

(1998) 09 KAR CK 0026

In the Karnataka High Court

Case No : Civil Revision Petition No. 956 of 1998

The Land Acquisition Officer

APPELLANT

Vs

Mallappa and Others

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (1), 18 (3) (b)
Limitation Act, 1963 — Section 5

Citation : (1999) 2 KarLJ 521

Hon'ble Judges : K.H.N. Kuranga, J

Bench : Single Bench

Advocate : Sri M. Narayanappa, High Court Government Pleader, for the Appellant; Sri Veeresh B. Patil, for the Respondent

Judgement

1. Heard the learned High Court Government Pleader.
2. The contention of the petitioner-State, in this petition, is that Section 5 of the Limitation Act is not applicable to the application filed u/s 18(3)(b) of the Land Acquisition Act (hereinafter referred to as the "Act").
3. The Supreme Court in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, , has held.--
"The Collector/LAO is not a Court when he acts as a statutory authority u/s 18(1) of the Land Acquisition Act. Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18".
4. In other words, according to the Supreme Court, if it is a Court, Section 5 of the Limitation Act is applicable.
5. The Supreme Court in the case of The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, , has held that the application by the claimant to Court for direction to the Deputy Commissioner for making

reference should be made within three years from the date of expiry of 90 days as provided under Article 137 of the Limitation Act.

6. The Supreme Court has observed thus.--

"There is no period of limitation prescribed in sub-section (3)(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted".

7. If Article 137 of the Schedule to the Limitation Act gets attracted to the application filed u/s 18(3)(b) of the Act, in my opinion, Section 5 of the Limitation Act equally gets attracted.

8. In the present case, the application u/s 18(3)(b) of the Act was filed before the learned Civil Judge, Yadgir requesting him to direct the Land Acquisition Officer, Narayanpur to make a reference. The learned Civil Judge rejected the said application on the ground that he has no jurisdiction to consider and condoned the delay in filing the application u/s 18(3)(b) of the Act. The learned First Additional District Judge, Gulbarga, set aside the order of the Civil Judge and directed him to dispose of the application filed u/s 5 of the Limitation Act.

9. Since the application u/s 18(3)(b) of the Act was filed before the learned Civil Judge, Yadgir and the Civil Judge Court is a Court, Section 5 of the Limitation Act is applicable to the application filed u/s 18(3)(b) of the Act. Hence, the contention of the petitioner-State that Section 5 of the Limitation Act is not applicable to the application filed u/s 18(3)(b) of the Act cannot be accepted.

10. The impugned order passed by the First Additional District Judge, Gulbarga is just and proper and it is not a fit case for admission and the petition is liable to be dismissed and accordingly, it is dismissed.