

01 08.06.22

Ct. No. 04

Akd

WPLRT 21 of 2022

Subrata Ghosh & Ors.

Vs.

The Revenue Officer & Ors.

**Mr. Kamalesh Bhattacharyya,
Mr. Md. Yusuf Ali.**

... for the petitioners.

**Mr. Chandi Charan De,
Mr. Anirban Sarkar.**

... for the State.

The present writ petition has been filed assailing the order dated 16th December, 2021 passed by the 1st Bench, West Bengal Land Reforms and Tenancy Tribunal in M.A. 325 of 2015 and M.A. 326 of 2015; whereby and whereunder the application for condonation of delay in filing the application for restoration was dismissed.

The origin of the litigation can be traced since 1976 when the writ petitioners challenged the vesting order before this Court in a writ petition being CR No. 8984 (W) of 1976. The said writ petition was disposed of directing the competent authority to determine afresh by allowing the retention of the land to the writ petitioners. Pursuant to the said order of this Court passed on 21st February 1986 in the said writ petition the Revenue Officer initiated a proceeding and ultimately decided to vest the land to the State of West Bengal. The aforesaid order was further challenged before this Court in CR No. 14654 (W) of 1988 and an interim order was passed therein.

Pursuant to the promulgation of the West Bengal Land Reforms and Tenancy Tribunal Act, 1977 the said writ petition was transferred to the Tribunal and was renumbered as T.A. 8434 of 2005. The matter was listed before the diverged Bench of the Tribunal from time to time and it appears that it

was dismissed earlier. However, the Tribunal restored the said application and the matter was further listed before several Benches of the Tribunal. Ultimately the said writ petition was again dismissed on 19th November, 2011.

The application for restoration along with an application for condonation of delay was taken out in the year 2015. The ground which has been assigned in the said application relates to unawareness of the learned Advocate about the listing of the matter in a particular Bench and since he was not a regular practitioner of the Tribunal, he could not appear on the said fateful day and ultimately handed over the brief to the writ petitioners, who engaged another Advocate and the application for restoration along with an application for condonation of delay was taken out.

The application proceeds on a premise that the matter was transferred to another Bench and no notice was ever given to the learned Advocate in this regard. The Tribunal dismissed the said application solely on the ground that there has been an enormous delay in filing the application for restoration without considering the averments made therein in its true and proper perspective.

There is no ambiguity in our mind that the length of delay is immaterial; the delay of a shorter period may not be condoned in absence of sufficient cause, on the other hand the delay of longer period may be condoned, if the cause shown therein is sufficient. We are also not unmindful of the proposition of law that the Court should encourage the litigation to be decided on merit, rather to nip in the bud on the anvil of limitation. The conduct of the litigant is one of the factors in deciding an application for condonation of delay and if the Court

finds that he was all along vigilant and careful in proceeding with the case and the laches and negligence cannot be attributed to his conduct, there is no impediment on the part the Court to condone the delay.

Furthermore the Court while considering the causes having shown for delay in taking out an application finds some what sufficient despite a minimal negligence on the part of the litigant, the Court may condone the delay upon imposition of costs in order to bring equilibrium between the rights of the parties.

The only ground shown in the instant application that the lawyer was unaware of the listing of the mater before another Bench and, therefore, for the negligence and laches on the part of the lawyer the litigant should not suffer.

The dispute relates to vesting of land under the West Bengal Land Reforms Act, 1955 and despite the order having passed by this Court permitting the writ petitioners to exercise an option of retention, the authority proceeded to vest the land in its entirety.

We thus feel that the matter requires to be considered on merit. However, we find that though the litigants appear to have acted bona fide, yet there has been a considerable period of silence having shown since the date of dismissal and the filing of the application for restoration along with an application for condonation of delay.

We thus feel that justice would be sub-served if the application for condonation of delay and restoration are allowed upon imposition of costs.

Accordingly the order impugned is set aside.

The applications being MA 325 and 326 of 2015 in TA 4834 of 2005 are allowed subject to the deposit of costs assessed at Rs.50,000/- with the State Legal

Services Authority within three weeks from date.

If such deposit is made within the time indicated hereinabove, the State Legal Services Authority shall keep the said amount in an account earmarked for juvenile.

In default, this order shall automatically be recalled and the applications being MA 325 of 2015 and MA 326 of 2015 filed in TA 4834 of 2005 shall be deemed to have been dismissed.

With the above observations, the writ petition is disposed of.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)