

(1967) 10 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No's. 185 and 186 and Civil Application No. 1311 of 1967

Abdul Sultan Hussainbhai Velji

APPELLANT

Vs

Collector of Ahmednagar

RESPONDENT

Date of Decision : 10-10-1967

Acts Referred:

Bombay Court Fees Act, 1959 — Article 3, 7, 7(1)
Land Acquisition Act, 1894 — Section 18, 23(1), 28

Citation : AIR 1968 Bom 390 : (1968) 70 BOMLR 203 : (1968) MhLj 483

Hon'ble Judges : Patel, J;Chitale, J

Bench : Division Bench

Advocate : V.N. Gadgil, for N.S. Shastri and V.N. Gadgil, for the Appellant; M.A. Rane, Asst. Govt. Pleader, for the Respondent

Judgement

Patel, J.

(1) In these two cases the question that arises is whether in an appeal against an award made in a land acquisition reference court fee on the amount of 15 per cent solatium payable on the award that may be made by the appellate Court must be paid by the Appellant.

(2) The facts of the case in C. R. A. 185 of 1967 are given in my referring judgment dated July 27, 1967. The question depends upon the construction of relevant provisions of the Court-fees Act and the Land Acquisition Act, Section 7 of the Court-fees Act consists of two sub-section, sub-section (2) not being relevant. Sub-section (1) reads as follows:

"(1) The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

All the authorities indicate that this section is a computing section or a section which lays down the method of computation of the value of the appeal while the charging provisions are contained in the Schedules to the Act. This view has been taken by reason of the language of S. 5, which requires that on a document, which is filed before a public officer or a court of justice, the court fees stamp of an amount of not less than that indicated by the said schedules as the proper fee has been paid. (See (Koppaka) Brahmanandam Vs. Secy. of State, : Mytheen Kunju Abdulrahiman Kunju v. State, AIR 1955 Trav Co 110 and M. Dodla Malliah and Others Vs. The State of Andhra Pradesh and Land Acquisition Officer, Warangal,). Coming home, see the decisions in Ganesh Gopal Vs. Moreshwar Narayan, and Hirji Virji Jangbari v. The Government of Bombay, 47 Bom LR 327=AIR 1945 Bom 348.

(2A) In the Schedules the relevant Articles are Arts. (i) and (iii) of Schedule I, Art (i) is

"Plaint or memorandum of appeal (not otherwise provided for in this Act) or of cross objections presented to any Civil or Revenue Court when the amount of the value of the subject matter in dispute does not exceed."

Article (3) reads:

"Plaint, application or petition (including memorandum of appeal), to set aside or modify any award otherwise than under the Arbitration Act, 1940, a fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1."

In my referring judgment I have said that Article (i) would have no application because S. 7 is a specific provision laying down the quantum of Court-fees. However, on a reconsideration of the matter and the authorities cited before us we hold that S. 7 is a computing section and the charging provisions are contained in the Schedules. Unfortunate as it may seem, in its anxiety to see that there is no escape from the payment of court-fees the legislature has made in many cases overlapping provisions. Article (1) is a general article, which does not apply if there is any other provision in the Act. We have held in First Appeal No. 15 of 1966 and Nos. 114 to 119 and 301 to 307 of 1965 that in the case of an appeal from an award made by an arbitrator appointed under S. 8 of Requisitioning and Acquisition of Immovable Property Act (Act XXX of 1950) Article 3 applies. In the case of an appeal under the Land Acquisition Act, however, we do not think that Art. 3 can apply for the reasons following.

(3) In order that Art. 3 should apply the appeal must be against an award or in a finding (sic) to set aside an "award" in its technical sense which means the decision of an arbitrator. Though a decision under the Land Acquisition Act is called an award, it is not strictly an award. The determination of the Land Acquisition Officer is really an offer by him on behalf of the Government. He is not an arbitrator at all. He is merely an officer of the Government. See Ezra v. Secy. of State, (1905) 32 Ind App 93 (PC). The Bombay Amendment which

requires him to submit his decision to the Government for approval before publishing the same, the Government having a right to direct modification makes it the more administrative. The offer is binding only the Government, vide *Gangadas Mulji Vs. Haji Ali Mahomed Jalal Saji*, . It is true that the decision of the Court deciding the reference is described as an award. Even so, the Court does not function as an arbitrator at all. The reference under S. 18 is to the Court and the decision is that of the Court and is subject to all incidents of a proceeding in it. It appears, therefore, that the word "award" in the Land Acquisition Act would carry its ordinary sense Article 3, therefore, cannot apply.

(4) Reverting then to S. 7, we have to construe the words "according to the difference between the amount awarded and the amount claimed by the appellant." In order to arrive at the true meaning of the words, we must also consider the provisions of the Land Acquisition Act in reference to which this phrase has been used, the question being what is the meaning of the words "amount awarded and the amount claimed by the appellant" In order to understand the meaning of the words "amount awarded" in relation to the words "amount claimed by the appellant" one has to see the scheme of the Land Acquisition Act and consider the words accordingly keeping also in view the words of second column of Article (1) to the Schedule to this Act.

(5) The word "awarded" has not been defined in this Act. Section 11 of the Land Acquisition Act makes it obligatory on the Collector after the preliminaries have been done to make an award under his hand of (i) the true area of the land (ii) the compensation which in his opinion should be allowed for the land: and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose claim, he has information, whether or not they have respectively appeared before him.

(6) Section 12 makes the award of the Collector final subject to the provisions of the Act in respect of matters stated in the award.

(7) Section 15 requires that the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act in determining the amount of compensation.

(8) We are really not concerned in S. 7(1) with the word "award" as such, but really with the words "amount awarded and the amount claimed". Sections 11, 12 and 15, therefore, which deal with the actual award as such, are not of much relevance for determining this question. For this purpose we are mainly concerned with the terms of S. 9 which appears to us to be very pertinent. The notice that is required to be given by the Collector and its nature is the subject matter of S. 9(1) and (2) of the Land Acquisition Act. In the notice the Collector is required to call upon the persons interested in the land to appear before him either personally or by an agent at the appointed time and place, and, to state the nature of his interest in the land and the amount and the particulars of his claim to compensation for such interests and also the objections (if any) to the

measurements made under S. 8. Surely while making a claim before the Collector he cannot be asked to claim also the 15 per cent solatium. After the claims are filed the Collector has to proceed to make the award in terms of Ss. 23 and 24, which are relevant. Section 23 reads as below:

"23(1). In determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration first, the market-value of the land at the date of publication of the notification under S. 4, sub-section (1) or at the relevant date, whichever is less:

Secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof.

Thirdly the damage (if any) sustained by the persons interested, at the time of the Collectors taking possession of the land, by reason of serving such land from his other land:

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or Immovable in any other manner, or his earnings.

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such changes and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under S. 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition."

It may be mentioned here that in the earlier Land Acquisition Act of 1870, the corresponding section to this section was S. 24 without sub-section (2). The equivalent of sub-section (2) was placed in Part V relating to payment and it required the Collector to pay 15 per cent on the market value in addition to the amount determined under S. 24. There is absolutely no difference between S. 42 in the Act of 1870 and sub-section (2) of S. 23 as it now stands except for the fact that the word "Court" is substituted for the word "Collector". In this connection it must be noticed that while transposing S. 42 as sub-section (2) of S. 23, as can be seen from the report of the Select Committee to the L. A. Bill to amend Act X of 1870 dated February 2, 1893, no particular purpose was intended to be achieved except one of convenience. The convenience being that the Collector and the Judge making the award would find embraced in a single section the whole of the details required for the completion of his estimates of compensation.

(9) Section 24 only prescribes matters which ought not to be taken into account by the Court making an award. One thing which is evident from the combined reading of S. 9 and S. 23 is that the claimant is not required to make a claim before the Collector or as a matter of fact before a Judge in respect of 15 per cent. Solatium provided by the Act. The amount of compensation being determined in terms of S. 23(1), 15 per cent. Solatium has to be added to the said price as an obligatory duty by the Court. See the decision of the Judicial Committee in *Secretary of State for India in Council v. Shanmugaraya Mudaliar*, (1893) 20 Ind App. 80 (PC). Therein Lord Hobhouse says (p. 86):

"It is also pointed out that the award does not give the additional 15 per cent on the market value, which is directed by Section 42 of the Act to be paid by the Collector. It is a matter of very little importance, but according to the exact terms of the Act the award is only to ascertain the market value and then the Act itself imposes a further obligation on the Collector to pay a further obligation on the Collector to pay the 15 per cent. The effect is the same whether the award is silent about the added percentage, or expressly includes it, as has been done by the High Court."

And in the last paragraph of that judgment, he says:

"The Collector will, of course, have to pay 15 per cent on the sum awarded according to the provisions of S. 42 of the Act before he can make his title perfect."

To the same effect are the decisions in *Muhammad Sajjad Ali Khan and Others Vs. Secy. of State*, and *Muhammad Ismail v. Secy. of State*, AIR 1936 Lah 59 where it has been held that the 15 per cent on the market value is a statutory amount of compensation in addition to the market value and the Court has no power to deprive the claimant of that amount on the ground that he has not previously claimed it specifically.

(10) It is true that these cases were not dealing with the question of court-fees,. That, however, does not affect the principle of those decisions. After all the court-fee is to be paid on the amount claimed by the appellant and if he is not compellable to claim that amount, it cannot be said that he has claimed the said amount. The distinction, therefore, sought to be made by Mr. Rane regarding these decisions cannot be valid.

(11) In Section 23 we particularly notice a little oddity and it is this. The heading "amount of compensation to be awarded for the land acquired under this Act" is part of sub-section (1) and not a general heading of the section with parts 1 and 2 sub-divided. The compensation, therefore, under sub-section (1) to be awarded for the land is determined in accordance with the six clauses therein mentioned. Though, therefore, the words "the amount of compensation to be awarded for the land" are ordinarily wide enough to include the entire compensation including 15 per cent in sub-section (2) it is referred to as "the market value of the land as above provided." It is possible, therefore to read the

words "compensation to be awarded for the land acquired" equivalent to "market-value of the land" That the items determined in accordance with Section 23(1) and Section 23(2) are intended to be kept separate, can be seen from S. 26 which refers to the contents of the award. In the case of a decree under the Civil Procedure Code, it is the formal expression of the totality of the reliefs given by the Court. But the "award" under the Land Acquisition Act consists of constituent parts and whole of which is deemed to be a decree.

(12) In this connection we must also notice S. 25(1). It provides that "when the applicant has made a claim to compensation. the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11". It is impossible to argue that the amount claimed includes 15 per cent which is the statutory obligation put on the Court. There may be persons who may claim exact value of the property. If the Collector finds that what is claimed is the market-value, he is bound to award 15 per cent, in addition in his final award. This section would suggest that the words "amount awarded" in the context mean the amount awarded under sub-section (1) and not the whole amount of the award.

(13) As under the Land Acquisition Act it is possible to read the words "amount awarded" to mean the amount awarded as the market value, having regard to the fact that the Court-fees Act is a fiscal statute, the words "amount awarded" must have this limited construction, particularly when read in the context of Article (1) of the Schedule which speaks of "subject matter in dispute". Since there is nothing which requires a claimant to make a claim for 15 per cent solatium before the Collector or the Court it is impossible to require him to make a claim for the same in the Memorandum of Appeal and then call upon him to pay the court-fees.

(14) This reading of S. 7 and Art. (1) of Schedule 1 is the correct reading of the Court-fees Act is supported by the Supreme Court decision in the case of State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, . In that case the question was whether an appellant was bound to pay court-fees on the amount of pendente lite interest decreed. The Supreme Court held that he was not bound to pay court-fees on that amount. Emphasis was laid on the words "subject matter in dispute" in "amount or value of the subject matter in dispute in appeal", contained in column (2) of Art. (1) of Schedule I of this Act. Mr. Justice Raghubar Dayal speaking on behalf of the Court said (at p. 257 of Bom LR)=(at p.459 of AIR):

"On what principle are these amounts not treated as forming part of the value of the subject-matter in dispute in appeal. Such value is to be determined on the substantial allegation in the plaint or from the pleas in the memorandum of appeal with respect to the point in dispute between the parties and sought to be determined by the Court. Such are necessarily the points affecting the rights of the parties sought to be adjudicated by the Court. Claims not based on any asserted right but dependant on the decision of the disputed right and reliefs

which are in the discretion of the Court do not come within the purview of the expression "subject matter in dispute or memorandum of appeal".

This to us appears to be the ration of the decision. The word "and" is an alternative and is not intended to be cumulative in the sense that both the conditions are to be satisfied. It is clear, therefore, that if something depends not on an asserted right which must be established but is dependent on a disputed right or is a relief which is purely within the discretion of the Court, it cannot come within the purview of the expression "subject-matter in dispute in the plaint or memorandum of appeal." It is argued however that the observation in the latter part has affected the statement of this principle. The observations relied upon are:

". . . .The reason really is that it is the value of the right claimed in the suit or appeal which is covered by the expression "amount or value of subject matter in dispute" in Art. 1, Schedule 1, of the Act and that the plaintiff has no right to get any of these amounts from the defendant though the Court may, in its discretion, allow future interest and costs according to the circumstances of the suit in view of Ss. 34 and 35, Civil Procedure Code. This principle equally applies to the non-inclusion of the decreed amounts of pendent lite interest in evaluating the subject-matter in dispute in appeal as that too is awarded in the exercise of its discretion by the Court and the plaintiff has no right or claim for that amount against the defendant."

When this contention is made by Mr. Rane, he loses sight of the fact that this is said in explanation of the principle earlier stated, Mr. Rane's argument that if the plaintiff succeeds in his claim, 15 per cent, becomes automatically added to it and, therefore, it ought to be considered as a part of the claim, cannot be accepted.

(15) The decisions, however, of other High Courts have taken a contrary view. We must now examine these cases. In AIR 1930 Mad 45, decided by a single Judge, it was held that under S. 8 of the Court-fees Act an appellant insisting on 15 per cent on market value in case of success, must pay court-fees on total amount including 15 per cent. Statement of facts shows that in this case the appellant specifically claimed 15 per cent, in the appeal. If he asked for it then it is possible to say that he ought to pay court-fees on the 15 per cent, as it was a part of the claim. In this case, the learned Judge distinguished the decision of the Privy Council in (1893) 20 Ind App 80 (PC) saying that the decision was under the Land Acquisition Act (10 of 1870) and that the observations were not pertinent to the question at issue. We have already noticed above that difference is not of substance but of form. A similar question arose directly in Chandulal Pitamberadas Vs. Special Lands Acquisition Officer, Eastern Railways, Ahmedabad, which again is a decision by a single Judge. The learned Judge distinguished the case of (1893) 20 Ind App 80 on the ground that it was not in connection with the Court-fees Act. It was held that as there was no discretion in the Court not to award 15 per cent solatium, that as soon as compensation was

determined, 15 per cent, becomes a part of his claim unless he were to state in the memorandum of appeal that he did not claim any amount of solatium that he may become entitled to. According to the learned Judge, it would remain a part of the claim before the appellate Court. To the same effect are the observations in AIR 1955 Trav-Co 110. With great respect, we find it extremely difficult to agree with the conclusion of the learned Judges for the reasons already stated.

(16) We have to consider the words "the amount claimed by the appellant" in S. 7(1) of the Court-fees Act, and not words like "the amount payable to the appellant" or "the amount claimable by the appellant". If a plaintiff or an appellant does not claim a relief, it is well settled that the Court cannot read that relief in the plaint. It is true that the plaint and the memorandum of appeal must be read reasonably and fairly, but that does not mean that we are entitled to add something of our own to what has been paid (sic) by the appellant. It is within our power not to grant the relief if not claimed, if it is within our power to refuse it. But where it is not, it is impossible to refuse 15 per cent solatium merely because it has not been claimed. The solatium that may be awarded also, therefore, cannot be treated as part of the claim, if actually not claimed.

(17) We, therefore, hold that the court-fees must be paid only on the amount claimed by the appellant. The "amount awarded" has reference really to "the amount of compensation awarded" i.e. the marked value under S. 23(1) and the court-fees, therefore, will have to be computed in accordance with my referring order. We make the rule in Civil Application No. 1311 of 1967 also absolute and direct the Registrar to register the appeal.

(18) Rules made absolute.