

(2016) 12 KAR CK 0020

In the Karnataka High Court

Case No : Writ Appeal Nos. 31169 to 31180 of 2013 (GM-RES)

National Highways Authority of India

APPELLANT

Vs

Udaykumar

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Limitation Act, 1963 — Article 137

National Highways Act, 1956 — Section 3-A

Citation : (2017) 2 AirKarR 815 : (2017) 2 KantLJ 454

Hon'ble Judges : Raghvendra S. Chauhan and Sreenivas Harish Kumar, JJ.

Bench : Division Bench

Advocate : Sri Sachin S. Magadum, Advocate, for the Appellant; Sri S.M. Kalwad, Advocate, for the Respondent Nos. 1-9 and 11-13; Government Advocate, for the Respondent No. 15; Notices to A, B, C, D, for the Respondent No. 10; are Served, for the Respondent No. 14

Final Decision : Dismissed

Judgement

1. Aggrieved by the order dated 15-2-2013, passed by the learned Single Judge, in W.P. Nos. 63433 of 2011 and 76142 to 76152 of 2013, the National Highways Authority of India has approached this Court. Before the learned Single Judge the appellant had challenged the order dated 24-2-2010 passed by the Deputy Commissioner and the Arbitrator, who had condoned the delay of four years in initiating the arbitration proceedings by respondents no. 1 to 14. Since the learned Single Judge has upheld the said condonation of delay, the appellant is before this Court.

2. Briefly the facts of the case are that, respondents no. 1 to 14 were the landowners of different parcels of the lands situated in Kavalettu Village, in Ranebennur Taluk of Haveri District. In 2001, in order to widen the National Highway-4 from kilometer 282 to 515 (Haveri, Dharwad, Belgaum) the Government of India, Ministry of Shipping, Road Transport and Highways, while exercising its powers under the National Highways Act initiated acquisition of

land under Section 3-A of the National Highways Act, 1956 (the Act for short). The acquisition proceedings culminated in award dated 14-1-2004. However, as the respondents no. 1 to 14 were aggrieved by the compensation being granted to them, on 19-11-2009, they sought an Arbitral reference under Section 3-G(5) of the Act before the Arbitrator. The appellant filed their objections.

The appellant pleaded that since no period of limitation has been prescribed by the Act, for filing of a reference before an Arbitrator under Section 3-G(5) of the Act, Article 137 of the Limitation Act would have to be read. Since according to Article 137 of the Limitation Act, the period of limitation prescribed is three years, therefore the Arbitral reference filed by respondents no. 1 to 14 after a lapse of 5 years is patently hit by limitation. Therefore, the Arbitral reference should be dismissed by the learned Arbitrator.

However, by order dated 24-2-2010 the said contention raised by the appellant was rejected by the Deputy Commissioner, and the delay of five years was condoned. Since the appellant was aggrieved by the order dated 24-2-2010, it filed writ petitions before this Court. However, by the impugned order dated 15-2-2015, the learned Single Judge has dismissed the writ petitions and upheld the order dated 24-2-2010. Hence, these appeals before this Court.

3. Mr. Sachin S. Magadum, the learned Counsel for the appellant, has reiterated the contentions raised before the learned Arbitrator, and has pleaded that since Section 3-G(5) of the Act does not prescribe any period of limitation, therefore an application filed before the Arbitrator would be covered by the limitation period prescribed by Article 137 of the Limitation Act. Since Article 137 of the Limitation Act prescribes a period of three years for filing of an application, the Arbitral reference made under Section 3-G(5) of the Act could not be filed after the lapse of three years. Moreover the power to condone delay under Section 5 of the Limitation Act is not available to the learned Arbitrator. Therefore the learned Arbitrator should have accepted the contention raised by the appellant.

Secondly the learned Single Judge has erred in relying upon Article 14 of the Constitution of India; the learned Judge has missed the point raised by the appellant with regard to the applicability of the Article 137 of the Limitation Act, and with regard to the non-availability of power under Section 5 of the Limitation Act to the learned Arbitrator. Therefore, the impugned order deserves to be set aside by this Court.

4. On the other hand, Sri S.M. Kalwad, the learned Counsel for respondents no. 1 to 14, has relied on the case of Uttam Namdeo Mahale v. Vithal Deo and Others, (1997) 6 SCC 73 in order to support his plea that even if a special statute does not prescribe the period of limitation, even then the general law of limitation is inapplicable. Hence, the question of applicability of Article 137 of the Limitation Act, or the availability of power to condone a delay under Section 5 of the Limitation Act would not even arise in the present case. As long as the Arbitral reference is made within a reasonable time, the Arbitral reference would have to

be entertained by the learned Arbitrator. Therefore, according to the learned Counsel, condonation of delay by the learned Arbitrator, and the upholding of the order dated 24-2-2010, by the learned Single Judge is legally justified. Therefore, neither the order passed by the learned Arbitrator, nor the order passed by the learned Single Judge needs to be interfered with by this Court.

5. Heard the learned Counsel for the parties and perused the impugned order.

6. This case raises interesting legal issues: firstly, whether the Limitation Act would be applicable in case a special statute does not prescribe a period of limitation for initiating an Arbitral proceedings? Secondly, whether in the absence of prescription of the limitation period, recourse could be had to Article 137 of the Limitation Act? Thirdly, in case Article 137 of the Limitation were applicable, whether the learned Arbitrator would have the power under Section 5 of the Limitation Act to condone the delay or not? In case the period of limitation has not been prescribed, whether an application/petition can be filed after delay and laches or not? Lastly, whether the Arbitrator would have the power to go into the question of delay and laches or not?

7. In the case of Uttam Namdeo Mahale (supra), the issue that was canvassed before the Hon"ble Supreme Court was whether a proceeding initiated before the Mamlatdar Court after a lapse of 12 years was hit by Limitation or not? The Hon"ble Supreme Court clearly opined that "in the absence of any specific limitation prescribed thereunder, necessary implication is that the general law of the limitation prescribed in the Limitation Act stands excluded". This observation was made keeping in mind that the Mamlatdar Court Act does not prescribe any limitation within which the order needs to be executed.

8. Similarly Section 3-G(5) of the Act does not prescribe any period of limitation for a reference to be made to an Arbitrator. Therefore, keeping in mind the ratio of Uttam Namdeo Mahale (supra), this Court is of the opinion that since no period of limitation has been prescribed by the Act, under Section 3-G(5) of the Act, the general law of limitation prescribed under the Limitation Act would stand excluded.

9. Since the Limitation Act cannot be applied in such circumstances, the issue whether the limitation period prescribed by the Article 137 of the Limitation Act is applicable or not, or the issue whether the power of condonation is available to the Arbitrator acting under Section 5 of the Limitation Act need not be answered by this Court.

10. However, merely because no period of limitation has been prescribed by Section 3-G(5) of the Act does not mean that an application under the said Act can be filed after an inordinate delay. For it is trite to State that in case a period of limitation is not prescribed by a statute, an application or a petition has to be filed within a "reasonable time". Whether the application has been filed within reasonable time or not is a question of fact which is to be examined by the learned Arbitrator while exercising his/her power under Section 3-G(5) of the Act.

11. Under three circumstances the learned Arbitrator would be justified in rejecting the application for reference: (i) if the party approaching the Arbitrator has gained by coming to the Arbitrator belatedly; (ii) if third party interest have arisen during the period when the award is passed by the Special Land Acquisition Officer and the filing of the application before the learned Arbitrator; (iii) if the equities cannot be balanced under the circumstances of the case.

12. Thus the Arbitrator would be justified in hearing both the parties on the point of inordinate delay, and on the point that the application is hit by delay and laches.

13. For the reasons stated above this Court does not agree with the contention of the learned Counsel for the appellant that the limitation period prescribed by Article 137 of the Limitation Act would have to be read in an Arbitral proceeding under Section 3-G(5) of the Act. Thus the learned Arbitrator was justified in condoning the delay of five years. Hence, his Court does not find any illegality or perversity in the impugned order dated 15-2-2013.

14. For the reasons stated above, this Court does not find any merit in the present appeals. Hence the appeals are dismissed.