

IN THE HIGH COURT OF ORISSA AT CUTTACK

L.A.A No. 100 of 2009

State of Orissa & Anr.

.....

Appellants

Mr. G. Rout, ASC

Vs.

Duryodhan Swain

.....

Respondent

CORAM: JUSTICE SANJAY KUMAR MISHRA

ORDER

26.10.2022

Misc. Case No.105 of 2013 & L.A.A. No.100 of 2009

Order No.

10.

This matter is taken up through hybrid mode.

2. This Appeal has been preferred against the judgment dated 22.01.2008, passed by the learned Civil Judge (Senior Division), Athgarh, in L.A. Case No.83 of 2005 on 20.10.2009.

3. As it seems from record, till 17.07.2013, no step had been taken by the State-Appellant for condonation of delay on which date Misc. Case No.105 of 2013 was filed under Section-5 of the Limitation Act for condonation of delay.

4. As per the office note, there is a delay of 542 days in filing the present Appeal. The reasons indicated in the Misc. Case for delay in preferring the Appeal are not convincing and that apart, the delay has not been properly explained.

5. The apex Court in the case of *Office of the Chief Post Master General & Ors. Vrs. Living Media India Ltd. & Anr.* reported in (2012) 3 SCC 563 observed as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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 bonafide, 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.

13) 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

6. Also, in view of the recent judgment/order of this Court in the case of *State of Odisha Vrs. Surama Manjari Das* (W.P.(C) No.15763 of 2021 dismissed on 16.07.2021), which has been passed relying on the decision of the Supreme Court in the case of *The State of Madhya Pradesh Vrs. Bherulal*, reported in *2020 SCC Online SC 849*, this Appeal deserves to be dismissed on the ground of delay and laches.

7. Accordingly, Misc. Case as well as Appeal preferred under Section 54 of the Land Acquisition Act, 1894, stand dismissed on the ground of delay and laches.

(S.K. MISHRA)
JUDGE

Banita