Karnataka High Court Nadubeedi Ramaiah Reddy ... vs Special Land Acquisition Officer on 31 August, 1999 Equivalent citations: ILR 1999 KAR 4564, 2000 (6) KarLJ 122 Author: A S Reddy Bench: A S Reddy ORDER A.V. Srinivasa Reddy, J. 1. In this batch of petitions, the petitioners who are the landowners have assailed the order of the Trial Court dated 23-11-1998 passed on the applications filed under Section 5 of the Limitation Act ('the Act' for short) in LAC No. 263 of 1989 connected with LAC Nos. 275, 276, 294 and 269 of 1989 dismissing the applications filed under Section 5 of the Act as not maintainable. 2. Since common questions of fact and law arise in all these revision petitions they are clubbed and disposed of by this common order with the consent of learned Counsel for parties. 3. The undisputed facts for purpose of disposal of these petitions are that the petitioners are claimants in LAC cases referred to supra before the II Additional City Civil Judge, Bangalore (CCH No. 17). Certain extent of their lands was admittedly acquired for the formation of Byrasandra, Tavarekere and Madiwala Layout. The respondent-Land Acquisition Officer in all cases ('LAO' for short) passed an award under Section 11 of the Land Acquisition Act. The award notice as contemplated under Section 12(2) of the Land Acquisition Act have admittedly been served on the petitioners on 9-6-1982. Applications under Section 18(1) of the Land Acquisition Act have also been filed by the petitioners on 2-8-1982 before the LAO seeking reference to the Civil Court for purposes of enhancement of compensation. Therefore, the applications seeking reference to the Civil Court were filed within the prescribed time. It is the case of petitioners that the LAO whenever he was approached had promised to make a reference to the Civil Court for enhancement of the compensation. Therefore, they have been prevented from making necessary applications seeking a reference under Section 18(3)(b) of the Land Acquisition Act within the period of three years 90 days. It is admitted that the petitioners have filed application under Section 18(3)(b) of the Land Acquisition Act before the Court of the II Additional City Civil Judge, Bangalore on 18-7-1989 i.e., 6 years 11 months after filing the applications under Section 18(1) of the Land Acquisition Act. 4. The respondents have taken up the contention that the applications under Section 18(3)(b) should have been filed by the petitioners within three years 90 days from the date of receipt of applications under Section 18(1) of the Land Acquisition Act by the LAO. Therefore, the applications are barred by limitation. It transpires that the petitioners have made applications under Section 5 of the Act on 22-6-1998 praying the Court to condone the delay in filing the petitions. The said applications were resisted by the respondent inter alia contending that the applications are not maintainable. 5. By the impugned order dated 23-11-1998 the Trial Court has dismissed the applications holding that the applications are not maintainable. 6. The petitioners have challenged this order in all these revision petitions. 7. There is no dispute regarding the dates of the service of award notice, filing of application under Section 18(1) and 18(3)(b) of the Land Acquisition Act and Section 5 of the Act. The learned Counsel appearing for the petitioners in all these petitions have vehemently contended that the impugned order of the Trial Court in dismissing the applications as not maintainable is without

jurisdiction and the same is erroneous and unsustainable in law. He, further contended that Section 5 of the Limitation Act does not prohibit a party from making an application at any time if the party satisfies the Court that he had sufficient cause for not making the application within the period prescribed or that he was prevented from making the application. Section 5 of the Limitation Act reads as follows: "5. Extension of prescribed period in certain cases.–Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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. Explanation.–The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section". On reading Section 5 of the Act, an aggrieved party is entitled to make an application after the prescribed period, if he satisfies the Court that he had sufficient cause for not filing the application within the prescribed period. In the above cases also the petitioners have filed the applications on 22-6-1998 seeking to condone the delay in filing the application under Section 18(3)(b) filed on 19-7-1989. The reasons assigned in support of the applications for condonation of delay among others, are that due to the assurances given by the LAO stating that references will be made to the Civil Court, the petitioners were prevented from filing the reference applications in time. 8. Per contra, the respondents have contended that the application for condonation of delay were filed to get over the lacuna of limitation and, therefore, the applications are not maintainable either in law or on facts. Further, it was contended that even if Section 5 of the Act is applicable, the same cannot be made applicable after filing the petitions under Section 18(3)(b) of the Land Acquisition Act. 9. On the above contentions the Trial Court has held that the applications are not maintainable. 10. I have heard the learned Counsel for the petitioners as well as the respondent. 11. The question that arises for my consideration is; Whether the order of the Trial Court dismissing the applications filed under Section 5 of the Act as not maintainable is legal and valid? 12. Learned Counsel for the petitioners would submit relying on the decision in Assistant Commissioner and Others v Bhima Shiddappa Naik and Others, for the proposition that the provisions of Section 5 of the Act are applicable vesting the Court with the jurisdiction to consider and condone any delay in filing the application. The relevant portion is extracted: "It is well-settled that Article 137 of the Schedule to the Limitation Act applies to an application under Section 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". (emphasis supplied) But the Trial Court has erroneously held that the principles laid down in the said decision are distinguishable in that the application under Section 5 of the Act had been filed along with the petition under Section 18(3)(b) of the Limitation Act. Whereas in the present cases the applications have not been filed along

with the applications under Section 18(3)(b) of the Land Acquisition Act. 13. Therefore, the question for consideration is whether the application filed under Section 5 of the Limitation Act subsequent to the filing of the application under Section 18(3)(b) of the Land Acquisition Act merits consideration or not? 14. Learned Counsel for the petitioners further contended that Section 5 of the Act does not contemplate that the application for condonation of delay should be filed along with the main application filed under Section 18(3)(b) of the Land Acquisition Act. In other words an application for condonation of delay under Section 5 of the Limitation Act can be filed subsequently also. He relied on the principle enunciated by the Full Bench of this Court in Hanamappa and Others v Special Land Acquisition Officer, U.K.P., Narayanpur, wherein it has been held that the Deputy Commissioner is entitled to make a reference to the Civil Court beyond three years and 90 days from the date of application for reference. In the said case, the Court was considering the question as to whether the reference made by the Deputy Commissioner to the Civil Court beyond three years and 90 days is barred or not. After considering various decisions of this Court as well as Apex Court, it was held that the reference made by the Deputy Commissioner to the Civil Court beyond three years and 90 days from the date of application for reference is not barred by limitation. On the same anology, it is contended that the Court should be liberal in condoning the delay if an application is filed to refer the matter to Civil Court after the prescribed time. 15. As already stated supra, there is nothing in the Act which expressly excludes the applicability of Section 5 of the Act. The rules of the limitation should not be given a strained interpretation which would work hardship on the affected persons. Even if a stricter view is taken 'ex debito justitiae' the delay can be excused under Section 5 of the Act. That could have been done only on considering the reasons given by the petitioners as to whether the petitioners were prevented from filing their applications within the statutory period. The Apex Court while considering the question of condonation of delay has held in Owners and Parties interested in M.V. "Vali Pero" v Fernandeo Lopez and Others, that the rules of procedure are not themselves an end but they are means to achieve ends of justice; "Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed

to it in our legal system". Further, in the case of Collector, Land Acquisition, Anantnag v Mst. Katiji, the Supreme Court while laying down what should be the approach of the Court while considering an application for condonation of delay, held: "(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late. (2) Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeating. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. (3)"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay. The doctrine must be applied in a rational common sense pragmatic manner. (4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserved to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. (5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides, a litigant does not stand to benefit by resorting to delay. In fact he run a serious risk. (6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expect to do so". (emphasis supplied) The Full Bench of this Court in Hanamappa's case, supra, has, already stated, held that the Deputy Commissioner can make a reference even beyond the period prescribed. When that being principles laid down by the Full Bench of this Court, the Trial Court ought to have considered the application filed by the petitioners for condonation of delay on merits having regard to be object of the Act. The petitioners before the Court are the persons who have lost their lands of small extent. The principles enunciated in Special Land Acquisition Officer v Gurappa Channabasappa Paramaj, relied on by the Trial Court has been overruled by the Full Bench of this Court. Insofar as the Special Land Acquisition Officer v Dattatraya Nagesh Wader, is concerned, the Division Bench of this Court has held that an application has to be made within 90 days from the day of service of the award and the power of the LAO to refer ends on the date on which the claimant's right ends. But the facts in the present cases are entirely different. This decision has no bearing to the facts of the case. The Full Bench also considered the decision in Additional Special Land Acquisition Officer v Thakoredas, wherein the Apex Court has taken the view that the application filed seeking reference under Section 18(3)(b) of the Act after the period of limitation prescribed i.e., three years and 90 days as barred by limitation. But in this case though the application was filed after the period prescribed, the petitioners have filed necessary application under Section 5 of the Act for condonation of delay. Therefore, it is not as though there was no application for condonation of delay. Section 5 of the Limitation Act itself does not say that the application must be filed along with the main petition. Therefore, in my view, the order of the Trial Court holding that the application for condonation of delay is not maintainable is untenable. 16. In Special Land Acquisition Officer v Tukkareddy, this Court has held that the authority to whom application under Section 18(1) of the Land Acquisition Act is made

must intimate to the applicant the date on which reference has been made to the Court as such an obligation has to be read into section on the part of the concerned authority, so that the applicant can take proper action before the Civil Court and has further held:"Section 18(3)(a) and (b) of the Act cannot result in taking away the competency of the Deputy Commissioner to discharge his statutory function of making the reference so long as the initial application made under sub-section (1) of Section 18 of the Act is pending undisposed of". 17. It is also held in Firm Kaura Mal Bishan Dass v Firm Mathra Dass Atma Ram, that:"the discretion under Section 5 of the Limitation Act has to be a judicial discretion and not a arbitrary one. Merely because there was not written application filed by the appellant is hardly a sufficient ground for refusing him the relief, if he is otherwise entitled to it. Procedure is meant for advancing and not for obstructing the cause of justice; and if the entire material is on the record, it cannot promote the ends of justice, if that material is ignored and the relief refused to the appellant, merely because he had not claimed it by means of a formal application in writing or that a formal affidavit was not filed. The language of Section 5 also does not provide that an application in writing must be filed before relief under the said provision can be granted". Similarly in Meghraj v Jesraj, while considering the scope of Section 5 of the Act the Court has held that:"If under explainable circumstances an appeal or an application is filed but without a formal or a written application for excusing the delay in presentation of the same, then the Court should afford a reasonable opportunity to the party to mend matters to avoid miscarriage of justice". Therefore, in the light of the principles laid down in various authorities and also the fact that the persons who have approached the Court have lost their lands, the Trial Court without considering the application on merit should not have dismissed the same as not maintainable. In my view the application filed under Section 5 of the Act is maintainable. 18. Therefore, these revision petitions are allowed. The order of the Trial Court dated 23-11-1998 is set aside with a direction to the Trial Court to consider the applications on merit and dispose of the same in accordance with law, expeditiously.