

PETITIONER:
DEPUTY COLLECTOR NORTHERNSUB DIVISION, PANAJI

Vs.

RESPONDENT:
COMUNIDADE OF BAMBOLIM

DATE OF JUDGMENT 26/07/1995

BENCH:
RAMASWAMY, K.
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RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 148 1995 SCC (5) 333
1995 SCALE (4) 721

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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 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, Dam 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 enhanced compensation awarded by the Civil Court the appellant filed the appeal on 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 not filed 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.

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.