The State of West Bengal

Vs

The Administrator, Howrah Municipality and Others

Civil Appeals Nos. 821 to 823 of 1968

(C.A. Vaidialingam, K.K. Mathew JJ)

14.12.1971

JUDGMENT

VAIDIALINGAM, J. -

1. These three appeals, by special leave, are directed against the common judgment and order, dated August 18, 1966, of the Calcutta High Court dismissing Civil Rule Nos. 1827(F) to 1829(F) of 1966, which were applications filed by the appellant under Section 5 of the Limitation Act, 1963, to excuse the delay in filing three appeals against the decision of the Additional District Judge, Howrah, dated June 27, 1963, in three Land Acquisition Reference Cases.

2. In this judgment we are referring the ranks of the parties as in Civil Appeal No. 821 of 1968. The first respondent is the Howrah Municipality. The second respondent had taken a lease of about 21 bighas 9 kotas of land from the first respondent and respondent Nos. 3 and 4 have taken a sub-lease from the second respondent of the said area.

3. The circumstances leading up to the order of the High Court may be stated : About 41 bighas of land situated in Salkia at Howrah were acquired by the Government of West Bengal for the purpose of utilising the same as market place at Howrah. After the acquisition, the entire land was placed at the disposal of the first respondent the Municipality, Howrah, on the specific condition that the said land was to be used for establishing a public market and that it would not be used for any other purpose without the permission of the Government. According to the appellant there was also an agreement that the land would be resumed in the event of a public market not being established within a reasonable time. In or about 1952, the first respondent passed a resolution leasing out an extent of about 21 bighas and 9 kotas, from and out of the about land, in favour of the second respondent and communicated the said resolution to the appellant on February 12, 1953. The first respondent executed a lease deed on March 27, 1953, in favour of the second respondent in respect of 21 bighas and 9 kotas. The second respondent in turn sub-leased to Respondents 3 and 4, the entire land taken on lease by him from the first respondent. On April 12, 1954, the appellant passed an order under Section 586(1) of the Bengal Municipalities Act, 1932, annulling the resolution of the first respondent, dated November 28, 1952. The first respondent called upon the second respondent to surrender possession of the property, which led to the latter instituting title suit No. 15 of 1959, against the Municipality and the appellant for a declaration that the lease in his favour is valid and the order of the Government, dated April 12, 1954, annulling the resolution of the Municipality is illegal and void. The first respondent in turn filed title suit No. 10 of 1959, against the second respondent for recovery of possession of the property together with mesne profits.

4. In the meanwhile the appellant issued two notifications under Section 4 of the Land Acquisition

Act, in November, 1955 and March 1966, regarding the acquisition of 8.44 across of land comprised in 41 bighas and odd of land given to the Municipality for putting up a public market. It also included a part of the land leased by the first respondent to the second respondent, who in turn had sub-leased them to the respondents Nos. 3 and 4. The Land Acquisition Collector in June, 1958 passed an Award in favour of respondents Nos. 1 to 4.

5. Out of the said Award three Reference arose under Section 18 of the Land Acquisition Act, being Miscellaneous Cases Nos. 21 and 40 of 1958 and 13 of 1959. The respondents Nos. 1 to 4 made claims for increased compensation and also claimed exclusive title.

6. On March 10, 1959, the appellant filed title suit No. 16 of 1959, against the respondents Nos. 1 and 2 for recovery of possession of 41 bighas of land. The said suit was later on re-numbered as Title Suit No. 34 of 1961. There is no controversy that during the pendency of the suit, the second respondent was struck off from the array of defendants. This title suit was instituted by the appellant for recovery of possession together with mesne profits on the ground that as no market place was established by the Municipality as agreed upon, the appellant was entitled to resume the same. The action of the Municipality by way of leasing a part of the property to the second respondent was also alleged to be in clear violation of the agreement and that the said transaction was not binding on the appellant. On January 25, 1960, the suit filed by the second respondent, namely, Title Suit No. 15 of 1959, was decreed and the suit No. 10 of 1959, filed by the Municipality was dismissed. It is claimed by the appellant that Title Suit No. 34 of 1961, for possession of 41 bighas was decreed on July 21, 1961. We are particularly referring to this aspect because considerable argument was advanced before us, particularly on behalf of the respondents Nos. 2 to 4 regarding the binding nature of this judgment.

7. Mr. D. N. Mukherji, learned counsel for respondent Nos. 2 to 4 urged that as the name of respondent No. 2 had been struck off from the array of defendants in the said suit, the decree therein is not binding either on the second respondent or his sub-lessees, respondents Nos. 3 and 4. According to him, even on the basis that the decree is binding on the Municipality, that decree will have no effect so far as the properties, which have been sub-leased by the Municipality in favour of respondent No. 2, are concerned.

8. On the other hand, it was the contention of the learned Solicitor-General that the decree in the suit clearly shows that the appellant was entitled to recover the entire area of 41 bighas and odd which included the portion leased out by the Municipality to respondent No. 2. Once the right of the Government to resume the entire area was recognised by the Court, the second respondent has no further right on the basis of the lease granted in his further by the first respondent and that the position is not in any manner altered by the second respondent having ceased to be in the array of defendants in the said suit. It is not necessary for us to go into all these aspects more especially when it is brought to our notice that the first respondent has filed an appeal against this decree, which is pending in the High Court as First Appeal No. 135 of 1963.

9. On June 27, 1963, the Additional District Judge, Howrah, decided the three Land Acquisition References and made the appellant liable to pay compensation in the sum of about Rs. 16,00,000/-. The decree in these References were signed on September 21, 1963. According to the appellant, when in the Title Suit No. 34 of 1961, which has been decreed on July 21, 1961, it has been held that the States is entitled to recover possession of the entire area, the Award made in the Land Acquisition Cases on June 27, 1963, in favour of respondents Nos. 1 to 4 is illegal and without jurisdiction as the respondent are mere trespassers, who have no right, title or interest in the lands

concerned. It is the further averment of the State that in view of the enormous amount awarded in the Land Acquisition References, the first respondent is purposely delaying taking further steps in prosecution of first Appeal No. 135 of 1963. This attitude, the State avers, is due to the fact that if the Municipality is able to withdraw the huge amount of compensation awarded, it will have no further interest in prosecuting the appeal against the decree in Title Suit No. 34 of 1961.

10. The second respondent on the basis of the Award, levied execution and the appellant filed objection on August 27, 1964, under Section 47, C.P.C., on the ground that the Award is not executable in view of the decree in Title Suit No. 34 of 1961. According to the appellant, the Department of Land Acquisition at Howrah did not know about the proceedings in Title, Suit No. 34 of 1961, as the letter related to another Department of the Government. When the objections filed regarding the executability of the Award were rejected, the matter was referred to the Legal Remembrancer, West Bengal, for taking necessary action. It was on March 4, 1965, that it was discovered that the judgment of the Additional District Judge in the three Land Acquisition References had not been appealed against. As the reasons for the appeals not being filed, were not clear, they were investigated by the Legal Adviser of the State. On or about April 15, 1965, the State Lawyer in the High Court advised the State to move the High Court under Article 227 of the Constitution to quash the judgment of the Additional District Judge, dated June 27, 1963, in the three Land Acquisition References, as the time for filing appeals had expired.

11. Accordingly, writ petitions under Article 227 of the Constitution were filed in the High Court on May 17, 1965, to quash the judgment of the Additional District Judge in the Land Acquisition References. On the same day, the learned Judges while declining to issue a Rule, however, granted stay of execution of the Award for one month with a direction that appeals should be filed with proper applications against the Award in Miscellaneous Cases Nos. 21 and 40 of 1958 and 13 of 1959, within a month. The learned Judges granted further two weeks' time on June 17, 1965, and also extended the period of stay by two weeks. A further order was passed on July 1, 1965, to obtain the necessary orders of stay regarding the execution of the Award from the appropriate Bench dealing with the appeals. Three appeals against the three Land Acquisition References Nos. 21 and 40 of 1958 and 13 of 1959, were filed in the High Court on July 3, 1965. The appeals on being returned by the High Court Office on July 5, 1965, with the endorsement that these is a delay of one year, seven months and twenty-two days, were represented on July 7, 1965, with the necessary applications under Section 5 of the Limitation Act, 1963. All the above facts were set out in the applications for executing the delay and praying that irreparable loss and injury would be caused to the State, if nearly Rs. 16,00,000/- have to be paid to persons who have been held to be in wrongful possession of the land and against whom a decree in Title Suit No. 34 of 1961, for eviction had been passed on July 21, 1961. It was further submitted that in view of the various matters mentioned in the applications filed under Section 5 of the Limitation Act, sufficient cause has been shown for executing the delay in filing the appeals.

12. The High Court on July 7, 1965, issued notice to the respondents to show cause why the delay should not be condoned and the appeals taken on file. After the issue of the notice, the appellant filed an additional affidavit on January 18, 1966, referring to the relevant provision so the Legal Remembrancer Manual in West Bengal regarding the procedure to be followed by its Legal Officers in cases where appeals have to be filed. The State also referred to the letters written by the Collector of Howrah on December 18, 1965 and January 5, 1966, to the Advocate, who was at the material time Government Pleader asking for his explanation as to why the Government was not advised by him regarding the filing of appeals against the Land Acquisitions References. On January 21, 1966, the High Court passed the following order :

> "On the present materials before us we are not satisfied that sufficient cause has been made out to explain the delay of over a year and a half in filing of the concerned appeals. Mr. Chakrabarty expressed his inability to produce better materials on information, at present available to him. In the circumstances, we have on opinion but to discharge these Rules. Liberty is, however, given to the petitioner to apply for reconsideration or modification of this order on further and better materials.
>
> There will be no order as to costs in any of these Rules."

13. Later on, the appellant received a reply, dated January 29, 1966, from their Ex-Government Pleader and filed the three applications in question requesting the High Court to reconsider its previous order, dated January 21, 1966, and to excuse the delay under Section 5 of the Limitation Act, in filing the three appeals.

14. The High Court, on June 3, 1966, issued notice to the respondents. After hearing the respondents, the High Court passed the common order in question on August 18, 1966, dismissing the applications filed by the appellant for excusing the delay under Section 5 of the Limitation Act, in filing the three appeals. In the other it is stated that though the decrees, under appeal, were passed as early as September 21, 1963, the appeals were filed along with the applications under Section 5 of the Limitation Act, only on July 3, 1965, the interval being over one year and nine months. The High Court, on doubt, states that there were previous proceedings but it is not necessary to refer to them. Ultimately, the High Court in its brief order is of the view that the State has not sufficiently explained the delay during the period October 27, 1964 and July 3, 1965. The former is the date on which the State and objections under Section 47, C.P.C., to the executability of the Land Acquisition Award, in view of the decree in Title Suit No. 34 of 1961. Regarding the period anterior to August 27, 1964, so far as we could see the High Court does not put it against the appellant and in fact it does not seem to give much importance to that period. On the other hand, the view of the High Court is : "These applications must fail for the unexplained delay between the two dates, August 27, 1964 and July 3, 1965". Ultimately, the learned Judges dismissed the application for excusing the delay.

15. There is a further direction given by the High Court that the writ petition filed by the appellant under Article 227 of Constitution on May 17, 1965, be taken up by the appropriate Bench for disposal. There is also a further direction that the order of stay of execution of the Award will continue for a fortnight with liberty to the State of apply for its continuance before the Bench, which is to take up the writ petitions.

16. It may be mentioned at this stage that the writ petitions filed under Article 227 on May 17, 1965, and in which stay had been granted and which stay was continued till the disposal of the applications filed under Section 5, was actually withdrawn only on September 28, 1966, as having become infructuous.

17. The learned Solicitor-General, on behalf of the appellant rather strenuously urged that it was the duty of the High Court to consider on the material placed before it whether sufficient cause for excusing the delay had been made out by the appellant. Though the decision in the Land Acquisition Cases was given on June 27, 1963, and the Award signed on September 21, 1963, the High Court was prepared to proceed on the basis, in view of the averment made in the affidavit of the appellant that the delay between September 21, 1963 and August 27, 1964, has been properly explained. At any rate, the Solicitor-General pointed out the High Court has not put that period against the

appellant. On the other hand, the High Court has held that there is an unexplained delay from August 27, 1964, the date on which the State filed objections under Section 47, C.P.C., to the execution of the decree under the Award and July 3, 1965, the date on which the appeals were filed, and on this ground the applications have been dismissed.

18. The learned Solicitor-General further pointed out that there is no proper consideration of the various matters, referred to in the affidavit, which according to him, have not been controverted by the respondents. He has further urged that the judicial power and discretion to excuse the delay given to the Courts under Section 5 of the Limitation Act, should be exercised to advance substantial justice, especially when the appellant has not been held guilty of any negligence or in action. The learned Solicitor-General further period out that the High Court has not disbelieved any of the facts mentioned in the affidavits filed on behalf of the appellant, regarding the circumstances under which the appeals came to be filed beyond the period of limitation.

19. On the other hand, Mr. D. Mukherji, learned counsel for the first respondent, Howrah Municipality urged that the question whether a party has made out a sufficient cause for excusing the delay in filing the appeals is a pure question of fact and it was within the exclusive jurisdiction of the High Court to decide it one way or the other. In this case, the counsel pointed out, that after a consideration of the reasons given by the appellant, the High Court has come to the conclusion that the delay during the period August 27, 1964 and July 3, 1965, has not been properly accounted for. In fact, the counsel pointed out the appellant should have been called upon to explain the delay even from September 21, 1963 and the High Court has been very considerate in reducing the period up to August 27, 1964. Mr. Mukherji further pointed out that the period of limitation applicable both to a private litigant as well as to the State is the same and the same principles are applicable to both the parties in considering whether sufficient cause has been shown for execusing the delay in filing an appeal beyond the period of limitation. Mr. Mukherji further urged that the same Government Pleader was appearing on behalf of the State both in the Title Suit No. 34 of 1961 and in the Land Acquisition Proceedings and therefor it is idle for the State to contend that it was not aware that an appeal had not been filed against the decision in Land Acquisition References till March 4, 1965. The fact that one Department may be dealing with Land Acquisition matter and another Department may be dealing with Ordinary Civil Suits, is not a sufficient excuse which will be accepted by the courts to justify an application under Section 5 of the Limitation Act.

20. Mr. D. N. Mukherji, learned counsel for the respondents Nos. 2 to 4, in particular, attempted to argue about the binding nature against his clients of the decree obtained by the State against the Municipality in Title Suit No. 34 of 1961. He also relied on the decision in the said suit to controvert the averment of the State that the Municipality has been held to be a trespasser without any rights in the land in question.

21. The learned Solicitor-General has also referred us to the various aspects dealt with in the said judgment. According to him the effect of the said judgment is that the respondents are all trespassers having no rights in the land and therefore they are not entitled to receive the compensation amount. He has also stated that if the decrees in the Land Acquisition Reference Cases are allowed to stand, the respondents, who are in possession as trespasser without any title right in the properties, will have to be paid by the State nearly about Rs. 16,00,000/-.

22. We have only referred above to the various matters placed before us. We express no opinion whatsoever regarding those aspects. As and when occasion arises, it is open to the parties concerned to raise any contention that may be available to them in law or on facts.

23. We have already referred to the fact that on the first occasion when the High Court dealt with the applications under Section 5 of the Limitation Act, it had been passed an order on January 21, 1966, which we have extracted in the earlier part of this judgment. That itself was a brief order. But that order clearly indicates that the learned Judges were not inclined to close the proceedings once and for all. In fact, they have given a further opportunity to the State to move for reconsideration of the order or modification of the order on better materials.

24. The order, dated August 18, 1966, unfortunately, is very brief and does not give the reasons as to why the High Court has come to the conclusion that the delay between August 27, 1964 and July 3, 1965, has not been explained by the appellant. There is only a brief statement to the effect that on the first of the above dates, i.e., August 27, 1964, the appellant filed objections under Section 47, C.P.C., to the execution of the decree under Award. Though the respondents urged that the delay is really from September 21, 1963, we are not inclined to accept that conclusion, especially when the High Court itself has not given any importance to the period prior to August 27, 1964. In view of the nature of the order passed by the High Court without an investigation into the facts and without giving reasons, we would have normally remanded the proceedings to the High Court for a fresh consideration. But we are not adopting that procedure in view of the fact that considerable time has already elapsed and if the matter is remanded, it will give rise again to a further challenge by way of appeal to this Court, whatever the decision of the High Court may be. Hence, we proceed to consider the matter and adjudicate upon the question whether the High Court was justified in rejecting the applications filed by the appellant under Section 5 of the Limitation Act.

25. One feature that strikes us on a perusal of the judgment of the High Court is that there is absolutely no indication that it has disbelieved any of the averments made in the affidavits filed on behalf of the appellant. If the High Court had considered the reasons given by the appellant, and rejected them as false or if the High Court had held that there has been such total inaction or negligence on the part of the appellant as would deprive the State of the protection under Section 5 of the Limitation Act, the position would be different. We do not have the benefit of the views of the High Court, one way or the other, on these aspects. At any rate, it has not held that the appellant is guilty of negligency or that the applications lack in bona fides.

26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing on appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasise that courts have to use their judicial discretion in the matter soundly in the interest of justice.

27. Mr. D. Mukherji, learned counsel for the first respondent, is certainly well-founded in this contention that the expression "sufficient cause" cannot be construed too liberally, merely because the party is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of Section 5 of the Limitation Act should also be available to the

State.

28. In the case before us, it must be stated in fairness to the learned Solicitor General that he has not contended that the State must be treats differently. On the other hand, his contention is that the reasons given by the appellant, which, according to him will establish "sufficient cause" have not at all been adverted to, much less, considered by the High Court. In our opinion, the contention of the learned Solicitor General is perfectly justified in the circumstances of this case. The High Court, certainly, was not bound to accept readily whatever has been stated on behalf of the State on explain the delay. But, it was the duty of the High Court to have scrutinised the reasons given by the State and considered the same on merits and expressed an opinion, one way or the other. That, unfortunately, is lacking in this case.

29. It has been pointed out by this Court in Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd., [(1962) 2 SCR 762 : AIR 1962 SC 361] as follows :

> "In construing Section 5 it is relevant to bear in mine two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the Law of Limitation to treat the decree as beyond challenge, and this legal right which has accord to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, [(1890) ILR 13 Mad 269] 'Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

30. From the above observations it is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

31. No doubt, Mr. D. Mukherji drew our attention to observation at page 771 to the effect :

> "The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone."

32. That is, according to Mr. Mukherji, as the appellant has not shown sufficient cause in this matter, the only course open is to dismiss the applications, as had been done by the High Court. That, in our opinion, is over-simplifying the matter and begging the question. The point really is whether on the facts stated by the appellant, it can be held that it had shown sufficient cause for

filing the appeals beyond the period of limitation.

33. The observations of the Madras High Court, extracted in the above decision, have again been quoted with approval in Shakuntala Devi Jain v. Kuntal Kumari and Others. [(1969) 1 SCR 1006 : AIR 1969 SC 575]. On the particular facts of the case, this Court held in the said decision that it was not a case where it was possible to impute to the appellant therein want of bona fide or such inaction or negligence as would deprive a party of the protection of Section 5 of the Limitation Act, 1963.

34. Mr. D. N. Mukherji, learned counsel for the respondents Nos. 2 to 4 invited our attention to the decision of Judicial Committee in Ram Narain Joshi v. Parmeshwar Narain Mehta and Others, [30 IA 20] where the Judicial Committee declined to interfere with the order of the High Court declining to excuse the delay filing an appeal under Section 5 of the Limitation Act on the ground that no sufficient cause was shown by the party concerned. The judgment the High Court, which was under appeal before the Judicial Committee, is contained in the report. The High Court had considered the reasons given by the party for filing the appeal out of time. After a full and detailed consideration of the reasons given by the party, the High Court had come to the conclusion that the party had not shown due diligence in the matter of filing appeal and, therefore, it was further held that no sufficient cause had been shown for not having filed the appeal within time. The Judicial Committee after a consideration of the reasons given by the High Court declined to interfere on the ground that they were satisfied that the refusal by the High Court to admit the appeal after the period of limitation was over, was justified. This decision does not help the respondents in view of the fact that there has been on such proper consideration by the High Court in the case before us. We have already stated that the High Court has neither adverted to the reasons given by the appellant; nor has the High Court expressed its views on them.

35. Bearing in mind the principles, referred by us earlier, we proceed to consider the facts in the case on hand. We do not think it necessary to refer very elaborately to the affidavits filed on both sides because they contain a lot of material relating to the various litigations, referred to above, as well as the legal consequences flowing from them. As stated earlier, we do not propose to go into those matters in these appeals.

36. Though originally when the High Court dealt with the applications under Section 5 of the Limitation Act, on January 21, 1966, it was of the view that has been a delay of over the one and a half years in filing the appeals, nevertheless, in the present order, which is under attack, the High Court has rejected the applications on the ground that there is an unexplained delay during the period August 27, 1964 and July 3, 1965. Therefore even according to the High Court the appellant has been able to satisfactorily explain the delay up to August 27, 1964, and therefore the period of delay has been very much narrowed down.

37. On behalf of the appellant it had been categorically stated in the affidavit filed in support of the application under Section 5 of the Limitation Act, to excuse the delay, that when the objections filed by the State under Section 47 C.P.C. regarding executability of the Award in the Land Acquisition Cases were dismissed on January 30, 1965, the matter was referred to the Legal Remembrancer, West Bengal, for taking necessary action. It has been further state that it was on March 4, 1965, that it became known that the judgment of the Additional District Judge, dated September 21, 1963, is the three Land Acquisition Cases had not been appealed from. It must be noted that the objections to the execution were filed by the State in Reference No. 21 of 1958, which was one of the cases covered by the judgment of the Additional District Judge, and in which execution was taken for realising the compensation amount. It has been further stated that the counsel for the State in the

High Court perused all the papers and consulted the officers of the Land Acquisition Department, Howrah, to consider the steps to be taken to challenge the decision of the Additional District Judge in the Land Acquisition Reference Cases. It was only on April 15, 1965, that the State was advised by its lawyer in the High Court to move applications under Article 227 of the Constitution to quash the judgment of the Additional District Judge in the Land Acquisition Reference Cases. Admittedly, writ petitions under Article 227 were filed on May 17, 1965, in which the High Court granted stay of execution of the decree under the Award. We have already referred to the fact that these writ petitions were kept pending till September 28, 1966. It may be, that the State was not properly advised regarding the remedy to be adopted to challenge the judgment in the Land Acquisition Reference Cases. But, as pointed out by the Judicial Committee in Kunwar Rajendra Singh v. Raj Rajeshwar Bali and Others, [AIR 1937 PC 276] if a party had acted in a particular manner on a wrong advice given by his Legal Adviser, he cannot be held guilty of negligence so as to disentitle the party of plead sufficient cause under Section 5 of the Limitation Act. In fact the Judicial Committee observes as follows :

> "Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice."

38. The advice given by the lawyer to file applications under Article 277, in our opinion, is also a circumstance to be taken into account in considering whether the appellant has shown sufficient cause.

39. In the additional affidavit filed on behalf of the State on January 18, 1966, after a reference to the provisions of the Legal Remembrancer's Manual in West Bengal, it has been stated that the Government Pleader at Howrah omitted and neglected to send any proposal, according to the Rules, advising the Government to file appeal against the decision of the Additional District Judge in the Land Acquisition Reference cases. In support of the application filed on behalf of the State, copies of the letters written by the Collector, dated December 18, 1965 and January 5, 1966, the Ex-Government Pleader as well as the copy of the latter's reply, dated January 29, 1966, were also filed in the High Court. In the letter, dated December 18, 1965, the Collector, after a reference to the relevant provisions of the Legal Remembrancer's Manual informed the Ex-Government Pleader that the latter had not compiled with those provisions inasmuch as he had not obtained the certified copies of the judgment and decree and forwarded them to the Collector with his opinion in the case specially when the decision was adverse to the Government.

40. In the counter-affidavit filed on behalf of the respondents, there is no specific denial of the fact that the Government came to know only on March 4, 1965, that no appeals had been filed against the decision of the Additional District Judge in the Land Acquisition Reference Cases. On the other hand, the main stand taken by them is that inasmuch as the State filed objections under Section 47, C.P.C., on August 27, 1964, regarding executability of the Award, in view of the decree in Title Suit No. 34 of 1961, the Government had become fully aware that it was imperative that appeals should be filed against the decision in the Land Acquisition Reference Cases. It was also emphasised that the same Law Officer, two appeared in the Land Acquisition Reference Cases and represented the Government, had appeared on behalf of the State in the Title Suit No. 34 of 1961. It is also averred that the opinion of the Government Pleader regarding the necessity of filing appeals against the decision of the Additional District Judge in the Land Acquisition Reference Cases had been furnished to the Government even in 1963. In view of all these circumstances, it is pointed out on behalf of the respondents that the Government is guilty of negligence had inaction in not having

filed the appeals immediately after August 27, 1964.

41. We have already referred to the fact that the High Court itself did not attach any importance to the period anterior to August 27, 1964. It has dismissed the applications of the State on the ground that there is unexplained delay between the period August 27, 1964 and July 3, 1965.

42. We have already referred to the fact that the High Court does not disbelieve the statement in the affidavit filed on behalf of the State that it was only on March 4, 1965, that it was known that no appeal had been filed against the decision of the Additional District Judge in the Land Acquisition Reference Cases. We have already pointed out that even this fact is not denied in the counter-affidavits filed on behalf of the respondents. If that is so, it follows that the High Court was not justified in holding, at any rate, that there was an unexplained delay from August 27, 1964 up to March 4, 1965. The date, August 27, 1964, is a date prior to the date of the knowledge of the Legal Remembrancer, namely March 4, 1965, that no appeal has been filed against the Award.

43. Then the question arises whether the appellant has taken diligent steps after March 4, 1965. It has been stated in affidavit filed on behalf of the State that immediately after March 4, 1965, the matter was investigated and the question of the remedy to be perused for challenging the judgment in the Land Acquisition Reference Cases was immediately taken on hand. According to the State, papers were entrusted to the Lawyer in the High Court for giving advice regarding the procedure and that the State Lawyer in the High Court on April 15, 1965, advised the appellant to file an application in the High Court under Article 227. The averment that the State was so advised on April 15, 1965, by the State Lawyer has neither been disputed nor denied by the respondents. The High Court also has not disbelieved this plea of the State. That writ petitions were filed under Article 227 on May 17, 1965, is clear from the proceedings, referred to earlier. In fact we have also stated that the High Court granted in the said proceedings stay of execution of the decree under the Award and the writ petition were pending till September 28, 1966. No doubt, it may be a wrong advice on the part of the State Counsel; but the fact that the State acted upon that advice cannot be considered to be a circumstance showing negligence on the part of the State. At the utmost what could be said is that they were misguided by a wrong advice given by its counsel.

44. Even as late as June 17, 1965, the High Court in the writ petitions extended the stay and granted further time to the appellant to file regular appeals together with applications under Section 5 of the Limitation Act. Again, even on July 1, 1965, the High Court in the writ petitions further extended the stay and directed the appellant to get appropriate orders from the Bench dealing with the regular appeals. On July 3, 1965, the appeals were filed along with the application for excusing the delay.

45. In view of the circumstances mentioned above, which, unfortunately, have not been adverted to and touched upon by the High Court, we are of the opinion that after March 4, 1965, the appellant had been taking diligent and active steps to challenge the decision of the Additional District Judge in the Land Acquisition Reference Cases. We are satisfied that in the circumstances of this case, the appellant has shown sufficient cause and it is not possible to impute to the appellant want of bona fides or such inaction or negligence as would deprive them of the protection of Section 5 of the Limitation Act. We are, therefore, inclined to allow the three applications filed by the appellant in the High Court under Section 5 of the Limitation Act and to condone the delay in filing the three appeals.

46. In the result, we set aside the judgment and order of the High Court, dated August 18, 1966, and allow the appeals. The applications filed by the appellant under Section 5 of the Limitation Act are

allowed. The High Court will take up the three appeals on its file and dispose them of according to him. The appellant will pay the taxed costs separately of the first respondent and respondents Nos. 2 to 4 in all these three appeals in this Court. The appellant will also pay the separate costs of respondent No. 1 and respondents Nos. 2 to 4 as taxed by the High Court in all the the proceedings filed by the appellant under Section 5 of the Limitation Act.

47. It is needless to state that the High Court will consider the question of giving a very early disposal to the appeals. It is open to the High Court to give appropriate directions regarding the land acquisition amount.

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