

(2001) 07 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 91 of 1999

The Special Land Acquisition Officer, Upper Krishna Project,
Almatti

APPELLANT

Vs

Lalasa Husensa Choudhari

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 5

Citation : (2002) ILR (Kar) 1288 : (2002) 3 KarLJ 427 : (2001) 4 KCCR 2317

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Shivaswamy, High Court Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—Delay of 785 days in filing the revision is condoned.

2. The petitioner-Special Land Acquisition Officer has challenged in this revision petition the order passed by the Reference Court condoning the delay in filing the application u/s 18(3)(b) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The only ground urged in this revision petition challenging the impugned order is that Section 5 of the Limitation Act has no application to an application u/s 18(3)(b), Elaborating the said contention it is submitted by the learned Government Advocate that the judgment of this Court in the case of Assistant Commissioner Vs. Bhima Shiddappa Naik, . is no more a good law in view of the judgment of the Supreme Court in the case of The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, . and therefore he submits the impugned order passed by the Trial Court is liable to be set aside.

3. It is not in dispute no period is prescribed under the Act for filing an application u/s 18(3)(b) of the Act. It is now well-settled that Article 137 of the Schedule to the Limitation Act applies to an application u/s 18(3)(b) of the Act which provides the period of limitation in respect of an application not provided

elsewhere. Therefore, three years is the period prescribed under Article 137 of the Schedule to the Limitation Act and therefore three years is the period prescribed for an application u/s 18(3)(b) of the Act. The question is whether Section 5 of the Limitation Act is applicable if such an application is not filed within three years. A Division Bench of this Court in Assistant Commissioner's case, supra, has considered the said question and has held as under.--

"The only question that remains for determination is as to the power of the Court to condone the delay in filing of the application u/s 18(3)(b) of the Act. Along with their application seeking direction for reference, the claimants had tiled an application u/s 5 of the Limitation Act for condonation of delay, which was allowed by the Reference Court. It is well-settled that Article 137 of the Schedule to the Limitation Act applies to an application u/s 18(3)(b) of the Act which provides period of limitation in respect of an application, not provided elsewhere. If that is so, the provisions of Section 5 of the Limitation Act are clearly applicable vesting the Court with the jurisdiction to consider and condone any delay in filing the application".

4. In view of the aforesaid judgment of this Court, I have no hesitation in holding that Section 5 of the Limitation Act is attracted to the facts of this case. However, it was contended by the learned Government Advocate that in view of the judgment of the Supreme Court in the case of Additional Special Land Acquisition Officer, Bangalore v. Thakoredas and Ors 1996 Lab.Ic. 337. the aforesaid judgment is no more a good law. Therefore, it is necessary to have a look at the aforesaid judgment. The Supreme Court while dealing with the question of the period stipulated for making an application u/s 18(3)(b) has laid down as under.--

"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. Thus, it could be seen that in the absence of any special period of limitation prescribed by Clause (b) of subsection (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e., the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation".

5. Therefore, in the aforesaid judgment of the Supreme Court no application u/s 5 of the Limitation Act was made to condone the delay in filing the application u/s 18(3)(b). In that view of the matter the Supreme Court said that the application is barred by time. There is no inconsistency between the said judgment of the Supreme Court and the law laid down by the aforesaid Division Bench. Therefore, I do not find any substance in the contention that in view of the Supreme Court judgment the law declared by this Court earlier is no more a good law.

6. Therefore, it is clear that in the absence of a specific provision providing for limitation in the Act to file an application u/s 18(3)(b) of the Act, the residuary Article 137 of the Schedule to the Limitation Act gets attracted. In the said Article 3 years is the period prescribed for making an application when no period of limitation is provided elsewhere from the day when the right to apply accrues. If no application is filed within three years from the date of expiry of 90 days from the date of making an application to the Deputy Commissioner requesting for making a reference, then it is open to the party to invoke the aid of Section 5 of the Limitation Act seeking the Court to condone the delay in making such application within the aforesaid period prescribed.

7. In the instant case, the Reference Court has exercised its powers u/s 5 of the Limitation Act in condoning the delay in filing the application u/s 18(3)(b) of the act and on such delay being condoned has entertained the application u/s 18(3)(b) of the Act. The learned Trial Judge on an appreciation of the oral and documentary evidence adduced on record in exercise of his judicial discretion has condoned the delay in filing the application which finding is based on evidence. Therefore, the said order does not call for any interference.

8. Under those circumstances, I do not find any merit in any of the contentions urged by the petitioner and no case for interference is made out. Accordingly, I pass the following order:

Civil revision petition is dismissed.