
(1982) 05 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 2344 of 1977

Raman Pillai Thankappan Pillai

APPELLANT

Vs

Special Tahsildar, Land Acquisition and Another

RESPONDENT

Date of Decision : 26-05-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Industrial Disputes Act, 1947 — Section 33C(2)
Limitation Act, 1963 — Section 10, 11, 12, 12(2), 13

Citation : (1982) KLJ 709

Hon'ble Judges : V. Khalid, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : V. Rajagopala Shenoi, for the Appellant; V. Bhaskaran Nambiar
Advocate Genera, for the Respondent

Final Decision : Dismissed

Judgement

Balagangadharan Nair, J.—The Original Petition comes before us on a reference made by a learned Judge for deciding whether Section 5 , Limitation Act 1963 is applicable to an application u/s 20, Kerala Land Acquisition Act. The relevant facts which lie in a narrow compass can be shortly stated. 1.20 Ares of land with the buildings therein of which the petitioner was the owner was acquired by the State for widening the road from the Girls High School Junction to the Civil Station, Quilon. The 1st respondent who is the Special Tahsildar, Land Acquisition, passed the relative award on 24-3-1976. The petitioner was served with notice of the award on 25-3-1976. On 10-5-1976 the petitioner who was dissatisfied with the compensation filed an application dated 9-5-1976 of which Ext. P2 is a copy before the 1st respondent u/s 20(1), Land Acquisition Act requesting him to make a reference to the civil court. On 16-6-1976 the 1st respondent sent him a reply Ext. P3 rejecting the application on the ground that it was barred u/s 20(2) (b) having been filed after the expiry of 6 weeks of the notice u/s 12(2). The counter-affidavit of the 1st respondent shows that on 26-6-1976 the petitioner made a second application requesting the 1st

respondent to condone the delay and make the reference and that he followed it up by another application dated 12-10-1976 supported by a medical certificate before the Collector, Quilon. The counter-affidavit states that to this the 1st respondent sent a reply that there was no provision to accept belated applications. The petitioner seeks to quash the communication Ext. P3.

2. In the course of the hearing before us counsel for the petitioner filed an affidavit that the original application for reference was made before the 1st respondent on 9-5-1976 and not on 10-5-1976. On this basis counsel sought to argue that the application was within time as the proceeding two days, 7th and 8th were public holidays. But investigation disclosed that there were no such holidays and that the application was in fact filed before the 1st respondent only on 10-5-1976. The contention that the application was within time must therefore fail, apart from the fact that it is contrary to the basis of the Original Petition and even to the observation in the order of reference that the controversy about the date of filing of the application being a disputed question of fact could not be resolved in these proceedings.

3. Accepting that the application which was filed only on 10-5-1976 was out of time the petitioner contends that the 1st respondent should have condoned the delay and that he was competent to do so. But the petitioner's stand on this aspect is tenuous as the application did not contain nor was it accompanied by any separate motion for condoning the delay. That motion was made, as appears from the counter-affidavit, only in the application dated 26-6-1976 after the original application for reference had been rejected by the order Ext. P3 as barred by limitation. The petitioner even submitted yet another application before the Collector which evoked a reply dated 1-3-1977. Neither the second application dated 26-6-1976 nor the third application dated 12-10-1976 can really help the petitioner seek condonation of the delay in view of the earlier order Ext. P3 dated 16-6-1976 dismissing the application for reference filed on 10-5-1976. In the light of this factual situation the question of condoning the delay hardly arises, but we do not want to avoid addressing ourselves to it as a reference has been made and as counsel for the petitioner and the learned Advocate General for the respondents gave us the benefit of a full argument.

4. Section 5, Limitation Act empowers the court to admit an appeal or application other than applications under Order XXI, C.P.C., after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Section 29(2), so far as relevant, provides that 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. That the Kerala Land Acquisition Act is a special or local law is undoubted; so is the fact that the proviso to Section 20(2) pre-scribes a period of limitation for reference. The essence of the petitioner's

contention was that as Section 5 of the Limitation Act has not been expressly excluded by the Land Acquisition Act it should on its terms apply to the application for reference u/s 20 especially as the Land Acquisition Officer exercises judicial or quasi-judicial authority u/s 20. This contention was countered by the learned Advocate-General arguing that it overlooks that Section of the Limitation Act is limited to appeals and applications in courts and does not extend to an authority like the Land Acquisition Officer and to applications u/s 20. In support of their rival contentions both sides also placed before us a number of decisions of different High Courts and the Supreme Court which we shall now examine.

5. Starting with the petitioner's authorities, counsel placed particular reliance upon *Ramesh S. Vankhede v. State*, AIR 1975 Bombay 297, and *Mahiji-bhai Jivanbhai Vaghri v. M. C. Shah*, ILR 1968 Gujarat 348. In AIR 1975 Bombay 297 the Land Acquisition Officer dismissed the petitioner's belated application for reference u/s 18 of the Land Acquisition Act, 1894 (which corresponds to Section 20 of the Kerala Act) in the view that he had no power to condone the delay for which there was a separate motion. From this order the petitioner preferred a revision in the High Court on the strength of sub-section (3) of Section 18 which had been added by Maharashtra Act No. 38 of 1964 providing that any order made by the Collector on an application under the Section was subject to revision by the High Court as if the Collector were a court subordinate to the High Court within the meaning of Section 115 of the CPC 1908. The learned Judge noticed certain decision including *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , AIR 1969 S.C 1335 and AIR 1970 S.C. 209 and held that although the Land Acquisition Officer would prima facie appear to be not a court yet by reason of sub-section (3) of Section 18 when he deals with the application for reference he has to be considered to be a court subordinate to the High Court within Section 115 of the CPC and therefore Section 5 . Limitation Act would apply to applications for reference. As the Land Acquisition Officer had refused to condone the delay on the ground of his lack of power the learned Judge remanded the application for disposal on the merits. ILR 1968 Gujarat 348 was also concerned with the Land Acquisition Officer's power to condone delay in an application for reference made beyond the prescribed time. The learned Judges held that Section 5 was applicable as Section 18, Land Acquisition Act did not exclude Sections 4 to 24 , Limitation Act and that the Land Acquisition Officer had the power to condone delay if there was sufficient cause. It was pointed out that Section 18 was a special law within sub-section (2) of Section 29 , Limitation Act and that Section 5 would therefore apply to the application for reference. They sought support for this view in A.I.R- 1964 S.C. 260, a case primarily concerned with Section 29(2) of the Limitation Act of 1908 and provides no authority for extending Section 5 to an application u/s 18 of the Land Acquisition Act. Although the report shows no light, V. G. Ramachandran's *Law of Land Acquisition and Compensation* shows that a provision like sub-section (3) of Section 18 exists in Gujarat as in Maharashtra. That makes all the difference.

Neither the Bombay nor the Gujarat case will apply to the Kerala Land Acquisition Act which contains no provision corresponding to sub-section (3) of Section 18.

6. *M/s. Vasanji Ghola and Co. v. State of Maharashtra*, I.L.R. 1967 Bombay 1130, was concerned with the question whether the Tribunal under the Bombay Sales Tax Act, 1946 had power u/s 5 read with Section 29(2) , Limitation Act to condone the delay in making an application for reference of questions of law to the High Court. The High Court ruled that as there was nothing in the Sales Tax Act to exclude Sections 4 to 24 of the Limitation Act the Tribunal had the requisite power to condone delay u/s 5. We need not discuss this case as a contrary view has been subsequently adopted by this Court in *Commr. of Agrl. income tax v. T.R.I.*, 1981 KLT 398 (F.B.) Again 1967 Bombay Law Reports 52, one of the decisions followed therein had held that Article 137 applies to applications made under any statute and special laws if these laws do not prescribe any special period of limitation. This again is contrary to the holding of the Supreme Court in *Kerala State Electricity Board v. T.P.K.*, 1976 KLT 810, that Article 137 applies only to petitions or applications under whatever statute made to a civil court.

7. In *Radheshyam v. M. R. Tribunal*, AIR 1970 Bombay 138, which dealt with the applicability of Section 14 of the Limitation Act to proceedings before a Tribunal has no direct bearing on the point now in issue. Further the view taken in the decision on the applicability of Section 14 is contrary to a later decision of the Supreme Court, *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, .

8. In *Chittaranjan Sahu v. Collector, Dhenkanal*, I.L.R. 1975 Cuttack 1347, an application for reference u/s 18, Land Acquisition Act was made in time but the required court fee was paid only after expiry of the period of limitation. The Land Acquisition Officer made the reference but it was dis-missed by the Subordinate Judge on the ground that the application for reference became valid only when the court fee was paid which was after expiry of the time limit. On appeal the High Court held that on payment of the court fee the application must be deemed to have been filed on the date of its initial presentation and it was therefore a valid petition. It further held that by virtue of Section 29(2), Section 5 , Limitation Act applied to the application and that when he made the reference, the Land Acquisition Officer must be deemed to have condoned the delay. This part of the decision which contains little reasoning was in the nature of an obitor dictum and does not call for any detailed consideration. Further by the Land Acquisition (Orissa Amendment) Act. XIX of 1948, Section 18 had been amended by the introduction of sub-section (3) as in Maharashtra and Gujarat. What we have said about A.I.R- 1975 Bombay 297 and ILR 1968 Gujarat 348 applies equally to LL.R. 1975 Cuttack 1347.

9. Turning to the authorities quoted by the learned Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , held that a petition u/s 33C(2) , Industrial Disputes Act filed before the Labour Court was

not governed by Article 137, Limitation Act and that the Article applies only to applications made under the CPC to a civil court. The subsequent decision *Nityanand v. LLC. of India*, A.I.R. 1970 S.C. 209, was concerned with the same question. While observing that Article 137 dealt with only application to courts as held in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , the Supreme Court remarked that it was not necessary to decide whether the Article applied to applications made to court under other provisions apart from Civil Procedure Code. However in discussing the scope of Article 137 and certain Sections of the Limitation Act the Supreme Court observed in paragraph 3:

Further Section 4 of the limitation Act. 1963. provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again u/s 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts and that the Labour Court is not a court within the Indian Limitation Act, 1963."

To the extent they go these observations definitely support the stand taken by the learned Advocate-General.

10. We do not find it necessary to dwell upon AIR 1975 S.C. 1039 as it was concerned only with the applicability of Section 14(2) . Limitation Act and its principles to proceedings before Tribunals.

11. In *Susivta Devi v. Rawandan Prasad*, AIR 1976 S.C- 177, the point that fell to be decided was whether the concerned officer under the Kosi Area (Restoration of Lands to Raiyats) Act had the power to condone delay invoking the provisions of Section 5 , Limitation Act in dealing with applications filed out of time under the Act. Reversing the High Court which had held that Section 5 applied to such applications, the Supreme Court held (page 182):

We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the 1st respondent. u/s 5 of the Limitation Act an appeal or application "may be admitted after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within much period." The Collector to whom the application was made was not a court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise."

Although the latter feature is absent in the present case as Section 20, Land Acquisition Act prescribes a time limit, the earlier observations are definite and support the learned Advocate-General.

12. In *Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others*, which is one of the cases mentioned in the order of reference the primary question that arose was whether the time limits prescribed by the proviso to sub-section (2) of Section 58 and by sub-section (3), Motor Vehicles Act admitted of extension u/s 5, Limitation Act. After observing that Section 29(2), Limitation Act makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act the Supreme Court held (Paragraph 8) that the express provision in sub-section (3) of Section 58 that the delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that it expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more than 15 days. With respect, we find it unable to agree with the observation in the referring order that this decision had expressed the view that the Limitation Act was applicable to proceedings before Tribunals or other authorities and thus uphold the view expressed by the High Courts of Gujarat and Bombay in ILR 1968 Gujarat 348 and AIR 1975 Bombay 297 respectively. We might also note that in *Ulahannan Chacko v. Pareed Marakar*, 1978 KLT 330, this decision was relied upon before a Bench to support an argument that Section 5, Limitation Act applied to appeals before the Appellate Authority under the Kerala Buildings (Lease and Rent Control) Act, 1965. On this the Bench made the following observations: "We do not see anything in the above decision to hold that an application to excuse delay would lie to the Regional Transport Authority u/s 5 read with Section 29(2) of the Limitation Act. On the other hand, if the Limitation Act would apply proprio vigore even to the Regional Transport Authority the principle stated by the Supreme Court and its conclusion should have been different". *Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others*, cannot therefore be held to have made any pronouncement on the question at issue.

13. *S.T. Comr. U.P. v. M.D.L. Sons*, AIR 1975 S-C. 523, might be passed over as it was concerned only with Section 12(2) and not with Section 5, Limitation Act.

14. Passing to the pronouncement of this Court, in *Jekkim Fornandez v. Amina Kunhi umma*, 1973 KLT 138 (F.B.) the majority judgment ruled that the Limitation Act applies only to courts and prescribes periods of limitation in respect of suits, appeals and applications filed only in courts and that even if the power u/s 5 were to be read into a special or local law by reason of Section 29(2) that power is exercisable only by courts and not by Tribunals or other authorities. In this view, the learned judges held that Section 5 did not govern appeals before the Appellate Authority under the Buildings (Lease and Rent Control) Act. One learned judge dissented. This decision was followed in *Thilakan v. M. C. V. Co-operative Society*, 1978 KLT 256, where a Bench held that the provisions of the Limitation Act do not apply to proceedings before the Assistant Registrar of Co-operative Societies as he was not a court governed by the provisions of the Civil Procedure Code. In *Ulahannan Chacko's* case. 1978 KLT 330, already cited the same view was repeated by another Bench after a discussion of several cases

including 1973 KLT 138 and Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . It is also worth mentioning that the case went before a Bench on a reference made by a learned single judge owing to the submission made by : counsel that 1973 KLT 138 required reconsideration in the light of Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . We have already extracted the opinion of the Bench on AIR 1976 S.C. 2161. It was ultimately held that there was no occasion to reconsider the decision in 1973 KLT 138.

15. The last of the cases to consider is Commr. of Agrl. Incometax v. T.R.I. 1981 KLT 398 (F.B.). The question before the Full Bench was whether the Appellate Tribunal under the Agricultural income tax Act had power u/s 5 read with Section 29(2) , Limitation Act to condone delay in respect of an application for reference made after the prescribed time- The Full Bench answered it in the negative after a detailed discussion of the authorities.

16. The principle of the question before us stands concluded by the majority decision in 1973 KLT 138 and the unanimous decision in 1981 K.L.T398 apart from the intermediate Bench decisions in 1978 KLT 256 and 330, although the cases arose on different statutes. 1981 KLT 398 was subsequent to the order of reference in the present case. Of the Supreme Court cases, there is none that supports the petitioner while the observations in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and AIR 1979 S.C. 177 rule out Section 5 in relation to Tribunals and limit it to courts. With respect we do not agree with the learned judge in the order of reference that Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, held that the Limitation Act was applicable to proceedings before Tribunals or other authorities and thus it uphold the view in ILR 1968 Gujarat 348 and AIR 1975 Bombay 297. We do not also agree that this view has been subsequently followed in The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, or that it is contrary to the majority decision in 1973 KLT 138 and is in accord with the dissenting opinion. We hold that Section 5 , Limitation Act does not apply to an application for reference u/s 20, Land Acquisition Act and that the 1st respondent was right in passing the order Ext. P3. The Original Petition therefore fails.

We dismiss the Original Petition but in the circumstances without any order as to costs.