(2000) 08 KL CK 0014

In the High Court Of Kerala

Case No : M.F.A. No. 186 of 1993 (D)

Sathish Babu alias Sathish Kumar — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : AIR 2001 Ker 48 : (2000) 3 ILR (Ker) 796

Hon'ble Judges : M. Ramachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.K. appa Nair and P.K. Suresh Kumar, for the Appellant; James Vincent, Govt. Pleader, for the Respondent

Judgement

Koshy, J.—Appellant in this case filed an application u/s 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 for a declaration that the property described in the petition is not vested in the Government under the above Act. The above application was rejected on the question of time bar. Along with the application the appellant filed a petition to consider the case as not time barred case because at the time when the Act came into force the appellant was a minor and when the notification was published also he was a minor. According to the appellant he filed a petition in time i.e. immediately after he attained majority, but that was not accepted by the Tribunal. The Tribunal dismissed the matter as time barred. Section 8 of the Act enables a person to file claims within such period as may be prescribed by the Tribunal for a decision of the dispute. Rule 3 of the Kerala Private Forests (Tribunal) Rules provides that such an application should be filed within sixty days from 6th August, 1991 or from the date of publication of the notification under Sub-rule (2) of Rule 2-A in respect of the land to which the dispute relates whichever is later. Tribunal''s power to condone the delay or prohibition against condoning delay is mentioned in the Act. According to the appellant when the Act came into force and when the notification was published he was a minor and therefore he is entitled to apply in view of Section 6 of the Limitation Act. Section 6(1) of the Limitation Act reads as follows :

"6. Legal disability :-- (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the schedule."

2. The only question to be decided in this case is whether Section 6 of the Limitation Act is applicable in a proceeding under the Act and Rules in question. A Division Bench of this Court in V.S. Joseph v. State of Kerala (1987) 1 KLT 651 took a view that Forest Tribunal under Private Forests (Vesting and Assignment) Act, 1971 cannot condone delay in filing the applications before it as Forest Tribunal is not a civil court and Section 5 of the Limitation Act is not applicable. The same decision was followed by another Division Bench of this Court in Sadasiva Saralai v. Government of Kerala (1988) 2 KLT 610. The Division Bench in the above case followed the Full Bench decision of this Court in Jokkim Fernadez Vs. Amina Kunhi Umma, wherein it was held that Rent Control Appellate Court is not a Court and therefore provisions of Limitation Act is not applicable.

3. It is seen that in the Full Bench decision of the Kerala High Court in Jokkim Fernadez Vs. Amina Kunhi Umma, was overruled by the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, in which the Supreme Court held as follows :

"..... Before parting with the discussion on this question we may also refer to one submission of Shri Nariman. He submitted that Sections 4 - 24 of the Limitation Act would apply to Civil Courts as duly constituted under the CPC and if that is so even if they are to be made applicable to suit, appeal or application governed by periods of limitation prescribed by any special or local law, they necessarily require such suit, appeal or application to be filed under special or local law before full-fledged Civil Courts as otherwise Sections 4 - 24 by themselves would not apply to them. It is difficult to agree. It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Sections 4 - 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these Sections of the Limitation Act would get telescoped into such provisions of special or local law. It amounts to a legislative shorthand. Consequently, even this contention of Shri Nariman cannot be countenanced."

The Supreme Court in the above case apart from holding that Rent Control Appellate Court can be considered as a court it was also held that Section 29(2) of the Limitation Act has got wider application. Section 29(2) of the Limitation Act reads as follows :

"29..... (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 - 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."

Therefore, it is clear that for attracting Section 29(2) there are three conditions :

(1) There must be a provision for period of limitation under any special law or local law in connection with any suit, appeal or application.

(2) 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.

(3) There should not be any express provision in the special or local law contrary to the provisions in Sections 4 - 24 of the Limitation Act.

If these three conditions are satisfied Section 4 to Section 24 will be applicable in view of Section 29(2). In this case period of limitation is provided under the special law. Time fixed for filing an application is 60 days. The above period is different from the period prescribed under the schedule to the Limitation Act and there is no provision in the special taw against application of Sections 4 - 24 of the Limitation Act or against condonation of delay. In the above circumstances, Section 29(2) is applicable to the applications filed under the Kerala Private Forests (Vesting and Assignment) Act, 1971.

4. We also note that the Full Bench decision reported in Kerala Fisheries Corporation v. P.S. John (1996) 1 Ker LT 814 also considered the above in paragraph 10 and held that the Rent Control Appellate Authority was not a persona designata but was a court and Full Bench decided that a Court need not necessarily be a Court constituted under the Code of Civil Procedure, but could even be a Court constituted under a Special enactment, even though it was held that the Collector taking action under Revenue Recovery Act is not a Court for any purpose, but only a statutory authority wherein provisions of Limitation Act are not applicable. Section 29(2) is applicable only when a period of limitation is prescribed in special laws. Supreme Court in appeal from the above judgment of the Full Bench held that even if Limitation Act is not applicable in a proceeding before Collector in Revenue Recovery Act, provisions of Revenue Recovery Act cannot be used to recover time barred debts and only legally recovered debts can be recovered by using the provisions of Revenue Recovery Act to speed up the recovery (State of Kerala and Ors Vs. V.R. Kalliyanikutty and Anr,).

5. Apex Court has recently considered the question regarding application of Section 14 of the Limitation Act in a proceeding before the Deputy Commissioner of Labour who is notified as Appellate Authority under the Shops and Establishments Act in P. Sarathy Vs. State Bank of India, . It was held that time spent before Shop Appellate Authority can be excluded for computing the period of limitation in view of Section 14 of the Limitation Act. We quote paragraphs 12 and 13 of the above judgment hereinbelow :

"12. It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any authority or tribunal having the trappings of a court would be a "court" within the meaning of this section.

13. In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, this Court, while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Co-operative Societies Act was a court. It was held that the Registrar had not merely the trappings of a Court but in many respects he was given the same powers as was given to an ordinary civil court by the CPC including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties. The Court referred to the earlier decisions in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, ; Maqbool Hussain Vs. The State of Bombay, and Brajnandan Sinha Vs. Jyoti Narain, . The Court approved the rule laid down in these cases that in order to constitute a court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

The above observations are all the more applicable to the Forest Tribunal and in Section 6 of the Limitation Act. Unlike words in Section 14(1) the word ''court'' is also absent in Section 29(2) and Section 6 of the Limitation Act and in any event it is not necessary that for application of Section 6, there must be a civil court. -

6. The question whether entire provisions of the Limitation Act is applicable in a proceeding before the Tribunal is not before us. The only question is whether in view of Section 29(2), Sections 4 - 24 of the Limitation Act is applicable or not. We also note that as early as in 1980 a Full Bench of this Court in State of Kerala and Another Vs. Ayilammal Syamala Thamburatti and Others, held that in view of Section 29(2), Sections 4 - 24 of the Limitation Act is applicable in a proceeding under the Kerala Private Forests (Vesting and Assignment) Act, 1971. This Full Bench decision was not cited before the Division Bench while deciding the cases in (1988) 2 KLT 610 (supra) and (1987) 1 KLT 651 (supra). Here, the appellant was a minor and legally disabled to file an application at the time of coming into force of the Act and at the time when notification was issued and his application cannot be dismissed only on the question of time bar in view of Section 6 of the

Limitation Act when such an application is filed before expiry of time after such disability has ceased.

7. Rule 11 of the Kerala Forest Tribunal Rules which reads as follows :

"11. Proceeding in General :-- in all proceedings before the Tribunal, the procedure prescribed as regards applications in the Code of Civil Procedure, 1908, or the rules made thereunder shall, as far as they can be made applicable, be followed, except to the extent otherwise provided in the Act or in these rules."

The provisions of the C. P. C. Is made applicable to Forest Tribunal and it has all the essential features of a Court. Jurisdiction of the Civil Court is prohibited in deciding the matter coming under the Act and quasi-judicial decision made by the Forest Tribunal on the applications filed is a judgment deciding questions affecting the rights of parties. Hence it can be seen that all conditions prescribed u/s 29(2) are satisfied for attracting the above section to applications filed u/s 8 of the Act before Forest Tribunal and hence Sections 4 - 24 of Limitation Act are applicable. In view of Section 6 of the Limitation Act, applications filed by the appellant before the Tribunal is not time barred and it has to be disposed of according to law.

8. In the above circumstances, we set aside the impugned order of the Tribunal and remand the matter for fresh consideration of the application according to law. Both parties are free to raise their contentions before the authorities concerned. In view of Section 29(2) as explained by the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, and in view of Supreme Court judgment in P. Sarathy Vs. State Bank of India, judgment of the Division Bench reported in (1987) 1 KLT 651 and in (1988) 2 KLT 610 are no longer good law.

The M. F. A. Is disposed of accordingly.

