

(1976) 09 KAR CK 0005
In the Karnataka High Court

Additional Special Land Acquisition Officer, Bangalore

APPELLANT

Vs

A. Thakoredas and Others

RESPONDENT

Date of Decision : 09-09-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18 (1), 18 (3) (a), 18 (3) (b), 33 C (2)
Limitation Act, 1963 — Section 137, 181

Citation : AIR 1977 Kar 42 : (1977) ILR (Kar) 137 : (1976) 2 KarLJ 285

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : K. Gopalakrishna, for the Appellant;

Judgement

1. This revision petition is filed against the order dated 22-6-1976 passed in L. A. C, 349 of 1975 on the file of the Additional Civil judge, Bangalore District, Bangalore, on an application filed by the respondents u/s 18(3)(b) of the Land Acquisition Act (Central Act I of 1894) as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, Karnataka Act No. 17 of 1961. An extent of 2 acres 37 guntas of land situated at Binnamangala Manavarthakaval village and belonging to the respondents was acquired under the provisions of the Land Acquisition Act under a notification issued on 27-8-1964. Respondents were served with the notice under sub-section (2) of, Section 12 of the Land Acquisition Act on 2-8-1970 informing them that an award had been passed in respect of the land that had been acquired. The case of the respondents before the Court below was that they had filed an application under sub-section (1) of Section 18 of the Land Acquisition Act requesting the Land Acquisition Officer to refer the case to the Court for the determination of proper compensation payable to them within the prescribed time and that the Land Acquisition Officer had not referred the case accordingly. The Court should therefore direct the Land Acquisition Officer to refer the case to it under clause (b) of sub-section (3) of Section 18 -of the Land Acquisition Act. The application u/s 18(3)(b) of the Land Acquisition Act was filed by the respondents in the year 1975, beyond three years from the expiry of 90 days from the date on which the respondents

claimed to have made the application. According to them the application had been filed before the Land Acquisition Officer on 1-9-1970. The Land Acquisition Officer denied that such an application had been filed by the respondents within the prescribed time and also contended that the application made u/s 18(3)(b) beyond three years from the last date on which the Land Acquisition Officer should have referred the case to the Court under clause (a) of sub-section (3) of Section 18 was barred by time in view of Article 137 of the Limitation Act, 1,963.

2. The learned Additional Civil judge before whom the said application came up for hearing held that the respondents had established that they had filed the application before the Land Acquisition Officer seeking a reference to the Court u/s 18(1) within the prescribed time and that the application made to the Court u/s 18(3)(b) was not barred by time as Article 137 of the Limitation Act was inapplicable. Accordingly he allowed the application filed under S. 18(3)(b) and directed the Land Acquisition Officer to refer the case to the Court for the determination of the compensation payable to the respondents. Aggrieved by the said order of the Court below the Land Acquisition Officer has filed this revision petition.

3. The respondents relied upon Exhibit P-2 which was a copy of the application filed by them u/s 18(1) before the Land Acquisition Officer to establish that they had applied u/s 18(1) within the prescribed time. The said copy contained the seal of the office of the Land Acquisition Officer and also the initials of an official of his office with the date 1-9-70. Admittedly the notice under sub-s. (2) of Section 12 of the Act had been served on the respondents on 2-8-1970. After taking into consideration the oral and documentary evidence the Court below was of the opinion that the respondents had proved that they had filed the application u/s 18(1) on 1-9-1970 within the prescribed time.. There is no ground to interfere with the said finding of the Court below u/s 115 of the Code of Civil Procedure. It is held that the respondents had filed an application u/s 18(1) within the prescribed time.

4. The next question, which arises for consideration is: whether the application filed u/s 18(3)(b) before the law of limitation barred the Court? It is not disputed that the Land Acquisition Act does not provide for any period of limitation for filing of application under S. 18(3)(b). The relevant part of Section 18 reads:

"Section 18(3)(b): "If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the - application, the applicant may apply to the Court to direct the Deputy Commissioner to make a reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix."

It is also not disputed that there is: no provision in the CPC under which an application can be made for a similar relief. Section 18(3)(b) was introduced into the Land Acquisition Act for the first time under the Karnataka Act 17 of` 1961 providing a statutory remedy to an applicant u/s 18(1) of the Land Acquisition

Act whose application had not been referred to the Court by the Land Acquisition Officer within the period of ninety days from the date of its receipt. It was argued by Sri K. Gopalakrishna, learned counsel for the petitioner, that since the Court before which their application was filed u/s 18(3)(b) was under Sec. 53 of the Land Acquisition Act required to follow the CPC while disposing of matters arising under the Land Acquisition Act, the application filed u/s 18(3)(b) was governed by Art. 137 of the Limitation Act and that any such application filed beyond three years from the expiry of the period of ninety days from the date on which the application u/s 18(1) was filed was barred by time. He contended that the lower Court was wrong in holding that Article 137 was not applicable to applications made under laws other than the Code of Civil Procedure. I am of the view that the Court below was right in rejecting this contention. The view adopted by the Court below is supported by the observations of the Supreme Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, . In that case the Supreme Court was considering the applicability of Article 137 of the Limitation Act to an application filed u/s 33-C of the Industrial Disputes Act made before a Labour Court. Dealing with the said question the Supreme Court observed as follows:-

"9: This earlier decision was relied upon by this Court in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , where the Court had to deal with the argument that applications u/s 33-C of the Act will be governed by three years" limitation provided by Article 181 of the Limitation Act. The Court in dealing with this argument held,-

"In our opinion, this argument is one of desperation, It is well settled that Article 181 applies only to applications which are made under the Code of Civil Procedure, and so, its extension to applications made u/s 33-C(2) of the Act would not be justified. As early as 1880, the Bombay High Court had held in *Bai Manekbai v. Manekji Kavasji* ILR (1880) Bom 213 , that Article 181 only relates to applications under the CPC in which case no period of limitation has been prescribed for the application, and the consensus of judicial opinion on this point had been noticed by the Privy Council in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 An attempt was no doubt made in the case of *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, to suggest that the amendment of Articles 158 and 178 ipso facto altered the meaning which had been attached to the words in Article 181 by judicial decisions, but this attempt failed, because this Court held "that the long catena of decisions under Article 181 may well be said to have, as it were, added the words "under the Code" in the first column of that article. Therefore, it is not possible to accede to the argument that the limitation prescribed by Article 181 can be invoked in dealing with applications u/s 33-C(2) of the Act."

10. It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly

different from that of the earlier Art. 181 in as much as, when prescribing the three years period of limitation, the first column giving the description of the application reads as "any other application for which no period of limitation is provided elsewhere in this division." In fact, the addition of the word "other" between the words "any" and "application" would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of ejusdem generis should be applied when interpreting the new Article 137. This word "other" implies a reference to earlier articles, and, consequently, in interpreting this article, regard must be had to be provisions contained in all the earlier articles. The other articles in the third division to the schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure. The effect of introduction in the third division of the schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, We think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure."

It is argued by Sri K, Gopalakrishna, the learned counsel for the petitioner, relying upon the last sentence in the portion of the decision of the Supreme Court extracted above, that the application u/s 18(3)(b) of the Land Acquisition Act should be construed as an application made under an Act which made CPC applicable to the Court and was therefore governed by Article 137. It may be that the Court has to follow the procedure prescribed in the CPC for the purposes of deciding the applications and references made to it under the Land Acquisition Act. But certainly an application u/s 18(3)(b) cannot be construed as an application under the Code of Civil Procedure. It is an application made to a Civil Court under the L. A. Act. We have to bear in mind the distinction between an application under the CPC and an application made under other laws to a Court which follows CPC to dispose of such application. In the decision referred to above the Supreme Court has clearly stated following its earlier decisions that Article 181 of the Limitation Act 1908 and Article 137 of the Limitation Act, 1963 applied only to applications made under the CPC but not to those applications which are made under the provisions of "other laws. As long as the above view of the Supreme Court is prevailing and the Supreme Court has not expressed to the contrary in any subsequent case, it is not open to this Court to take the view that Article 137 would apply to applications under laws other than the Code of Civil Procedure. No decision of the Supreme Court where a contrary view is

expressly taken is brought to my notice. I may add here that the observations made in para 11 of the decision of the Supreme Court in the Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., only constituted another ground to reject the contention urged in that case but they do not in any way affect the clear statement of the law in the earlier paragraphs 9 and 10 which are extracted above. It has, therefore, to be held that an application made u/s 18(3)(b) of the Land Acquisition Act is not governed by Article 137 of the Limitation Act, 1963, Since no period of limitation is prescribed under any law the application filed by the respondents before the Court below cannot be rejected on the ground that it is barred by time.

5. There is no ground to interfere with the order of the Court below. The revision petition is dismissed.

6. Revision dismissed.