

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Interlocutory Application No. 360 of 2015
arising out of R.F.A. No. 6 of 2015

1. Shri Rothangpuia
S/o Chhawna (L),
R/o Thingsulthiah, Aizawl District, Mizoram.
2. Shri Lalchhuanga
S/o Chalzawna,
R/o Thingsulthiah, Aizawl District, Mizoram
3. Shri K.Lalzika Hnamte
S/o Thangdula
R/o Thingsulthiah, Aizawl District, Mizoram
4. Shri Lalduhawma
S/o Chalthianga,
R/o Thingsulthiah, Aizawl District, Mizoram.
5. Shri R.Kapchhunga
S/o Sena (L)
R/o Thingsulthiah, Aizawl District, Mizoram.
6. Shri Zahlira
S/o Thuama (L)
R/o Thingsulthiah, Aizawl District, Mizoram. ... Applicants

-versus-

1. Union of India
(represented by Secretary to the Govt. of India, Ministry of
Shipping & Surface Transport), New Delhi.
2. Chief Engineer,
Project Pushpak,
Zemabawk, Aizawl, Mizoram C/o 99 APO.
3. Officer Commanding,
1604 PNR COY, Transit Camp, 405 RMPL/74 RCC (Gref)
C/o 99 APO ...Opposite Parties

APPEARANCE

For the Applicants	:	Shri C. Lalrinchhunga, Advocate.
For the Opposite Parties No. 1 - 3	:	Ms. Zairemsangpuii, Advocate.
Hearing	:	17.2.2016
Order delivered on	:	22.2.2016

ORDER

1. The application has been filed u/s 5 of the Indian Limitation Act for condoning delay of about 700 days in filing the appeal petition against the Judgment & Order dated 19.4.2012 in Civil Suit No. 35 of 2007 passed by Sh. Vanlalena, Id. Senior Civil Judge, Aizawl.

2. The facts of the case in brief are the applicants as plaintiffs claimed some portion of the land allegedly occupied by the Respondent No. 3 for the past several years located at Thingsulthliah. According to the applicants, the basis of their claims is allotment of lands to their father by the then Mizo Chief of Thingsulthliah village on 15.10.53 for the purpose of kitchen garden and the lands were developed. With the emergence of the MNF insurgency and the Arm Forces Special Powers Act/Maintenance of Internal Security Act being in force, the applicants were forcibly evicted from their respective lands. The lands of their father came to be occupied by BRTF for transit Camp. At the time of the allotment of lands, there was no proper land record, but their said lands were entered in the Village Land Record in the year of 1960 during the term of Shri Biakthanga, Villlage Council President, Thingsulthliah.

3. In the learned Trial Court, the applicants also claimed rental compensation from the date of occupation of occupation until vacation of the suit land in Civil Suit No. 35 of 2007. However, the suit was dismissed on the ground that the

applicant could not establish their titles and interest over the suit land and also the suit was barred by limitation.

4. It is also the case of the applicant that their counsel informed them about pronouncement of the Judgment & Order dated 19.4.2012 passed in Civil Suit No. 35 of 2007 after a year. Thereafter, the applicants asked their counsel to give copy of the Judgment & Order along with their documents and received the same from their counsel in the month of June, 2014. The applicants contacted another counsel who took time. A certified copy of the said Judgment & Order was also applied. Finally, their present counsel preferred Regular First Appeal before the learned District Judge against the Judgment & Order dated 19.4.2012 passed in Civil Suit No. 35 of 2007 by filing their Regular First Appeal petition on 17.7.2015. The learned District Judge transferred the present Regular First Appeal petition to this Court for disposal.

5. On the other hand, the case of the opposite parties is that the land in question was occupied by the opposite party No.3 under valid passes issued by the Government.

6. I heard the learned Counsel Shri C. Lalrinchunga appearing for the petitioners and the learned Standing Counsel Ms Zairemsangpuii for the opposite parties. I perused the petitions of the applicants as well as the written objection of the opposite parties. Also perused the case record of the learned Trial Court.

7. The main submission of the learned Counsel Shri C. Lalrinchunga is that there is no willful negligence in filing the instant appeal as well as application for condonation of delay. Hence, the learned Counsel prays the Court to condone delay of 700 days.

8. I have carefully perused the Case Records including the Case Record of the Trial Court. In the present application, though the petitioners have made a prayer to condone delay of 700 days in filing the appeal petition, but there is a delay of more than 1000 days.

9. The explanation made by the applicants that they were informed by their Counsel after a year about the pronouncement of the Judgment & Order dated 19.4.2012 passed in Civil Suit No. 35 of 2007 is not believable.

10. The Apex Court in the case of G. Ramagowda v. Special Land Acquisition Officer, reported in AIR 1988 SC 897 has held that there is no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

11. The Hon'ble Gauhati High Court in the case of Hemendra Nath Sharma & Ors v. Dilip Kumar Sharma & Ors reported in 2012 (2) GLT 245 has held-

"9. From the facts narrated hereinabove and keeping in mind the fundamental rule of guidance for exercise of discretion under Section 5 of the Limitation Act is to see whether the applicants claiming the indulgence have been reasonably diligent in prosecuting the appeal. The application for condonation of delay must contain not only the cause which led to the delay but also must contain all relevant materials which would enable the court to determine that the applicants, despite due diligence were prevented from filing the appeal within the period of limitation".

12. While dealing with an application for condonation of delay, the numbers of days is not the prime consideration. The question is whether delay was due to any carelessness or negligence on the part of the applicants. In the present case, the applicants are hailing from the same village of Thingsulthliah and filed the civil suits jointly. The distance between Aizawl and Thingsulthliah is barely 50 Kms even if they

wanted to seek legal adviser in person and telephone. No date is shown at all in the explanation.

13. It appears to this Court that the manner, in which the delay is explained, is casual, general, vague and sketchy. From the manner in which the delay has been explained, it is difficult to find any material to show that despite due exercise of diligence delay occasioned.

14. In view of the reasons indicated in the preceding paragraphs, this court is of the considered opinion that the applicants have failed to explain the delay sufficiently.

15. The application stands dismissed accordingly.

Sd/- VANALENMAWIA
Addl. District Judge,
Aizawl Judicial District,
Aizawl.

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 22nd February, 2016

Copy to: -

1. Sh. Rothangpuia & Ors. through Counsel Sh. C. Lalrinchunga, Advocate.
2. Union of India (represented by
Secretary to the Govt. of India,
Ministry of Shipping & Surface Transport),
New Delhi.
3. Chief Engineer, Project Pushpak,
Zemabawk, Aizawl, Mizoram C/o 99 APO.
4. Officer Commanding 1604 PNR COY,
Transit Camp, 405 RMPL/74 RCC (Gref) C/o 99 APO
5. District Judge, Aizawl Judicial District, Aizawl.
6. Registration Section.
7. Guard File.
8. Case Record.
9. Calendar Judgment.

through
Ms. Zairemsangpuii,
Standing Counsel

P E S H K A R