

(2017) 08 BOM CK 0004
In the Bombay High Court
Case No : 543 of 2017

Shandesh Shaikant Kavlekar

APPELLANT

Vs

Ramchandra B. Bhakle & Ors.

RESPONDENT

Date of Decision : 07-08-2017

Acts Referred:

[Limitation Act, 1908](#), [Section 4](#), [Section 24](#), [Section 5](#), [Section 29\(2\)](#) -
[West Bengal Land Reforms Act, 1955](#), [Se](#)

Citation : (2017) 08 BOM CK 0004

Hon'ble Judges : C. V. Bhadang

Bench : SINGLE BENCH

Advocate : Myron DSouza, A. D. Bhobe, S. Bhobe, Jatin Ramaiyya

Final Decision : Dismissed

Judgement

1. Whether the provisions of section 5 of the Indian Limitation Act 1963 can be invoked in filing a Revision Application under section 201-B of the Goa Panchayat Raj Act, 1994 (Act for short) is the question which falls for determination in this petition.

2. The brief facts are that; on the basis of a complaint filed by the first respondent, about the alleged illegal construction undertaken by the petitioner, the second respondent, Village Panchayat had issued an order of demolition. The petitioner challenged the said order before the Director of Panchayats who allowed the appeal on 14/7/2016. The first respondent sought to challenge the said order in an appeal before the learned District Judge which was barred by limitation by 29 days. Hence the first respondent filed Civil Misc. Application No.241/2016 for condonation of delay, which application has been allowed by the learned District Judge by the impugned order dated 26/5/2017. Feeling aggrieved the petitioner is before this Court.

3. The sole contention raised on behalf of the petitioner is that the provisions of

section 5 of the Indian Limitation Act are not applicable to a revision under section 201-B of the Act. The learned counsel for the petitioner has raised the following contentions: (i) That sub section 2 of section 201-B of the Act provides that every revision application "shall" be filed within 30 days from the date of the order. It is thus submitted that the provision as to filing of the revision application within 30 days is mandatory and there is no provision made for condonation of delay in filing such revision.

(ii) Section 239-B of the Act which provides for limitation and court fees would not be applicable to a revision application under section 201-B of the Act, in as much as section 239-B refers to an appeal or a petition made under the provisions of the Act and not to a revision.

(iii) It is submitted that section 239-A to 239-C should be read together which would indicate that the said sections apply where an appeal or petition is filed before the officers/authorities appointed under the Act and would not apply to proceedings such as, a revision before the "Court".

(iv) Section 239-B was introduced by Amendment Act 1 of 1997, while section 201-B was introduced by the Amendment Act 8 of 2010 i.e. much after the introduction of section 239- B. It is submitted that there is no corresponding amendment to section 239-B to include a revision therein.

(v) The provisions of sub section 4 of section 201-B show that the revision application shall be decided as expeditiously as possible and within a period of three months from the date on which it is filed. Thus, reading of a provision for condonation of delay in the section would be contrary to the intention of the Legislature to have the Revision disposed of expeditiously and in a time bound manner.

(vi) That sub section 4 of section 201-B of the Act is indicative of the intention of the Legislature not to provide for condonation of delay in filing such a revision. It is submitted that the provisions of section 29(2) of the Limitation Act would not be applicable to a revision under section 201-B, in as much as the provisions of sub section 4 of section 201-B of the Act would indicate that such application stands excluded.

(vii) That the learned District Judge was in error in placing reliance on the decision of this Court in the case of Ashok G. Naik Vs. Village Panchayat at Marcaim in W.P. NO.278/2015 and others decided on 13/1/2016, in as much as the specific issue about the applicability of section 5 of the Limitation Act was neither raised nor addressed to in the said decision. It is submitted that a judgment is an authority only for what it actually decides.

4. On behalf of the petitioner reliance is placed on the following decision of the Supreme Court : (i) Sultana Begum Vs. Prem Chand Jain (1997) 1 SCC 373.

(ii) Dr. J. J. Merchant and others Vs. Shrinath Chaturvedi (2002) 6 SCC 635.

(iii) Gopal Sadar Vs. Karuna Sadar (2004) 4 SCC 252.

(iv) National Insurance Co., Ltd. Vs. Anajana Shyam and others (2007) 7 SCC 445.

(v) Mohan Singh and others Vs. International Airport Authority of India and Others (1997) 9 SCC 132.

(vi) New India Assurance Company Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. 2015 (16) SCC 20.

5. Per contra, it is submitted by Shri Bhohe the learned counsel for the respondent no.1 that under section 2(b) of the Limitation Act an "application" includes a "petition". It is submitted that a "petition" is not defined in the Act and thus taking recourse to section 2(b) of the Limitation Act an application would include a petition and vice versa. It is submitted that as section 239-B speaks about an appeal or a petition (which would include a revision application), the Legislature had not thought it fit to amend section 239-B to specifically include a revision therein. It is submitted that there is nothing in the Panchayat Raj Act, as such, to exclude the applicability of the Limitation Act. It is submitted that on a conjoint reading of section 2(b) and Section 29(2) of the Limitation Act with section 239-B of the Act, the conclusion is inescapable that the provisions as to condonation of delay cannot stand excluded in the matter of filing of a revision under section 201-B of the Act. The learned counsel has placed reliance on the decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others (1978) (2) SCC 213. in which the Supreme Court has quoted with the approval the observations of Lord Denning in Seaford Court Estates Ltd. Vs. Asher; 1949 (2) K.B. 481 that although a Judge must not alter the material of which the act is woven, but in an appropriate case, he can and should "iron out the creases". It is submitted that if at all there is any incongruity, it is only in the nature of some "creases" which this Court should iron out.

6. I have given my anxious consideration to the submissions made. It would be worthwhile to reproduce the relevant sections of the Act in the context of which the question has to be decided. Sections 239-A to 239 -C were introduced in the year 1997 and they read thus : 239-A. Powers of officers.-

The Officers appointed under this Act, viz, the Director, the Chief Executive Officer, the Deputy Director and the Block Development Officer, shall have the same powers in making inquiries under this Act and the rules framed thereunder as are vested in courts in respect of the following matter under the Code of Civil Procedure, 1908, in trying any petition or appeal, namely:-

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling the production of documents;

(d) awarding costs.

239-B. Limitation and Court fees.-

(1) Every appeal or petition made under the provisions of this Act or the rules made thereunder shall be filed within the limitation period provided therein and the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 (Central Act 36 of 1963), shall apply to the filing of such appeal or petition. (2) Notwithstanding anything contained in the Court Fees Act, 1870 (Central Act 7 of 1870), every appeal or petition made under this Act to the Officers appointed under this Act shall bear a court fee stamp of such value as may be prescribed.

239-C. Procedure.-

(1) Subject to the other specific provisions in this behalf, the procedure to be followed by the Officer in all inquiries, appeals and proceedings under this Act and the rules framed thereunder shall be such as may be prescribed. 98 Section 239-A to 239-C inserted by the Amendment Act 1 of 1997. Manual of Goa Laws (Vol. III) -622- Panchayat Raj Act & Rules (2) Every decision or order passed under this Act shall be recorded in the form of an order which shall state the reasons thereof.

(3) All inquiries and proceedings before the Officers shall be deemed to be judicial proceedings within the meaning of section 193, 219 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).]

7. A provision, for revision to the District Court against "any order passed by any authority under the Act" was introduced vide section 201-B in the year 2010. The section reads thus : 201B. Revision.-

(1) Save as otherwise provided in this Act, a revision shall lie against any order passed by any authority under this Act to the District Court within whose jurisdiction the subject matter of the dispute lies.

(2) Every revision application shall be filed within thirty days from the date of the order.

(3) The decision of the District Court shall be final and binding on the parties to the revision.

(4) Every such revision shall be decided as expeditiously as possible and endeavour shall be made to decide the same within a period of three months from the date on which it is filed.

8. Admittedly, the word "petition" is not defined under the Act and therefore, a recourse to the definition of "petition" can justifiably be made to section 2 (b) of the Limitation Act, which says that an application includes a petition. It can thus be seen that the terms "application" and "petition" are usually used interchangeably. For instance, a revision is usually called a "revision petition" or

a "revision application". Section 201 does not refer to either of the expression, namely, an application or petition. Section 201-B simply provides that a "revision" shall lie against any order passed by any authority under the Act to the District Court. It is evident that a revision can be preferred by making an application or a petition to the District Court. Nothing much turns on the nomenclature used, as long as the substance of the challenge is in the nature of a revision. Be that as it may, let us now deal with the submissions made on behalf of the petitioner.

9. It is true that under sub section 2 of section 201-B, the revision has to be filed within 30 days from the date of the order and there is no specific provision made in section 201-B for condonation of delay in filing such revision. However, that alone may not be decisive to hold that the provisions for condonation of delay are not applicable while filing a revision under sub section 2 of section 201-B of the Act. Sub section 2 of section 201-B of the Act merely prescribes the period of limitation for filing such revision. The use of the word "shall" therein in my considered view is not sufficient to hold that it excludes the provisions as to condonation of delay.

10. In this regard a useful reference may be made to section 201-A of the Act, which was also introduced by amendment Act 1/1997 along with section 239-B. Section 201-A provides that an appeal in Miscellaneous matters dealt by the panchayat "shall" lie to the Block Development Officer within a period of 30 days from the date of refusal of any request by the said authority. Notwithstanding the use of the word "shall" in section 201-A, section 239-B would show that the provisions of section 5 of the Limitation Act would apply to an appeal under section 201-A. Thus merely because sub section 2 of section 201-B employs the word "shall" cannot per se be construed as excluding the provisions as to condonation of delay.

11. Reliance is placed on sub section 4 of section 201-B in order to submit that as the revision is to be decided within a period of three months, reading of provisions of condonation of delay would be contrary to the intention of the Legislature to have the revision decided in a time bound manner. Reliance in this regard is placed on the decision of the Supreme Court in the case of Dr. J. J. Merchant and others and in the case of New Assurance Insurance company Ltd. (supra). In my considered view the submission is misplaced. The question which fell for consideration of the Supreme Court in the case of Dr. J. J. Merchant and others was whether the provisions of section 13 (1) (a) of the Consumer Protection Act are mandatory in nature. Under section 13 (1) (a) of the Consumer Protection Act, the opposite party is required to file "his version of the case" within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum. The question was whether the District Forum can extend the period for filing the written statement/ reply beyond 15 days. The Supreme Court held that the provisions were mandatory and the written statement or his "version of the case" has to be filed within the time as

stipulated and if this is not adhered to, the Legislative mandate of disposing of the case within 3 to 5 months would be defeated. In a later decision in the case of New India Assurance Company Ltd. Company Ltd., (supra) the judgment in the case of Dr. J.J. Merchant has been concurred with. The judgment in the case of Dr. J.J. Merchant cannot come to the aid of the petitioner for more reasons than one. The provisions where under the defendant/opposite party is required to file his written statement and/or reply within a fixed period, cannot be compared with the provisions where the Legislature provides for an appeal or revision to be decided by the Court in a time bound manner. For instance, if under the Consumer Protection Act, the opposite party is precluded from filing "his version of the case", beyond 45 days, a Court may not be deprived of the jurisdiction to decide the appeal or petition beyond the period within which, the act mandates that it should be decided. In other words, it cannot be said that if such a revision under section 201-B is not decided within three months, (for some substantial and justifiable reasons), the Court would lack jurisdiction to decide the same beyond the said period. For this reason, no comparison can arise between a provision akin to section 13 (1) (a) of the Consumer Protection Act and sub section 4 of section 201-B. Secondly, a bare perusal of sub section 4 of section 201-B would show that it is not couched in a peremptory or mandatory language, notwithstanding the use of the word "shall". If carefully read, all that sub section 4 of section 201-B provides is that such revision "shall" be decided as expeditiously as possible and then goes on to say that "an endeavour shall be made to decide the same within a period of three months from the date on which it is filed". For this reason also no comparison can arise between the provisions of sub section 4 of section 201-B and the provisions akin to section 13 (1) (b) of the Consumer Protection Act. Thus it is not possible to accept that because the Court is required to "make an endeavour", to decide the revision application within a period of three months, would mean that the provisions as to condonation of delay would stand excluded.

12. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of National Insurance Co. Ltd. (supra) in order to submit that to ascertain the true meaning of a clause under a statute the Court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. The learned counsel points out that the Supreme Court has observed that this approach has been accepted in innumerable cases. There cannot be any dispute with the proposition as canvassed on behalf of the petitioner.

13. In the case of National Insurance Company Ltd., a vehicle having carrying capacity of 42 passengers apart from one driver and one conductor was found to be carrying 90 passengers when it met with an accident resulting into death of 26 passengers and injury to 63 persons. The question was whether the expression "any passenger" has to be understood as passengers authorized to be carried into the vehicle and "use of the vehicle" as "permitted use of the vehicle". The question was answered in the affirmative holding that it was not

possible to accept that the insurance of the vehicle can be taken to cover more passengers than permitted by the certificate of registration and the stage carriage permit. It can thus be seen that the case of National Insurance Company Ltd. arose under facts which are clearly distinguishable.

14. Coming back to the present case, the contention is that section 239-A to C have to be read together. It is submitted that the section 239-A pertains to the powers of officers appointed under the Act, while, section 239-C refers to the procedure to be followed by the officers in all inquiries appeals and proceedings under the Act and the rules framed thereunder. The contention is that these sections would indicate that section 239-B providing for limitation and court fees would pertain to appeals or petitions to the officers and the authorities constituted under the Act and not to a Court in as much as, the revision under section 201-B lies to the District Court. The contention in my considered view cannot be accepted only because section 239-A to C were introduced by the amendment in the 1997. It would not be sufficient to hold that section 239-A and 239-C can be used or would control the provisions of section 239-B of the Act. It is significant to note that although section 239-A of the Act refers to the powers of the officers "appointed under the Act", section 239-C prescribes the procedure to be followed by the officers, in "all inquires, appeals and proceedings under the Act and the rules framed thereunder". Section 239-B also does not specifically refer to appeals or petitions filed before the officers/authorities constituted under the Act. It is true that at the time when section 239-A to C were introduced in the year 1997, there was no revision provided to the District Court which was introduced in the year 2010. Thus there was no occasion for the Legislature to make a distinction between appeals and petitions filed before the officers and authorities constituted under the Act or otherwise. However, the moot question is whether the petition, as referred to in section 239-B of the Act would include a revision under section 201-B of the Act. As noticed earlier, the words "petition" and "application" are more often than not have been used interchangeably. Although section 201-B provides for a "revision to be filed" it has to be in a nature of an application or petition to the District Court. It is for this reason that the Legislature might not have thought it fit to correspondingly amend section 239-B of the Act to specifically mention about a revision therein. It is trite that various statutory provisions in an Act have to be read harmoniously and to avoid any conflict and to ensure that none of them is rendered otiose. Thus, in my considered view the submission on behalf of the petitioner cannot be accepted.

15. This takes me to the contention that reading of a provision for condonation of delay in section 201-B of the Act would be contrary to the intention of the Legislature to have the revision application disposed of expeditiously and in a time bound manner. The contention in my considered view cannot be accepted. As noticed earlier, all that sub section 4 of section 201-B of the Act provides is that such revision "shall" be decided as expeditiously as possible and an "endeavour shall be made" to decide it within a period of three months from the date of filing. I have already noticed that a careful reading of sub section 4 of

section 201-B of the Act does not show that the later part about the revision being disposed within a period of three months is not couched in a language which can be considered as paremtory or mandatory in nature. Such provisions are found in several enactments with the salutary object of deciding the dispute expeditiously. By themselves such provisions would not be indicative of the Legislative intention to exclude the provisions as to condonation of delay.

16. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of Mohan Singh and others and in particular para 26 of the judgment which reads thus : "Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word "shall", though prima facie gives impression of being mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature ad design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the Court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provided for any contingency for non-compliance; if the word "shall" is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directly. If an object to the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice."

17. The contention is that reading of provisions for condonation of delay in filing a revision under section 201-B of the Act would defeat the object of deciding the revision application expeditiously. In the case of Mohan Singh and others (supra) the question was whether compliance with the three steps under section 4 (1) of the Land Acquisition Act is mandatory while exercising the power of eminent domain under section 4(1), when the appropriate Government exercises the power under sub -section (4) of section 17 of the Land Acquisition Act dispensing with the inquiry under section 5-A of the said Act. It has inter alia been held that the although the word "shall" gives the impression that it is mandatory, it requires to be considered in the light of the intention of the Legislature by careful attending to the scope of the statute, its nature, design and the consequence that would flow from construction, one way or the other. It can thus be seen that the question whether the word "shall" as used has to be construed as mandatory or otherwise depends upon fact and circumstances of each case. I have already noticed that sub-section 4 of section 201-B of the Act, read as a whole, does not

indicate that it excludes the provisions for condonation of delay.

18. We may now turn to section 29(2) of the Limitation Act which reads thus:
(1)

(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."

19. It can thus be seen that under sub section 2 of section 29 of the Limitation Act where any special or local law prescribes the period of limitation different from the period prescribed by the schedule under the Limitation Act, the provisions of section 3 shall apply, as if such period, was the period prescribed by the schedule. For the purposes of deciding any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in section 4 to 24 (both inclusive) shall apply, "if they are not expressly excluded by such special or local law". It is not in dispute that the Goa Panchayat Raj Act would, both be a special and a local law. It has prescribed a limitation of 30 days in filing revision. Thus by virtue of section 29 (2) of the Limitation Act, the provisions of section 4 to 24 of the Limitation Act would be applicable, if we were to find that they are not expressly excluded by the Goa Panchayat Raj Act.

20. The learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of Gopal Sadar (supra) in order to submit that the words "expressly excluded" as used in section 29(2) of the Limitation Act, do not mean, that there must be an express exclusion by reference, (in the special or local law) to the specific provisions of the Limitation Act, the operation of which is sought to be excluded. In other words it is submitted that in a given case, it may be an implied exclusion or exclusion by necessary implication. The case of Gopal Sardar arose in the context of West Bengal Land Reforms Act 1955 under which an application could be made to the Munsil Court claiming right of preemption on the basis of vicinage being the owner of adjoining plots of land. The question precisely was whether the provisions as to condonation of delay can apply to an application under section 8 of the West Bengal Land Reforms Act 1955. Section 8 of the said Act prescribes a specific period of limitation for initiation of the proceedings for enforcement of the right of preemption by different categories of people with no provision for extension of such period under section 5 of the Limitation Act. The Supreme Court in the context of the provisions of the said Act found that there was a conscious and intentional omission by the Legislature to exclude the application of section 5 of the Limitation Act to the proceedings under section 8 of the West Bengal Land

Reforms Act, 1955 looking to the nature of the right of preemption. The Supreme Court referred to its earlier decision in the case of H. N. Yadav Vs. L. N. Mishra, in which it was held thus: " In H.N. Yadav Vs. L. N. Mishra, this Court held that the words "expressly excluded" occurring in section 29(2) of the Limitation Act do not mean that there must necessarily be express reference in the special or local law to the specific provisions of the Limitation Act, the operation of which is sought to be excluded. It was held that if on an examination of the relevant provisions of the Special Act, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefit conferred by the Limitation Act cannot be called in aid to supplement the provisions of the Special Act."

21. It would be significant to note that the Supreme Court held that Section 5 of the Limitation Act cannot be pressed into service while entertaining an application of the West Bengal Act looking to the nature of the right of preemption. The following observations in para 11 are apposite: "We conclude that Section 5 of the limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of pre-emption conferred under Section 8 is a statutory right besides being weak, it has to be exercised strictly in terms of the said Section and consideration of equity has no place. On the facts found in these appeals, application under Section 8 were not made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal." (emphasis supplied)

It can thus be seen that provisions of section 5 of the Limitation Act were held to be excluded, looking to the nature of the right of preemption which was considered to be a weak right.

22. It can thus clearly be seen that the question whether the provisions of section 4 to 24 of the Limitation Act are expressly excluded or not would again depend upon the object, scheme and nature of a particular enactment and the right sought to be enforced. It is true that, as held by the Supreme Court the "express exclusion" as envisaged under section 29(2) of the Act may not be in specific words and in a given case can be gathered from the reading of the Act as a whole. However, that gain would depend upon the object, the scheme and the nature of the individual Act. The scheme of the Goa Village Panchayat Act as a whole and the provisions of section 201-B of the said Act in my considered view do not show that the provisions of section 4 to 24 of the Limitation Act are either expressly or implicitly excluded within the meaning of section 29(2) of the Limitation Act. For this reason also I find that on taking recourse to section 29(2) of the Act, it will have to be held that the provisions of section 5 of the Limitation Act would apply to the revision application.

23. The learned counsel for the petitioner has relied upon the decision of the

Supreme Court in the case of Sultana Begum Vs. Prem Chand Jain (supra), in order to submit that if there is a clash between two sections of the same statute which appear to be inconsistent or repugnant, the Court will have to adopt a rule of interpretation and to make an effort to so as to interpret such provisions harmoniously so that the purpose of the Act may be given effect to and both the provisions made be allowed to operate without rendering either of them otiose. The proposition as canvassed cannot be disputed. However, the same is not attracted in this case. There is no crash or repugnancy pointed out between the two provisions of the Goa Panchayat Raj Act. The contention that sub section 4 of section 201-B of the Act indicates that the provisions as to condonation of delay are excluded has already been rejected. Thus the judgment in the case of Sultana Begum in my considered view cannot come to the aid of the petitioner.

24. In so far as the reliance placed before the learned trial court on the decision of this Court in the case of Ashok Naik, (supra), it is true that a specific issue about the applicability of section 5 of the Limitation Act was not raised and as such there was no occasion for this Court to go into the said question. Be that as it may, after considering the specific contentions raised, I find that the provisions of section 5 of the Limitation Act would be applicable to a revision application under section 201-B of the Goa Panchayat Raj Act.

25. This takes me to the merits of the application for condonation of delay. In fact as noticed earlier, the only contention raised was on the law point as to applicability of the provisions of section 5 of the Limitation Act to the Revision application under section 201-B of the Limitation Act. Be that as it may looking to the quantum of delay of 29 days and for the reasons mentioned in the application, I find that the trial court was justified in condoning the delay. The impugned order does not show any infirmity so as to require interference in exercise of the jurisdiction under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed.