

(2015) 06 KL CK 0069
In the High Court Of Kerala
Case No : F.A.O. No. 90 of 2009

Ayyampilly Kizhakkepadam Karshaka Samajam and Others	APPELLANT
Vs	
Kuzhuppilly Grama Panchayath and Others	RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 249 (1)(b), 249(1)(a), 249(1)(b), 271F, 271-G
Land Acquisition Act, 1894 — Section 28A
Limitation Act, 1963 — Section 14

Citation : (2015) 06 KL CK 0069

Hon'ble Judges : T.R. Ramachandran Nair, J;K.P. Jyothindranath, J

Bench : Division Bench

Advocate : Sreelal N. Warriar and B. Raghunandanan, for the Appellant; H.B. Shenoy, S.C., Kuzhuppally G. Panchay, B. Ashok Shenoy, Lakshmi B. Shenoy, Abu Mathew, Sobhan George and K.V. George, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—This appeal is filed by the appellants aggrieved by the order passed by the Principal Sub Court, North Parur in O.P.(Indigent) No. 22/2002.

2. We heard Shri Sreelal Warriar, learned counsel for the appellants and Shri Asok Shenoy learned counsel for the respondents.

3. The original petition was filed by the appellants claiming damages for the illegal demolition of the shed, wooden materials stored for constructing sluice, etc. owned by the Samajam in its property having an extent of 4.018 cents comprised in Sy. No. 238/2 of Kuzhuppilly Village, against the first respondent Panchayat. The application for permission to sue as indigent person was once allowed as per order dated 31.5.2005 which was challenged by the respondents in W.P.(C) No. 32401/2005 before this Court. The order was set aside and the matter was remanded back for fresh consideration. While remanding the matter,

this Court directed the court below to consider the maintainability of the suit in view of Section 249 (1)(b) of the Kerala Panchayat Raj Act. In the said section, pre conditions have been prescribed by the statute for maintaining the suit of the present nature by way of a notice and the period for institution of the suit has also been provided as six months next after the accrual of the cause of action.

4. The court below, by the impugned order, found that no notice was issued under Section 249(1)(a) of the Panchayat Raj Act. It was also found that as per Section 249(1)(b) as the suit has to be instituted within six months after accrual of the cause of action and, there is non-compliance of the same.

5. In the course of the argument, it was also contended that the appellants had approached the Ombudsman for Local Self Government Institutions and the said period is liable to be excluded under Section 14 of the Limitation Act. All these contentions were rejected by the Sub Court, against which the present appeal is filed.

6. The contention raised by the learned counsel for the appellants is that the application was filed before the learned Ombudsman as O.P. No. 7/2002 on 4.1.2002. The alleged demolition was on 16.1.2001. The final order passed by the learned Ombudsman is dated 27.9.2002 whereby the appellants were directed to approach the civil court. It is thereafter the Indigent O.P. was filed admittedly, i.e. on 19.11.2002.

7. For the application of Section 14 of the Limitation Act, various conditions are to be satisfied. One of the main aspect to be considered is whether the appellants have been prosecuting with due diligence "another civil proceeding", whether in a court of first instance or of appeal or revision.

8. A Division Bench of this Court had occasion to consider the matter in the light of the question whether the authority under Section 28A of the Land Acquisition Act can be equated with a civil court as contemplated under Section 14 of the Limitation Act, in the decision reported in Parameswaran Pillai Vs. State of Kerala, (2014) 3 KLT 597 . We need only consider the following extract from paragraph 12. After referring to the decision of the Apex Court in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, (2008) 2 ARBLR 139 : (2008) 3 CLT 244 : (2009) 3 CompLJ 203 : (2008) 5 CTC 741 : (2008) 6 JT 22 : (2008) 6 SCALE 748 : (2008) 7 SCC 169 , the Division Bench has extracted paragraph 21 of the Apex Court decision which we reproduce below:

"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court."

Going by the same, both the prior and subsequent proceedings should be civil proceedings and both the proceedings should be in a court also. Finally, the Division Bench found that the authority under Section 28A of the Land Acquisition Act cannot be equated with a civil court. Similar is the position herein also. We are of the view that Ombudsman cannot be equated with a court for the purpose of Section 14 of the Limitation Act. Apart from the same, both the proceedings cannot be said to be civil proceedings.

9. The institution of Ombudsman is one created under Section 271-G of the Panchayat Raj Act. There, the proceedings initiated should be in the nature of a complaint, going by the definition under Section 271F, especially sub-clause (c). An Ombudsman can be approached by filing a complaint raising an allegation that a public servant or a local self Government institution is guilty of corruption or mal administration. Going by the functions of the learned Ombudsman provided under Section 271-J: (i) He can investigate into any allegation contained in a complaint or on a reference from Government or that has come to the notice of the learned Ombudsman; and (ii) enquire into any complaint in which corruption or mal administration of a public servant or a Local Self Government Institution is alleged. Sub-section (iii) provides the manner in which an order can be passed. Sub-clause (b) therein will indicate that where the irregularity causes loss or inconvenience to a citizen, the Ombudsman can direct the Local Self Government Institution to give him compensation and to reimburse the loss from the person responsible for the irregularity. Even though under Section 271-K of the Act, it is stated that the Ombudsman shall, for the purpose of any investigation or enquiry under the Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the enumerated matters (a) to (f) therein, those are only procedural provisions which could be made use of by the Ombudsman for the purpose of investigation or enquiry. That will not alter the position.

10. We find no reason to equate the said power as equal to the power of civil court in a case where damages are claimed from the respondents. Herein, if mal administration is found by the learned Ombudsman, he can award compensation. As far as the present claim is concerned, the same is termed as claim for damages for demolishing a shed.

For all these reasons, we find that the appellant will not be entitled to rely upon

Section 14 of the Limitation Act. On the said sole ground, the appeal fails and the same is dismissed. The parties will suffer their costs in the appeal.