
(2010) 10 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 691 of 2010

Shri Pascoal Rodrigues

APPELLANT

Vs

State and Dy. Collector and Sub Divisional Magistrate, Panaji,
Goa

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 10 BOM CK 0047

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : Arjun Naik, for the Appellant; V. Rodrigues, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard Mr. Naik, learned Counsel for the petitioner and Mr. Rodrigues, learned Additional Government Advocate for the respondent. By this petition, under Articles 226 and 227 of the Constitution of India, the petitioner challenges the order dated 08-09-2010, passed by the Administrative Tribunal, Panaji refusing to condone delay of 63 days in filling appeal against judgment and order dated 25-09-2009, passed by the Deputy Collector directing the petitioner to demolish the illegal structure, admeasuring 104 square metres constructed in the property bearing chalta No. 2 of P.T. sheet No. 192 at Dona Paula and to restore the land to its original position.

2. The petitioner by order dated 27-02-2009, passed by the Deputy Collector and SDO, Panaji was ordered to stop the illegal construction of rooms in property surveyed under chalta No. 2 of P.T. sheet No. 192 of city of Panaji thereby converting agricultural land to non-agricultural use without permission u/s 32 of the Land Revenue Code, 1968.

3. The petitioner was asked to show cause as to why action should not be taken

against the petitioner. The petitioner appeared before the Deputy Collector on 09-03-2009 and matter was adjourned to 16-03-2009. On 16-03-2009, according to the petitioner his brother appeared and thereafter the proceedings continued, neither the petitioner nor his brother appeared before the Deputy Collector. The Deputy Collector by judgment and order dated 25-09-2009 held that the construction carried out by the petitioner was illegal and ordered demolition.

4. The petitioner filed application for condonation of delay of 63 days in preferring appeal before the Administrative Tribunal. According to the petitioner, his relations with his brother, Francisco were strained for 12 years and the petitioner was not informed about the further proceedings held by the Deputy Collector. According to the respondent, the operative part of the final order passed by the Deputy Collector, was served on the petitioner whereas, according to the petitioner, the notice was served on his brother and not on him. The Administrative Tribunal refused to condone the delay and held the petitioner negligent, guilty of inaction and there were malafides on the part of the petitioner by submitting that the relation with his brother were strained and that he was not aware of the order since it was served on his brother and not on him.

5. The learned Counsel for the petitioner placing reliance on judgment of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and in the case of, N. Balakrishnan Vs. M. Krishnamurthy, , submitted that the term "sufficient cause" has to be liberally construed. Further, neither there was negligence nor inaction on the part of the petitioner and the petitioner was not aware of the final order passed by the Deputy Collector ordering demolition of the house which has been existing for many years. The petitioner filed application for condonation of delay of 63 days in preferring appeal before the Administrative Tribunal.

6. Mr. Rodrigues, learned Additional Government Advocate submitted that since the petitioner has not with true facts he is not entitled for condonation of delay of 63 days in filing the appeal.

7. After perusal of the record and on hearing rival submissions from the learned Counsel appearing for their parties, I am of the considered opinion that no case is made out for interference with the impugned order by the petitioner under Articles 226 and/or 227 of Constitution of India. It is well settled that the jurisdiction under Articles 226 and/or 227 of the Constitution of India is discretionary and that one who comes to the Court must come with clean hands and if he does not come with clean hands, he is not entitled to any relief.

8. In the present case, the petitioner had filed an affidavit that his relations with his brother were strained for 12 years. It is obviously not true in as much as his brother appeared on behalf of the petitioner before the Deputy Collector on 16-03-2009. Appearance of his brother on behalf of the petitioner on 16-03-2009 completely belies the story of the petitioner that his relations with his brother

were strained. Therefore, the necessary sequitur is that the petitioner has not come before this Court with correct facts and on this ground alone, the petition filed by the petitioner deserves to be dismissed. No doubt, the judgments relied by Mr. Naik lay down the term "Sufficient Cause" is to be liberally construed but at the same time a party guilty of suppression of facts is not entitled to any discretionary relief. Therefore, the authorities relied upon by the petitioner do not advance the case of the petitioner. No case is made out for interference with the impugned order. Hence, the Writ Petition stands dismissed.