

# BOMBAY HIGH COURT

P.V. Gadgil

Vs.

P.Y. Deshpande

Civil Revn. Applns. Nos. 146, 147 and 148 of 1979

(Jahagirdar and Mody, JJ)

28.08.1981

## JUDGMENT

### **Jahagirdar, J.**

1. These three revision applications have been referred to this Division Bench by the learned Chief Justice on a recommendation made by Shah J. in a judgment of 5th Jan. 1981. Shah J. thought it necessary to refer these petitions to a Division Bench because he disagreed with the view taken by another single Judge of this Court in *Ramesh Shankar Wankhede v. State of Maharashtra*<sup>1</sup>, The question involved is one relating to the interpretation of sub-section (3) of Section 18 Land Acquisition Act. This sub-section has been introduced by the Maharashtra legislature by Act 38 of 1964. More particularly the question is whether the Collector exercising his function under Section 18 Land Acquisition Act and passing an order on an application made under Section 18 is a court to which the provisions of the Limitation Act, 1963, apply.

2. Before we consider the relevant provisions and the authorities cited for throwing light on the question, a few facts must be mentioned. In the land acquisition proceedings giving rise to these revision applications, notification under Section 4 Land Acquisition Act had been issued on 20th of Feb. 1970. Thereafter the award was passed on 15th Feb. 1978. Subsequent dates are somewhat different in the three applications, but it may be stated that the applications under Section 18 were made by all the petitioners in these revision applications to the District Court within a period of six weeks from the date of the receipt of the notice from the Collector under Section 12(2), Land Acquisition Act. The applications were not made to the Collector as required under Section 18 of the Act. Realizing that the applications were made to the wrong authority, the parties withdrew the said applications from the District Court and thereafter presented them to the Collector. By the time this was done, the period of six weeks prescribed under Section 18(2)(b) of the Act had expired.

3. Along with the applications which they had thus preferred to this Collector, the petitioners had also made applications purporting to be applications under Section 5 Limitation Act for condoning the delay in preferring the applications to the Collector. In all these three cases, the Special Land Acquisition Officer, acting as the Collector under

<sup>1</sup> AIR 1975 Bom 297

the Land Acquisition Act refused to condone the delay because, according to him, he could not entertain any applications which were preferred after a period of six weeks prescribed under Section 18(b) of the Act. Aggrieved by this order passed by the Collector, the petitioners have preferred these three revision applications. They were heard by Shah J. who by his detailed judgment of 5th Jan. 1981, disagreed with the view taken by a single Judge of this Court in Ramesh Wankhede's case and recommended that the petitions be placed before a Division Bench.

4. Before we notice the view taken by the learned single Judge in Ramesh Wankhede's case, it will be appropriate to briefly take note to the law laid down by the Supreme Court relating to the applicability of the Limitation Act to authorities other than the Courts and also the scope and ambit of the reference under Section 18 of the Land Acquisition Act. In *Athani municipality v. Labour Court, Hubli*<sup>2</sup>, a question had arisen as to whether an application made under Section 33C(2) of the Industrial Disputes Act was an application within the meaning of Article 137 Limitation Act 1963 and if it were so it could be filed within three years from the accrual of the cause of action. Two propositions were laid down by the Supreme Court in that judgment. One was that the application envisaged under Article 137 of the Limitation Act must be an application under the Civil Procedure Code and secondly that application must be made to a Court governed by the Civil or Criminal P.C. Since the application under Section 33C(2) of the Industrial Disputes Act did not satisfy either of these two conditions, it was held that the Limitation Act, 1963 was not applicable and, therefore, Article 137 itself was not applicable.

5. Subsequently, in *Nityanand v. L.I.C. of India*<sup>3</sup>, the same question, namely as to whether applications under Section 33C(2) Industrial Disputes Act were included in applications covered by Article 137 Limitation Act 1963, arose. It was held that Article 137 contemplates applications to ordinary Courts, but the other question which had been decided in Athani Municipality's case, namely whether applications must be under the Civil Procedure Code was left open in Nityanand's case. Indeed the Supreme Court itself had mentioned in Nityanand's case that it will require serious consideration whether applications to courts under other provisions, apart from Civil Procedure Code were included within Article 137 of the Limitation Act. This question was seriously considered in *Kerala State Electricity Board v. T.P. Kunhaliumma*<sup>4</sup>,

6. The facts of Kerala State Electricity Board's case disclosed that an application contemplated under Section 63 of the Telegraph Act was made to the District Court as required by the said provision. The question was whether it was an application to which the provisions of the Limitation Act apply. This issue was answered in the affirmative by the Supreme Court. While so doing the Supreme Court held that an application governed by Article 137 of the Limitation Act

1963 need not necessarily be an application under the Civil Procedure Code itself. In para 18 of the judgment, the Supreme Court examined the change introduced in the Limitation Act of 1963 as compared to the position contained in the Limitation Act of 1908. It was pointed out that the alteration of the division as well as the change in the collocation of the words in Article 137 of the Limitation Act 1963 compared with Article 181 of the 1908 Limitation Act showed that the application contemplated under Article 137 were not applications confined to the

<sup>2</sup> AIR 1969 SC 1335

<sup>4</sup> AIR 1977 SC 282

<sup>3</sup> AIR 1970 SC 209

Civil Procedure Code Proceeding further it was held that the words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code. The Supreme Court further held that any other application under Article 137 would be a petition or any application under any Act, but that application has to be to a Court for the reason mentioned in para 18 of the judgment. In other words, in Kerala State Electricity Board's case it was held in the first place that the application to be governed by Article 137 Limitation Act 1963 need not be an application under the Civil Procedure Code, but may be an application under any Act provided that that application was made to a Court. When this happens the provisions of the Limitation Act apply. In the present state of law, therefore, the following proposition is now settled that an application to be governed by the provisions of the Limitation Act 1963 need not necessarily be an application under the Civil Procedure Code, but may be an application under any other law. However, that application must necessarily be to a Court.

7. It has not been contended before us, and indeed it could not be contended that the Collector exercising his powers under Section 18 Land Acquisition Act without its Maharashtra amendment could be regarded as a Court in order that the provisions of the Limitation Act could be applicable to him. Nevertheless, it would be appropriate to take note of what the Supreme Court has said in a judgment regarding the nature of the functions discharged by the Collector under an Act which is analogous to the Land Acquisition Act. In *Mohammed Hasnuddin v. State of Maharashtra*<sup>5</sup>, the Supreme Court was dealing with the provisions of the Hyderabad Land Acquisition Act. While so doing, the provisions contained in the Land Acquisition Act of 1894 were also taken into consideration. The Supreme Court has laid down that merely because the Collector while making an award under Section 11 or in serving a notice on the owner of the land under Section 12, acts as an agent of the Government, it does not necessarily imply that while, making a reference to the Court under Section 18, he acts in the capacity of an agent of the Government. It was further pointed out that Section 18(1) entrusts to the Collector the statutory duty of making a reference on the fulfilment of the conditions laid down therein. The Collector, acting under Section 18, therefore, is nothing but a statutory authority exercising his own powers under the Section. In our opinion, therefore, the Collector discharging his functions under Section 18 of the Land Acquisition Act cannot be regarded as a Court attracting the provisions of the Limitation Act.

8. What has been contended before us, however, is that the amendment introduced by the Maharashtra Act 38 of 1964 changes the character of the functions discharged by the Collector.

The amendment, which is sub-section (3) of Section 18, is in the following terms :-

"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 Civil Procedure Code 1908." It has been urged by Mr. Naik appearing for the petitioners that the very fact that the Maharashtra legislature has made the Collector subject to the revisional jurisdiction of the High Court under Section 115 of the Civil Procedure Code necessarily implies that the Collector must be regarded as a Court for all the

<sup>5</sup> AIR 1979 SC 404

purposes of the Civil Procedure Code It is not merely the order made by the Collector that is subject to the revisional jurisdiction of the High Court under Section 115 of the Code. On the other hand, what the legislature has laid down is that the Collector is to be treated as a Court subordinate to the High Court within the meaning of Section 115. If this is so, then by virtue of the provisions contained in Section 29(2) Limitation Act, Sections 5 and 14 Limitation Act would be applicable to the proceedings before the Collector started pursuant to an application made for making a reference to the Court. It would be within the powers of the Collector to consider as to whether a person making an application has shown sufficient cause for not preferring the same within the prescribed time. The Collector is also entitled to consider as to whether, as in the instant case, the petitioner had spent time before another Court which for want of jurisdiction could not entertain the application presented by the petitioner. If the Limitation Act is applicable naturally Section 29(2) will be applicable and, therefore, Sections 5 and 14 would also be automatically applicable to the proceedings before the Collector. The question is whether the Collector even after the Maharashtra amendment is a Court to which the provisions of the Limitation Act are applicable.

9. This question has been answered in the affirmative by a single Judge of this Court in the Ramesh Wankhede's case. After noticing the law prior to the Maharashtra amendment and after also noticing that the Land Acquisition Officer who is empowered to act as a Collector in the land acquisition proceedings would not ordinarily be a Court governed by the Civil Procedure Code, the learned Judge proceeded to mention that the amendment which had been made by the Maharashtra Act 38 of 1964 would make considerable difference. According to the learned Judge, under the amended Section 18, the Collector deals with an application made under that Section as a Court governed by the provisions of the Civil Procedure Code and "that is why an application for revision to the High Court has been provided against the order made by the Collector on such an application." Proceeding further, the learned Judge has said that when dealing with an application for reference under Section 18 of the Land Acquisition Act, the Land Acquisition Officer is considered to be a Court subordinate to the High Court within the meaning of Section 115 of the Civil Procedure Code.

10. We are unable to agree with the reasoning contained in the latter half of para 4 of the judgment of the learned Judge. We are unable to agree that the Maharashtra amendment converts a functionary, who is essentially a statutory authority with restricted powers under Section 18, into a Court governed by the provisions of the Civil Procedure Code. In our opinion, it is not correct to say that sub-section (3) inserted by the Maharashtra amendment in Section 18 Land Acquisition Act converts a Collector into a Court governed by the provisions of the Civil Procedure Code. The language of sub-section (3) does not warrant such an inference. Sub-section (3) of Section 18 merely mentions that an order made by the Collector on an application under Section 18 shall be subject to the revisional jurisdiction of the High Court. In order to make clear the extent of the powers of revision to be exercised by the High Court it has been further provided that the Collector should be regarded as a Court subordinate to the High Court within the meaning of Section 115 of the Civil Procedure Code. There is nothing in this provision which would, in our opinion, remotely indicate that the Collector is to be regarded as a Court governed by the provisions of the Civil Procedure Code for all the purposes.

11. In fact it has not been mentioned that the Collector is to be regarded as a Court within the meaning of the Civil Procedure Code and, therefore, the order passed by him is subject to the revisional jurisdiction of the High Court under Section 115 of the Code. On the other hand, it has been mentioned that the order is subject to revision of the High Court and for the purpose of merely indicating the extent of the subjection of the order to the revisional jurisdiction of the High Court it has been mentioned that the Collector is to be treated as a Court subordinate to the High Court. It is not possible for us to read into sub-section (3) of Section 18 anything more than this and therefore, we are unable to agree with the learned single Judge when he holds that the Collector is to be considered as a Court under sub-section (3) of Section 18 and on that ground the provisions of Section 5 of the Limitation Act would apply to an application for reference made under Section 18 Land Acquisition Act.

12. Mr. Naik also placed reliance upon a judgment of a Division Bench of the Gujarat High Court in *Mahijibhai Jivanbhai Vaghri v. M.C. Shah, Spl. Land Acquisition Officer, Nadiad*<sup>6</sup>. In this judgment we do not find any reference to the Maharashtra amendment. The Gujarat High Court held that because the period of limitation prescribed under Section 18 was different from the period prescribed in the schedule of the Limitation Act, the provisions of Section 29(2) Limitation Act applied. It was further held in that case that for the purpose of determining any period of limitation prescribed for any application by any special or local law, the provisions contained in Sections 4 to 24 shall apply. In other words, the Gujarat High Court proceeded on the basis that the Limitation Act would automatically apply to the proceedings before the Collector under Section 18 of the Land Acquisition Act. The question as to whether, in the light of the decisions of the Supreme Court referred to by us above, the Collector was a Court to which the provisions of the Limitation Act applied was not considered, let alone answered, by the Gujarat High Court. In view of the line of decisions resting at present with the judgment of the Supreme Court in the Kerala State Electricity Board's case, it is impossible to agree that the Gujarat High Court lays down the correct law.

13. Considering the language of sub-section (3) introduced by the Maharashtra amendment in Section 18 Land Acquisition Act, we see merely an intention on the part of the legislature to provide a remedy of revisional application to the High Court against any order passed by the Collector in the discharge of his statutory duty under sub-section (1) and we are also of the opinion that while the Collector so discharges his statutory duty he is not a Court under the Civil Procedure Code attracting the provisions of the Limitation Act. The view taken in Ramesh Wankhede's case is, therefore, overruled.

14. In the view which we have thus taken, all these revision applications must fail. Apart from this question, there is no other question involved in these revision applications and, therefore, it is not necessary to remit the same to the single Judge for disposal and they are accordingly disposed of by this judgment. Rule in each of these applications is discharged with no order as to costs.

15. At this stage, Mr. Naik makes an oral application for a certificate under Article 133 of the Constitution. This application is rejected.

Ordered accordingly.

<sup>6</sup> ILR (1968) Guj 348