2025 INSC 440

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1796-1828 OF 2024

NEW MANGALORE
PORT TRUST & ANR. ...APPELLANTS

VERSUS

CLIFFORD D SOUZA ETC.ETC. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

1. The appellants New Mangalore Port Trust[1] has assailed the correctness of the judgment and order dated 22.11.2019 passed by the High Court of Karnataka at Bengaluru dismissing a bunch of writ petitions preferred by NMPT assailing the correctness of the judgment and order dated 15.03.2017 passed by the District Judge allowing the appeal of the respondents and quashing the order of the Estate Officer of NMPT raising demand against the respondents.

[1] NMPT

2. The facts in brief relevant for proper adjudication of these appeals are summarised hereunder:

2.1. NMPT allotted land to the respondents (hereinafter referred to as Licensees) for loading and unloading goods subject to payment of licence fee which is to be revised every five years with the approval of Tariff Authority for Major Ports (TAMP).

2.2. Allotment to the respondent for the licensees had been made in the year 2003. By notification dated 20.06.2005 licence fee was revised w.e.f. February, 2002. Thereafter, the next revision was notified on 23.07.2010 approving the revision of licence fee w.e.f. 20.02.2007 again for a period of five years.

2.3. Pursuant to the said revision, demand was raised for realising the arrears of licence fee for the period 20.02.2007 till 23.07.2010 i.e. the date of the notification. Beginning March, 2011, the Assistant Estate Manager/Estate Officer issued demand notice to all the Licensees. The Licensees challenged the notification dated 23.07.2010 before the High

Court by way of writ petitions filed in the year 2011-2012 primarily on the ground that it was not permissible to revise the licence fee retrospectively. The learned Single Judge vide judgment dated 28.06.2013 dismissed the bunch of writ petitions holding that the licence fee could be revised retrospectively and upheld the notification dated 23.07.2010.

2.4. Aggrieved by the same the Licensees preferred writ appeals before the Division Bench of the Karnataka High Court at Bengaluru. These group of appeals are still pending however without any interim orders.

2.5. After the judgment of the Single Judge dated 28.06.2013, the Assistant Estate Manager issued a demand notice on 15.01.2015, copy whereof is filed as Annexure P-5. It would also be relevant to mention that there are other notices also issued but the notice dated 15.01.2015 is specifically mentioned as there is a reply given to it by the Licensees. The

notice dated 15.01.2015 is reproduced hereunder:-

"FINAL NOTICE

No.30/44/2015/EBL.1/TAMP
To Date: 15.01.2015
M/s Export Trade Link Agencies
Lal Bagh
MANGALORE – 575 003

Sir,
Sub: Payment of difference in Licence fee on account of revision of Scale of Rate w.e.f. 20.02.2007

Ref:
1) TAMP ORDER G NO.184 dated 23.07.2010.
2) T.O. letter even No.dtd/07.11.2014

Please refer to the letter cited above, wherein it was requested to remit the difference of licence fee/penal licence fee including Service Tax amounting to Rs.55,32,234/- on account of revision of SoR w.e.f. 20.02.2007, But you have not remitted the said amount.

Hence you are once again requested to make necessary arrangement for remittance of difference in Licence Fee and Service Tax within 15 days from the date of receipt of this letter failing which penal interest @ 13% shall be payable from the due date till the payment is received and action for recovery of dues will be initiated as per law.

Thanking you

Yours faithfully
Sd/- 15.01.2015

Asstt. Estate Manager (Gr.I)"

2.6. The Licensees responded to the same *vide* letter dated 04.02.2015 and objected to the demand raised on the ground that as the issue is still pending before the Division Bench of the High Court, no question arises for the payment of the difference in licence fee for the period 20.02.2007 till 23.07.2010. The same would prejudice their case. The question whether licence fee could have been revised with retrospective effect and recovered was still to be decided by the High Court in the pending writ appeal. It was thus requested that the NMPT may not demand the difference in licence fee for the period prior to 23.07.2010 till such time the appeal is not decided. The said communication dated 04.02.2015 is reproduced hereunder: -

"The Asst. Estate Manager (Gr.I)
New Mangalore Port Trust,
Mangalore,

Sir,

Subject: Writ Petition No.36972/2011, order dated

28.06.2013 of Hon'ble High Court of Karnataka

Ref: i) Payment of difference licence fee on account of revision of scale of rates w.e.f. 20.02.2007, on the basis of Tamp order No. G184, dated: 23.07.2010.

ii) Your Letter bearing No.3/44/2015/EBL.1/TAMP, dated 15.01.2015.

With reference to the above said subject, we would like to inform you that we had challenged the TAMP order dated: 23.07.2010, before the Hon'ble High Court of Karnataka, Bangalore by filing the writ petition No.34541 & 34784/211 and the said writ petition was dismissed on 28.06.2013 by the Hon'ble High Court of Karnataka, Bangalore. We have challenged the order dated:28.06.2013 passed in the writ petition by the Hon'ble High Court of Karnataka, Bangalore before the division bench by filing the writ appeal no.4400 & 4401/2013, the said writ appeal was posted on 10.11.2014 for preliminary hearing/admission and the Hon'ble Court after hearing the matter by the council appearing for our company and by the council appearing for New Mangalore Port Trust the appeal was admitted by the Hon'ble High Court of Karnataka on 10.11.2014, therefore the above said subject matter i.e. the notification

> dated: 23.07.2010 (TAMP) is under challenge before the Hon'ble High Court and the Court has already admitted the matter the said subject matter pending before the Hon'ble High Court therefore immediately the question doesn't arise for payment of difference license fees to be paid to you as per your letter, it will prejudice our case since we are not liable to pay the difference license fees with retrospective effect, whether we are liable to pay or not that question has to be decided by the court in the pending writ appeal.
>
> Therefore, we are requesting you to not to demand difference license fees amount with retrospective effect as per the TAMP order, dated 23.07.2010, during the pendency of the appeal before the Hon'ble High Court of Karnataka, Bangalore and the question of remittance of money demanded by you as per you Letter, dated 15.01.2015 for a sum of Rs.5,73,833/- present does not arise, since appeal is pending before the Hon'ble High Court of Karnataka, Bangalore."

2.7. The Assistant Estate Manager Grade-1 was also nominated as Estate Officer under Public Premises (Eviction of Unauthorised Occupants) Act, 1971[2]. The Estate Officer

[2] The PP Act

vide communication dated 12.08.2015 gave a notice under sub-section (3) of section 7 of the PP Act to the Licensees calling upon them to show cause on or before thirty days from the date of receipt of the notice why an order requiring to pay the said arrears of rent together with simple interest should not be made. The Licensees again came up with their reply on 07.09.2015 taking up the same defence that their writ appeal was pending before the Division Bench of the Karnataka High Court at Bengaluru and till such time it is not decided, any demand would prejudice their case. The question of demanding the difference of license fee for the period prior to 23.07.2010 was yet to be decided by the Division Bench in the pending writ appeal.

2.8. Since the response is the same as given in the earlier reply dated 04.02.2015 we are not reproducing the same. The Estate Officer again issued a notice dated 15.02.2016 granting them three weeks further time to show cause and it further stated that the

compound interest at the rate of 9% (nine percent) would also be payable under the statutory provisions. This notice was also replied on 25.02.2016 by the Licensees resisting any demand during the pendency of the writ appeal citing the same reasons as given earlier.

2.9. The Estate Officer not satisfied with the reply and noting the fact that there was no stay granted in the pending writ appeals proceeded to pass an under section 7(1) of the PP Act granting a month's time to make the payment failing which it would be recovered as land revenue.

2.10. The Licensees preferred a miscellaneous appeal under section 9 of the PP Act before the District Judge at Mangalore. The District Judge clubbed all the appeals and decided the same vide judgment dated 15.03.2017, allowing all the appeals holding that the proceedings under section 7(1) was barred by time and accordingly, set aside the demand. Aggrieved by the aforesaid judgment of the

District Judge, the NMPT filed writ petitions before the High Court which have since been dismissed by the impugned judgment giving rise to the present appeals.

3. We have heard Mr. Yatindra Singh, learned senior counsel appearing for the appellant and on behalf of the respondents Shri Vikas Singh and Ms. Haripriya Padmanabhan, learned senior counsels, and have perused the material on record.

4. The arguments advanced on behalf of the appellant are briefly summarised hereunder:

   a) The licensees did not raise the plea of limitation in their reply to the show cause notice under Section 7(3) of the PP Act. For the first time they raised it in the appeal. Under the PP Act no limitation is prescribed for passing an order under Section 7(1).

   b) The judgment in the case of ***NDMC vs. Kalu Ram,***[3] although wrongly decided holding that there would be limitation of three years applicable to recovery proceedings under the PP

[3] (1976) 3 SCC 407

Act, but without going into that question in view of the facts of the present case, the proceedings for recovery under the PP Act were within the limitation period of three years. This submission is based upon Section 18 of the Limitation Act. It is submitted that the respondent, in writing, had acknowledged the debt *vide* their reply dated 04.02.2015 to the demand notice dated 15.01.2015 and therefore the limitation would stand extended up to 03.02.2018.

c) Admitted facts and admitted documents can be relied upon to argue a question of law before this Court even if not raised before the Courts below. The submission is that though the benefit of Section 18 of the Limitation Act was not claimed specifically before the Court below, but in view of the admitted facts based on admitted documents, this Court may consider extending the benefit of Section 18 of the Limitation Act. Once this benefit is extended, the limitation for recovery of arears of rent would extend up to 03.02.2018 and even

beyond in view of further acknowledgement of the debt in response to the show cause notice and reply given by the respondents on 07.09.2015 and 25.02.2016 for a further period of three years.

d) The Division Bench and the High Court held the recovery proceedings to be barred by limitation taking the date of notification of the revised tariff i.e. 23.07.2010 as the cause of action for the recovery of arrears. After excluding the period during which interim order was operating i.e. 1 year and 293 days, the limitation would extend up to 11.05.2015 but as the show cause notice was issued on 21.08.2015, it was beyond the prescribed period of limitation.

e) The respondents challenged the notification of revised tariff dated 23.07.2010 by way of several petitions before the learned Single Judge of the Karnataka High Court, in which interim order was also passed. The said bunch of petitions was dismissed on 28.062013. Aggrieved by the same, respondent preferred intra-court appeals

which were admitted and are still pending before the Division Bench of the High Court of Karnataka. Throughout in their correspondence to the various demands and the show cause notices, the only defence taken by the respondents was that the demand should not be pressed at this stage as it would prejudice their case pending in the appeal before the Division Bench of the Karnataka High Court. The tenor of the defence is clear. Then subject to the outcome of the appeals, the demand could be raised if the respondents failed.

f) It is further submitted that in view of the specific stand taken in their replies, the respondents cannot now urge that the recovery proceedings were barred by limitation.

g) In view of the admitted position that the intra-court appeals are pending before the Division Bench of the High Court, this Court may consider setting aside the quashing of the recovery proceedings on the ground of limitation and may remand the proceedings before the High Court to be clubbed with the pending

appeals and both the matters may be decided simultaneously. If the intra-court appeals of the respondents are allowed and the revision of tariff retrospectively is set aside, that is the notification dated 23.07.2010, to the extent that its retrospective application is set aside, automatically the writs filed by the appellant before the High Court would stand dismissed. However, if the respondents' appeals are dismissed by the Division Bench, then the writ petition filed by the appellant before the High Court, deserves to be allowed and the respondents would be liable to pay the arears of rent along with admissible interest.

h) Lastly, it was submitted that the respondents were well aware of the revision of the tariff and thus would have realised the enhanced tariff. If they succeed on this technical ground, they would be guilty of unjust enrichment.

i) On the above submissions, learned senior counsel prayed that the appeals be allowed after setting aside the impugned order of the High Court.

5. Mr. Vikas Singh and Ms. Haripriya Padmanabhan, learned senior counsels appearing for the respondents, vehemently submitted that the appeals are liable to be dismissed. None of the arguments advanced by the appellant are tenable in law. Their arguments are summarised hereunder:

   a) The appellant, having failed to raise the plea of acknowledgment and extension of limitation under Section 18 of the Limitation Act either before the Estate Officer, the District Judge or the High Court and not even in the pleadings before this Court, cannot raise this plea during the course of oral arguments. The submission relating to applicability of Section 18 of the Limitation Act deserves to be rejected outright.

   b) The question of limitation would be a mixed question of law and fact and, as such, a party seeking benefit of an extension provision should specifically plead and lead evidence in support of their submissions. In the absence of any such pleading before any of the forum, no benefit can be extended to the appellants seeking applicability of Section 18 of the Limitation Act.

c) The communication dated 04.02.2015 never admitted the liability/debt. In fact, it clearly denied the liability/demand on the ground that there could be no retrospective revision of tariff. It is, thus, wrong on the part of the appellant to argue that the communication dated 04.02.2015 acknowledged the liability/debt.

d) The demands raised prior to 12.08.2015 were not under any statutory provision. These demands were being raised by the lessor to the lessee. The statutory authority under the PP Act for the first time, issued show cause notice on 12.08.2015, which admittedly was beyond a period of three years if the benefit of section 18 of the Limitation Act is not extended. Had there been a notice under Section 7(3) of the PP Act prior to 11.05.2015 to which a reply had been given by the respondents may be for deferment of the demand in view of the pending appeal before the Division Bench, it could be urged on behalf of the appellant that they were entitled to the benefit of Section 18 of the Limitation Act. There being no such show cause notice prior to

11.05.2015, any proceedings for recovery would be barred by law. Both the notices under Section 7(3) dated 12.08.2015 and the order passed under Section 7(1) on 21.07.2016 were beyond the prescribed period of limitation and, thus, proceedings have been rightly quashed by the District Judge as confirmed by the High Court.

e) It may be true that the Assistant Estate Manager also happened to be the Estate Officer under the PP Act, it cannot be presumed that rather no benefit can be extended to the appellant that the previous notices issued by the Assistant Estate Manager could be treated to be notice under the provisions of the PP Act.

f) For all the reasons recorded above, the submission is that the appeals deserve to be dismissed.

6. Having considered the submissions and having perused the material on record, we now proceed to deal with the respective arguments.

7. Common argument raised on behalf of both sides is to the effect that objections had not been taken at the right time and at the initial stage. On behalf of the appellant, it was submitted that in reply to the show cause notice under section 7(3) of the PP Act, no objection regarding the plea of limitation had been taken. However, in the appeal, ground for limitation was taken for the first time. Similarly on behalf of the respondents, it was submitted that the plea of section 18 of Limitation Act was not raised right up to the stage of filing the appeal before this Court, but it was taken only during the course of arguments. As the facts and the material on record, i.e. the correspondences between the parties, are not in dispute, we are rejecting the said submission of both the sides and thus would be dealing with the plea of limitation also.

8. The District Judge had allowed the appeal of the respondents and quashed the demand notice on the finding that it was barred by limitation. Taking the date of cause of action to be 23.07.2010, and after excluding the period during which there was an interim order operating in the writ petition pending

before the Single Judge filed by the respondents, the limitation of 3 years would expire on 11.05.2015. The said limitation of 3 years is provided under Article 52 to the Schedule of the Limitation Act. The High Court also took the same view and accordingly held that the proceedings under the PP Act having been initiated by issuance of notice for the first time on 12.08.2015 the same would be barred by limitation. It also placed reliance on the judgement of this Court in the case of **New Delhi Municipal Committee vs. Kalu Ram[4].** In the absence of ***Kalu Ram*** (supra), the Limitation Act would not apply because the PP Act does not explicitly incorporate it. While Section 9 of the PP Act provides a limitation period for filing appeals, Section 7 thereof contains no such provision. However, *Kalu Ram* clarifies that the Limitation Act does apply to proceedings under the PP Act. On behalf of the appellants, it was briefly argued that ***Kalu Ram*** (supra) was incorrectly decided and required to be revisited by a larger Bench, but this was raised merely as a passing reference.

[4] AIR 1976 SC 1637

9. On behalf of the respondents, it has been submitted that in view of the admitted facts that no notice was issued under the PP Act by the Estate Officer prior to 11.5.2015, the impugned proceedings under section 7 of the PP Act were rightly held to be barred by law.

10. In effect, both sides agree that the Limitation Act will apply to the proceedings under the PP Act. The respondents cannot argue that only section 3 of the Limitation Act along with the limitation provided under Article 52 of the Schedule of the Limitation Act will apply and not section 18 of the same Act. Once the Limitation Act applies, all its provisions will be applicable to the proceedings under the PP Act. It is true that the plea of benefit of section 18 of the Limitation Act was not raised before the High Court and therefore not considered but nevertheless, as we have already rejected the objection of the respondents that the arguments relating to the benefits of section 18 of Limitation Act may not be considered by this Court, we proceed to deal with the same and analyze as to whether the benefit could or could not be extended to the appellant as claimed.

11. Before proceeding further, it would be appropriate to reproduce section 18 of the Limitation Act:

> " **Effect of acknowledgment in writing.**
> (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
> (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.
>
> Explanation.—For the purposes of this section,—
>
> (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or **avers that the time for payment**, delivery, performance or enjoyment **has not yet come** or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
> (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and
> (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

12. Section 18 of the Limitation Act is very clear that where liability is acknowledged in respect of any property or right, a fresh limitation may be computed from the time when the acknowledgment was so signed. Clause (a) of the explanation to Section 18 declares that an acknowledgment would be sufficient for various reasons to be stated therein, which includes the time for payment has not yet come as one of the reasons. In the present case this reason squarely applies. The respondents were throughout alleging that the time had not been come as the appeals were pending before the Division Bench. This acknowledgement was given in response to the demand by the lessor (appellant) made well within the limitation of 3 years. The lessor as such would be entitled to the benefit of extension of limitation taking benefit of Section 18 of the Limitation Act.

13. The respondents have vehemently argued that this point had never been raised before any of the forum below nor in the pleadings before this Court. However, the fact remains that the communication dated 04.02.2015 is not disputed by the respondents. There is no dispute on the contents either of the said

communication. If that be so, under admitted position, and in view of Clause (a) of explanation to Section 18 of the Limitation Act, the acknowledgment of the liability stands established. Thus, the limitation would extend to 03.02.2018.

14. It has also been urged on behalf of the respondents that they never admitted the liability, rather they had specifically denied it. This submission is based on the ground that the revised tariff vide notification dated 23.07.2010 had been challenged before the High Court with respect to its retrospective application. This submission of the respondents is of no help to them. The respondents do not dispute the revised tariff under the notification dated 23.07.2010. Their challenge was only to the retrospective application of the same. The Single Judge had dismissed the writ petition filed by the respondents against which an intra-court appeal before the Division Bench of the Karnataka High Court was filed and is still pending. There are no interim orders in the said appeal. The respondents had been objecting to the demand on the ground of pendency of this intra-court appeal. As such there was no denial to pay nor the amount was

disputed. The respondents were bound by the notification dated 23.07.2010 till such time it was set aside by any Court of law. Having failed before the Single Judge, the respondents, were liable to comply with the notification dated 23.07.2010.

15. At the time of the filing of the writ petition by the appellants before the High Court, the intra-court appeals preferred by the respondents were already pending. The learned Single Judge could have considered deferring the hearing of the writ petition till the disposal of the intra-court appeals as the outcome of the intra court appeals would have a direct bearing on the writ petition filed by the appellants.

16. Once the issue relating to retrospective applicability of revised tariff has been upheld by the learned Single Judge and the writ petitions filed by the respondents were dismissed, against which intra-court appeals at the instance of the respondents were pending, the High Court ought not to have proceeded with the hearing of the writ petition. Rather, it should have awaited the outcome of the pending intra-Court appeals relating to retrospective application of the

notification dated 23.07.2010. Subject to the final outcome of the said intra-court appeals, the writ petition should have been decided. This was all the more necessary for the High Court in view of the consistent stand taken by the respondents that the demands raised by the appellant *vide* various notices issued prior to 12.08.2015 or thereafter may be deferred awaiting the outcome of the appeals.

17. The respondents were well aware that they had lost from the Single Judge as their petitions had been dismissed but still, they had been resisting the demand only on the basis of the pendency of the appeals before the Division Bench. This objection was taken only to delay the payment of the dues of the revised tariff. The respondents therefore ought not to have benefitted out of the technical objection raised by them regarding the limitations when they were themselves bound by the decision of the learned Single Judge and had no other objection or denial to the demand except that of the pending appeals before the Division Bench.

18. In the above facts and circumstances, we are not entering into the other arguments advanced by the

parties. We are restoring the writ petition of the appellants to be heard after the decision in the intra-court appeals. In case the appeals are allowed by the Division Bench then there would no question of any recovery retrospectively. The demands would be liable to be withdrawn. However, if the respondents fail in their appeals, they would be liable to pay the demand in accordance to law along with interest admissible under law.

19. We accordingly allow the appeals, set aside the impugned order of the High Court and restore the writ petitions before the High Court to be heard after disposal of the pending intra-court appeals filed by the respondents.

.....J.
(VIKRAM NATH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI
APRIL 03, 2025