

GAHC010271132023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6986/2023

RANJIT KUMAR PAUL
S/O- LATE SANAT KUMAR PAUL, R/O- SUBHASH NAGAR, P.O.
KARIMGANJ, P.S. KARIMGANJ, DIST.- KARIMGANJ, ASSAM, INDIA, PIN
NO. 788210

VERSUS

THE STATE OF ASSAM AND 8 ORS
TO BE REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
ASSAM, WATER RESOURCE DEPARTMENT, DISPUR-06, ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPARTMENT DISPUR
GUWAHATI- 781006

3:THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

4:THE CHIEF ENGINEER
WATER RESOURCE DEPARTMENT
ASSAM
NATIONAL HIGHWAY-37
BASISTHA
GUWAHATI- 781029

5:THE ADDL. CHIEF ENGINEER
CACHAR AND HILLS WATER RESOURCES SILCHAR
DIST.- CACHAR
ASSAM

6:THE SUPERINTENDING ENGINEER
HAILAKANDI WATER RESOURCE CIRCLE

HAILAKANDI
ASSAM

7:THE EXECUTIVE ENGINEER
KARIMGANJ WATER RESOURCE DEPARTMENT
KARIMGANJ
ASSAM

8:THE ASSISTANT EXECUTIVE ENGINEER
WATER RESOURCE DIVISION
KARIMGANJ
ASSAM

9:THE DEPUTY COMMISSIONER OF KARIMGANJ
DISTRICT- KARIMGANJ
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

04.12.2023

Heard Shri J.M. Sulaiman, learned counsel for the petitioner. Also heard Ms. R.M. Deka, learned counsel appearing on instructions of Shri R.M. Das, learned Standing Counsel, Water Resource Department as well as Shri B. Gogoi, learned Standing Counsel, Finance Department.

The petitioner claims to have executed three contractual work namely, (i) M&R to protect the area from Phanirbond to Dullavpur from flooding of River Shingla for 2012-13 (Closing work at Panchdali) (ii) M&R to protect the area from Phanirbond to Dullavpur from flooding of River Shingla for 2012-13 (Closing work at Madanpur) and (iii) M&R to Dyke along BB of River Singla from Dullavpur to Kakrakhal for 2012-13, K-6.

It is the case of the petitioner that in spite of the works being completed, the total bills have not been paid to the petitioner. As per the petitioner, he is entitled to certain amounts pertaining to the said works and in this connection, he had also issued notice under Section 80 (1) of the CPC.

The learned counsel for the respondents however submits that the works are of the year 2012-13 and therefore, the contentions raised cannot be matters of adjudication after a delay of around 10 years.

Responding to the said objection, Shri Sulaiman, the learned counsel for the petitioner has submitted that the legal notice served under Section 80 (1) of the CPC was received and a communication was also issued on 03.09.2021 to reply to the same and therefore there is no delay as such.

The aspect of the application of Limitation Act in a writ proceeding has been adequately explained by a Constitution Bench of the Hon'ble Supreme Court in the case of ***State of MP Vs. Bhailal Bhai*** reported in ***AIR (1964) SC 1006***. In paragraph 21 of the said judgment, it has been observed as follows.

“The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai's case out of which Civil Appeal No. 362 of 1962 has arisen. On behalf of the respondents-petitioners in these appeals (C.A. Nos. 861 to 867 of 1962) Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. He argued that assuming that the remedy of recovery by action in a civil court stood barred on the date these applications were made that would be no reason to refuse relief under [Art. 226](#) of the Constitution. Learned counsel is right in his submission that the provisions of the [Limitation Act](#) do not as such apply to the granting of relief under [Art. 226](#). It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought 134--159 S.C. 18 may

ordinarily be taken to be a reasonable standard by which delay in seeking remedy under [Art. 226](#) can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the [Limitation Act](#) is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, the mistake was discovered much later, this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

What has been laid down by the Hon'ble Supreme Court is that while the Limitation Act *per se* may not be applicable, its spirit will be applicable and where matters are barred by limitation, the question of laches would be a relevant factor to be taken into consideration by a writ Court.

In the instant case, this Court is of the opinion that issuing a notice under Section 80 of the CPC cannot extend the limitation and the laches on part of the petitioner cannot be overlooked / obliterated.

Therefore, without even going into the merits of the claim, this Court is of the opinion that on the ground of laches, this writ petition is not liable to be entertained.

Accordingly, the same stands dismissed.

JUDGE

Comparing Assistant