

(1931) 01 MAD CK 0008
In the Madras High Court

Mahant Bagavathi Doss Bavaji, Dharmakartha of Sri
Venkatesaperumal Devasthanam

APPELLANT

Vs

M. Sarangaraja Aiyangar and Others

RESPONDENT

Date of Decision : 22-01-1931

Acts Referred:

Land Acquisition Act, 1894 — Section 3(d)

Citation : AIR 1931 Mad 536 : (1931) ILR (Mad) 722 : (1931) 33 LW 528 :
(1931) 61 MLJ 312

Judgement

1. On this appeal being called on, a preliminary objection was taken on behalf of the respondent that the appeal was incompetent as no appeal lay

from the Land Acquisition Court, when that Court, as in this case, was constituted by the appointment of a ""Special Judicial Officer."" The objection

is founded upon alternative arguments, viz., (1) either the Chief judge of the Small Cause Court who was the ""Special Judicial Officer"" appointed in

this case (see Local Rules and Orders, p. 84) is a persona designata so as to make the Court he constitutes fall within no general class from which

appeal to the High Court lies, or (2) by virtue of the fact that the ""Special Judicial Officer"" appointed was in this case the Chief Judge of the Small

Cause Court, the Court he constitutes falls within the class of Small Cause Courts and accordingly in that case also no appeal lies to the High

Court.

2. In our view in this case ""the Court"" within the meaning of the Land Acquisition Act was constituted by the Local Government appointing a

Special Judicial Officer to perform the functions of the Court. It follows, therefore, that this was a Special Court and was not ""a Principal Civil

Court of Original Jurisdiction"" within the meaning of Section 3 (d) of the Land

Acquisition Act. The question then arises whether when the matter in dispute and litigated before such a Court leads not to the making of an award but to the pronouncement of a decree, any appeal lies to the High Court from the decree of such a Court.

3. Before, however, we consider this matter, it is necessary to advert to the meaning of the term "award" as used in the Land Acquisition Act and to consider whether the Trial Court in this matter made an award or issued a decree.

4. There is clearly a distinction between an "award" within the meaning of that Act, and a decree. See 26 CWN 713 (Privy Council) and Rangoon

Botatoung Co. v. The Collector, Rangoon (1912) L.R. 39 IndAp 197 : ILR 40 C. 21 : 23 M.L.J. 276 (P.C.). Many decisions which can be made

under this Act are not "awards." For example, an order made u/s 32 is not an "award." Section 54 also clearly distinguishes between "decrees" and awards.

5. When one comes to define the term "award" so as to see where the functions of an award end, one finds that the matter has already been fully considered by the Judicial Committee; for in 26 CWN 713 (Privy Council) their Lordships observed:

The award as constituted by Statute is nothing but an award which states the area of the land, the compensation to be allowed and the

apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are

not in dispute, but from the moment when the sum has been deposited in Court u/s 31, Sub-section (2), the functions of the award have ceased;

and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award.

6. It is thus apparent that the judgment now appealed from was not an "award" but was a decree and is so termed in the memorandum of appeal.

7. As was pointed out by Lord Bramwell in Sandback Charity Trustees v. North Staffordshire Ry. Co. (1877) 3 Q.B.D. 1 cited with approval by

the Judicial Committee in Rangoon Botatoung Co, v. The Collector, Rangoon, 2 "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." Their Lordships of the Judicial Committee added in Rangoon Botatoung

Co. v. The Collector, Rangoon (1912) L.R. 39 IndAp 197 : ILR 40 C. 21 : 23 M.L.J. 276 (P.C.), loco citato:

A special and limited appeal is given by the Land Acquisition Act from the award of "the Court" to the High Court. No further right of appeal is given. Nor can any such right be implied.

8. The express right of appeal is to be found in Section 54 which provides inter alia as follows:

Subject to the provisions of the Code of Civil Procedure, 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 lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court...

9. Notwithstanding this express limitation and the pronouncement above referred to of the Judicial Committee to the effect that a limited right of appeal alone is given, it is argued on behalf of the appellant that because Section 53 applies the provisions of the CPC (and although such application is "save in so far as they may be inconsistent with" the provisions of the Land Acquisition Act), therefore we must apply Section 96 of the CPC and say that as "the Court" within the meaning of the Land Acquisition Act falls within the term "any Court" within the meaning of Section 96 (1) of the Code of Civil Procedure, therefore an appeal lies not only from awards but from decrees of "the Court" to the High Court.

10. Whatever weight there may be in this argument when one is considering the position where the appeal is from "the Court" where such Court is a Principal Civil Court of Original Jurisdiction" within the meaning of Section 3 (d) of the Land Acquisition Act, the point raised by the present objection is not touched unless one can find the authority which makes the High Court "the Court authorised to hear appeals from the decisions of such Court" within the meaning of Section 96 of the Code of Civil Procedure, for in the absence of such authority there is no competent Appellate Court, or, if there be, it is not the High Court.

11. We invited the appellant's counsel to indicate where such authority is to be found and the only authority he could suggest was the authority conferred by Section 54 of the Land Acquisition Act. That is to say, as that section says that subject to the provisions of the CPC applicable to

appeals from original decrees, appeals shall only lie to the High Court from awards, therefore appeals lie to the High Court from the Court, and

therefore the High Court is authorized to hear appeals from "the Court" and therefore the High Court is a Court authorized to hear appeals within

the meaning of Section 96 of the CPC not only from awards but also from decrees. We cannot so construe the authority conferred by Section 54.

The authority by that section conferred is an authority to hear appeals from awards. We can find no other authority conferring upon the High Court

the power to act as a Court of Appeal from the specially constituted Court from whose decision this appeal is brought. It is urged that this results in

an anomaly, because an appeal would have lain had the Court been a "Principal Civil Court of Original Jurisdiction." As to whether an appeal

would lie in such a case we express no opinion. But in the present case it is clear that the Court in question was not a "Principal Civil Court of

Original Jurisdiction." It was a special Court specially constituted. It has its own statutory status and does not follow the status of the Court

ordinarily presided over by the person who happens to be appointed as its Judge. No authority has been conferred upon the High Court to hear

appeals from such special Court except in the case of an award, and if this results in an anomaly the remedy is in an alteration of the law not in a

construction of the existing Act which would do violence to the most elementary rules of construction.

12. It follows that the preliminary objection is upheld, and the appeals are dismissed with costs.