

(2022) 12 DEL CK 0175

In the Delhi High Court

Case No : Letter Patent Appeal No. 543 Of 2019, Civil Miscellaneous Application
No. 32791 Of 2019, 32793 Of 2019

Deepjot Singh Anand

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 54
Code Of Civil Procedure, 1908 — Section 100A

Citation : (2022) 12 DEL CK 0175

Hon'ble Judges : Vibhu Bakhru, J;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Mahesh K Mehta, Sanjay Kumar Pathak, K.K.Keran Pathak, Sunil Kumar Jha, M.S.Akhtar, Rini V. Tigga, Anuj Aggarwal, Ayushi Bansal, Sanyam Suri

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The appellant has filed the present appeal impugning an order dated 30.05.2019 (hereafter 'the impugned order') passed by the learned Single Judge in L.A. APP.179/2016 captioned Deepjot Singh v Union of India & Anr. The said appeal was preferred by the appellant against the order dated 10.05.2016 passed by the learned Additional District Judge in a reference made at the instance of the appellant, under Section 18 of the Land Acquisition Act, 1894 (hereafter 'the Act') being LAC No.8/10/01 captioned Deepot Singh v. Union of India.

2. The Government of NCT of Delhi had acquired the land admeasuring 156 bigha 15 biswas in Village Tikri Kalan, Delhi. The notification under Section 4 of the Land Acquisition Act, 1894 (hereafter 'the Act') in respect of the said acquisition was issued on 12.08.1997. This was followed by a notification dated 10.09.1997 under Section 6 of the Act. The Land Acquisition Collector passed an award (Award No.3/DCW/98-99) dated 15.09.1998 under Section 11 of the Act,

determining the value of land at ₹8,80,000/- per acre (₹1,83,333/- per bigha). The appellant's land admeasuring 25 bigha and 13 biswas was also included in the land so acquired. The possession of the petitioner's land was taken on 13.11.1997.

3. The Collector assessed the total value of the appellant's land at ₹72,51,223.77/- and issued a notice calling upon the appellant to appear before the concerned officer on 03.11.1998. Apparently, the appellant did not appear before the concerned officer on that date. However, he appeared before the concerned officer on 09.11.1988 as well as on 10.11.1998, and sought release of the admitted amount of compensation. The appellant also claims that he sent several letters to the respondents seeking payment of admitted amount of compensation.

4. Since the compensation as admittedly due was not released, the appellant filed a petition (CWP No.5463/99) before this Court on 25.08.1999, inter alia, praying that the respondents be directed to release the admitted amount. The respondents filed the counter-affidavit claiming that the appellant had not appeared before the concerned officer and had also not filed the necessary documents. According to the respondents, the appellant was also responsible for the delay in disbursement of the compensation.

5. The compensation was finally paid to the appellant on 20.02.2002. According to the appellant, there was an inordinate delay in disbursing the compensation and he is entitled to interest for the said delay. The appellant was also aggrieved with the value of the land as determined.

6. The appellant filed a reference under Section 18 of the Act (LAC No.8/10/01). The said reference was disposed of by the learned Additional District Judge, by an order dated 10.05.2016. In terms of the said order, the compensation awarded to the petitioner was enhanced to ₹2,35,815/- per bigha for 'A' category land and ₹1,90,156/- for 'B' category land. In addition, the court also held that the appellant was entitled to an additional amount at the rate of 12 % per annum from the date of the notification till the date of the Award (that is from 12.08.1997 to 15.09.1998). The court also directed that the appellant would be entitled to interest at the rate of 9% annum for the first year from the date of taking possession of land in question and at the rate of 15% per annum for the subsequent years until the entire payment of compensation was made. However, the appellant was entitled to interest after 18.02.2010 as the petitioner had failed to lead evidence.

7. The appellant appealed the said decision to this Court (LA. APP.179/2016), which was rejected by the impugned order dated 30.05.2019.

8. The appellant has filed the second appeal impugning the said decision.

9. At this stage, the principal question to be addressed is whether the said appeal is maintainable in view of Section 100A of the Code of Civil Procedure

(CPC).

10. The learned counsel appearing for the appellant had relied on the decision of the Lahore High Court in *Har Dial Shah v. The Secretary of State for India in Council*; AIR 1923 Lahore 275; the decision of the full bench of this court in *Mahli Devi v Chander Bhan & Ors.*; AIR 1995 Delhi 293; and the decision of the Supreme Court in *Sharda Devi v. State of Bihar*; 2002 3 SCC 705.

11. In *Har Dial Shah v. The Secretary of State for India in Council* (supra), the Lahore High Court had rejected the preliminary objection that the second appeal was not maintainable from the award of the District Judge made under the Act. The Court referred to Section 54 of the Act as amended by the Land Acquisition (Amendment) Act, XIX of 1921 and held that the said provision did not restrict the right of the appeal and it was merely intended to make it clear that the forum of appeal in Land Acquisition cases is always the High Court and not the District Court. The Court further held that clause 10 of the Letters Patent, grants and express right of appeal and Section 54 of the Land Acquisition Act does not impliedly take away the said right.

12. A full Bench of this Court in *Mahli Devi v Chander Bhan & Ors.* (supra), following the aforesaid decision in *Har Dial Shah v. The Secretary of State for India in Council* (supra) took a similar view.

13. In *Basant Kumar & Ors. v. Union of India*; 1996 11 SCC 542, the Supreme Court observed as under:

"it is a settled legal position that under Section 54 of appeal on the basis of the pecuniary value was decided by a Single Judge necessarily, it being the judgment of the Single Judge, an appeal would lie to the same Court in the form of LPA to the Division Bench."

14. The Supreme Court in the case of *Sharda Devi v. State of Bihar* (supra) observed 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 statutory enactment concerned excludes an appeal under the Letters Patent.

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14. In our view, Mr Mathur is right. Section 26 of the said Act provides that every award shall be a 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 to any other court e.g. the District Court. The term "an appeal" does not restrict it to only one appeal in the High 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 under Section 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 case. The reference is answered accordingly."

15. Clearly, in view of the aforesaid decisions, the present appeal would be maintainable; however, the CPC was amended with effect from 01.07.2002 by the Code of Civil Procedure (Amendment) Act, 1999 and Section 100A was introduced in the statute. Section 100A of the CPC reads as under:-

"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."

16. It is clear from the plain language of Section 100A of the CPC that it introduced a statutory bar of an appeal from a judgment or a decree of a Single Judge of the court deciding an appeal from an original or an appellate decree. It is relevant to note that Section 100A of CPC includes a non obstante clause, which expressly provides that the provisions of Section 100A of the CPC overrides the provisions of any letters patent appeal for any High Court or any other instrument having the force of law.

17. The decisions in Mahli Devi(supra), Sharda Devi (supra) and Basant Kumar (supra) and other decisions referred to above, were rendered prior to the introduction of Section 100A in the CPC. In a later decision, in Mohd. Saud and Anr. v. Dr. (Maj.) Shaikh Mahfooz; 2010 13 SCC 517, the Supreme Court had considered the question regarding maintainability of a letters patent appeal. The court adopted the cannon of purposive interpretation and held that since the purpose of enacting Section 100A was to curtail the number of appeals, a second appeal under letters patent would not be available. The relevant extracts from the said decision read 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* (vide p. 5) 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 we.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 CPC 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 SRTC*, the Madhya Pradesh High Court in *Laxminarayan v. Shivilal 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.”

18. In view of the aforesaid decision, the question whether a second intra- court appeal is maintainable is no longer res integra. The present appeal is not maintainable and the same is, accordingly, rejected.