
(1918) 04 MAD CK 0003
In the Madras High Court

Manavikraman Tirumalpad	Vs	APPELLANT
The Collector of The Nilgiris		RESPONDENT

Date of Decision : 13-04-1918

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (1918) ILR (Mad) 943

Hon'ble Judges : Seshagiri Ayyar, J;Oldfield, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—u/s 54 of the Land Acquisition Act, an appeal from the award of the District Court of Coimbatore was heard by a Bench

consisting of Ayling and Sadasiva Ayyar, JJ., Both the learned Judges differed, generally speaking, from the Land Acquisition Judge and among

themselves on some questions relating to the principle on which the value of the property was to be assessed. The total amount claimed by the

owner was eight lakhs. The Land Acquisition Judge, confirming the valuation of the Collector, made an award of one lakh and seventy-two

thousand rupees in round figures. Ayling, J., on the basis on which he proceeded held that the amount of the award should be enhanced by Rs.

7,000 and Sadasiva Ayyar, J., on the method of valuation adopted by him was for awarding on the whole an additional sum of about Rs. 56,000.

We understand that a question was then raised before the learned Judges as to what should be the order of the High Court under such

circumstances. The learned Judges thereupon agreed upon the order in the appeal being that the decree of the District Judge should be modified by

adding Rs. 8,050 to the award. In other words, they thought that that was the least amount to which the appellant was entitled, as that was the

additional amount, which Ayling, J., wanted to award, and, according to Sadasiva Ayyar, J., the appellant was entitled to something more and not less.

2. The appeal before us is filed under Clause 15 of the Letters Patent and the preliminary objection taken is that no such appeal is allowed by the

law. That depends upon whether the decision of the High Court in an appeal u/s 54 of the Land Acquisition Act can be said to be a "judgment

within the meaning of Clause 15 of the Letters Patent. It seems to me that the matter is not involved in any doubt in view of the decision of the

Privy Council in *Rangoon Botatoung Company Ltd. v. The Collector, Rangoon* (1913) ILR 40 Cal. 21 (P.C.) and the judgment at the Bombay

High Court in *The Special Officer, Salsette Building Sites v. Dossabhai Bezonji* ILR (1913) Bom. 506 confirmed as it was by the Privy Council as

reported in *The Special Officer, Salsette Building Sites v. Dassabhai Basanji Motiwala* 17 C.W.N. 421. In the first case, their Lordships described

an award made under the Land Acquisition Act as "the determination of arbitrators as to the value of land" taken for public purposes; and upon

that ground they refused to accept the argument that once the claimant is admitted to the High Court as appellant u/s 54 of the Act, he has all the

rights of an ordinary suitor including the right to carry the award up to the Board as if it were a decree of the High Court made in the exercise of its

ordinary civil jurisdiction. It will be seen from the report of the argument of Buckmaster, K.C., the present Lord Chancellor, that almost his whole

argument against the maintainability of the appeal was based on the use of the word "award" in the Act. His contention was that the legislature

wanted the determination of the land acquisition tribunal to be distinguished from an "order" or "decree" of an ordinary civil Court.

3. In the case in the Bombay High Court the learned Judges had to consider whether Clause 39 of the Letters Patent of the Bombay High Court,

which is in the same language as Clause 39 of the Letters Patent of the Madras High Court, allowed an appeal to the Privy Council; for no

arguments were or could have been based in the *Rangoon Company's* case on any such clause as the Chief Court of Lower Burma was not

constituted under Letters Patent. The Letters Patent allow an appeal from a "final judgment," "decree" or "order" of the High Court. Mr. Justice

Batchelor and Mr. Justice Heaton, interpreting the ruling of the Privy Council in the Rangoon case as laying down that an award in a land

acquisition case is more in the nature of an award of an arbitrator than a "judgment, decree or order of civil Court," held that the parties have no

further or other right of appeal than that expressly given by the legislature. On the matter being taken to the Privy Council, they refused to grant

leave to appeal, and if the arguments at the bar and the observations of the learned Lords of the Privy Council are correctly reported in The

Special Officer, Salsette Building Sites v. Dassabhai Basanji Motiwala 17 C.W.N. 421, it would appear that the Judicial Committee refused to

regard the decision of the Bombay High Court in an appeal u/s 54 of the Land Acquisition Act as a "judgment," "decree" or "order" of a High

Court within the meaning of Clause 39 of the Letters Patent. The attempt therefore of Mr. T.R. Ramachandra Ayyar to distinguish the ruling of the

Privy Council in Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon ILR (1918) Cal 21, on the ground that the appeal to the Privy

Council was from the decision of a Judge of the Rangoon Chief Court acting as the land acquisition Judge and not of the Chief Court as an

appellate tribunal hearing an appeal u/s 54, must fail. It is not suggested that the word "judgment" in Clause 15 of the Letters Patent is used in a

different or wider sense than in Clause 89. As for Secretary of State for India v. Chellikani Rama Rao (1916) ILR 89 Mad. 617 (P.C.) which was

also referred to at the bar, I do not think that there is anything in the judgment of the Privy Council in that case which can be said to have modified

the law enunciated in Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon (1918) ILR 40 Cal. 21 (P.C.).

4. We have then been asked to consider whether Section 98 of the CPC applies to this case. In my opinion, it does. Section 54 of the Land

Acquisition Act says that the appeal to the High Court shall be subject to the provisions of the CPC applicable to appeals from original decrees;

and it seems to me that Section 98 is one of the provisions of the Code which is so made applicable, for apart from it, there is no procedure

prescribed, by which the order to be passed in the cases of difference of opinion contemplated there, could be ascertained. No doubt in Sub-

section 2 of that section the words "decree" and "judgment" are used, but these are the ordinary terms used in Part VII of the Code dealing with

appeals from original decrees, as also elsewhere throughout the Code. But Sub-sections 1 and 2 of Section 98 do not confer any right of appeal;

they only lay down how an appeal heard by a Bench of two or more Judges is to be disposed of in certain contingencies. The principle governing

the question as to the right of appeal to the Privy Council or to the High Court under Clause 15 of the Letters Patent has no application to Section

98. The provisions of the CPC relating to appeals from original decrees as laying down the procedure for the hearing and disposal of such appeals

are made applicable to appeals u/s 54 of the Land Acquisition Act by express reference. The application of those provisions cannot therefore be

excluded because of the use of the words "judgment" and "decree" in the sections, orders and rules bearing on the subject.

5. Sub-section 2 of Section 98 provides that "where there is no such majority which concurs in a judgment varying or reversing the decree

appealed from, such decree shall be confirmed", and this in terms applies to what has happened in this case. I should say therefore that the result of

the hearing before Ayling and Sadasiva Ayyar, JJ., must be taken to be that the award of the District Judge was confirmed. But Mr. Ramesam

appearing for the Government, the respondent in the appeal, is content to accept the award proposed by Ayling, J., and which to that extent was

accepted by Sadasiva Ayyar, J. It thus becomes unnecessary to decide whether the order of the Court consisting of Ayling and Sadasiva Ayyar,

JJ., was a proper order. We have in this connexion been referred to a decision of the Calcutta High Court in Krishen Dayal v. Irshad Ali (1915)

CRI.L.J. 525, but I do not think that the circumstances of that case afford a very close parallel to the present case. If necessary, the Calcutta ruling

could be distinguished on the ground that the learned Judges who heard the appeal in this case differed from each other and from the land

acquisition Judge on matters relating to the principle of valuation and not merely on a question of figures, and I should be inclined to think that the

order of the High Court was not in accordance with Sub-section 2 of Section 98.

6. I may also mention that Mr. Ramachandra Ayyar drew our attention to Rule 2 of the Appellate Side rules under which the Bench composed of

Ayling and Sadasiva Ayyar, JJ., was constituted and under which other benches are ordinarily constituted for the hearing of appeals u/s 54 of the

Land Acquisition Act. The rule provides for a Bench of two Judges who are ordinarily to hear and determine appeals from ""the decree or order of

a civil Court"" and Mr. Ramachandra Ayyar's argument was that if we hold that the decision of the High Court in an appeal u/s 54 is not a decree

or order of a civil Court, we must also hold that Ayling and Sadasiva Ayyar, JJ., had no jurisdiction to hear the appeal at all. I am not prepared to

hold that there is force in this contention though the argument is not without an appearance of plausibility. The rules are framed under the powers

vested in the High Court not merely by the Charter Act and the Letters Patent but also by the Civil Procedure Code, and as the provisions of the

CPC relating to appeals from original decrees are expressly made applicable to appeals to the High Court from the award of a land acquisition

Judge, I should think that the words ""decree or order of a civil Court"" in Clause (a), Sub-rule 2 of Rule 2 of the Appellate Side rules do not

preclude the application of this rule to cases of appeals u/s 54 of the Land Acquisition Act. The District Judge, against whose award the appeal

was heard, tried the case as the tribunal designated as ""the principal civil Court of original jurisdiction,"" and in my opinion, it would not be unduly

straining the language of Rule 2 (Appellate Side Rules) to say that the award of such a Court is ""a decree or order of a civil Court"" for purposes of

the procedure to be followed in the hearing and disposal of an appeal from an award of that Court as prescribed by the provisions of the CPC

which are expressly referred to in Section 54. I hold that the preliminary objection is valid and the appeal must be dismissed with costs.

Oldfield, J.

7. I agree.

Seshagiri Ayyar, J.

8. In my opinion the preliminary objection is well founded. The decision against which the Letters Patent Appeal has been preferred is practically

the result of a compromise. Mr. Justice Ayling was for giving Rs. 7,000 more to the claimant than was awarded by the District Judge. Mr. Justice

Sadasiva Ayyar was prepared to increase it by over Rs. 50,000. Neither of them was for confirming the award of the District Judge. Both of them

were for varying it, one learned Judge to a small extent, the other to a larger extent. In the result, the Court's order was that the award should be

increased by Rs. 7,000 plus the usual 15 per cent. To such a state of affairs, the language of Section 98 of the CPC seems inapplicable. Clause (1)

contemplates the concurrence of the Judges or a majority. There is neither in this case. Clause (2) provides for confirmation of the lower Court's

decision when the Judges are not agreed. That has not been done in this case. The proviso, as is very often the case in Indian enactments,

introduces an exception to the rule requiring the confirmation, and only applies where the Judges differ on a question of law. Ex facie, therefore, the

conclusion come to by the learned Judges in this case does not appear to be within the letter of the section, although if the District Judge's

judgment were confirmed, the section would have been satisfied.

9. Mr. T.R. Ramachandra Ayyar contended that the conclusion is in accordance with the view taken by a bench of three Judges in *Krishen Dayal*

v. Irshad Ali (1915) 22 CRI.L.J. 525. Mr. Justice Mookerjee alone deals with the present question. In substance, what the learned Judge says

amounts to dividing the judgment of a lower Court into compartments, and to appropriating the differing Judges' views pro rata to such of them as

are concurred in and to others which are not approved of. Such a procedure is hardly compatible with the avowed policy of the legislature. In

effect, the view leads to countenancing the splitting up of a single judgment into a number of judgments. If this process is logically applied,

whenever there is a concurrence with the decision of a Court below on one of the issues, to that extent there must be a confirmation leaving the

other issues, on which there is a difference of opinion to be adjusted otherwise. If there is a judgment relating to a number of items of land or

accounts, the final result as to each of the items will have to be settled in the same way. By parity of reasoning, when there is a judgment for Rs.

10,000 the decision must, for purposes of Section 98, be regarded as having been given in respect of each rupee or groups of tens or hundreds of

rupees. With all respect, I am unable to uphold such a piecemeal apportionment of a single decree. I am not losing sight of the fact that there were

practically distinct subject matters in the suit from which the appeal was heard in the Calcutta case. None the less, the logical application of the

principle of that decision to cases of money claims shows that the section was not intended to be construed as suggested. Mr. Justice Chatterjee, in

the original judgment from which there was the Letters Patent Appeal, says that Clause (1) of Section 98 justifies the procedure adopted by him.

That clause speaks of the appeal in its entirety, and of its confirmation or variation as a whole. I am unable to construe the clause as reading "'the appeal or such portion of it as is concurred in by the Judges'" shall be decided in accordance with the opinion of such Judges.

10. In the present case there is greater difficulty than was present in the Calcutta case. The conclusion to increase the award by Rs. 7,000 was not based on any point on which the learned Judges agreed. Mr. Justice Ayling and Mr. Justice Sadasiva Ayyar proceeded to award compensation on different principles. Both of them to a certain extent disagreed with the Court below and with each other. To such a decision I find it difficult to apply the language of Section 98 of the Code. The result is that there is no judgment which attracts the provision of Section 15 of the Letters Patent, and consequently no appeal lies under it.

11. Mr. Ramachandra Ayyar next suggested that the final decision may be regarded as that of Mr. Justice Ayling, the senior Judge, so as to invite Clause 36 of the Letters Patent. There are two difficulties in the way. In the first place, the recorded note speaks of the final award as that of the Court of the two Judges. In the second place, it seems clear, as contended by the learned Government Pleader, that it is not a case to which any clause of the Letters Patent can apply.

12. Before dealing with the larger question whether an award in a Land Acquisition case is a judgment, I shall consider the shorter point whether Clause 36 of the Letters Patent applies. Section 44 says that the provisions are subject to the legislative powers of the Governor-General in Council. The CPC enacted by this authority makes provision for cases of difference of opinion by Section 98. But that provision is defective and has not taken into account differences like the present one. Therefore it is open to argument that the Letters Patent must at least be taken to be supplementary of the Code. Although I was at first inclined to the view that Clause 36 of the Letters Patent should be confined to appeals from the original side, as such a provision exists, as pointed out by Mr. Justice Oldfield in the course of the argument, in the Allahabad Patent which did not contemplate an Original Civil jurisdiction, I have come to the conclusion that the

clause is applicable to mufassal appeals as well. In practice this conclusion may lead to difficulties. Whether Section 98 of the Code or Clause 36 of the Letters Patent applies to a given case may not easily be determined. One rule may be acted upon, namely, that the Letters Patent should be invoked only in cases which are not covered by the Code.

13. As regards decided cases, in *Narayanasami Reddi v. Osuru Reddi* ILR (1902) Mad. 548, a Full Bench of this Court held that Clause 36 of the Letters Patent cannot apply to mufassal appeals. In *re Karri Venkanna Patrudu* (1915) 18 M.L.T. 591 takes a different view, although it should be noted that the Full Bench case was not quoted before the learned Judges. *Roop Laul v. Lakskmi Doss* ILR (1906) Mud. 1, lays down the converse of the proposition enunciated in *Narayanasami Reddi v. Osuru Reddi* ILR (1902) Mad. 548 In *Surjmal v. Horniman* (1917) 20 Bom. L.R. 186, reported since we heard the arguments in this case, Sir Basil Scott, C.J., refers to Sections 4 and 129 of the CPC as pointing to the conclusion that Clause 36 of the Letters Patent is alone applicable to appeals from the original side. This does not affect the question whether that section, subject to any law that may be passed by the Governor-General in Council, is not intended to provide for differences of opinion in mufassal appeals. Mr. Justice Chatterjee says in *Krishen Dayal v. Irshad Ali* (1915) CRI.L.J. 528 that Clause 36 of the Letters Patent is applicable whenever Section 98 of the Code is not applicable. That seems to be the better view. I have therefore come to the conclusion, though not without hesitation, that Clause 36 of the Letters Patent applies to this case if otherwise the decision is within its terms.

14. The last question is whether the pronouncement of the two learned Judges in this case amounts to a "judgment" within the meaning of Clauses 15 and 36 of the Letters Patent. If the matter were *res integra* I would have agreed with Mr. Rama Chandra Ayyar on this point. There is great force in the learned vakils' contention that a conclusion come to by the tribunals exercising jurisdiction under the Land Acquisition Act is not an award like that given by an arbitrator or by an umpire. In the Land Acquisition Act I of 1894, first of all there is a proposal by the acquiring officer in which he fixes the amount of compensation which he is prepared to give to the claimant. If the claimant accepts the proposal there is a concluded

bargain. If the claimant disputes the correctness of the acquiring officer's valuation, he is entitled to ask that the question be referred for the decision of a Civil Court. The Judge of the Civil Court exercises all the functions and privileges of a Judge who is hearing a contested case. The Government on the one hand, and the claimant on the other, adduce evidence of their respective contentions. The Judge gives his decision on weighing the evidence placed before him. There is no provision in the Act by which finality is given to the decision thus arrived at. It is open to appeal u/s 54 of the Act. Moreover the question may arise, and very often does arise, as to whether A or B is entitled to the compensation which may be fixed by the acquiring officer or by the Court. Thus there will be a tripartite contest. The tribunal will have to decide first between the contesting claims of the rival claimants, and then fix the amount of valuation.

15. Further, there may be cases in which the mode of apportioning the compensation between rival claimants, as in the case of a landlord and tenant, will have to be inquired into by the tribunals. There will thus be difficult questions relating to title, questions relating to mode of apportionment and questions relating to the mode of valuation cropping up in the course of a land acquisition case. The Judge who determines these questions is not acting as an arbitrator, in the proper significance of that term. Therefore there is considerable force in the contention of the learned vakils for the appellant that the decision arrived at under these circumstances is a "judgment" in its most accepted sense. But, however, speculation is not possible on a question of this kind. The Judicial Committee of the Privy Council have said the last, if not the final, word on the subject. In *Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon* (1918) ILR 40 Cal. 21 (P.C.), they first propounded the view that the conclusion come to by the Appellate Court u/s 54 of the Land Acquisition Act is not a judgment, but partakes the character of an award. In a later case, *The Special Officer, Salsette Building Sites v. Dassabhai Basanji Motiwala* 17 C.W.N. 421, there are observations of the members constituting the Board which undoubtedly point to the conclusion that in the opinion of their Lordships the decision on appeal in a land acquisition case is not a judgment. It is true, as Mr. Ramachandra Ayyar argued, that the report of the observations is not authentic in the sense that they

appear in a publication sanctioned by the Judicial Committee. But there is no reason for supposing that these observations were invented.

Moreover, if we bear in mind that the application for special leave was made to the Judicial Committee after the refusal of the learned Judges who

heard the case to grant a certificate under the CPC [vide *The Special Officer, Salsette Building Sites v. Dossabhai Bezonji* ILR (1913) Bom. 506]

there can be no doubt that the Judicial Committee did intend to lay down the proposition contended for by the learned Government Pleader.

16. Lastly we have the latest Privy Council decision in *The Secretary of State for India v. Challikani Rama Rao* (1916) ILR 39 Mad. 617 (P.C.);

that was a case under the Forest Act; it was there pointed out that when under a local or special enactment an appeal is preferred to a District

Court, the provisions of the Code relating to appeals and to further appeals therefrom ordinarily govern such an appeal; but that appeals in land

acquisition cases stand on a different footing. The inference is irresistible that the Judicial Committee have definitely come to the conclusion that no

appeal lies to them from a judgment of the High Court in a land acquisition proceeding. It may be that His Majesty the King's unlimited prerogative

of hearing appeals from any judicial proceedings may induce the Judicial Committee to grant special leave in this case. But we are not concerned

with that question. It seems to us that the conclusion is forced on us that the decision in the present case is not a "judgment" within the meaning of

that expression in Clause 15 or 36 of the Letters Patent. The preliminary objection must prevail and the appeal should be rejected with costs.