

WPA 11326 of 2003
CAN 2 of 2022, CAN 3 of 2022

Keshov Prosad Shaw
-vs-
State of West Bengal & ors.

Mr. Debayan Bera
...for the petitioner
Mr. Ansar Mondal
Ms. Srilekha Bhattacharyya
...for the State

The present application for restoration is accompanied by an application under Section 5 of the Limitation Act.

Affidavit-in-reply and affidavit-in-opposition filed in Court today are taken on record.

Learned senior counsel appearing on behalf of the petitioner submits as follows. A writ petition was filed in the year 2003 challenging an order of rejection of a prayer for reference for higher valuation in respect of acquisition of land. In 2014, fresh directions were passed pursuant to which an opposition was filed by the State respondents. There it was admitted that money awarded was kept with the Revenue Department. In the meantime, the Hon'ble Apex Court passed the judgment in Pune Municipality's Case reported at (2014) 3 SCC 183. In view of the ratio laid down in that judgment, a fresh writ petition was filed in the year 2014. It was disposed of on 31.03.2015 relying on the decision in Pune Municipality's Case (supra). For all practical purposes, the first writ petition had become

infructuous. The State preferred an appeal against the order passed in the second writ. In the meantime, the Constitution Bench of the Hon'ble Apex Court overruled the ratio laid down in Pune Municipality's Case in the judgment reported at (2020) 8 SCC 129. The appeal preferred by the State was accordingly allowed on 07.07.2022. However, as the first writ petition had become infructuous after the pronouncement of the judgment in Pune Municipality's Case (supra), the same was finally dismissed for default on 12.04.2016 and no steps were taken in this regard till the appeal preferred by the State in the second writ petition was decided. At present, after the reversal of the ratio laid down in Pune Municipality's Case (supra), the present writ petition has become relevant and the petitioner's rights have to be decided in view of the judgment of the Constitution Bench of the Apex Court. In such circumstances, an application for restoration has been filed along with an application for condonation of delay.

Learned counsel appearing on behalf of the State relies on the oppositions and submits as follows. The petitioner has not been vigilant in pursuing his reliefs before this Court.

It is perhaps not a question of being vigilant about pursuing one's reliefs before this Court. In the peculiar circumstances of the instant case, by dint of a judgment passed by the Hon'ble Apex Court in 2014, the first writ petition had practically become infructuous and the

petitioner was pursuing his rights through the second writ petition and after reversal of the decision by a Constitution Bench of the Hon'ble Supreme Court, the situation became different. The petitioner did follow the normal course by defending the appeal. It was only thereafter that the present restoration along with the application for condonation of delay could have been filed and was filed.

In such exceptional circumstances, this Court is of the view that the petitioner had made out a case for condonation of delay and restoration of the first writ petition.

Accordingly, the delay is condoned and the writ petition is restored to its original file and number.

CAN 2 of 2022 and CAN 3 of 2022 are disposed of.

Let this matter appear in the list after a week.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)