

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.791 of 2022

1. Smt. Ava Debnath, wife of late Binoy Bhusan Debnath,
2. Sri Rakesh Debnath, son of late Binoy Bhusan Debnath,
3. Smt. Anupama Debnath, daughter of late Binoy Bhusan Debnath,
4. Sri Bibhash Debnath, son of late Binoy Bhusan Debnath,
5. Sri Ashis Debnath, son of late Binoy Bhusan Debnath,
6. Sri Debasis Debnath, son of late Binoy Bhusan Debnath.

All are resident of Madhya Badharghat, P.O. A.D. Nagar, Agartala, West Tripura.

..... Petitioner(s)

V E R S U S

1. North Frontier Railway represented by Dy. Chief Engineer(construction), N.F. Railways, having its office at Gorkhabasti, Agartala, West Tripura.
2. Land Acquisition Collector, Gomati District, having its office at Udaipur, P.O. R.K. Pur, District- Gomati Tripura.
3. State of Tripura represented by the Secretary to the Revenue Department, having its office at New Capital Complex, P.O. Kunjaban, Agartala, West Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. T.D. Majumder, Sr. Advocate,
Mr. Tapas Halam, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : 1st May, 2023.

Whether fit for reporting : NO.

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the petitioners.

[2] The land acquisition proceedings against late Binoy Bhusan Debnath abated on his death on 22.05.2014, on 21.02.2017. The prayer for

setting aside the abatement was made by the petitioners claiming to be the wife, sons and daughter of deceased claimant through Civil Misc. No.11 of 2021 before the learned Land Acquisition Judge, Gomati District, Udaipur after a delay of 6 years 7 months and 16 days. The learned LA Court heard the parties, dealt with the plea of condonation of delay of 6 years 7 months and 16 days and rejected the application for condonation of delay holding *inter alia* as under :

“Ld. counsel Sri S. Bhowmik is present for the petitioner.
Ld. GP is present on behalf of the LA Collector.
I have heard both sides.

This petition under section 5 of the Limitation Act has been preferred to condone the delay of 6 years 7 months 16 days for setting aside the abatement order dated 21-02-2017 passed in Misc (LA) 05 of 2013 upon death of claimant-petitioner.

As per Article 120 of the Limitation Act upon the death of the plaintiff or respondent the legal heirs are to be substituted within 90 days from the death.

It appears that in Misc (LA) 05 of 2013 the claimant-petitioner Binoy Bhusan Debnath died on 22-05-2014. No substitution of the legal heirs were done till 21-02-2017 when my Ld. Predecessor was pleased to dismiss the case as abated. Therefore, it would appear that this court was lenient enough to allow taking necessary steps for substitution for around three years after the death of original claimant-petitioner.

The principle of condonation of delay is well-settled in the case of M.K. Prasad vs P. Arumugam reported (2001) 6 SCC 176 wherein it has been categorically held that delay should be condoned and the discretion under section 5 of Limitation Act be exercised to advance substantial justice.

It has been held by the Hon'ble Supreme Court that the expression “sufficient cause” in section 5 of the Limitation Act must receive a liberal construction and generally delays should be condoned where gross negligence or deliberate inaction or lack of due diligence cannot be attributed to the party seeking condonation of delay.

It is settled law that acceptability of explanation for the delay is to be the criteria and the length of delay is not relevant. At the same time, it is also no longer *res integra* that courts cannot condone huge delay on mis-placed sympathy as to dilute the principles laid down in law of limitation which is substantive law. Condonation of delay is,

therefore, an exception and exercise of discretionary power by the courts in this regard is to be exercised cautiously and by recording reasons.

The explanation given by the petitioners in this case is that they had temporarily moved away from this District and were residing at A.D. Nagar, Agartala and they were not aware that any reference case instituted by their predecessor-in-interest Late Binoy Bhusan Debnath was pending. Only on 02-05-2021 they came to know from neighbour of their predecessor that such case was pending. Thereafter they have instantly filed this application after collecting the certified copies.

The reasons stated for condonation of delay of 6 years 7 months 16 days is neither candid nor convincing. There is no reference as to whether there was at all any Land Acquisition Proceeding of Late Pranab Debnath, neighbour of Late Binoy Bhusan Debnath. There is also no submission or supporting affidavit from Ld. Counsel Sri Jhulan Ch. Das, the original conducting lawyer that he failed to contact with the legal heirs in this 7 years. Situated thus, I am not convinced with the explanations advanced by the petitioners regarding delay in filing the application.

In the result, the petition for condonation of delay for substituting legal heirs and revival of Misc (LA) 05 of 2013 is dismissed.

The case is disposed of on contest.”

[3] Learned counsel for the petitioners has submitted that petitioners being the wife, sons and daughter were completely unaware of the land acquisition proceedings being pursued by deceased claimant regarding the piece of land acquired by the North Frontier Railway (NFR) under the Land Acquisition Act, 1894. Only after being informed by a legal heir of another awardee, namely, Pranab Debnath the petitioners approached the learned L.A Court for setting aside of the abatement after condonation of delay. The application for condonation of delay has adequately explained the reasons for not been able to seek setting aside of the abatement of deceased claimant within time. Learned counsel for the petitioner submits that the

delay is well explained. As such, impugned order may be set aside and the matter may be remitted to the learned L.A Court for reconsideration.

[4] I have considered the submission of learned counsel for the petitioners and gone through the records including the impugned order dated 07.04.2022. Petitioner No.1 is the wife while petitioners No.2, 4, 5, & 6 are sons of deceased claimant while petitioner No.3 is the daughter of deceased claimant Binoy Bhusan Debnath. The death occurred on 22.05.2014 but due to non-substitution of legal heirs the abatement set in on 21.02.2017 when the predecessor of the L.A. Court dismissed the case as abated. Petitioners took the plea of knowledge through legal heir of another claimant Pranab Debnath and have approached the Court for setting aside of the abatement after condonation of delay in the year 2021 i.e. after 6 years 7 months and 16 days. The learned L.A. Court, however, did not find substance in the explanation urged and accordingly dismissed the application for condonation of delay on contest for revival for Misc(LA) No.05 of 2013.

[5] Having considered the submission of learned counsel for the parties, the grounds urged in the instant petition and also the explanation furnished by the petitioners before the L.A Court, I do not find any infirmity in the order of the L.A Court in dismissing the petition for condonation of gross unexplained delay of 6 years 7 months and 16 days, more so, for the reason that it cannot be countenanced that even the wife of deceased claimant petitioner No.1 or the other four sons leaving aside even the

daughter for the time being were completely unaware of the proceedings in the LA Court when a valuable piece of their immovable property had been acquired for public purposes by the North Frontier Railway. As such, this Court is not inclined to interfere in the order of the learned L.A Court dated 07.04.2022 in Civil Misc. No.11 of 2021.

[6] The writ petition being devoid of merit stands dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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