

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.950 OF 2023

Comunidade of Bordem,
Having its office at Bicholim, Goa,
Through its Attorney
Mr. Somnath Harishchandra Pal,
42 years of age,
S/o. Harishchandra Pal,
Resident of Bordem, Bicholim, Goa.

.....PETITIONER

Versus

1. Shri Narayan Ramnath Pal,
Major of age, R/o. H. No.2/341,
Madhlawada, Bordem, Bicholim, Goa.

2. Smt. Sidhabai Ramnath Pal,
(Since deceased through her legal
Representative the R.No.1)

.....RESPONDENTS

Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. Ajit Kantak, Advocate for Respondent No.1.

CORAM: BHARAT P. DESHPANDE, J

RESERVED ON : 16th April, 2024

**PRONOUNCED 6th May, 2024
ON:**

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties for final disposal at the admission stage.

2. Heard Mr. A.D. Bhobhe, learned Counsel for the petitioner and Mr. Kantak, learned Counsel for respondent No.1.

3. In the present petition challenge is raised to the order passed by the learned District Court, Mapusa in Tenancy Revision Application No.16/2015 vide order dated 27/11/2015.

4. The petitioner/Communidade of Bordem is challenging the impugned order dated 27/11/2015 by way of filing this petition, i.e. after a period of five years. Some reasons are disclosed in the petition explaining about the delay.

5. Mr Bhobe, learned Counsel appearing for the petitioner would submit that though there is nearly delay of 5 years in challenging the impugned order, the same is properly explained. He contended that the earlier attorney appointed to look after the Court matters, failed to take appropriate care and did not informed the Comunidade about the case and accordingly the said attorney was removed and new attorney was appointed. He submitted that a new attorney was not getting proper details of the cases from the earlier attorney and theretofore there is delay in challenging the impugned order. Mr. Bhobe while placing reliance in decision of delay and laches, would submit that this is a fit case wherein explanation is given for the purpose of entertaining the petition thereby challenging the impugned orders.

6. Mr. Bhobe on merit would submit that the respondent by filing an application under Sections 7 and 14 of the Goa Tenancy Act claimed that the suit property was auctioned in favour of their ancestors for a period of 3 years which continued thereafter on payment of rent and accordingly the respondents became deemed purchasers. He would submit that there is no tenancy document however whatever was produced was only some auction proceedings for a period of 3 years. He would submit that as per the Code of Comunidade, auction for three years was not in respect of creation of tenancy but only for income purpose and therefore such auction even if it is accepted, would not give right to claim tenancy. Mr. Bhobe would submit that such auction was for the purpose of plucking fruits and it was not a long term lease. He submits that the Mamlatdar, Deputy Collector as well as District Court completely lost the sight of the provision of the Code of Comunidade with regard to creation of lease which is totally different from auctioning of the interest for a limited period, without creating any right of the auction purchaser in the land.

7. Mr. Bhobe would thereafter submit that the order passed by the Mamlatdar, the Deputy Collector as well as that of the District Court are cryptic and without any plausible reasons. He submits that all these Courts, summed up the findings in one paragraph without considering the nature of documents relied upon by the parties.

8. Mr. Bhobe would submit that this is a fit case to interfere under Article 227 of the Constitution of India so as to save large property of the Comunidade.

9. Mr. Bhobe would then submit that there are no proper pleadings as to when the tenancy was created, the rent was paid etc and thus on such cryptic application ought not to have been considered.

10. Finally, Mr. Bhobe would submit that Comunidade is required to act in accordance with the Code of Comunidade and therefore the documents placed on record would not justify the creation of any tenancy in favour of the respondents. He would submit that this is a fit case to remand the matter before the learned District Court to consider all these aspects and decide the revision in accordance with law.

11. Per contra, Mr. Kantak appearing for the respondents would submit that there is inordinate delay in filing the petition and there is no proper explanation coming forth. He would submit that the present attorney was very much aware about the proceedings in the year 2016 itself when he appeared for the mutation proceedings. He then claimed that there is total inaction on the part of Comunidade from the date of order passed by the District Court and blame on the earlier attorney cannot be put. He submits that there is two types of attorneys one is the regular attorney whereas the second is the special attorney. He submits

that the regular attorney as well as special attorney are both entitled to look after the cases against the Comunidade pending in different Courts.

12. Mr. Kantak would then submit that respondents filed mutation proceedings in the year 2007 itself which were objected by the Comunidade and even the appeal was filed against it. Thus the explanation given in the present petition with regard to the delay and laches, is not at all satisfactory.

13. Mr. Kantak would then submit that on merit, a specific case was put forth by the respondent that their ancestors was allotted a land in auction for a period of three years, which continued to be enjoyed till the tillers' day. He submits that thereafter, there was no need for paying the rent which has been accepted in the documents of the Comunidade. He would then submit that the definition of lease, rent, tenancy and tenant as found in the Tenancy Act would clearly attract to the case in hand.

14. Mr. Kantak then would submit that Section 7 of the Tenancy Act deals with the question to be decided by the Mamlatdar and accordingly the matter was taken up before the said Mamlatdar and after the detailed inquiry a finding was arrived at though in concise form i.e. within one paragraph. He would submit that such findings are based on the evidence and documents placed on record. The petitioner challenged such decision

before the Deputy Collector and finally before the District Judge unsuccessfully.

15. Mr. Kantak then would submit that while dealing with the present petition and more particularly concurrent findings of the Courts below, this Court should not venture into such findings of facts unless it is shown that such findings of facts are patently illegal.

16. Mr. Kantak would submit that even a scope of revision under Section 50, before the District Judge was very limited and since the findings of the Courts below were not found to be perverse, such revision was rightly rejected. Finally, Mr Kantak would submit that even the purchase proceedings filed by the respondents are concluded and thus the respondents are now owners of the property in question.

17. The rival contentions fall for determination.

18. Contentions with regard to delay and laches in approaching this Court will have to be taken first. If the petitioner succeeds in showing reasons in connection with delay and laches, the matter could be taken up on merits.

19. It is admitted fact that the revision filed by the petitioner vide Tenancy and Revision Application No.16/2015 was dismissed by the learned District Judge II Mapusa on 27/11/2015 whereas present petition

was filed on 24/08/2020. Thus the petition is filed nearly about 5 years from the date of disposal of the revision petition.

20. Reasons for such delay and laches are found in paragraph Nos 10 to 14, in the present petition.

21. It is the contention of the petitioner that it is a body of Association governed by the Code of Comunidade and looked after by the Managing Committee. The attorney appointed by Managing Committee is responsible for protecting the interest of the Comunidade and managing the legal matters. At times, to attend or look after legal matters, special attorneys are appointed. In this matter vide resolution dated 10/10/2010, one Mr. Tukaram Naru Pal was appointed as special attorney w.e.f. October, 2010. Said Tukaram Pal was looking after and attending the matter/s for and on behalf of the petitioner. Vide letter dated 18/09/2018, said Tukaram was called upon to hand over the details pertaining to all the cases looked after by him, since the time he has taken charge as special attorney. Vide reply dated 27/10/2018 said Tukaram failed to disclose the details of the cases handled by him. Accordingly, vide letter dated 01/11/2018 said Tukaram was called upon to remain present before the committee. Though Tukaram attended the meeting, he was unable to give answers in respect of proceedings/matters handled by him. Accordingly, the petitioner removed Tukaram as special attorney w.e.f. 04/11/2018 and thereafter Mr. Somnath Harischandra Pal was

appointed as attorney and was given responsibility to look after the legal matters w.e.f. 04/11/2018.

22. It is further contention of the petitioners that new attorney Mr Somnath was finding it difficult to look into legal matters as earlier attorney Tukaram failed to disclose the details and subsequently said Tukaram expired on 21/11/2019.

23. The petitioner further claimed that somewhere on 05/02/2020 Advocate Mr. Amol Sawant appearing for the petitioner informed attorney Somnath that he will not be unable to attend the matter of the petitioner before Mamlatdar Court. Accordingly attorney Somnath appeared before the Mamlatdar in tenancy case no.108/2018 and tried to find out the subject matter of the proceedings. At that time, the attorney found that the said case is with regard to purchase proceedings filed by the respondents in connection with the suit property. On further inquiry the said Somnath found that the declaration was granted by the Mamlatdar, confirmed by the Deputy Collector and also by the District Court and thereafter the respondents filed purchase proceedings. Thus it is their case that the earlier attorney Tukaram failed to inform the Comunidade about the matters pending in the court and the decisions made thereunder.

24. Mr. Kantak appearing for the respondent strongly objected to such contentions on various grounds stating therein that the Comunidade is a body of persons who has to take decisions though attorney is entitled to attend the proceedings for and on behalf of the Comunidade. He submits that the decision passed by the Mamlatdar would clearly go to show that the written statement was filed on behalf of the Comunidade which is dated 01/09/1995. Similarly earlier attorney Tukaram deposed in the matter and his deposition was recorded somewhere in the year 2000. The learned Mamlatdar after considering the evidence and documents placed on record, passed a judgment on 29/07/2002. The Comunidade immediately filed an appeal before the Deputy Collector wherein earlier attorney Tukaram was the signatory to the appeal memo. Advocate was representing the Comunidade before the Mamlatdar, Deputy Collector as well as before the District Court. Thus it is very much clear that the earlier attorney Tukaram intimated the Comunidade about the judgment passed by the Mamlatdar, Deputy Collector and only thereafter decision was taken by the Comunidade to challenge it before the District Court. The revision filed before the learned District Court Mapusa would clearly go to show that the Comunidade was also represented by an Advocate.

25. It is no doubt true that the Comunidade is a body of persons governed by Code of Comunidade and attorney is appointed to look after the matters and represent Comunidade before various authorities.

However, it is also a fact that the present attorney by name Somnath was also attending the proceedings of the Comunidade. This is evident from the reply/written statement filed by the petitioner Comunidade in a tenancy case/suit No.47/2016 **Narayan Ramnath Pal v/s. Comunidade of Bordem and Anr** produced at Exh.C by the respondents. This written statement/reply filed by the Comunidade is dated 17/01/2017 which is signed by Somnath Pal as attorney of the Comunidade. These proceedings were filed by respondent No.1 against the Comunidade under Section 18 of Tenancy Act for the purchase of tenanted property. In these proceedings, respondent has clearly averred in paragraphs No. 2 to 5 that they are in possession of the property as tenants and their application for declaration of tenancy was allowed by the Mamlatdar by order dated 29/07/2002 against which the Comunidade filed an appeal before the Deputy Collector and then revision before the District Judge II were rejected. Paragraph 5 of this purchase proceedings shows that the tenancy revision No.16/2015 was dismissed vide order dated 27/11/2015.

26. The petitioner contested such purchase proceedings by filing reply/written statement. The present attorney Somnath appeared before the Court under the purchase proceedings in said matter and then filed an application on 29/08/2016 which is at Annexure B page 136. Thereafter the petitioner through the present attorney Somnath filed reply/written statement thereby opposing the purchase proceedings. In such reply and

with reference to paragraph 7 of the purchase application, the petitioner stated thus: *“With reference to paragraph 5 of the said application, the opponent No.1 state that since the applicant had obtained the Judgement & Order dated 29th July, 2002 in the said Case No. JM/I/TNC/121/1993 by misleading the lower Court with false and fabricated documents, the appellate Courts had upheld the said order.”*

27. This reply/written statement in the purchase proceedings is affirmed by the present attorney Mr. Somnath on 17/01/2017. Thus such reply/written statement filed in January, 2017 would clearly go to show that the Comunidade had a clear knowledge of the dismissal of their revision by District Judge-II Mapusa in the year 2015 itself. There is no whisper in this written statement/reply to the purchase application that the petitioner had no knowledge about dismissal of revision petition on 27/11/2015.

28. The application for purchase under Section 18 of the Tenancy Act was preferred by the respondent in July 2016 and the notice of it was served upon the Comunidade. In August 2016, the attorney of Comunidade i.e. Somnath Pal appeared before the tenancy Court in such purchase proceedings and thereafter in January 2017 he filed a detailed written statement/reply. Thus, it is clear from the record that before filing of the written statement in January 2017, the present attorney Mr. Somnath Pal as well as the petitioner Comunidade had a

knowledge of dismissal of their revision petition by the District Court in the year 2015 itself. Admittedly, Comunidade failed to approach this Court immediately after having knowledge of the dismissal of such revision and on filing of the written statement for the purchase proceedings in January 2017. Such proceedings were contested and it is submitted by Mr. Kantak that the proceedings have been concluded.

29. The record produced along with the reply filed by the respondents, which are the documents of the petitioners filed before the Court would go to show that the reasons or the grounds disclosed from paragraphs 10 to 14 in the petition for explaining the delay and laches are clearly concocted and false. The present attorney Mr. Somnath was fully aware about the matters and even purchase proceedings in January 2017 when he filed written statement in the purchase proceedings, it must have been approved by the managing committee of the Comunidade. Thus the Managing Committee of the Comunidade had a knowledge of the dismissal of the revision by the District Court, at least in January 2017.

30. Besides, the petitioner was represented by the Advocate throughout the proceedings before the Mamlatdar, Deputy Collector as well as before the District Court, Mapusa. There is absolutely no whisper in the entire petition as to whether the Advocate failed to Comunidade the decisions passed by the Courts and more specifically the decision of the District Court on 27/11/2015, to the Comunidade.

31. Blaming the earlier attorney who expired somewhere in 2019, would not be sufficient enough as the Managing Committee of the Comunidade is also fully responsible for the purpose of looking after the affairs of the Comunidade and more particularly taking various decisions of filing of the Written Statement/reply etc. in the matters pending in the Court.

32. Mr. Bhobe placed reliance in the case of State of **Uttar Pradesh v/s. Bahadur Singh and Others** [(1983) 3 SCC 73], however, this case will not help the petitioner in any way. In that matter, the High Court dismissed the Writ Petition on the sole ground that the petition was filed after a long delay i.e. beyond the period of 90days. The Apex Court observed that there is no such period of limitation prescribed for filing a Writ Petition. The only known principle is that the Court may not examine stale causes as the court helps the vigilant and not the indolent. It is a rule devised on the principle of judicial circumspection and has to be applied wisely. These observations are in fact supports the case of the respondents.

33. Mr Bhobe would then placed reliance in the case of **Basanti Prasa v/s. Chairman, Bihar School Examination Board and others** [(2009) 6 SCC 791]. Again the Apex Court while relying earlier decisions, observed that when there is negligence or laches or acquiescence on the part of the appellant as may disentitle her for grant of a writ. While

relying in the case of State of MP v/s. Nandlal Jaiswal [(1986) 4 SCC 566], it was observed in paragraph 20 that if there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. Of Course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

34. Mr. Katak while relying upon the case of **Karnataka Power Corpn.Ltd. Through its Chairman and Managing Director and another v/s. K. Thangappan and Another**[(2006) 4 SCC 322] would submit that the observations of the Apex Court in paragraph 6 would clearly support the case of the respondent. In that matter, the Apex Court observed that delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case, the High

Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court.

35. Having regard to the above circumstances and the fact that the record show that the present attorney was well as the Comunidade was fully aware in January 2017 that the revision was dismissed, failed to take necessary steps. This petition is filed almost 5 years from the date of dismissal of the revision petition. The reasons disclosed from paragraphs No.10 to 14 in the petition are contrary to the record. The present attorney Mr. Somnath Pal was very much aware about the dismissal of the revision including that all the Managing Committee of the Comunidade, at least in January 2017 when they filed a reply /written statement to the purchase proceedings. Thus the contentions raised in the petition that the Advocate appearing for the petitioner somewhere in February 2020 disclosed to the attorney that he is unable to attend the matters fixed before the Mamlatdar and only thereafter the present attorney started inquiring into the present matter is clearly contrary. The present attorney Mr. Somnath Pal as well as the committee was well aware in January 2017 itself that the revision is dismissed in the year 2015. therefore filing a petition in August 2020 without explaining the laches and delay satisfactorily, goes against the Comunidade. The contention of the

petitioner in paragraphs No.10 to 14 are factually incorrect as discussed above and thus such reasons cannot be considered at all for the purpose of explaining the laches and delay on the part of petitioner to approach this Court. On this count alone, the petition needs to be dismissed.

36. Since the matter was argued on merit, it is necessary for this Court to consider the aspect of merit also. It is admitted fact that the proceedings were filed for declaration of tenancy before the Mamlatdar in the year 1993 itself. The petitioner contested such proceedings by filing Written Statement and even leading evidence. The learned Mamlatdar considered entire evidence and passed the judgment in favour of respondents. It is no doubt true that the reasons are found only in one paragraph. However the facts remains that the petitioner challenges such findings of the Mamlatdar before the Deputy Collector who also decided the matter in favour of the respondents. Thus, it is clear that there are two authorities holding in favour of the respondents and basically on the findings of the facts.

37. The revision was filed before the District Court under Section 50 of the Tenancy Act and it is well settled that the scope of revision is limited. The learned District Court found that there is no illegality or perversity in the order passed by the Trial Court and accordingly dismissed the revision. The documents were placed on record which were considered

by all the Court and accordingly the decision was rendered in favour of the respondents.

38. Such findings of facts cannot be gone into in writ petition and that too under Article 227 of the Constitution of India.

39. The petition therefore needs to be dismissed mainly on delay and laches.

40. Writ Petition stands dismissed.

41. Rule is discharged in the above terms.

BHARAT P. DESHPANDE, J.

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