

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

BEFORE:

**The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar**

**FAT 82 OF 2015
With
CAN 8905 of 2015 (Condonation)
(filed on August 31, 2015)**

**State of West Bengal
Versus
Manju Rani Dutta & Ors.**

For the Appellant : Mr. Chandi Charan De, Adv.
Mr. Subrata Dasgupta, Adv.

Order Dated : 7th September, 2022

Soumen Sen, J.(oral): There is a delay of 1209 days in preferring the appeal. Inexplicable delay in preferring the appeal has not been sufficiently explained in the application for condonation of delay. A valuable right was accrued in favour of the award holders. They cannot be deprived of the benefits of the award dated July 28, 2011 passed in connection with the land acquisition case arising out of a reference under Section 18 of the Land Acquisition Act I of 1894.

The referring claimants, who are the respondents in this appeal, filed the land acquisition case before the Land Acquisition Court at Barasat, North 24-Parganas, against the award passed by the Land Acquisition Collector, North 24-Parganas. The land acquisition case was registered as Land

Acquisition Case No. 1A of 2001. The acquisition proceedings are all between 1999 and 2000. The reference case was ultimately disposed of by the learned Judge, Land Acquisition Court at Barasat on July 28, 2011. No attempt was made by the State to prefer the appeal in time. The appeal was preferred on February 16, 2015 but with defects. The application for condonation of delay in filing the appeal was filed on August 31, 2015, but thereafter no attempt was made to move the application.

The State cannot be considered to be a favoured litigant. Culpable negligence and inexplicable delay in preferring the appeal would be the factors the court is duty bound to follow while considering the application for condonation of delay.

The learned advocate appearing on behalf of the State argued that a liberal approach is required to be taken considering the fact that the government decisions are proverbially slow, encumbered and involves considerable degree of procedural red tape in the process of their making.

It is submitted on behalf of the State that the award dated July 28, 2011 suffers from certain errors. The delay in preferring the appeal is explained in paragraph 8 of the application for condonation of delay. It is stated that after the award was passed on July 28, 2011, the application for certified copy was made on August 16, 2011. On August 18, 2011 the office of the Land Acquisition Collector became aware of the award through the learned State Counsel and on September 5, 2011 the learned Government Pleader, Barasat, was contacted, when he suggested for taking steps to prefer an

appeal. On September 6, 2011 the Assistant Land Acquisition Officer examined the record and put up his report. On September 9, 2011 certified copy of the award was received by the office of the Land Acquisition Collector. Between the period from September 16, 2011 and November 8, 2011 necessary steps were taken in the matter for preferring appeal. On November 11, 2011, it was learnt that an application under Sections 152 read with Section 153 of the Code of Civil Procedure had been filed for correction of the judgment dated July 28, 2011 and the proposal for preferring the appeal was held up. In between November 12, 2011 and March 19, 2012 the application under Section 152 read with Section 153 was pending for adjudication before the learned Land Acquisition Judge. On March 3, 2014 the appellant came to know from the learned Government Pleader that the said petition was disposed of on March 19, 2012. On the said date the learned Government Pleader opined for preferring an appeal as the enhanced price of questioned land was not in conformity with law. On March 5, 2014 the application for certified copy of the judgment after review was filed. On March 6, 2014, proposal for preferring the appeal was approved by the Collector. On March 7, 2014 the proposal was submitted to the Land Reforms Department for approval. From March 7, 2014 till April 20, 2014 the proposal was pending appreciation by the Land Reforms Department and after satisfaction the matter was referred to the learned Legal Remembrancer for taking ultimate decision. On May 14, 2014 the Land Reforms Department communicated the decision of the learned Legal Remembrancer to prefer appeal to the Joint Legal

Remembrancer. On June 10, 2014 reminder was sent to the Land Reforms Department for approval of the proposal of appeal. On June 24, 2014 the departmental assistant was asked to prusue for certified copy of the of order. On August 29, 2014 some of the required documents, conveniently not specified, were submitted to the learned State Advocate, when he asked for the certified copy of the order July 28, 2014 and some other documents that again was conveniently left unspecified. On November 25, 2014 the certified copy was made ready and on December 5, 2014 the same was collected. On December 6, 2014 the certified copy was placed before the Legal Cell for taking steps and on December 12, 2014 the certified copy was handed over to the learned State Advocate for preparation of the draft memorandum of appeal. On January 28, 2015 the draft memorandum of appeal was collected from the learned State Advocate for finalisation by the departmental authority, which authority approved the draft memorandum of appeal on January 29, 2015. On February 2, 2015 the modified draft memorandum of appeal was handed over to the learned State advocate for finalisation and on February 3, 2015 the rate chart had been collected and handed over to the learned State advocate. On February 4, 2015 the draft memorandum of appeal was finalised after due scrutiny. On February 9, 2015 the draft memorandum of appeal was made ready for filing and on February 11, 2015 the finally typed memorandum of appeal was handed over to the learned State advocate and ultimately on February 16, 2015 the memorandum of appeal was filed.

The State appellant is unable to produce the copy of the application filed under Section 152 read with Section 153 of the Code of Civil Procedure for correction of the judgment. However, we have been given to understand that the correction of the judgment is nothing to do with the merits of the matter. Curiously the requiring body has filed an application being CAN 3 of 2022 on April, 30, 2022 being unaware of the fact that an application under Section 152 and 153 of the Code of Civil Procedure was filed and disposed of on March, 19, 2012. Mr. Bera learned Advocate appearing for the requiring body has very fairly submitted he was not aware of this development. It seems that there is no synchronisation between the two wings of the government. There has been inaction, laches, negligence and carelessness at every stage. Undoubtedly, the matter progress at a snail's pace and the explanations offered are clearly not acceptable. The government cannot be a beneficiary of its own laches and negligence. The award holders have been deprived of the fruits of the award for almost 22 years as due to the pendency of the appeal the execution proceedings did not progress. No attempt was made by the Government to move the application for condonation of delay soon after it was filed. The State simply kept the application pending without any genuine intention to move it with the oblique motive of delaying the execution proceeding. The pendency of the appeal was shown in the executions proceedings in order to buy time. The State has not even mentioned for disposal of the application for condonation of delay. The matter has appeared

at the instance of the requiring body, which filed an application being CAN 3 of 2022 that we have dismissed as misconceived.

All the award holders were deprived of the fruits of the award since 2011 for no fault of them and by reason of the long passage of time valuable right accrued in their favour should not be lightly interfered.

It is well settled that a government cannot be a beneficiary of its own wrong and cannot claim to be a favoured litigant.

We are conscious of the fact that section 5 of the Limitation Act, 1963 has clearly stated that Court may admit any appeal or applications other than an application under any of the provisions of Order XXI of the Code of Civil Procedure (CPC) after the prescribed period, “if the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the applications within such period. (emphasis supplied)

The Section casts a duty upon the court to satisfy itself with the cause shown for the delay. The cause for the delay needs to be “sufficient” and not a mere cause. The court cannot exercise such power mechanically disregarding insufficient or unsatisfactory explanation. It implies discretion which needs to be applied judiciously. The discretion is conditional upon satisfactions of the Court being satisfied with the explanation offered which should be reasonable and acceptable. The award holders cannot be taken for a ride. They cannot suffer due to inaction, inertness and extreme casualness of the State and its machinery. The pain and anxiety of a land looser and deprivation of his legitimate dues due to do proverbial lackadaisical approach should not be

countenance. In a fairly recent decision of the Hon'ble Supreme Court in ***Brahampal v. National Insurance Company***, reported at **2021 (6) SCC 512** the apex court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. The Apex Court in explaining the term "sufficient cause" has stated:

"16. This Court in the case of Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs.,: (2008) 8 SCC 321, observed that:

13....The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant. (emphasis supplied)

17. The aforesaid view was reiterated in *Balwant Singh (Dead) v. Jagdish Singh*, (2010) 8 SCC 685, wherein this Court held that:

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence,

default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. (emphasis supplied)

18. The Court in the above-mentioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the Clause "sufficient cause" a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

19. The aforesaid view was taken by this Court in the case of *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157 wherein the Court held that:

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power Under Section 5 of the Limitation Act and other similar statutes, *the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. *If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.* (emphasis supplied)

22. Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief."

In ***University of Delhi v. Union of India & Ors.*** reported in **2020(13) SCC 745** the Hon'ble Supreme Court upheld the order passed by Division Bench of the High Court dismissing the LPA on the ground of delay of 916 days, with the following observations:

"23.. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of

indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the Appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the Respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified."

The lethargy seems to have crept in the administration as they believe that justice oriented liberal view approach would steer them away irrespective of the quality of explanation offered for the delay since it is a state or a government body. They take things for granted. It is as if grace is the rule and denial would be an exception. A time has come for them to realise that they stand on the same footing and they are accountable for their conduct. Persons responsible for the delayed filing are let off even without caution. This indifferent, casual and lethargic attitude of the state or government bodies have been seriously deprecated in ***Postmaster General v. Living Media (India) Ltd. [2012 (3) SCC 563]*** wherein it is held as hereunder: (SCC p.574, paragraphs 28-29).

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to

considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

The culpable negligence on the part of the appellant to conduct the matter cannot be condoned. In our view, justice should be evenly balanced. The negligent conduct of the State is manifest at every stage of the proceeding. An extremely casual approach is discernible from the explanations offered by the appellant for delayed filing of the appeal. Any liberal approach would result in injustice to the award holders, who have lost their lands almost 22 years back and by reason of the pendency of the proceeding they are deprived of their dues.

Under such circumstances, we dismiss the application for condonation of delay. Consequently, the appeal stands rejected as time barred.

The appellant is directed to deposit the entire decretal dues with the executing court within two weeks from date. The execution court is directed to disburse the amount to the award holding on or before September 30, 2022.

In view of rejection of the memorandum of appeal, nothing remains in the application for stay filed under CAN 9643 of 2015 and the same is also dismissed.

There will be no order as to costs.

The department is directed to communicate this order to the respondents/claimants by registered speed post with acknowledgment due within two weeks from date.

A copy of this order shall also be communicated to the learned Land Acquisition Judge at Barasat, North 24-Parganas, for information and doing the needful.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)