

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 Supratim Bhattacharya

WPLRT 139 of 2025

Jai Balaji Infotech Private Limited
Vs.
The State of West Bengal and others

For the petitioner	:	Mr. Joydip Kar, Sr. Adv., Mr. Rahul Karmakar, Mr. Rajarshi Banerjee, Mr. Anirudhya Dutta, Ms. Suranjana Chatterjee
For the State	:	Mr. Sk. Md. Galib, Sr. Govt. Adv.
For the respondent nos. 5 & 6	:	Mr. Arup Chatterjee Ms. Priti Jain
For the KMC	:	Mr. Biswajit Mukherjee, Mr. Debanjan Mukherjee
Heard on	:	02.02.2026
Judgment on	:	02.02.2026

Sabyasachi Bhattacharyya, J.:-

1. Heard learned counsel for the parties.
2. In view of the limited ambit of the challenge, we take up the writ petition itself for final disposal.
3. The writ petitioner relies on a purchase deed dated May 12, 2010 to stake claim to title in the subject property.
4. Pursuant to such purchase, the name of the petitioner was mutated in the concerned records on August 05, 2010.
5. Subsequently, however, it came to the notice of the petitioner that the records have been amended, removing the name of the petitioner and incorporating the name of the private respondents. Upon coming to know of the same, an original application, bearing OA No. 3337 of 2012 (LRTT), was filed before the West Bengal Land Reforms and Tenancy Tribunal by the petitioner, thereby substantially challenging the removal of the name of the writ petitioner from the records on the strength of the recording of the subject property as a thika tenancy.
6. During pendency of the said proceeding, it was disclosed before the Tribunal by the State that an order was passed by the Thika Controller on August 26, 2011 declaring the property as a thika property.
7. Learned senior counsel appearing for the petitioner contends that upon learning of the same, the petitioner had an inspection of the Thika Controller's records with the leave of the Tribunal and a further leave was sought and obtained by the petitioner from the Tribunal for

getting a certified copy of the order dated November 09, 2010 upon which such certified copy was obtained.

8. It is pointed out that vide order dated December 09, 2021, the Tribunal granted the prayer of the writ petitioner to file a supplementary affidavit, incorporating the order of the Thika Controller within the broad conspectus of the challenge in the original application.
9. However, the writ petitioner, instead of filing a supplementary affidavit simpliciter, as per legal advice, took out a fresh original application, giving rise to OA No. 4086 of 2022 (LRTT), challenging the order of the Thika Controller dated June 26, 2011.
10. Since a period of a little more than 12 years had elapsed between passing of the Thika Controller's order and the filing of the second original application, MA No. 119 of 2023 was also filed along with the second OA, formally seeking condonation of the delay in preferring the same.
11. By the judgment impugned before us, the Tribunal dismissed MA No. 119 of 2023 and consequentially held OA No. 4086 of 2022 (LRTT) to be time-barred on the premise that the writ petitioner could not properly explain the long delay.
12. Learned senior counsel appearing for the writ petitioner submits that in fact, a leave had already been granted by the Tribunal to the writ petitioner to file a supplementary affidavit bringing on record formally the order of the Thika Controller. As per legal advice, however, the second original application was filed.

13. As such, it is contended that the second original application could very well have been treated to be the supplementary affidavit, leave for filing which had already been granted by the Tribunal. Instead of doing so, the Tribunal adopted a hyper-technical approach, it is submitted.
14. Secondly, learned senior counsel appearing for the writ petitioner argues that the delay could not have been construed for the entire period of 12 years, since it is only when the State informed the Tribunal that there was a formal order of the Thika Controller, was permission given to the present writ petitioner by the Tribunal to have an inspection of the records, upon which the order was seen for the first time by the writ petitioner. Only thereafter, that too as per the liberty granted by the Tribunal, a certified copy thereof was obtained. Thus, there was no substantial delay at all in filing the second original application, even if taken on face value.
15. Thus, it is argued by the petitioner that the impugned judgment ought to be set aside and either the second original application ought to be deemed to be a supplementary affidavit within the broader ambit of the challenge preferred in OA No. 3337 of 2012 (LRTT) or the delay occasioned, if any, in preferring the second original application ought to be condoned.
16. Learned counsel appearing for the private respondents, in his usual fairness and on instruction, submits that in principle, the private respondents do not oppose the prayer sought in the present application.

17. Learned Senior Government Advocate appearing for the State opposes the writ petition. It is submitted that the learned Tribunal applied its mind and, on a thorough scrutiny of the materials on record, came to the reasoned conclusion that the delay in preferring the second original application could not be condoned. It is submitted that the said view of the Tribunal was one of the plausible views on the materials on record and there ought not to be any interference under Article 226 of the Constitution of India.
18. Secondly, it is contended that for a substantial period, even from coming to know of the order of the Thika Controller, no explanation for the delay has been furnished at all in the condonation application filed in connection with OA No. 4086 of 2022 (LRTT).
19. Learned Senior Government Advocate further argues that in the absence of any infirmity in the impugned judgment, the same ought not to be interfered with.
20. There are two aspects of the present matter which are to be taken note of.
21. First, the Tribunal, as evident from its findings, in particular in the final and penultimate portions of the impugned judgment, specifically in internal pages 14 and 16 of the impugned judgment, proceeded on the premise that the delay in filing of OA No. 4086 of 2022 (LRTT) was of more than 12 years. However, we are unable to agree with such finding.
22. It is nobody's case that the writ petitioner had any knowledge of the Thika Controller's order prior to the existence of the same being

clearly disclosed before the Tribunal in connection with OA No. 3337 of 2012 (LRTT).

23. Rather, it is found from the records that the State nowhere contended that any notice of the proceeding before the Thika Controller, which led to the declaration of thika tenancy dated June 26, 2011 was served on the writ petitioner, who had already purchased the suit property prior to such order, on May 12, 2010 and was the owner of the property at the relevant juncture.
24. More importantly, since the name of the writ petitioner had already been mutated in respect of the subject property on August 05, 2010, also prior to the order of the Thika Controller, as on the date of the passing of the order of the Thika Controller, the writ petitioner, as a matter of right, was entitled to a notice of the thika tenancy proceeding, being the owner and occupier of the subject property. In the absence of such notice, there is nothing to attribute knowledge of the writ petitioner vis-à-vis the order of the Thika Controller dated June 26, 2011 before it was first disclosed in the Tribunal.
25. We find from the order dated September 24, 2019 passed in OA No. 3337 of 2012 (LRTT) that upon the case records being called for from the Thika Controller, a report of the Thika Controller in that regard was filed before the Tribunal on the said date and learned counsel for the writ petitioner was granted liberty to inspect the records as per a previous order dated March 19, 2019.
26. Only thereafter on December 09, 2019, it was recorded by the Tribunal that liberty was given to the writ petitioner to get a certified

copy of the order dated November 09, 2010 from the records of the Thika Controller on filing a proper application and proper court fees.

27. Thus, at least before September 24, 2019, there was no occasion for the writ petitioner even to have an inspection of the records of the Thika Controller.
28. Therefore, knowledge, if at all, regarding the Thika Controller's declaration could not be attributed to the writ petitioner prior to around the month of September, 2019. The certified copy of the Thika Controller's order could be obtained even thereafter, pursuant to leave in that regard being granted by the Tribunal.
29. On December 09, 2021, the petitioner sought for time to file a supplementary affidavit.
30. Read in the context of the earlier orders of the Tribunal, such affidavit was evidently to bring on record the order of the Thika Controller, to include it within the broader ambit of the primary challenge in OA No. 3337 of 2012 (LRTT).
31. Thus, it is found that before the production of the records and inspection of the same and obtaining a certified copy of the order of the Thika Controller, there was no knowledge on the part of the writ petitioner about the order of the Thika Controller and there was no scope of challenging the said order. Hence, the preliminary premise of the Tribunal, to the effect that the delay in preferring the second original application was of more than 12 years, is palpably perverse.
32. We find from the impugned judgment of the Tribunal that the Tribunal was aware of such position, due to which the learned

Tribunal proceeded on the premise that even if it is assumed for the sake of argument that the applicant/writ petitioner came to know about the existence of the proceeding on September 24, 2019, no explanation had been assigned as to why the writ petitioner filed the application for obtaining certified copy on January 14, 2020.

33. However, we find that the approach taken by the learned Tribunal regarding the period after obtaining the certified copy was hyper-technical and is contrary to the well-settled legal position that Courts and Tribunals are liberal insofar as condonation of delay is concerned, unless *mala fides* can be attributed to the applicant and/or there is gross negligence on the part of the applicant. Neither of the two is evident in the facts and circumstances of the case. Rather, the effort of the writ petitioner to bring on record a challenge to the Thika Controller's order was somewhat validated by the liberty granted by the Tribunal to apply for certified copy after having an inspection of the records.
34. Hence, the approach of the Tribunal itself was erroneous.
35. Even otherwise, since on a perusal of OA No. 3337 of 2012 (LRTT), it is evident that the primary challenge was to the alteration of the records on the premise of the Thika Controller's order, it cannot be said that the original application of 2012 did not include a challenge, in principle, to the declaration of the subject property as a thika tenancy.
36. Hence, the second original application merely supplemented the original challenge to the Thika Controller's declaration, which had

already been preferred by way of OA No. 3337 of 2012 (LRTT). Seen from such perspective as well, the writ petitioner was well within its bounds in bringing on record a specific challenge to the Thika Controller's declaration, which comes within the broad ambit of the primary challenge preferred in OA No. 3337 of 2012 (LRTT).

37. Thus, the learned Tribunal acted without jurisdiction and *de hors* the law in refusing to condone the delay in preferring OA No. 4086 of 2022 (LRTT).
38. In view of the above, WPLRT 139 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated May 23, 2025 passed by the Fourth Bench, West Bengal Land Reforms and Tenancy Tribunal in MA No. 119 of 2023, filed in connection with OA No. 4086 of 2022 (LRTT).
39. Accordingly, MA No. 119 of 2023 stands allowed, thereby condoning the delay in preferring OA No. 4086 of 2022 (LRTT). The Tribunal shall now proceed to hear OA No. 4086 of 2022 (LRTT) along with OA No. 3337 of 2012 (LRTT) and dispose of the two original applications as expeditiously as the business of the Tribunal permits.
40. We make it clear that the merits of the challenge in the said original applications have not been entered into by this Court at this stage and it will be open to both the parties to argue all points available to them before the Tribunal at the final hearing of the said original applications.
41. There will be no order as to costs.

42. 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.

(Supratim Bhattacharya, J.)

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