

**ASR 185.
Ct. no. 24.
10.1.2025**

SA 722 of 1977

**With
CAN 1 of 2024
With
CAN 2 of 2024
With
CAN 3 of 2024
With
CAN 4 of 2024**

**Bannyeswar Ghosh & Anr.
Vs.
State of West Bengal & Ors.**

Mr. Dilip Kumar Miaty

.....For the appellants

CAN 1 is an application for substitution in respect of death of appellant no. 1 and 2.

CAN 3 is an application under Section 5 of the Limitation Act in support of an application being CAN 1 of 2024.

CAN 2 of 2024 is an application for substitution after setting aside abatement on the death of pro-forma respondent nos. 2 and 3.

CAN 4 of 2024 is an application under Section 5 of the Limitation Act in filing of CAN 2 of 2024.

The instant second appeal is pending since 1977. Appellant no. 1 died on 6th July, 1986. Appellant no. 2 died on 23rd May, 1991. While filing the

application CAN 3 of 2024 the present petitioner intends to condone the delay of 38 years, 1 month and 14 days in respect of deceased appellant no. 1 as well 32 years 8 months and 14 days in respect of deceased appellant no. 2.

It is the case of the petitioner that they are legal heirs of the deceased appellant no. 1 and 2. While destroying an old box they found a small piece of paper, wherein a case no. i.e. being S.A 722 of 1977 was noted; by obtaining such paper, they search the status of the said appeal before this court and came to know that the appeal is still pending.

No further reason for such inordinate delay was explained in the petition itself. However, this is an old appeal, which is pending since 1977. This court before condoning the delay intends to find out the merit of the appeal whether it exists today.

It appears that the erstwhile plaintiffs prefer a title suit being T.S. no. 180/1971 before the learned Munsiff at Lalbagh with a prayer for decree of declaration that the suit land is exclusively used for live stock breeding and not liable to be vested by state of West Bengal and also praying for declaration that the order passed in B.R. case in the year 1971 after reviewing the previous order is illegal, ultravires and null and void and also prayed for permanent injunction against the state respondents.

The said suit was dismissed on contest without any order of cost on 27th September, 1972.

Against the said order of dismissal the appellants filed an appeal before the court of the District Judge, Murshidabad vide appeal no. 393 of 1972. The said appeal was also dismissed on contest on 17th February, 1977.

Against the said order of the appellate court, the instant second appeal has been preferred. It appears that the plaintiffs/appellants have challenged an order of respondent authorities in a B.R. case in the year 1971, wherein reviewing authority has passed an order against the plaintiffs/appellants.

According to the provision of section 6 of the West Bengal State Acquisition Act, 1953 the reviewing authority has passed the order and it is an appealable order before the appellant authority.

Provision of Section 57 B of West Bengal State Acquisition Act, 1953 makes it clear that jurisdiction of Civil Court is bar to entertain any relief arising out of a B.R. case passed by the competent authority. Considering the same, it appears to me that the instant appeal have no merit to entertain at present.

Considering the entire circumstances, it appears to me justified to hold that the appellant has correctly lost interest to proceed with this appeal. Consequently, the appeal is pending since 1977.

I find no justification to allow the applications under Section 5 of the Limitation Act in respect of condonation of delay in preferring CAN 1 of 2024 and CAN 2 of 2024. The petitioner has not assigned any sufficient reason to condone such inordinate delay.

Hence, applications being CAN 3 of 2024 and CAN 4 of 2024 are dismissed. The substitution application being CAN 1 of 2024 and CAN 2 of 2024 are also dismissed and disposed of.

Consequently, the second appeal being S.A. 722 of 1977 is dismissed as abated.

I make it clear that the appellants/plaintiffs were all along proceeded to wrong notion of law and has approached the civil court. The appellants/plaintiffs must have resorted before the appropriate authority for his desire relief.

On those circumstances, it appears to appropriate to give liberty to the petitioners to approach the appropriate forum for their desire relief.

On such approach, the competent authority shall deal with the matter according to law, without being influenced by any observation of this court.

The applications (CAN 1 of 2024, CAN 2 of 2024, CAN 3 of 2024 and CAN 4 of 2024) are disposed of by this order.

[Subhendu Samanta, J]

