

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18416 of 2010

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1. Bisheshwar Sahni S/O Late Judagi Sahni R/O Mohalla- Brahmpura Tola-
Sikandarpur Kundal, P.S.- Town, P.O. & Distt.- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar Through Collector, Muzaffarpur, Distt.- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Advocate

Mr. Rakesh Chandra

Mr. R.K. Dubey

Mrs. Sangeeta Sharma

For the Respondent/s : Mr. Sunil Kumar Mandal, S.C.-24

Mr. Arjun Prasad, A.C. to S.C. 24

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 20-01-2016

Respondent of Title Appeal No. 6 of 2010 has filed the present application under Article 227 of the Constitution of India to assail the order dated 30.06.2010 passed by the learned District Judge, Muzaffarpur. The Appellate Court condoned the delay of 5563 days in filing the appeal by the respondent State of Bihar and the appeal was admitted to hearing.

Heard Mr. S.S.Dwivedi for the petitioners and Mr. S.K. Mandal, S.C.-24 for the State.

Before I deal with the rival contentions, few relevant facts are stated as under:

Petitioner filed T.S. No. 188 of 1991 in the Court of Munsif, Muzaffarpur for declaration of his title over the land



appertaining to R.S. Khata no. 975, Plot no. 846 measuring an area of 44 decimals impleading the State of Bihar as the defendant contending *inter alia* that during Cadastral Survey, the subject land was recorded in the name of the ancestor of the plaintiff but during the Revisional Survey operation, the suit land was wrongly recorded in the name of State of Bihar. The State appeared in the said suit through counsel and filed applications seeking time to file written statement. In spite of indulgence granted, no written statement was filed. The defendant State subsequently left pairvi in the suit. Ultimately, the suit was allowed vide judgment and decree dated 16.9.1994. On the strength of decree, it is stated, an application for mutation (Annexure-1) was filed and on submission of report by the Revenue Karmachari, the rent was fixed vide order passed in Rent Fixation Case No. 55 of 1995-96 under the orders of D.C.L.R., Muzaffarpur and the petitioner thereafter is paying rent in respect of the suit land vide jamabandi no. 8. Subsequently, he sold part of the land through registered sale deed.

Criticizing the order, Mr. Dwivedi submitted that the Appellate Court illegally condoned the enormous delay in filing the appeal for which no explanation much less reasonable explanation was offered by the appellant State of Bihar. The Appellate Court under the impugned order without application of judicial mind treating the State of Bihar on different pedestal condoned the delay



which has severely prejudiced the petitioner as he would now require to contest the appeal on merit which was filed several years beyond the time prescribed therefor. He would further argue that the stand taken in the condonation petition that the State had no knowledge about the order is also not acceptable and in fact is a wrong statement since the judgment and decree was produced by the petitioner before the Circle Officer while seeking mutation of his name in respect of the subject land. The order being wholly erroneous merits to be set aside. In support of his contention, he has relied on:-

- (i) ***2012 (3) SCC 563 Postmaster General and Ors vs. Living Media India Ltd.***
- (ii) ***2009 (1) BBCJ IV-248 (Pundlik Jalam Patil (D) by lrs. Vs. Exe. Eng. Jalgaon Medium Project.***
- (iii) ***(1997) 7 SCC 556 P.K. Ramachandran vs.State of Kerala.***

In contra, the Counsel for the State supported the impugned order. It has been urged that once the judicial discretion vested in the Court is exercised, the same does not merit interference particularly when no serious prejudice is caused to the petitioner. The appeal shall now be considered and decided on merit. The State acts in public interest through diverse hands. Some latitude should be granted to the State.

I have heard the rival contentions of both the party and perused the materials on record.

In the condonation petition, it was stated that no information about the judgment delivered under Order VIII Rule 10 C.P.C. was given to the State. When it came to the notice of the State on 12.1.2010 the certified copy of the judgment was applied and obtained on 25.1.2010. It was sent to the State lawyer for preparing draft of appeal. Grounds of appeal prepared by the Government counsel was sent to the legal section for approval of the Collector and after getting approval, the appeal was presented on 5.3.2010. In the rejoinder to the condonation petition, it was stated *inter alia* that the respondents had the knowledge of the judgment and decree which was placed in course of consideration of the Rent Fixation Case No. 55 of 1995-96. It is, therefore, incorrect and misleading to state that the respondents had no knowledge.

From the materials available on record, it appears that in December, 2009, the petitioner sold 8 dhurs of the subject land to Sri Poddar. The deed of conveyance was presented before the Registrar, Registration wherefrom it was revealed to the State that the land was Khas Mahal land. Due to objection on registration of the sale document, the petitioner produced the judgment and decree of the Trial Court which persuaded the Registrar to call for a report from the

D.C.L.R. In January, 2010, the D.C.L.R. also reported that the subject land was recorded as Khas Mahal. In these factual backgrounds, the Appellate Court, under the impugned order dated 30.6.2010, has recorded that the cause of delay shown by the appellant State of Bihar was satisfactory and admitted the appeal after condoning the delay.

It has been argued with much vehemence that misleading statement was made in the condonation petition about the knowledge of the decree. On this score itself, the Appellate Court ought to have rejected the application. Mr. Dwivedi in this regard has referred to **2009 (1) BBCJ IV-248 (Pundlik Jalam Patil (D) by lrs. Vs. Exe. Eng. Jalgaon Medium Project)** wherein the Apex Court while considering the application seeking condonation of delay of 1724 days found it fit to be rejected on this score itself as a false stand was taken to get rid of the bar of limitation. He may be right in his submission on the strength of the statements made in the rejoinder that the decree of the Trial Court was presented in support of rent fixation case. However, the stand of the respondent State is that in connection with registration of a document of sale effected by the petitioner, it came to their knowledge that the land was Khas Mahal and the petitioner had a decree of the Trial Court in support thereof. Essential pre-requisite for exercise of discretion to condone the delay is that the Court must record its satisfaction about the explanation for delay.

Essentially, the satisfaction shall be on the basis of materials placed before the Court by the parties. It will vary from case to case. Section 5 of the Limitation Act confers jurisdiction on the Court to admit the appeal or application filed after the prescribed period.

The Apex Court in *State of Haryana vs. Chandra Mani* (1996) 3 SCC 132 observed that when the State is applicant praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology embodied in the decision making process where file moves from table to table, it is less difficult to understand the delay. The State represents collective cause of the community. Delay in the decision making process involving pushing the file from table to table cannot, therefore, be assumed to be intentional. The State is, therefore, entitled to certain amount of latitude particularly when the delay caused is not attributable to one person who has to make calls. In this circumstance, insisting on explaining every day's delay is neither advisable nor pragmatic. The Court in such matter is expected to consider the case in justice oriented manner.

In *Postmaster General and Ors vs. Living Media India Ltd.* [(2012) 3 SCC 563], the Apex Court did not approve delay of 427 days caused by the Postal Department in filing S.L.Ps. That was a case where the Apex Court granted an opportunity to the appellant to

file an improved/better affidavit, still no explanation was offered. It was also noticed that at every stage of the case, delay had occasioned at the behest of the appellants.

Present is not a case of such nature. If the appeal has been admitted after condoning the delay, the worse thing that would happen is consideration and disposal of the appeal on merit. In essence, no serious prejudice is caused to the petitioner except that he would contest the appeal on merit, which again, is in larger public interest as every lis as far as possible should be decided on merit. Delay may be enormous as in this case but the same has to be reckoned from the date of knowledge of the order under appeal. The judgment of the trial Court in the present case was rendered ex-parte by the Trial Court. One A.G.P. had entered appearance on behalf of the State at the suit but later left pairvi. Whether the State Government had entrusted to him or not is not known to Court. As I have noticed, the State acts through diverse hands. Who did what and at what stage may not be in the personal knowledge of the decision making authority. To some extent, however, Mr. Dwivedi may be right in submitting that no difference can be made between the State and the private litigant in such matter. This may be true in a case where the delay is hopelessly barred and there is no plausible explanation therefor and when the case is wholly without merit. Once a judicial

discretion on the basis of satisfaction of the reasonable explanation furnished by the party is recorded on perusal of the materials on record, in my view, it would be an inappropriate exercise of jurisdiction under Article 227 of the Constitution to dislodge the said satisfaction of the Court. The Writ Court is not required to correct each and every error committed by the Court below unless the same are shown to be wholly perverse causing serious prejudice to the applicant/petitioner. When the technical justice is pitted against substantial justice, the Court should lean in favour of the latter.

As a result of the discussions made above, this Court declines to interfere with the order dated 30.06.2010 passed by the District Judge, Muzaffarpur in T.A. No. 6 of 2010 invoking its discretionary power under Article 227 of the Constitution of India.

The writ application is dismissed. The Appellate Court shall proceed to dispose of T.A. No. 6 of 2010 pending on its file since 2010 expeditiously.

(Kishore Kumar Mandal, J)

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