

(2015) 04 BOM CK 0213

In the Bombay High Court

Case No : First Appeal Nos. 856 and 1046 of 2014

Abhay Laddulal Shah and Others

APPELLANT

Vs

Udaykumar Radhakisan Dubey and Others

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 45, 110, 96
Land Acquisition Act, 1894 — Section 18, 18, 19, 20, 21

Citation : (2015) 3 MhLj 660

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : A.R. Deshpande, for the Appellant; S.S. Sarda, Advocates for the Respondent

Judgement

A.S. Chandurkar, J.—The question that arises in both these appeals is whether adjudication of reference under Section 30 of the Land Acquisition Act, 1894 can be challenged by way of appeal under Section 54 of the said Act or whether the same is required to be challenged by way of appeal under Section 96 of the Code of Civil Procedure (for short the Code).

2. Facts in First Appeal No. 1046/2014 are being referred to. The Reference Court therein while deciding reference proceedings under Section 30 of the said Act held the present respondent to be entitled to 1/3rd amount of compensation and the appellant entitled to 1/4th amount of compensation. This adjudication by the Reference Court is sought to be challenged by way of appeal under Section 54 of the said Act.

3. When this appeal was taken up for admission, Shri M.G. Sarda, the learned Counsel appearing for the respondent Nos. 1 and 2 raised a preliminary objection to the tenability of the appeal on the ground that no appeal under Section 54 of the said Act was maintainable for challenging the decision of the Reference Court under Section 30 of the said Act. According to the learned Counsel, the adjudication under Section 30 of the said Act is not related to the amount of

compensation, but relates to the dispute regarding title between the contesting parties and hence, said decision could be challenged only by preferring an appeal under Section 96 of the Code. It was submitted that under Section 26 of the said Act only an award passed under Section 18 of the said Act is covered and provisions of Section 30 fall in Part IV of the said Act. He, therefore, submitted that on the basis of monetary valuation, the pecuniary jurisdiction of the Court would be determined and appeal under Section 96 of the Code would lie before such Court. In support of his preliminary objection, the learned Counsel relied upon the following decisions:

[1] Bai Lalita Vs. Shardaben and Others, AIR 1970 Guj 37 .

[2] Gurudatta Housing Society Vs. Maruti Bali Kokate, (1980) 82 BOMLR 397 : (1980) MhLj 619 .

[3] Motte Rajaram Vs. Revenue Divisional Officer and Another, (2006) 3 ALD 199 : (2006) 2 ALT 477 .

[4] State of Bihar Vs. Smt. Sharda Devi, (1997) 1 BLJR 1 : (1997) 1 PLJR 155 .

4. Shri A.R. Deshpande, learned Counsel appearing for the appellant submitted that appeal under Section 54 of the said Act was tenable while challenging the adjudication under Section 30 of the said Act. According to him, Section 54 provides for remedy of appeal against order passed in an award of the Reference Court and, therefore, adjudication of proceedings under Section 30 of the said Act could be challenged by filing such appeal under Section 54 of the said Act. He placed reliance upon decision of the Supreme Court in Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others, AIR 2010 SC 112 : (2009) 10 JT 509 : (2009) 10 SCALE 416 : (2009) 16 SCC 1 : (2009) 13 SCR 929 and the judgment of the Karnataka High Court in Indian Council of Agricultural Research and Vs. Smt. Varija amd Ors. etc. etc., AIR 2011 Kar 73 : (2011) ILR (Kar) 499 : (2011) 2 KarLJ 73 : (2011) 2 KCCR 1435 .

5. Having heard the learned Counsel for the parties and having considered the statutory provisions as well as the decisions pressed into service, the preliminary objection raised by the respondents to the tenability of the appeal under Section 54 of the said Act deserves to be upheld.

6. Section 54 of the said Act which provides for remedy of appeal reads thus:-

"54. Appeals in proceedings before Court.-- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to [the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 (5 of 1908), and in Order XLV thereof.]"

7. The term "award" has not been specifically defined under the said Act. Reference to said term can, however, be found in Section 26 of the said Act which refers to an award under Part-III of the said Act. Part-III of the said Act, in turn, covers provisions of Sections 18 to 28 of the said Act. Section 30 of the said Act with regard to which the preliminary objection is required to be considered falls in Part-IV of the said Act. Hence, from the placement of aforesaid provisions in the said Act, it is clear that Section 54 of the said Act would cover such award that is passed in terms of Section 26 of the said Act which, in turn, is an award passed under Part-III of the said Act.

8. In Gurudatta Housing Society (supra), the Division Bench of this Court considered the question of valuation of an appeal that was filed challenging adjudication under Section 30 of the said Act. The question considered was whether the appeal was required to be valued in terms of the declaratory relief sought or whether ad voleram Court fees were required to be paid. After referring to the decision of Privy Council in T.B. Ramchandra Rao and another v. A.N.S. Ramchandra Rao and others AIR 1922 Privy Council 80 and the decision in Raghunathdas Harjivandas Vs. The District Superintendent of Police, AIR 1933 Bom 187 : (1933) 35 BOMLR 276 : (1933) ILR (Bom) 314 , it was held that there was a distinction between proceedings that were decided on reference to the Civil Court. Said distinction was in relation to determining the amount of compensation and adjudication of title. The Division Bench thereafter held that the valuation of said appeal under provisions of Article 23(f) of Schedule-II of the Bombay Court Fees Act, 1959 was correct as the dispute as regards the question of title was declaratory in nature.

This decision, therefore, highlights the distinction between proceedings under Section 18 of the said Act which are for determining compensation and proceedings under Section 30 of the said Act that are for resolving disputes in relation to title.

9. A somewhat similar question that arises in this appeal was considered by the Division Bench of the Gujarat High Court in Bai Lalita (supra). Again after referring to the judgment of the Privy Council in Ramchandra Rao (supra) and the decision in Raghunath Das (supra), it was held that the decision of the Court under Section 30 of the said Act is not an award as contemplated by Section 54 of the said Act and hence, the same could be challenged by filing appeal under Section 96 of the Code.

This decision fully supports the submissions as urged on behalf of the respondents.

10. The decisions in Motte Rajaram (supra) and the decision of the Full Bench of the Patna High Court in State of Bihar (supra) also support the submissions made on behalf of the respondents that a decision in a reference under Section 30 of the said Act is susceptible to an appeal under Section 96 of the Code.

11. In the decision in Steel Authority of India Ltd. (supra) that was relied upon

by the learned Counsel for the appellant, the question that arose was whether writ proceedings on behalf of an Association representing the land owners for the purpose of agitating claims under Section 18 of the said Act was tenable. The Supreme Court was pleased to hold that in matters pertaining to the land acquisition, the expression "person interested" under Section 18 of the said Act has to be given a restricted meaning and there is no question of a body of persons being represented by an Association. While coming to said conclusion, the Supreme Court observed that an award must be under the heads of correct area of land, amount of compensation and an apportionment of compensation, if any. It was then observed that the remedy of appeal was restricted only to the questions relating to aforesaid three factual matters. On the basis of these observations made in paras 33 to 35 of its judgment, the learned Counsel for the appellant sought to support his submission that the appeal under Section 54 of the said Act was tenable.

Said submission cannot be accepted as the same is not a ratio of the aforesaid decision. The question as to whether appeal under Section 54 of the said Act for challenging adjudication under Section 30 of the said Act was tenable did not fall for consideration in aforesaid decision. The question that was decided was with regard to the scope of an Association of land owners to initiate writ proceedings for seeking relief similar to that under Section 18 of the said Act. It is not the ratio of aforesaid decision that appeal under Section 54 of the said Act could be filed for challenging adjudication of a dispute under Section 30 of the said Act.

12. The decision of Karnataka High Court in Indian Council of Agricultural Research and etc. (supra) also does not come to the aid of the appellant. The Court therein considered provisions of Section 54 of the said Act as amended by the Land Acquisition (Mysore Extension and Amendment) Act XVII, 1961. Under said amendment, the forum of appeal under Section 54 of the said Act was dependent on the value of the subject matter of dispute in appeal.

13. From the aforesaid discussion, it is crystal clear that there is a marked distinction between the nature of adjudication under Section 18 of the said Act and under Section 30 of the said Act. While in the former the amount of compensation payable for the acquisition is determined, in the latter the relief of apportionment by granting a declaration is made. As adjudication under Section 30 of the said Act is not an award in terms of Section 26 of the said Act in terms of Section 54 of the said Act, the same would be appealable under provisions of the Code as applicable to appeals from original decrees. Moreover, if it is held that adjudication under Section 30 of the said Act is also subject to appeal under Section 54 of the said Act then the initial portion of Section 54 of the said Act would be rendered otiose.

Hence, upholding the preliminary objection, it is held that adjudication under provisions of Section 30 of the said Act can only be challenged by preferring appeal under Section 96 of the Code and not under provisions of Section 54 of the said Act. Further, the forum of appeal under Section 96 of the Code would

depend upon the pecuniary valuation of the amount in dispute.

14. Consequently, time of two weeks is granted to take all consequential steps pursuant to aforesaid adjudication.