

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T. 58 of 2025

Smt. Rajyashree Mukherjee

vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Bhudeb Bhattacharyya, Advocate
Mr. Sugata Shankar Roy, Advocate

For the State : Mr. T. M. Siddiqui, Ld. A.G.P.
Mr. Suddhadev Adak, Advocate

For the private Respondents : Mr. Arif Ali, Advocate

Heard on : 25.04.2025

Judgment on : 25.04.2025

DEBANGSU BASAK, J.:-

1. Three orders of the West Bengal Land Reforms and Tenancy Tribunal are under challenge in the present writ petition.

2. Learned advocate appearing for the writ petitioner submits that, writ petitioner is the owner of a particular immovable property in Kolkata. A proceeding under the Calcutta Thika Tenancy Act was undertaken in respect of that property at the behest of the private respondents which resulted in an order dated April 15, 2012 passed by the Thika Controller. He submits that, the writ petitioner was not aware of such order till May 4, 2015. In response of an application under the Right to Information Act, 2005 his client was informed of the order dated April 15, 2012.
3. Learned advocate appearing for the writ petitioner submits that, immediately on coming to know of such order of the Thika Controller, his client was advised to move the High Court which his client did. His client filed a writ petition being W.P. No.19273 (W) of 2015, which was disposed of by an order dated April 26, 2023 permitting the appellant eight weeks time to file an Original Application before Tribunal. Writ petitioner filed the Original Application being O.A. No.1824 of 2023.
4. Learned advocate for the writ petitioner submits that, the private respondents being aggrieved by the order dated April 26, 2023 passed by the High Court, preferred an appeal which was disposed of on February 1, 2024 requiring the Tribunal to decide the issue of limitation. Writ petitioner filed an application under Section 5 of the

Limitation Act, 1963 which was registered as M.A. No.207 of 2024. Such application was dismissed on November 26, 2024. Thereafter filed an application for correction of errors apparent on the face of the record. Learned Tribunal corrected the error on December 6, 2024. Application for review was dismissed on January 15, 2025. These three orders are under challenge in this writ petition.

5. Learned advocate appearing for the writ petitioner submits that, his client adequately explained delay in approaching the Tribunal against an order of the Thika Controller dated April 15, 2012. Learned Tribunal erred in dismissing the application for condonation of delay.
6. State and the private respondents are represented.
7. Learned advocate appearing for the private respondents submits that, there is a delay in excess of 11 years in approaching the Tribunal. He submits that, the Tribunal rightly rejected the application for condonation of delay. He draws the attention of the Court to the averments made in paragraphs 92 to 95 of the application for condonation of delay and submits that, neither those paragraphs nor the entirety of the application for condonation of delay contains any acceptable ground of condonation of delay.
8. We are proceeding on the basis of the materials made available on record before the learned Tribunal while deciding application for

condonation of delay. The orders impugned before us relate to the application for condonation of delay filed at the behest of the writ petitioner before the Tribunal as also the application for correction of errors and review application.

9. Writ petitioner claims to be the owner of immovable property. Private respondents claim to be thika tenants in respect of such property. Private respondents filed a return before Thika Controller under the Thika Tenancy Laws. Thika Controller proceeded to decide on such return and found the private respondents to be thika tenants in respect of the property concerned. Such decision of the Thika Controller is dated April 15, 2012.
10. No material was placed on record before learned Tribunal as also before us that, any notice was issued by the Thika Controller to the writ petitioner with regard to the proceeding initiated under the Thika Tenancy Laws for consideration of the thika tenancy of the private respondents in respect of the property concerned.
11. Quite to the contrary, records placed before learned Tribunal suggests that, no notice was in fact issued to the writ petitioner before us by the Thika Controller with regard to the proceeding under the Thika Tenancy Laws.

12. Writ petitioner became aware of the order of the Thika Controller dated April 15, 2012 on May 4, 2015 in response to a query raised under the RTI Act, 2005.
13. Thereafter, the writ petitioner approached the High Court by way of a writ petition being W.P. No.19273 (W) of 2015 assailing the decision of the Thika Controller dated April 15, 2012.
14. It is trite law that, notwithstanding the availability of the statutory alternative remedy, a citizen can approach the Writ Court assailing an order of the statutory authority on the ground of lack of jurisdiction or on breach of principles of natural justice amongst others.
15. The High Court, in such writ petition, however, was of the view that, the writ petitioner should avail of the statutory alternative remedy before the Tribunal. Such decision was rendered on April 26, 2023 by permitting the writ petitioner to approach the Tribunal within eight weeks from the date of such order.
16. Writ petitioner filed an Original Application before the Tribunal on June 9, 2023. The Original Application was registered as O.A. 1824 of 2023.
17. Private respondents being aggrieved by the decision of the learned Tribunal dated April 26, 2023 preferred an appeal therefrom which was disposed of by an order dated February 1, 2024. Appeal Court

directed the Tribunal to decide on the issue on limitation, on an application to be filed by the writ petitioner, if so advised.

18. Writ petitioner filed an application for condonation of delay being M.A. 207 of 2024.
19. Application for condonation of delay is elaborate. It runs into several paragraphs and in fact is in excess of 100 paragraphs. It traces the entire history of the subject-matter. It alludes to the events noted above and it seeks to explain the delay on the ground of proceeding pending again as noted above.
20. Private respondents were awarded an opportunity to file affidavits by the Tribunal to the application for condonation of delay which the private respondents did.
21. It is trite law that, an application under Section 5 of the Limitation Act, 1963 is required to be decided leniently. An authority deciding an application under Section 5 of the Limitation Act, 1963 per se is not concerned with the quantity of delay but with the quality of the explanation.
22. Applying such principles of law in the facts of the present case, we find that, writ petitioner was not aware of the order of the Thika Controller which it sought to assail before the Tribunal dated April 15, 2012 till May 4, 2015. Before the Tribunal it was not established

that the writ petitioner was aware of the order dated April 15, 2012 of the of the Thika Controller prior to May 4, 2015.

23. Subsequent to the knowledge of the writ petitioner on May 4, 2015 of the order of the Thika Controller dated April 15, 2012 approached the High Court by way of a writ petition which was disposed of by an order dated April 26, 2023. It cannot be said that the High Court was without jurisdiction or that the writ petitioner approached a forum which was wholly without jurisdiction. There was no delay in the writ petitioner approaching the High Court on knowledge of the order of the Thika Controller.
24. It is pointed out on behalf of the private respondents that, the writ petition filed was challenging the mutation. Obviously, in the event, order of the Thika Controller dated April 15, 2012 is correct then the writ petitioner loses title over the property and the new owner that the State needs to be mutated in the Municipal records and the private respondents as thika tenants therein. Challenge to the mutation will in its wake bring into the fore a challenge to the order of the Thika Controller passed under the Thika Tenancy Laws.
25. Therefore, in our view, the decision of the Thika Controller that the property was governed by the Thika Tenancy Law was under challenge before High Court in the writ petition filed by the writ petitioner being W.P. 19273(W) of 2015. Such writ petition was

- disposed of by an order dated April 26, 2023 permitting the writ petitioner to approach the Tribunal within eight weeks which the writ petitioner did and filed Original Application being O.A.1824 of 2023 on June 9, 2023.
26. It is, thereafter on an appeal by the private respondents directed against the order dated April 26, 2023 that the Appeal Court required the Tribunal to decide on the issue of limitation. Writ petitioner filed an application for condonation which was dismissed by the order dated November 24, 2024. Errors thereon were corrected on December 6, 2024. Application for review was dismissed on January 15, 2025 by the Tribunal.
27. In our view, learned Tribunal did allude to the fact that, the writ petitioner was not lax in availing of the remedies of challenging the order dated April 15, 2012 of the Thika Controller. There exist sufficient explanations for the condonation of delay and for the Tribunal to accept the same. Tribunal erred in not doing so.
28. In such circumstances, the decision of the Tribunal, rejecting the application for condonation of delay and refusing the review are set aside.
29. M.A.207 of 2021 seeking condonation of delay is allowed. O.A.1824 of 2023 (LRTT) will be heard and decided by the Tribunal on merits.

30. **W.P.L.R.T. 58 of 2025** is **disposed of** without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)