



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.706 OF 2023

Mr. Agnelo H A Andrade

... PETITIONER

s/o late Valeriano F.X. Andrade
57 years old, Indian National
R/o H/No. 2/b Per-Seraulim
South Goa

v/s

1. The Additional Collector
Mathany Saldhana
Administrative Complex
Margao-South Goa.

2. The Mamlatdar of Salcete
Taluka, Mathany Saldhana
Administrative Complex
Margao-South Goa

3. Mrs. Edviges Andrade

4. Mrs. Maria Severina Victoria Andrade
and her Husband

5. Mr. Minguel Socrates Falcao

6. Mr. Jose Antonio Andrade and his wife.

7. Mrs. Maria do Ceu Angelina Henriqueta
Andrade

8. Mr. Eusebio Socorro Andrade and his
wife;

9. Mrs. Melinda Sara Sales

10. Mrs. Karen Andrade

11. Mr. Francisco Herdonio Andrade and his wife;

12. Mrs. Judith Barreto

13. Mr. LuizaCarmina Andrade and his wife;

14. Mrs. Pamella Rodrigues

15. Mrs. Nazreen S. D'Mello

16. Mr. Peter Manuel D'Mello

17. Mrs. Juliet Bonafacio Vaz

18. Mr. Bonafacio Vaz

19. Mrs. Sita Eugene Gomes

20. Mr. David Caetano Gomes

21. Mrs. Lucia Rodrigues

22. Mr. Richard Rodrigues

23. Mr. Agnelo Cruz Andrade

24. Mr. Maurice Jose Andrade

25. Mrs. Fatima Andrade

All major in age
All Indian Nationals
All residing at Zaino,
Velim Salcete-Goa

...RESPONDENTS

Mr. Shane Gomes Pereira, Advocate for the Petitioner.

Mr. Geetesh Shetye, Additional Government Advocate for Respondent Nos.1 and 2.

CORAM: BHARAT P. DESHPANDE, J

DATED: 8th August, 2024.

O R A L J U D G M E N T :

1. Rule. Rule is made returnable forthwith.
2. The matter is taken up for final disposal at the admission stage itself as notice to the private Respondents is not necessary for the reasons recorded below.
3. Mr. Shetye, learned Additional Government Advocate appears for Respondent Nos.1 and 2.
4. The present proceedings are filed challenging the order passed by the Collector/District Magistrate on 22/11/2022 thereby communicating the Petitioner of its appeal filed on 15/11/2022 against the order dated 30/06/2022 stands rejected as not maintainable.
5. Mr. Pereira, learned Counsel for the Petitioner submits that he being aggrieved by the order passed by the Deputy Collector dated 30/06/2022 whereby an appeal filed against the decision of the

Mamlatdar in mutation case, the petitioners approached the Collector by filing a second appeal.

6. Mr. Pereira submits that the said Second Appeal is maintainable under Section 188(2) of the Land Revenue Code against the order passed by the Deputy Collector and the time period for filing such appeal is 60days as provided under Section 189.

7. Mr. Pereira submits that the Petitioner admittedly filed the appeal beyond the period of limitation but along with the application for condonation of delay as provided under Section 195 of the said Code.

8. Mr. Pereira would submit that the Petitioner was not notified or given an opportunity to argue the application for condonation of delay and the same was rejected by the impugned order dated 22/11/2022 only on the ground that the appeal is filed beyond 60days and such huge delay is not justified.

9. The impugned order passed by the Additional Collector, South Goa District Margao reads thus:

**OFFICE OF THE COLLECTOR & DISTRICT
MAGISTRATE, SOUTH GOA DISTRICT, MARGAO GOA,**

*Additional Collector-1 Section
Matanhy Saldanha Administrative Complex, Margan-Goa.
email: acl-south.goa@nic.in*

*Phone No:0832-2794423
No.AC-I/LRC/Misc/1/2022 114*

*Fax No: 0832-2794402
Date: 22/11/2022*

*To,
Mr. Agnelo H A Andrade,
S/o. Valeriano F.X. Andrade,
57 yrs, Indian National,
R/o. H.No.2/b, Per-Seraulim, Salcete Goa.*

Ref:- Your Second Mutation Appeal dated 15/11/2022.

Sir,

With reference to your Appeal Application dated 15/11/2022 against the Order dated 30/06/2022 passed by the Dy. Collector & SDO of Salcete, Margao Goa in case No. SDO-II/SAL/LRC/MUT-APPL/03/2017/951, received in this office on 15/11/2022, following discrepancy/observation is noticed in the said appeal:

(i) As per the Provision of Section 189 of the Goa Land Revenue Code, 1968 the limitation period prescribed is 60 days. Whereas, in the instant case the same is filed after substantial time period, since the impugned Order is dated 30/06/2022 and the date of receipt of the said appeal in this office is 15/11/2022 and such a huge delay cannot be justified.

In the light of above, your appeal application cannot be processed and as such the same is summarily rejected in terms of Rule 3 of the Goa Land Revenue

(Appeals, Revision and Review) Rules, 1969 and Section 188/189 of the Goa Land Revenue Code, 1968, being not maintainable.

Your faithfully

*Sd/-
(Srinet Kothwale)
Additional Collector-1,
South Goa District Margao Goa.*

10. The Petitioner preferred an appeal under Section 188(2) (A) of the Code whereby challenging the order passed by the Deputy Collector while deciding the First Appeal. Since the appeal was filed late and an application for condonation of delay was also annexed to the Second Appeal disclosing reasons for the delay of 60 days. The said application appending with an affidavit of the Petitioner thereby discloses reasons for filing the appeal late.

11. Chapter XII of the Code deals with Appeals, Revision and Review.

12. Section 188(2) specifically provides a Second Appeal against the order passed by the Sub-Divisional Officer, before the Collector. It is no doubt true that the period for filing such a Second Appeal is 60 days from the date of order as provided under Section 189, there is a provision for condonation of delay as provided under Section 195, which reads thus:

195. Application of limitation Act, 1963.—
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.

13. The above provision clearly provides that Section 5 of the Limitation Act shall apply to the filing of appeals, applications for revision and review under the said Act. Thus, it is clear that even Section 5 of the Limitation Act is made applicable for the filing of appeals which include Second Appeal under Section 188(2) of the said Code.

14. Once such an application is filed, the natural justice demand of giving hearing to the Applicant justifying that delay occurred in filing of the appeal. Such opportunity is by way of giving hearing in the matter or by allowing the parties to file written submissions.

15. The matter in hand clearly goes to show that though the Second Appeal along with the Application for condonation of delay was filed and presented somewhere in November, 2022, there is no record of giving any opportunity to the Petitioner of hearing. The impugned order also nowhere shows that the concerned authority

afforded an opportunity to the Petitioner to argue the matter justifying the delay in filing the appeal. It further shows that without such opportunity, an order is passed on 22/11/2022 holding that such delay is not justified.

16. The approach of the learned Second Appellate Authority is clearly against the principles of natural justice and fair play. Without giving any opportunity of hearing, the application ought not to have been dismissed.

17. The concerned authority is clearly acting as a quasi judicial authority and specific power is given to hear the Second Appeal under the Code.

18. Such power needs to be exercised by applying or considering the principles of natural justice.

19. Having said so, the only option is to quash and set aside the impugned order dated 22/11/2022 by restoring the condonation of delay application along with the Second Appeal and by remanding the matter back to the authority with directions to give an opportunity to the Petitioner of hearing and thereafter to decide the delay application in accordance with the law.

20. Accordingly, the impugned order is quashed and set aside. An application for condonation of delay along with the Second Appeal filed by the Petitioner is restored to the file of the learned Collector, South Goa with directions to give an opportunity of hearing to the Petitioner and thereafter to decide the application for condonation of delay in accordance of law.

21. The parties shall appear before the Collector on 22/08/2024 at 3.00pm.

22. The Collector to give an opportunity to the Petitioner of hearing on the delay application and then decide it in accordance with the law as early as possible.

23. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.