

(2005) 01 KL CK 0039

In the High Court Of Kerala

Case No : C.R.P. No's. 1486 and 1830/03 and connected cases

Petronet CCK Ltd.

APPELLANT

Vs

Vijayan

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Limitation Act, 1963 — Section 5
Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 —
Section 10

Citation : (2005) 1 KLT 773

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : M. Pathrose Mathai and K.P. Sreekumar, for the Appellant; Sheejo Chacko, M.N. Manoj and Johnson P. John, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—In these Revision Petitions, the petitioner Petronet CCK Ltd. has challenged the order passed by the District Court Palakkad condoning the delay in filing the application for enhanced compensation u/s 10(2) of the Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Act, 1962, (hereinafter referred to as "the Act"). The Act provides for the acquisition of right of use of the land for laying pipelines for transport of petroleum and minerals and for matters connected therewith. As per the provisions of the Act, the owners of the land are entitled to compensation for the damages caused to the land. This is to be determined by the competent authority under the Act.

2. The owners of the land were not satisfied with the order passed by the competent authority. They have approached the District Court by challenging the order passed by the competent authority, Section 10(2) of the Act says thus:

"If the amount of compensation determined by the competent authority under Sub-Section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge

within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge".

Section 17 of the Act provides for framing of Rules by the Central Government. Accordingly, Rules have been framed as the Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Rules, 1963.

Rule 4 of the above Rules says that any person interested in any land may file before the competent authority a claim for compensation within 60 days of the date of publication of the declaration u/s 6(1). There is a proviso stating that the competent authority may admit any claim within thirty days after the expiry of the period specified in this sub-rule, if he is satisfied that the applicant had sufficient cause for not making the application within such specified periods. Rule 5 deals with the application to the District Judge for determination for compensation. It says that any party aggrieved by the determination of the amount of compensation may prefer an application to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, not later than ninety days of the receipt of the intimation from the competent authority under Rule 4(3).

3. The question for consideration is whether under Rule 5, if any application is not filed within ninety days, the Court has got power to condone the delay. The Court below held that it has got power and accordingly, condoned the delay in filing the application.

4. Learned counsel for the revision petitioner Sri. K.P. Sreekumar contended that a comparison between Rules 4 and 5 will reveal that there is no power for the District Judge to condone the delay in filing the application under Rule 5. He brought to my notice Rule 4 where the competent authority is given power to condone the delay of thirty days whereas no such power is given to the District Judge under Rule 5. Further, he contended that Rule 5 itself says that no application shall be received later than ninety days.

5. Learned counsel for the respondents submitted that u/s 29 of the Limitation Act, if any period is fixed differently by an enactment and there is express provision against condoning delay, then the provisions of the Limitation Act will be excluded. But in the present case, since there is no express exclusion, Section 5 of the Limitation Act is applicable. In *Mangu Ram Vs. Municipal Corporation of Delhi*, the Supreme Court held as follows:

"There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, Sub-section (2) is concerned. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, Sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation".

In Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, the Supreme Court held as follows:

"When the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act. Once the two conditions namely (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application, (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 are satisfied Section 29(2) on its own force will get attracted to appeals filed before Appellate Authority u/s 18 of the Rent Act. When Section 29(2) applies to appeals u/s 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before Appellate Authority u/s 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act can be said to have been satisfied".

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6. Learned counsel for the respondents brought to my notice the decision reported in Prakash H. Jain Vs. Ms. Marie Fernandes, . But that is not concerned with the Court, but with the statutory authority. Hence, that can be distinguished. So far as the decision in Gopal Sardar Vs. Karuna Sardar, is concerned, Rule 4 was regarding pre-emption and the Court held that the application filed before the Munsiff is in the nature of the suit. It is in the above circumstances that the Court below held that Section 5 of the Limitation is not applicable.

7. In the present case, I am of the opinion that since there is no express exclusion of the Limitation Act, Section 5 of the Limitation Act can be applied. Learned counsel for the petitioner then submitted that in some of the cases, delay has been condoned without proper reasons. According to me, such discretion exercised by the Court below is proper and hence, there is no scope for interference.

In the above view of the matter, all the revisions are dismissed.