
(1989) 10 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 612 of 1989

Mahalekshmi

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Land Acquisition Act, 1962 — Section 12(2), 18

Citation : (1989) 10 KL CK 0008

Hon'ble Judges : V.S. Malimath, C.J.; V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : K.L. Narasimhan, for the Appellant; Seemandini, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Malimath, C.J.—The short question for consideration in this case is as to whether an application made u/s 18 of the Land Acquisition Act received by the Collector after the prescribed period of limitation can still be regarded as one made within the prescribed period of limitation, if the said application was presented to the post office for being dispatched to the Collector by registered post within the prescribed time. Section 18 reads:

18. Reference to Court.— (1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if a person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

2. The proviso to Section 18 which provides for making of such an application to the Collector does not say that the application may be sent by post. It says that if the person making it was present or represented before the Collector at the time when he made his award, the application should be made within six weeks from the date of the Collector's award. In other cases the application shall be made to the Collector within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section, (2) or within six months from the date of the Collector's award, whichever period shall first expire. The statutory provision makes it clear that the application must be made to the Collector within the prescribed period of limitation. "Making" in the context means submitting or presenting. Hence the question of the aggrieved person presenting the application to the post office within the prescribed time for being dispatched by registered post to the Collector does not arise. What is of the essence of the matter is that the application should have been received by the Collector within the prescribed period of limitation. Receipt by the post office for transmission to the Collector is not receipt by the Collector. It is only when such an application is received by the Collector within the prescribed period of limitation that the application can be regarded as having been made to the Collector within the prescribed period of limitation. The learned Single Judge following the decision of this Court in 1984 KLT 837 between State of Kerala and C.R. Viran has held that the application of the Appellant having been received by the Collector after the prescribed period of limitation, the same could not be entertained by the Collector. Though the Appellant relied upon the decision of a learned. Single Judge of this Court reported in 1982 KLT 466 between Achuthan and State of Kerala in support of her case, the learned Single Judge has preferred to follow the subsequent Division Bench ruling on the ground that the decision of the larger bench is binding on him. We had occasion to examine a similar question in W.A. No. 351/89. That was a case of an appeal having been submitted to the post office within the prescribed period of limitation but received by the appellate authority after the prescribed period of limitation. Dealing with the question, this is what this Court has observed following an earlier Division Bench ruling of this Court reported in 1978 KLT 254 between Lalithamma and Manager", Aravukad High School and Ors.:

The contention that the Appellant having sent the appeal by post on 1st February 1984 and it is that date that should be regarded as the date of preferring the appeal cannot be accepted as the said question stands concluded by a Division Bench ruling of this Court reported in Lalithamma v. Manager, A.H. School and

Ors. 1978 KLT 254. In that case this Court has held that an appeal sent by post within time but reaching the authority beyond the prescribed period cannot be regarded as having been preferred within time. The presentation of the appeal to the post office for transmission to the appellate authority cannot be regarded as preferring the appeal to the appellate authority. The appeal can be regarded as preferred to the appellate authority only when it reaches the appellate authority.

3. The relevant observations of a Division Bench of this Court in 1978 KLT 254 between Lalithamma and Manager, Aravukad High School and Ors. relied upon by us may be extracted for the sake of convenience as follows:

...It appears to us that we shall be treading on dangerous ground if we are to invoke the principles of contract law and the rules regarding the construction of tenders in this sphere. Once we accept the principle that putting the appeal in the course of transmission by post within a period of time that should normally take it to its destination before the last date specified in the rule, will amount to a "preferring" of the appeal, we feel we are bound to land ourselves in difficulties and complications. When for reasons beyond the control of either party the appeal is lost in course of transit or otherwise delayed, or does not reach its destination, on what basis is the appeal to be regarded as filed, and how is it to be dealt with? How do we conclude that despite the appeal not having reached its destination it should be regarded as having been preferred as contemplated by the rule? How is such an appeal to be dealt with? In conceivable situations, there must, in appropriate cases, be grounds for excusing delay in preferring the appeal, if there be power to do so; but not, to regard the appeal as having been preferred within the time. We are of the opinion that the view taken by the learned judge that the appeal against Ext. P-2 order which was rejected by Ext. P-5 must be regarded as having been "preferred" within time, cannot be sustained.

4. The above principle laid in connection with presentation of appeal is equally applicable to making of applications u/s 18 of the Land Acquisition Act. Thus it is clear the question involved in this case stands concluded by the above decisions of the Division Bench and that the principle laid down by the Single Judge in 1982 KLT 466 is no more good law. We have therefore no hesitation in taking the view that the Appellant's application sent by post not having been received by the Collector within the prescribed period of limitation, the said application cannot be regarded as having been made to the Collector within the prescribed period of limitation. The view taken by the learned Single Judge that the application of the Appellant is barred by limitation is therefore right and does not call for interference. The appeal fails and is dismissed. No costs.