

Rekha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 11 OF 2020

FILOMENA JOANITA
MENEZES.,

... PETITIONER

Versus

KAMAT REAL ESTATE
DEVELOPERS AND 6 ORS.,

... RESPONDENTS

Mr. Nigel Da Costa Frias with Andrade Barbara and Mr. Bazilio Pacheco Advocates, for petitioner.

Mr. S.D. Lotlikar, Senior Advocate, with Ms. Sailee Kenny, Advocate, for Respondent nos.1, 2, 3 and 4.

Mr. P.A. Kamat, Advocate, for Respondent no.6.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 23rd FEBRUARY 2023

P. C.

1. Heard Mr. Nigel de Costa Frias appearing for the petitioner, learned Senior Counsel S.D. Lotlikar alongwith Sailee Kenny for respondent nos. 1 to 4 and learned Counsel P. Kamat for respondent no.6.

2. Present petition is filed challenging the impugned order passed by the learned Administrative Tribunal in Land Revenue Appeal no. 49 of 2018 dated 11.02.2019.

3. Mr. Frias appearing for the petitioner would submit that first of all, the petitioner had no knowledge of the impugned sanad issued in her own name through power of attorney i.e. respondent nos.3 and 4. When the construction of the road through the portion of the petitioner commenced, she applied for copy of conversion sanad and only after receiving the relevant documents it was observed that such sanad was obtained in the year 2015 itself in her name by the power of attorney and that to by violating the specific condition given in the power of attorney. It is submitted that limitation would start only from the date of constructive knowledge and not from the date of the passing of the order or issuance of sanad.

4. Mr. Frias then pointed out specific grounds raised in the memo of appeal which is found at paragraphs 10 and 11 of the memo of appeal.

5. He submits that the petitioner being a landlady is considered as aggrieved person since the sanad is issued though in her name contravene the agreement between her and the respondent nos. 1 to 4. Therefore, the impugned order requires interference.

6. He placed reliance on the following decisions:-

(1) **Housing Board, Haryana Vs. Housing Board Colony Welfare Association and others¹**.

¹ (1995) 5 SCC 672

(2) **D. Saibaba Vs. Bar Council of India and another.**²

(3) **Writ Petition no. 4607 of 2014, Buldana Urban Co-operative Society Ltd., Vs. Deputy Director and anr.**

7. He further submits that the learned Tribunal failed to consider the documents alongwith the appeal but only decided it on the ground that no application for condonation of delay is filed and that appeal is barred by limitation as provided under section 189 of the Land Revenue Code.

8. Shri. Lotlikar appearing for respondent nos. 1 to 4 would submit that since the sanad is issued in the name of the petitioner, she had knowledge of it as any act carried out by the power of attorney on the basis of such document has to be presumed as to act done by the owner or the person who has given power of attorney and thus appeal was hopelessly barred. He submits that there is no question of considering matter on merits since the Tribunal has dismissed the appeal only on the ground that the same was barred under section 189 of the Land Revenue Code.

9. He submitted that petitioner filed civil suit challenging the authority of the power of attorney to obtain sanad or other permissions in respect of the portion of the petitioner. The said suit has been dismissed by the trial Court. However, he admits that an

² (2003) 6 SCC 186

appeal has been filed before this Court which is still at the stage of admission.

10. Relevant rival contentions considered by this Court.

11. Section 188 in Chapter 12 of the Land Revenue code 1968 deals with appeals, revision and review.

12. The appeal is provided from original order passed by the authorities acting under the said Code. Therefore, sanad issued under section 32 of the Code is also an order passed by the concerned authority and accordingly appeal is maintainable.

13. Section 189 of the Code provides limitation and read thus:-

189. Limitation of appeals.— No appeal shall lie,—

(a) in the case of a first appeal, after the expiry of sixty days from the date of the order appealed against; and

(b) in the case of a second appeal, after the expiry of sixty days from the date of the order appealed against.

14. The above provision clearly and without any ambiguity provides that the first appeal shall not lie after expiry of 60 days from the date of order appealed against, which is applicable to the matter in hand.

15. In the present matter since sanad is issued in the name of the petitioner itself though through power of attorney, it is to be presumed

that the acts performed by the power of attorney are as per the knowledge of the person who gives such power. It is different proposition that if there is violation of the condition of the power of attorney which is to be challenged before the appropriate forum. In this case the petitioner has already filed civil suit raising grounds that permissions were obtained by misrepresentation. Admittedly the said suit has been dismissed. No doubt the appeal is pending, however the fact remains that till such claim of the petitioner is not accepted by the Court about misrepresentation or otherwise all acts done by the power of attorney are presumed that the same are within the knowledge of the person who gives such power of attorney.,

16. Mr. Frias relied upon *Housing Board, Haryana* (supra) wherein Section 15 of the Consumer Protection Act 1986 specifically provides that the order has to be communicated to the parties and only thereafter the period of limitation would start, which is not the case in the present matter. Therefore, the observation of the Apex Court in the case of *Housing Board* (supra) are different aspects and would not help the case of the petitioner in any manner.

17. In case of D. Saibaba (supra) the Apex Court while dealing with the provisions of Advocate's Act and the Bar Council of India rules wherein it was observed that when the impugned order is not communicated to the parties for the purpose of filing of review, the period of limitation would not start.

18. In the present matter Section 188 and 189 of the Code are very clear and provide that the appeal has to be filed within a period of 60 days from the date of order. Therefore, the observations in the case of *D. Saibaba* (supra) are of no help to the petitioner.

19. Mr. Frias has also relied upon the order passed in Writ Petition no. 4607 of 2014 wherein reliance was placed in the case of *D. Saibaba* (supra) thus observations in the case of *D. Saibaba* (supra) are different and hence not helpful to the petitioner.

20. Since the petition is filed under Article 227 which is having supervisory jurisdiction it is necessary to prove that the impugned order is suffering from material informity and illegality.

21. First of all the learned Tribunal has observed that the limitation period is 60 days from the date of passing of order, which cannot be faulted with as it is evident from the language used in the section itself.

22. Secondly, it is admitted that the petitioner could have applied for condonation of delay for filing Appeal by giving reasons, which would have been considered as sufficient grounds for condoning the delay. Admittedly, no such application was filed. There are clear averments in the appeal memo which are made in paragraph 26 stating that the appeal is within limitation.

23. The question of knowledge of the petitioner about the order is subjective satisfaction and therefore the date of order assumes

significance and that to when such order/sanad is issued in the name of petitioner itself.

24. Learned Tribunal has clearly observed that conversion sanad is dated 25.02.2013 and thereafter it was terminated only with effect from 15.09.2017. The Tribunal has observed that appellant has clearly acknowledged the existence and validity of the power of attorney and the powers conferred thereunder on the basis of which the conversion sanad was issued. The Tribunal further observed that the appeal is filed against self as the sanad is issued in the name of the petitioner. These observations of the Tribunal that the petitioner cannot be considered as aggrieved, cannot be faulted with since the said sanad was issued only in the name of the petitioner and that to on the basis of power of attorney as well as agreement for development of the entire property executed between her and the respondents.

25. Appeal was filed in the year 2018 i.e. after a period of 5 years from the date of sanad.

26. It is difficult to accept that the petitioner who is claiming to be the joint owner of the property was unaware of the issuance of sanad in her own name. The contentions of the petitioner in the present petition are therefore devoid of merits. The impugned order nowhere show any illegality or informity so as to interfere with it under Article 227 of the Constitution.

27. In the result, petition stand dismissed. The parties shall bear their own costs.

BHARAT P. DESHPANDE, J.