

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

WPLRT 138 of 2025

Tapas Kumar Naskar
Vs.
The State of West Bengal and others

With

WPLRT 141 of 2025

Tapas Kumar Naskar
Vs.
The State of West Bengal and others

For the petitioners : Mr. Dhananjay Nayak,
Ms. Tanwishree Mukherjee

For the State
in WPLRT 138 of 2025 : Mr. Sk. Md. Galib, Ld. Sr. Govt. Adv.,
Mr. Santimoy Bhattacharyya

For the State
in WPLRT 141 of 2025 : Mr. Sk. Md. Galib, Ld. Sr. Govt. Adv.,
Ms. Priyamvada Singh

Heard on : 04.09.2025

Judgment on : 04.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeals arise out of an order passed by the learned Land Reforms and Tenancy Tribunal, whereby the applications for condonation of delay in preferring original applications against the orders of the appellate authority setting aside the mutation in the name of the present appellant and his mother were dismissed.
2. Both the writ petitions arise out of two mutation cases in respect of connected proceedings and, as such, are taken up together for hearing.
3. Learned counsel for the petitioner argues that the orders of the appellate authority which was challenged before the Tribunal were passed in the name of dead persons, since all the appellants were dead at the time when the orders were passed by the appellate authority.
4. Learned counsel places reliance on the death certificate of one of the appellants, which has been annexed to the present writ petitions, which indicates that Bhadreswar Naskar, one of the appellants, met his demise on December 14, 2011, that is, much before the passing of the appellate authority's order.
5. Learned counsel places reliance on *Raja Harish Chandra Raj Singh vs. Deputy Land Acquisition Officer and another*, reported at AIR 1961 SC 1500, where the Hon'ble Supreme Court relied on certain judgments of different High Courts where it was held that time can begin to run

only from the date on which the decision is communicated to the parties and that where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed, the expression "within thirty days after the making of the order" used in the statute under consideration means thirty days after the date on which the communication of the order reached the parties affected by it. It is thus submitted that in respect of the proceedings before the quasi-judicial authorities, it is the incumbent duty of such authority, if an adverse order is passed, to communicate such order to the person against whom the order was passed.

6. Learned Senior Government Advocate refutes the contention that all the appellants were dead at the time of passing of the order of the appellate authority. It is submitted that even if one of the appellants was dead by then, the other appellants were alive and, as such, the cause of action for preferring the appeal survived in the rest of the appellants and the entire order of the appellate authority cannot be deemed to be a nullity.
7. Even as per the communication made on September 19, 2022, allegedly by the present appellant to the appellate authority, only one of the appellants namely Jugal Kishore Naskar had died on April 27, 2022. It is submitted that as per the principles embodied in the Code of Civil Procedure, which ought to be adopted in the absence of any specific provision in the present case, if a demise of one of the parties occurs after the hearing is concluded, it will be deemed that the order

is passed against such person, creating a legal fiction that the person was alive at the relevant juncture.

8. It is further contended by learned Senior Government Advocate that the present appellant, despite having admittedly written a letter to the appellate authority, chose not to appear in the appellate proceedings repeatedly, which is borne out by the records of the appeals, the order sheets of which have been annexed to the present writ petitions. Thus, the principle laid down in the cited judgment does not apply in the present case.
9. Upon hearing learned counsel for the parties, we take note of the fact that only a single death certificate of one of the appellants before the appellate authority has been annexed to the present writ petition. Thus, it is not even clear till date as to whether all the appellants before the appellate authority were deceased at the juncture when the appellate authority's order was passed.
10. Surprisingly, the appellant seeks to take shelter of a communication made on September 19, 2022, that is, after the hearing of the matter was over before the appellate authority, indicating that one of the appellants had apparently died. However, it is admitted in the application under Section 5 of the Limitation Act, which was filed before the Tribunal, that a notice of hearing of the appeal was served on the present appellant on July 08, 2021. Although it is contended that the said date itself was fixed for hearing and, as such, could not be attended by the appellant, it is not clear before the court and

remains unexplained as to what prevented the appellant from appearing in the appeals even thereafter.

11. Since the appellant, in his application for condonation of delay before the Tribunal, categorically admitted having knowledge of the pendency of the appeal, the reason for the absence of the appellant thereafter in support of his contention that the appellants had died is unclear. Even in the communication dated September 19, 2022, the death of only one of the appellants was mentioned, which is quite contrary to the submissions now made from the Bar on behalf of the appellant that all the appellants were deceased at the time when the appeal was disposed of. Thus, not only is the stand of the appellant contradictory, since the death of one of the appellants was intimated to the appellate authority but the death certificate of a different appellant is produced before us and the present appellant chose deliberately, despite admittedly having knowledge of the appeal at least from July 08, 2021, not to attend the hearing, we do not find any error in the learned Tribunal having dismissed the application for condonation of delay of the appellant.
12. On a more basic premise, it can only be held that an order is a nullity if all the appellants were dead at the time the same was passed. Even if it is arguable as to whether the right to sue survived on the other appellants, it would not be a case where an order passed would be a nullity *ab initio*.

13. In the present case, even the factum of death of all the appellants has not been established at any stage up to this Court by the appellant. Thus, there is no question of consideration of nullity of the appellate award which was challenged before the Tribunal as a mitigating factor for the delay in preferring the challenge before the Tribunal.
14. The judgments cited by the appellant are of no avail to him, since in those cases the ratio laid down was that if no notice of the proceeding was at all served on, or no opportunity of hearing was given to, the aggrieved party, the date of knowledge of the order would be relevant for calculating limitation. Such necessity to give notice would, as per the said reports, be read into statutory provisions where no necessity to serve a copy of the award/order is provided.
15. However, in the present case, the appellant was admittedly served with a notice of hearing and despite that, the appellant chose to abstain from appearing before the appellate authority at all. Hence, it cannot be said that no notice of the proceeding was given to him or the orders of the appellate authority were passed behind his back. The appellant, after having deliberately remained absent in the hearing of the appeals and having not substantiated his case that all the appellants had met their demise, cannot now be permitted to take advantage of his own wrong and challenge the appellate authority's orders before the Tribunal after a prolonged delay of about 486 days.
16. Thus, we do not find any reason to interfere with the impugned order.

17. Accordingly, WPLRT 138 of 2025 and WPLRT 141 of 2025 are dismissed on contest without any order as to costs.
18. All pending connected applications, if any, stand disposed of accordingly.
19. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)