

The Addl. Spl. Land Acquisition ... vs Thakoredas, Major And Others on 8 February, 1994

Equivalent citations: AIR1994SC2227, (1997)11SCC412, 1995 (1) APLJ 3, AIR 1994 SUPREME COURT 2227, 1997 (11) SCC 412, 1994 AIR SCW 2026, (1995) 1 LANDLR 71

Bench: K. Ramaswamy, N. Venkatachala

JUDGMENT

1. All these four appeals arise from a judgment of the High Court of Karnataka rendered on September 16, 1976, in C. R. P. Nos. 1577 etc. of 1976. The facts are not in dispute. As concluded by the High Court, the award having been made by the Deputy Commissioner (the Collector) under Section 11 of the Land Acquisition Act, 1894 ('the Act') it was served on the Respondents as required under Section 12(2) on August 2, 1970. The respondents are said to have made an application on September 1, 1970 before the Deputy Commissioner seeking the making of a reference to the Civil Court under Section 18, after they required the compensation under protest. The Deputy Commissioner did not make any reference to the Civil Court. However, the respondents filed application to the Civil Court after the lapse of the period of 5 years, for getting a direction issued to the Deputy Commissioner for making the references. That application have come to be allowed by the Civil Court. Calling in question that Order of the Civil Court, the appellant filed a Revision Petition in the Karnataka High Court. The appellant contended that the respondents, when had made the application alter the expiry of the period of five years from the date of receipt of the Award, it should have been dismissed as barred by time allowed under Article 137 of the Schedule to the Limitation Act, 1963. However, the High Court following the decision in Town Municipal Corporation Athani v. Presiding Officer, Labour Court, Hubli rejected the contention and upheld the Order of Civil Judge directing the sending of the reference. The correctness of case of Municipal Corporation Athani was doubted in Nityanand M. Joshi v. L.I.C. of India . In Kerala State Electricity Board, Trivandrum v. T. P. K. K. Amson & Besom, Kerala , this Court held that Article 137 of the Schedule to Limitation Act applies to any petition or any application filed under any Act to a Civil Court. It also held that the words "any other application" under Article 137 of Schedule to Limitation Act cannot be said, on the principle of ejusdem generis to be applicable only to applications made under the CPC. Therefore, it becomes clear that this Court had Ruled that any application filed under any other special statute, to the Civil Court would be governed by the limitation prescribed by Article 137, whereunder an application should be made within three years from the date when cause of action to file the application arises.

2. "Land Acquisition (Mysore Extension and Amendment Act, XVII of 1961, by its Section 4, which came into force on 24-8-1961; amended Section 18, thus:

(1) after the word "award" where it occurs for the first time insert the words "or amendment thereof" and after the said word, whenever it occurs thereafter, insert the

words "or the amendment";

(2) in Sub-section (2), substitute for the proviso the following proviso, namely:

Provided that every such application shall be made within ninety days from the date of service of the notice from the Deputy Commissioner under Sub-section (2) of Section 12 (3) after Sub-section (2), add the following Sub-section, namely,-

3(a) The Deputy Commissioner shall, within ninety days from the date of receipt of an application under Sub-section (1), make a reference to the Court.

(b) If the Deputy Commissioner does not make a reference to the Court within a period of ninety days from the date of receipt of the application the applicant may apply to the Court to direct the Deputy Commission make the reference, and the Court may direct the Deputy Commissioner to make the reference within such time as the Court may fix.

(4) for the word "Collector", wherever it occurs, substitute the words "Deputy Com missioner".

3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the Civil Court under Section 18. Under the amended Sub-section 3(a) of the Act, the Deputy Commissioner shall, within 90 days from September 1, 1970 make reference under Section 18 to the Civil Court which he failed to do. Consequently by operation of Sub-section 3(b) with the expiry of the aforesaid 90 days, the cause of action had accrued to the respondents to make an application to the Civil Court with a prayer to direct the Deputy Commissioner to make a reference. 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 Sub-section (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. Since, the High Court relied upon the case in Municipal Corporation of Athani , which has stood overruled, the Order of the High Court is unsustainable. The appeals are accordingly allowed, and the application made to the Court by the respondent stands rejected.