

(1991) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : F.A. No. 15 of 1984

Land Acquisition Officer, Seoni

APPELLANT

Vs

Laxminarayan Bhagwandas Bhargava

RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (1991) MPLJ 887

Hon'ble Judges : R.D. Shukla, J; B.C. Varma, J

Bench : Division Bench

Advocate : R.P. Jain, Deputy A.G, for the Appellant; S.S. Jha, for the Respondent

Judgement

B.C. Varma, J.

This is an appeal u/s 54 of the Land Acquisition Act against the award made by the District Court. What court-fee on the memorandum of appeal and on the cross-objection is payable is the question. According to the Appellant, the court-fee payable is as prescribed under Article 11, Schedule II of the Court-fees Act and not ad valorem. To support this contention, the Appellant relies on a Full Bench decision of this Court in Shantilal Soganmal and Another Vs. Town Improvement Trust, Ratlam and Others, which in turn draws support from the decision of the Supreme Court in Diwan Bros. Vs. Central Bank of India, Bombay and Others, With this view of the Full Bench we are bound. The learned Deputy Advocate-General, however, referred to this Court a later decision of the Supreme Court in C.G. Ghanshamdas and Others Vs. Collector of Madras, and contended that a decision by the Court is an order and not a decree and, therefore, ad valorem court-fee is payable on the amount of the difference between the amount awarded by the Court and the amount claimed in appeal. This decision in Ghanshamdas's case (supra) turns upon the term "order" mentioned in Section 51 of the Tamil Nadu Court-fees and Suits Valuation Act (14 of 1955). Section 51 of that Act provides that the fee payable under the Act on a memorandum of appeal against an order 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. The Supreme Court held that the "order" referred to in Section 51 of that Act need not be an order of a Civil Court as defined in Section 2(14), CPC but should be an order relating to compensation under any Act for the time being in force for acquisition of property for public purposes. The Supreme Court further held that even if 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 (Tamil Nadu 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 the Civil Court only. It was, therefore, held that the award made u/s 8 of the Requisitioning Act and the appeal filed u/s 11 of the Requisitioning Act were squarely governed by Section 51 of the Tamil Nadu Court-fees Act. Court-fee had to be paid on ad valorem basis as provided under Article 1, Schedule I of the Act. It was, therefore, held that the residuary Article of that Act was not attracted. It is this feature which, in our opinion, distinguishes the present case, which is governed by the decision of the Supreme Court in *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, and applied and followed by the Full Bench of this Court in *Shantilal's case* (supra). The three Judges Bench of the Supreme Court in *Diwan Brothers' case* (supra) were concerned with the expression "decree" as used in Schedule II, Article 11 of the Court Fees Act, as is our concern in the present case. It was held that it is referable to a decree as defined in Section 2(2), CPC Code. During the course of the judgment, while considering the term "decree" as used in Section 2(2), CPC Code, the essentials of that term were expressed thus: (i) that the adjudication must be given in a suit; (ii) that the suit must start with a plaint and culminate in a decree and (iii) that the adjudication must be formal and final and must be given by a Civil or Revenue Court. In that case, the Court was concerned with an award made by order of the Tribunal under the Displaced Persons (Debts Adjustment) Act. Since the Tribunal was not a Civil Court, it was held that the order awarding compensation by that Court is not a decree within the meaning of Schedule II, Article 11, Court Fees Act. Consequently, it was held that court-fee on the memorandum of appeal against the order of the Tribunal was payable under Article 11, Schedule II and not ad valorem as under Schedule I, Article 1. While so interpreting the provisions, the Supreme Court expressed that the Courts have to interpret the provisions of a fiscal statute strictly so as to give the benefit of doubt to the litigant. In *Shantilal's case* (supra), the Full Bench was concerned with an appeal against the decision of a Tribunal under the M. P. Town Improvement Trusts Act, 1960. Every order made by the Tribunal for payment of money is made enforceable by a competent Civil Court as if it were a decree of that Court. The Full Bench held, following the decision of the Supreme Court in *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, that although by fiction described as a decree, an order or decision made by the Tribunal under

the Town Improvement Trusts Act does not make it a decree within the meaning of the Court Fees Act. Sub-section (2) of Section 26 of the Land Acquisition Act also provides that an award made by the Court under the Act shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), CPC Code. By parity of reasoning in the above two cases *Diwan Brothers v. Central Bank of India* (supra) and *Shantilal Soganmal and Another Vs. Town Improvement Trust, Ratlam and Others*, an award so made by the Court cannot be said to be a decree for purposes of Article 11, Schedule II, of the Court Fees Act, which provides for payment of fixed court-fee on the memorandum of appeal, when the appeal is not from a decree or order having the force of a decree. Recently, a Division Bench of this Court in First Appeal No. 35 of 1988, by its order dated 24-4-1991, has also resolved the issue and is of the view that we have taken. We are, therefore, of the opinion that the decision in *C.G. Ghanshamdas and Others Vs. Collector of Madras*, which turns upon the express terms of Section 51 of the Tamil Nadu Court-fees Act, does not at all shake the authority, of the Full Bench of this Court in *Shantilal v. Town Improvement Trust, Ratlam* (supra), based upon the decision of the three Judges Bench of the Supreme Court in *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, We, therefore, hold that ad valorem court-fee is not payable on cross-objection and the memorandum of appeal u/s 54 of the Land Acquisition Act and the fixed court-fee under Article 11, Schedule II of the Court Fees Act has rightly been paid.