STATE OF GOA & ANR. A

v.

DR. ALVARO ALBERTO MOUSINHO
DE NORONHA FERREIRA

(Civil Appeal No. 7576 of 2019) B

SEPTEMBER 24, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ]

Goa, Daman & Diu Land Revenue Code, 1968: s 32 – Conversion of land from agricultural to non-agricultural – Payment of conversion charges – Calculation of, on the basis of the rates applicable at the time of making of the application or on the date when the order allowing conversion of land was issued – Held: Payment of conversion fees arises only when a decision is taken to grant a Sanad, thus, the relevant date for fixing the conversion charges will be the date on which the decision is taken to grant the Sanad – On facts, the date appears to be 19.09.2013 – Amount determined by the Collector was deposited by the land owners on 09.10.2013 though under protest – Appellants rightly imposed the conversion charges as on the date of decision to grant Sanad – Respondent not entitled to challenge the levy of these conversion charges in view of his own acts, deeds and conduct – Goa Land Revenue Code (Amendment) Act, 2013. C D E

Allowing the appeal, the Court

HELD: 1.1 The question of payment of conversion fees arises only when a decision is taken to grant a *Sanad*. Therefore, the relevant date for fixing the conversion charges will be the date on which the decision is taken to grant the *Sanad*. In the instant case, that date appears to be 19.09.2013. The amount determined by the Collector was deposited by the land owners on 09.10.2013 though under protest reserving their right to challenge the fixation of the date on which the conversion charges were to be levied. [Para 14] [658-E-F] F G

1.2 Section 32 of the Goa, Daman & Diu Land Revenue Code, 1968 lays down certain timelines and gives a right to the land owners to file an appeal if the timeline is not adhered to by H

A **the department. The application in the present case was filed on 08.03.2013 and 60 days expired on 07.05.2013. The land owner could have filed an appeal immediately thereafter to the appellate authority which was obliged to decide it within 30 days. This was not done. In fact, even after the amendment was made on 22.05.2013, no appeal was filed. No doubt, there is a delay** B **in terms of the timelines laid down in Section 32 but the delay cannot be said to be too much. Furthermore, the respondent waived any rights which may have accrued to them in terms of Section 32 by not filing an appeal. Further, the respondent has acquiesced and consented to conversion charges being paid in** C **accordance with the amended provisions by filing the affidavit-cum-indemnity bond. [Para 17] [659-C-F]**

1.3 The respondent had only sought permission for conversion of 16014 sq. mtrs. of land but on consideration of the plan submitted by the respondent before the Town and D **Country Planning the total requirement of land was 25368.50 sq. mtrs. and, therefore, permission was granted for this 25368.50sq. mtrs. The confusion arose because of the area which the applicant applied for and this led to delay in the decision of the matter. Though from the record it is not very clear on which date the application was filed for conversion of the excess 9354.50** E **sq. mtrs. of land but the finding of the High Court is clear that the application for this additional area which came to be included by a separate addendum to the original application was filed only after the amendment came into force. This portion of the judgment has not been challenged by the respondent. It is, thus,** F **apparent that the land actually required to be converted was 25368.50 sq. mtrs. and, therefore, a complete application could be said to have been filed only after the addendum was added. Even if the addendum is ignored, it is obvious that by applying for a smaller area than what was actually required, the respondent and his family members themselves created a confusion which** G **also was partly responsible for the delay in grant of permission. This is not a case where the delay is very large and the respondent also contributed to the delay by not applying for the conversion of the entire extent of land in one go. Furthermore, the respondent did not even file an appeal. [Para 19-21] [660-**H **C-G]**

1.4 The affidavit-cum-indemnity bond filed by the respondent, there was no coercion in the matter. The respondent was not forced to file such an affidavit. They may have been asked to do so but they could have refused to file it. Nothing has been placed on record to even remotely undertake that undue pressure was put upon the respondent to file such an affidavit. In this affidavit he undertook to pay the conversion charges as demanded. He also undertook not to challenge the imposition of conversion charges. Most importantly, he also undertook not to sue for recovery of any excess conversion charges. The respondent deposited this amount, though under protest. Thereafter, he obtained all necessary permissions and after *Sanad* and all other documents were prepared, he chose to challenge the order. The respondent cannot be permitted to challenge the levy of conversion charges at the rates, post amendment, on account of his acts, deeds and conduct and acquiescence to the said order. Thus, the appellants rightly imposed the conversion charges as on the date of decision to grant *Sanad.* The judgment of the High Court is set aside. [Para 22-24] [660-H; 661-A-D]

Union of India & Anr. v. Mahajan Industries Ltd. & Anr. **(2005) 10 SCC 203 - distinguished.**

Union of India & Ors. v. Dev Raj Gupta & Ors. **(1991) 1 SCC 63 ;** *Ansal & Saigal Properties (P) Ltd. & Ors. v. L. & D.O. & Ors.* **(1998) 74 DLT 152 - referred to.**

Case Law Reference

(2005) 10 SCC 203	**distinguished**	**Para 7**
(1991) 1 SCC 63	**referred to**	**Para 8**
(1998) 74 DLT 152	**referred to**	**Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7576 of 2019.

From the Judgment and Order dated 13.10.2016 of the Division Bench of the High Court of Bombay at Goa in Writ Petition No. 262 of 2014.

A Pratap Venugopal, Ms. Surekha Raman and Ms. Viddusshi for M/s. K J John and Co., Advs. for the Appellants.

Dhruv Mehta, Sr. Adv., Yashraj Singh Deora, Ms. Anupma, Anmol Mehta, Ms. Sonal Mashankar, Shyam Agarwal, Advs. for the Respondent.

B The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. Leave granted.

C 2. The following question arises for decision in this appeal.

"Whether conversion charges payable for conversion of land from agricultural to non-agricultural should be calculated on the basis of the rates applicable at the time of making of the application or on the date when the order allowing conversion of land was issued?"

D

3. Facts necessary for decision of the case are that the respondent and three of his family members applied to the State for permission to convert some agricultural land measuring 16014 sq. mtrs. on 08.03.2013. This application was acknowledged by the Office of the Deputy Collector on 29.04.2013. Inspection of the land was carried E out on 15.05.2013 and the *Mamlatdar* submitted his report to the Deputy Collector on 16.05.2013. Thereafter, a report was submitted by the Town and Country Planning Department on 21.05.2013.

4. On 22.05.2013, amendment was made in the Goa, Daman & Diu Land Revenue Code, 1968 (hereinafter referred to as 'the Code') F by the Goa Land Revenue Code (Amendment) Act, 2013 and the rates of conversion were revised and increased substantially.

5. The Deputy Conservator of Forest, Margao submitted his report with regard to the conversion on 04.06.2013. On 09.07.2013, the G Deputy Collector wrote to the *Mamlatdar* for some information, which information was supplied by the *Mamlatdar* to the Deputy Collector on 15.07.2013. On 19.07.2013, the respondent submitted an affidavit agreeing to pay the conversion charges as asked for and also undertook not to sue for refund of conversion charges. On 19.09.2013, a communication was sent to the respondent and his family members to H deposit the amount as per the enhanced rates. On 09.10.2013, the

respondent deposited the amount of conversion charges, as demanded and thereafter, *Sanad* granting permission for conversion of land was issued on 19.11.2013.

6. Thereafter, the respondent filed writ petition claiming refund of the excess amount, as according to the respondent, the conversion charges should have been fixed as per the rates applicable on the date of application i.e. 08.03.2013. The High Court partly allowed the writ petition in the following terms:

> "(ii) The impugned communication dated 19.09.2013 stands quashed and set aside.
>
> (iii) The respondents are directed to calculate the conversion fees payable by the petitioner in the light of the observations made herein above and refund the excess amount, if any, to the petitioner together with interest thereon at the rate of 8% per annum from the date of such payment up to the actual payment."

The High Court, however, held that this order applied only to 16014 sq. mtrs. and for the remaining area 9354.50 sq. mtrs. which was added by a separate addendum after the amendment came into force on 22.05.2013, the respondent herein shall be liable to pay revised rates. The High Court relied upon the judgments of this Court in the case of ***Union of India & Anr.*** vs. ***Mahajan Industries Ltd. & Anr.*** [1], ***Union of India & Ors.*** vs. ***Dev Raj Gupta & Ors.*** [2], and the judgment of the Delhi High Court in the case of **Ansal & Saigal Properties (P) Ltd. & Ors.** vs. **L. & D.O. & Ors.**[3]

7. As far as the judgment in ***Mahajan Industries case*** *(supra)* is concerned, the judgment is based on the concession of the counsel for the appellant that he did not dispute the correctness of the judgment of the Delhi High Court in ***Ansal & Saigal Properties (P) Ltd.*** *(supra).* The Court further held that in terms of the said judgment the crucial date for calculating the conversion charges is the date of receipt of the application. This Court further held that the application filed by the original owners on 25.03.1981 through their general power of

[1] (2005) 10 SCC 203
[2] (1991) 1 SCC 63
[3] (1998) 74 DLT 152

A attorney for change of land use had never been rejected and was still pending and it was in these circumstances that the Union of India was directed to take a final decision on conversion of land use as expeditiously as possible but conversion charges would be payable as on the date of application for conversion. According to us, this judgment is based on a concession and cannot be used by the respondent and
B has been wrongly relied upon by the High Court.

8. In ***Dev Raj Gupta's case*** *(supra)*, there were various questions raised. One of the questions was – when was the application properly constituted; and the other was, what was the appropriate date for fixing the conversion charges? The High Court held that a proper
C application for conversion had been filed by the land owners on 15.02.1978. The High Court further held that in view of the provision in the Master Plan declaring the area in question in which the leased land was situate as commercial zone, there was automatic and statutory conversion and no application for conversion was necessary. It was
D also held that it was the rate of 1978 which would apply and not the rate of April, 1981. This Court held that an application for conversion was required and a proper application in this behalf was filed only on 27.02.1981. This Court held that the sanction was given by the authority concerned to convert the user of land on 12.01.1984 and the Union of
E India had failed to explain the delay of 3 years in replying to the application for conversion filed on 27.02.1981 and it was in these facts it was held that the conversion charges should be fixed as on 27.02.1981.

9. As far as the judgment of the Delhi High Court in the case of ***Ansal & Saigal Properties (P) Ltd.*** *(supra)* is concerned, on careful
F perusal of the same we find that that judgment has been delivered in the facts of the case. There was no provision for levying of conversion fees from a particular date. In the present case, Section 32 of the Code is applicable and there was no such provision before the Delhi High Court. Therefore, in our view, that judgment has no applicability to the facts and circumstances of the case.
G

10. As far as the present case is concerned, we may make reference to the relevant provisions of Section 32 of the Code which reads as follows:

H "**32. Procedure for conversion of use of land from one purpose to another.** –

(1) xxx xxx xxx

(2) The Collector, on receipt of an application, -

(a) shall acknowledge the application within seven days;

(b) xxx xxx xxx

(c) may, after due enquiry, either grant the permission on such terms and conditions as he may specify subject to any rules made in this behalf by the Government; or refuse the permission applied for, if it is necessary so to do to secure the public health, safety and convenience or if such use is contrary to any scheme for the planned development of a village, town or city in force under any law for the time being in force and in the case of land which is to be used as building sites in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of the occupiers or are suitable to the locality; where an application is rejected, the Collector shall state the reasons in writing of such rejection.

(3) The Collector shall take a decision on the application within a period of sixty days from the date of receipt of the application and in case of his failure to do so, the person shall have the right to make an appeal to the Secretary (Revenue) to the Government who shall dispose of the appeal within a period of thirty days from the date of filing of appeal.

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) When the land is permitted to be used for a non-agricultural purpose, a sanad shall be granted to the holder thereof in the prescribed form, on payment of fees at the following rates, namely:-

xxx xxxxxx

(Rates are prescribed)

(7) xxx xxx xxx"

A 11. It would be pertinent to mention that vide amendment dated 22.05.2013, sub-section (6) was amended providing different commercial rates for different areas and for different purposes. We are concerned with clause (ii) of sub-section (6) of Section 32 which reads as follows:

> "(ii) When the land is permitted to be used from one purpose to
B another, a sanad shall be granted to the holder thereof in the prescribed form, on payment of the fees hereinbelow:-"

12. A careful analysis of Section 32 shows that on receipt of an application, the Collector shall acknowledge the application within 7 days, if it is not otherwise returned. Clause (c) of sub-section (2) of
C Section 32 empowers the Collector either to grant or refuse permission. Sub-section (3) is important and provides that the Collector should take a decision on the application within a period of 60 days from the date of receipt of the application. In case, the Collector fails to take a decision within 60 days then the person has a right to file an appeal to the Secretary (Revenue), who is duty bound to dispose of the appeal within
D 30 days of the filing of the appeal.

13. Sub-section (6) clearly lays down that once permission is granted to use the land for non-agricultural purpose, a *Sanad* is to be granted to the holder thereof on payment of fees prescribed in the Code itself. Even after amendment, the position virtually remains the same.
E

14. The question of payment of conversion fees arises only when a decision is taken to grant a *Sanad*. Therefore, the relevant date for fixing the conversion charges will be the date on which the decision is taken to grant the *Sanad*. In the present case, that date appears to be
F 19.09.2013. The amount determined by the Collector was deposited by the land owners on 09.10.2013 though under protest reserving their right to challenge the fixation of the date on which the conversion charges were to be levied.

15. As far as the present case is concerned, the application was
G admitted submitted on 08.03.2013. The perusal of the record reveals that on 29.04.2013 the Field Surveyor prepared a note that the application is in order and the copies of the same be forwarded to the Deputy Conservator of Forest, Margao, *Mamlatdar*, Salcete, Town & Country Planning Department, Salcete with a request to the respondent and his family members to be present for inspection of the site proposed.
H It would also be relevant to point out that after the officers submitted

the reports, as required, the respondent submitted an affidavit-cum-indemnity bond on 19.07.2013. The relevant portion of the same reads as follows:

> "7. I further say that, myself along with my said brother shall not request the Government for the refund of conversion fees or part of conversion fees paid hereinafter for conversion of said land, except in case where we are not allowed to develop the land by any government authority and or agency."

16. It was thereafter that the order dated 19.09.2013 was passed. After depositing the amount and taking necessary permissions, the writ petition was filed.

17. We are of the view that the situation in the present case is totally different from the cases referred to by the High Court. In the cases decided by this Court, there was no provision similar to Section 32 of the Code. Section 32 lays down certain timelines and gives a right to the land owners to file an appeal if the timeline is not adhered to by the department. The application in the present case was filed on 08.03.2013 and 60 days expired on 07.05.2013. The land owner could have filed an appeal immediately thereafter to the appellate authority which was obliged to decide it within 30 days. This was not done. In fact, even after the amendment was made on 22.05.2013, no appeal was filed. No doubt, there is a delay in terms of the timelines laid down in Section 32 but the delay cannot be said to be too much. Furthermore, the respondent waived any rights which may have accrued to them in terms of Section 32 by not filing an appeal. Further, the respondent has acquiesced and consented to conversion charges being paid in accordance with the amended provisions by filing the affidavit-cum-indemnity bond, referred to above.

18. It was contended by Mr. Dhruv Mehta, learned senior counsel appearing for the respondent that this indemnity bond was a result of coercion by the authorities, who insisted on the said indemnity bond being filed before granting permission. We are not impressed with this argument. In the writ petition filed by the respondent, the only averment made in this regard is that respondent was required to submit the said indemnity bond to the Office of the Deputy Collector. The relevant portion of the writ petition reads as follows:

A "7. On 19/07/2013, the Petitioner submitted Affidavit-cum-Indemnity Bond, which the Petitioner was required to submit to the Office of the Deputy Collector (Revenue)……

8. At the time of presenting the said Affidavit-cum-Indemnity Bond, the Petitioner's representative was told, that the issuance
B of the Conversion Sanad, might be delayed further, as confusion had arisen in the Office of the Deputy Collector (Revenue), in the matter….."

19. We also cannot lose sight of the fact that the respondent had only sought permission for conversion of 16014 sq. mtrs. of land but
C on consideration of the plan submitted by the respondent before the Town and Country Planning the total requirement of land was 25368.50 sq. mtrs. and, therefore, permission was granted for this 25368.50 sq. mtrs. The confusion arose because of the area which the applicant applied for and this led to delay in the decision of the matter.

D 20. Though from the record it is not very clear on which date the application was filed for conversion of the excess 9354.50 sq. mtrs. of land but the finding of the High Court is clear that the application for this additional area which came to be included by a separate addendum to the original application was filed only after the amendment
E came into force. This portion of the judgment has not been challenged by the respondent. It is, thus, apparent that the land actually required to be converted was 25368.50 sq. mtrs. and, therefore, a complete application could be said to have been filed only after the addendum was added.

F 21. Even if we were to ignore the addendum, it is obvious that by applying for a smaller area than what was actually required, the respondent and his family members themselves created a confusion which also was partly responsible for the delay in grant of permission. This is not a case where the delay is very large and we are of the view that the respondent also contributed to the delay by not applying
G for the conversion of the entire extent of land in one go. Furthermore, as pointed out above, the respondent did not even file an appeal.

22. It is in this factual background that we have to consider the affidavit-cum-indemnity bond filed by the respondent. In our view, there was no coercion in the matter. The respondent was not forced to file
H such an affidavit. They may have been asked to do so but they could

have refused to file it. Nothing has been placed on record to even remotely undertake that undue pressure was put upon the respondent to file such an affidavit. In this affidavit he undertook to pay the conversion charges as demanded. He also undertook not to challenge the imposition of conversion charges. Most importantly, he also undertook not to sue for recovery of any excess conversion charges. The respondent deposited this amount, though under protest. Thereafter, he obtained all necessary permissions and after *Sanad* and all other documents were prepared, he chose to challenge the order. In our view, the respondent cannot be permitted to challenge the levy of conversion charges at the rates, post amendment, on account of his acts, deeds and conduct and acquiescence to the said order.

23. In view of the above discussion, we hold that in the facts of the present case, the appellants rightly imposed the conversion charges as on the date of decision to grant *Sanad*, which is the legal position. We further hold that the respondent was not entitled to challenge the levy of these conversion charges in view of his own acts, deeds and conduct.

24. In view of the above, we allow the appeal, set aside the judgment of the High Court dated 13.10.2016 and dismiss the Writ Petition No.262 of 2014 filed by the petitioner (respondent herein). Pending application(s), if any, stands disposed of.

Nidhi Jain Appeal allowed.