

GAHC010162952024



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

Case No. : CRP/83/2024

M/S POWER GRID CORPN. INDIA LTD.
A GOVERNMENT OF INDIA ENTERPRISE, HAVING ITS SUB-STATION AT
SILCHAR IN THE DISTRICT OF CACHAR AND IS REPRESENTED BY ITS
AUTHORIZED SIGNATORY SRI S. RAMAMOHANA CHARY, SON OF LATE S.
RANGA CHARYA, RESIDENT OF 132 KV POWERGRID SUB STATION,
BADARPUR GHAT, BADARPUR- 788803, DISTRICT- HAILAKANDI, ASSAM.

VERSUS

ABDUL SATTAR
SON OF LATE SAFAR ALI, VILLAGE- JAMIRA, P.S. KATLICHERRA,
DISTRICT- HAILAKANDI.

Advocate for the Petitioner : MR G N SAHEWALLA, MD ASLAM, MR M SAHEWALLA, MS. S.
TODI, MS T J SAHEWALLA

Advocate for the Respondent : MS S DAS, MR F U BARBHUIYA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06.11.2024

Heard Mr. G.N. Sahewalla, learned Senior counsel, assisted by Ms. K. Sarma,
learned counsel for the petitioner. Also heard Mr. F.U. Barbhuiya, learned counsel

for the respondent.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the judgment dated 21.09.2022, passed by the learned District Judge, Hailakandi, in Misc. (P.G.) Case No. 85/2006, in an application filed by the respondent under Sections 10 and 6 of the Indian Telegraph Act, 1885, read with Sections 42/51 of the Indian Electricity Act, 1910, and under Sections 23/24 of the Land Acquisition Act, 1894.

3. It is to be noted here that vide impugned judgment dated 21.09.2022, the learned District Judge, Hailakandi had granted a sum of Rs. 7,03,600/- as compensation to be paid by the petitioner, M/s Power Grid Corporation of India Ltd. to the respondent for the damages caused to the plants and trees of the respondent herein.

4. Mr. Sahewalla, learned Senior counsel for the petitioner submits that the petitioner Corporation undertook to construct a transmission line, of 132 K.V. power, from Badarpur, Assam to Bhairabi, Mizoram in the district of Hailakandi and in course of the aforesaid work, the petitioner Corporation had constructed transmission tower LOC Nos. 240 to 241 and strings on the said towers and in the process, damages were caused to some plants and trees of the respondent herein. Accordingly, an assessment was carried out and the damage was assessed at Rs. 10,753/- by the Revenue Authority, Hailakandi and the same was paid to the respondent herein through cheque and the respondent had accepted the same in presence of witnesses in the year 1999. Mr. Sahewalla further submits that after more than 7 years, in the year 2006, without any proper justification, the respondent herein filed an application before the learned District Judge, Hailakandi under Sections 10 and 6 of the Indian

Telegraph Act, 1885, read with Sections 42/51 of the Indian Electricity Act, 1910, and under Sections 23/24 of the Land Acquisition Act, 1894, which was registered as Misc. Case No. 85/2006, claiming compensation to the tune of Rs. 2,47,45,000/-, and in the aforementioned application, it had been alleged that some trees were cut and removed and the applicant/respondent herein was asked to remove his residence and he had accordingly done so, and that the authorities did not record the loss he had sustained. However, in the said application, no explanation or reason whatsoever was cited for delay in filing the application and thereafter, the learned District Judge, Hailakandi in spite of written objection filed by the petitioner herein, vide judgment dated 03.12.2011, had assessed the compensation at Rs. 2,61,340/- and directed the present petitioner to pay the same within 60 days, and further directed that failing which the award will carry interest @ 6/% per annum. Thereafter, the petitioner had preferred one writ petition before this Court, being WP(C) No. 6260/2012 and in the said writ petition, after hearing both the parties, vide judgment and order dated 08.08.2019, the judgment dated 03.12.2011 was set aside and the matter was remanded back to the learned District Judge, Hailakandi for consideration by giving a finding in respect of the fact that there exists a dispute between the parties. Thereafter, the learned District Judge, Hailakandi after hearing the parties and considering the pleadings on the record, vide impugned judgment dated 21.09.2022, had awarded a sum of Rs. 7,03,600/- in favour of the respondent herein. Mr. Sahewalla vehemently submits that the claim petition was barred by the law of limitation and in the written objection filed by the petitioner, the plea of limitation had been taken, but the learned District Judge, Hailakandi without framing any issue on that point, had decided the matter. Further, Mr. Sahewalla submits that limitation goes to the root of the matter and

as such, the learned District Judge, Hailakandi ought to have framed an issue on that point and record a finding to that effect, but, the same had not been done for which the impugned judgment dated 21.09.2022 is arbitrary and illegal and as such, Mr. Sahewalla submits that the matter may be remanded back to the learned District Judge, Hailakandi to frame an issue on the point of limitation and thereafter, afford opportunities of being heard to both the parties and thereafter, decide the matter afresh. In support of his submission, Mr. Sahewalla has referred to the following decisions:

- (i) **The Kerala State Electricity Board, Trivandrum vs. T.P. Kunhaliumma**, reported in (1976) 4 SCC 634.
- (ii) **Addl. Spl. Land Acquisition Officer, Bangalore vs. Thakoredas, Major and Ors.**, reported in (1997) 11 SCC 412.
- (iii) **M/s B and T AG vs. Ministry of Defence**, reported in (2024) 5 SCC 358.

5. On the other hand, Mr. Barbhuiya, learned counsel for the respondent has supported the impugned judgment dated 21.09.2022. Mr. Barbhuiya, by referring to the impugned judgment, submits that the learned District Judge, Hailakandi had framed an issue regarding the maintainability of the application and thereafter, arrived at a finding that the application is maintainable and this issue had covered the issue of limitation also and as such, Mr. Barbhuiya has contended to dismiss this petition. However, to a pointed query of this Court, Mr. Barbhuiya submits that the petitioner had taken the ground of limitation before the learned District Judge, Hailakandi in the written objection, but no issue on that point was framed by the learned District Judge, Hailakandi. Mr. Barbhuiya also submits that in the event of setting aside the impugned judgment dated

21.09.2022 and remanding the matter back to the learned District Judge, Hailakandi, the learned District Judge, Hailakandi may be directed to dispose of the application in a time bound manner.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the impugned judgment dated 21.09.2022 and the decisions referred by Mr. Sahewalla, learned Senior counsel for the petitioner.

7. It appears that while filing the written objection before the learned District Judge, Hailakandi, the petitioner had taken a categorical stand that the claim is barred by the law of limitation. It is the categorical submission of Mr. Sahewalla, learned Senior counsel for the petitioner that the payment of Rs. 10,753/- was made to the respondent in the year 1999 and since then, several years had elapsed and only in the year 2006 after elapse of 7 years, the application had been filed before the learned District Judge, Hailakandi and as such, it is clearly barred by the law of limitation. The submission of Mr. Sahewalla is found to be based on the materials placed on the record and it also appears that a categorical stand had been taken by the petitioner before the learned District Judge, Hailakandi by filing written objection that the application is barred by the law of limitation. But, in spite of such averment made in the written objection, the learned District Judge, Hailakandi had failed to frame an issue on this point. Mr. Barbhuiya, learned counsel for the respondent also fairly submits that no such issue had been framed on that point.

8. It is well settled in the case of **the Kerala State Electricity Board, Trivandrum** (supra), that Article 137 of the Limitation Act, 1963 will apply to any petition or application filed under any Act to a civil court. The Article

prescribed the period of limitation as 3 years.

9. In the case of **Noharlal Verma v. Distt. Coop. Central Bank Ltd.**, reported in (2008) 14 SCC 445 Hon'ble Supreme Court has held as under:-

“32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:

“3. Bar of limitation.—(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

(emphasis supplied)

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.”

10. Here in this case, it appears that while the compensation was paid to the respondent in the year 1999 and the claim petition was filed in the year 2006, before the learned District Judge, Hailakandi. Even though a definite plea was taken on the point of limitation in the written objection, the same eschewed consideration of the learned District Judge. Non-framing of any issue on the

point of limitation, despite a plea being taken in the written objection by the petitioner herein, is admitted by Mr. Borbhuiya, the learned counsel for the respondent also. That being so, the submission of Mr. Sahewalla, cannot be said to be without any substance.

11. Under the given facts and circumstances on the record, and in view of the proposition of law laid down by Hon'ble Supreme Court in the cases discussed herein above, this Court is inclined to record concurrence with the submission of Mr. Sahewalla, learned Senior Counsel for the petitioner.

12. In the result, the impugned judgment dated 21.09.2022, stands set aside and quashed. The matter is remanded back to the learned District Judge, Hailakandi to frame an issue on the point of limitation and thereafter to hear both the parties on the said point and also to afford opportunity to adduce evidence, if found necessary and thereafter to decide the matter afresh. Though, it is not permissible to fix a definite time frame within which the case should be decided by the learned District Judge, Hailakandi, yet this Court is inclined to request the learned District Judge, Hailakandi to make an endeavour to dispose of the claim petition as soon as practicable.

13. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant