

(1998) 01 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No's. 7225, 16770, 16771, 21203, 24804, 26736, 16212, 18358, 18359, 4035 and 168 of 1997; 28229 to 28245, 30097, 34373, 15804 to 15813, 16558, 16559, 15796 to 15803, 34728 to 34734, 25318, 25319 and 25310 to 25317 of 1996; 13899 and 14757 o

Abdul Rahaman Shariff and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-01-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Land Acquisition Act, 1894 — Section 54

Mysore Court-fees and Suits Valuation Act, 1958 — Section 48

Citation : (1999) 1 KarLJ 364

Hon'ble Judges : Y. Bhaskar Rao, J;B.N. Mallikarjuna, J

Bench : Division Bench

Advocate : Sri M. Noorulla Shariff, Sri S.P. Shankar, Sri Kashinatharao Patil, Sri J.V. Hulsoor, Sri B.C. Seetharama Rao, M/s. Vijayashankar Associates, Sri I.G. Gachchinamath, Sri Basavaprabhu Patil, Sri B. Rudragowda, for the Appellant; Sri S.N. Aswathanarayana, Government Advocate, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This batch of writ petitions are filed by the claimants under the Land Acquisition Act, 1894, assailing the constitutional validity of Section 48 of the Karnataka Court Fees and Suits Valuation Act, 1958 (shortly called "the Act") to declare that Section 48 of the Act as void ab initio or as violative of fundamental rights of the petitioners under Articles 14 and 21 of the Constitution of India and at all events repugnant and contrary to the declaration of law laid down by the Supreme Court in P.M. Ashwatha narayana Setty and Others v State of Karnataka and Others.

2. The facts of the case are that all the petitioners in these petitions are claimants under the Land Acquisition Act. Their lands were acquired under the Act (Act No. 1 of 1894). The petitioners sought a reference to the Civil Court as the compensation awarded by the Land Acquisition Officer is not adequate. The

reference Court passed awards, after considering the material evidence on record and again appeals are preferred u/s 54 of the L.A. Act. The Registry has insisted payment of ad valorem Court fee on the enhanced amount claimed in the appeals, as per Section 48 of the Act. Aggrieved by that order, the present writ petitions are filed questioning the constitutional validity of Section 48 and Schedule I of the Act.

3. The learned Counsel for the petitioners contended that the lands are acquired by virtue of the provisions of the L.A. Act. The process of determination of compensation starts from the time of award enquiry to find out the market value of the land. If the person, whose land is acquired, is not satisfied with the award of the Deputy Commissioner, he can seek for a reference to the Civil Court and in some cases by further appeal to the High Court and Supreme Court. So the entire process, i.e., the award by the Deputy Commissioner and after reference enquiry by the Civil Court and consideration of the appeal by the High Court by Act No. 1 of 1894 are part and parcel of the determination of the market value of the land. According to the learned Counsel for the petitioners, the claimants need not pay any Court fee before the Land Acquisition Officer or before the Civil Court in reference; whereas, they are obligated to pay Court fee, in an appeal filed in the High Court, as per Section 48 of the Act. The State has got an obligation to pay the market value as the lands are acquired by the State under the power of eminent domain. To determine, what is the proper market value, the claimants, or some times the Government or beneficiaries, approach this Court after reference. Section 54 of the L.A. Act provides that subject to the provisions of the Civil Procedure Code, an appeal shall lie from the award or from any part of the award, of the Court in any proceedings under the Act to the Court authorised to hear appeals from the decision of that Court. Therefore, the charging of Court fee u/s 48 of the Act and for an appeal filed under Act No. 1 of 1894 is not a fair and just procedure and therefore, it is violative of Article 21 and Article 300A of the Constitution. There is no Us between the parties in the Land Acquisition proceedings as it is not adversarial procedure. The State acts as a parent to acquire the land and to give compensation. The payment of just compensation is an obligation under the Statute. The L.A. Act is though expropriatory legislation to the extent of payment of compensation to the claimants, it is a beneficial legislation. Therefore, the requirement of payment of Court fee at the stage of appeal is arbitrary and not fair. The Court fee is payable only by the claimants; whereas the Government and the beneficiaries are not liable to pay any Court fee. Therefore, the provision is discriminatory, arbitrary and violative of Article 14 of the Constitution. The Act of the State to pay just compensation and the determination of the market value under the Act is inquest to find out, what is just compensation. The appeal is also a part and parcel of the process to find out, what is just compensation. Therefore, no Court fee need be charged on such appeals. The State has got power to exempt the payment of Court fee on the appeals filed by the Government, but it has not exempted the payment of Court fee as far as claimants are concerned and therefore the same is violative of

Article 14. Payment of just compensation does not amount to a service under the scheme of the Act. Therefore, levying the Court fee on the appeals to determine the compensation amounts to levying tax and therefore, it is unconstitutional. The High Court and the Supreme Court time and again held that the payment of solatium and interest and additional amounts are payable as a statutory obligation, apart from the market value of the land acquired and on such amounts no Court fee is to be paid. After the judgment of the Full Bench of this Court holding that no Court fee is chargeable on the solatium, interest and other amounts, the explanation in Section 48 of the Act is incorporated including the solatium, interest and other amounts paid under the Act as the amount awarded or claimed, is contrary to the judgment of this Court; so the explanation has to be struck down as unconstitutional. The requirement of payment of Court fee is denying the poor claimants to approach this Court, which amounts to denying approach to the Court to seek justice. Therefore, it is violative of Article 39A of the Constitution and the same is liable to be struck down.

4. The learned Government Advocate contended that as per the scheme of the Act, no Court fee is payable at the time of referring the matter to the Civil Court. When the claimants filed an appeal seeking further enhancement of compensation from this Court, Section 48 of the Act obligates payment of Court fee; where the appeal of the claimant is allowed, he is entitled to the costs of the appeal which includes Court fee paid by him as per Section 27 of the L.A. Act. Therefore, no hardship or harm would be caused to the claimants merely because they are paying the Court fee for filing the appeal. The provision is not discriminatory, unconstitutional or against judgment of the Supreme Court in Ashwathanarayana Setty's case, *supra*. The Government and beneficiaries are a separate class than the claimants. Therefore, the requirement of Court fee paid is not discriminatory. This Court in *Executive Engineer, Karnataka Housing Board Division, Belgaum v Babu Krishna Waskar*, directed the Government to make necessary amendment to obligate the beneficiaries to pay Court fee. In compliance with the direction of this Court, the Government has already prepared a Bill and that will be placed before the Cabinet shortly.

5. Firstly, it is contended that the payment of compensation under the Act is the duty of the State as the lands are acquired by virtue of the power of eminent domain; the appeal provided u/s 54 of the L.A. Act is part and parcel of the determination of the market value of the land and when no Court fee is payable at the time of the award passed by the Deputy Commissioner, or award passed by the Civil Court, the imposition of Court fee on the appeals filed to pursue the remedy for proper determination of the market value is illegal and unconstitutional. Therefore, Section 48 and Schedule I of the Act are ultra vires of the Constitution.

6. To appreciate the above contention, it is necessary to refer to the relevant provisions of the L.A. Act, and the relevant provisions of the Constitution.

7. Article 300A was incorporated by the Constitution (Forty-fourth Amendment)

Act, 1978, simultaneously by deleting Article 19(f) with effect from 20-6-1979 which provides that no person shall be deprived of property save by authority of law. The power of the State to acquire the land, as per the above constitutional provisions, is that for acquiring the land there must be valid law and market value must be paid for such acquisition of the land, wherein the land is within the ceiling limit. In acquiring the land there must be procedure and conditions laid down in Articles 31A and 300A of the Constitution are to be satisfied.

8. The Land Acquisition Act has been tested numerous times and its constitutional validity was upheld and the same is not in dispute. The Central Act provides for issuance of a notification for acquiring the land and in case of urgency, to dispense with the enquiry u/s 5A; otherwise to issue declaration u/s 6 of the L.A. Act. Where there is no urgency, the enquiry has to be made as contemplated u/s 5A of the L.A. Act, after considering the objections filed by the claimant. In case of emergency, a declaration shall be issued u/s 17. Thereafter, after issuing the notice as contemplated under Sections 9 and 10 of the Act to all the interested persons, an award has to be passed u/s 11 and notice have to be issued to the claimants as provided u/s 12 of the Act and compensation has to be paid to the claimants. If the claimants are then in possession of the land, it can be taken as provided under Sections 16 and 17 of the Act. Ordinarily the compensation is paid after the award. When emergency class invoked and possession has to be taken, 80% of the compensation has to be paid before possession of the land is taken. The aggrieved person can seek a reference u/s 18 of the L.A. Act. On reference, the Civil Court will conduct an enquiry whether the market value fixed is proper or not and where it is found that the market value fixed by the Land Acquisition Officer is not adequate, after taking into consideration the material evidence on record, enhance the same. The award made by the Deputy Commissioner is only an offer, then upon reference, the Civil Court has to decide whether it is proper compensation or not. If the claimant is not satisfied with the award made by the Civil Court, he can prefer an appeal u/s 54 of the L.A. Act. The appeal lies to the High Court. Section 53 envisages CPC to apply to proceedings before Court in all such cases. Section 27 of the L.A. Act provides that every such award shall state the amount of costs incurred in the proceedings under this part, and by what persons and in what properties they are to be paid. Section 26 envisages the form of awards and further provided that the award shall be deemed to be a decree within the meaning of Section 2, clause (2) and Section 2, clause (9) of the Code of Civil Procedure. Section 28A envisages redetermination of the amount of compensation on the basis of the award of the Court.

9. By reading the above provisions of the Act, it is manifest that after the offer is made by the Deputy Commissioner by his award, the aggrieved party can seek a reference to the Civil Court and after Civil Court decides the compensation either enhancing or not upto the satisfaction, the aggrieved party can file an appeal, i.e., either by the claimant, Government or beneficiary. This is the Scheme of the Act. The award of the Deputy Commissioner is an offer made by the Government

and therefore there is no necessity to pay the Court fee. Similarly, reference u/s 18 also, no Court fee is payable. Section 48 obligates payment of Court fees on appeals before the High Court u/s 54 of the L.A. Act.

10. The question is, whether the obligation of payment of Court fee in the Land Acquisition Appeal filed before the High Court is unconstitutional?

11. The entire scheme of the Act envisages determination of the market value of the land acquired. Article 31A also provides that no land can be acquired within the ceiling limit without paying the market value of the land. The market value of the land has to be determined as per the principles laid down u/s 23 of the L.A. Act. It is a settled principle of law that the results follow the cause. Section 27 of the L.A. Act provides for payment of costs. The same principle also applies to the appeals and further CPC is also applicable in such cases, including the High Court. Therefore, where a claimant's appeal is allowed, he will be entitled for the costs incurred by him. What is required is that at the time of filing the appeal, he has to pay the Court fee. After the decision in *Ashwathanarayana Setty's case*, supra, the Court fee payable on the appeals upto Rs. 15,000/- was scaled down bringing it to 2 to 2 1/2 per cent as directed by the Supreme Court. In a given case, where the claimant has no means to pay the Court fee, he can file an appeal as an indigent person and the same is maintainable under Order 33 of the Code of Civil Procedure. When a claimant has no money to pay the Court fee at the time of filing the appeal, he can seek extension of time for payment u/s 148 of the CPC and the Courts are liberally granting such time. The scheme of the L.A. Act makes it clear that an appeal is part and parcel of quest to find out what is proper market value of the land. But charging of Court fee on appeal cannot be said illegal or unconstitutional as sufficient safeguard is provided for claimants.

12. It is relevant to refer to *Secretary, Government of Madras, Home Department and Another v Mis. Zenith Lamps and Electricals Limited*, wherein the Supreme Court has observed as follows:--

"The fee must have relation to the administration of civil justice. While levying fees the appropriate legislature is competent to take into account all relevant factors, the value of the subject-matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of Courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14".

(emphasis supplied)

The principle laid down in the above judgment manifests that levying of the fee has relation to the administration of justice. While levying the fee, the appropriate legislature is competent to take into account the value of the subject matter of dispute, the various steps necessary in the prosecution of the suit, the entire cost of the upkeep of Courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters.

Therefore, the contention that no Court fee can be charged on the appeals filed in the High Court to pursue the remedy for determination of the market value is not tenable as the Court fee levied is in accordance with the directions laid down in the above judgment. Therefore, we are unable to agree with the contention of the learned Counsel for the petitioners that Section 48 and Schedule I of the Act is not constitutionally valid on this count.

13. The learned Counsel for the petitioner secondly contended whether Section 48 and Schedule I of the Act is unconstitutional on the ground that the Court fee fixed therein is against the principles laid down by the Supreme Court in *Ashwathanarayana Setty's case, supra*?

14. Section 49 of the Act envisages that except as provided in Section 48, in all appeals, shall be the same as the fee that would be payable in the Court of first instance, on the subject matter of the appeal. Section 48 is an exception to Section 49. Section 48 of the Act provides that fee payable on a memorandum of appeal against the decision or award, or order relating to compensation under the L.A. Act, shall be computed on the difference between the amount awarded and the amount claimed by the appellant. Therefore, the Court fee payable on the memorandum of a Land Acquisition Appeal has to be computed on the difference between the amount awarded and the amount claimed by the appellant.

15. We will now examine the facts of *Ashwathanarayana Setty's case, supra*. The provisions of the Act were challenged in this Court and this Court upheld the validity of the Act. Against that, appeals are filed before the Supreme Court. The Supreme Court granted special leave. Similar appeals were filed from the States of Rajasthan and Bombay assailing the respective Court Fees Acts. The Supreme Court, disposed of all the three cases together in *Ashwathanarayana Setty's case, supra*, confirming the judgments of Rajasthan and Bombay High Courts, holding that the provisions challenged therein were invalid and upholding the constitutional validity of the Karnataka Act. The Supreme Court has given guidelines in para 37 of the judgment. The Supreme Court considered the question of payment of ad valorem Court fee is valid or not by posing a question, whether the Court fee should be ad valorem or ad quantum is again a matter of fiscal policy and referred *Zenith Lamp's case, supra* (referred supra at para 12 of this judgment).

16. The Supreme Court further held that similar contentions were raised before it for imposition of market fee ad valorem on different commodities. The Supreme Court held that the contention was similar to the one which was raised in ILR 1982 Kar. 399 and in the said judgment of this Court reliance was placed in *Ganga Sugar Corporation Limited v State of Uttar Pradesh and Others*, wherein the Supreme Court, though in a different context, stated:

". . . Article 14, a great right by any canon, by its promiscuous forensic misuse despite the *Dalmia* decision has given the impression of being the last sanctuary

of losing litigants...Price is surely a safe guide but other methods are not necessarily violational".

It is also relevant here to refer para 35 which reads thus:

"The State is in theory entitled to raise the totality of the expenses by way of fee. Any interference with the present yardstick for sharing the burden might in turn produce a yardstick less advantageous to litigants at lower levels, subject to certain observations and suggestions we propose to make in regard to the rationalisation of the levies in view of the general importance of the matter to the administration of civil justice, we think we should decline to strike down the law".

17. The learned Counsel relied upon the observations of the Supreme Court in para 37 of the said decision, in support of his contention, wherein it is observed thus:

" XXX XXX XXX Though we have abstained from striking down the legislation, yet, it appears to us that immediate steps are called for and are imperative to rationalise the levies. In doing so, the States should realise the desirability of levying on the initial slab of the subject matter - say upto Rs. 15,000/- a nominal Court fees not exceeding 2 to 2 1/2% so that small claims are not priced out of Courts. Those who have less in life, it is said "should have more in law". Claims in excess of Rs. 15,000/- might admit of an ad valorem levy at rates which preferably should not exceed 7 1/2% subject further to an upper limit which, having regard to all circumstances, could be envisaged at Rs. 75,000/-. The upper limit even prior to 1974 under the Bombay Act was Rs. 15,000/- and prior to 1961 under the "Rajasthan Act" at Rs. 7,500/-. Having regard to steep inflation over the two decades the upper limit could perhaps to upto Rs. 75,000/-. After that limit is reached, it is appropriate to impose on gradually increasing slabs of the value of the subject matter, progressively decreasing rates, say from 7 1/2% down to 1/2% in graduated scales. The Governments concerned should bestow attention on these matters and bring about a rationalisation of the levies".

The Supreme Court has made an observation in the above case that the Government should amend the law; but by that observation, it cannot be said that the Supreme Court has held that the law providing for payment of ad valorem Court fee is invalid. It is relevant to refer para 34 of the Supreme Court judgment, which is as follows:--

"Having regard to the nature and complexity of this matter it is, perhaps difficult to say that the ad valorem principle which may not be an ideal basis for distribution of a fee can at the same time be said to be so irrational as to incur any unconstitutional infirmity. The presumption of constitutionality of laws requires that any doubt as to the constitutionality of a law has to be resolved in favour of constitutionality. Though the Scheme cannot be upheld, at the same time it cannot be struck down either".

18. By reading of paras 34, 35 and 37 of the decision of the Supreme Court in Ashwathanarayana Setty's case, supra, it is evident that the levy of ad valorem Court fee is valid; however, there is need to amend the Act to rationalise the levies of Court fees so that the State should realise the desirability of levying on the initial slab of the subject matter, say upto Rs. 15,000/-, a nominal Court fee not exceeding 2 to 2 1/2%. so that small claims are not priced out of Courts. Further, the Supreme Court observed that those who have less in life, it is said "should have more in law". The Supreme Court also gave guidelines in levying the Court fee as the claim of the litigants increases. These guidelines are issued for consideration of the Parliament and the legislatures of States to amend the law. By that itself, it cannot be said that the impugned Act is unconstitutional.

19. It is to be noticed that after the judgment of the Supreme Court, the Karnataka Act was amended to be in conformity with the guidelines given by the Supreme Court - vide State Act 2 of 1993. The amended Schedule I(i) prescribes payment of Court fee at 2 1/2% where the amount not exceeding Rs. 15,000/-. The Court fee prescribed for the amount exceeding Rs. 15,000/- but not exceeding Rs. 75,000/- is Rs. 375/- plus 7 1/2% of the amount exceeding Rs. 15,000/-. Where the amount exceeding Rs. 75,000/- but not exceeding Rs. 2,50,000/- the Court fee prescribed is Rs. 4,875/- plus 7% of the amount exceeding Rs. 75,000/-. When the amount exceeding Rs. 2,50,000/- but not exceeding Rs. 5,00,000/- the Court fee prescribed is Rs. 17,125/- plus 6"-2% of the amount exceeding Rs. 2,50,000/-. Similarly, when the amount of claim increases, the fee prescribed also increases in the corresponding ratio. When Schedule I of the Act is examined in the light of the guidelines of the Supreme Court. It is found that it is within the guidelines prescribed by the Supreme Court. Therefore, the contention of the learned Counsel for the petitioners that the Court fee prescribed in Schedule I is unconstitutional and against the guidelines of the Supreme Court is not correct and therefore it is not tenable. Therefore, we hold that Section 48 and Schedule I of the Act is not ultra vires of the principles laid down by, the Supreme Court in Ashwathanarayana Setty's case, supra.

20. The learned Counsel then contended that the Supreme Court has upheld the judgment of the Bombay and Rajasthan High Courts wherein they have struck down the provisions of the Court Fees Acts as unconstitutional. The Supreme Court has disposed of all the cases arising out of the Bombay and Rajasthan High Courts and also the Karnataka High Court by a common judgment, but dealt with each case separately, in the judgment, giving different reasons. In the Bombay Court Fees Act (36 of 1959), Section 29(1), Schedule I, Entry 10 prescribes ad valorem Court fee only in respect of Probate and Letters of Administration without upper limit. For all other types of suits, the payment of Court fee was with upper limit. Considering the said question the Supreme Court held that the provisions fixing the ad valorem Court fee, without any upper limit, only for the proceedings of Probate and Letters of Administration, is discriminatory when for all other types of suits Court fee fixed with upper limit. The facts of that case are

different from the facts of the case on hand. Similarly, the facts of the Rajasthan case was also different. Therefore, the fact that the Supreme Court confirmed the judgments of Bombay and Rajasthan High Courts, on the ground that the discrimination brought about by the Statute, fails to pass the constitutional validity.

21. The learned Counsel for the petitioner thirdly contended that the salary of High Court Judges and other administrative expenses are paid from the consolidated fund of the State and therefore, there is no necessity of levying fee as Court fee. The Court fee levied is not a tax. So the levying of Court fee is arbitrary, illegal and unconstitutional.

22. To appreciate the contention, it is appropriate to refer to the relevant provisions of the Constitution. Article 246 provides distribution of legislative subjects between Federal and Provincial Government. The entries in Lists I to III deal with specific subjects allotted to the Centre and the State.

23. Items 77 to 79 of List I of Seventh Schedule of the Constitution of India envisages constitution, organisation, jurisdiction and other powers of the Supreme Court and the fees taken therein and extension of the jurisdiction of the High Court to and from any Union territory. Entry 3 of List II of the Seventh Schedule empowers the State Legislature to enact laws in respect of Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court. By reading Entries 77 to 79 of List I and Entry 3 of List II of the VII Schedule along with other relevant provisions, it is manifest that the Parliament can make law in regard to collection of fee by the Supreme Court and the States are empowered to make law in regard to collection of Court fees in all Courts in the State, which means, including the High Court. In Entries 77 to 79 of List I, the collection of the fee for the High Court is not mentioned. In Entry 3 of List II, it is mentioned that fees taken in all High Courts, except the Supreme Court, Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all Courts except the Supreme Court. Thus Entry 3 of List II of the Seventh Schedule covers the Court fee payable to the High Court, but excluded the Supreme Court. Thus the Constitution specifically empowered the parliament to make law in regard to the Supreme Court and the State Legislature is empowered to make law for the fees to be collected in the High Court and other Courts. Therefore, the State Legislature is competent to enact law in regard to the fee payable in the High Court.

24. The salary of the High Court Judges and other expenses of the High Court are paid out of the consolidated fund of the State as envisaged in Article 202(3) (d) and Article 229(3). The constitutional scheme envisages that the salaries of the High Court Judges and other administrative expenses of the High Court are paid from the consolidated fund of the State and the State is empowered to make law for collection of Court fee in all Courts, including the High Court of the State. There is no provision in the Constitution prohibiting the collection of Court

fee. Therefore, merely because the salaries and other expenses of the High Court Judges and other expenses are paid from the consolidated fund of the State, it cannot be inferred that the State has no power to levy the fee on the Court proceedings. If the constitutional scheme is examined as envisaged in the above Articles and the entries made in the Lists of the VII Schedule of the Constitution, it is manifest that the State is empowered to make laws for collection of Court fee. The Supreme Court in *Ashwathanarayana Setty's* case, *supra*, upheld levying of Court fee. Therefore, the contention that the Court fee collected on appeals is a tax is not tenable. Therefore, we are not able to see any justification in the contention raised by the learned Counsel for the petitioners in this regard.

25. The learned Counsel fourthly contended that the requirement of payment of ad valorem Court fee is against the Directive Principles, particularly to the spirit of Article 39A of the Constitution.

26. To appreciate the contention, it is relevant here to refer Article 39A which reads as follows:--

"Equal justice and free legal aid.-

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

The Article provides that the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, in particular provide free legal aid. by suitable legislation or scheme, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Therefore, requirement of payment of Court fee on the appeals filed under the Land Acquisition Act is contrary to Article 39A of the Constitution.

27. When a person is not able to pay Court fee due to his social and economical backwardness, Order 33 of the CPC prescribes suits by indigent persons to file in *forma pauperis* without paying the Court fee, after obtaining the leave of the Court. Section 107(2) of the CPC provides that the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed on Courts of original jurisdiction in respect of suits instituted therein. Therefore, where a person is indigent and not able to pay Court fee, as he has no means, he can file appeals in *forma pauperis*. Thus the weaker sections of the society who are not able to pay Court fee due to their social and economical background are provided with ample opportunity to approach the Court. Further, as stated *supra*, on a claim of Rs. 15,000/- the Court fee payable is only nominal as per Schedule I of the Act and as the claim increases the amount of Court fee also increases in the ratio as provided under the Schedule. Thus indigent and poor persons are not deprived from approaching the Court. The above said procedure prescribed under the Code of Civil

Procedure, L.A. Act and the Court Fees Act, is in consonance of Article 39A of the Constitution.

28. The scope and ambit of the proceedings of civil nature and proceedings of criminal nature are quite different and distinct. Criminal proceedings are initiated by virtue of the sovereign power of the State to control crime and to maintain rule of law and to have the peace and tranquility in the society. When State initiating criminal proceedings no Courtfee is to be paid by a delinquent. Criminal case filed by the complainants are liable to pay only nominal Court fee. In Civil Proceedings, the Court fee is prescribed under the Act, but where suits and claims are filed by the indigent persons, they can file appeals without Court fee, after obtaining permission of the Court under Order 33 of the CPC. Both are separate classes of proceedings and not one and the same. Therefore, levy of Court fee on civil proceedings cannot be equated with that of criminal proceedings. Hence the Act is not discriminatory and violative of Article 14 of the Constitution.

29. Fifthly it is contended that Section 48 and Schedule 1 of the Act are discriminatory and violative of Article 14 of the Constitution as the Court fee is payable only on the appeal filed by the claimants and not on the appeals filed by the Government and beneficiaries.

30. Section 48 of the Act obligates the applicant, who files an appeal by paying the Court fee on the enhanced amount claimed by him as per Schedule I of the Act. In *Ashwathanarayana Setty's* case, *supra*, the Supreme Court upheld the constitutional validity of the Act and also payment of ad valorem Court fee. The suggestion made by the Supreme Court to scale down the higher Court fees into lower slab was complied with and the Schedule I of the Act was amended and the payment of Court fee was made in consonance with the directions of the Supreme Court. It is a fact that the Government need not pay any Court fee. Section 69 of the Act exempts the Government from payment of Court fee and the Government is accordingly exempted from payment of Court fee. The claimants are separate class from the Government. The classification between the two sets of separate classes cannot be said classification of the same specie. Therefore, non-charging of Court fee on the appeals filed by the Government and charging Court fee on claimants' appeal is not discriminatory.

31. Appeals are also filed by the beneficiaries. The amendment made to Section 20 of the L.A. Act by the Karnataka Amendment states that show cause notice to be issued to all persons concerned, including the beneficiaries. Earlier to this Amendment, no notice was required to be issued to the beneficiary. Until the Supreme Court declared that the beneficiaries are also entitled to go up in appeal, they have not filed any appeal. Only after declaration of law by the Supreme Court, beneficiaries are now filing appeals. The provisions of the Court Fees Act are earlier to the pronouncement of the judgment by the Supreme Court and earlier to the Amendment made to Section 20 of the L.A. Act.

32. In Executive Engineer, KHB Division's case, *supra*, a question came before the Division Bench of this Court, whether public bodies and beneficiaries to acquisition made by State, liable to pay ad valorem Court fees on Memorandum of Appeals. The Division Bench of this Court held that the applicant is none other than the claimant whose lands are acquired and therefore it follows that only in appeals preferred by the claimant-applicant, claiming enhanced compensation over and above the amount awarded by the Civil Court. Section 48 is attracted and it does not apply to appeals preferred, either by the State or by the beneficiaries, who question the quantum of compensation awarded by the Court. Dealing with reference u/s 18 of the L.A. Act, it follows that no Court fee is payable on the memorandum of appeal preferred by the beneficiary against the award. The Division Bench suggested that it may be necessary for the legislature to intervene and bring about suitable amendments to the Act, providing for payment of Court fees on the memorandum of appeals filed by the beneficiaries also, with a direction to communicate a copy of the order to the Chief Secretary to Government.

33. The Government Pleader submitted that the Government has prepared a Bill proposing to amend Section 48 of the Act, to incorporate appellant in the place of application in Section 48 of the Act so that even the beneficiary is also liable to pay Court fee. In view of the fact that the Government has already taken action to amend Section 48 of the Act to make the beneficiary also to pay the Court fee, it cannot be said that they are exempted from payment of Court fee.

34. Section 48 of the Act as worded, applies only to the claimants obligating them to pay the Court fee. It is a fact that the beneficiaries are not covered by Section 48 of the Act. The mistake has been pointed out by a Division Bench of this Court to correct it and gave a direction to the Government to make necessary amendment. Thus the exclusion of the beneficiaries from payment of Court fee is an error or mistake in the legislation. When there is a direction to correct the mistake, the beneficiaries are also liable to pay the Court fee, after the amendment. Therefore, the petitioners are not entitled to contest on that basis and they are liable to pay Court fee in Land Acquisition Appeals. Apart from that, the beneficiaries are also a separate class from the claimants. Therefore, the classification cannot be said to be bad. Therefore, in view of the above circumstances, it cannot be said that Section 48 and Schedule I of the Act are discriminatory.

35. The learned Counsel for the appellants fifthly contended that the State Act is violative of Articles 246 and 254 of the Constitution as the Central Court Fees Act of 1870 occupied the field.

36. The question that raised is when there is a Central Act prescribing fee to be paid in the Courts, the field is occupied by the Centre and the State has no power to make law. It is a fact that there is a Central Court Fees Act of 1870. The same is a pre-constitutional legislation. Article 372 of the Constitution envisages that notwithstanding the repeal by the Constitution of the enactments

referred to in Article 395 but subject to the other provisions of the Constitution, all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. Article 375 prescribes that all Courts of civil, criminal and revenue jurisdiction, all authorities and all officers judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to exercise their respective functions subject to the provisions of the Constitution. As per Article 372 all pre-constitutional laws will be in force unless they are amended by the respective legislatures or authorities. The subjects for legislation are distributed between the Centre and the State by virtue of Article 246. The State is empowered to make law in regard to the Court fees to be collected in the High Court and other Courts in the State. By virtue of the said power, the Karnataka Act was enacted. Section 79 of the Act repeals application of the Central Act to the parts of the State for which it was applicable prior to the Reorganisation of the States. Therefore, the Central Act is not at all applicable to the State of Karnataka. When once the Act is not applicable, the question of repugnancy between the Central enactment and the State Act does not arise. Therefore, the impugned Act is not violative of Articles 246 and 254 of the Constitution.

37. In view of the above facts and circumstances of the case, we do not see any merit in these writ petitions, and we uphold the constitutional validity of Section 48 and Schedule I of the Act.

The writ petitions are accordingly dismissed without any order as to costs.