

(1974) 02 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. No. 572 of 1973

Vishnu Vazhunnavar

APPELLANT

Vs

State of Kerala And Another

RESPONDENT

Date of Decision : 06-02-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 417(3), 417(4)
Kerala Land Reforms Act, 1963 — Section 108, 6(1), 65, 65(1), 72

Citation : (1974) 02 KL CK 0005

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : L. Gopalakrishnan Poti, for the Appellant;

Final Decision : Allowed

Judgement

Justice M.U. Isaac

1. The petitioner is the managing trustee of a religious institution who applied to the second respondent, the Land Board, Trivandrum under S.65 (1) of the Kerala Land Reforms Act, 1963 for payment of an annuity in perpetuity by the Government in consideration of the right, title and interest of the institution which the trustee opted to vest in the Government. There is a proviso to sub-section (1) of S.65 which provides that no such application shall be entertained by the Land Board on or after the date notified by the Government under S.72. The date notified by the Government under that Section is 3112 1971. The petitioner's application was filed admittedly after the above date. He Invoked the provision of S.108 of the Kerala Land Reforms Act to condone the delay. That Section reads:

Unless otherwise specifically provided in this Act, the provisions of S.5 of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act.

S. 5 of the Limitation Act provides that any appeal or any application other than an application under any of the provisions of 0.21 of the Civil Procedure Code,

1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The second respondent held that there was no provision in the Kerala Land Reforms Act to condone the delay in the case of an application under S.65 (1) of the Act; and it summarily rejected the petitioner's application on that ground. This petition has been filed to revise the said order of the second respondent.

At first I had a doubt whether the proviso to S.65 (1) of the Kerala Land Reforms Act enacts a period of limitation or it is a provision which bars the jurisdiction of the Land Board to entertain an application after the notified date. There is a decision of the Supreme Court in *Lala Ram Vs. Hari Ram*, which has dealt with a similar question on the interpretation of sub-section (4) of S. 41T of the Criminal Procedure Code. That sub-section reads:

No application under Sub-s. (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

The proviso to S.65 (1) of the Kerala Land Reforms Act, 1963 and S.417 (4) of the Criminal Procedure Code, though not in the same language, contain substantially similar provisions. Dealing with the contention whether S.417 (4) of the Criminal Procedure Code enacts a period of limitation or a bar to the jurisdiction of the Court, the Supreme Court held that it was a provision prescribing a period of limitation, and that S.5 of the Limitation Act would apply to an application made under S.417 (3) of the Criminal Procedure Code after the period prescribed under sub-s. (4). The same principle should apply to the interpretation of the proviso to S.65 (1) of the Kerala Land Reforms Act; and I hold that it enacts only a period of limitation.

2. The same result would be reached on a true construction of S.108 of the Kerala Land Reforms Act, which states that S.5 of the Limitation Act would apply to a proceeding under the Kerala Land Reforms Act "unless specifically provided in this Act". That means there must be an express provision in the Kerala Land Reforms Act that S.5 of the Limitation Act shall not apply to the proceeding concerned under the Kerala Land Reforms Act. There is no such provision in this Act. The proviso to S.65(1) of this Act cannot possibly yield to such a construction. It follows that S.108 of the Act applies to the case.

3. The learned Government Pleader advanced an argument that S.108 of the Kerala Land Reforms Act would apply only to a pending proceeding, or to a proceeding newly arising out of a concluded proceeding. The argument is too far fetched. The language of the Section does not, in my opinion, give any support to that contention. For the reasons stated above, I allow the revision petition, set aside the order of the Land Board and remit the case to that authority to consider whether there was sufficient cause to make the application after the date mentioned in the proviso to S.65(1) of the Kerala Land Reforms Act, and if

there was, to entertain the application and dispose of the same according to law.
There will be no order as to costs.