

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

W.A.No. 484 of 2009 (D) IN WP(C).18838/2008

AGAINST THE JUDGMENT IN WP(C) NO.18838/2008 OF HIGH COURT OF KERALA DATED
18-11-2008

APPELLANT(S)/PETITIONER:

RERMAL PADMANABHAN,
AGED 63, S/O. LATE GOVINDAN,
GREEN LAND AUDITORIUM, KAIVELY NARIKODE,
KOTTELA P.O., KANNUR DISTRICT, RESIDING AT
RERMAL HOUSE, KAIVELY NARIKODE, KANNUR.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S)/RESPONDENTS:

1. TRIBUNAL FOR LOCAL SELF GOVT.
INSTITUTIONS, THIRUVANANTHAPURAM.
2. EZHOM GRAMA PANCHAYATH,
REPRESENTED BY ITS SPECIAL GRADE SECRETARY
KANNUR DISTRICT.

R2 BY ADV. SRI.M.SASINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

C.R.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.484 OF 2009

Dated this the 21st day of May, 2015

JUDGMENT

Antony Dominic, J.

The correctness of the judgment of the learned Single Judge dismissing Writ Petition No.18838/2008 filed by the appellant, calling in question the order passed by the Tribunal for Local Self Government Institutions, dismissing an application for condonation of delay of 180 days, this appeal is filed.

2. The facts of the case are that the appellant is the owner of a 'Kalyana Mandapam' situated within the jurisdiction of the 2nd respondent Panchayat. Initially, the property tax in respect of the 'Kalyana Mandapam' was assessed at the rate of Rs.2,000/- per year. From paragraph 3 of the counter affidavit, we find that in August, 2005, the Secretary of the Panchayat issued Ext.P1 notice for revision of the property tax, proposing to impose tax at the rate of Rs.15,000/- per annum.

Objecting to Ext.P1, the appellant submitted Ext.P2 and on receipt thereof, the Secretary issued notice, affording the appellant an opportunity of personal hearing on 14.10.2005. Accordingly, the appellant was heard by the Secretary and he revised the proposal, deciding to impose tax at the rate of Rs.12,600/-, adopting daily rent at the rate of Rs.4,000/- and also taking that the 'Kalyana Mandapam' could be let out for 100 days per year. The order in this behalf was served on the appellant by registered post on 07.03.2006. On receipt of this order, the appellant filed a petition before the Secretary on 26.10.2006. This petition was treated as an appeal against the order of the Secretary and was placed before the Standing Committee of the Panchayat. The Standing Committee called for a report from the Secretary and passed a resolution dated 29.09.2007, reducing the tax to Rs.10,238/-, adopting Rs.3,250/- as the daily rent. Appropriate deduction towards expenses for electricity, water and other charges was also allowed. This decision was communicated to the appellant by Ext.P3. Challenging Ext.P3, the appellant filed Ext.P4 revision before the Tribunal along with Ext.P5, an application to condone the delay of 180 days in filing the revision. The application for

condonation of delay was considered by the Tribunal and the same was dismissed by Ext.P11 order, referring to the proviso to Rule 8 of the Tribunal Rules and holding that the power of the Tribunal to condone delay is limited to one month only. It was challenging this order of the Tribunal, the appellant filed the Writ Petition, which was dismissed by the learned Single Judge placing reliance on the judgment of this Court in '**Thomas Thomas v. Kottayam Municipality**' [2008 (3) KLT 964]. It is this judgment which is under challenge before us.

3. We heard the learned counsel for the appellant and the learned counsel appearing for the 2nd respondent Panchayat.

4. In order to resolve the controversy involved in this Writ Petition, it is necessary to refer Rule 8(3) and the proviso thereto of the Tribunal for Kerala Local Self Government Institutions Rules, 1999, which reads thus:

"8(3). Petitions under sub-rules (1) and (2) shall be in Form 'C' and the same shall be submitted before the Tribunal within thirty days from the date of the notice or order or proceedings against which the petition is filed or within ninety days in cases where decision has not been taken within sixty days of filing appeal before the Local Self Government Institutions:

Provided that the Tribunal may admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time limit."

5. A reading of this rule shows that a revision, as in this case, should have been filed within 30 days from the date of the order. The proviso to the rule also empowers the Tribunal to admit a petition submitted within one month after the expiry of the one month period prescribed in Rule 8(3), if the Tribunal is satisfied that there was sufficient reason for not submitting the petition within one month period specified in Rule 8(3). In this context, it is also relevant to state that the one month period prescribed in Rule 8(3) is in terms of the provisions contained in Sec.276(6) of the Kerala Panchayat Raj Act, 1994 also.

6. In so far as the judgment in the case '**Thomas Thomas**' (*supra*) is concerned, after referring to the judgments of the Hon'ble Apex Court and this Court and distinguishing the judgment in '**Pushpakaran v. Union of India**' (2008 (1) KLT 161) in paragraphs 11, 12 and 13, this Court held thus:

"11. From the aforesaid judgments it is clear that once the statutory period of limitation has expired, the party loses its right of appeal.

Thereafter it is not open to him to invoke the power of this court under Art.226 of the Constitution and bypass the statutory restrictions and get the delay condoned or to have the matter examined by this Court. Admittedly, proviso to R.8(3) authorizes the Tribunal to condone delay of only one month if it is satisfied that there is sufficient reason for the delay. The power conferred on the Tribunal being restricted, in my view, the above two judgments of this court gives a complete answer to the contentions of the petitioner.

12. As rightly contended by the counsel for the Municipality if a special statute has prescribed a period of limitation, to that extent, the provisions of the Limitation Act will stand excluded as provided in S.29(2) of the Limitation Act. This contention of the learned counsel for the Municipality is fully supported by the judgment of the Apex Court in [(2008) 7 SCC 169] and para 20 (mistakenly shown in the referred judgment as paragraph 10) to the extent relevant, reads as under:

"When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded.
As the intention of the legislature in enacting sub-s.

(3) of S.34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court of the opinion that the provisions of S.5 of the Limitation Act would not be applicable because the applicability of S.5 of the Limitation Act stands excluded because of the provisions of S.29(2) of the Limitation Act. (emphasis supplied)

13. Counsel for the petitioner also relied on the decision reported in Pushpakaran v. Union of India [2008 (1) KLT 161]. That was a case arising under the Railway Claims Tribunal (Procedure) Rules, 1989. However, on going through the Rules, it is seen that unlike R.8 of the Tribunal Rules, where the maximum condonable period is one month, no such limitation is provided for in R.18 of the Rules referred to above, which came up for consideration of the Division Bench in the above case. In view of this factual difference this judgment of the Division Bench does not help the petitioner."

7. A reading of the above paragraphs show that this Court has held that Rule 8(3) authorized the Tribunal to condone delay of only one month, if it is satisfied that there was sufficient reason for the same and that the said power conferred

on the Tribunal is a restricted power.

8. However, the learned counsel for the appellant sought to canvass the correctness of this judgment, placing reliance on the decision of the Division Bench of this Court in '**Pushpakaran v. Union of India**' [2008 (1) KLT 161]. That was a case arising under the provisions of the Railway Claims Tribunal Act, 1987 and the Railway Claims (Procedure) Rules, 1989.

9. Rule 18 of the Procedure Rules provides for action on application for applicant's default and this rule reads thus:

"18. Action on application for applicant's default.--(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear (when the application is called) for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review."

10. Taking note of the above provisions, the Division Bench held thus in paragraph 6 of the judgment:

"6. R.18 of the Railway Claims Tribunal (Procedure) Rules prescribe the time limit of 30 days in filing an application for setting aside an order dismissing the application for default. But, there is no specific exclusion or prohibition in the section for extending the time. Hence, considering the mandate of S.29(2) of the Limitation Act, S.5 of the Limitation Act is applicable. It is true that before Mukri Gopalan's case (supra) there were large number of decisions to the effect that S.5 of the Limitation Act is applicable only to a civil court and not to courts or tribunals or quasi judicial authorities which has though all trappings of the court but not being a civil court. Now it has been consistently held that in the absence of specific exclusion or prohibition, if limitation is prescribed in a special law for filing an application, by virtue of S.5 read with S.29(2) of the Limitation Act, tribunal which has all the trappings of court can condone delay on sufficient reasons. This is all the more applicable to the Railway Claims Tribunal in setting aside any order of dismissal for default of the applicant in view of S.18(3) of the Railway Claims

Tribunal Act, 1987."

11. A reading of the statutory provisions relied on by the Division Bench show that though in Rule 18 of the Procedure Rules, provision has been made for the filing of an application to set aside an order dismissing an application and for restoring the application, within 30 days from the date of dismissal, there is no further provision in the rule providing for condonation of delay or any period up to which delay can be condoned, as in the proviso to Rule 8 of the Tribunal Rules. It was taking note of this peculiar nature of Rule 18 that in paragraph 6 of the judgment, the Division Bench held that the provisions of Sec.5 of the Limitation Act would apply to an application made under Rule 18 and the Railway Claims (Procedure) Rules, in our view, in the light of the difference in the provisions of Rule 8 of the Tribunal Rules and Rule 18 of the Railway Claims (Procedure) Rules, the judgment rendered by the Division Bench in '**Pushkaran's**' case (*supra*) cannot be relied on to get over the proposition laid down by this Court in '**Thomas Thomas's**' case (*supra*).

12. The learned counsel for the appellant also contended that in order to exclude Sec.5 of the Limitation Act, there should be a specific provision under the special statute, viz., the Tribunal for Kerala Local Self Government Institutions Rules, 1999, excluding expressly Sec.5 of the Limitation Act.

13. The said contention was resisted by the learned counsel for the 2nd respondent by referring to the decision reported in '**Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department**' [(2008) 7 SCC 169], wherein the Hon'ble Apex Court had occasion to consider the limitation prescribed under the proviso to Sec.34(3) and Sec.43(1) of the Arbitration and Conciliation Act, 1996 with respect to condonation of delay as contemplated under Secs. 5, 14 and 29(2) of the Limitation Act, 1963. After evaluating the facts and circumstances of this case, in paragraph 20 of the said judgement, [incorrectly shown as paragraph 10 in the judgment reported in '**Thomas Thomas**'s case (supra)] the Hon'ble Supreme Court has held as follows:

"20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation

prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-s. (3) of S.34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court of the opinion that the provisions of S.5 of the Limitation Act would not be applicable because the applicability of S.5 of the Limitation Act stands excluded because of the provisions of S.29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of

Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996."

From the paragraph referred above, it is categoric and clear that so far as the special limitation prescribed under a statute is concerned, Sec.5 of the Limitation Act will not be applicable.

14. Further, one of the Hon'ble Judges of the Bench, concurring fully with the findings, rendered separate reasons and in paragraphs 53 and 54, it is clearly held that whenever there is a period prescribed for condoning the delay, then Sec.5 of the Limitation Act is clearly excluded, and these paragraphs are quoted hereunder:

"53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond

thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the prescribed of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3)

exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29 (2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence."

15. Apart from this, we have come across a judgement of the Hon'ble Supreme Court in '**Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Others**' [(2010) 5 SCC 23], wherein the Hon'ble Supreme Court had occasion to consider the special limitation prescribed under Sec.125 of the Electricity Act, 2003. Sec.125 of the Electricity Act, 2003 reads thus:

"125. Appeal to Supreme Court.--Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court,

within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

16. On a reading of the said provision, it is clear that a person aggrieved by any decision of the Appellate Tribunal constituted under the Electricity Act, 2003 is to prefer an appeal to the Hon'ble Supreme Court within 60 days from the date of communication of the decision or order of the appellate Tribunal to him. There the proviso enables the Apex Court to condone delay of 60 days on showing sufficient cause. After considering various judgments rendered by the Hon'ble Apex Court and various High Courts with regard to the limitation with specific reference to Secs.5 and 29 of the Limitation Act, it was held that whenever there is a special limitation prescribed under a special statute, that is clearly an exclusion as contemplated under Sec.29(2) of the Indian Limitation Act.

17. Paragraphs 25, 26 and 27 of the judgment reads thus:

"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

26. The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of

special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil Courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29 (2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law."

18. So also, yet another judgment in '**Om Prakash v. Ashwani Kumar Bassi**' [JT 2010 (9) SC 162], the Hon'ble Supreme Court had occasion to consider Secs.5 and 29(2) of the Limitation Act vis-a-vis Sec. 13(b) of East Punjab Urban

Rent Restriction Act, 1949 and held as follows in paragraph 17 of the said judgment:

"17. Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18A(2) of the aforesaid Act provides that after an application under Section 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power."

19. Further, the Hon'ble Supreme Court in the decision reported in '**Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others**' [(2008) 3 SCC 70] held that Sec.35 of the Central Excise Act, 1944 would override the provisions of Sec.5 of the Limitation Act. Paragraph 8 of the judgment reads thus:

"8. x x x x
 x x x x

The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by

condoning delay only up to 30 days after the expiry 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

20. In yet another decision in **'Popat Bahiru Govardhane and Others v. Special Land Acquisition Officer and Another'** [(2013) 10 SCC 765], the Hon'ble Supreme Court emphasized the need for strict compliance with the statutory scheme and held that it is not permissible to extend the period of limitation on equitable grounds if statute does not permit the same. Taking into account the facts, circumstances and law involved in the case before us, we are of the considered opinion that the order passed by the learned Tribunal, refusing to condone the delay in excess of the period prescribed under the proviso to Rule 8(3) and the affirmation of the same by the learned Single Judge is correct and no interference is called for.

21. The learned counsel for the appellant then contended that Ext.P2 is an objection filed by him to Ext.P1 and that

Ext.P2 was wrongly treated as an appeal. According to him, it is on that basis, resolution leading to Ext.P3 was passed by the Standing Committee. We have already narrated the facts making reference to paragraph 3 of the counter affidavit filed by the Panchayat, which show that this assertion made by the counsel for the appellant is factually incorrect. This is all the more so, because the appellant has not refuted the averments in the counter affidavit of the Panchayat by filing any reply affidavit. Therefore, this contention also cannot be accepted.

22. The counsel for the appellant then contended that the revision in question was made under Rule 7 and if that be so, only the Standing Committee could have the powers under Rule 7 of the Kerala Panchayat Raj Act (Taxation, Levy & Appeal) Rules, 1996. Rule 7 provides for powers of the Standing Committee for Finance to give directions to amend assessment books and this rule has application where tax has been inadequately assessed or where property has been inadvertently or improperly omitted from assessment books or when a clerical or arithmetical error has crept in the assessment etc. None of the documents produced by the appellant would show that the revision leading to Ext.P3 is the result of any of the

circumstances mentioned in Rule 7 mentioned above.
Therefore, this contention also cannot be accepted.

In the aforesaid circumstances, we are unable to accept the contentions of the appellant, the appeal fails and it is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI .P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-