

The Officer On Special Duty(Land ... vs Shah Manilal Chandulal Etc on 9 February, 1996

Equivalent citations: JT 1996 (2), 278 1996 SCALE (2)153, 1996 AIR SCW 941, 1996 (9) SCC 414, (1996) LACC 208, (1996) 2 ICC 89, (1996) 27 ALL LR 358, (1996) 2 CIVLJ 473, (1996) 1 MAH LJ 609, (1996) 1 RENTLR 299, (1996) 2 SCR 366 (SC), (1996) 1 CURCC 254, (1996) 2 GUJ LR 626, (1996) 1 MAD LJ 113, (1996) 1 RRR 725, (1996) 2 JT 278 (SC), 1996 (2) KLT SN 53.2 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

THE OFFICER ON SPECIAL DUTY(LAND ACQUISITION) & ANR.

Vs.

RESPONDENT:

SHAH MANILAL CHANDULAL ETC.

DATE OF JUDGMENT: 09/02/1996

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

G.B. PATTANAIAK (J)

CITATION:

JT 1996 (2) 278 1996 SCALE (2)153

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Leave granted.

A short but an important question of law arises for decision in these appeals. By a notification under Section 4(1) of the Land Acquisition Act, 1894 [1 of 1894] [for short, the "Act"] published in the State

Gazette on February 20, 1984, Government acquired the land for public purpose. The Land Acquisition Officer [for short, the "LAO"] made his award under Section 11 on February 28, 1989. The respondents were present at the time when the award was announced. On June 10, 1989 they applied for reference under Section 18. After giving an opportunity of hearing, by order dated January 9, 1990, the LAO rejected the application for reference on the ground that it was barred by limitation, i.e., beyond six weeks from the date of the award. In writ petitions the High Court of Gujarat in the impugned order dated March 13, 1992 in Special Civil Application No.2296/90 and batch held that Section 5 of the Limitation Act applies to the proceedings before the Collector and that, therefore, reasons given to condone the delay for filing the application were valid. The reasons were that they had applied for certified copy of the award and after its supply and in consultation with the counsel, the reference application came to be filed. Accordingly, High Court condoned the delay and directed the LAO to make the reference. These appeals thus are filed against the said order.

Section 18(1) envisages that any interested person who has not accepted the award may, by application in writing to the Collector, require him to refer the dispute raised in the application for the determination of the court. Under sub-Section [2], the grounds on which objection to the award is taken have to be stated in the application. However, under the proviso to sub-Section (2) every such application shall be made: (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub- section (2), or within six months from the date of the Collector's award, whichever period shall first expire. It would thus be clear that if the interested person was present at the time the Collector made the award, he should make the application within six weeks from the date of the award of the Collector. In other cases, it should be made within six weeks after the receipt of the notice from the Collector/LAO under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. Admittedly, the application for reference is beyond six weeks under clause (a) of proviso to subsection (2) of Section 18.

The question, therefore, is: whether Section 5 of the Limitation Act would apply? The High Court relied upon sub- section (3) of Section 18 which was made by way of a local amendment, i.e., Land Acquisition (Maharashtra Extension and Amendment) Act XXXVIII of 1964 which reads thus:

"Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908."

It would appear that the High Court of Gujarat has taken consistent vies that, by operation of sub-section (3), as the Collector was designated to be a court subordinate to the High Court under Section 115, Civil Procedure Code [for short, "CPC"], Section 5 of the Limitation Act [26 of 1963] stands attracted. Though sub- section (3) of Section 18, by virtue of local amendments, treated the Collector as court for a limited purpose of exercising revisional jurisdiction under Section 115, CPC to correct errors of orders passed by the Collector under Section 18, he cannot be considered to be a court for the purpose of Section 5 of the Limitation Act. Section 5 of the Limitation Act stands

attracted only when LAO acts as a court.

The question is: whether the view of the High Court is correct in law? Section 3 of the Limitation Act casts a duty on the court to apply the prescribed limitation and irrespective of the fact that deference of limitation was not taken, the court is enjoined to ensure that no suit etc. is laid beyond the prescribed limitation unless the exceptions for extension of time are found in Section 4 to 24 [both inclusive] and Section 5 is one of them and extends the prescribed time occupied by those sections. Section 5 of the Limitation Act extends the prescribed period of limitation in certain cases on showing sufficient cause which would be a question of fact in each case.

Any appeal or application other than an application under any of the provisions of Order 21 of the CPC may be admitted after the prescribed period, if the applicant or appellant satisfies the court that he had sufficient cause for not instituting the suit or preferring the appeal or making the application within such period. Explanation is not necessary for the purpose of this case. Hence omitted. If the suit is barred by limitation prescribed by the Limitation Act, an application for extension of the prescribed time may be made to the court and the applicant may satisfy the court that he had sufficient cause for not preferring the appeal or making the application within such period. The question, therefore, is: whether the Collector is a court for the purpose of Section 18(1) of the Act?

The right to make application in writing is provided under Section 18(1). The proviso to subsection (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In *Mohd. Hasnuddin v. State of Maharashtra* [(1979) 2 SCC 572], this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfillment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In para 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has

jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.

It would thus be clear that one of the conditions precedent to make a valid reference to the court is that the application under Section 18(1) shall be in writing and made within six weeks from the date of the award when the applicant was present either in person or through counsel, at the time of making of the award by the Collector under clause (a) of proviso to sub-section (2). The Collector, when he makes the reference, acts as a statutory authority.

In *State of Punjab & Anr.v.Satinder Bir Singh* [(1995) 3 SCC 330], a Bench of two Judges [to which one of us, K.Ramaswamy, J., was a member] was to consider whether the application for reference under Section 18 was barred by limitation and the direction issued by the court for making reference was valid in law. The Collector made the award on August 1, 1970. The notice under Section 12(2) was received by the respondent on September 22, 1970 and he received the compensation under protest on September 29, 1970. The application for reference under Section 18 was made on January 21, 1971. The Collector rejected the application as being barred by limitation. The High Court in revision under Section 115, CPC, similar to Gujarat Amendment, allowed the revision holding that since the notice did not contain all the details of the award, notice under Section 12(2) was not valid. Therefore, there was no limitation. This Court reversing the view had held in paragraph 7 that the form of notice was not material since the respondent appeared and received the notice on September 22, 1970 and received the compensation under protest on September 29, 1970. The limitation began to run from the date of the receipt of the notice and by operation of clause (b) of the proviso to sub- Section (2) of Section 18 since the application was not made within six weeks from the date of the receipt of the notice, the application was barred by limitation prescribed in Section 18(2). It does not depend on the ministerial act of communication of notice in any particular form which the Act or Rules have not prescribed. The limitation began to operate from the moment the notice under Section 12(2) was received as is envisaged by Section 18(2). Accordingly the order of the High Court was set aside.

The question emerges: whether the LAO/Collector acts as a court? Section 3(d) defines "Court" to mean the principal Civil Court of original jurisdiction or a principal Judicial officer within any special local limits appointed thereunder to perform the functions of the court under the Act.

"Collector" has been defined in Clause 3 (c) to mean the Collector of district and includes a Deputy Commissioner etc. appointed by the appropriate government to perform the functions of the Collector under the Act. He is variously called the Collector/LAO. It would thus be clear that the Act made a distinction between the Collector and the court. The Collector/LAO performs the statutory functions under the Act including the one making the award under Section 11 and referring a written application made under Section 18(1) of the Act to the court and complies with Sections 19 and 20 of the Act. The dichotomy of the Collector and the court cannot be lost sight of.

In *Nityanada, M. Joshi & Ors, v- Life Insurance Corpn. of India & Ors.* [(1969) 2 SCC 199], a Bench of three Judges of this Court was to consider whether the industrial Tribunal is a court within the meaning of the Industrial Disputes Act when it entertains application under Section 33C (1) and (2) of the Industrial Disputes Act, 1947. It was held that Article 137 of the Schedule to the Limitation Act applies to an application referable under the CPC and it contemplates an application to the court as provided in the Third Schedule to the Limitation Act. Section 4 of the Limitation Act also refers to the closure of the court. Section 5 of the Limitation Act applies only to a court which is to entertain an application or an appeal after the prescribed period has expired on its satisfying that the applicant had sufficient cause for not preferring the appeal or making application. The Labour Court was held not a court within the Limitation Act when it exercises the power under Section 33C (1) and (2) of the Industrial Disputes Act, 1947.

In *Smt. Sushila Devi v. Ramanandan Prasad & Ors.* [(1976) 1 SCC 361], the question arose whether the Collector to whom application under Section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act 30 of 1951 is made, is a court under Section 5 of the Limitation Act? The said Act by operation of Section 15 of that Act makes certain provisions of the CPC applicable when it conducts certain proceedings before it. This Court had held that Collector is not court where he conducts the proceedings under the Act. Therefore, Section 5 of the Limitation Act does not apply. In *Mohd. Ashfaq v. State Transport Appellate Tribunal. U.P. & Ors.* [AIR 1976 SC 2161], under Section 58 of the Motor Vehicles Act [4 of 1939] and under sub-section (2) proviso and sub-section (3), application for renewal of the permit would be made and power is given to the R.T.A. to condone the delay if the application is made after the expiry but within 15 days of the period. The question arose: whether Section 5 of the Limitation Act would apply by operation of subsection (2) of Section 29 of the Limitation Act? This Court had held that since the limitation of 15 days was prescribed, if the application is not made within that limitation, the R.T.A. is not a court under Section 5 and it has no power to condone the delay.

In *Kaushalya Rani v. Gopal Singh* [AIR 1964 SC 260], the question arose whether Section 417(4) of Criminal Procedure Code is a special law within the meaning of Section 29(2) of the Limitation Act and whether Section 5 of the Limitation Act does not apply? It was held that Section 417(4) is a special law and Section 5 of the Limitation Act does not apply in view of the specific limitation provided under that Act for filing of an appeal by a private complainant. In *Major(Retd.) Inder Singh Rekhi v. Delhi Development Authority* [(1988) 2 SCC 388], Article 137] of the Schedule to the Limitation Act, 1963 would apply to an application filed in a civil Court. When application under Section 20 of the Arbitration was filed. the question arose as to when the limitation began to run. This Court had held that the cause of action arose on February 28, 1983 when the final bill was not prepared and the application under Section 20 was filed within three years from that date. It is seen that in that case the application under Section 20 of the Arbitration Act is to an

established civil Court. Therefore the ratio therein has no application to the facts presently before us.

In *P.V. Gadgil & Ors. v. P, Y. Deshpande & Anr.* [AIR 1983 Bombay 342] the question similar to the one presently under consideration had directly arisen. Section 5 of the Limitation Act was applied for condition of the delay in seeking or make a reference under Section 18. It was contended that by operation of sub-section (3) as also applicable to States of Maharashtra and Gujarat, the Collector is a court which is amenable to revisional jurisdiction under Section , CPC and that, therefore, Section 5 of the Limitation Act would apply. The Division Bench negated the contention and held that the Collector is not a court under CPC attracting the provisions of the Limitation Act. The contra view taken by that court was held to be not a good law and accordingly the same was overruled. The same question had arisen in Kerala where there is no specific local provision like Section 18(3), locally amended by Maharashtra and Gujarat. Contention was raised that by operation of sub-section (2) of Section 29 of the Limitation Act, Section 5 stands attracted since there is no express exclusion of the limitation under the Act. Therefore, the delay was condonable. The Division Bench negated the contention and held that the Collector is not a court under Section 5 of the Limitation Act. Sub-section (2) of Section 29 did not apply. Same is the view of the A.P. High Court in *Spl. Dy. Collector Land Acquisition Anantapur v. K. Kodandaramacharlu* [AIR 1965 A.P. 25].

In *Jokkim Fernandez v. Amina Kunhi Umma* [1973 Kerala Law Times 138], a Full Bench of that Court per majority had held that sub-section (2) of Section 29 and Section 5 of the Limitation Act do not apply to the proceedings under the Kerala Building [Lease and Rent Control) Act and that therefore, the Tribunal is not court under Section 5 of the Limitation Act. In *Commissioner of Agricultural Income-tax v. T.R.I.* [1981 K.L.T. 398], the Court was concerned with the question whether the Appellate Tribunal under the Agricultural Income-tax Act is a court under Section 5 read with Section 29(2) of the Limitation Act in respect of an application for reference. The Full Bench had held that the appellate authority is not a court under Section 5. The delay therefore, could not be condoned.

It is to remember that the Land Acquisition [Amendment] Act [68 of 1984] was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-Section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition [Amendment] Act [68 of 1984], the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under

Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period to limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act.

Accordingly, we hold that the applications are barred by limitation and Collector has no power to extend time for making an application under Section 18(1) for reference to the court.

The appeals are accordingly allowed. The orders of the High Court are set aside. The application under Section 18(1) stands rejected but, in the circumstances, without cost.