

IN THE HIGH COURT OF ORISSA AT CUTTACK

LAA NO.13 of 2006

Union of India

.....

Appellant

Mr. D.R. Bhokta, CGC

Vs.

***Special Land Acquisition
Officer, Kalahandi &
Another***

.....

Respondents

Mr. G.Rout, ASC

CORAM:

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

13.09.2022

Misc. Case No.49 of 2006 and LAA No.13 of 2006

Order No.

08.

This matter is taken up through hybrid mode.

2. Though the scanned copy of the appearance Memo was filed through online on 07.09.2022, Mr. D.R. Bhokta, learned CGC, has filed the said Memo, in original today in the Court, which be kept on record.

3. Since Notice issued to Respondent No.2 returned unserved with a noting that he is dead, direction was given vide Order dated 27.07.2015 to take necessary steps for substitution in respect of the deceased Respondent No.2 within two weeks, as undertaken by the learned counsel for the Appellant.

4. Again, when the matter was listed on 09.09.2015, as nobody appeared for the Appellant when the matter was called, Registry was directed to issue Notice to the Appellant indicating there in that Counsels engaged by it are not taking any steps in the matter.

5. On 07.09.2022, when the matter was last listed, Mr. D.R. Bhokta, learned CGC for the Appellant, rendered appearance and filed appearance Memo in course of the day, and the matter was adjourned, permitting Mr. Bhokta to take instruction in the said regard. In the meantime, no steps have been taken till date for substitution of the legal heirs of the deceased Respondent No.2.

6. This Appeal has been preferred against the judgment dated 16.05.2003, passed by the learned Civil Judge (Senior Division), Dharamgarh, Dist- Kalahandi in Misc. Judicial Case No.154 of 2002 on 07.04.2006. As per the Office Note, there is a delay of 945 days in filing the present Appeal. Though the Misc. Case has been filed under Section 5 of the Limitation Act for condonation of delay, but the reasons indicated in the said Misc. Case are not convincing and it seems, the delay has not been properly explained.

7. 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.”

8. 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.

9. Accordingly, the Misc. Case for condoning of delay as well as the Appeal preferred under Section 54 of the Land Acquisition Act, 1894, stand dismissed.

(S.K. MISHRA)
JUDGE

Banita