

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the Eighth day of February
One thousand nine hundred and seventy nine

PRESENT

The Honourable Mr. Justice Ramanujam, CRP No. 2060
of 1977

S. Sundarajan

.. Petitioner

Vs.

The Authorised Officer (Land Reforms),
Tirunelveli

.. Respondent

Petition under Section 110 of Act V of 1908 praying the High Court to revise the order of the Court of the Prl. Subordinate Judge (Land Tribunal), dated 20th July 1977 and made in I.A. 16 of 1976 in (CMA. (LT) No. 13 of 1972.

JUDGEMENT:

This petition coming on for hearing this day the court delivered the following judgments:

This revision is directed against the order of the Land Tribunal, Tirunelveli excusing the delay in filing a review application under section 5 of the Limitation Act in CMA No. (LT) No. 13 of 1972.

The respondent is the Authorised Officer, Land Reforms, Tirunelveli against whose order an appeal had been filed to the Land Tribunal. The Land Tribunal disposed of said appeal on 30th October 1974. A review application was filed by the Authorised Officer on 27th October 1975 after considerable delay. Along with the review application, an application for excusing the delay in filing the review application (IA) No. 16 of 1976) had also been filed stating that the order of order of the Tribunal had to be examined at various levels and the higher authorities had to be consulted for filing a review application and that examination and consultation resulted in the said delay and that as such the delay was not wilful.

The application for condonation of the delay was opposed by the petitioner herein on the ground that as section 5 of the Limitation Act will not apply to the Land Tribunal which is not a court, it cannot condone the delay invoking that section.

The Tribunal, however, has taken the view that as the Act which given the power of review to the Tribunal does not provide for any period of limitation for filing an application for review, the residuary provision in article 137 of the Limitation Act could be invoked by the party seeking the review even if Section 5 of the Limitation Act cannot be invoked by the Tribunal. The Tribunal then went into the question as to whether sufficient grounds have been shown for condonation of the delay, condoned the delay in filing the review application. Aggrieved against the order of the Tribunal condoning the delay the respondent in IA 16 of 1976 on the file of the Land Tribunal has filed the present revision petition. The contention of the petitioner in that the tribunal having held that section 5 of the Limitation Act will not apply, erred in holding that the delay could be condoned under article 137 of the Limitation Act and that the reasoning given by the Tribunal for condonation of the delay is in any even unsustainable. It has also been contended that the Tribunal has no power to review under the provisions of Tamil Nadu Act 58 of 1961 or the rules framed thereunder.

Whether the Tribunal has got the power of review or not has to be decided with reference to the provisions of Tamil Nadu Act 58 of 1961 constituting the Tribunal and the provisions dealing with its powers and jurisdiction. Section 76 of the Act provides for the constitution of as many Land Tribunals as necessary for the purpose of the Act. Section 77(3) says that each Tribunal shall have the same powers as are vested in a civil court under the code of Civil Procedure, 1908. Section 78(3) provides the manner or disposal of appeals filed before the Tribunal. It says that the Tribunal, after giving the parties a reasonable opportunity of being heard, shall (i) determine a case finally. (ii) remand a case and (iii) take additional evidence or require such evidence to be taken by the Authorised Officer. Section 80 says that the provisions of Section 4 and of Sub-section (i) and (2) of Section 12 of the Indian Limitation Act, 1908 shall as far as may be apply to any appeal under section 78 or 79. Rule 11 of the Land Reforms (Fixation of Ceiling on Land), Rules, 1962 deals with the powers of the Authorised Officer and the procedure to be followed by him.

that rule says:--

(i) The Proceedings of the authorised officer shall be summary and shall, subject to the provisions of the Act and these rules, as far as possible be governed by the provisions of the Code of Civil Procedure, 1908 with regard to--

- (a) the issue and service of summons;
- (b) the examination of parties and witnesses;
- (c) the production of documents;
- (d) the amendment of pleadings;
- (e) the addition of parties;
- (f) the passing of ex-parte orders and setting them aside for good cause;
- (g) the ordering dismissal for default of appearance and setting aside such orders for good cause;
- (h) the reviewing of orders passed on ground of apparent error;
- (i) local inspection and
- (j) the passing of orders.

2. A summons requiring the attendance of any person or for the production of any document during an enquiry under the Act or these rules shall be in form 5". According to the petitioner, neither section 77 nor section 78 confers a power of review to the Tribunal and though the Tribunal has the same powers as a re-vested in a civil court under the code of Civil Procedure under Section 77(3), that will not enable the Tribunal to entertain a review application as such a power has not been specifically given and though the tribunal is invested with the powers of a civil court that will mean that the Tribunal can have all the powers of a civil court in the matter of disposal of the appeals before it, and not for entertaining a review application. It is also pointed out by the learned counsel for the petitioner that while rule 11 specifically confers a power of review on the authorised officer there is no such specific conferment on the Tribunal and therefore, the Land Tribunal should be taken to have no power to review its own orders. In support of this plea, the learned counsel refers to the decision in S. Ganapathy V.N. Kumaraswami (AIR. 1975 Madras 383) in which it was held that the appellate authority functioning under the Tamil Nadu Buildings (Lease & Rent Control) Act 1960 is not a court but a person designata and therefore it has no power to condone the delay in filing appeals before it by invoking section 55 of the Limitation Act. The petitioner submits that on the same analogy the Land Tribunal can only be treated as a persona designata and not a court and therefore the 52/6--74.

Tribunal could not invoke section 5 of the Limitation Act. Reference also has been made to the decision in Town Municipal Council V. Presiding Officer, Labour Court (1970 ISC 1) wherein it has been pointed out that section 137 and the other articles in the third division of the schedule will only apply to applications made to court under the civil procedure code with the exception of applications under the Arbitration Act and also under the CRPC and not to applications made to Industrial Tribunals or Labour Courts.

The learned counsel for the respondent would however assert that the Tribunal has the power to review its own orders as also the power to condone the delay in filing a review application. Thus the controversy between the parties relates to the following three questions.

(1) Whether the Tribunal has the power to review its own orders (2) whether the Tribunal has got the power to condone the delay either under Section 5 and whether the review application could be filed within 3 years under Article 137 of the Limitation Act.

That the Tribunal is only a persona designata and not a court is beyond any doubt. Section 76 which provides for the constitution of Land Tribunal says that the Government shall constitute a Land Tribunal consisting of a Judicial Officer not below the rank of a Subordinate Judge and Section 77(1) enables the Government to determine the areas over which the Tribunal so constituted can exercise jurisdiction. These provisions make it clear that the Tribunal constituted is only a persona designata and not a court. The learned counsel for the respondent also does not dispute this position. The controversy between the parties is only as to whether the Tribunal has got the power to review its own orders. While the petitioner says that the Tribunal has so much power the respondent asserts that it has, Section 77(3) confers on the tribunal all the powers vested in a civil court under the code of civil procedure. This seems to suggest that the Tribunal will have all the powers which the civil court has under the Code of Civil Procedure. There cannot be any doubt that a court functioning under the Code of civil procedure has the power to review. However, the learned

counsel for the respondent would refer me to sub-section (3) of Section 78 and say that though Section 77(3) is somewhat wide so as to attract all the provisions of the code of civil procedure, sub-section (3) of Section 78 curtails the said wide power for Section 78(3) merely enables the tribunal to determine the case finally, remand a case or take additional evidence or require such evidence to be taken by the authorised officer and there is no reference to the power of review. I am not inclined to agree with the learned counsel for the respondent that Section 78(3) should be taken to supersede or curtail in any manner Section 77(3). Section 78(3) merely says how the Tribunal should dispose of the appeal after hearing the parties. The provisions will not apply to a stage where the appeal has been disposed of by the Tribunal and a party seeks a review of its order. Since section 77(3), specifically invests all the powers of a Civil Court under the Civil Procedure Code on the Tribunal, it should take in the power of review as well and that power has not been curtailed by sub-section (3) of Section 78, as contended for by the respondent.

The argument of the petitioner based on rule 11 is that while the Authorised Officer has been specifically given power to review, the Tribunal has not given such power. Here again I do not see any merit in the said contention. The authorised officer has not been invested with all the powers of a civil court and only certain enumerated powers had been conferred on the authorised officer and one of such enumerated power is the power of review. That is not the case in relation to the Tribunal. The Tribunal has been invested with all the powers of a civil court and there is no necessity for enumerating the various powers particularly the power of review. I have to therefore hold that the Tribunal has got the power to review its own orders.

Once all the powers of a civil court under the Civil Procedure Code are available to the Tribunal, it can entertain a review petition within the time which is normally prescribed for filing review petitions before the Civil Courts. The period for filing a review petition before a civil court is 30 days from the date of the order. In this case, the review petition has been filed beyond the period of 30 days and therefore, the necessity arisen to file an application for condonation of the delay. But,

the delay could condone only be invoking the power under Section 5 of the Limitation Act. Having regard to Section 80 of the Act which says that the provisions of Section 4 and of sub-section (1) and (2) of Section 12 of the Indian Limitation Act, 1908 will alone apply to any appeal under section 78, the question has to be considered whether section 5 of the Limitation Act could even then be applied by the Tribunal. When particular sections of the Limitation Act have been made applicable under Section 80, the normal inference is that the other sections are not applicable. If all the provisions of the Limitation Act were to apply to the Tribunal. Therefore, the intention of the Legislature appears to be not to make section 5 applicable to appeals before Tribunal. Having regard to the language of section 80 of the Act, it is not possible to say that section 5 of the Limitation Act can be applied to proceedings before the Tribunal.

In a case arising under the Kerala Buildings (Lease and Rent Control) Act, 1965 A full Bench of the Kerala High Court in *Fernandaz- v. Umma* (AIR. 1974 Kerala 102 (F.B) held that the appellate authority under that Act is a persons designata and as such neither section 5 nor section 5 read with section 29(2) of the Indian Limitation Act will apply for condoning the delay in filing appeals. In *Abdul Wahid. V. Abdul Khader* (AIR 1947 Mad. 400) Yanya Ali, J. had held that the appellate authority constituted under Section 12 of the Madras Buildings (Lease and Rent Control) Act, 1966 is a persona designata and not a court. Similar view has been expressed by this court in *Chinnaiah Thevar V. Badhsa* (AIR 1948 Mad. 539) *Rajam Aiyer V. Pavanambal* (AIR 1949 Mad. 787) and *S. Ganapathy V. Kumaraswamy* (AIR 1975 Mad. 383). In view of the above decisions the Land Tribunal cannot be considered as a court and it cannot invoke Article 5 of the Limitation Act for condonation of the delay in filing the review before it.

The learned counsel for the respondent refers to the decision in *D.M. Rao V. Ranga* (AIR 1975) (AE 13) wherein it has been held that the Rent Controller acting under the Rent Control Act is a court and section 5 of the Limitation Act is applicable to the proceedings before it. But with due respect to the learned judge who decided that case. I cannot agree with that view.

even assuming that the said decision is right, it cannot be applied here for the reason that section 80 of the Act which applies certain specific sections of the Limitation Act to the proceedings before the Land Tribunal it has to be held that the Land Tribunal has no power to invoke section 5 of the Limitation Act which is not one of the specified sections for purpose of condoning the delay in filing a review petition.

Further the Tribunal in this case proceeds on the basis that though section 5 of the Limitation Act may not apply, the time for filing a review petition should be taken to be governed by article 137 of the Limitation Act, as section 77(3) does not provide for any period of limitation for an application for review and, therefore, the residuary article. 137 would along apply. That being the basis of the decision of the Land Tribunal, it should have held that the application for excusing the delay is not necessary as the review application has been filed within the period of three years prescribed by article 137. But the Tribunal has ultimately excused the delay on the ground that it was due to administrative reasons which was unavoidable. The question is as to what is the period of limitation for filing a review application before the Tribunal.

Article 124 provides a period of thirty days from the date of order sought to be reviewed for seeking review of a judgement by a court other than the Supreme Court. In view of the fact that the land tribunal is invested with all the powers of a civil court under the code of Civil Procedure, it has got the power to review its own orders and such a power could be invoked by a party before the Tribunal in the same manner as it would be invoked by a party before a court. If that were to be so a party before a civil court has to file a review application within 30 days from the date of the order of decree. On the same analogy a party before the Land Tribunal should also invoke the power of review within the said period. Merely because Act 58 of 1961 does not provide specifically for limitation, resort cannot be had to the residuary provision in article 137. Even the civil procedure code does not contain the period of limitation for filing any review before the court and one has to look into the provisions of the limitation Act for that purpose. Similarly, once the Land Tribunal considered is to be a court for the purpose

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of filing a review, the review has to be filed within the same time as it would be filed before a civil court. Article 137 is a residuary article which has to be applied only when no period of limitation is prescribed in the Schedule to the Limitation Act. Therefore, article 137 cannot be invoked in this case.

The result is the order of the Land Tribunal condoning the delay in filing the review application cannot be sustained. Nor could the review petition held to be in time under Article 137. The civil revision petition is therefore allowed. However, there will be no order as to costs.

(Sd.) K.V. Ramachandran,
Asst. Registrar (AS).

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