
(1991) 10 KAR CK 0007
In the Karnataka High Court
Case No : W.A. No. 2510 of 1991

Mary D'Souza

APPELLANT

Vs

Land Acquisition Officer

RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 3
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (1991) ILR (Kar) 4266

Hon'ble Judges : Rama Jois, Acting C.J.; Krishnan, J

Bench : Division Bench

Advocate : A. Keshava Bhat, for the Appellant; S. Shivaram, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, Ag.C.J.

1. In this Writ Appeal the following question of law arises for consideration;

Whether the provisions of Section 5 of the Limitation Act, 1963, can be invoked for condoning the delay in making an application for reference u/s 18 of the Land Acquisition Act, beyond the period of 90 days prescribed in the said Section?

2. The brief facts of the case are these:- Appellant was the owner of 36 cents of land in Karkala Casba village, Karkala Taluk. This land was acquired by the Government under the provisions of the Land Acquisition Act in the year 1983. The appellant challenged the legality of the order before this Court in Writ Petition No. 7966/1986. That Writ Petition was dismissed. Aggrieved by the said order, the appellant preferred Writ Appeal No. 524/1988. That Writ Appeal was dismissed on 29-3-1988. Thereafter, the appellant who was served with notice of award u/s 12(2) of the Act on 28-5-1986 itself filed an application u/s 18 of the Land Acquisition Act on 20th February, 1990, before the Land Acquisition Officer

on whom the power of the Deputy Commissioner u/s 18 of the Act had been conferred to make reference to the Civil Judge's Court for adjudicating the claim for higher compensation. This application was rejected by the Land Acquisition Officer by his endorsement dated 28th February, 1990. The endorsement reads:-

"D.DIS LAQ CR 38/89-90 Dated 28-2-1990 ENDORSEMENT

Sub: Land Acquisition-Karkala Casba village - S.No. 137/14 enhancement claim u/s 18 of L.A. Act by GAP of Mary D'Souza regarding.

Ref: Application dated 20-2-1990 by GIA of Mary D'Souza, Karkala.

In the above application GAP holder of Mrs. Mary D'Souza has filed a claim for enhancement of compensation u/s 18 of the L.A. Act. The notice u/s 12(2) of the Act was served on the claim on 28-5-1986. The time limit for filing the enhancement claim is 90 days from the date of receipt of notice u/s 12(2). In this case, the claim is delayed beyond 3 years. The application filed beyond the time before the Land Acquisition Officer cannot be entertained and therefore, the claim is rejected."

After the above endorsement was issued, the appellant filed a Review Petition and along with it filed an application purporting to be u/s 5 of the Limitation Act requesting the Land Acquisition Officer to condone the delay in presenting the application. The Land Acquisition Officer issued the following endorsement dated 3-7-1990:

"ENDORSEMENT

Sub: Land Acquisition-Karkala Casba village, S.No. 137/14 - enhancement claims - Review application filed u/s 3 of the CPC 1908 - reg.

Ref: 1, Application dated 20-2-1990 by GPA of Mary D'Souza, Karkala.

2. This Office D.DIS LAQ CR 39/1989-90 dated 28-2-1990.

3. Application dated 30-3-1990 by GPA of Mary D'Souza.

With reference to the above, the Applicant is informed that an endorsement dated 28-2-1990 cited (2) above, was issued to her in response to an application dated 20-2-1990. The review application dated 30-3-1990 being unsigned and having the same subject matter as the application of 20-2-1990 was not endorsed as the earlier endorsement holds good for it also. However, since, a signed review petition was submitted subsequently to this office on 4-4-1990 it is once again endorsed to the Applicant that, since the time limit for filing of enhancement claim is 90 days from the date of receipt of notice u/s 12(2) as per Section 23(2) of the LAQ Act and as this application is delayed beyond 3 years, the application is not maintainable and cannot be entertained. The Land Acquisition Officer is also not empowered to condone the delay. Applicant's claim is rejected for the above reasons."

As can be seen from the above endorsement the Land Acquisition Officer who

had rejected the Application seeking reference on the ground that it was barred by time also rejected the Review Application specifically stating under the Act he was not empowered to condone the delay. Questioning the legality of the endorsement, the appellant presented the Writ Petition.

3. In the Writ Petition, the contention of the appellant was that the provisions of Section 5 of the Limitation Act was applicable to the application filed u/s 18 of the Land Acquisition Act before the Deputy Commissioner, in view of Section 29(2) of the Act and therefore, the Land Acquisition Officer was not right in saying that he had no power to condone the delay. It was contended before the learned Judge that the Land-Acquisition Officer had the power to condone the delay and therefore his endorsement stating that he had no power to condone the delay was liable to be set aside. The learned Judge followed the Judgment reported in Sakuru Vs. Tanaji, and held that the provisions of Section 29(2) of the Act were applicable only to Courts and not to applications required to be filed under any of the provisions of law before an Administrative Authority. The learned Judge dismissed the Writ Petition. Aggrieved by the said order, this Appeal is presented.

4. The learned Counsel reiterated the contention urged before the learned Judge and it is in view of the said contention, the question of law set out in the first paragraph arises for consideration. Section 18 of the Land Acquisition Act, as amended by the Karnataka Amendment of 1961 reads:-

"18. REFERENCE TO COURT:- (1) Any person interested who has not accepted the award for amendment thereof may, by written application to the Deputy Commissioner require that the matter be referred by the Deputy Commissioner for the determination of the Court, whether his objection be to the measurement of the land, the amount of the 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 or the amendment is taken;

Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under Sub-section (2) of Section 12.

(3)(a) The Deputy Commissioner shall within ninety days from the date of receipt of an application under Sub-section (1) make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application, the applicant may apply to the Court to direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make the reference, and the Court may direct the Deputy Commissioner to make within such time as the Court may fix."

As can be seen from the above Section, if a claimant whose land is acquired does

not accept the award made by the Land Acquisition Officer, he gets the right to make an application before the Deputy Commissioner, or an Officer on whom the power of the Deputy Commissioner is conferred for the purpose of Section 18, to make an application within 90 days from the date of service of notice of award requesting him to refer the matter for adjudication to the Court. The Section does not authorise the Land Acquisition Officer to entertain any application filed after 30 days. The learned Counsel for the appellant, however, contends that in the absence of any specific provision in the Act conferring power on the Land Acquisition Officer to entertain an application filed beyond 90 days, if sufficient cause for such delay exists, the party can fall back on Section 5 read with Section 29(2) of the Limitation Act. These two provisions of the Limitation Act read thus:-

"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."

"29. SAVINGS:-(1) xxxxx

(2) 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 were the period prescribed by the Schedule and for the purpose of determining any period "of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

(Underlining by us)

As can be seen from the wording of Section 5 of the Act, an application for condonation of delay in filing an appeal or application could be filed before a Court. Section 29(2) of the Act makes the provisions that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed in the Schedule to the Act, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule: and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

5. The learned Counsel for the appellant contended that there was no specific exclusion of Section 29 or Section 5 of the Act to the applications required to be filed u/s 18 of the Land Acquisition Act and therefore the provisions of Section 5 of the Act could be invoked by a claimant for condonation of delay in filing an application u/s 18 of the Act.

6. In the first instance it should be pointed out that the condition precedent for a valid reference u/s 18 of the Act by the Deputy Commissioner to the Court is the filing of an application within 90 days from the date of service of notice of the Award u/s 29(2) of the Act. The Deputy Commissioner is not given the power to make any reference if an application is filed beyond 90 days from the date of service of the order. Even if the Deputy Commissioner were to make any such reference, the Court gets no jurisdiction to adjudicate upon such reference. This position in law is clearly laid down by the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, The relevant portion of the Judgment reads:-

"25, The conditions laid down in Section 18 "matters of substance and their observance is a condition precedent to the Collector's power of reference", as rightly observed by Chandavarkar, J., in Re Land Acquisition Act (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, Sub-section (2) is a sine qua non for a valid reference by the Collector.

26. From these considerations, it follows that the Court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference."

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"28. If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector the Court will still have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends on a proper reference being made u/s 18, and if the reference is not proper, there is no jurisdiction in the Court to hear the reference. It follows that it is the duty of the Court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the Court and, therefore, the Court has to ask itself the question it has jurisdiction to entertain the reference.

29. In deciding the question of jurisdiction in a case of reference u/s 18 by the Collector to the Court, the Court is certainly not acting as a Court of Appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the

provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The Court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to Sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference."

Therefore, it is clear in the absence of any specific provisions authorising the Land Acquisition Officer to entertain an application filed beyond 90 days, he has no jurisdiction to entertain the application, to condone the delay and make a reference to the Court.

7. The question of applicability of Section 5 read with Section 29 of the Act to authorities other than the Court was the subject matter of consideration by a Division Bench of this Court in *GOVINDARAJAN v. STATE OF KARNATAKA* 1984(1) KLJ 328. That case arose under the provisions of the Karnataka Government Servants (Determination of Age) Act, 1974. The said Act provided for making an application by Government servants who were aggrieved by the incorrect entry relating to their date of birth in their service records. They were required to make an application before the State Government within the period prescribed under that Act and that when such an application was made, the Government was required to refer the application for enquiry and report to an Officer designated by the Government, and after the receipt of the inquiry report, the State Government was required to pass final order on the application, on consideration of the inquiry report. The question for consideration in the said case was, if the application was filed before the Government beyond the time prescribed under the said Act, whether the Government servant concerned could invoke the provisions of Section 5 of the Limitation Act read with Section 29(2) and seek condonation of the delay in presenting the application. On an elaborate consideration of the relevant provisions of the Act and the several Authorities referred to in the Judgment, the Division Bench held that power u/s 5 of the Limitation Act can be exercised only by the Court and neither the State Government nor the Enquiry Officer exercising powers under the Age Determination Act was a Court. The relevant portion of the Judgment is found in paragraph-13. It reads:-

"13. The last point for consideration is as to whether the State Government which is empowered by Section 5 of the Act to alter the date of birth is "Court" within the meaning of that expression occurring in Section 5 of the Limitation Act. It was contended by the learned Counsel for the petitioners that the scheme of Section 5 of the Act shows that State Government can exercise the powers of a Civil Court and therefore it must be regarded as Court. Sub-section (3) of Section 5 empowers the State Government to appoint an enquiry officer for the purpose of enquiring into an application made by a State Servant for altering the date of birth to his advantages, Sub-section (4) of Section 5 provides that the enquiry officer so appointed shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, viz.,

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or Office;
- (e) issuing commissions for the examinations of witnesses or document.

Merely because certain specified powers under the CPC are conferred on the Enquiry Officer, the State Government does not become a "Court" in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, the Supreme Court has held that though the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, it is not a Court. The petitioners also sought to support the contention by inviting our attention to Sub-section (5) of Section 5 of the Act. It provides that the Officer appointed under Sub-section (3) shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 288 of the Indian Penal Code 1860, is committed in the view or presence of the said Officer, the said Officer may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him u/s 346 of the Code of Criminal Procedure. It is obvious for the limited purpose specified in that sub-section the Enquiry Officer shall be deemed to be a Civil Court. As fiction is created for a limited purpose, it cannot be further extended to deem the Enquiry Officer or the State Government as a Court for the purpose of Limitation Act. We have, therefore, no hesitation in taking the view that neither the Enquiry Officer nor the State Government functioning u/s 5 can be regarded as "Court", within the meaning of the expression "Court" in Section 5 of the Limitation Act."

(Underlining by us)

The above view stands reiterated by the Judgment of the Supreme Court in *Sakuru*. The relevant portion of the Judgment reads:

"3. After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in *Venkaiah's* case is perfectly correct and sound. It is well settled by the decisions of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, and *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than the Courts such as quasi-judicial Tribunals or executive

authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him."

(Underlining by us)

In our opinion, the ratio of the above Decision of the Supreme Court as also the Decision of the Division Bench of this Court is a complete answer to the contention urged by the appellant.

8. For the reasons aforesaid, we answer the question set out in the first paragraph as follows:

The provisions of Section 5 of the Limitation Act, 1963, cannot be invoked for condoning the delay in making an application for reference u/s 18 of the Land Acquisition Act, beyond the period of 90 days prescribed in the said Section.

9. In the result, we make the following order: The Appeal is dismissed.