
(2011) 07 UK CK 0146

In the Uttarakhand High Court

Case No : Writ Petition No. 1143 of 2006 (M/B)

Smt. Khushnudi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (2011) 07 UK CK 0146

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.

Restoration Application No. 363 of 2011 & Delay Condonation Application No. 5330 of 2011

1. The writ petition was dismissed for want of prosecution on 6th March, 2007. An application for restoration has been filed on 2nd June, 2011. Because there was delay in filing the restoration application, an application for condonation of delay has also been filed. In both these applications, it has been contended that the clerk of the counsel did not mark the writ petition when the same was listed on 6th March, 2007 and, accordingly, no one appeared when the writ petition was taken up for consideration. With that, it has been stated that in the third week of May, 2011, Petitioner contacted her counsel, when it was learnt that the writ petition has been dismissed for non prosecution. In the event, counsel for the Petitioner did not mark the case in the list, it must be deemed that the counsel was unaware of dismissal. If that be so, how, on being contacted, the counsel informed the Petitioner that the case has been dismissed for non prosecution, has not been explained in the body of any of those two applications. The said state of affair clearly indicates that a cock and bull story has been made out in the applications. No prudent person can place any reliance on the averments made in the applications. The logical conclusion, therefore, would be that there is no reason why the writ petition was permitted to be dismissed for

non prosecution and there is also no reason for the delay in filing the restoration application. Both the applications are abuse of process of Court and are liable to be and should be dismissed. However, taking into account the fact that the Petitioner is an agriculturist, whose land had been acquired, and that she had to heavily depend upon the wisdom and prudence of her chosen Advocate and it is her chosen Advocate, who sank her; we condone the delay in filing the restoration application and also allow the restoration application subject to the Advocate, engaged by the Petitioner, paying cost of Rs. 2,000/- from his own resources with the High Court Legal Services Committee within 15 days from today, as a condition precedent. In default, the application for condonation of delay in filing the restoration application as well as the restoration application shall stand dismissed.

Writ Petition No. 1143 of 2006 (M/B):

Heard learned Counsel for the parties on the merits of the writ petition.

2. Since the subject matter of dispute in the present writ petition is identical to the one dealt with by us in Writ Petition No. 1139 of 2006 (M/B), for the reasons recorded in our judgment rendered today while disposing of the said writ petition, we direct the Collector to dispose of the application of the Petitioner in terms of Section 28A of The Land Acquisition Act, 1894.

3. The writ petition is, accordingly, disposed of.