

IN THE HIGH COURT OF ORISSA AT CUTTACK

LAA NO.113 of 2007

*Special land Acquisition
Officer, Dhenkanal*

.....

Appellant

Mr. G. Rout, ASC

Vs.

Ramachandra Behera & Ors.

.....

Respondents

CORAM:

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

21.09.2022

**Misc. Case Nos.22 of 2008, 193 of 2015, 194 of 2015, 195 of 2015,
190 of 2015, 191 of 2015, 192 of 2015, 187 of 2015, 188 of 2015,
189 of 2015 & LAA No.113 of 2007**

Order No.
05.

This matter is taken up through hybrid mode.

2. Pursuant to Order dated 18.08.2014, Notice was issued to the Respondents by Registered Post with A.D. on the question of limitation. Perused the service return of Notice in limitation matter issued to Respondent No.2 and Respondent Nos.8 to 10 by Registered Post with A.D. which has been received by Khayam Behera, Tirtha Behera and Pramila Behera respectively without stating in the said endorsements as to their relationship with the said Respondents. So far as Notice to the Respondent Nos.4 and 5, the same were returned with an endorsement “addressee is long absent” & “addressee died”, respectively.

3. Vide Order dated 09.09.2015 the Petitioner/Appellant was directed to take fresh steps for issuance of Notice to Respondent

Nos.2, 4 and 8 to 10 in their present address by Registered Post with A.D. within two weeks from the date of the said Order.

4. In pursuance of the said Order dated 09.09.2015, no fresh steps for issuance of Notice to Respondent Nos.2, 4 and 8 to 10 have been taken till date. However the applications have been filed for substitution of the LRs of Respondent Nos.2, 5 and 10 coupled with applications for setting aside abatement of the said Respondents under Order 22 Rule 4 of C.P.C. and applications for condonation of delay under Section-5 of the Limitation Act for filing the substitution Petitions belatedly.

5. This Court is not inclined to entertain the Misc. Cases filed for substitution, so also abatement as well as condonation of delay.

6. This Appeal has been preferred against the judgment dated 05.08.2005, passed by the learned Civil Judge (Senior Division), Dhenkanal in L.A. Misc. Case No.167/2002 on 06.12.2007. As per the Office Note, there is a delay of 764 days in filing the present Appeal.

7. In Misc. Case No.22 of 2008, the reasons indicated for delay in filing the present Appeal are not convincing and it seems, the delay has not been properly explained.

8. 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.”

9. 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.

10. Accordingly, all the Misc. Cases so also the Appeal preferred under Section 54 of the Land Acquisition Act, 1894, stand dismissed.

(S.K. MISHRA)
JUDGE

Banita

