

(1998) 03 MP CK 0060
In the Madhya Pradesh High Court
Case No : M.P. No. 3990 of 1986

Mandas

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 12, 13, 14, 15, 16

Citation : (1998) ILR (MP) 449 : (1999) 1 J LJ 360

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : Atul Awasthi, for the Appellant; J.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—The Petitioner, aggrieved from the order dated 8.9.1984, passed by the Collector Rajnandgaon in Appeal No. 7C/148(4)/83-84 has come to this Court impeaching the same seeking relief for issuance of suitable writ, direction or order including writ in the nature of certiorari quashing the order dated 8.9.84, passed by the Respondent No. 1 (Annexure-B to the petition).

2. The brief facts of the case are that Sub-Divisional Officer, Khairagarh, district Rajnandgaon registered a case No. 24-B/121/1981-82 on the basis of the application made by Respondent No. 2 Johandas u/s 5 of the Madhya Pradesh Samaj Ke Kamjor Vargon Ke Krishi Bhumi-Dharkon Ka Uddhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (for brevity, hereinafter referred to as "the Act") and the S.D.O. rejected the application on 15.2.1982 by passing following order:

15-2-82 1- vkosfndk mifLFkrA

2- vkosfndk us fo?; i= dh udy is? dhA ftlds vuqlkj laO;ogkj fnukad 1-1-71 dk iwoZ dk gSA

3- vr,o m/kkj dk laO;ogkj dh Js.kh esa ugha vkrk gS] vr,o vkosfndk dk vkosnu i= fujLr fd;k tkrk gSA ekeyk uLrh gksA

3. There is no dispute so far as the date of sale-deed is concerned, which is 18.1.1969. There is no dispute regarding the fact that the Act came into force on 1st January, 1971 which is also the appointed day though the Act was published in the Gazette on 31.1.77. Rules framed therein were published in M.P. Rajpatra Part IV (Gaz.) on 12.5.78 (page 172) which is the date of their coming into force.

4. The case was that the Petitioner purchased the land comprising in Khasra No. 462, measuring 2 acres for a sum of Rs. 500/- from Respondent No. 2 Johandas by means of a registered sale-deed dated 18.1.1969. It is not necessary to dilate on the facts as for the purpose of the limited controversy, the facts have only peripheral relevance.

5. Heard the learned Counsel for the Petitioner, Shri Atulanand Awasthy and the learned State counsel, Shri J.P. Agrawal.

6. Learned Counsel for the Petitioner submitted that the land was purchased by the Petitioner by means of Act came into force on 1.1.1971 which is also the appointed day and the application was moved on 23.1.82 and on these facts learned Counsel submitted that the Collector has committed error in allowing the claim of the Appellant i.e. Respondent No. 2 as the claim itself was not maintainable and was barred by time.

Learned counsel submitted that Section 5 of the Act provides that a holder of agricultural land who is a party to any transaction of loan subsisting on the appointed day or entered into thereafter may apply to the Sub-Divisional Officer within such time; and in such form and manner as may be prescribed for protection and relief under this Act and according to him such time is provided by Rule 3 of the Rules known as "The M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi-Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Niyam, 1978 (for brevity, hereinafter referred to as "the Rules"). Rule 3 of the Rules is as extracted below:

3. The application u/s 5 shall be made in Form I to the Sub-Divisional Officer within a period of 12 months from the date specified in Sub-rule (2) of Rule 1.

The said rule provides the period as 12 months from the date specified in Sub-rule (2) of rule 1. Sub-rule (2) of Rule 1 says that the rules shall come into force on the date of their publication in the "Madhya Pradesh Gazette". Publication of these rules in the M.P. Gazette Part-IV is dated 12.5.78 and according to him the claim was made after a lapse of time provided for making a claim.

7. So far as this submission is concerned, it has got force that the period provided for making claim is 12 months from the date on which the rules have been published in the M.P. Gazette.

8. Learned State counsel submitted firstly that on the record of the present

petition there is no material as regards to the date that the claim was preferred by the Respondent No. 2 on 23.1.82 and secondly the provisions of Section 29 of the Limitation Act would apply.

9. So far as first submission is concerned, it is correct that neither in the order of the appellate authority nor in the petition, the date of making of claim has been disclosed but on the basis of the claim u/s 5 of the Act, the case was registered by the SDO as Case No. 24 C/148 (4)/1981-82. Whatever may be the position but it is clear that the claim was not put forward earlier than 1981. The rules were published in the Gazette on 12.5.1976 and 12 months would be counted from this date and thus 12 months would be completed on 11.5.1977. In view of this, first submission deserves to be accepted and is accepted.

Second submission is regarding the applicability of Section 29 of the Limitation Act. The Limitation Act in fact bars the remedy and not the right but the equitable considerations are out of place in any provision of law limiting the period for filing the suits or legal proceedings.

10. The first question for consideration is whether the Limitation Act would apply to the proceedings before the quasi-judicial Tribunals or executive authorities who are vested with certain specified powers of the Courts. The relevant statute which provides the special limitation, should expressly provide for filing of an application u/s 5 of the Limitation Act. Reference may be had to case of Sakuru Vs. Tanaji, . In that case u/s 90 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, an appeal was to be filed before the Collector against the order of the Revenue Divisional Officer, Adilabad who declared Tanaji to be the owner of an extent of 6 acres, 39 guntas comprised in Survey Nos. 289 and 290 of Hasnapur village u/s 38-E of the Act on the ground that Tanaji, the Respondent, was a "protected tenant". Instead of filing an appeal the order was challenged by way of writ petition under Article 226 of the Constitution of India which was dismissed by the learned Single Judge of the High Court on July 1, 1976 whereagainst writ Appeal No. 385 of 1976 was filed against the decision of the learned Single Judge which was also dismissed by a Division Bench on 6.12.1976. Long thereafter, on August 22, 1978, the Appellant preferred an appeal before the District Collector purporting to be one filed against the order dated January 22, 1975 passed by the Revenue Divisional Officer together with an application for condonation of delay u/s 5 of the Limitation Act. That application and the appeal were opposed by the Respondent therein. But his objections were overruled, the delay was condoned and the appeal was allowed by the Collector on 24th October, 1977, whereupon Respondent-Tanaji moved the High Court by filing a revision petition u/s 91 of the said Act and the learned single Judge allowed that revision holding that the Collector had no jurisdiction to condone the delay in the filing of the appeal by invoking Section 5 of the Limitation Act following an earlier ruling of a Division Bench of the same High Court reported in K. Venkaiah and Others Vs. K. Venkateswara Rao and Another, . In that decision the Division Bench of the High Court had taken the

view that the Limitation Act applies only to proceedings before a Civil or Criminal Court and since the Collector before whom an appeal is filed u/s 90 of the Act is not a Civil or Criminal Court, the provisions of the Limitation Act, have no application to the proceedings before him unless there is express provision in the special enactment whereunder the Collector is exercising jurisdiction, making any particular section of the Limitation Act specifically applicable to such proceedings, The case was under the old Limitation Act of 1963 and the High Court further held that Section 93 of the said Act, as it then stood, made applicable to proceedings before the Collector only those provisions of the Limitation Act which related to the "computation of the period of limitation" and since Section 5 did not fall within the group of Sections (Sections 12 - 24 of the Limitation Act) dealing with computation of the period of Limitation, the provisions of Section 5 were not applicable to the proceedings before the Collector and the correctness of the said decision was questioned before the Supreme Court.

The Supreme Court maintaining the view of the Andhra Pradesh High Court said that : "We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah's case that Section 93 of the Act did not have the effect of rendering the provision of Section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector."

11. The controversy came before the Supreme Court regarding the applicability of the Limitation Act in regard to the petition under the Representation of the People Act and the Supreme Court held that the Representation of the People Act as it now stands is a complete and self contained Code in itself which does not admit of the introduction of the principles of the provisions of law contained in the Limitation Act. AIR 1974 SC 480 (490, 491), AIR 1970 SC 1477 (1480) and AIR 1969 SC 872 (877). On the same principle the Act does not make any provision for application of Section 5 of the Limitation Act to the proceedings under the Act and Section 5 of the Limitation Act cannot be made applicable.

12. Sub-section (2) of Section 29 of the Limitation Act creates a fiction by saying that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period prescribed by the Schedule. Section 3 of the Limitation Act is extracted as below:

3. Bar of limitation - (1) Subject to the provisions contained in Sections 4 - 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act.-

(a) a Suit is instituted,-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is

made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of set off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted:

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court.

and Section 5 of the Limitation Act, which is as extracted below:

5. Extension of prescribed period in certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the Appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation -- The fact that the Appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

are not made applicable to the proceedings in suit and as such even otherwise Section 5 cannot be attracted to the initial proceedings of institution of the claim u/s 5 of the Act. Section 29 of the Limitation Act has no applicability in the present case.

13. Learned Counsel for the Petitioner also tried to justify the transaction on its merit. Since the claim petition u/s 5 of the Act is held as not maintainable being barred by time, it is not necessary to dilate on the merit of the claim petition.

14. In view of above, the writ petition succeeds. The impugned order passed by the Collector Rajnandgaon in Appeal No. 7 C/148 (4)/83-84 is set aside. In the circumstances, no order as to costs. Security amount, deposited if any, may be refunded.