

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Jurisdiction)

CMP No. 282 of 2017

With

IA No. 7440 of 2017

Defence Estate Officer (Earlier designated as Military Estate Officer) Bihar & Orissa Circle, Danapur Cantonment, PO & PS Danapur, District Patna, Bihar. Petitioner

Versus

1. Jayant Karnad, son of Late Malti Rao Karnad @ Malti Karnad Rao and Late Shankar Rao Karnad, resident of 7, River View Enclave, PO TELCO Works, PS TELCO, Town Jamshedpur, District East Singhbhum, Jharkhand.
2. The Union of India through Ministry of Defence, South Block, PO & PS New Delhi, New Delhi.
3. General Officer, Commandant in 'C' Central Commandant Lucknow, Cantt. PO & PS Lucknow Cantt, Lucknow UP.

... .. Opposite Parties

(Through V.C.)

**CORAM:HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Petitioner : Mrs. Nitu Sinha, Advocate
For the Opposite Parties : None

Order No.05/ Dated: 6th September, 2021

Per, Shree Chandrashekhar,J.

By an order of the Hon'ble the Chief Justice, these matters are assigned to the Bench consisting of one of us (Hon'ble Mr. Justice Ratnaker Bhengra).

2. A mentioning slip dated 24.08.2021 sent through e-mail by the learned counsel for the applicant- Defence Estate Officer was received in the Registry. The Bench Clerk obtained necessary permission and transmitted the mentioning slip to the concerned section on 03.09.2021 for listing of these applications on 06.09.2021.

3. CMP No. 282 of 2017 is an application for restoration of LPA No. 205 of 2009.

4. On 18.04.2017, LPA No. 205 of 2009 was dismissed for default.

5. The order dated 18.04.2017 reads as under:

“07/Dated: 18th April, 2017

1. When the matter was called out, nobody appeared on behalf of appellants hence, this Letters Patent Appeal is hereby dismissed for default.

2. Interim relief, if any, stands vacated.”

6. The application for restoration has been filed with a delay of 72 days.

7. IA No. 7440 of 2017 has been filed under section 5 of the Limitation Act for condoning the delay of 72 days in filing CMP No. 282 of 2017.

8. In IA No. 7440 of 2017, the applicant has averred thus:

“3. That L.P.A. No. 205 of 2009 was dismissed for default on 18.04.2017 for non appearance before the Division Bench of Hon'ble Mr. Justice D.N. Patel and Hon'ble Mr. Justice Ratnaker Bhengra.

4. That it is humbly stated that the counsel for appellant came to know regarding the dismissed of Memo of Appeal (L.P.A. No. 205 of 2009) on 8/08/2017 when the Liaisoning Officer of the concerned department enquired about the status of the appeal and thereafter it was searched and it was learnt that the L.P.A. No. 205/2009 has been dismissed for default on 18.04.2017.

5. That thereafter the certified copy of order dated 18.04.2017 was obtained from the office and it was communicated to the petitioner/appellant's office at Danapur and decision was being taken for filing restoration petition.

6. That thereafter the C.M.P. Was drafted by the counsel of appellant and was send to the concerned department for vetting. Thus in this process limitation of about 72 days occurred in filing the restoration application.

7. That, in the aforesaid facts and circumstances delay of 72 days in filing the restoration application may be condoned which is unintentional, otherwise petitioner/appellant will suffer irreparable loss and injury.”

9. In CMP No. 282 of 2017, the applicant has stated thus:

“3. That the aforesaid L.P.A. No. 205 of 2009 was listed under the heading “For Hearing” at Sl. No. 62 on 18.04.2017.

4. That it is humbly submitted that inadvertently it could not be marked by the clerk of that counsel for appellant and therefore, when the case was called out then on one appeared on behalf of the petitioner and it was dismissed for non appearance of the counsel by the Hon'ble Court. But unfortunately the counsel had no knowledge about the matter.

5. That on 10.08.2017 the Liaisoning Officer of the counsel department of the petitioner came to office of the A.S.G.I. And enquired about the status of L.P.A. No. 205/2009. Thereafter the status was searched from the website and it was found that the L.P.A. No. 205/2009 has been dismissed for non appearance on 18.04.2017 by the Hon'ble Court.

The certified copy of the order dated 18.04.2017 is annexed herewith and marked as Annexure-1 to this application.

6. That after getting the information about the status of the L.P.A. No. 205/2009 the restoration petition was immediately drafted by the counsel of petitioner on and it was sent to the concerned department for approval and after receiving the vetted copy from the concerned department on 17/08/2017 it is being filed today on 18/08/2017.

7. That there is good grounds in Memo of Appeal (L.P.A. No. 205/2009) and there is every chance of success of the case.

8. That it is submitted that if the Memo of Appeal is not restored to its original file the petitioner/appellant will suffer irreparable loss and injury.”

10. The case of the applicant is that a piece of land admeasuring 4.46 acres comprised under MS Plot No. 557 situated at Morabadi, Booti Road, Ranchi was in active occupation of defence forces and regular rents were being paid. The occupation of the said land was regularized by way of hiring with effect from 01.04.1946 to 31.03.1960 at an annual rent of Rs. 446/- payable with effect from 01.08.1953 and on the expiry of the period of sanction the Government decided to seek extension of lease period up to 31.03.1963 but when the owner was approached for executing the hiring agreement he refused. The further case of the applicant is that one B.M. Mukund Rao sworn an affidavit stating that his father, namely, Sri B.M. Laxamana Rao passed away on 09.08.1966 and he was the only legal heir. He further stated that his sister Mrs. Malti S. Karnad was married to Sri Shankar Rao Karnad and she has given “no objection” in his favour as regards right, title and interest over 4.46 acres of land. Accordingly, rent was paid to him and revised from time to time on his request. The said B.M. Mukund Rao passed away in the year 1998 and therefore payment of rent was withheld by the applicant.

11. A writ petition was filed by Jayant Karnad, who is son of Malti S. Karnad and Shankar Rao Karnad, for payment of arrears of compensation and release of the aforesaid property. Jayant Karnad pleaded that after death of his wife, who died issue-less, B.M. Mukund Rao started living with his sister Malti S. Karnad at Jamshedpur and he died on 04.09.1998. After the death of his mother Mrs. Malti S. Karnad, he became the sole successor of the estate of Late B.M. Mukund Rao.

12. An application for impleadment was filed by one Mohan Kumar Kapoor claiming himself as the constituted attorney of Salim Pasha Jagirdar and IA No. 1493 of 2007 was dismissed by the writ Court on 05.11.2007 observing thus:

“I.A. No. 1493 of 2007

3/05.11.2007 Heard the parties.

By filing this Intervention Application, one Mohan Kumar Kapoor has prayed for being added as Intervenor/Respondent in this writ petition on the ground that he

has got right, title and interest in the property in question being holder of Registered Power Of Attorney. It is stated by the applicant that Mrs. Malti S. Karnad, wife of Sri Shankar Rao Karnad, by swearing an affidavit, had relinquished her right in favour of her brother Late B.M. Mukund Rao and said B.M. Munkund Rao had also sworn an affidavit declaring himself to be absolute owner of the properties. It is also stated that Late B.M. Mukund Rao had executed a Power of Attorney in favour of one Salim Pasha Jagirdar on 15.04.1998 who in turn executed a Power of Attorney on 06.12.2004 in favour of the applicant Mohan Kumar Kapoor and therefore, the applicant/Intervener is very much interested in the property in question for which, the present Writ Petition has been filed by Jayant Karnad for release of the property in view of Section-6(1-A) of Requisitioning and Acquisition of Immoveable Property Act, 1952 (R.A.I.P. Act) and in view of Requisitioning and Acquisition of Immoveable Property (Amendment) Act, 1970.

A reply counter affidavit to the Intervention Application has been filed by the respondent nos. 1 to 3 wherein, it is stated that the original owner of the property in question was one B.M. Lakshman Rao who died on 09.08.1968.

Even according to the applicant, Late B.M. Mukund Rao executed Power of Attorney in favour of Salim Pasha Jagirdar on 15.04.1998 and thereafter, said B.M. Mukund Rao died on 04.09.1998.

The power of attorney executed by Late B.M. Mukund Rao in favour of Salim Pasha Jagirdar became dead letter after his death on 04.09.1998 and as such, the power of attorney, if any, executed by Salim Pasha Jagirdar in favour of this applicant Mohan Kumar Kapoor regarding the properties of B.M. Mukund Rao has got no force in the eyes of law. Salim Pasha Jagirdar was not authorized to execute power of attorney in 2004 in favour of Mohan Kumar Kapoor after the death of B.M. Mukund Rao.

In this view of the matter, the prayer of the applicant for being added as Intervenor Applicant in the application, cannot be entertained.

Accordingly, I.A. 1493 of 2007 is rejected.

W.P.(S) No. 1903 of 2007

Put up this application under the heading for 'Admission'."

13. The writ petitioner filed IA No.1817 of 2008 which was allowed vide order dated 04.08.2008 and IA No. 3014 of 2008 filed by the applicant was dismissed on 22.10.2008.

14. The order dated 04.08.2008 reads as under:

"5. 4.8.08 I.A. No. 1817 of 2008

Learned counsel appearing for the petitioner submits that after filing of the writ application, a letter has been issued by the respondents wherein intention to pay rental due to the petitioner has been expressed by the respondents.

This interlocutory application is disposed of with a direction to the respondents to make payment at the earliest, preferably within a period of two months from the date of receipt/production of a copy of this order.

The aforesaid I.A. stands disposed of."

15. The order dated 22.10.2008 reads as under:

“6. 22.10.08 I.A. No. 3014 of 2008

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents over the interlocutory application bearing I.A. no.3014 of 2008 wherein prayer has been made to modify the order dated 4.8.2008 wherein respondents were directed to make payment to the petitioner preferably within a period of two months to the extent that the petitioner be asked to furnish succession certificate before being paid rental.

Having heard learned counsel appearing for the parties, I do not find any reason whatsoever for making such modification as nothing has been placed before me so as to the petitioner be directed to file succession certificate.

In that view of the matter, the order dated 4.8.2008 needs not to be modified.

In the circumstances, the respondents must pay rental which is due to be paid to the petitioner by 20.11.2008.

The aforesaid I.A stands disposed of.”

16. A learned Single Judge after noticing section 6(1-A)(a) of Requisitioning and Acquisition of Immovable Property Act, 1952 read with Rule 2(11) of the Defence of India Rule, 1939 held that the property requisitioned even much before the commencement of 1970 Act would be deemed to have been requisitioned under the said Act and as such the property requisitioned under the Defence of India Act, 1939 would also fall within the provisions under section 6(1-A)(a) of Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970.

17. The learned Single Judge after tracing history of the legislation allowed the writ petition and held as under:

“In order to have a clear picture, one needs to have history of the legislations relating to requisition of property for the use of the Army. During the war, the lands and buildings were requisitioned under the Defence of India Act, 1939 and the Rules made thereunder and such property continued to be the subject to requisition under the Requisitioned Land (Continuance of Power) Act, 1947. That Act was due to expire on 31.03.1952 and as Government of India had no power to requisition any property outside Delhi, necessity was felt to take measure to ensure the continuance of the requisition of the premises already requisitioned under the Defence of India rule and continued to be the subject to requisition under the Requisitioned Land (Continuance of Power) Act, 1947 also to secure power for the Central Government to make fresh requisition in order to meet its demand, the Requisitioning the Acquisition of Immovable Property Act, 1952 was enacted and thereby the Act of 1947 got repealed. The said Act of 1952 was initially to operate for a period of 6 years but its duration was extended from time to time. Then came the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1970 which made the Requisitioning Act of permanent nature but restricted the period for which requisitioned

property could be retained under requisition to 3 years from the commencement of the aforesaid Amendment Act in the case of properties requisitioned before such commencement. Thus, the properties requisitioned before the commencement of the said Amendment Act could be retained under the requisition upto March 10, 1973. Even after expiry of March 10, 1973, large number of properties could not be released as there was still necessity of those properties and, therefore, it was decided to have a continued requisition for a longer period by amending Act from time to time. Lastly, the Act was amended by the Act 20 of 1985 whereby all the properties which were requisitioned prior to the amendment of requisitioning Act in 1970 were required to be released from requisition by 10th of March, 1985.

Thus, it is evidently clear that even the properties requisitioned under the provision of Defence of India Act read with Rules will be subject to de-requisition in terms of the provisions as contained in Section 6(1-A)(a) of the Requisitioning and Acquisition Act, 1952. Therefore, under the said provision the land in question should have been released by 10th of March, 1985, but the Army has retained its possession till date which is certainly in gross-violation of the law.

Accordingly, the petitioner is entitled to have the property released in his favour. Consequently, respondents are hereby directed to release the land in question in favour of the petitioner without any further delay, preferably within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid direction/observation, this writ petition is allowed.”

18. The Defence Estate Officer, Bihar & Orissa Circle, Danapur Cantonment filed LPA No. 205 of 2009 which was dismissed in default on 18.04.2017.

19. Mrs. Nitu Sinha, the learned counsel for the applicant submits that the writ petitioner was a stranger and in spite of a direction by the authorities of Danapur Cantonment he did not produce a succession certificate and therefore a contentious issue has been raised in the Letters Patent Appeal.

20. Now reverting to the application seeking condonation of delay and the application for restoration, we find that there is an apparent conflict in the statements made in both the applications insofar as the date when the order of dismissal of the Letters Patent Appeal came to the knowledge of the applicant. Mrs. Nitu Sinha, the learned counsel states that this was an inadvertent error committed in course of drafting which occurred in paragraph No.5 of CMP No. 282 of 2017 and in paragraph No.4 of IA No. 7440 of 2017.

21. We are not influenced by such contradictory statements even though the aforesaid applications are supported by affidavit of Defence

Estate Officer, Danapur Cantonment but what is relevant for the present purposes is that the reasons given in these applications are wholly unsatisfactory. It is well-settled that the accrued right of the opposite party cannot be lightly dealt with. Each day's delay must be explained and a plea that the application for condonation of delay preferred by the State instrumentalities should be viewed leniently has not been approved by the Hon'ble Supreme Court.

22. In *“Government of Maharashtra (Water Resources Department) v. Borse Brothers Engineers & Contractors Pvt. Ltd.”* 2021 SCC OnLine SC 233 the Hon'ble Supreme Court has observed as under:

“58. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 [“Postmaster General”], as follows:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.”

23. In CMP No. 282 of 2017, the applicant has taken a plea that the clerk of the learned counsel for the applicant could not mark the list and that is the reason no one could appear before the Court when the matter was called out for hearing. In the first place, an affidavit of the clerk of the learned counsel for the applicant has not been filed in support of the aforesaid statement made in paragraph No.4 of the application for restoration. Except a bald statement as aforesaid, nothing has been produced on record to persuade the Court to take a lenient view in the matter.

24. We are conscious that in an application for condonation of delay the Courts need not go into merits of the case and we have recorded

brief history of the case only for the purpose of testing *bona fide* of the applicant. The Army was enjoying the property, which does not belong to it, and it has taken undue advantage of process of the Court – LPA No.205 of 2009 was admitted for hearing. We further find that the plea taken by the applicant that the matter was not marked in the cause list for 18.04.2017 does not appear to be correct. LPA No. 205 of 2009 was a hearing matter which must have appeared in the list either on the previous day or in the cause list of previous week and, therefore, the applicant must have had information about listing of the case for hearing. Both the applications are completely vague and copies of the letters written to the learned counsel inquiring about status of the case and the cause list of the relevant date(s) have not been produced before us to demonstrate *bona fide* of the applicant.

25. Even though in a passing, we may also observe that IA No. 1817 of 2008 filed before the writ Court for modification of the order dated 04.08.2008 by which the applicant was directed to pay rent to Jayant Karnad was dismissed on 22.10.2008 and the writ Court refused to direct the writ petitioner to produce a succession certificate.

26. The occupation of the land was admitted by the Army at least from 01.04.1946; a writ petition was filed in the year 2007, and; Letters Patent Appeal was filed in the year 2009. However, there is nothing on record to indicate that any step was taken by the applicant for hearing of the Letters Patent Appeal for long 8 years before it was dismissed in default on 18.04.2017. Thereafter, there was some delay in hearing of CMP No. 282 of 2017 on account of change of roster/assignment to a Bench but the fact remains that it is more than 11 years when the writ Court had passed a direction for release of the property.

27. Besides that the applicant has failed to demonstrate sufficient cause for condoning the delay, the application for restoration of the Letters Patent Appeal is devoid of merits and lacks *bona fide*.

28. IA No. 7440 of 2017 and CMP No. 282 of 2017 stand dismissed.

(Shree Chandrashekhar, J.)