

DEPUTY COLLECTOR NORTHERN SUB DIVISION, PANAJI A

v.

COMMUNIDADE OF BAMBOLIM

JULY 26, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.] B

*Limitation Act, 1963:Section 14.*

*Land Acquisition at Goa—Compensation Award by Reference Court—Extension of CPC and Arbitration Act to Goa—State Counsel—Doubt whether remedy to be pursued under Portuguese Code or CPC—Appeal filed under CPC without prejudice to right under Portuguese Code—Dismissal by High Court as time barred and for non-filing of Vakalatnama—Held pursuing wrong remedy under Portuguese Code was bona fide—Section 14 held applicable—Filing of memo of appearance by State Counsel held sufficient.* C

For certain lands acquired at Goa, the Land Acquisition Officer gave his award on March 30, 1966 while the Reference Court gave its award on June 1, 1967. In the meantime the Code of Civil Procedure, 1908 and the Arbitration Act, 1940 was extended to Goa with effect from September 15, 1965. Dissatisfied with the enhanced compensation the appellant filed an appeal before the Civil Court on August 25, 1967. As the State Counsel was in doubt as to whether the appeal should be pursued under the Portuguese Code or under the Code of Civil Procedure, he filed a memo on June 22, 1966 that he was pursuing the appeal under the CPC without prejudice to his right under the Portuguese Code. The Judicial Commissioner Goa dismissed the appeal on the grounds that : F

(i) the appeal was barred by Limitation and (ii) the Vakalatnama had not been filed by the Counsel for the State. Hence this appeal.

Allowing the appeal and setting aside the order of the Judicial Commissioner, this Court G

HELD : 1. It is true that if the appeal is filed under "Recurso de Apelacao" it is well within time. If appeal is entertained under Section 96 of CPC read with Section 54 of the Land Acquisition Act, it is beyond limitation. The State is acting through its authorised representative and H

- A the counsel was in two minds, as to whether the appeal should be pursued under the Portuguese Code or under C.P.C. Since C.P.C. stood extended to Goa, Daman and Diu on September 15, 1966 by which date there was a decree passed by the Reference Court, obviously the proceedings should be pursued under C.P.C. as per Section 53 of the Land Acquisition Act.
- B Therefore, there is a bona fide mistake on the part of the counsel in pursuing the remedy under the Portuguese Code. [361-D-F]

2. Since the State acts through the counsel for the State and he is entitled to represent the State in all the proceedings initiated in the Court, there was no need to file vakalatnama but memo of appearance would be sufficient. [361-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.445 of 1979.

- D From the Judgment and Order dated 28.4.78 of the Court of Judicial Commissioner, Goa Daman & Diu at Panaji in Application No. 138 of 1968.

Ms. A. Subhashini for the Appellant.

S.K. Mehta and Dhruv Mehta for the Respondents.

- E The following Order of the Court was delivered :

This appeal by special leave arises from the order of the Judicial Commissioner Goa, Daman and Diu dated April 28, 1978. The Judicial Commissioner by the said order dismissed the appeal on two grounds

- F namely the appeal was barred by limitation and the Vakalatnama had not been filed by counsel for the State. The admitted facts are that a Notification was issued under s.4 of Land Acquisition Act, 1894 (for short 'the Act') dated January 21, 1965 acquiring the land situated at Bambolim for public purpose, namely, construction of Medical College. The Land Acquisition Officer made his award on March 30, 1966. The Code of Civil Procedure and the Arbitration Act were extended to Goa, Daman & Diu on September 15, 1965 and were applied and came into force by a Notification dated 24th May, 1966. The Award of the Civil Court was made on reference under s. 18 on June 1, 1967. Dissatisfied with the enhanced compensation awarded by the Civil Court the appellant filed the appeal on
- G August 25, 1967 in the Comarca Court which is a civil court under the Act.

Thereafter it would appear that there was a procedural difficulty, in which the Govt. Pleader appearing for the State was unable to decide under what Code he was to pursue the remedy whether it would be under "*Recurso de Apelacao*" under the Portuguese Code or under the Code of Civil Procedure. To that effect a memo was filed by the Govt. Pleader on June 22, 1966 that he was pursuing the appeal under the Code of Civil Procedure without giving up, pursuing the remedy under "*Recurso de Apelacao*". Ultimately, the Judicial Commissioner came to the conclusion that since the Code of Civil Procedure was extended and acquisition was initiated under the Act and the appeal came to be filed under s.54 of the Act, it was not within the prescribed period. Hence the appeal had to be barred by limitation. It also found that since the counsel appearing for the State had to file the Vakalatnama the appeal was not properly presented.

The crucial question is whether the appeal was presented bona fide within limitation. It is true that if the appeal is filed under *Recurso de Apelacao* it is well within time. If appeal is entertained under s.96 of CPC read with s.54 of the Act, it is beyond limitation. The question is whether the appellant was pursuing the remedy bona fide. It is contended for the respondent that there are no bona fides on the part of the State and, therefore, s.14 of the Limitation Act cannot be applied to the facts in this appeal. We are unable to agree with the counsel. The State is acting through its authorised representative and the counsel was in two minds, as to whether the appeal should be pursued under the Portuguese code or under C.P.C. Since C.P.C. stood extended to G.D.D. on September 15, 1966 by which date there was a decree passed by the Reference court, obviously the proceedings should be pursued under C.P.C. as per s.53 of the Act. Therefore, the counsel was pursuing the remedy wrongly under the Portuguese Code. In consequence, the appeal came to be filed beyond limitation. Accordingly, there are bona fides in pursuing the remedy. The State was represented by the counsel and the counsel was in two minds as to whether the appeal should be pursued under the Portuguese Code or under the Code of Civil Procedure. There is a bona fide mistake on the part of the counsel in pursuing the remedy. Since the State acts through the counsel for the State and he is entitled to represent the State in all the proceedings initiated in the Court, there was no need to file vakalatnama but memo of appearance would be sufficient. Accordingly the order of the Judicial Commissioner is set aside.

A Since the matter is being remanded to the High Court at Goa, the High Court is requested to dispose of the appeal expeditiously preferably within a period of six months from the date of the receipt of the order. The appeal is allowed accordingly. No costs.

T.N.A.

Appeal allowed.