.2022, the learned Adhoc District Judge has refused to condone the delay in preferring Civil Revision Application preferred by the Petitioner challenging the Order dated 23.07.2018 passed by Additional Director of Panchayat-II in Panchayat Appeal No. MAR/I/57/2016. On perusal of impugned Order dated 08.11.2022, it is evident that the learned Judge has

passed a well reasoned Order which does not warrant interference. Although the Courts are required to adopt a liberal approach in condoning the delay, but in the facts of this case, the learned Judge has rightly observed that the Petitioner has not shown sufficient cause to condone the delay. The delay is more than 800 days and it has been explained merely by stating that the Petitioner is an illiterate person coming from a poor family, not conversant with the procedure of the Court. The learned Judge noted that the Petitioner has been approaching various fora time and again whenever the threat to her illegal structure loomed large. It is pertinent to note that although the learned Adhoc District Judge was dealing with the application for condonation of delay, since the Petitioner had preferred the Civil Revision Application challenging the Order dated 23.07.2018, the Petitioner had contended that she was the mundkar of the said structure. Similar submissions are advanced before this Court.

7. It is submitted by the learned Counsel for the Petitioner that the mundkarial right of the Petitioner has not been decided. The Petitioner has not constructed new structure. Pursuant to the land acquisition, part of the structure was demolished which was occupied by the brother of Petitioner's husband and that the Petitioner and her husband continued to stay in the other part of the structure which was not acquired or demolished.

8. Although the main order under challenge is refusal to condone the delay in preferring Civil Revision Application, considering the submissions of learned Counsel for the Petitioner and the factual matrix of the case, it is required to be noted that the Petitioner's husband filed a mundkarial case no. MND/SANC/6/91, which was dismissed vide Order dated 01.09.1993 on the ground that land where the dwelling house of the Petitioner was situated had been acquired and demolished by the State Government under the Land Acquisition Act, 1894 and the Petitioner had received compensation towards the same. The Respondent no.3 filed a complaint dated 23.07.2004 calling upon the Respondent no.1 to take action against illegal structure of the Petitioner which was built by her in the property of Respondent no.3. Final notice dated 04.05.2015 was issued by Respondent no.1 and the Petitioner was directed to demolish the structure within seven days. It was indicated that failure by the Petitioner to demolish the structure within stipulated time, the Panchayat would demolish the same. The Petitioner filed an appeal before Director of Panchayats at Panaji, Goa, on 15.05.2015 challenging the final notice. The Petitioner was represented by Advocate who took all the grounds to challenge the final notice. The intervention of the Respondent no.3 was opposed by the Petitioner through her Advocate. Vide Judgment dated 23.07.2018, passed by Additional Director of Panchayat-II, the appeal preferred by the

Petitioner was dismissed and she was directed to demolish the suit structure situated in the property surveyed under no. 201/1 of Village Sancoale within a period of thirty days from the date of the receipt of the Order. In the said judgment, it was observed that the Respondent no.3 has proved that the land and house which is shown on the survey plan is acquired by the Government and subsequently demolished by the Government for the purpose of road widening. The panchanama and sketch prepared by the Respondent no.1 clearly unveils the fact that the suit structure constructed by the Petitioner is illegal.

9. The Petitioner filed second mundkarial case bearing no. JM-II/MUND/SANC/8A/c1/3/2020. The previous order had attained finality. Letters were issued by the Respondent no.1 calling upon the Petitioner to produce documents. Thereafter, the Respondent no.3 had filed a Writ Petition before this Court. The Petitioner had relied upon the Order passed by the Mamlatdar granting stay. The Deputy Collector/SDO & SDM vide Order dated 05.09.2023, allowed the appeal preferred by Respondent no.3 challenging Order dated 08.11.2022 passed by Joint Mamlatdar, Mormugao and set aside the said Order of Joint Mamlatdar.

10. The learned Adhoc District Judge has analysed the factual aspects of the matter and rejected the application for condonation of

delay. The learned Judge has also referred to various judicial pronouncements dealing with condonation of delay wherein broad principles for condonation of delay under Section 5 of the Limitation Act were laid down. It is a settled law which is emanating from several decisions which are considered by the learned Adhoc District Judge that the laws of limitation are founded on public policy and unlimited and perpetual threat of limitation creates insecurity and uncertainty. Some kind of limitation is essential for public order. The Courts cannot be ignorant and an application for condonation of delay cannot be filed as an empty formality. Vague statements in the application cannot be appreciated. The discretionary powers of the Court have to be exercised cautiously and by recording reasons if genuine and sufficient cause has been shown by the parties. Courts cannot condone delay on misplaced sympathy to dilute the principles of law of limitation. It would be unreasonable to take away the right of the other party which accrues as a result of the failure of the first party to explain the delay by showing sufficient cause particularly when the delay is result of negligence, default or inaction of the party. There should be liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The term sufficient cause should be understood in the proper spirit, philosophy and purpose. No presumption can be attached to deliberate causes of delay but gross negligence on the part of the

litigant is to be taken note of. Lack of bonafides imputable to a party seeking condonation of delay is significant and relevant fact. The conduct, behaviour and attitude of a party relating to its inaction and relevant factors to be taken into consideration.

11. Learned Adhoc District Judge has observed that the material on record produced by the Petitioner indicate that structure is illegal although the panchanama may suggest that structure is 45 years old, the bottom line is that it is an illegal structure having been constructed without licence from the authorities without declaration of mundkarship from the competent authority, no right under the mundkar law can be claimed. The first mundkar application was dismissed on 01.09.1993 and no steps were taken by the Petitioner to challenge the said Order or to get declared as mundkar of any structure in the property of Respondent no.3. It is only when the Respondent no.3 pressed for demolition order, the Petitioner raised a vague plea in the condonation of delay application. Even if the application dated 24.09.2020 of the Petitioner to Respondent no.1 had to be taken at face value since September 2020, till order of the High Court in Writ Petition no. 161 of 2022, the Petitioner chose not to take any steps to challenge the order of demolition of structure.

12. No cause is shown to condone delay of over 800 days. There is no merit in the application for condonation of delay. The learned

Adhoc District Judge has rightly observed that the Petitioner has been thoroughly negligent in pursuing her remedies for the demolition of her structure.

13. The Respondent no.3 preferred Writ Petition no. 161 of 2022 before this Court for seeking directions to implement the demolition Order dated 04.05.2015. The Petition was disposed off by Order dated 10.10.2022 taking into consideration the submission of the Respondents therein that the demolition order will be executed within eight weeks unless the Respondent no.8 therein (Petitioner) produced some order restraining the implementation of order of execution.

14. The Division Bench of this Court vide Order dated 10.10.2022, accepted the statement and disposed of the Petition with directions that if within four weeks from the date of order no restraint Order is produced, the concerned authorities to ensure that the demolition Order dated 04.05.2015 is executed/implemented within a period of maximum four weeks. The time stipulated in Order dated 10.10.2022 had expired but demolition could not be executed. The Respondent no.3 filed Contempt Petition no. 6 of 2023 with a grievance that the Panchayat is not complying with the directions of this Court vide Order dated 10.10.2022 and enforcing the demolition order/final notice dated 04.05.2015. The concerned authorities filed affidavit

tendering apology for not complying directions of this Court. It was submitted that the Panchayat has requisitioned the demolition squad from the Block Development Officer vide communication dated 07.08.2023 and that the demolition squad will be provided at the earliest. This Court directed that the Panchayat and Block Development Officer to ensure that the demolition order is enforced as expeditiously as possible and, in any case, within four weeks from the date of order. The Block Development Officer was directed to file compliance report with photographs. The Contempt Petition was disposed off vide Order dated 22.08.2023. The Petitioner filed Civil Application (Review) No. 11 of 2023. It is pertinent to note that the said application was filed before the expiry of period of four weeks for demolition of the structure stipulated in Order dated 22.08.2023. The application was for review of Order dated 22.08.2023. This Court vide Order dated 04.09.2023 observed that no case is made out for reviewing the Order dated 22.08.2023. It was further observed that in Order dated 10.10.2022 passed in Writ Petition no. 161/2022, the Court accepted the statement of Panchayat about the execution of demolition order dated 04.05.2015 against the structure put up by the Petitioner. However, it was clarified that the Panchayat would not be obliged to enforce the demolition order if the Applicant/Petitioner produced a restraint order of implementation of execution. It was also observed that the review application is filed

based on the Judgment and Order dated 08.11.2022 made by Joint Mamlatdar of Mormugao Taluka, restraining the Bhatkar from dispossessing or demolishing the suit house till disposal of application under Section 8-A of Goa Daman and Diu (Protection from Eviction) Act, 1975, filed by the Applicant/Petitioner. The issue in the main petition was about legality of structure put up by the Petitioner. The demolition Order was made in 2015 because the authorities found that the structure was illegal and contrary to the provisions of the Panchayat Raj Act, 1994 or Rules pertaining to put up construction. In none of the proceedings, the legal rights of the Petitioner had issue. Even if the Petitioner is the owner of the suit property and has a civil right to put up construction in his own property, the Panchayat Act provisions regarding obtaining permissions or constructions being in accordance with the Rules provided, etc., had to be complied with. The Applicant/Petitioner did question the demolition order before the authorities under the Panchayat Raj Act, however, such challenge has failed. Besides the Order dated 08.11.2022, is only against the Bhatkar and the same does not apply to Panchayat from enforcing its own demolition order. The Court also noted that the District Court vide its Judgment and Order dated 08.11.2022, rejected the Petitioner's contention about legality of the structure in question. The Review Petition was dismissed without going into the issue of maintainability. It is

pertinent to note that the Advocate representing the Petitioner has submitted before the Division Bench which submission has been recorded in paragraph 9 of Order dated 04.09.2023, which reads thus:

“9. At this stage, Mr. Fernandes, learned Counsel for the applicant based on instructions from the applicant, seeks two weeks' time to remove the belongings from the structure. On instructions, he states that after two weeks, no obstruction will be offered to the Panchayat implementing its demolition order.”

15. This Court then granted two weeks time to the Petitioner to remove belongings from the structure in question. The earlier time limit for executing demolition specified in Order dated 22.08.2023 was extended up to 09.10.2023 and it was directed that the demolition must be carried out after two weeks but before 09.10.2023.

16. Learned Advocate for the Petitioner has submitted that the statement recorded in paragraph 9 of Order dated 04.09.2023 was made before the Division Bench of this Court in the facts and circumstances of the case. But, in the present Petition, the Petitioner is challenging the impugned Order rejecting the application for condonation of delay.

17. In the light of the aforesaid factual aspects, it is clear that the Petitioner has failed to explain the delay. The conduct of the Petitioner and the various orders referred to herein above does not warrant interference in setting aside the impugned order.

18. Accordingly, I pass the following order :

ORDER

Writ Petition no. 610 of 2023 is dismissed.

Civil Application No. 113 of 2023 stands disposed of.

PRAKASH D. NAIK, J

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