Item nos.10-12

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WA No.21 of 2018 with
MC(WA) No.40 of 2018

Kwa Mana Plantation & Sales Association,
A Society registered under the Manipur Societies
REgistration Act, 1989, bearing Regd. No.26 of 1997 having
Its registered office at Naoremthong Laishram Leikai, PO & PS
Lamphel, District Imphal West, Manipur represented by its
President, Shri Sagolsem Biren Singh, aged about 54 yrs.
s/o late S.Kunjamani Singh, resident of Naoremthong Laishram
Leikai, Imphal West, Manipur.

…. Appellant

-Versus-

1. The State of Manipur, represented by the Commissioner (Revenue), Government of Manipur at Imphal -795001.
2. The Director of Settlement and Land Records, Government of Manipur.

…..Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MV MURALIDARAN

For the appellant	::	Mr.S.Sobol, Advocate
For the Respondents	::	Mr. H.Lenin, Addl.AG Ms. Lunthan Kamei, Advocate
Date of Order	::	**23.01.2020**

O R D E R (ORAL)

R.S., CJ.

Heard Mr. S. Sobol, learned counsel for the appellant/applicant and Mr. Lenin Hijam, learned Addl.AG for the State respondents.

[2] As against the order dated 24.8.2017 passed by the learned Single Judge in W.P(C) No.5 of 2015, the writ appeal has been filed along with the application for delay of 292 days and another application has

been filed pleading that the affidavit of one Maibam Tomba Singh should be taken on record to support the application for condonation of delay.

[3] A perusal of the petition filed for condonation of delay makes it clear that the appeal has been filed by a Society represented by Shri Sagolsem Biren Singh, who is claiming to be the President, who was also the petitioner in the writ petition. The learned Single Judge dismissed the writ petition vide order dated 24.8.2017 after hearing Mr. N.Surendrajit, learned counsel for the writ petitioner, the present appellant. A detailed order was passed after hearing the counsel for the petitioner and Mr. H.Samarjit, learned Government Advocate for the State respondents. The operative portion of the order dated 24.8.2017 at para No.5 and 6 reads as follows:-

> "[5] As evident from the above, the land in issue was given to the petitioner on lease for a period of five years. However, since the petitioner had approached the High Court seeking for a direction for allotment of the land after expiry of the lease period, the High Court had directed the authorities to consider the request for allotment and not to evict the petitioner. The petitioner has continued to remain in possession. This order was passed by the Hon'ble Gauhati High Court, Imphal Bench on 28.04.2005 in W.P.(C) No. 1052 of 2004 to consider the case of the petitioner for allotment of the land in favour of the petitioner. Since the respondents have not taken any decision, the petitioner has approached this Court again but after a gap of ten years of the aforesaid direction given by the High Court in W.P.(C) No. 1052 of 2004. Now a peculiar situation has arisen in view of order passed in W.P.(C) No. 1052 of 2004 by which, if the Government does not consider the case of the petitioner, they would continue to remain in occupation of the site as the petitioner cannot be evicted, even if the State Government desires. As the direction passed in W.P.(C) No. 1052 of 2004 which was to be complied with promptitude and expeditiously, has not been implemented, the petitioner has approached to this Court again for implementation of the order passed in W.P.(C) No. 1052 of 2004 and filed this petition in 2015. However, the petitioner was also equally under obligation to approach the Court for redressal of the grievance without undue delay. In this case, it has been noted that the petitioner has approached this Court again after undue delay of about 10 (ten) years. Accordingly, in view of the delay and latches in approaching to

> this Court after ten years which the petitioner has failed to explain satisfactorily, this Court is not inclined to entertain this petition and accordingly, petition stands dismissed as hit by delay and latches.
>
> [6] As regards the relief claimed by the petitioner for considering the allotment of land in favour of the petitioner, it is noted that the State respondents have not taken any decision till now and in view of the fact that, the State respondents have not taken any decision in favour of the petitioner till now, it will be deemed that the respondents have refused the request for allotment of land in favour of the petitioner in terms of the earlier communication dated 21.10.2002 as well in terms of the order passed in W.P.(C) No. 1052 of 2004. Accordingly, the earlier restraint placed on the State authorities for not evicting the petitioner in terms of the order dated 28.04.2005 passed in W.P.(C) No. 1052 of 2004 stands lifted. However, the petitioner may approach the respondent authorities for allotment of land which will be considered by the authorities without any preferential treatment to anyone, except in accordance with law.
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> Petition stands dismissed with the above observation and direction."

[4] The present appeal along with the application for delay of 292 days is filed stating that Shri Sagolsem Biren Singh, who is the petitioner in the writ petition and the President of the Society, did not have knowledge or notice of the case listed on 24.8.2017 and there was no communication about the case and result thereof between himself and the learned counsel and therefore, a delay of nearly 300 days occurred and after deducting the timeline for filing an appeal, the actual delay is 292 days. It is also pleaded by Mr. S.Biren Singh that one M.Tomba Singh informed him about the disposal of the case. Thereafter, he applied for a certified copy of the order dated 24.8.2017 and filed the present appeal with condone delay application.

[5] The main reasons stated in the affidavit is on account of serious communication gap between the petitioner's society and the former counsel. Except the bald allegation against the said former

counsel, no detail as to when the case was listed earlier, why they did not contact the earlier counsel and why they allowed the earlier counsel to conduct the case if there was a serious communication gap between the society and the former counsel, is not stated. On the contrary, the explanation of the appellant appears to be to cover up for the undue delay in prosecuting the appeal as against the judgment and order dated 24.8.2017. This could be attributed only to appellant/applicant's own supine indifference and lethargic attitude. This Court is not inclined to accept a made up allegation against the former counsel without there being any specific complaint against the said counsel before the competent forum. There is no communication between the appellant/ petitioner' Society and the former counsel on the nature of complaint.

[6] In the course of judicial proceedings, we notice that it has become a practice to throw wild allegation against the former counsel and seek condonation of delay. Such conduct, if entertained, will lead to parties taking such stand in every case of delay accusing one counsel or the other. The inordinate delay of 292 days has not been properly explained except trying to cover up with an affidavit of an executive member which appears to be self serving. It is bereft of details and the date of knowledge is vague.

[7] The principle laid down by the Hon'ble Supreme Court in the case of **Esha Bhattacharjee** vs. **Managing Committee of Raghunathpur Nafar Academy & ors**. reported in **(2013) 12 SCC 649** squarely applies to the facts of the present case.

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

Tested on the above parameters, there is no scope to condone the unexplained inordinate delay. It will encourage the party to prosecute the case in appeal at his sweet will and pleasure by just making wild allegations and supporting affidavits. In this case, the party has failed to show diligence or action if they are aggrieved by the conduct of the counsel.

[8] Therefore, we are not inclined to condone the delay. Accordingly, the application and appeal are dismissed.

JUDGE **CHIEF JUSTICE**

FR/NFR

Opendro(rt)

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