
(1996) 04 KL CK 0013

In the High Court Of Kerala

Case No : W.A. No's. 76 and 84 of 1990 and O.P. No's. 10643 of 1989 and 2880 of 1990

Kerala Fisheries Corporation Ltd.

APPELLANT

Vs

P.S. John and Others

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 34, 7, 71
Limitation Act, 1963 — Article 112, 3
State Financial Corporations Act, 1951 — Section 32G, 46B

Citation : (1997) 88 CompCas 104 : (1996) 2 ILR (Ker) 759

Hon'ble Judges : K. Sreedharan, Acting C.J.; P.K. Balasubramanyan, J; J.B. Koshy, J

Bench : Full Bench

Advocate : S. Parameswaran, in W.A. No. 76 of 1990, for the Appellant; K. Ravindranathan Nair, for respondent Nos. 1 and 2 in W.A. No. 76 of 1990 and S. Narayanan Poti, General for respondent Nos. 3 and 4 in W.A. No. 76 of 1990, for the Respondent

Judgement

P.K. Balasubramanyan, J.—Writ Appeal No. 76 of 1990 is filed by the Kerala Fisheries Corporation Ltd., an institution specified u/s 1 of the Kerala Revenue Recovery Act, 1968 (hereinafter called "the Act"), as per notification, dated December 19, 1972, and W. A. No. 84 of 1990 is filed by the District Collector and the Tahsildar the authorities under the Act. Respondent No. 1 in the writ appeals, entered into an agreement with the Fisheries Corporation for purchase of fish from the fishermen under the control of the corporation and to pay the price of the fish to the corporation on the terms agreed upon by the parties. Though respondent No. 1 collected the fish he did not pay the price, in spite of being called upon to do so. The Fisheries Corporation, therefore, filed a suit O. S. No. 223 of 1973 on the file of the Subordinate Judge's Court of Kottayam. The said suit was decreed in favour of the corporation on March 29, 1974, providing for recovery of a sum of Rs. 41,823.70 with 6 per cent. Interest thereon from the date of suit and the costs of suit. The Fisheries Corporation did not execute the

decree, but on January 13, 1986, applied to the District Collector for initiation of proceedings under the Revenue Recovery Act for recovery of the amounts due to it. On March 17, 1986, the Collector issued the certificate contemplated by Section 69(3) of the Act. A demand notice was issued on March 20, 1986. A notice dated March 30, 1986, proposing to attach the movables was issued to the defaulter which was received by him on April 5, 1986. Contending that the recovery of the amount was barred by limitation, respondents Nos. 1 and 2 filed O. P. No. 3149 of 1986 before this court praying for the issue of a writ of certiorari to quash the notices issued u/s 34 and Section 7 of the Act. The contention was that since the execution of the decree in O. S. No. 223 of 1973 of the Subordinate Judge's Court of Kottayam was barred by limitation, no execution having been initiated prior to March 29, 1986, the Fisheries Corporation was disentitled to recover the amounts due under the said decree. This was countered by the Fisheries Corporation and by the officials under the Act, by contending that the Revenue Recovery Act does not provide any time limit for initiation of proceedings for recovery of amounts due to the Government or to the institutions notified u/s 71 of the Act, that in the case on hand, in any event, proceedings under the Act were initiated on January 13, 1986, well before March 29, 1996, on which date the execution of the decree would become barred under the Limitation Act, that the certificate u/s 69(3) of the Act itself was issued by the Collector on March 17, 1986, and the notice of demand, exhibit P-2, u/s 34 of the Act was itself issued on March 20, 1986, within 12 years of the decree in O. S. No. 223 of 1973 and, therefore, in any view of the matter, the proceeding initiated under the Act was in time and was valid. A learned single judge by the judgment under appeal, which is reported in John v. District Collector [1989] 2 KLT 831 took the view that since the notice of demand u/s 7 of the Act was served on the defaulter only on April 5, 1986, beyond 12 years of the date of the decree in O. S. No. 223 of 1973 the proceedings under the Revenue Recovery Act could not be taken to be within 12 years of the decree and since the amount due to the financial corporation could not be recovered in execution, in view of the relevant article in the Limitation Act, 1963, initiation of proceedings under the Revenue Recovery Act has also to be held to be unsustainable. In that view, the learned single judge quashed the proceedings under the Act. The learned single judge also relied on the decision in A.K. Nanu and Others Vs. State of Kerala and Others, in support of his conclusion. The correctness of this decision is questioned in these writ appeals.

2. In O. P. Nos. 10643 of 1989 and 2880 of 1990, the petitioners therein challenge the initiation of proceedings under the Revenue Recovery Act on their plea that the notice under the Act was served on them after the expiry of three years from the date fixed for repayment and consequently, initiation of proceedings are without jurisdiction. The amounts therein were due to the Kerala Financial Corporation, an institution notified u/s 71 of the Act, and governed also by the State Financial Corporations Act. The Financial Corporation resisted the claim of the petitioners. The learned single judge, before whom the original

petitions, came up for hearing, felt that the ratio of the decision in A.K. Nanu and Others Vs. State of Kerala and Others, may require reconsideration and referred the cases to a Division Bench. Since one of the questions involved in the said original petitions was also the same as the one involved in the writ appeals, those original petitions were also directed to be posted along with the writ appeals. A Division Bench of this court having heard the writ appeals and the original petitions and considering the fact that the decision in A.K. Nanu and Others Vs. State of Kerala and Others, was that of a Division Bench, referred the cases for being heard by the Full Bench and that is how these cases are before us.

3. Section 5 of the Act states that whenever public revenue due on land is in arrear, such arrear together with the other sums referred to therein could be recovered by attachment and sale of the defaulter's movable property, by attachment and sale of the defaulter's immovable property, by appointing an agent for the management of the defaulter's immovable property or by arrest of the defaulter and his detention in prison. What is stated is that when revenue due on land is in arrear, it could be recovered. Section 68 of the Act which makes the provisions of the Act applicable to recovery of certain other dues to the Government, uses the expressions "all sums due to the Government" and "all moneys due from any person" and Section 71 of the Act dealing with the power of the Government to declare the Act applicable to any institution speaks of a declaration that the provisions of the Act shall be applicable to recovery of "amounts due" from any person. In the judgment under appeal, the learned judge interpreted the words "recovery of amounts due" occurring in Section 71 as meaning "legally recoverable". The learned judge proceeded to state (at page 833) :

"Whether an amount is legally recoverable depends upon the question whether the said amount can be recovered well within the time, the same could be recovered under the general law of limitation. If it is found that recovery of any amount is barred by the law of limitation, it is difficult to sustain the plea that the Recovery Officers can still insist that the said amount was payable/recoverable."

4. A Division Bench of this court in A.K. Nanu and Others Vs. State of Kerala and Others, to which also the same learned judge was a party, overruled the view of another learned single judge to the effect that :

"As long as the right is not extinguished and no period is prescribed for resorting to the proceedings for recovery under the Act, the fact that a suit is barred will not disentitle the bank from resorting to steps in pursuance of the notification by proceeding under the provisions of the Revenue Recovery Act",

and held that in the absence of a provision creating a substantive right to recover time-barred debts, the Act providing for summary recovery does not avail, once the period prescribed for recovery under the Limitation Act has expired. In other words, the Division Bench held that if the Government or the institutions coming

under the Act cannot enforce the right through a court in view of the provisions of the Limitation Act, the Government or the institution cannot have the right to invoke the provisions of the Revenue Recovery Act to recover the amounts due to them. The court proceeded on the basis that the Revenue Recovery Act did not create new liabilities or confer new rights but merely created a summary procedure for recovery of the existing liabilities and proceeded to state that when the recovery of a sum was barred by the provisions of the Limitation Act, the same could not be recovered through the machinery of the Revenue Recovery Act. This court referred to the decision of the Privy Council in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 and the decision of the Supreme Court in *New Delhi Municipal Committee Vs. Kalu Ram and Another*, . This court held that the expression "money due" in Section 71 and Section 68 of the Act would have to be understood as "money legally recoverable" and "money becomes not legally recoverable" when a suit for recovery of the same is barred by limitation under the Limitation Act, 1963. Their Lordships distinguished the decision of another Division Bench of this court in *E. S. I. Corporation v. Ramdas Reddiar* [1980] KLT 425 wherein this court held :

"The law of limitation is confined in its application to suits, appeals and applications and where a creditor does not seek to enforce a claim by resort to a suit, the law of limitation has no part to play. In other words, his rights if any other than the right to take action in court continues to be operative."

5. According to their Lordships, the said principle was not applicable to proceedings under the Revenue Recovery Act since it was merely a procedure for enforcing existing liabilities. Their Lordships also referred to the decision of this court in *Official Liquidator, Palai Central Bank Ltd. (in liquidation), Ernakulam Vs. K. Joseph Augusti, Kayalackakam House, Palai and Others*, . In that case, *Raman Nayar J.* (as he then was) stated thus (at page 125 of AIR 1966 Ker):

"The first is the elementary proposition that, except by the operation of provisions like Section 28 of the Indian Limitation Act, 1908, I shall for purposes of illustration refer to the more familiar provisions of that Act which have repeatedly come before the courts rather than to those of the new Act of 1963--limitation does not extinguish the right but only bars the remedy. Here, the word, "right" is used to mean a primary or substantive right, and the proposition is true only if the word is understood in that limited sense. For, a remedy is also a right in the wider sense of the word, a sanctioning or secondary right, a remedial or procedural right as it is often called, and limitation does" undoubtedly extinguish such a right, though, subject to the qualification already mentioned, leaving the substantive right unaffected. Of course, the remedy can be revived--recreated, would perhaps be the better word to use--by a law for the purpose, just as any other right, including a substantive right, can be so created. But, in so far as the particular remedial right to which it applies is concerned, limitation undoubtedly extinguishes the right. It is, however, important to remember that limitation extinguishes only the particular remedial right which is its victim and

that, since it leaves the substantive right unaffected, that right can still be enforced in other ways, if other ways are available, not merely indirectly by the enforcement of lien, or by obtaining a fresh promise, or by reason of payment notwithstanding the bar being safe from recall, but also in a positive and direct manner. Thus, it might well be that there is more than one legal remedy available for the enforcement of the same substantive right."

6. With respect, we feel that the passage quoted above cannot be said to support the proposition enunciated in *A.K. Nanu and Others Vs. State of Kerala and Others*, The question whether the provisions of the Limitation Act, 1963, would also govern the proceedings under the Revenue Recovery Act was not discussed by the Division Bench. This aspect was noticed in the decision in *B.C. Harikumar Nair Vs. Kerala State Financial Enterprises Ltd. and Another*, wherein it was pointed out that the Limitation Act as such could not be applied when a person does not approach the civil court for relief either by way of a suit or by way of an application.

7. The two decisions relied on by the Division Bench in *A.K. Nanu and Others Vs. State of Kerala and Others*, now require to be noticed. In *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63, their Lordships held that a claim against a company in liquidation was not made by the presentation of a plaint and hence is not a suit instituted within the meaning of Section 3 of the Limitation Act. Their Lordships also held that an application u/s 186 of the Indian Companies Act, 1913, made by the liquidator within three years from the date of winding up order could not be dismissed by reason of Section 3 of the Limitation Act as it is either an application made within time or it is an application made for which no period of limitation is prescribed. Their Lordships proceeded to observe that the expression "any money due" in Section 186 of the Companies Act must be confined to money due and recoverable in a suit by the company and it does not include any monies which at the date of the application u/s 186 of the Act, could not have been so recovered. In that case, the application by the liquidator though under a special enactment was to the court and what was held was if on the date the application was made, the company in liquidation could not have recovered the money by way of a suit, the same could not be recovered by the liquidator through an application u/s 186 of the Companies Act. With respect, we feel that the application u/s 186 of the Companies Act being one made to a court, the Limitation Act applied and only debts alive on the date of the application could be recovered. It must also be observed that their Lordships noticed that the procedure u/s 186 of the Companies Act was one providing for a summary proceeding against the debtor-contributories to avoid proceedings in different courts and to permit a single proceeding in the winding up court. Every defence was as open to the person sought to be charged as it would have been if a suit had been filed. In other words, an application u/s 186 was treated as akin to a suit to be instituted by the company and was considered only as a special summary mode provided for recovery through the winding up court in the place of filing suits against various debtors in various courts. It could be seen that their

Lordships noted that whether in view of the particular terms of the Limitation Act such a situation could arise in India, depended upon the meaning to be attributed to the words "money due" and proceeded to state that the law of India was the same as in England, and the words "money due" must be confined in their Lordships' judgment to money due and recoverable in a suit by the company and they do not include any moneys which on the day the application was made u/s 186 of the Companies Act, could not have been so recovered.

8. With respect we feel that the Privy Council considered the proceeding u/s 186 of the Indian Companies Act, 1913, as a summary mode of recovery and not as an alternate mode available to the company for recovery of the amount due to it. A perusal of the Indian Companies Act, 1913, shows that the application u/s 186 of that Act had to be made to the court. The court was defined by that Act to mean a court having jurisdiction under that Act. The Rules under that Act defined court to mean the District Court. The various Rules also affirm this position. It is therefore clear that an application u/s 186 of that Act lay to a court and obviously in such a situation, the provisions of the Limitation Act would be attracted.

9. The other decision relied on is New Delhi Municipal Committee Vs. Kalu Ram and Another, , In that decision, following the decision of the Privy Council in Hansraj Gupta's case [1933] 3 Comp Cas 207 Delhi two learned judges of the Supreme Court held that under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, the "Estate Officer" who could recover the arrears of rent payable in respect of any public premises, could not recover the rent in arrears if it was time barred. Their Lordships observed that Section 7 of the Public Premises Act only provided a special procedure for realisation of rent in arrears and did not constitute a source or foundation for a right to claim rent otherwise time barred. During the course of the judgment, their Lordships noticed that "a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it." Observing that the question in every case would depend upon whether the particular enactment would create a right to recover arrears of rent without any limitation of time and interpreting the words "payable" as "legally recoverable" their Lordships held that the barred rent could not be recovered by the Estate Officer. We may notice here the Constitution Bench decision of the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others, . Considering the question whether a debt which is time barred could be the subject of transfer and if it could be, how it could benefit the transferee, the court, speaking through Venkatarama Aiyar J., observed (at page 335) :

"Now, it is the settled law of this country that the statute of limitation only bars the remedy but does not extinguish the debt."

10. Proceeding further, his Lordship observed (at page 337) :

"It has been already mentioned that when a debt becomes time-barred, it does

not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them."

11. The Supreme Court had to consider the scope of the expression "entire amount of rent due" in the decision in *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur*, . Relying on the decision in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, , referred to above, approving the Full Bench decision of the Patna High Court and following the decision of the Allahabad High Court, the Supreme Court held that the expression would include in the context of the U. P. Rent Control Act, rent which had become time-barred.

12. We may also notice the decision of the Supreme Court in *Punjab National Bank v. Surendra Prasad Sinha* [1992] 75 Comp Cas 699 ; AIR 1992 SC 1825 In that case, towards a debt barred by limitation as against the principal debtor, the bank adjusted the proceeds of fixed deposit receipts from a depositor who had stood as guarantor for the debt, that had become time barred. The bank was sought to be prosecuted by the guarantor for offences under sections 409, 109 and 114 of the Indian Penal Code, 1860. The argument on behalf of the guarantor was that the debt had become barred as against the principal debtor and even though he had stood as guarantor for the loan, once the debt had become barred as against the principal debtor, the amount due under the fixed deposit receipt could not be appropriated by the bank towards the liability which could not be enforced in view of Section 3 of the Indian Limitation Act, 1963. Their Lordships held as follows (at page 702) :

"The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act, 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right to which the remedy relates. The right to the debt continues to exist notwithstanding that the remedy is barred by limitation. The only exception in which the remedy also becomes barred by limitation is when the right is destroyed. For example, u/s 27 of the Act, a suit for possession of any property becoming barred by limitation, the right to the property itself is destroyed. Except in such cases which are specially provided under the right to which the remedy relates, in other cases the right subsists. Though the right to enforce the debt by judicial process is barred u/s 3 read with the relevant article in the Schedule, the right to the debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers to is only the remedy but not the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt." (emphasis* supplied)

13. In Whartoris Law Lexicon, the meaning of the word "due" is given as :

"anything owing. That which one contracts to pay or perform to another ; that which law or justice requires to be paid .or done.

It should be observed that a debt is said to be due the instant it has existence as a debt ; it may be payable at a future time."

14. In A.K. Nanu and Others Vs. State of Kerala and Others, we feel, that the scope of the expression "amounts due" was not fully appreciated while applying the decision in New Delhi Municipal Committee Vs. Kalu Ram and Another, , which related to the interpretation of the expression "payable". In our view, Section 71 of the Act having used the words "amounts due" to any of the institutions notified under that section, the institutions so notified would be entitled to recover all amounts due irrespective of whether the said amounts could be recovered through a court in view of Section 3 of the Limitation Act, 1963, or not. The creditors whose rights have not become extinguished have been given the right of recovering the moneys due to them without approaching the civil court and that is clearly with the object of enabling them to recover the amounts due to them from their debtors so that public interest could be served and the public purpose for which these institutions have been created further carried forward. The argument that the Revenue Recovery Act does not confer any new right in the creditor and is only procedural, may not affect the position as above, since what the Revenue Recovery Act has done is to give the creditor another mode of recovering the amounts due to it without approaching the civil court. In that context, it could be even treated as conferring a right on the creditor to recover the amounts due to him without recourse to the ordinary civil courts. The right in the creditor, as is clear from the various decisions referred to, continues notwithstanding the fact that his right of recovery through a civil court stands barred by limitation. It is, therefore, not necessary to create a new right to him to recover the amounts. All that is necessary is to provide an alternate mode of recovery of an amount owed by a debtor and that is what has been conferred on the creditor by the Revenue Recovery Act and without providing for any period of limitation regarding such recovery.

15. The Limitation Act, 1963, was enacted with effect from January 1, 1964. with a view to consolidate and amend the law for the filing of suits and other proceedings and for purposes connected therewith. The 1963 Act replaced the Limitation Act of 1908. The 1908 Act had a preamble. But a preamble was dispensed with when the 1963 Act was enacted. The long title was altered. Dispensing with the preamble and the alteration in the long title led to an argument that the effect of the same was to make the Limitation Act of 1963 applicable even to proceedings before the Labour Courts. The argument based on the absence of the preamble and the alteration of the long title was rejected by the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . The Supreme Court observed thus (at page 1343) :

"In the long title, thus, the words "other proceedings" have been added ; but we do not think that this addition necessarily implies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasi judicial, when, earlier, the old Act was intended to govern proceedings before civil courts only. It is also true that the preamble which existed in the old Limitation Act of 1908 has been omitted in the new Act of 1963. The omission of the preamble does not, however, indicate that there was any intention of the legislature to change the purposes for which the Limitation Act has been enforced ... The question still remains whether this alteration can be held to be intended to cover petitions by a petitioner to authorities other than courts. We are unable to find any provision in the new Limitation Act which would justify holding that these changes in definition were intended to make the Limitation Act applicable to proceedings before bodies other than courts."

16. In *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , dealing with the question of the applicability of Article 137 and sections 4 and 5 of the Limitation Act to applications u/s 33C(2) of the Industrial Disputes Act, the Supreme Court has observed as follows (at page 210) :

"In our view, Article 137 only contemplates applications to courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again u/s 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

17. The decision in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , also supports this view. Their Lordships, speaking on the scope of Article 137 of the Limitation Act, 1963, held (at page 285 of AIR 1977 SC) :

"Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if an applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period."

18. Their Lordships held that Article 137 of the Limitation Act is applicable to an application u/s 16 of the Indian Telegraph Act on the ground that the application was being made to the District Court and consequently such a petition was an application falling within the scope of Article 137 of the Limitation Act. The view has been reiterated by the Supreme Court in the decision in *Birla Cement Works*

v. G. M. Western Railways [1995] 2 JT 59 Therein, a claim was filed before the Railway Claims Tribunal u/s 16 of the Indian Railways Act. Section 17(1)(c) of the Limitation Act, 1963, was sought to be relied on to get over the bar u/s 8B of that Act. The plea based on Section 17(1)(c) of the Limitation Act was rejected by the Supreme Court in the following words (at page 60) :

"Section 17(1)(c) of the Limitation Act, 1963, would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of the statute. Therefore, it is not a civil court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying "over charges" and the limitation is not saved by operation of Section 17(1)(c) of the Limitation Act."

19. Relying on the decision of the Supreme Court in Gopalan v. Aboobacker [1995] 2 KLT 205 SC it was contended that by virtue of Section 29(2) of the Limitation Act, the provisions of that Act would be applicable to all authorities and even to initiation of proceedings under the Revenue Recovery Act. Section 29(2) of the Limitation Act applies only when a special law or local law prescribes a period of limitation different from the one prescribed by the Limitation Act and the proceedings are before a court under the CPC or constituted by the special enactment as stated in Gopalan v. Aboobacker [1995] 2 KLT 205 The Supreme Court has clearly stated that for importing the machinery of the provisions containing sections 4 - 24 of the Limitation Act, two requirements have to be satisfied by the authority invoking the said provision. The two requirements are : (i) there must be a provision for a period of limitation under any special or local law in connection with any suit, appeal or application, and (ii) the said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act. The view expressed herein only extends the Limitation Act to appeals to courts constituted by special or local law and a period is fixed for filing them by the special or local law. It does not lay down that the Limitation Act would apply to proceedings before each and every authority. It is also not possible to accept the contention that even if the special or local law does not provide a period of limitation at all, by invoking Section 29(2) of the Limitation Act, sections 4 - 24 of the Act or the Act itself could be made applicable. The observation to the effect that, if a period is prescribed by a special or local law in respect of an appeal, but there is no provision in the Limitation Act in respect of such an appeal, still Section 29(2) of the Limitation Act would be attracted cannot help the respondent to contend that Section 29(2) of the Limitation Act would be applicable even to a case where the local law or the special law does not provide a period of limitation. We do not see anything in the decision in Gopalan's case [1995] 2 KLT 205 which would militate against the decisions of the Supreme Court referred to earlier, to the effect that the Limitation Act has application only to courts. At best, what Gopalan's case [1995] 2 KLT 205 lays down is that for Section 29(2) of the Limitation Act to apply, the court need not necessarily be a court constituted under the Code of Civil Procedure, 1908, but could even be a

court constituted under a special enactment. Gopalan's case [1995] 2 KLT 205 also indicates that the provisions of sections 4 - 24 of the Limitation Act were applied to an appellate court constituted under the Kerala Buildings (Lease and Rent Control) Act, on a finding that the appellate authority constituted by Section 18 of the Rent Control Act, was not "persona designata" but was a court. This reasoning also, in our view, supports the conclusion that the provisions of the Limitation Act could be applied only to proceedings before court. The recent decision of the Supreme Court in Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, holding that the Limitation Act has no application to proceedings before the Collector under the Land Acquisition Act also fortifies the above position.

20. It was then argued that even if the Limitation Act could not be applied to proceedings before authorities other than courts, that could still be applied in view of the fact that the Collector acting under the Revenue Recovery Act was a court. It was contended that there was a decision-making power conferred on the Collector under the Act and, consequently, the Collector under the Act could be treated as a "court" and in any event as a "revenue court". Section 34(2) of the Act was relied on in support of the contention that on an objection by the defaulter, an adjudication by the Collector was contemplated. The proceedings under the Act for the sale of the attached immovable property and for the entertaining of claims to attached immovable properties, and the power to order arrest were referred to, to contend that the "Collector" under the Act would be a court thereby attracting the applicability of the Limitation Act, 1963. The decision of the Supreme Court in State of Tamil Nadu Vs. G.N. Venkataswamy and others etc. etc., , was relied on in support. That decision was rendered on an appeal against the decision of the Madras High Court in G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., . It must be noticed that the only question that was argued in that case before the High Court of Madras was that Section 52A of the Tamil Nadu Revenue Recovery Act, corresponding to Section 71 of the Kerala Act, was unconstitutional since it was ultra vires the powers of the State Legislature. In upholding that argument, the attempt made by the Advocate-General to bring the said Act within the purview of entry 3 of List II of the Seventh Schedule to the Constitution by relying on a decision of the Calcutta High Court in N.C. Mukherjee and Co. Vs. Union of India (UOI), , was repelled by the Division Bench of the High Court of Madras by noticing the difference between the Bengal Public Demands Recovery Act and the Madras Act and holding that on the scheme of the Madras Act, the authority constituted under the Act could not be considered to be a court and, consequently, the Act could not be brought within the ambit of entry 3 of List II of the Seventh Schedule to the Constitution. In appeal, the Supreme Court held that the Act could be sustained even with reference to entry 3 of List II of the Seventh Schedule to the Constitution or the corresponding entry, entry 11-A in List III of the Seventh Schedule to the Constitution. In paragraph 14 of the judgment of the Supreme Court, their Lordships observed that the "Collector" exercises

powers under the Act, which is an act of the State Legislature and is invested with the power to decide the controversy between the State and the defaulter. There was the existence of a Us between the .State and the defaulter. There is an assertion and denial. The dispute involves the rights and obligations of parties which are decided by the Collector. The conclusion that could be drawn was that the Collector under the Act was a revenue court and once it was held that the Collector was a revenue court, there was no difficulty in holding that Section 52A of the Act was enacted by the State Legislature under entry 11-A, List III of the Seventh Schedule to the Constitution. Their Lordships went on to hold that the Legislature was also competent under entry 30 of the State list to enact that section, since it would be a legislation relating to money lending and money lenders, the view taken by the Kerala High Court in David v. Kerala State Financial Corporation [1988] 1 KLT 585 . It was contended with reference to the decision in Sahkari Ganna Vikas Samiti Ltd. Vs. Mahabir Sugar Mills (P) Ltd., , that even if the "Collector" was treated as a revenue court, the Limitation Act would apply.

21. In the context of these decisions it becomes necessary to consider the relevant provisions of the Kerala Revenue Recovery Act to find out whether the authority constituted under the Kerala Act exercises any adjudicatory power and could be found to be a "court" in the strict sense or a revenue court. We have also to remember that what was involved in the decision in State of Tamil Nadu Vs. G.N. Venkataswamy and others etc. etc., , was the interpretation of a legislative entry in the Seventh Schedule to the Constitution, which of course had to be interpreted in the widest manner possible.

22. The Kerala Revenue Recovery Act, 1968, came into force on December 15, 1968, as an Act to consolidate and amend the laws relating to the recovery of arrears of public revenue in the State of Kerala. Section 2(a) of the Act defines "arrears of public revenue due on land" as meaning any portion of any kist or instalment of such revenue not paid on the day on which it falls due. Section 2(c) of the Act defines "Collector" as meaning the District Collector or any other officer appointed by the Government to exercise the powers and conferring on him the functions of a Collector under the Act. Section 2(j) of the Act defines "public revenue due on land" as meaning the land revenue charged on the land and including all other taxes, fees and cesses on land whether charged on land or -not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation. Section 5 of the Act gives the power to the Collector to recover the arrears of public revenue due on land by the modes referred to in that section. Section 7 requires the Collector to furnish to the person employed to make the attachment of movable properties, a demand in writing signed by him containing the name of the defaulter, the amount of arrears of public revenue due on land for which the attachment is to be made, the date on which such arrear fell due and such other particulars that may be prescribed. The person employed to make the attachment is to serve the demand on the defaulter and if the defaulter fails to remit the amount, make the

attachment construing the demand in writing given to him by the Collector as the authority for making the attachment. At the stage of Section 7, it is clear that no enquiry by the Collector with notice to the defaulter is contemplated. The Collector is only expected to issue a demand in writing to the authorised officer to proceed to demand the amount from the defaulter, and to attach the movables on the failure of the defaulter to pay. Sections 8 - 18 provide for acceptance of the tender of arrear by the defaulter and the procedure to be followed for sale of the movables attached on the failure of the defaulter to pay the amount demanded u/s 7 of the Act. Sections 19 - 27 deal with attachment of specified assets referred to in those sections. Sections 28 and 29 deal with claims to property attached. Section 30 confers jurisdiction on the civil court to restore possession to the officer who had effected the attachment when the attached property was taken away clandestinely or forcibly from him. Section 31 confers power on the officer making the attachment for entering dwelling houses, etc., and Section 32 provides for removal of property from the apartments of women. Section 33 provides for punishment for entering the apartments of women contrary to the terms of Section 32 of the Act. Section 34 of the Act lays down the procedure for attachment and sale of immovable property. That section also contemplates the causing of service of written demand on the defaulter before the Collector proceeds to attach the immovable property of the defaulter. Sub-section (2) of Section 34 states that if within the time prescribed under Sub-section (1) the defaulter objects to the claim of arrears wholly or in part, the Collector or the authorised officer as the case may be was to enquire into the objection and record a decision before proceeding to attach the immovable property of the defaulter. Section 35 provides that the immovable property of the defaulter could be attached when the defaulter neglected to pay the amount due in terms of the written demand served on him. Section 36 provides for the mode of attachment and sections 37 to 41 provide for the custody of the property attached and the appointing of an agent to manage the property. Sections 42 to 51 provide for the procedure to be followed for sale and Section 51 provides for the case where a tender of arrears is made before the sale. Section 52 of the Act provides for an application to set aside the sale of immovable property on deposit of the amounts due and Section 53 of the Act provides for an application to set aside the sale on the ground of material irregularity in publishing or conducting the sale. Sections 54 to 64 deal with the procedure to be followed regarding the delivery of possession and the mode of conducting the sale. Sections 65 and 66 provide for arrest and the procedure in case of arrest. Section 67 of the Act refers to the mode of enforcing payment by sureties. Section 68 of the Act provides for the application of the Act to recovery of certain other dues to the Government including amounts due on account of quit rent or revenue other than public revenue due on land, all moneys due under a written agreement, all specific pecuniary penalties to which that person renders himself liable under the agreement, all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue and all fees and other dues payable by any person to the Government. Section 69 provides

the procedure for recovery when the defaulter or his surety resided outside the district and for recovery of dues other than public revenue due on land. Section 70 provides that when proceedings are taken under the Revenue Recovery Act against any person, for recovery of any sum of money due from him, that person may, at any time before the commencement of the sale of any property attached, pay the amount claimed and at the same time deliver a protest signed by himself or his authorised agent to the officer issuing the demand or conducting the sale, who thereupon, was to drop further proceedings for recovery of the money. Section 70(2) of the Act provides that if the amount was paid under protest under subsection (1) of Section 0, if the same was received by an officer other than the one who issued the demand, that officer was to forward the same to the officer who had issued the demand. The protest was also to be forwarded to the officer who issued the demand in case the officer who collected the money was someone other than the officer who issued the demand. The officer issuing the demand or the officer at whose instance the proceedings were initiated was to enquire into the protest and pass appropriate orders. If the protest was accepted, the officer disposing of the protest was to immediately order the refund of the whole or part of the money paid under protest and was to initiate fresh proceedings for the realisation of the amount if any due. Sub-section (3) of Section 0 provides that subject to Sub-section (4) of that section, the person who was making the payment under protest had the right to institute a suit for recovery of the whole or part of the sum paid by him under Sub-section (2) of Section 0, Sub-section (4) of Section 0 states that no suit under subsection (3) shall be instituted if the law under which the amount paid under protest was due, provided a remedy whether by way of appeal or revision or other proceedings, to the person who paid such amount, before exhausting such remedy. In other words, if that person had an alternate remedy by way of appeal or revision or other proceeding, he could not institute the suit contemplated by Sub-section (3) of Section 0 of the Act before exhausting such remedy. Section 71 of the Act enabled the Government by notification in the Gazette if it was satisfied that it was necessary to do so in public interest, to declare that the provisions of the Act should be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions. Once a notification was thus issued, upon the issuance of such notification, all the provisions of the Act were applicable to the recovery. Section 72 bars the jurisdiction of the civil court save where fraud was alleged. Section 73 provides for delegation of power by the Collector. Sections 74 to 78 provide for the modes of service of notice. Section 79 of the Act provides that no civil court shall take into consideration or decide any question as to the rate of public revenue due on land payable to the Government, or as to the amount of assessment fixed or to be thereafter fixed on the portions of a divided field. Section 80 provides for attachment of salaries and debts due to defaulters and Section 81 saves the right of suit provided that the suit was instituted within ninety days from the time when the cause of action arose. Section 82 bars any suit except as provided by the Act. Section 83 of the Act confers a power of

revision on the Board of Revenue and the Government in respect of any proceeding taken by the Collector or the authorised officer under the Act. The Government has the power of revision over a decision taken by the Board of Revenue u/s 83(1) of the Act. Section 84 interdicts certain persons from bidding at revenue sales and Section 85 provides a penalty for fraudulent conveyance of property to prevent attachment or for forcibly taking away the property attached. Section 86 of the Act confers power on the Government to make Rules to carry out the purposes of the Act. Section 87 of the Act repeals the Madras Revenue Recovery Act, 1864, and the Travancore-Cochin Revenue Recovery Act, 1951. There is no provision in the Act prescribing a period of limitation for initiation of proceedings under the Act.

23. According to counsel for the respondents Section 34(2) of the Act confers an adjudicatory power on the Collector and contemplates an adjudication by him on the objections of the defaulter. This provision coupled with the right of the Collector to sell the properties attached, to entertain and adjudicate on the claims to the attached property by third parties, right to order arrest of a defaulter, constitute the Collector a court and consequently, the Limitation Act, 1963, could be applied to him. It is also contended that in any event, the Collector would be a "revenue court" and even in that event, the provisions of the Limitation Act would per se apply to him. The learned Advocate-General on the other hand submitted that the Collector's role under the Act is very limited. He relied on Section 68 of the Act in that connection. Section 68 of the Act enables the Government to apply the Act for recovery of various sums other than arrears of revenue due on land. He also pointed out with reference to Section 69(2) and 69(3) of the Act, that when any amount is recoverable under the Act, the officer charged with realisation had only to forward to the Collector of the District in which the demand arose, a written requisition in the prescribed form duly verified and signed by him and on receipt of the requisition, the District Collector on being satisfied that the demand was recoverable under the Act, was to sign a certificate to that effect in the prescribed form specifying the amount of demand, the account on which it was due and the name of the defaulter and was to cause the certificate to be filed in his office. This according to him shows that when the institutions notified u/s 71 of the Act make requisitions for recovery under the Act, there is no adjudication contemplated by the Collector before issuing the certificate contemplated u/s 69(5) of the Act and all that the Collector has to do is to satisfy himself that the demand was one recoverable under the Act by virtue of the notification u/s 71 of the Act and the authority making the demand was the competent authority. He derived support for this position from the scheme of Section 0 of the Act. It contemplates only a payment under protest and not an objection to recovery. Section 70(2) of the Act provides that when a payment is made under protest, the Collector is not to enquire into the protest but is only bound to send to the officer at whose instance the steps were initiated, the amount collected and the protest made, leaving it to that officer, to consider and dispose of the objections made by the " person paying the amount

under protest. Only while dealing with claims to the attached property or considering the arrest of the defaulter u/s 65 of the Act, the power to adjudicate is specifically conferred on the Collector, by the Act. There is also a right of suit conferred by Section 70(3) of the Act, in the person from whom the amount is recovered. Considering the respective arguments, on the scheme of the Act, we find that before issue of the certificate or the notice of demand before actually attaching the properties of the defaulter, no enquiry or adjudication of any dispute between the defaulter on the one hand and the requisitioning authority or the Government on the other is contemplated by the Act. Since no adjudication is involved before taking action under the Act, we are of the view that the Collector under the Kerala Act is not acting as a court, as contended by the respondents.

24. We also consider that an Act like the Revenue Recovery Act is also enacted in public interest. The public interest is that monies borrowed from the Government and the institutions should be returned by the borrowers so that they can be made available to others for the purpose intended, not to permit "property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life" (See S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,) to appropriate the amounts borrowed from institutions or Government for themselves, leading even to the closing down of the institutions and to make it available to other entrepreneurs is the need of a developing nation and it is with that object in view that a special law is enacted to facilitate the speedy recovery of amounts due, by making it possible to recover the dues without approaching the courts. This enactment was brought forward about a century after the Limitation Act was introduced and the Legislature was aware of the working of that law. If the Legislature in its wisdom thought that in respect "of amounts due to the State and other instrumentalities, and consequently to the public, no period of limitation need be fixed, is it in public interest to import into that law, the strict rules of limitation as enshrined in the Limitation Act ? We think not. Public policy cannot remain constant. It has to undergo modification according to the needs of the times. When the State is making available loans to its citizens directly and through various other public agencies with a view to industrial development and to achieve it, deems it necessary to provide for recovery of the amounts lent without reference to any bar of time, it cannot certainly be said to be opposed to any public policy that might be embodied in the Limitation Act. Even if it does conflict with the Limitation Act or the policy behind that Act, we think that that policy must give way to the need to generate, and rotate the capital for development, the need of a growing nation. Permitting dishonest borrowers to keep the money borrowed, cannot certainly facilitate the economic development envisaged by the State. In our march towards the dawn of the twenty-first century, all-round economic development is a must. We see no warrant for importing the provisions of the Limitation Act into the Revenue Recovery Act considering the public interest involved in making that law. We cannot also ignore the various means adopted

by dishonest borrowers from the institutions to see to it that steps for recovery are not taken in time by the institutions.

25. When there is nothing in the Revenue Recovery Act which warrants the application of the Limitation Act to proceedings under that Act, we do not think that we could import the Limitation Act into the Revenue Recovery Act by analogy. This position is clear from the decision in *A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others*, , wherein their Lordships held (at page 232) :

"The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must therefore be regarded as an exhaustive code. It is a piece of objective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the Legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus for instance, the period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles in that Schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons, the provisions of sections 3 to 28 of the Limitation Act cannot be applied to situations which fall outside their purview.

These provisions do not adumbrate any general principles of substantive law nor do they confer any substantive rights on litigants and, therefore, cannot be permitted to have greater application than what is explicit or implicit in them."

26. It was argued on the basis of the decision in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, , that the Limitation Act reflects a public policy and the court should normally act on the analogy of the statutes of limitation even in respect of claims arising under other laws. In *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, , the question that arose for consideration was whether a petition filed under Article 32 of the Constitution with an allegation of the breach of the fundamental rights of a petitioner could be entertained after a long lapse of time. In that case, the petitioner had allowed the decision of the High Court against him to become final and had approached the Supreme Court about 11 years after the judgment of the High Court on a contention that his fundamental rights have been violated and he is entitled to seek relief on that basis, at any time. The court by a majority held that the application filed after a considerable lapse of time could not be entertained and the court would act on the analogy of the Limitation Act to consider whether the relief can be granted. Their Lordships observed that the statutes of limitation are founded on principles of public policy and the court acts on the analogy of the

statutes of limitation even in respect of a claim under Article 32 of the Constitution, though such a claim is not the subject of any express statutory bar of limitation. It is the contention before us that the right to recover a debt due to the Government or other individuals are provided for in the Limitation Act, 1963, and the periods prescribed therein reflect a public policy and gives an indication of what Parliament had thought to be a reasonable period for recovery of debts due to the Government or to other institutions or individuals and that public policy should inform the court in considering whether a debt recovery of which is barred by limitation in an action through court, should be permitted to be recovered by invoking the Revenue Recovery Act.

27. It is first to be noted that except in the cases provided for by Section 27 of the Limitation Act, 1963, there is no extinguishment of a right in respect of a debt provided for by the Limitation Act. It is no doubt true that the Limitation Act reflects a public policy and operates as a statute of repose and on the basis that the interests of the State require that there should be a limit to litigation. It cannot be said that the Legislature was not aware of this principle while it enacted the Revenue Recovery Act providing for an alternate right to the Government and to the institutions notified u/s 71 of that Act to recover the amounts due from their debtors. Recovery of public money with a view to advance public weal is also an important facet of public policy.

28. Assuming that the provisions of the Limitation Act can be applied to proceedings under the Revenue Recovery Act or the policy underlying that Act is to be applied for initiating proceedings under the Revenue Recovery Act, the question is what is the period of limitation within which the proceedings under that Act should be initiated. As regards the amounts due to the Government it is obvious that the recovery would be governed by Article 112 of the Limitation Act providing for a period of 30 days from the starting point of limitation. The question is what would be the position of an institution brought in by the declaration notified u/s 71 of the Act. Section 71 indicates that it is on the satisfaction of the Government that it was necessary to do so in public interest that the declaration contemplated by Section 71 of the Act could be notified. The institutions declared by notification u/s 71 of the Act thus far, also give a clear indication that the notification u/s 71 of the Act is issued only in respect of institutions that are public institutions and most of them are instrumentalities of the State. Section 71 of the Act itself indicates that the notification itself is to be issued in public interest. Therefore, by a fiction, the amounts due to the institution notified under the section are treated on a par with the amounts due to the Government in terms of Section 68 of the Act. By giving full play to the fiction so created, we think that under the Act, the period of limitation prescribed for recovery of the debts to those institutions notified u/s 71 of the Act would also be 30 years as provided under Article 112 of the Limitation Act. It is no doubt true that Article 112 of the Limitation Act, 1963, would not by itself apply to such institutions and applies only to the Governments. But in our view, by the issuance of the notification u/s 71, the Act, by a fiction treats the amounts due to

those institutions on a par with the amounts due to the Government. Approached from that angle we are of the view, that in respect of the institutions notified u/s 71 of the Act, the period available for recovery of amounts due to those institutions under the Act would also be 30 years from the date when the cause of action arises for recovery.

29. On the facts obtaining in W. A. Nos. 76 and 84 of 1990, it is argued on behalf of the appellants that a decree was obtained by the Fisheries Corporation on March 29, 1974, for the recovery of a sum of Rs. 41,825.70 with interest. Before the expiry of 12 years from that date, the Corporation made a requisition on January 13, 1986, to the District Collector to recover the amount under the Revenue Recovery Act. The District Collector issued the certificate u/s 69(3) of the Act on March 17, 1986, again within 12 years of the date of the decree. The certificate was issued to the Tahsildar who in turn issued notice dated March 20, 1986, under sections 7 and 34 of the Act on respondents Nos. 1 and 2. Respondents Nos. 1 and 2 claimed that they had received the notice dated March 20, 1986, under sections 7 and 34 of the Revenue Recovery Act only on April 5, 1986, a date which falls beyond the period of 12 years from the date of the decree. In the judgment under appeal, the learned judge accepted the contention that as far as respondents Nos. 1 and 2 are concerned, the proceeding must be taken to be initiated only on April 5, 1986. This finding by the learned judge is seriously assailed by the Advocate-General who submits that since the proceedings were initiated well within 12 years of the decree and even the notices under sections 7 and 34 addressed to the respondents were issued within 12 years of the decree, on the facts, it could not be held that the proceedings under the Revenue Recovery Act were initiated only after 12 years of the decree. According to him the execution of the decree was not barred on the day the Fisheries Corporation sought the initiation of proceedings under the Revenue Recovery Act and the necessary certificate was issued by the Collector under that Act. This contention of the learned Advocate-General is met by counsel for the respondents by contending that having obtained a decree from the civil court, the Fisheries Corporation ought to have executed the decree through the civil court and could not have initiated proceedings under the Revenue Recovery Act. Having elected one remedy they were estopped from pursuing another. This contention on behalf of the respondents cannot be accepted in view of the Division Bench decision of this court in *Canara Bank v. Thankappan* [1989] 2 KLT 74. The Division Bench, held that the two remedies available are not mutually exclusive and consequently the principle of election cannot apply. Though learned counsel for the respondents attempted to challenge the decision of the Division Bench, we do not see any substance in the challenge and we are in agreement with the view expressed therein. This argument therefore, cannot avail the respondents in this case. The only other submission on behalf of the respondents is that as far as the respondents are concerned the proceeding commenced only on receipt of notice u/s 7 or u/s 34 of the Act and since the notices, though dated March 20, 1986, were received only

on April 5, 1986, the recovery of the amount due under the decree must be deemed to be barred by limitation. We are not in a position to agree with this submission. The proceedings have been initiated well within 12 years of the decree. So long as the execution had not become barred the amount due under the decree was an "amount due" within the meaning of Section 71 of the Act. Even while the amount remained due, the Fisheries Corporation initiated proceedings for recovery under the Act and the District Collector himself issued the necessary certificate under the Act within 12 years of the decree. Even the notices under sections 7 and 34 of the Act were issued within 12 years of the decree. The fact that the notice was served on respondents Nos. 1 and 2 about six days after the expiry of 12 years from the date of the decree would not make the proceedings initiated one for recovery of amount which has become barred by limitation. On the facts, therefore, even if all the contentions of the respondents are upheld this would be a case where it will have to be held that the revenue recovery proceedings were initiated at a time when the amounts continued to be legally recoverable even from the angle of the Limitation Act, 1963.

30. The petitioners in the original petitions borrowed amounts from the Kerala Financial Corporation, an institution to which the Revenue Recovery Act applies by virtue of the notification issued u/s 71 of the Act. Under the loan agreement dated February 21, 1976, the petitioners borrowed certain amounts from the financial corporation. The amounts not being repaid in full the corporation issued a notice dated February 26, 1981, calling upon the petitioners to pay off the entire balance amount within ten days of receipt of that notice. The last instalment under the loan transaction was to be paid on May 10, 1979. The notice dated February 26, 1981, was followed up by the sale of the vehicle which was hypothecated and for the balance a notice was issued u/s 34 of the Act. It is seen that the petitioners on receipt of these notices filed a suit O. S. No. 147 of 1986 before the Munsiffs Court, Calicut, seeking a permanent prohibitory injunction restraining the financial corporation from enforcing the notice dated February 1, 1986, It is pointed out on behalf of the financial corporation that the averments in the plaint in that suit were identical to the contentions raised in the original petition. That suit was dismissed for default on June 15, 1988. The petitioners do not seem to have made any attempt to get the said suit restored in terms of Order 9, Rule 9 of the Code of Civil Procedure, 1908. Obviously, a second suit for that purpose by them would be hit by that rule. It is thereafter that the petitioners have approached this court with the original petition by invoking Article 226 of the Constitution. Considering that the jurisdiction under Article 226 of the Constitution is discretionary, this aspect would dissuade this court from exercising its jurisdiction under Article 226 of the Constitution in favour of the petitioners.

31. Learned counsel for the petitioners contended that the notice dated February 1, 1986, having been issued more than three years after the last instalment fell due, the claim was barred by limitation under the Limitation Act, and the

financial corporation is not entitled to proceed against the petitioners for recovery under the Revenue Recovery Act. In answer, the financial corporation, in addition to adopting the arguments of learned Advocate-General, has also relied on Section 32G of the State Financial Corporations Act, 1951, to point out that even under that Act there is a right in the financial corporation to recover the amounts through the machinery provided by the Revenue Recovery Act of the State. He also brought to our notice Section 46B of that Act to point out that the provisions of that Act would have overriding effect.

32. The petitioners in O. P. No. 2880 of 1990 are only partners of the firm of which the petitioners in O. P. No. 10643 of 1989 are also partners. The transaction being the same, no separate arguments were addressed in the said original petition.

33. In the light of our conclusions in the earlier part of this judgment, the contention of the petitioners that the recovery under the Revenue Recovery Act is barred by limitation, is not sustainable. Section 32G of the State Financial Corporations Act enables the Corporation to recover its dues by resort to proceedings under the Revenue Recovery Act. The Corporation is also a notified institution u/s 71 of the Act. By virtue of Section 46B of the State Financial Corporations Act, that Act would override the provisions of the Limitation Act which is the general law. In considering whether the Sick Industrial Companies (Special Provisions) Act, 1985, would prevail over the State Financial Corporations Act, 1951, in the light of Section 46B of that Act, the Supreme Court relied on the non obstante clause occurring in the Sick Industrial Companies (Special Provisions) Act, 1985, to hold that since that Act was the later Act, the non obstante clause therein would prevail over the non obstante clause in Section 46B of the State Financial Corporations Act. The reasoning in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, in our view lends support to the contention of counsel for the financial corporation that the provisions of the State Financial Corporations Act would prevail over the Limitation Act, 1963, and in view of Section 32G of that Act, the amount can be recovered now by recourse to the Revenue Recovery Act.

34. In the light of our conclusions as above, Writ Appeals Nos. 76 and 84 of 1990 are allowed and O. P. No. 3149 of 1986 is dismissed. O. P. Nos. 10643 of 1989 and 2880 of 1990 are dismissed. Considering the circumstances, we direct the parties to suffer their respective costs.