
(1974) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 55 of 1969

Deepchand Ramnarayan Mahajan and another

APPELLANT

Vs

Land Acquisition Officer, Rajgarh and others

RESPONDENT

Date of Decision : 23-07-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110, 2(2), 96
Land Acquisition Act, 1894 — Section 26(2), 49, 49(1), 54

Citation : (1975) JLJ 436

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; G.G. Waghmare and P.L. Mehta Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.G. Sohani, J.—This appeal is directed against an order dated 29th April 1969 passed by the Additional District Judge Rajgarh in Civil Miscellaneous Judicial Case No. 3 of 1965.

2. The facts giving rise to this appeal briefly are as follows: The Land Acquisition Officer Rajgarh made a reference under the second proviso to sub-section (1) and section 49 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), for determination of the question as to whether the land in question, which was being acquired by the Land Acquisition Officer for the Municipal Committee Biora, formed an integral part of the appellants' factory and office buildings. The learned Additional District Judge Rajgarh by his order dated 29th April 1969 held that the land proposed to be acquired did not form an integral part of the appellants' factory and office buildings. Aggrieved by this decision the appellants have preferred this appeal.

3. When this appeal came up for hearing a preliminary objection was raised on behalf of the respondents that the appeal preferred by the appellants was not competent. In reply Shri Chaphekar learned counsel for the appellants, urged

that the impugned order passed by the learned Additional District Judge has the force of a decree and as such it is appealable according to law. The point was therefore fully argued, and having heard learned counsel for the parties we have come to the conclusion that the preliminary objection to the maintainability of the appeal must be upheld.

4. Now the decision under appeal has been given on a reference made to the Court u/s 49(1) of the Act. That decision is obviously not an "award", and learned counsel for the appellants did not also urge that it was an "award". As it is not an award, there is no right of appeal against that decision u/s 54 of the Act, which reads as under:--

54. Subject to the provisions of the Code of Civil Procedure, 1908 (V 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 (V of 1908), and is Order 45 thereof.

From a perusal of the aforesaid section, it is clear that if a person is aggrieved by a decision given by a Court on a reference made to it u/s 49(1) of the Act, no right of appeal has been conferred upon him by the provisions of the Act. It may be useful to refer to the following observations of their Lordships of the Privy Council in *Rangoon Rotatoung Co. Ltd. v. The Collector, Rangoon* 39 Ind. App. 197: --

It was admitted by the learned counsel for the appellants that it was incumbent upon them to show that there was a statutory right of appeal. As Lord Bramwell, then Bramwell J.A., observed in the case of *Sandback Charity Trustees v. North Staffordshire Ry. Co.* 3 Q B D 1 "An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment." A special and limited appeal is given by the Land Acquisition Act from the award of "the Court" to the High Court.

It is, therefore, clear that unless the appellants are able to refer to a specific provision of law conferring a right of appeal against a decision given by a "Court" on a reference u/s 49(1) of the Act, this appeal cannot be held to be competent.

5. Learned counsel for the appellants, therefore, contended that the decision in question amounted to a "decree", and was, therefore, appealable u/s 96 Civil Procedure Code. In support of this proposition, learned counsel relied upon the decisions reported in *Ramchandra v. Ramchandra* A I R 1922 P C 80, *Dalchand v. Secy. of State* A I R 1917 Cal. 148, *Secy. of State v. Narayana Swami* A I R 1932 Mad. 55, and *Kali Prasad and Others Vs. Government of Bihar*, , Now, the question for consideration before the Privy Council in *Ramchandra v. Ramchandra* was entirely different. In that case, in pursuance of land acquisition proceedings

a dispute had arisen between one Thulja Bayee and her adopted son as to the character and extent of the estate that she took under a will. Their Lordships of the Privy Council held that the decision on that question operated as *res judicata* in subsequent proceedings between the legal representatives of parties to the earlier dispute as to the nature and extent of the estate that Thulja Bayee took under the will. It is difficult to appreciate as to how this decision can be read as laying down a proposition that a decision given by a "Court" under any of the provisions of the Land Acquisition Act amounts to a "decree". Moreover, in the case before the Privy Council their Lordships have made it clear with regard to the earlier dispute that--"What the actual proceedings were that ensued between them is not plain". As observed by Stone J. in *Krishnamoorthi v. Spl. D.C. Kumbakonam* A I R 1936 Mad. 514, "what was there held to operate as *res judicata* was a disposal in appeal, and a decision in appeal was, as the CPC then stood, *ex decree* as defined by the CPC whether in a suit or not". In the same decision, Madhavan Nair J. (as he then was) reiterated his observations made in *Rajgopal Chettiar v. Hindu Religious Endowments Board* A I R 1934 Mad. 103, as follows:

As regards the decision of the Privy Council in *Ramchandra Rao v. Ramchandra Rao* 45 Mad. 320, I expressed the view that

"Their Lordships in that case were dealing with the finality of the High Court's decree for the purposes of *res judicata* and were not directly concerned about the appealability of the order passed by the District Court and that decision does not support the argument that an adjudication on an application stands on the same footing as an adjudication in a suit for the purposes of the definition of a decree under the Code."

I am still of the same opinion.

6. Be it as it may, a decision given by a Court on a reference u/s 49(1) of the Act cannot be called a "decree", as defined by section 2(2) Civil Procedure Code. The adjudication must be in a "suit" which is instituted by the presentation of a plaint in a civil Court. The fiction that of "award" shall be deemed to be a "decree", introduced by section 26(2) of the Act, is limited in its operation. It is attracted only in the case of an award. It cannot be extended to include any decision given by a Court under the provisions of the Act. No doubt, the decisions reported in *Dalchand v. Secy. of State*, *Secy. of State v. Narayau Swami* and *Kali Prasad v. Government of Bihar* do support the proposition, advanced by learned counsel for the appellants, that an appeal lies against an order passed u/s 49(1) of the Act, but, with great respect, we do not agree with the reasoning given in those decisions. To hold that a decision by a Court u/s 49(1) of the Act amounts to a "decree" would be to slur over the requirements of a "decree" as defined in section 2(2) Civil Procedure Code. Our conclusion is reinforced by the following observations of Stone J. in *Krishnamoorthi v. Spl. D. C. Kumbakonam*.

The present decision is clearly not an award and it appears to us that, whatever you call it, it is a decision of a Court specially constituted under statutory

authority and unless from that decision the right to appeal is given no right to appeal lies. It might well be that it would be otherwise if the Court in question were an ordinary civil Court to which this matter, the matter in dispute had been, under powers conferred by the statute, referred for decision by the proper authority. That, however, is not the scheme of the Act. The scheme of" the Act contemplates that sometimes the Court shall be an ordinary civil Court and sometimes a special Court specially constituted. In the latter case, except where the Court makes an award the Act does not make any statutory provision for appeals from that Court. And on this short ground we are of the opinion that the objection succeeds.

To the same effect are the decisions reported in *Sarat Chandra v. Secy. of State* A I R 1919 Cal. 86, and *Mahesh Missir and Others Vs. Province of Bengal*, , We respectfully agree with the reasoning given in those decisions.

7. As a result of the aforesaid discussion, we hold that no appeal is competent against a decision given, on a reference, by a Court u/s 49(1) of the Act. Accordingly this appeal fails, and is dismissed. In the circumstances of the case, the parties shall bear their own costs of this appeal.