

10.07.2024

Ct No.12

as/akd

04

MAT 2040 of 2023

with

CAN 1 of 2023

with

CAN 2 of 2023

M/s. Ranicherra Tea Estate

Vs.

The State of West Bengal & Ors.

Mr. Tapas Sil,
Mr. Shivam Bhimsaria.

...for the Appellant.

1. Heard learned Counsel for the appellant on delay condonation application being CAN 2 of 2023.

2. This appeal is stated to have been filed on 11.10.2023, beyond limitation by 1762 days, along with a delay condonation application (CAN 2 of 2023).

In this appeal the appellant/petitioner has challenged the order dated 13.11.2018 passed by the learned Single Judge in WP 20732 (W) of 2018 (M/s. Ranicherra Tea Estate Vs. The State of West Bengal & Ors.).

3. In the writ petition, the appellant/petitioner has prayed for the following reliefs:-

“A) Writ in the nature of Mandamus quashing/setting aside the order dated 11.09.2018 annexed as Annexure ‘P-11’ to this application;

B) Writ in the nature of Mandamus commanding the respondent authorities to pay the compensation to the petitioner in terms of the award passed by the Ld. Arbitrator;

C) A Writ in the nature of Certiorari directing the respondents to transmit the entire records of the case in this Hon’ble Court so that considerable justice may be rendered;

D) Rule ni-si in terms of prayers (A), (B) and (C) above;

E) Ad-interim order in terms of Prayer (A) and (B) above till the disposal of this application;

F) Such further Order or Orders and/or Direction or Directions as this Hon’ble Court may deem fit and proper for the ends of Justice.”

4. Learned Single Judge has disposed of the writ petition by the impugned order dated 13.11.2018, as under:-

“The petitioner assails an order dated September 11, 2018 passed by the District Magistrate purporting to act as the competent authority under the provisions of the Requisitioning and Acquisition of Immovable Property Act 1952.

The respondents are represented by the Additional Solicitor General.

By the impugned order, the competent authority has decided that no amount is payable under the award. The award is appealable. The Court is informed that, the respondents have preferred an

appeal against the award and that, such appeal has since been dismissed for default. However, there is an application for restoration pending.

competent authority exceeded its jurisdiction in arriving at a finding that, no amount is payable. Therefore, the impugned order is quashed. This order will not prejudice any of the parties in the proceedings relating to the appeal from the award. This order will also not prevent the petitioner to receive the amount awarded in accordance with law.

W.P. No.20732(W) of 2018 is disposed of.

No order as to costs.

Urgent certified Website copy of this order, if applied, be supplied to the parties, upon compliance of all requisite formalities.”

5. The Award is in favour of the appellant/petitioner. The learned Single Judge while quashing the order of the competent authority dated 11.09.2018, has observed that this order (writ court's order dated 13.11.2018) (i) shall not prejudice any of the parties in the proceedings relating to the appeal from the Award and (ii) **will also not prevent the petitioner to receive the amount awarded in accordance with law.** Thus the writ court made it open for the appellant/petitioner to receive the amount awarded in accordance with law.

6. However, the appellant/petitioner has filed the present appeal beyond limitation of 1762 days. In paragraph '2' of CAN 2 of 2023, the applicant/appellant

has admitted that he obtained certified copy of the order of the learned Single Judge dated 13.11.2018 on 17.12.2018. In subsequent paragraphs, the applicant/appellant has attempted to give an impression as if he was not advised by his lawyer to file the appeal which caused delay. While stating so, the applicant/appellant has even failed to disclose the name of the Counsel who advised him and who was the new Counsel who advised to file the appeal. The explanation offered by the applicant/appellant in the delay condonation application is totally vague. Under the circumstances, such a long delay of 1762 days, cannot be condoned on vague explanation, not supported by any documentary evidence.

7. Learned Counsel for the applicant/appellant has relied upon a judgment of Hon'ble Supreme Court in the case of ***N. Balakrishnan Vs. M. Krishnamurthy*** **[(1998) 7 SCC 123]** (paragraphs 9 to 12) and submits that this Court should condone the delay.

8. We find no substance in the submission of learned Counsel for the applicant/appellant. It is true that the principles laid down by Hon'ble Supreme Court in the aforesaid judgment are the settled principles of law for condonation of delay but on facts of the present case it does not help the applicant/appellant. The explanation submitted by the

applicant/appellant for condonation of long delay of 1762 days is totally vague. In the case of **N. Balakrishnan** (Supra), Hon'ble Supreme Court observed acceptability of the explanation is the only criteria for condonation of delay. In the present set of facts, we find that the explanation submitted by the applicant/appellant for condonation of delay of 1762 days is totally vague and hence cannot be accepted.

9. Hence, delay condonation application being CAN 2 of 2023 deserves to be rejected.

10. For all the reasons aforesaid, the delay condonation application being CAN 2 of 2023 is hereby rejected. Consequently, the appeal and all other pending applications stand dismissed.

11. Considering the last submission of learned counsel for the appellant for liberty to file an appropriate application on the point of relief No.(B) of the writ petition on which the impugned order is silent despite granting relief No.(A), we grant liberty to the applicant/appellant to submit an appropriate application before learned Single Judge in W.P.No.20732 (W) of 2018 with regard to the relief No. 'B' of the writ petition.

(Surya Prakash Kesarwani, J.)

(Ajay Kumar Gupta, J.)