

(2009) 08 CAL CK 0012
In the Calcutta High Court
Case No : W.P.L.R.T. No. 118 of 2008

Subimal Bhunia and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Limitation Act, 1963 — Section 1, 5

West Bengal Land Reforms Act, 1955 — Section 14T(3), 54

Citation : (2009) 08 CAL CK 0012

Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : B.C. Manna, for the Appellant; Gita Mukherjee for the State, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Challenging the judgment and order dated 30th November, 2007 passed by the West Bengal Land Reforms and Tenancy Tribunal in Original Application No. 1761 of 2006 (LRTT), this writ application has been filed. The issue involved in the Original Application was the challenge of the order passed by the Appellate Authority u/s 54 of the West Bengal Land Reforms Act, 1955 in Appeal Case No. 85(T) of 2003, whereby the Appellate Authority rejected the application u/s 5 of the Limitation Act seeking condonation of delay in preferring the appeal. The order of Appellate Authority is quoted by the learned Tribunal below in the impugned order. The order of the learned Tribunal under challenge reads such:

This application has been filed challenging the order dated 21.3.2006 passed by the LD & LRO, Purba Midnapore being the learned Appellate Authority in appeal Case No. 85(T)/2003 u/s 54 of the WBLR Act, 1955.

2.1. The applicant's case, in brief, is that the applicant filed W.P. No. 22991 (W) of 1995 which was renumbered as O.A. No. 1132 of 2003 (LRTT) challenging the

order of the vesting passed by the concerned Revenue Officer in vesting Case No. 311181 u/s 14T(3) of the WBLR Act and this Tribunal on 17.4.2003 disposed of the said O.A. by passing the following order:

(Quote) "Heard both sides at length.

The writ petition being C.O. No. 22991 (W) of 1995 was filed challenging the notice issued from the office of BL & LRO, Contai-III under his Memo No. 2926-281VS dated 7.11.95 for talking over possession of the vested land.

It has been submitted that the order of vesting was passed by the Revenue Officer attached to the office of DL&LRO then Tamluk and now Purba Medinipur and the raiyat he Ids that within the jurisdiction of BL & LRO, Contai-II and Contai-III, District- Purba Medinipur and of BL & LROs, Pathar Pratima and Basanti, District - South 24-Parganas.

As prayed for by the learned Lawyer for the applicants the said Writ Petition No. 22991 (W) of 1995 alongwith O.A. No. 1132 of 2003 which has been filed on the same issue is disposed of directing the applicants to apply for a certified copy of the order of vesting passed by the Revenue Officer, attached to the office of DL & LRO then Tamluk and now DL & LRO, Purba Medinipur within 15 days from the date of receipt of this order. The said Revenue Officer is directed to supply the certified copy within one month from the date of receipt of such application. The applicants are further directed to prefer an appeal within one month from the date of receipt of the certified copy to the DL& LRO, Purba Medinipur, who is directed to admit the appeal by condoning delay in view of the pendency of the writ petition since 1995 and dispose it of in accordance with law.

DL & LROs, Purba Medinipur and South 24-Parganas and BL & LROs, Contai-II and III, Pathar Pratima and Basanti are directed to maintain the status quo with regard to the physical possession of the vested land as of today till supply of the certified copy as directed and one month thereafter,

Let a plain copy of this order duly countersigned by the Principal Officer of the Tribunal be made over to the learned Government Representatives for onward communication to the DL & LROs, Paschim Medinipur and South 24-Parganas and BL & LROs, Contai-II, Contai-III, Pathar Pratima and Basanti for information and compliance and Xerox certified copy if applied for to the applicant on receipt of payment of requisite Court fees. (unquote)

2.2 Pursuant to the aforesaid order dated 17.4.2003 passed by this Tribunal in O.A. No. 1132/2003 (LRTT) the applicant submitted application for obtaining of the order of vesting in proceeding No. 371/81 but the same was not supplied by the authority concerned. Thereafter, the applicant preferred an appeal on 7.7.03 before the DL & LRO, Purba Medinipur along with an application for condonation of delay for filing the said appeal. During the pendency of the appeal, the certified copy of the vesting case was supplied.

The learned appellate authority rejected the prayer of the application for

condonation of the delay for filing the appeal and the said was rejected. The present application has been filed challenging the said order of the appellate authority.

2.3 The applicant sought for the following relief at para 7 of page 11 of the application.

(Quote) "7. Relief sought for:

In view of the facts stated in Paragraph-6 above, the applicants pray for the following relief:

(a) To pass an order directing the respondent appellate authority to forbear from giving effect and further effect to the impugned order dated 21.3.2006 in Appeal Case No. 85(T)/2003 passed by the appellate authority and to quash it.

(b) To pass an order with a direction to the said appellate authority to admit the appeal being Appeal ease No. 85(T) of 2003 by allowing the application u/s 1 of the limitation Act for condonation of delay for filing of the said appeal.

(c) To pass such further order or direction as to Your Lordship may seem fit and proper.(Unquote)

3.1 The learned Advocate for the applicant submitted that despite direction from the Tribunal in O.A. No. 1132/2003 (LRTT) the Revenue Officer did not supply the certified copy of the impugned vesting order in time but the learned Appellate Authority rejected the application and did not condone the delay in preferring the appeal. The highlight of contention urged was that the Appellate Authority had no jurisdiction to reject the prayer as the same was filed in terms of the order passed by this Tribunal in O.A.No.1132/ ,2003 (LRTT).

3.2 The learned Government Representative submitted that the applicant practically obtained the certified copy of the vesting order on 28.10.2002 and took wrong plea in suppression of the fact. The learned Appellate Authority correctly rejected the prayer on 21.03.06 by passing the speaking and reasoned order.

Decision with reasons

4.1 The question of law involved in the present case is related to the actual date of issue of the certified copy of the impugned order dated 21.3.06 passed in vesting Case No. 85(T)/2003.

4.2 For better appreciation of the point it is pertinent to reproduce as below the relevant text of the order dated 21.3.06 passed by the learned Appellate Authority.

(Quote) ...The instant appeal is found to have been filed by the present appellants on 7.7.2003. In their application u/s 5 of the Indian Limitation Act they have attributed the delay in preferring the instant appeal to the delay of nearly two months in getting supply of the certified copy of the order of vesting

from the office of the concerned BL & LRO. On examination of the relevant case records, it becomes evident that the certified copy of the order of vesting against which they have preferred the instant appeal was supplied to them on 28.10.2002. It is interesting to note that the certified copy of the order of vesting was already with the appellants when they moved the Hon''ble LRTT on 17.4.2003 and when the Hon''ble LRTT, on prayer by their learned Lawyer passed a number of statutory directions to be complied with within the specific deadlines including the direction upon the appellants to apply for the certified copy of the order of vesting, direction upon the concerned Revenue Officer to supply the same within one month from the date of application and the direction upon the DL & LRO, Purba Medinipur to admit the appeal by condoning the delay. It implies that the appellants suppressed the fact of availability of the certified copy of the order of vesting with them before the Hon''ble LRTT on 17.4.2003. It could not be understood why the appellants could not make honest submission before the Hon''ble LRTT in this regard. Despite such order dated 17.4.2003 in O.A. No. 1132/2003 (LRTT) the appellants have filed the instant appeal on 7.7.2003 after a lapse of almost three months on the specious plea that there has been a delay of two months on the part of the office of concerned BL as LRO in supplying the certified copy of the order to them. The averments made by them in their application u/s 5 of the Indian Limitation Act are based on misrepresentation. In the context of the above facts, the present appellants'' delay in preferring the instant appeal cannot be condoned and their appeal cannot be admitted.

The instant appeal is rejected. (Unquote)

We have considered the cited decisions in relation to condonation of delay and we are not oblivious as to settled proposition of law dealing of the matters relating to condonation of delay. At the same time we must not shut our eyes to the approach made in totality in this connection. Here in present case, we find that at para 4 of the memo of appeal (annexed at page 28 of the application), the present applicant specifically admitted 4. That after filing of the said application for obtaining certified copy of the said alleged vesting order as per direction of the Hon''ble Tribunal no certified copy has not yet been supplied after a long time for a period of two months. Without alternative an appeal was filed before the learned DL & LRO Tamluk, Dist. Midnapore without certified copy as per direction of the Hon''ble Tribunal by annexing the previous certified copy supplied by the concerned BL & LRO, Contai-III, Dist. Midnapore East.

The learned Appellate Authority while accepting this very admission a bit more specifically observed that the concerned BL & LRO issued certified copy of the vesting order on 28.10.2002 about six months before issuing of the order dated 17.4.2003 by this Tribunal in O.A. No. 1132/2003 (LRTT). But the applicant in that connection chose to suppress the fact and in the similar factum of suppression vested to hold the BL & LRO concerned responsible for delay in filing the appeal. Such suppression acts/approaches cannot commend consideration. The applicant thus having capitalized demonstrative suppressive

approach and having failed to come with clean hands, the present application does not merit consideration. The learned Appellate Authority very rightly disclosed the truth and passed the reasoned order. We, therefore, do not find any cogent ground to interfere with the order dated 21.3.06 passed by the learned Appellate Authority.

As a result the O.A. No. 1761/2006 (LRTT) is not maintainable and stands dismissed.

Let a plain copy of this order duly countersigned by the Principal Officer of the Tribunal be made over to the learned Government Representative for communication to the aforesaid BL & LRO for compliance and Xerox certified copy of the order if applied for by the applicant, be delivered subject to payment of requisite Court fees.

3. Assailing the order of vesting, an appeal was preferred to the Appellate Authority along with the application u/s 5 of the Limitation Act, wherein in Paragraph-7 it was categorically contended by the writ petitioners as appellants therein that the appeal was filed annexing the certified copy of the order supplied on 28th October, 2002. The Paragraph-7 of the said application reads such:

That the instant appeal was filed on 7.7.2003 by annexing the certified copy of the said order supplied earlier on 28.10.2002 without further delaying by filing of the said certified copy as per direction of the Hon''ble Tribunal.

4. The actual thing happened in the following way. Assailing the vesting proceeding, writ application as was moved before the High Court at Calcutta was transferred for hearing before the Tribunal and in the meantime, the vesting order was passed and writ petitioner received certified copy of the order of vesting but before the Tribunal, learned Advocate could not submit the same, when the Tribunal directed the writ petitioner to move the appellate authority by filing an appeal u/s 54 of the West Bengal Land Reforms Act along with application u/s 5 of the Limitation Act on having the certified copy of the order afresh for which direction was given by the said Tribunal to issue the certified copy within two months. In the transferred writ application learned Tribunal below registering the same as Original Application No. 1132 of 2003 (LRTT) passed the following order on 17th April, 2003:

Heard both sides at length.

The writ petition being C.O.No.22991 (W) of 1995 was filed challenging the notice issued from the office of BLLRO, Contai-III under his Memo No. 2926-28/VS dated 7.11.95 for taking over possession of the vested land.

It has been submitted that the order of vesting was passed by the Revenue Officer attached to the office of DLLRO then Tamluk and now Purba Medinipur and the raiyat holds land within the jurisdiction of BLLRO, Contai-II and Contai-III, District Purba Medinipur and of BLLROs, Pathar Pratima and Basanti, District-South 24-Parganas.

As prayed for by the learned Lawyer for the applicants the said Writ Petition No. 22991 (W) of 1995 along with O.A. No. 1132 of 2003 which has been filed on the same issue is disposed of directing the applicants to apply for a certified copy of the order of vesting passed by the Revenue Officer attached to the office of DLLRO then Tamluk and now DLLRO, Purba Medinipur within 15 days from the date of receipt of this order. The said Revenue Officer is directed to supply uncertified copy within one month from the date of receipt of such application. The applicants are further directed to prefer an appeal within one month from the date of receipt of such application. The applicants are further directed to prefer an appeal within one month from the date of receipt of the certified copy to the DLLRO, Purba Medinipur who is directed to admit the appeal by condoning delay in view of the pendency of the writ petition since 1995 and dispose it of in accordance with law.

DLLROs, Purba Medinipur and South 24-Parganas and BLLROs, Contai-II and III, Pathar Pratima and Basanti are directed to maintain the status quo with regard to the physical possession of the vested land as of today till supply of the certified copy as directed and one month thereafter.

Let a plain copy of this order duly countersigned by the Principal Officer of this Tribunal be made over to the learned Government Representatives for onward communication to the DLLROs, Paschim Medinipur and South 24-Parganas and BLLROs, Contai-II, Contai-III, Pathar Pratima and Basanti for information and compliance and Xerox certified copy if applied for to the applicant on receipt of payment of requisite Court fees.

5. This order of the Tribunal was not challenged by the State respondent, as such, it reached its finality. In view of the order whereby direction passed for grant of certified copy afresh to prefer an appeal and when the learned Tribunal directed to admit the appeal by condoning the delay, the appellate authority had no power to dismiss the appeal on the ground of delay. The order of Tribunal was binding upon him. As there was a categorical direction by the learned Tribunal on 17th April, 2003, irrespective of the technical defect as raised, appeal was required to be admitted for hearing on condoning the delay on the reasoning that the order of 17th April, 2003 had crystallized the rights and liabilities of the parties and as such, the said order was required to be followed strictly.

6. Having regard to such State of affairs, we are of the view that both the appellate authority and the learned Tribunal went wrong to dismiss the respective applications, namely, the application u/s 5 of the Limitation Act and the original application as moved against that respectively. Hence, the order of the appellate authority passed on 21st March, 2006 in the said appeal and the order of the Tribunal dated 30th November, 2007 passed in Original Application No. 1761 of 2006 (LRTT) both stand set aside and quashed.

7. Having regard to the order of the learned Tribunal dated 17th April, 2003 as passed in Original Application No. 1132 of 2003 (LRTT), the appellate authority is

directed to admit the appeal by condoning the delay by passing a formal order in the application u/s 5 of the Limitation Act within two weeks from the date of communication of the order and thereby to hear the appeal on merit and to pass a reasoned decision in the appeal. The writ application is thus allowed.

8. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Mrinal Kanti Sinha, J.

9. I agree.