

CASE NO.:
Appeal (civil) 4688 of 1998

PETITIONER:
Gopal Sardar

RESPONDENT:
Karuna Sardar

DATE OF JUDGMENT: 09/03/2004

BENCH:
Shivaraj V. Patil & D.M. Dharmadhikari

JUDGMENT:
J U D G M E N T
WITH
CIVIL APPEAL NO. 444 OF 2000

SHIVARAJ V. PATIL J.

CIVIL APPEAL NO. 4688 OF 1998

The respondent made an application under Section 8 of the West Bengal Land Reforms Act, 1955 (for brevity 'the Act') in the Munsif Court claiming right of pre-emption on the basis of vicinage being the owner of adjoining plots of land purchased on 20.7.1966 and 1.6.1981. According to her, the appellant tried to take forcible possession of the plot no. 1368 adjoining to the east of his land. It is her case that she came to know on 18.9.1985 that the appellant had purchased the said plot no. 1368 on 17.8.1979, which is adjoining the respondent's plot no. 1366. The appellant contested the case denying the material incidents and inter alia contending that the application made under Section 8 of the Act was barred by limitation. The Munsif Court condoned the delay on the ground that the respondent had no knowledge of the sale till the date of application and that there was sufficient cause for not making the application within time but dismissed the application on merits finding that on the date of transfer, the respondent was not possessing the longest common boundary. The appeal filed by the respondent against the said order of the Munsif Court was dismissed by the learned Addl. District Judge both on the ground of limitation as well as on merits. In other words, on merits, the learned Addl. District Judge concurred with the finding recorded by the Munsif Court and reversed its finding on the limitation holding that the application filed by the respondent was barred by time. The respondent approached the High Court by filing a revision petition under Section 115 of the Code of Civil Procedure. The High Court held that the period under Article 137 in the Schedule of the Limitation Act, 1963 (for short 'Limitation Act') was applicable to the case. In that view, the High Court upheld the order passed by the Munsif Court condoning the delay for making the application. The High Court also held that the respondent was entitled to get the order of pre-emption on the basis of purchase in 1966 in view of the amendment of 1981. In

the result, the High Court set aside the order of the Addl. District Judge and remitted the case to the first appellate court (District Judge) to decide on merits. Hence, this appeal.

CIVIL APPEAL NO. 444 OF 2000

The appellant made an application to enforce right of pre-emption under Section 8 of the Act as a contiguous land owner in the Munsif Court stating that he came to know about the sale deed of the land in question on 18.2.1989. She immediately rushed to the office of the sub-Registrar and on search came to know of the existence of the sale deed dated 27.5.1983. The application under Section 8 was filed within time from the date of knowledge; an application under Section 5 of the Limitation Act also was filed for condonation of delay in filing the application under Section 8 of the Act; the Munsif Court dismissed the application filed under Section 5 of the Limitation Act; consequently rejected the application filed under Section 8 of the Act. Aggrieved by the said order of the Munsif Court, the appellant filed Civil Revision No. 56 of 1991 in the District Court under Section 115-A of the Code of Civil Procedure; the learned District Judge condoned the delay in making application under Section 8 of the Act applying Article 137 of the Limitation Act, set aside the order of the Munsif Court and remitted the case to the Munsif Court to decide the application made under Section 8 of the Act on merits. The respondent moved the High Court under Article 227 of the Constitution of India challenging the aforementioned order of the District Judge. The High Court by the impugned order, set aside the order of the learned Addl. District Judge holding that the claim made by the appellant was barred by limitation following the Division Bench decision of the High Court reported in *Serish Maji vs. Nishit Kumar Dolui* [1999 (1) C.H.N. 365]. Consequently, the High Court dismissed the application filed by the appellant under Section 8 of the Act. Hence, this appeal.

Mr. Ranjit Kumar, learned senior counsel for the respondent in C.A. No. 444 of 2000 and Shri Shibshankar Sarkar, learned senior counsel for the appellant in C.A. No. 4688 of 1998 contended that an application made under Section 8 of the Act is a suit; hence Section 5 of the Limitation Act does not apply in making an application under Section 8 of the Act; Schedule to the Limitation Act contains three divisions, relating to suits, appeals and applications respectively; Article 97 of the Limitation Act relates to enforcement of right of pre-emption and there is no reference to pre-emption suit anywhere else in the Schedule; Under Article 97, the period of limitation prescribed is one year. As per Section 29(2) of the Limitation Act, the period of limitation prescribed under any special or local law for any suit, appeal or application is different from the period prescribed in the Schedule of the Limitation Act. Section 3 of the Limitation Act shall apply as if such period is the period prescribed by the Schedule of the Limitation Act and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions

contained in Sections 4 to 24 shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. The learned senior counsel submitted that under Section 14H of the Act, a period of limitation is prescribed for filing an appeal or revision; in the second proviso thereto, it is expressly provided that Section 5 of the Limitation Act shall apply to an appeal under the said Section. Under Section 14(0) for filing an appeal, 30 days is the period of limitation prescribed. Expressly, provision is also made in the same Section enabling the appellate authority to permit further time for filing an appeal on sufficient cause being shown. Again under Section 19(2), a period of limitation of 30 days is prescribed for filing an appeal and in the proviso attached to the said sub-section, it is clearly and expressly stated that the provisions of Section 5 of the Limitation Act shall apply to an appeal under the said Section. Under Section 8 of the Act, for filing an application for pre-emption, various periods of limitation are prescribed but unlike under other provisions aforementioned, no provision is made for applying Section 5 of the Limitation Act. Hence, by necessary implication the application of Section 5 of the Limitation Act is excluded to such proceedings. It was also urged that the Act is a complete Code relating to pre-emption proceedings. Even after amendment of certain provisions of the Act, no such provision was made under Section 8 to apply Section 5 of the Limitation Act. The learned senior counsel cited few decisions in support of their submissions. They urged that the impugned order in C.A. No. 4688 of 1998 cannot be sustained and the impugned order made in C.A. No. 444 of 2000 is to be upheld.

Mr. M.N. Krishnamani, learned senior counsel for the appellant in C.A. No. 444/2000 and the learned counsel for the respondent in C.A. No. 4688/1998 contended that Sections 8 and 9 of the Act speak of 'application' and not of 'suit'; hence, Section 5 of the Limitation Act applies; exclusion of application of provisions of Limitation Act is to be made in special Act and such exclusion must be made expressly as required under Section 29(2) of the Limitation Act; there is no scope for implied exclusion contrary to the statutory requirement. They also cited some decisions in support of their case. In reply, Shri Ranjit Kumar, the learned senior counsel, drew our attention to section 8 of the Limitation Act.

In the light of the submissions made by the learned counsel for the parties in both these appeals, basically the only short question that arises for consideration is whether Section 5 of the Limitation Act is applicable to an application made under Section 8 of the Act having regard to Section 29(2) of the Limitation Act. Ultimate result in these appeals depends on the answer to this question.

Before finding an answer to the question, it is both useful and necessary to reproduce relevant portions of the provisions of the Act and Limitation Act: -

West Bengal Land Reforms Act, 1955

"8. Right of purchase by co-sharer or contiguous tenant \026 (1) If a portion or share of a plot of land of a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice given under sub-section (5) of Section 5, or any raiyat possession land adjoining such plot of land, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in section 14M on deposit of the consideration money together with a further sum of ten per cent of that amount."

"14H. Appeal and revision \026 An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Munsif having jurisdiction from any order made under sub-section (4) of section 14C or Section 14E or Section 14G and his order shall be final:

Provided that an application for revision or modification of the order passed by Munsif on appeal shall lie to the District Judge if made within sixty days from the date of the order:

Provided further that the provisions of Section 5 of the Limitation Act, 1963 (Act 36 of 1963) shall apply to an appeal under this Section."

"14-0. Appeal \026 Any person who is aggrieved by any determination made by the prescribed authority under Section 14N may, within thirty days from the date of such determination or within such further time as the appellate authority may, on sufficient cause being shown, allow, prefer an appeal to such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, against such determination."

"19. Appeal \026 (1) An appeal shall lie to the Collector, having jurisdiction over the area in which the land is situated, against any order made under Section 17 or Section 18 or sub-section (3) of Section 21. The Collector shall, on an appeal being disposed of, send a copy of his order to the officer or authority whose decision is appealed against.

(1A)

(2) The period within which the appeal mentioned in sub-section (1) must be filed shall be thirty days from the date of the order appealed against:

Provided that an appeal against any order referred to in sub-section (2) of section 18A made before the commencement of the West Bengal Land Reforms (Amendment) Act, 1960 may be filed within ninety days of such commencement:

Provided further that the provisions of Section 5 of the Indian Limitation Act, 1908 shall apply to an appeal under this Section."

(Emphasis supplied)

Provisions of Limitation Act:-

"2. Definitions \026 In this Act, unless the context otherwise requires, -

(a)

(b) "application" includes a petition.

(c) to (k)

(l) "suit" does not include an appeal or an application;"

"3. Bar of limitation \026 (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

"5. Extension of prescribed period in certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation \026 The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section."

"8. Special exceptions \026 Nothing in Section 6 or in Section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application."

"29. Savings \026

(1)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

"The Schedule

Description of suit
period of
limitation

Time from which period
begins to run

FIRST DIVISION \026 SUITS

Part IX \026 Suits relating to Miscellaneous Matters

Article 97:-

To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract

One year

When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.

SECOND DIVISION \026 APPLICATIONS

Description of application
period of
limitation

Time from which period
begins to run

Part II \026 Other Applications

Article 137

For any other application
for which no period of

limitation is provided
elsewhere in this division
3 years
When the right to apply accrues."

In Section 8 of the Limitation Act there is reference to suits to enforce rights of pre-emption stating therein that nothing in Section 6 or Section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application. In Article 97 of the Schedule appended to the Limitation Act under the heading suits relating to miscellaneous matters there is reference to enforcement of rights of pre-emption. Thus, there is reference to suits in Section 8 and Article 97 of the Limitation Act, but there is no reference to an application for enforcement of right of pre-emption. Having regard to the fact that the Act is a self-contained Code in relation to the enforcement of rights of pre-emption and looking to the provisions of the Limitation Act, as stated above, it appears to us that when one applies for enforcement of rights of pre-emption under Section 8 of the Act, the proceedings initiated are in the nature of a suit. The words "application" and "suit" have been defined in Section 2(b) and 2(l) of the Limitation Act. "Application" includes a petition but "suit" does not include an appeal or an application. The Division Bench of the Calcutta in *Serish Maji* (supra), after elaborate consideration, referring to various decisions and on analysis of different provisions, in paras 25 to 50 of the judgment has concluded that a proceeding initiated by an application of Section 8 is to be construed as a "suit" for the purpose of the Limitation Act. We have good reason to approve the said view. This being the position, Section 5 of the Limitation Act is not attracted to the proceedings initiated under Section 8 of the Act. The right conferred under Section 8 is a statutory right. Even otherwise, in our view, the position as regards to applicability of Section 5 of the Limitation Act to an application under Section 8 of the Act does not get altered. As already stated above, the Act is a self-contained Code inasmuch as the Act provides to enforce the rights of pre-emption, forum is provided, procedure is prescribed, remedies including the appeals and revisions are provided, penalties are indicated for non-compliance of the orders and powers are given for restoration of land. Further period of limitation is also specifically prescribed to make an application under Section 8 of the Act and for preferring appeals or revisions under the provisions of the Act. All these and few other provisions are clear enough to indicate that the Act is a complete Code in itself dealing with the rights of pre-emption. Second proviso to Section 14H specifically provides for the application of Section 5 of the Limitation Act in the matter of preferring an appeal or revision. Section 14-0(1) specifically enables the appellate authority to allow to prefer an appeal even after the expiry of the period of limitation prescribed on showing sufficient cause. Similarly second proviso to Section 19(2) of

the Act expressly provides for application of Section 5 of the Limitation Act to an appeal to be preferred under the said Section. Section 51A of the Act deals with preparation and revision of record-of-rights. Rule 26 of the Rules framed under the Act provides that every appeal under Section 51A of the Act is to be filed within one month from the date of passing of the order appealed against. The proviso to the said Rule states that an appeal may be admitted after the said period if the appellant satisfies that he had sufficient reasons for not preferring the appeal within the said period. Thus either Section 5 of the Limitation Act or its principles have been expressly and specifically incorporated in the various Sections afore-mentioned. In contrast although Section 8 of the Act prescribes period of limitation for applying to enforce pre-emption rights, it does not speak of application of Section 5 of the Limitation Act or its principles. If in the same Act, consciously and expressly, the Legislature has made provision for application of Section 5 of the Limitation Act or its principles expressly and specifically to other proceedings such as appeal or revision etc. and such a provision is not made for initiation of the proceedings under Section 8 of the Act, it necessarily follows that the Legislature did not intend to give benefit of Section 5 to the Limitation Act having regard to the nature of rights of pre-emption which is considered a weak right. In a recent decision of this Court in *Mattoo Devi (Smt.) vs. Damodar Lal (deceased) by Lrs. & Ors.* [(2001) 6 SCC 330] in para 8 it is stated thus:-

"8. On the basis of the aforesaid, Subba Rao, J. with his usual felicity of expression observed that the general law of pre-emption does not recognise any right to claim a share in the property sold when there are rival claimants and pre-emption is a right to acquire the whole of the property sold in preference to other persons. The learned Judge further relied upon the decision in the case of *Gobind Dayal v. Inayatullah* (ILR (1885) 7 All 775 : (1885) 5 Awn 228 (FB)) as also the decision of the Lahore High Court in the case of *Mool Chand v. Ganga Jal* (ILR (1930) 11 Lah 258 (FB) : AIR 1930 Lah 356) and summarised the law pertaining to the right of pre-emption in the manner as below :

"(1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of repurchase i.e. the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it

can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

There is yet another good reason for insisting that right of pre-emption must be exercised within the period specified under Section 8 of the Act so that the rights of purchasers of a land cannot be eclipsed for a long time. Right of pre-emption was sought to be exercised after six years and four years from the dates of transfer respectively as against the period of four months prescribed under Section 8 of the Act without any scope for extension of that period. Sub-section (3) was added to Section 8 of the Act by the West Bengal Land Reforms (Amendment) Act, 1972 w.e.f. 15.2.1971. Prior to 15.2.1971, an application under Section 8 was required to be made to the "Revenue Officer specifically empowered by the State Government in this behalf". This phrase was substituted by the phrase "Munsif having territorial jurisdiction" by the aforementioned amendment. Even after this amendment when an application is required to be made before the Munsif Court, no amendment was made to Section 8 of the Act either to apply Section 5 of the Limitation Act or its principles so as to enable a party to make an application after the expiry of the period of limitation prescribed on showing sufficient cause for not making an application within time. The Act is of 1955 and for all these years, no provision is made under Section 8 of the Act providing for condonation of delay. Thus, when Section 5 of the Limitation Act is not made applicable to the proceedings under Section 8 of the Act unlike to the other proceedings under the Act, as already stated above, it is appropriate to construe that the period of limitation prescribed under Section 8 of the Act specifically and expressly governs an application to be made under the said Section and not the period prescribed under Article 137 of the Limitation Act.

An important departure is made in Section 29, sub-section (2) of Limitation Act of 1963. Under the Indian Limitation Act, 1908 Section 29(2)(b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the application of Section 5 of the Limitation Act was specifically and in clear terms excluded, but under Section 29(2) of the present Limitation Act Section 5 shall apply in case of special or local law to the extent to which they are not expressly excluded by such special or local law. In other words, application of Section 5 of the Limitation Act stands excluded only when it is expressly excluded by the special or local law. The emphasis of the argument by the learned counsel, who argued for the proposition that Section 5 of the Limitation Act is applicable to an application made for enforcement of rights of pre-emption under Section 8 of the Act was on the ground that the Act has not expressly excluded the application of Section 5 of the Limitation Act.

In *Hukumdev Narain Yadav vs. Lalit Narain Mishra* [(1974) 2 SCC 133], a bench of three learned Judges of this Court, dealing with election petition under the

Representation of People Act on the point of limitation for filing an election petition, after examining the provisions of the Representation of the People Act and Section 29(2) of the Limitation Act, has held thus:-

"17. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117."

(emphasis supplied)

This Court in *Anwari Basavaraj Patil & Ors. vs. Siddaramaiah & Ors.* [(1993) 1 SCC 636], again dealing with the election petition under Representation of People Act, after considering the relevant provisions of the Representation of People Act and Section 29(2) of the Limitation Act, took a view that the controversy was practically concluded on the question of applicability of Section 5 of the Limitation Act by the decision of this Court in the case of *Hukumdev Narain Yadav* (supra). Para 8 of the said judgment reads thus:-

"8. In *H.N.Yadav vs. L.N. Mishra*, this Court held that the words "expressly excluded" occurring in Section 29(2) of the Limitation Act do not mean that there must necessarily

be express reference in the special or local law to the specific provisions of the Limitation Act, the operation of which is sought to be excluded. It was held that if on an examination of the relevant provisions of the Special Act, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred by the Limitation Act cannot be called in aid to supplement the provisions of the Special Act. That too was a case arising under the Representation of People Act and the question was whether Section 5 of the Limitation Act is applicable to the filing of the election petition. The test to determine whether the provisions of the Limitation Act applied to proceedings under Representation of People Act by virtue of Section 29(2) was stated in the following words: (SCC p.147.para 18)

"The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act."

(emphasis supplied)

A Bench of three learned Judges of this Court in The Commissioner of Sales Tax, Uttar Pradesh, Lucknow vs. M/s. Parson Tools and Plants, Kanpur [AIR 1975 SC 1039], dealing with the question of limitation in relation to revision filed beyond time prescribed by Section 10 of U.P. Sales Tax Act, 1948, in para 17, has observed thus: -

"17. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act."

In the same judgment it is expressed that "where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or

consistent with such expressed intent of the law-giver". The conclusion reached by the Division Bench of the High Court in *Serish Maji* case (supra) that Section 5 of the Limitation Act is not applicable to proceedings under Section 8 of the Act is correct and acceptable.

Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for enforcement of right of pre-emption by different categories of people with no provision made for extension or application of Section 5 of the Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made under Section 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act. Considering the scheme of the Act being self-contained code in dealing with the matters arising under Section 8 of the Act and in the light of the aforementioned decisions of this Court in the case of *Hukumdev Narain Yadav*, *Anwari Basavaraj Patil* and *M/s. Parson Tools* (supra), it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application under Section 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed under Section 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate in the light of the Three-Judge Bench decision of this Court in *Hukumdev Narain Yadav* case (supra) and subsequently followed in *Anwari Basavaraj Patil* case (supra), even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered. Thus, a conscious and intentional omission by the Legislature to exclude application of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act, looking to the scheme of the Act, nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and amounts to "express exclusion" of it satisfying the requirement of Section 29(2) of the Limitation Act.

The decision in *Mangu Ram vs. Municipal Corporation of Delhi* [(1976) 1 SCC 392] is cited in support of the submission that in the absence of express exclusion of application of Section 5 of the Limitation Act in the special law, benefit of Section 5 of Limitation Act could be availed. In that case, special leave petitions were filed in this Court against the condonation of delay to the application for

the grant of special leave under Section 417 of Cr.P.C. against acquittal of the petitioners by the trial court in spite of the mandatory period of limitation provided in sub-section (4) of Section 417. The question that arose in that case was whether the decision of this Court in Kaushalya Rani vs. Gopal Singh [1964 (4) SCR 982], in which it was held that Section 417 Cr.P.C. excluded application of Section 5 of the Limitation Act on a construction of Section 29(2)(b) of the old Limitation Act of 1908 could be applied under the corresponding provisions of the Limitation Act, 1963. The decision of that case turned upon the facts of that case in criminal appeals by comparison of the provision of the old Limitation Act to the provision of the new Limitation Act. The Division Bench of the Calcutta High Court in Serish Maji (supra), referring to the observation made in Mangu Ram (supra) that "mere provision of a period of limitation in howsoever pre-emptory or imperative language is not sufficient to displace the applicability of Section 5", in para 11 of the judgment, has stated thus:-

"11. The observation does not help the applicant. It assumes that an imperative provision coupled with other factors might be sufficient to exclude the applicability of the Limitation Act. Ultimately it would be a question of interpretation of the special or local law in question."

Further the decision in Hukumdev Narain Yadav (supra) was not brought to the notice of this Court when Mangu Ram case (supra) was decided. In the light of the three-Judge Bench decision of this Court in Hukumdev Narain Yadav we do not find any good reason to take a different view.

The case of Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker [(1995) 5 SCC 5] cited in support of the submission that Section 5 of the Limitation Act can be applied to a proceeding under Section 8 of the Act also does not support the submission for the reasons more than one. The short question that arose for consideration in that decision was "whether the appellate authority constituted under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 has power to condone the delay in the filing of appeal before it under the said Section". On the facts of that case, it is clear that the question that has arisen for consideration in these appeals did not directly arise. In that case, the view taken by Kerala High Court was that the appellate authority has no power to condone the delay being a persona designata. On examination of the provisions of the Kerala Act, this Court held that appellate authority was not a persona designata but it was functioning as a court. Further, this Court taking note of Section 29(2) as it stood in the Limitation Act, 1908 and Section 29(2) of the Limitation Act, 1963, expressed the view that by virtue of Section 29(2) of the Limitation Act, 1963, the provisions of Section 5 of the Limitation Act were automatically applicable. A Division Bench of the Calcutta High Court in Serish Maji (supra) has rightly distinguished

the said case in para 12 thus:-

"12. Thus in Mukri Gopalan vs. C.P. Aboobacker (AIR 1995 SC 2272) the Supreme Court considered the legislative history of Section 18 of the Kerala Building (Leasing and Rent Control) Act, 1965 to construe whether the appellate authority constituted thereunder has the power to condone the delay in filing of the appeal before it under that section. The Supreme Court noted that the Rent Act of 1965 was preceded by the Rent Act of 1959. The 1959 Act contained a provision expressly stating that the provisions of section 5 of the Indian Limitation Act, 1908 would apply to all proceedings under the Act. According to the Supreme Court, this was necessary because section 29(2) of the Indian Limitation Act, 1908 did not include section 5 as one of the provisions to be applied to special or local laws. In the Limitation act, 1963, section 5 has been included in section 29(2) as one of the provisions which would apply to special and local laws. Therefore, when the Rent Act of 1965 was enacted it was not necessary to include an express provision incorporating the provisions of section 5 of the Limitation Act, because by virtue of section 29(2) the provisions of section 5 would get automatically attracted."

Incidentally it may also be mentioned that this decision also was rendered by two learned Judges of this Court. Thus, in our view, this case of Mukri Gopalan (supra) does not help to say that Section 5 of the Limitation Act is applicable to proceedings under Section 8 of the Act.

Having regard to all aspects we answer the question set out above in the negative.

Once it is held that the benefit of Section 5 of the Limitation Act is not available to the proceedings under Section 8 of the Act and the applications filed under Section 8 of the Act are to be dismissed on that ground, it is unnecessary to go into the merits of these appeals on other issues.

We conclude that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of pre-emption conferred under Section 8 is a statutory right besides being weak, it has to be exercised strictly in terms of the said Section and consideration of equity has no place. On the facts found in these appeals, applications under Section 8 were not made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal.

Thus, in the light of what is stated above, the impugned order in civil appeal No. 4688 of 1998 is set aside, the appeal is allowed and the application made

by the respondent under Section 8 of the Act is
dismissed with no order as to costs.

Civil Appeal No. 444 of 2000 stands dismissed. No
costs.

JUDIS