

(1941) 05 CAL CK 0009
In the Calcutta High Court

Dhajadhari Ghosh

APPELLANT

Vs

Union Board of Kendragoria

RESPONDENT

Date of Decision : 02-05-1941

Acts Referred:

Limitation Act, 1963 — Article 146A

Citation : AIR 1942 Cal 151

Hon'ble Judges : Biswas, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Biswas, J.—This is an appeal on behalf of the defendant in a suit instituted by the Union Board of Kendragoria in respect of a strip of land which it claimed as part of a public road vested in it. The plaintiff board is a local authority constituted under the Bengal Village Self. Government Act of 1919, and its case was that the defendant had encroached upon the disputed land by putting up certain sheds over it, and it accordingly asked for removal of the encroachment and also for a permanent injunction to restrain further encroachment by the defendant. The trial Court found in favour of the plaintiff and decreed the suit, and this decision was affirmed on appeal by the District Judge of Birbhum.

2. The defendant had raised various defences to the suit, but the only one with which we are concerned in this appeal is that of limitation which was negated by both the Courts below. They concurrently took the view that treating the suit as one for possession of immovable property, the 12 years" limitation under Article 142 or Article 144 did not apply, but that the suit was governed by Article 146A of Schedule 1, Limitation Act, which provides an extended period of 30 years" limitation for a suit by or on behalf of a local authority for possession of any public street or road from which it has been dispossessed or of which it has discontinued the possession. It is the propriety of this decision which is challenged in this appeal. On the findings arrived at by the Courts below, it is not disputed that if Article 142 or 144 was held to apply, the suit would be clearly out of time. The question is, how far these findings are sufficient to attract the

operation of Article 146A, and it is necessary, therefore, to see what they are.

3. One important fact found is that the plaintiff Union Board came to be established in the Bengali year 1327 or 1328 B.S., that is to say, in or about the year 1921, so that it could not have been in possession of the disputed land at any time prior to this. As regards the alleged encroachment by the defendant, the finding is that it had commenced several years before the Union Board came into existence, and not four years after, as was the case of the plaintiff. The precise date when the defendant came into possession could not be ascertained, but both Courts found that it was well within 12 years from before the establishment of the Union Board. The suit was instituted on 6th May 1936, that is, more than 12 years, but within 30 years, from the date of the encroachment or of the inception of the Union Board. On these facts, it seems to us that there can be no room for the application of Article 146A, and it is difficult to support the view taken by the Courts below. In our opinion, Article 146A applies only where the local authority suing has been dispossessed or has discontinued its possession: in other words, it contemplates prior possession of the land by the local authority which it subsequently loses by reason of any act done by the defendant or otherwise. The article can obviously have no operation in a case like the present, where, as stated above, the local authority is found not to have been in possession at all. At the date the Union Board was created, possession was with the defendant, and if, therefore, the Union Board wanted to recover the land as part of a public road to which it became entitled upon its creation under the Act of its incorporation, it might and ought to have sued for such recovery within 12 years from the date of its establishment under Article 144.

4. Mr. Das on behalf of the plaintiff-respondent contended that the word "dispossession" in Article 146A has not the same meaning as in Article 142, and in support of his argument he pointed out that while Article 142 expressly contains the words "while in possession of the property," no such words occur in Article 146A. It was urged that Article 146A was a special provision enacted for the benefit of local authorities in order to give them a longer period of limitation in respect of all kinds of suits for possession of a public street or road, and not merely of such suits as could be brought within the terms of Article 142. In other words, the argument was that suits which would otherwise come under Article 144 were also intended to be included within the scope of Article 146A, where the plaintiff was a local authority. This would mean that the words "dispossessed" or "discontinued the possession" in Article 146A should be deemed wide enough to include a case of being kept out of possession. We find ourselves unable to accept this contention. In our opinion these words must be given the same meaning as in Article 142 and we do not think that the absence of the words "while in possession of the property" can be taken to indicate that prior possession was not contemplated. The suit here was instituted on 5th May 1936, and the defendant had already been in possession of the land for over 12 years in assertion of a claim of ownership. Such possession of the defendant would have been sufficient to bar a suit for recovery of possession by the rightful owner

both under Arts. 142 and 144. The only effect of the special provision enacted in Article 146A in favour of a local authority is that if the local authority was previously in possession, it could claim a longer period of 30 years within which to bring a suit. But where this was not the case, evidently the shorter period of 12 years" limitation would apply. As, in this case, the defendant is found to have been in possession of the land from before the date of establishment of the Union Board, it is obvious that his possession could not be adverse to the plaintiff from before such date, and it follows, therefore, that as no steps were taken by the Union Board to recover the property within 12 years thereafter, its right to recover possession was barred.

5. Mr. Das raised a further argument that the plaintiff had a continuing cause of action u/s 23, Limitation Act, but we do not think there is any substance in this contention. This is not a suit by or on behalf of the public to assert their right of way over the disputed strip of land and for removal of an encroachment therefrom, in which case no doubt Section 23 might appropriately be held to be applicable. As Mr. Das himself admits this is a suit by the Union Board for possession, and it could, therefore, come only under Article 146A, or under Article 142 or 144. On the facts of the case, however, as already pointed out, none of these articles could be invoked by the plaintiff in support of the suit. The result is that in our opinion the suit must be held to be barred by limitation. The appeal is accordingly allowed, and the judgments and decrees of the Courts below are hereby set aside. The defendant is entitled to his costs in all the Courts.

B.K. Mukherjea, J.

6. I agree.