
(2014) 05 JH CK 0069

In the Jharkhand High Court

Case No : L.P.A Nos. 104, 105, 106, 107, 108, 109 and 110 of 2014

Agricultural Produce Market Committee

APPELLANT

Vs

Saryu Prasad Gupta

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 44, 100A, 100-A, 104(1), 104(2)
Land Acquisition Act, 1894 — Section 18, 26, 4(1), 54

Citation : AIR 2015 Jhar 19 : (2014) 7 AJR 181 : (2014) 3 JLJR 104

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : V.P. Singh, Senior Advocate, M.K. Roy and A. Kumari, Advocate for the Appellant; V.K. Prasad, SC (L and C), S. Narsaria, JC to SC (L and C), M. Tiwari, N. Sinha and P. Sinha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J.—As against the judgment and decree passed by the Single Judge in the First Appeals filed against the Land Acquisition Cases whether Letters Patent Appeal is maintainable, is the point falling for consideration in these appeals.

2. Shorn of details, brief facts which led to the filing of these Letters Patent Appeals are as follows: The appellant is a statutory body established under the provisions of the Agricultural Produce Market Committee (hereinafter Market Committee). For establishment of market yards at Garhwa, as per the requirements of the provisions of the Market Act, 22.71 acres of land was acquired at Garhwa by the State Government by Government Notification, which was published in the District Gazette on 16.6.1977. The Land Acquisition Officer fixed the value of the land at Rs. 16,900/- per acre for the land situated upto 200 ft. from road side and Rs. 12,675/- per acre for the lands beyond 200 feet. The award was passed on 17.8.1978. On 28.8.1978 claimants received the payment of compensation under protest. Seeking enhancement of compensation,

Reference was made u/s 18 of the Land Acquisition Act and those cases were registered as (i) L.A. Case No. 166/78 of 1979 (ii) L.A. Case No. 159/72 of 1979 (iii) L.A. Case No. 163/76 of 1979 (iv) L.A. Case No. 164/76 of 1979 (v) L.A. Case No. 162/75 of 1979 (vi) L.A. Case No. 64/147 of 1979 (vii) L.A. Case No. 65/148 of 1979. In addition to the above, there was another case arising out the same acquisition being L.A. Case No. 161/1979 (Anil Kumar Gupta v. The State).

3. The above seven Land Acquisition Cases were dismissed for default in March, 1981 and subsequently, pursuant to the order dated 27.9.1983 passed by the High Court in Civil Revision Nos. 392/1983(R) and batch matters, Land Acquisition Cases were ordered to be restored to their Files. After restoration, seven Land Acquisition Cases were lingering on file for quite sometime. The appellant Marketing Committee was impleaded as respondent in the Land Acquisition Cases in or about August, 2012. Seven Land Acquisition Cases were disposed of by Civil Judge, Senior Division, Garhwa, by judgment dated 29.9.2012. Reference Court passed the award enhancing the rate of compensation from:

(i) Rs. 16,900/- per acre (as awarded by the Collector for the land upto 200 ft. from roadside) to Rs. 1,00,000/- per acre;

(ii) Rs. 12,675/- per acre (as awarded by the Collector for the land beyond 200 ft. from road side) to Rs. 80,000/- per acre;

(iii) awarding additional compensation at the rate of 12% per annum on the total amount of compensation for the period commencing on and from the date of publication of notification u/s 4(1) of the Land Acquisition Act till the date of award or taking over the possession whichever is earlier.

(iv) awarding solatium at the rate of 30% on the valuation of the land determined:

(v) statutory interest at the rate of 9% per annum for the period of one year from the time of taking possession and in case, the amount is not deposited within a period of one year, the claimants shall be entitled to get interest at the rate of 15% per annum from the date of expiry of one year over the amount of compensation or part thereof, which has not been paid/deposited before such expiry.

(vi) apart from the statutory interest, interest pendent lite at the rate of 12% per annum over the entire amount till the date of its realization.

4. Being aggrieved by the enhancement of compensation and also award of interest pendent lite at the rate of 12% per annum over the entire amount of compensation, solatium at the rate of 30% and the accrued interest, the appellant, Marketing Committee, has preferred the First Appeals. In the First Appeals, by a common judgment dated 28.1.2014, learned Single Judge confirmed the award passed by the Reference Court. Learned Single Judge also confirmed the award of interest pendent lite at the rate of 12% per annum on

the entire amount of compensation as ordered by the Reference Court. Being aggrieved by the judgment passed by the learned Single Judge in First Appeals, the Agricultural Marketing Committee has preferred these appeals.

5. Mr. Vikash Kishore Prasad, learned S.C. (L & C) appearing for the respondent-State as well as Mr. Mahesh Tiwary, learned counsel appearing for the private-respondents/claimants raised strong objection as to the maintainability of these LPAs, against the judgment passed by the learned Single Judge in exercise of appellate jurisdiction. Having regard to the objection raised, we heard the arguments of the learned counsel appearing for the parties on the maintainability of these LPAs.

6. Mr. V.P. Singh, learned Senior Counsel appearing for the appellant-Marketing Committee, has submitted that Section 54 of the Land Acquisition Act contains a non-obstante clause and a Letters Patent Appeal would lie u/s 54 of the Land Acquisition Act. Learned Senior Counsel submitted that although the bar u/s 100-A C.P.C. will apply to the judgments and orders passed in any appeal arising from an, original or appellate decree by a Single Judge of a High Court in respect of matters arising out of ordinary Laws, as per the provisions of Section 54 of the Act, these Letters Patent Appeals arising out of Land Acquisition Act, 1894, are maintainable.

7. Learned Senior Counsel appearing for the appellant-Marketing Committee, has submitted that the amendment in Section 100-A has been made in the year 2002 and it came into force with effect from 1.7.2002 and the said amendment will have no application in the land acquisition proceeding, which started in the year 1977-79 and further due to delay and laches on the part of the claimants/respondents, the proceeding should not be treated as continuous proceeding and appellant may not be made to suffer. The Land Acquisition Cases were dismissed in the year 1981 and restored only in the year 2004 and while so, the appellant cannot be made to suffer for the delay. It was further submitted that the Letters patent is the charter of the High Court and the provisions of Special enactment or the CPC cannot take away the power of the High Court under the Letters Patent. In support of his contention, learned Senior Counsel relied upon P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, and Sharda Devi v. State of Bihar (2002 (2) JLJR (SC) 12).

8. Learned counsel appearing for the State of Jharkhand, Mr. Vikash Kishore Prasad, submitted that the Parliament, while amending Section 100-A of the CPC with effect from 1.7.2002, took away Letters Patent power of the High Court in the matter of appeal against the order of Single Judge where any appeal from original or appellate decree, order is heard and decided by the Single Judge of the High Court. In support of his contention, learned counsel relied upon Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others, , Mohd. Saud and Another Vs. Dr. (Maj.) Shaikh Mahfooz and Others, and other judgments.

9. Reiterating the submissions of the learned counsel appearing for the respondent-State that Letters Patent Appeal is not maintainable, Mr. Mahesh Tiwary, learned counsel for the private respondents/claimants has submitted that even though land acquisition cases were dismissed for default in 1981, they were ordered to be restored, vide order dated 27.9.1983 in Civil Revision Nos. 392/1983(R) and batch matters. It was submitted that since the order passed in Civil Revision Nos. 392/1983(R) and batch matters were not communicated to the court below, there was delay in restoration of the matter and therefore, the appellant, Marketing Committee, cannot avoid payment of statutory interest.

10. We have carefully considered the submissions of the learned counsel for the parties and perused the materials on record.

11. u/s 54 of the Land Acquisition Act, whether Letters Patent Appeal is maintainable and whether Section 100-A C.P.C. will have no application to the Letters Patent Appeals filed against the judgment of Single Judge deciding the First Appeals arising out of the award passed by the Reference Court, is the point falling for consideration in these appeals.

12. Section 54 of the Land Acquisition Act deals with any proceeding before the court. Section 54 of the Land Acquisition Act reads as under:-

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, and in Order XLIV thereof.

13. By a careful reading of Section 54, it is clear that the appeals from the award passed by the Reference Court shall only lie to the High Court. Subject to the provision of CPC 1908 relating to the appeals from original decrees from the judgment passed in such appeal by the High Court, further appeal shall lie to the Supreme Court. Section 54 starts with the rider "subject to the provisions of CPC 1908 applicable to appeals from original decree". A careful analysis of Section 54 would make it clear that further appeal from any decree passed on such appeal by the High Court shall be governed by the provisions of Civil Procedure Code.

14. By CPC (Amendment) Act 1999 (46 of 1999) and CPC (Amendment) Act 2002 (22 of 2002) (with effect from 1.7.2002), Section 100-A C.P.C. was amended. As per Section 100-A where an appeal from an original or appellate decree or order is heard and decided by Single Judge of High Court, no further appeal shall lie from the judgments and decree of such Single Judge to the High Court. Justice Malimath Committee examined the issue of further appeal against the judgment of Single Judge and the Committee recommended for suitable amendment to Section 100-A of the Code with a view to providing that further

appeal in this regard shall not lie. Section 100-A has been newly inserted for the purpose of minimizing delay in finality of adjudications, barring a further appeal against the decision of Single Judge over-riding the provisions of Letters Patent or any other law providing such appeal. Section 100-A provides for abolition of further appeals against the judgment of Single Judge exercising first appellate jurisdiction. In Salem Advocate Bar Association Vs. Union of India (UOI), , Hon''ble Supreme Court held that the Amendment Acts 1999 and 2002 are not ultra vires to the Constitution and do not suffer from any constitutional infirmity.

15. Contending that Letters Patent Appeal is a charter under which the High Court has the power to entertain the appeal would not get excluded and u/s 54 of the Land Acquisition Act, there is no bar for maintaining the Letters Patent, learned Senior Counsel for the appellant placed reliance in the case of Sharda Devi (2002 (2) JLJR (SC) 12). Considering the question of maintainability of the appeal u/s 54 of the Land Acquisition Act, Hon''ble Supreme Court held as under:-

9. A Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent.

13. On the other hand, Mr. Mathur has submitted that a letters patent appeal would lie. He points out that almost all High Courts have taken the view that a letters patent appeal would lie against a judgment of a Single Judge passed in an appeal filed u/s 54 of the said Act. He relies upon the cases of Mahli Devi Vs. Chander Bhan and Others, , AIR 1923 274 (Lahore) , AIR 1944 284 (Nagpur) and M. Srinivas Vs. Jawaharlal Nehru Technological University, .

14. In our view, Mr. Mathur is right. Section 26 of the said Act provides that every award shall be decree and the statement of grounds of every award shall be a judgment by virtue of the Letters Patent "an appeal" against the judgment of a Single Judge of the High Court would lie to a Division Bench. Section 54 of the said Act does not exclude an appeal under the Letters Patent. The word "only" occurring immediately after the non obstante clause in Section 54 refers to the forum of appeal. In other words, it provides that the appeal will be to the High Court and not any other court e.g. the District Court. The term "an appeal" would take within its sweep even a letters patent appeal. The decision of the Division Bench rendered in a letters patent appeal will then be subject to appeal to the Supreme Court, Read in any other, manner there would be a conflict between Section 54 and the provision of a Letters Patent. It is settled law that if there is a conflict, attempt should be made to harmoniously construe the provisions.

15. We, therefore, hold that u/s 54 of the said Act there is no bar to the maintainability of a letters patent appeal. We therefore agree with the view taken

in Basant Kumar's case. The reference is answered accordingly.

The ratio of the above judgment in Sharda Devi (2002 (2) JLJR (SC) 12) (dated 13.3.2002) is not applicable to the present case since the judgment in Sharda Devi was rendered on 13.3.2002 prior to the C.P.C. (Amendment) Act, 1999 and 2002, which came into force with effect from 1.7.2002 amending Section 100-A.

16. The effect of C.P.C. Amendment Act 2002 is that where an appeal from an appellate order or decree is heard and decided by the Single Judge of the High Court, no further appeal lies to the Division Bench of the High Court. In Section 100A of the Amendment Act, the words "no further appeal shall lie" is of great significance. It clearly means that no further appeal arising out of the judgment of the Single Judge shall be entertained in respect of the appeal filed after 1.7.2002. In this regard, we may usefully refer the judgment of Hon'ble Supreme Court in the case of Salem Advocate Bar Association Vs. Union of India (UOI), , which reads as follows:-

15. Section 100A deals with two types of cases which are decided by a Single Judge. One is where the Single Judge hears an appeal from an appellate decree or order. The question of there being any farther appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a Single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-Court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a Single Judge. In Such a case to give a further right of appeal where the amount involved is nominal to a Division Bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-Court appeal, even where the value involved is large. In such a case, the High Court by Rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100A.

17. Considering the scope of Section 100-A, Hon'ble Supreme Court in the case of Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others, held as under:-

22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment, either expressly or by necessary intendment. Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1-7-2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench. Section 100-A of the

CPC reads as follows:

100-A. No further appeal in certain cases.--Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

23. Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn.....

18. In the case of P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, , the Constitution Bench of Hon''ble Supreme Court considered the effect of Section 100-A as amended in 2002. Referring to Section 100-A (after Amendment Act), Hon''ble Supreme Court held as under:-

From Section 100A C.P.C., as inserted in 1976, it can be seen that when the Legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100A, as amended in 2002, it can be seen that the Legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100A nor Section 104(2) barred a letters patent appeal. The words used in Section 100A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the Legislature knew that in the absence of such words a letters patent appeal would not be barred. The Legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 C.P.C. Thus now a specific exclusion was provided.

Therefore, on facts, the appeal under clause 15 of the Letters Patent of Madras High Court is an appeal provided by a law for the time being in force. Therefore, the finality contemplated by Section 104(2) did not attach to an appeal passed under such law.

19. Again Hon''ble Supreme Court in the case of Mohd. Saud and Another Vs. Dr. (Maj.) Shaikh Mahfooz and Others, , referring to various judgments and observing that after amendment of Section 100-A C.P.C. with effect from 1.7.2002, no Letters Patent Appeal shall lie against the order or judgment passed by the learned Single Judge even in an appeal arising out of a proceeding under the Special Act, held as under:-

7. The Full Bench by the impugned judgment has held that after the introduction of Section 100-A with effect from 1-7-2002, no letters patent appeal shall lie against the judgment or order passed by a learned Single Judge in an appeal.

The Full Bench has held that the decision of the Division Bench of the High Court in *Birat Chandra Dagra v. Taurian Exim (P.) Ltd.* does not lay down good law while the decision of the Division Bench in *V.N.N. Panicker v. Narayan Patil* lays down the correct law. The Full Bench has further held that after the amendment of Section 100-A w.e.f. 1-7-2002, no LPA shall lie against the order or judgment passed by a learned Single Judge even in an appeal arising out of a proceeding under a special Act.

9. The validity of Section 100-A C.P.C. has been upheld by the decision of this Court in *Salem Advocate Bar Assn. v. Union of India*. The Full Benches of the Andhra Pradesh High Court vide *Gandla Pannala Bhulaxmi v. A.P. S.R.T.C.*, the Madhya Pradesh High Court in *Laxminarayan v. Shivalal Gujar*, and of the Kerala High Court in *Kesava Pillai Sreedharan Pillai v. State of Kerala* have held that after the amendment of Section 100-A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of a learned Single Judge of the High Court passed in an appeal. We respectfully agree with the aforesaid decisions.

10. In *Kamla Devi v. Kushal Kanwar* this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable. In the present case the LPAs were filed after 2002 and hence in our opinion they are not maintainable.

13. While at first glance this argument may appear plausible but when we go deeper into it, we will realise that it has no merit. It would be strange to hold that while two appeals will be maintainable against the interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

14. It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court" (emphasis supplied), in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the latter part of the section mentions judgment and decree.

15. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be

strange, and against the very purpose of the object of Section 100-A, that is, to curtail the number of appeals.

The same principle was enunciated in the cases of Geeta Devi and Others Vs. Puran Ram Raigar and Another, and Kamla Devi Vs. Khushal Kanwar and Another, . In view of Section 100-A C.P.C., the Letters Patent Appeals filed against the judgment of learned Single Judge passed in First Appeals are not maintainable. Since the power of the High Court in exercising the Letters patent, where a Single Judge decided the appeal from the award passed by the Reference Court has been taken away, the Letters Patent Appeal cannot be entertained.

20. Learned Senior Counsel appearing for the appellant submitted that notwithstanding Section 100-A C.P.C., Letters Patent Appeals are maintainable since the land acquisition was of the year 1977-78 and Land Acquisition Cases were filed in the year 1979 and those Land Acquisition Cases were dismissed for default in 1981 and subsequently restored in pursuance of the order dated 27.9.1983 passed in Civil Revision Nos. 392/1983(R) and batch matters. Learned Senior Counsel submitted that since the acquisition and Land Acquisition Cases are much prior to the C.P.C. Amendment Act 1999 and 2002 (with effect from 1.7.2002), the amended Section 100A of CPC is not applicable to the cases on hand. Raising strong objection regarding awarding of interest pendente lite at the rate of 12% per annum over the entire amount of compensation plus 30% solatium and interest accrued, learned Senior Counsel submitted that 12% interest pendente lite awarded by the Reference Court is not sustainable. Learned Senior Counsel submitted that in respect of another Land Acquisition Case No. 161/1979 (Anil Kumar Gupta v. The State), the First Appeal in F.A. No. 146/1988(R) filed by the claimant Anil Kumar Gupta was partly allowed by the judgment dated 14.10.1999, in which the Court has confirmed the award of interest pendente lite at the rate of 12% per annum. Learned Senior Counsel submitted that in Civil Review No. 32/2004 filed by the Marketing Committee, vide judgment dated 30.7.2004, Hon"ble Chief Justice has deleted the interest pendente lite at the rate of 12% per annum over the entire amount till the date of its realization. Learned Senior Counsel submitted that in spite of bringing it to the notice of the learned Single Judge about the order passed in Civil Review No. 32/2004 deleting interest pendente lite at the rate of 12%, learned Single Judge committed serious error in confirming pendente lite interest awarded at the rate of 12% per annum and learned Senior Counsel, therefore, submitted that in view of the serious infirmity, LPAs are to be entertained. In view of the specific bar u/s 100-A C.P.C., we have already held that LPAs against the order of Single Judge passed in First Appeal are not maintainable. Since LPAs are not maintainable, we are not inclined to go into the merits of the above contentions raised on behalf of the appellant.

21. In the result, all the Letters Patent Appeals are dismissed as not maintainable. The appellant is at liberty to challenge the judgment passed by the

learned Single Judge in First Appeals in accordance with law.