

Abdul Rasheed Vs. State of Kerala

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Court : Kerala

Decided On : Oct-29-2004

Reported in : 2005(1)KLT5

Judge : Pius C. Kuriakose, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 28A

Appeal No. : W.P. (C) No. 31051 of 2004

Appellant : Abdul Rasheed

Respondent : State of Kerala

Advocate for Def. : Aloysius Thomas, Government Pleader

Advocate for Pet/Ap. : George Varghese (Perumpallikuttiyil),; Sreelekha Puthalath and;

Judgement :

Pius C. Kuriakose, J.

1. This Writ Petition has been filed seeking to quash Ext.P3 order by which the application filed by the petitioner under Section 28A of the Land Acquisition Act has been rejected by the Land Acquisition Officer-3rd respondent on the ground of limitation. The petitioner filed Ext.P2 application relying on the judgment in

L.A.R.No.85 of 1994 of the Subordinate Judge's Court, Mavelikkara which pertained to another property covered by the Section 4(1) notification under which the petitioner's property was also acquired. The Subordinate Judge's Court, Mavelikkara pronounced the judgment in L.A.R. No. 85 of 1994 on 12.4.2002, the day on which that Court was closed for midsummer vacation. The Mavelikkara Sub Court was having midsummer vacation by virtue of a notification issued by the High Court under Section 19 of the Civil Courts Act till 25.5.2002. The petitioner applied for certified copy of the judgment in L.A.R. No. 85 of 1994 on 25.5.2002 itself and did not waste time in the matter of the copy application after the same was filed. He filed Ext.P2 application within three months of obtaining the copy. However, the Land Acquisition Officer passed Ext.P3 rejecting Ext.P2 on the ground of limitation. A reading of Ext.P3 will show that the Land Acquisition Officer has excluded from the period of limitation only the day on which the judgment in L.A.R. No. 85 of 1994 was delivered and not the days when the Sub Court remained closed for midsummer vacation.

2. I heard Sri. George Varghese Perumpallikuttiiyil, Advocate for the petitioner and Sri. Aloysius Thomas, Senior Government Pleader.

3. Sri. George Varghese submitted that both under the Limitation Act as well as under Section 28A(i) of the Land Acquisition Act, the petitioner was entitled to exclusion of the date 12.4.2002 as well as the time taken for obtainment of a certified copy of the judgment in L.A.R. No. 85 of 1994 and since the Subordinate Judge's Court remained closed for vacation from 13.4.2002 till 25.5.2002, it could have been possible for the petitioner to apply for copy only on 25.5.2002, the reopening date when the application was actually made by him. Thus, according to the learned counsel, Ext.P2 application filed admittedly within 87 days of the obtainment of certified copy was perfectly on time and was not liable to be rejected.

4. Sri. Aloysius Thomas, learned Senior Government Pleader submitted that the copying section of the Mavelikkara Sub Court did not have any vacation at all and was working all through the vacation. According to the learned Government Pleader, the application for copy could have been filed by the petitioner on

13.4.2002 in which case he could have got the certified copy of the judgment in L.A.R. No. 85 of 1994 either during the vacation itself or immediately on the reopening of the Court. The learned Government Pleader invited my attention to the Explanation to Section 12 and submitted that Section 10 of the General Clauses Act does not have any application in the present case.

5. Replying to the submissions of the Government Pleader Sri. George Varghese submitted that the legislative objective underlying Section 28A was to enable poor and inarticulate people who were unable to apply for reference under Section 18 to receive the same compensation as those who could approach the reference Court and therefore a liberal approach was required in the matter. The learned Government Pleader retorted quickly by inviting my attention to the judgment of the Supreme Court in State of A.P. v. Marri Venkaiah ((2003) 7 SCC 280) where in the Supreme Court has said that even though Section 28A is a beneficial provision, the parties who seek relief under that provision ought to be vigilant and apply within three months of the date of the Court award relied on.

6. Sub-ss.(2) and (3) of Section 12 of the Limitation Act dealing with appeals and applications for revision or review of judgments provide that in computing the period of limitation for such proceeding, the date on which the judgment which is subject-matter of the proceeding was delivered and the time requisite for obtaining a copy of the same shall be excluded. However, the Explanation to Section 12 says that in computing the time requisite for obtaining copy, the time taken by the Court to prepare the decree or order or judgment before an application for copy is made will not be excluded. The Explanation indicates very clearly that the parties are not expected to waste time in the matter of making applications for copy of the judgment which is relevant. In other words, the application for copy of the judgment in L.A.R. No. 85 of 1994 ought to have been filed ordinarily on 13.4.2002, since both under the Limitation Act and under the proviso to Section 28A(i) the day on which the judgment was pronounced, i.e. 12.4.2002, is liable to be excluded from the period. The basis of the petitioner's contention that Ext.P2 application is not liable to be rejected is that from 13.4.2002 till 25.5.2002 the Subordinate Judge's Court, Mavelikkara which passed the judgment in L.A.R. No. 85 of 1994 was remaining closed for midsummer vacation.

But the above basis cannot be as strong as it apparently looks when it is realised that the copying section of the Subordinate Judge's Court at Mavelikkara did not have vacation and the staff of that section were working during the midsummer vacation also. It is Section 19 of the Civil Courts Act which provides for midsummer vacation to the Civil Courts in the State.

S.19 reads as follows:-

'19. Adjournment of Civil Court.--

(1) The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate sixty days in each year.

(2) During the adjournment of a Civil Court, the High Court shall nominate a District Judge for each District, who shall have the power to make provisional orders on all urgent matters and for such purpose, appeals, plaints and petitions and other matters which would ordinarily be presented to such Civil Court shall be received in the District Court and any such order shall, except on matters to be presented in the District Court itself, remain in force until such matter has been heard and decided by the Court having jurisdiction and in the case of orders passed on matters to be presented in the District Court itself, such order shall be an order passed by a Court having jurisdiction.'

S.20 of the said Statute deals with the functions of the ministerial sections during vacation. Section 20 reads as follows:-

'20. Duties of ministerial officers.- The ministerial officers of a Court shall perform such duties as may from time to time be imposed upon them by the Presiding Officer of the Court.'

S.10 of the General Clauses Act reads as follows:-

'10. Computation of time

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is

closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

PROVIDED that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts or Regulations made on or after the fourteenth day of January, 1887.'

7. Had this been a case of the petitioner requiring the certified copy of judgment in L.A.R. No. 85 of 1994 for the purposes of preferring an appeal or an application for review, there would not have been any difficulty at all since the situation is covered by precedents. The difficulty arises only because certified copy of the judgment in L.A.R. No. 85 of 1994 was applied for by the petitioner for the purpose of producing along with Ext.P2 application under S .28 A. I am however inclined to hold on the following reasons that the entire midsummer vacation period from 13.4.2002 till 25.5.2002 is also to be excluded from computation of the period of limitation in the matter of Ext.P2 application.

8. The copying section of the Civil Court during midsummer vacation will be able to entertain and process only ordinary copy applications. From the point of view of the ordinary people like the petitioner, it will not be easy to apply for and obtain certified copies of judgments in cases to which he is not a party without the assistance of a lawyer. Getting the services of a lawyer of the Mavelikkara Subordinate Judge's Court during midsummer vacation will be difficult. Obtaining certified copy of the judgment during midsummer vacation on the basis of an ordinary copy application will require surveillance by the applicant on more days than one. The Allahabad High Court decided way back in 1912 in *Khub Chand v. Harmukh Rai* (ILR 34 Allahabad 41) that notwithstanding that the copying department of the Civil Court was kept open for some days during vacation the applicant was entitled to the benefit of the whole period of vacation even if the party applied for copy during vacation and the copy was made ready by the copying section during the vacation. Following the above decision of the Allahabad High Court a learned Single Judge of this Court in *Marthanda Pillai v. Devassia*

(1985 KLT 701) also held that when a copy of the judgment is ready for delivery during the vacation of the Court it can be taken delivery of on the date when the Court reopens after vacation without losing time, for computation of the period of limitation for filing appeal, revision etc. The Court also clarified that if actually the copy is received during vacation, time will start running from that date. In my view, the judgment of the Allahabad High Court as well as this Court give support to the view that from the point of view of a litigant the copying section though not closed for vacation can be treated as remaining closed for practical purposes. The learned Judge (V. Bhaskaran Nambiar, J.) who decided Marthanda Pillai's case (supra) rightly noticed Rule 247 of the Civil Rules of Practice which says that list of copies ready for delivery shall be posted on the notice board of the section and shall remain there for three clear days other than holidays and found that the party has the option to treat Court holidays as holidays for the section also even if the section was actually working during the Court holidays. There is another trite principle that when two views are possible on the question of limitation, that view which brings the proceeding within the period of limitation should be preferred. After all, the legislative objective underlying Section 28A is to give equal treatment to inarticulate land owners who had not applied for reference under Section 18. State of A.P. v. Marvi Venkaiah (supra) was a case where the claimant applied after years unlike the instant case where the claimant applied for copy of the judgment, which was delivered on the closing date, on the very reopening date.

The result is that Ext.P3 is quashed. It is declared that Ext.P2 is not barred by limitation. The 3rd respondent is directed to consider Ext.P2 on its merits and dispose of the same in accordance with law within a maximum period of three months from the date of production of a copy of this judgment. The Writ Petition is allowed as above.

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