

GAHC030000432024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/11/2024

The Union of India r/b the Secy to the Govt. of India, Ministry of Defence and Anr.
South Block, New Delhi-110011 2: The Defence Estate Officer
Guwahati Circle

VERSUS

The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram and 7 Ors.
Aizawl, Mizoram 2: The Special Secretary to the Govt of Mizoram Land Revenue
and Settlement Department

3: The District Collector/Deputy Commissioner Aizawl District

4: Sh Remsiana Ngente

5: Sh. Lalnunngila

6: Sh.H.Lalrintluanga(L) r/b his legal heir Zosangliana Hmar

7: The Secy to the Govt. of India
Ministry of Home

8: The Director
(Northeast II) Govt of India
Ministry of Home Affairs

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi

Advocate for the Respondent : Addl. AG/GA, Mizoram

Linked Case : WA/4/2024

The Union of India r/b the Secretary and Anr.
Govt. of India Ministry of Defence
South Block
New Delhi-110011

2: The Defence Estate Officer
Guwahati Circle
P.O. Silpukhuri
Guwahati-781003
VERSUS

The State of Mizoram r/b the Chief Secretary and 7 Ors.
Govt. of Mizoram
New Capital Complex
Khatla
Aizawl
Mizoram

2:The Special Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
New Capital Complex
Khatla
Aizawl
Mizoram

3:The Deputy Commissioner/District Collector
Aizawl District Treasury Square
Aizawl
Mizoram

4:Sh Remsiana Ngente
S/o Denga (L)
House No.KB-10
Lunglei Road
Bawngkawn
Aizawl
Mizoram

5:Sh Lalnunngila
S/o Lungmuana (L)
R/o E-69/1
Chawnga Road
Khatla
Aizawl
Mizoram

6:Sh H.Lalrintluanga (L)
R/b his legal heir
Zosangliana Hmar
S/o H.Lalrintluanga (L)
R/o Huifang
Aizawl District
Mizoram

7:The Secretary to the Govt. of India
Ministry of Home
North Block
New Delhi

8:The Director (North East-II)
Govt. of India
Ministry of Home Affairs
North Block
New Delhi

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi
Advocate for the Respondent : Addl. AG/GA
Mizoram

Linked Case : I.A.(Civil)/112/2024

Union of India and Anr.
R/b the Secretary to the Govt. of India
Ministry of Defence
South Block
New Delhi - 110011

VERSUS

State of Mizoram and 7 Ors.
R/b the Chief Secretary to the Govt. of Mizoram
New Capital Complex
Khatla
Aizawl
Mizoram

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi
Advocate for the Respondent : Addl. AG/GA
Mizoram

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

Date : 19-08-2024

(Marli Vankung, J)

Heard Mr. S.K. Medhi, learned counsel for the applicant/appellant. Also heard Mr. Lalfakawma, learned counsel for the private respondent Nos. 4, 5 & 6. The learned Government Advocate for the State respondents no. 1 to 3 had earlier submitted that they will not be raising any objection.

2. The instant application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 276 days in preferring an appeal against the Judgment & Order dated 15.02.2023 passed by the learned Single Judge in WP(C) No. 170/2019

3. Mr. S.K. Medhi, learned Central Government Counsel/CGC for the applicants/appellants submits that the applicant/appellants had preferred an appeal against the judgment and order passed by the learned Single Judge on 15.02.2023 in WP(C) No. 170/2019 since the learned Single judge had erred in finding that the present applicants/appellants were liable to pay rental compensation to the present respondents. The learned Central Government Counsel submits that there was no delay or negligence on the part of the applicants/appellants, who, vide the Order dated 24.02.2023 had requested the Deputy Solicitor General of India, Gauhati High Court to render his legal opinion on the said judgment and order dated 15.02.2023 and the learned Deputy Solicitor General of India, Gauhati High Court furnished his legal opinion to the

applicants vide letter dated 02.04.2023, wherein, he opined to prefer an appeal against the said judgment and order dated 15.02.2023. Thereafter, the applicants vide the letter dated 24.04.2023 had requested the Deputy Solicitor General of India, Gauhati High Court, to prepare a draft writ appeal and forward the same to the office of the applicants. However, since the same was not done immediately, the applicants had issued reminders to the Deputy Solicitor General of India, Gauhati High Court, vide letters dated 24.05.2023, 30.05.2023, 20.06.2023, 03.08.2023, 05.09.2023, 14.09.2023 and 16.11.2023. (copies duly annexed as annexure –C series). The learned counsel also submits that the certified copy of the Judgment and order was misplaced and the same was applied for and received on 29.11.2023.

4. The learned Central Government Counsel further submits that on 30.11.2023, the case was allotted to him, by the Deputy Solicitor General of India, Gauhati High Court. Thereafter, the present CGC was also required to applied for the uncertified copy of the writ petition and affidavit-in-opposition filed by the respondent Nos. 1 & 4 from the Gauhati High Court, Aizawl Bench on 13.12.2023, since the same were not found legible in the documents handed over to him from the office of the Deputy Solicitor General of India, Gauhati High Court. Thereafter, the copy of the writ appeal was sent to be vetted to the applicants and vetted copy was received by the CGC on 17.12.2023. He further submits that the writ appeal could not be immediately filed before the Aizawl Bench due to the closure of the Aizawl Bench from 16.12.2023 to 11.01.2024 due to winter vacations. The applicant had therefore, on 18.12.2023, made an application before the Chief Justice (Acting of the Gauhati High Court) to allow the applicants to file the writ appeal before the Principal Seat of this High Court,

which was allowed on 18.12.2023. Accordingly, writ appeal was filed by the applicants on 19.12.2023. The learned counsel thus submits that under the above facts and circumstances of the case, the delay of 276 days in filing the writ appeal was not due to any negligence or laches on the part of the applicants and prayed that the said delay may be condoned.

5. The learned counsel for the applicant/appellant has placed reliance on the judgments of the Apex Court in the case of ***Sheo Raj Singh (Deceased) Through Lrs. & Ors. Vs. Union of India & Anr., reported in 2023 7 Supreme 35 – 2023 0 Supreme (SC) 1022***, and the decision of a Coordinate Division Bench of this Court in I.A.(Civil) No. 1243/2017 dated 26.07.2018 in ***State of Assam & 6 Ors. Vs. Relief Families Welfare Service Society & 2 Ors***, wherein, the facts and circumstances of the case are similar with the present case and the Division Bench of the Principal Seat had condoned the delay of 397 days by observing that the delay was not due to the conduct of the Departmental Authorities and that explanation for the delay caused in the office of the Government Advocate appeared reasonable and acceptable

6. Per Contra, Mr. Lalfakawma, learned counsel for the private respondent Nos. 4, 5 & 6 submits that no sufficient cause has been made out by the applicants for the condonation of delay of 276 days in filing the appeal against Judgment & Order dated 15.02.2023. The learned counsel submits that it is admitted by the applicants that, vide communication dated 24.04.2023, the applicants had requested the Deputy Solicitor General of India, Gauhati High Court to prepare a draft of the writ appeal. However, the applicants have not

furnished any explanation for the period between 24.04.2023 and 02.04.2023 which is the date when the Deputy Solicitor General of India provided its opinion for preferring an appeal.

7. The learned counsel further submits that several communications were sent by the applicants to the office of the Deputy Solicitor General of India for the period between 24.04.2023 & 30.11.2023. The applicants have not given any explanation for the non-action of the Deputy Solicitor General of India for a period of 7 (seven) months. The learned counsel further submits that the applicants have submitted that the certified true copy of the Judgment & Order was again obtained on 29.11.2023, without providing any details as to when the first certified true copy was applied for, which raises doubt whether a certified copy was ever applied for previously. This action of the applicants clearly shows the casual and lethargic attitude of the applicants in filing the present appeal against the said judgment and order of the learned Single Judge. The learned counsel further submits that there was no need to apply for uncertified copies of the writ petition etc from the Aizawl Bench, Gauhati High Court when the same could have been provided by the applicants/appellants. The learned counsel thus submits that the explanation given by the applicant clearly shows that the explanation given by the applicant are all dilatory tactics by the applicants and do not amount to sufficient cause for condonation of the delay. In support of his submissions, the learned counsel has relied on the decision of the Apex Court in ***Basawaraj & Anr. Vs. Special Land Acquisition Officer***, reported in ***(2013) 14 SCC 81*** (para 9 & 12), ***Union of India & Ors. Vs. Tata Yodogawa Limited & Anr.***, reported in ***(2015) 9 SCC 102*** (para 2 & 5).

8. We have heard and considered the submissions made by the learned counsels for both the parties.

9. We have examined the explanation given by the learned Central Government Counsel for the delay of 276 days in filing the appeal against the judgment and order passed by the learned Single Judge in WP(C) No. 170/2019 dated 15.02.2023, wherein, we find that the applicants had promptly taken steps by submitting an application dated 24.02.2023 to the Deputy Solicitor General of India, Gauhati High Court for obtaining his opinion. Thereafter, the Deputy Solicitor General of India, Gauhati High Court had rendered his reply on 02.04.2023, opining that there were reasonable grounds for filing an appeal against the said Judgment & Order dated 15.02.2023, to which the applicants had requested the Deputy Solicitor General of India, Gauhati High Court to prepare a draft of the writ appeal. However, the Deputy Solicitor General of India, Gauhati High Court had failed to prepare the draft appeal and the applicants between the period from 24.04.2023 to 30.11.2023, had made several communications reminding the Deputy Solicitor General of India to prepare the draft writ appeal. We thus find that the delay between the periods 24.02.2023 to 30.11.2023 was caused by the office of the Deputy Solicitor General of India, Gauhati High Court. Thereafter the matter was handed over to the present Central Government Counsel who again had taken time to prepare the draft writ appeal, since the documents received by the learned CGC were found to be illegible and he had taken steps for obtaining uncertified copies of the writ petition and affidavit-in-opposition filed by the respondent Nos. 1 & 4 in the Gauhati High Court, Aizawl Bench. We also note that a certified copy of the Judgment and order had to be obtained on 29.11.2023 while the matter was

already placed with the office of the learned Deputy Solicitor General of India, Gauhati High Court.

10. We have noted that Apex Court in ***Basawaraj & Anr. Vs. Special Land Acquisition Officer (Supra)*** had held that it is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds and that the "*legal maxim dural ex sedlex which means the law is hard but it is the law, stands attracted in such a situation*", and did not condoned the delay. This Court however, finds that the facts and situation of the case before the Hon'ble Apex Court is different from the present case, wherein in the cited case, the appellants had approached the Court after about 5(five) years 6 (six) months in filing the appeal, under Section 54 of the Land Acquisition Act, 1894 and the Apex court had observed that the only explanation given in approaching the Court at such a belated stage had been that one of the applicants had taken ill.

11. We also noted that the Hon'ble Apex Court in ***Union of India & Ors. Vs. Tata Yodogawa Limited & Anr. (Supra)***, had not condone the delay of 51 days in filing the SLP by observing that there was no whisper to explain all the legal problems arose in filing the SLP. Thus the facts and situation of the cited case are found to be different,

12. In the instant case, we find that from the projections made by Mr. S.K Medhi, the learned Central Government Counsel, as mentioned in the foregoing paragraphs, the delay appeared to be caused mainly due to the inaction of the learned Deputy Solicitor General of India, Gauhati High Court and thereafter the

time taken by the present Central Government Counsel, when the file was handed over to him on 30.11.2023, to draft the writ appeal by obtaining the required documents which were initially found to be eligible. We find the Coordinate Bench of this Court in Principal seat in ***State of Assam and 6 Ors. Vs. Relif Families Welfare Service Society & 2 Ors (supra)***, where the facts and circumstances is quite similar to the present case had condoned the delay of 397 days by observing that *"the conduct of the Departmental Authorities clearly indicates a bona fide effort on their part and also the explanation for the delay caused in the office of the Government Advocate appears to be reasonable and acceptable."*

13. We have also noted that the Apex court in ***Sheo Raj Singh (Deceased) Through Lrs. & Ors. Vs. Union of India & Anr. (supra)*** has held that : *"The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests."*

14. In view of the above observations of the Hon'ble Apex court, the decision of the Coordinate Bench of this court in the Principal seat, and on considering the sequence of the events narrated by the learned counsel for the applicant, we find that the delay is not due to the conduct of the applicants but was due to the delay in office of the learned Deputy Solicitor General of India, Gauhati High Court and also the office of the CGC. We are therefore of the considered view

that the delay of 276 days in preferring the appeal is required to be condoned in the interest of justice and accordingly, the delay stands condoned and IA(C) No. 11 of 2024 stands allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant