

(2010) 09 CAL CK 0008

Calcutta High Court

Case No: C.O. No. 2660 of 2010

Shyamali Das and Another

APPELLANT

Vs

Rabindranath Biswas and Others

RESPONDENT

Date of Decision: Sept. 16, 2010**Acts Referred:**

- Limitation Act, 1963 - Section 12, 5
- West Bengal Estates Acquisition Act, 1953 - Section 44(2), 44(3), 55A
- West Bengal Estates Acquisition Rules, 1954 - Rule 31

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** S.K. Ghosh, K. Prodhan and S. Chakraborty, for the Appellant; Ahin Choudhury, for the Respondent**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the respondents and is directed against the order dated August 3, 2010 passed by the learned District Judge, Alipore in E.A. Appeal No. 2 of 2005 thereby condoning the delay in preferring the appeal by the appellants/opposite parties herein.

2. The Revenue Officer, Kasba started a proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 being the Case No. 1 of 2005 and on June 7, 2005 orders were passed in favour of the petitioners. In that proceeding, the appellants/opposite parties herein were not parties at all. The opposite party Nos. 1 to 3 preferred an appeal against the said judgment and order u/s 44(3) of the said Act being E.A. Appeal No. 2 of 2005 before the learned District Judge, Alipore describing themselves as trustees of Dakshineswar Kali Temple and Debottar Estate. They also filed an application for condonation of delay u/s 5 of the Limitation Act, 1963. That appeal was registered and an order of stay of the order impugned was

granted by the order dated September 12, 2005. Being aggrieved, the petitioners preferred a writ petition being W.P. No. 13716(W) of 2007 before this Hon"ble Court and this Hon"ble Court disposed of that writ application on April 29, 2010 upon certain directions. Thereafter, the appeal proceeded in accordance with law and the application for condonation of delay filed by the appellants were taken up for hearing. Upon hearing both the sides, the learned District Judge allowed the application u/s 5 of the Limitation Act condoning the delay. Being aggrieved by such order, the respondents have come up with such application.

3. Now the point for consideration is whether the learned District Judge was justified in allowing the application for condonation of delay.

4. Upon hearing the submission of the learned Advocate of both the parties and on perusal of the record, I find that admittedly the appellants were not the parties to the proceeding No. 1 of 2005 u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953. Pursuant to the order of that proceeding, the petitioners made an advertisement in the local newspaper dated July 10, 2005. The appellants came to know that the petitioners had obtained orders from the Court regarding Dakshineswar and Touzi property was mentioned as 145. The petitioners have claimed that they are the absolute owners of many properties including Dakshineswar Kali Temple and Debottar Estate. They did not state the particulars of the Court or the case number. For that reason, the appellants had to search different courts and records to know the particulars about the case. Thereafter, on getting particulars on August 2, 2005 they applied for certified copy of that order and that was made available to the appellants on August 9, 2005. Then, within 30 days from that date, they filed the appeal and as a precautionary measure they have filed the application u/s 5 of the Limitation Act for condonation of delay, if any delay is caused.

5. The petitioners have filed a written objection stating, inter alia, that the appellants had no locus standi to file the instant appeal at all. They have also contended that the application u/s 5 of the Limitation Act is not applicable in an E.A. Appeal and as such, the condonation of delay does not arise. In the instant case, it must be remembered that the appeal has been filed by the third parties who had no knowledge about the judgment and order impugned. Section 55A of the West Bengal Estates Acquisition Act, 1953 lays down that the provisions of Sections 5 and 12 of the Limitation Act, 1963 shall apply to any appeal or application under the Act. Since the said Section has expressly provided for application of the Limitation Act, there is no bar to entertain an application u/s 5 of the Limitation Act. Moreover, the Rule 31 of the West Bengal Estates Acquisition Rules clearly lays down that an appeal may be admitted even after the prescribed period from the date of passing of order when the appellant satisfies the Tribunal that sufficient cause has been shown for not preferring the appeal within the said period of limitation of 30 days.

6. The appellants have clearly stated under what circumstances they got knowledge about the judgment and order impugned and how they have got the particulars of the judgment and order after thorough search after the paper publication. The appellants claimed as trustees of the Dakshineswar Kali Temple and Debottar Estate. The learned Trial Judge has analysed the materials on record and the circumstances to arrive at a conclusion that the prayer for condonation of delay should be granted and if it is rejected on technical ground there would be injustice to the appellants.

7. I am of the view that the learned District Judge has approached the matter correctly and she has arrived at a correct conclusion in allowing the application for condonation of the delay. Therefore, I am of the view that there is nothing to interfere with the impugned order.

8. The application is, therefore, dismissed.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.