

(2022) 04 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13670 Of 2021

Ghanshyam Gupta

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 21-04-2022

Acts Referred:

Limitation Act, 1963 — Article 137
National Highways Act, 1956 — Section 3G(5)
Limitation Act, 1963 — Section 5
Arbitration And Conciliation Act, 1996 — Section 11, 20

Citation : (2022) 04 MP CK 0071

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Shambhoo Dayal Gupta, Rohit Jain

Final Decision : Allowed

Judgement

Ravi Malimath, CJ

The case of the petitioner is that he is the owner of the lands bearing Khasra No.918 admeasuring 0.886 hectare, Khasra No.919 admeasuring 0.458 hectare and Khasra No.922 admeasuring 1.023 hectares, situated in village Pali, Municipal Council, Birsinghpur Pali, Ward No.4, Police Station and Tahsil Pali, District Umaria (M.P.). That the respondent No.3 namely Madhya Pradesh Road Development Corporation acquired 0.477 hectare in part of Khasra No.918 area 0.886 hectare, 0.010 hectare in part of Khasra No.919 area 0.458 hectare and 0.010 hectares in part of Khasra No.922 area 1.023 hectares. An award was passed on 30.07.2015, wherein the petitioner was granted compensation of Rs.10,39,638/- for area 0.477 hectare, Rs.21,795/- for 0.010 hectare and Rs.21,795/- for 0.010 hectares. Being dissatisfied with the quantum of award, the petitioner challenged the same under Section 3G(5) of the National Highways Act, 1956 (hereinafter referred to as "the Act of 1956") before the learned Commissioner-cum-Arbitrator, Shahdol Division, Shahdol.

He also filed an application under Section 5 of the Limitation Act seeking to condone the delay, if any, in challenging the said award. The Arbitrator dismissed the appeal on the ground that there is no reason to condone the delay in filing the appeal. Aggrieved by the same, the instant petition is filed.

The learned counsel for the petitioner contends that the impugned order passed by the Arbitrator is bad in law and, therefore, liable to be set aside. That there is a delay of about 4 years in challenging the award. That in terms of Section 20 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996"), the petitioner had to file an application within 3 years from the date of the award. The same has been filed after 4 years. The reason explained for condoning the delay requires to be accepted by the Arbitrator.

Failure to do so and dismissing the application for condonation of delay has, therefore, led to gross miscarriage of justice.

The same is disputed by the learned Government Advocate appearing for the respondents No.1 and 2 as well as by the learned counsel appearing for the respondent No.3. It is contended that various courts have held that in absence of specifying a period of limitation for filing an appeal under Section 3G(5) of the Act of 1956, it was construed that the provisions of Article 137 of the Limitation Act would stand applicable. The same confers a limitation of 3 years for filing the appeal. Therefore, the courts having taken such a view, the Arbitrator was justified in passing the award. Hence, no interference is called for.

Heard learned counsels.

The Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Private Limited, reported in (2021) 5 SCC 738, held in para 21 to the effect that it would be necessary for the Parliament to effect an amendment in Section 11 of the Act of 1996 prescribing a specified period of limitation within which a party may move the Court for making an application for appointment of an arbitrator under Section 11 of the Act of 1996 in view of the reason that the same does not provide for any limitation.

The Hon'ble Supreme Court in the case of Additional Special Land Acquisition Officer, Bangalore Vs. Thakoredas, Major , reported in 1994 Legal Eagle (SC) 172 has held that since there is no limitation prescribed under the Land Acquisition Act for making a reference limitation will be attracted under the residuary Article 137 of the Schedule to the Limitation Act and therefore, an application seeking a reference must be made within three years of the expiry of 90 days from the date of the award.

The High Court of Kerala vide judgment dated 30.03.2015 passed in Writ Appeal No.226 of 2015 (K. Leela Vs. The District Collector and Arbitrator and another) held in para 19 to the effect that as there is no specific period provided for making a claim seeking higher compensation, the residuary clause under Article 113 of the Limitation Act has to be applied which is three years from the date on

which the right to sue accrues. Consequently, if no such steps are taken within the said period, the Arbitrator is entitled to reject the claim as barred by limitation.

Having considered the contentions in the aforesaid judgments, we are of the considered view that appropriate interference is called for. Admittedly, no limitation is provided for filing an appeal under Section 3G(5) of the Act of 1956. Therefore, it can be construed, as held in the aforesaid judgments, that Article 137 of the Limitation Act would stand applicable to such cases.

However, the issue can also be considered from another angle to the effect that it need not always be construed that there is an omission by the Parliament to state the limitation for filing such an appeal. It can also be contended that the Parliament in its wisdom has deliberately avoided prescribing a limitation for filing such an appeal. The reason may not be too far to find. It is ultimately the villager namely the land owner who loses his land under compulsory acquisition. Therefore, to restrict him by limitation from claiming an enhancement, in our considered view, may not be just or fair. When the land owner has a right to compensation as well as to seek its enhancement, to restrict the same by limitation may lead to gross injustice rather than justice. The authority would not be benefitted if there is no limitation applicable to such cases. Therefore, it could also be contended that keeping this in mind, the Parliament has deliberately not enforced any limitation for exercise of such a right and on the other hand, it cannot be said that there was an omission by the Parliament to do so. Secondly, even assuming that Article 137 of the Limitation Act would stand applicable, in that event the powers of the court under Section 5 of the Limitation Act will come into play. The National Highways Act does not specifically bar the provisions of Section 5 of the Limitation Act. Therefore, even if it is to be held that Article 137 is to be applied, then the delay in filing such an appeal would require to be considered in exercise of the powers under Section 5 of the Limitation Act based on the facts and circumstances involved and sufficiency of cause. Therefore, we are of the view that in either circumstances, limitation requires to be considered appropriately.

So far as the facts of this case are concerned, the authority came to the view that there is a delay of 4 years, 4 months and 4 days in filing the appeal. That the award was passed on 30.07.2015. The appeal under Section 3G(5) of the Act of 1956 was filed on 04.12.2019 namely 4 years after passing of the award. If Article 137 of the Limitation Act is to be applied then there is a delay of only 1 year, 4 months and 4 days. For the said period, the writ petitioner has stated that he was not aware that he was entitled to file an appeal against the said award. Only after consulting his lawyer, he came to know that he could seek for enhancement. Therefore, there is a delay.

On considering the reasons assigned, we are of the view that the petitioner has shown sufficient cause for condoning the delay of 1 year, 4 months and 4 days in filing the appeal. Therefore, we are of the view that the order impugned herein

calls for an interference.

Consequently, the petition is allowed. The impugned order dated 28.12.2020 (Annexure P/6) passed by the respondent No.1 in Case No.0072/B-121/2019-20, is set aside. The appeal filed by the petitioner is held to be within limitation. The respondents to consider the case of the petitioner on merits and pass an appropriate order in accordance with law.