

(2007) 10 KAR CK 0077

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5408 of 2007

Dr. Subashchandra Kalburgi

APPELLANT

Vs

Assistant Commissioner and Special Land Acquisition Officer

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Mysore Court-fees and Suits Valuation Act, 1958 — Section 48, 49

Citation : (2008) 1 KarLJ 1 : (2007) 4 KCCR 2616

Hon'ble Judges : S.R. Bannurmath, J; A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Srivaishnavi Law Associates, for the Appellant;

Judgement

S.R. Bannurmath and A.N. Venugopala Gowda, JJ.—This appeal is directed against the common judgment and award of the I Additional Civil Judge (Sr.Dn.,) at Gulbarga, ("reference Court" for short), dated 28.2.2007, passed in LAC Nos. 468 and 469 of 1994.

2. The appellant has paid the Court fee of Rs. 15/- under Article 3 (iii)(1)(a) of Schedule II of the Karnataka Court Fees and Suits Valuation Act, 1958 ("the Act" for short). The office has raised objection regarding the insufficiency of Court fee paid. According to the office objection, the Court fee has to be paid u/s 48 r/w Article 1 of Schedule I of the Act. The appellant has submitted before the office that, the matter involved in the appeal being limited to the rejection of reference by the Court and the appeal being not for seeking any enhancement of compensation, Section 48 has no application. On the said objection, the matter is listed for hearing.

3. The learned Counsel for the appellant contended that the reference made u/s 18 of the Land Acquisition Act ("L.A. Act" for short), to the reference Court having been rejected by the impugned Judgment and award and no enhancement of compensation having been claimed in the appeal, the valuation made and Court fee paid as above, as correct. The learned Counsel relied upon

the order passed by this Court in the case of Special Land Acquisition Officer v. S.M. Gajendran @ S.M. Gajendra Babu ILR 2001 KAR 2404 and in the case of Executive Engineer, KHB Division Vs. Babu Krishna Waskar, . The learned Counsel contends that the office objections as untenable, seeks over ruling of the same and to entertain the appeal on the basis of the Court fee paid.

4. The brief facts of the case as could be seen from the record of the appeal memo are:

The lands bearing Sy. Nos. 51/2 measuring 1 acre 25 guntas, 53/2 measuring 2 acres and 53/1-B measuring 0.08 guntas, situated at Saradgi (B) village of Taluka and District Gulbarga, were shown as required for acquisition, for the purpose of formation of road of Bidar - Srirangapatna. Notification u/s 4(1) of the L.A. Act was issued on 18.1.1993 and Section 6(1) notification was issued on 28.6.1994. Award was passed by the Land Acquisition Officer on 17.2.1999. To determine the proper compensation, the appellant had sought for a reference to the Civil Court u/s 18 of the L.A. Act. The reference Court had passed the award. The said award was questioned in LAC Appeal No. 97/1997 in the Court of the Principal District Judge, Gulbarga. Cross appeals were also filed, which were dismissed by common Judgment dated 24.9.1999. The same were subsequently questioned in MFA Nos. 1536/1997 and 1723/1997 in this Court. Cross appeals were also filed. The appeals filed by the State were dismissed and the cross appeals filed by the appellant were allowed.

Subsequently, review petitions 28/1999 and 95/2000 were filed by the State to review the Judgment and award passed in MFA 1723/1997 c/w Cross Appeals 1/1997 and MFA 1536/1997 dated 30.9.1999. The review petitions were disposed of by this Court by an order dated, 23.3.2001. The order is reported in ILR 2001 KAR 3532. The operative portion of the said order reads as follows:

17. Suffice it to say, that the judgments of the Reference Court and this Court as obtained by playing fraud by suppressing the truth, but the court of Justice cannot allow this fraud to continue and sustain. Therefore, the orders passed by the Reference Court in LAC 468 and 469 of 1994 on the file of the Additional Civil Judge, Gulbarga and the judgments passed by this Court in MFAs 1536 of 1997 and 1723 of 1997 C/w Cross Appeal No. 1 of 1997 are set aside. The Judgments rendered in MFA 1536 and 1723 of 1997 C/w Cross Appeal No. 1 of 1997 are recalled. The entire matter is remitted to the Court below viz., the Reference Court to consider the claim afresh and to consider the following questions before passing appropriate orders:

- a) To examine whether the reference made u/s 18 of L.A. Act is in accordance with law;
- b) Whether the acquisition proceedings are product of fraud and If so, whether the claim made by the respondent-claimant is Justifiable.

These review petitions stand disposed of with the above directions.

5. The appellant had questioned the said order in SLP Nos. 13267-13268/2001 in the Hon''ble Supreme Court. The Hon''ble Supreme Court by its order dated 18.2.2002 declined to entertain the petitions and passed an order which reads as follows:

We are not inclined to interfere in the matter presently for consideration before this Court more so, by reason of the fraud being unfurled at the High Court stage. The order for further inquiry in the matter by the High Court cannot but be stated to be justifiable in nature. It is, however, clear that any observation made by the High Court pertaining to the merits of the matter shall not be considered or looked into at the time of disposal of the matter. The parties would be at liberty to agitate all the contentions raised before the High Court. It is clarified that there should be stay of further recovery proceedings and the same shall abide by the result in the matter. The special leave petitions are dismissed accordingly.

5.1. In pursuance of the direction issued by this Court in the aforesaid order, which was affirmed by the Hon''ble Supreme Court, the reference Court has taken up the matter, conducted further the enquiry, in which the appellant has deposed as PW.1 and has also examined a witness as PW.2, apart from producing documentary evidence, which has been marked as Exs.P1 to P26. On behalf of the State, evidence of RWs. 1 and 2 has been recorded and Exs.D1 to D40 are produced. The reference Court formulated the points that arose for its consideration. The points 1 and 2 framed by the reference Court were:

1. Whether the reference made u/s 18 of the Act is in accordance with law?
2. Whether the acquisition proceedings are product of fraud and If so whether the claim made by the claimant is justifiable?

5.2. The reference Court has passed the common judgment and award, wherein, it has been held that, the claim made by the appellant as not justified and the whole proceedings are an outcome of fraud and fraudulent acts. The reference Court has held that the amount already got released by the appellant pursuant to the awards and orders passed, is liable to be recovered and has directed the respondents to take appropriate steps for recovering the amount released in favour of the appellant with admissible interest.

6. This appeal has been filed against the said common judgment and award, with the prayer to set aside the same and grant reliefs as may be deemed fit in the facts and circumstances of the case.

7. In the background of the said facts, in essence, the claim of the appellant in the matter is that, he is entitled to payment of compensation in respect of the said lands, shown for acquisition under the said notification. According to the judgment and award passed by the reference Court, rendered pursuant to the remand order and directions issued by this Court, which has been challenged in this appeal and which the appellant is seeking to set aside, is to the effect that,

he is not entitled to any compensation and whatever amount has been ordered to be paid to the appellant and received by the appellant, has been ordered to be recovered from him with interest. Hence the value of the appeal is the entire amount of compensation awarded by the Land Acquisition Officer in respect of the aforesaid lands.

8. The relevant provisions of "the Act" that have to be noticed for taking decision in the matter, are the following:

a) Section 4, is the charging section, which provides for levy of fee on documents in Courts and public offices. Section 20 provides as to how the fee payable under the Act shall be determined and computed/reckoned. As per the said Section, determination shall be in accordance with the provisions of Chapter IV, Chapter VI, Chapter VIII and Schedules I and II. Sections 21 to 47 have been put under Chapter IV and they deal with different kinds of suits and provide the manner of computation of fees. Sections 48 and 49 are the only sections providing for payment of fee on memorandum of appeals.

b) Section 48 of the Act reads as follows:

48. Fee on memorandum of appeal against (decision, award or order) (Substituted for the words "order" by Act No. 11 of 1969, Section 2 (w.e.f. 22-5-1969) relating to compensation:

The fee payable under this Act on a memorandum of appeal against (a decision or an award or order) (Substituted for the words "an order" by Act No. 11 of 1969, Section 2 (w.e.f. 22-5-1969) relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the (appellant) (Substituted for the words "applicant" by Act No. 15 of 1998s, Section 2 (w.e.f. 28-5-1998).

(Explanation:- For the purpose of this section the expressions of "amount awarded" and "amount claimed" include any other additional sum payable in accordance with the law providing for acquisition in consideration of the compulsory nature of the acquisition) (Explanation added by Act No. 80 of 1976, Section 2 (w.e.f. 15-8-1960).

It is also necessary to refer to Section 49 of the Act, which reads as follows:

49. Appeals: (Save as provided in Section 48, the fee payable) (Substituted for the words "The fee payable" by Act No. 11 of 1969, Section 3 (w.e.f. 22-5-1969) in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of the appeal:

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the court of first instance or by the court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1):- Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the court of first instance.

Explanation (2):- Costs shall not be deemed to form part of the subject matter of the appeal except where such costs form themselves the subject matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject matter in the suit.

Explanation (3):- In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject matter of the appeal except where such interest is relinquished.

Explanation (4):- Where the relief prayed for in the appeal is different from the relief prayed for or refused in the court of first instance, the fee payable in the appeal shall be the fee that would be payable in the court of first instance on the relief prayed for in the appeal.

Explanation (5):- Where the market value of the subject matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

c) To consider the effect of Sections 48 and 49, it is necessary to refer to the relevant Articles of Schedules I and II. Article 1 of Schedule I reads as follows:

SCHEDULE I Ad Valorem Fees

Article

Particulars

Proper fee

(1)

(2)

(3)

1

Plaint, written statement pleading a set off or counterclaim or memorandum of appeal presented to any court.

When the amount or value of the subject matter in dispute-

(I) not exceeding rupees 15,000

2?per centum.

(II) exceeding rupees 15,000 but not exceeding rupees 75,000

Rupees 375 plus 7% per centum of the amount exceeding rupees 15,000.

8.4. Article 3 (iii)(1)(a) of Schedule II provides as follows:

SCHEDULE II

Article

Particulars

Proper fee

(1)

(2)

(3)

3.

Memorandum of appeal (from a decision or an award or order) (Substituted for the words "from an order" by Act No. 11 of 1969, Section 4 (w.e.f. 22-5-1969) inclusive of an order determining any question u/s 47 or Section 144 of the Code of Civil Procedure, 1908, and not otherwise provided for when presented-

(I) XXX

(II) XXX

(III) To the High court -

(1) Where the order was passed by a subordinate Court or other authority -

(a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees.

(Fifteen rupees)

d) The Court Fees Act is in fact, a taxing Statute and from the interpretation placed by the Apex Court in catena of cases, that the citizen is not to be charged or made liable except when the provisions are clear. The argument advanced by the learned Counsel for the appellant, is that if Section 48 of the Act has to be applied, the Court fee payable is only in respect of the amount claimed and amount awarded to the appellant and since no amount has been awarded by reference Court, Section 48 has no application.

e) The L.A. Act does not make any distinction between the claim for compensation and the right to receive it. If there is a dispute relating to the adequacy of compensation awarded, on reference being sought/or ordered, the LAO is enjoined to refer such dispute in terms of provisions contained in Section 18 of the L.A. Act.

9. A Division Bench of this Court in the case of State of Karnataka Vs. N.K. Shanthappa, has held as follows:

7. With that, we now again turn to Section 48. The language of the section, in our view, is clear and unambiguous. When the words of a section or an enactment are themselves clear and precise, it is a settled principle that no more is necessary than to expound those words in their natural and ordinary sense. It is seen that the first part of the section refers to a memorandum of appeal against a decision or an award or order relating to compensation for the acquisition of property for public purpose. The words "relating to compensation" found therein, should not be narrowly construed so as to confine them only to the question of adequacy of compensation. The word "relate" means "bring into relation", "establish" or "have reference to". That means, if the appeal is against a decision or an award or order adjudicating a dispute with reference to compensation awarded in respect of a property acquired for public purpose, then the fee payable on the appeal shall be computed in the manner provided by the second part of Section 48. The second part states that the fee shall be computed on the difference between the amount awarded and the amount claimed by the applicant. There will be a difference between the amount awarded and the amount claimed not only in a claim for compensation but also in a case where there is a right to the appeal relating to both these matters squarely fall within the ambit of Section 48.

(emphasis supplied)

9.1. The Hon'ble Supreme Court in the case of C.G. Ghanshamdas and Others Vs. Collector of Madras, , while considering the question - whether under the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the Court fee payable on a memorandum of appeal u/s 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) should be computed in accordance with Section 51 of Tamil Nadu and Suits Valuation Act, 1955 or a fixed Court fee is payable under the residuary provision i.e., Article 3(III)(A)(1) (a) of Schedule II to the Act, has held as follows:

18. The portion of the judgment of this Court which has been underlined clearly brings out the effect of an award. This Court has held that the award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. We are also of the view that much reliance cannot be placed on the definition clause found in Section 3(iv) of the Act since the definitions given in that section have to be read subject to the context in which the expressions defined therein appear in the Act. Section 3 of the Act states that in the Act "unless the context otherwise requires" the words and expressions defined in that section shall carry the meaning given to them in various clauses in that section. It is relevant to note that in Section 51 of the Act which arises for consideration before us the word "order" does not appear in isolation. The section states that the fee payable under the Act on a memorandum of appeal against an order relating to compensation in any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the

appellants. The "order" referred to in Section 51 of the Act need not therefore be an "order" of a civil court as defined in Section 2(14) of the CPC but should be an "order" relating to compensation under any Act for the time being in force for the acquisition of property for public purposes. There is no doubt that the award passed by the Arbitrator under the Requisitioning Act is a formal expression of a decision made by a competent authority which is binding on the parties and it relates to compensation payable under an Act for the time being in force for the acquisition of property for the public purposes. Hence we are of the view that even though the expression "order" simpliciter has to be understood in the sense in which that expression is defined in Section 2(14) of the Code of Civil Procedure, the word "order" found in Section 51 of the Act has to be read differently having regard to the words which qualify that expression in that section, namely, "relating to compensation under any Act for the time being in force for the acquisition of properties". The said order need not be an order of a civil Court only. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. The award made u/s 8 of the Requisitioning Act satisfies these tests. We do not, therefore, find any substance in this contention too. Since according to us the appeal before the High Court filed u/s 11 of the Requisitioning Act falls squarely u/s 51 of the Act, court-fee has to be paid on ad valorem basis as provided in Article 1 of Schedule I to the Act. It follows that the residuary Article i.e. Article 3(iii)(A)(1)(a) of Schedule II to the Act is not attracted. The High Court was right in following its earlier decision in Y. Venkanna Choudhary's case (AIR 1976 Mad 41) (supra) and directing the appellants to pay court-fee on ad valorem basis u/s 51 of the Act.

19. We may add that the decisions in Srunguri Lakshminarayana Rao and Others Vs. Revenue Divisional Officer, Kakinada and Others, ; Satya Charan Sur Vs. State of West Bengal, , Balakrishnan Nambiyar and Others Vs. Kanakathidathil Madhavan and Others, and Ghouse Saheb v. Sharifa Bi AIR 1977 Kant 181; have taken the same view as we have taken.

9.2. The decision of this Court in Ghouse Saheb's case, has thus been held to be the correct position of law.

10. The case of Executive Engineer, KHB Division Vs. Babu Krishna Waskar, relied upon by the learned advocate for the appellant, is a case relating to the consideration of question, whether "public bodies" and "beneficiaries" to acquisition made by State, liable to pay ad valorem Court Fees on Memoranda of Appeals? Taking into account the provisions as existed in the Act then, it was held, that no Court Fee is payable on the memorandum of appeal preferred by the beneficiary against the award. The appellant herein is not the beneficiary and hence the abovesaid case has no application.

10.1. In the case of Special Land Acquisition Officer v. S.M. Gajendran @ S.M. Gajendra Babu ILR 2001 KAR 2404, relied upon by the learned advocate for the appellant, the matter considered was, with regard to Court fee payable on the

difference between the amount awarded by the reference Court and the amount awarded by the Land Acquisition Officer. The questions that were raised for consideration and answered therein are following:

6. In view of the rival contentions, the following two questions arise for consideration:

a) For calculating the difference between the "amount awarded" and "amount claimed", whether only the amount awarded u/s 23(1) and solatium u/s 23(2) should be reckoned or whether the amount awarded u/s 23(1A) should also be reckoned.

b) What is the Court Fee payable.

In this appeal the abovesaid questions have not arisen for consideration. Hence the findings on the two questions rendered in the abovesaid case has no application.

11. The appeal herein is against the judgment and award of the reference Court holding that, the appellant is not entitled to any compensation and the amount which he has already received should be refunded/recovered with interest. Thus in effect, it is the right of the appellant to claim compensation which is required to be adjudicated in this appeal. In such a situation, in our view, it is Section 48 r/w Schedule I, Article 1 of the Act, which has to be applied to determine the Court fee payable on the appeal. In our view, Section 48 applies not only to the appeals in which the correctness of the amount determined is challenged, but also to the appeals which concerns the question of title. The provisions of Section 48 applies even to appeals, wherein the challenge is to the award made by the reference Court holding that the claimant is not entitled to any compensation at all and the claim of the appellant as to claim and receive the compensation, has been negated. The reference Court: has held that the appellant is not entitled to any compensation and has also ordered to recover the amount already released/paid. Hence the appellant will have to pay the Court fee on the entire amount claimed by him as compensation in the land acquisition proceedings, as the issue that required to be adjudicated in this appeal is the right to payment of compensation to the appellant.

12. In view of the above discussion, we are of the view that, the appellant has to pay the Court fee on the memorandum of appeal on the amount shown in the valuation column, by applying Section 48 r/w Article 1 Schedule I of the Act.

13. The appellant is granted four weeks time to pay the Court fee on the amount of Rs. 3,91,500/-, being the value shown in the appeal memorandum, less Rs. 15/- already paid.

Order accordingly.