

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 08 , 2015

(i) CWP No.25420 of 2012 (O&M)

Bir Singh and others

.....Petitioners

Versus

Union of India and others

.....Respondents

Present: Shri R.S. Hooda, Advocate, for the petitioners.

S/Shri Deepak Verma and
Sameer Nandwani, Advocates, for the respondents.

(ii) CWP No.8529 of 2013 (O&M)

Bishamber Dayal

.....Petitioner

Versus

Union of India and others

.....Respondents

Present: Shri Naveen Kaushik, Advocate, for the petitioner.

S/Shri Deepak Verma and
Sameer Nandwani, Advocates, for the respondents.

(iii) CWP No.206 of 2014 (O&M)

Seela Devi and others

.....Petitioners

Versus

Union of India and others

.....Respondents

Present: Shri R.S. Hooda, Advocate, for the petitioners.

S/Shri Deepak Verma and
Sameer Nandwani, Advocates, for the respondents.

(iv) CWP No.8104 of 2014 (O&M)

Mohit and another

.....Petitioners

Versus

Union of India and others

.....Respondents

Present: Shri Rakesh Kumar Sharma, Advocate, for the petitioners.

S/Shri Deepak Verma and
Sameer Nandwani, Advocates, for the respondents.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported?

Hemant Gupta, J.

This order shall dispose of the above mentioned four writ petitions, wherein the challenge is to an order dated 11.05.2012, whereby an application to seek enhancement of compensation by the Arbitrator to be appointed by the Central Government was declined. For facility of reference, the facts are taken from CWP No. 25420 of 2012.

The land of the petitioners was made subject matter of acquisition by virtue of a notification under Section 3A of the National Highways Act, 1956 (for short 'the Act') dated 2.1.2007. The notification under Section 3D of the Act was published on 21.03.2007 and the Competent Authority determined the compensation @ Rs.16,00,000/- per acre vide award dated 4.3.2008.

Some of the land owners disputed the determination of the amount of compensation and sought appointment of an Arbitrator

as contemplated under Section 3G(5) of the Act soon after the Award was announced. The Arbitrator appointed by the Central Government awarded Rs.36,50,000/- per acre vide Award dated 13.01.2012.

The petitioners were disbursed the amount of compensation on 31.01.2009. They submitted an application for enhancement of compensation amount of compensation in the year 2012 but after more than three years of announcing of the Award on 4.3.2008. The said application has been declined by the Central Government vide order impugned in the writ petition.

Learned counsel for the petitioners has vehemently argued that there is no period of limitation prescribed to seek appointment of an Arbitrator in terms of sub-section (5) of Section 3G of the Act. Therefore, an application filed within three years of the date of disbursement of the amount of compensation is within the period of limitation. Such application could not be declined for the reason that it is barred by limitation. It is also argued that in terms of the Hon'ble Supreme Court judgment in Imrat Lal v. Collector (LA), (2014) SCC 133, the similarly situated land owners are entitled to same amount of compensation. Thus, the petitioners, even if have sought enhancement of compensation after some delay but still the petitioners are entitled to the same amount of compensation.

On the other hand, the argument of the learned counsel for the respondents is that it is Article 113 of the Limitation Act, 1963, which would be applicable. Said Article prescribes the period of three years from the date the cause of action arose for the purpose of filing of the suit. It is argued that filing of an application for appointment of an Arbitrator is akin to the filing of suit, therefore, the period of limitation commences from the date of Award.

To appreciate the argument raised, Section 3G of the Act needs to be examined. The said Section reads as under:-

“3G. Determination of amount payable as compensation:-

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspaper, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.....”

A perusal of the above provisions would show that there is no period of limitation prescribed for moving an application for appointment of an Arbitrator by the Central Government. The

question requires to be examined is that in the absence of any provision in the Act, whether the limitation prescribed under Article 113 of the Limitation Act, 1963 would be applicable in respect of appointment of an Arbitrator.

We do not find any merit in the argument raised that an application for appointment of an Arbitrator is akin to a suit. Section 2(l) of the Limitation Act, 1963 defines the suit so as not to include an appeal or an application. Section 3(2) of the Limitation Act, 1963 deals with the situation when the suit is deemed to be instituted. Since the Arbitrator is to be appointed by the Central Government, the Central Government is not a Civil Court before which alone the Civil Suit can be filed. The Limitation Act, 1963 is applicable to the proceedings before the Court and not before the quasi judicial authorities. Reference may be made to Supreme Court Judgments reported as Nityananda, M. Joshi v. LIC, (1969) 2 SCC 199; Kerala State Electricity Board v. T.P. Kunhaliumma, (1976) 4 SCC 634 and M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58.

In *Nityanand M. Joshi's case (supra)*, the Hon'ble Supreme Court was considering the question of applicability of Article 137 of the Limitation Act in respect of an application to the Labour Court under Section 33(C)2 of the Industrial Disputes Act, 1947. The Court held as under:-

“2. This Court in *Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli*, AIR 1969 SC 1335, has dissented from the decision of the Bombay High Court and has held that Article 137 of the Limitation Act, 1963, does not apply to applications under Section 33-C(2) of the Industrial Disputes Act. This Court gave two reasons for coming to this conclusion. The first ground was that in spite of the changes made in the Indian Limitation Act, 1963, no drastic change was

intended in the scope of Article 137 so as to include within it applications irrespective of the fact whether they had any reference to the Code of Civil Procedure or not. This Court held that in spite of the changes the interpretation of Article 181 of the Limitation Act, 1908, by this Court in *Bombay Gas Co. Ltd. v. Gopal Bhiva*, (1964)3 SCR 709, would apply to Article 137 of the Limitation Act, 1963. The second ground given by this Court was that it is only applications to Courts that are intended to be covered under Article 137 of the Limitation Act, 1963.

3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is “when the court is closed.” Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.”

In *Kerala State Electricity Board's case (supra)*, the period of limitation for a petition contemplated by the Telegraph Act came up for judicial decision. It was held by the Hon'ble Supreme Court that the provisions of the Limitation Act, are not confined to applications contemplated by or under the Code of Civil Procedure but to all application before the “Court”. It was held as under:-

“21. The changed definition of the words “applicant” and “application” contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle

of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other articles in Part I of the third division. This Court in *Nityananda Joshi case* has rightly thrown doubt on the two-Judge Bench decision of this Court in *Athani Municipal Council case* where this Court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word “applications”. These petitions and applications can be under any special Act as in the present case.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in *Athani Municipal Council case* and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

In *M.P. Steel Corpn. Case*, the Supreme Court has held that the Limitation Act applies only to courts and not to quasi-judicial tribunals. The Court held as under:-

“**20.** Now to the case law. A number of decisions have established that the Limitation Act applies only to courts and not to tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in *Bharat Bank Ltd. v. Employees*, 1950 SCR 459. This root authority has been followed in a catena of judgments. This judgment refers to a decision of the King’s Bench in *Cooper v. Wilson*. The relevant quotation from the said judgment is as follows: (*Bharat Bank Ltd. case*, SCR p. 477 : AIR p. 195, para 24)

“A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not necessarily orally) of their case by the parties to

the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice.' (*Cooper case*, KB pp. 340-41)"

21. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the expression "court", it refers to this court system. As opposed to this court system is a system of quasi-judicial bodies called tribunals. Thus, Articles 136 and 227 refer to "courts" as distinct from "tribunals". The question in this case is whether the Limitation Act extends beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well?

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23. In *Kerala SEB v. T.P. Kunhaliumma*, (1976) 4 SCC 634, a three-Judge Bench of this Court followed the aforesaid two judgments and stated: (SCC p. 639, para 22)

22. "The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-Judge Bench of this Court in *Athani Municipal Council case* and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present

case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

This judgment is an authoritative pronouncement by a three-Judge Bench that the Limitation Act applies only to courts and not to quasi-judicial tribunals. *Athani case*, (1969) 1 SCC 873 was dissented from on a different proposition—that Article 137 is not confined to applications under the Code of Civil Procedure alone. So long as an application is made under any statute to a civil court, such application will be covered by Article 137 of the Limitation Act.”

In view of the above, we find that an application before the Central Government for appointment of an Arbitrator is not akin to the suit governed by the provisions of Article 113 of the Limitation Act, 1963. It is an application to seek intervention of a Statutory Authority and not the Court.

Article 137 of the Limitation Act is a residuary Article which is applicable for moving an application before the Court for which no period of limitation is prescribed in the Limitation Act, 1963. Such provision would not be applicable as the application for appointment of an Arbitrator is not to be filed before the Civil Court. The Arbitrator is to be appointed by the Central Government on an application of either of the parties. Therefore, there cannot be any period of limitation in terms of the provisions of the Limitation Act, 1963.

But, even in the absence of any period of limitation under the Limitation Act, the intervention of a statutory functionary is required to be sought within a reasonable period. An aggrieved person cannot move an application at any point of time. Therefore, the reasonable period for moving an application can be said to be three years from the date of cause of action arose. If in any statute, no period of limitation is prescribed, the Courts have held that an

application has to be filed within a reasonable time. Reference may be made to Govt. of India v. Citedal Fine Pharmaceuticals, (1989) 3 SCC 483, RPF Commr. v. K.T. Rolling Mills (P) Ltd., (1995) 1 SCC 181, Collector v. D. Narsing Rao, (2015) 3 SCC 695.

In Citedal Fine Pharmaceuticals case (supra), the Hon'ble Supreme Court has held that in the absence of any period of limitation, every authority is to exercise the powers within a reasonable period. The Court held to the following effect:-

“.....We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.”

In K.T. Rolling Mills (P) Ltd.'s case, the Hon'ble Supreme Court, while reiterating the aforesaid view, held as under:-

“4. There can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness.”

Very recently, in D. Narsing Rao's case (supra), while examining various earlier judgments on the question of reasonable period of limitation for initiating the lis, the Court held as under:-

“25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

26. In one of the earlier decisions of this Court in *S.B. Gurbaksh Singh v. Union of India*, (1976)2 SCC 181 this Court held that exercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

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31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be

tantamount to a fraud upon the statute that vests such power in an authority.”

Keeping in view the test of reasonableness of the period of from the date of Award, it can be said that the reasonable period of time to seek intervention of the Central Government would be three years within which a grievance is required to be made regarding determination of the amount of compensation.

Admittedly, the application for appointment of an Arbitrator was filed after three years of the announcing of the Award, but in the meantime, the Arbitrator had enhanced the amount of compensation of the land to Rs.36,50,000/- per acre in the case of other landowners. In view of the judgment of the Hon’ble Supreme Court in Imrat’s case (supra), we find that the amount of enhanced compensation is to be given to all those land owners, who have not claimed appointment of an Arbitrator. The Court has held to the following effect:-

“11. We can take juridical notice of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the court should adopt a liberal approach and either grant time to the party to file a better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.

12. In Samiyathal v. Tehsildar, Civil Appeal 5335 of 2013 decided on 5.7.2013, this Court took cognizance of the fact

that many land owners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation. The relevant portion of the judgment passed in that case is extracted below:-

“We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other land owners whose land was acquired by the Notification dated 22.5.1991, but who may have on account of ignorance, poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution.”

In view of the aforesaid judgment, we deem it appropriate to set aside the order passed by the Central Government declining the reference to Arbitrator for determination of amount of compensation. But since the award in respect of the other land owners has attained finality, the procedure for appointment of an Arbitrator will only delay the determination of the amount of compensation and cause unnecessary harassment to the landowners.

Consequently, we allow the present writ petitions and direct the respondents to pay the compensation to the land owners in terms of the Award dated 13.01.2012 finalized in respect of the other land owners.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

October 08, 2015
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