

(1970) 07 KL CK 0005

In the High Court Of Kerala

Case No : A.S. No's. 348, 349 and 350 of 1970

Manjeri Kovilakath Manavallabhan Karanamulpad Manjeri and
Another

APPELLANT

Vs

The Sub Collector and Land Acquisition Officer, Malapuram
and Another

RESPONDENT

Date of Decision : 31-07-1970

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 25(2), 28, 28(1), 30, 60

Citation : AIR 1971 Ker 257

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;M. Madhavan Nair, J

Bench : Division Bench

**Advocate : P.C. Balakrishna Menon, A.P. Chandrasekharan, V.P. Mohankumar,
P.C. Chacko and P. Krishnamoorthy, for the Appellant;**

Judgement

Krishnamoorthy Iyer. J.

1. These court-fee references u/s 11 of the Kerala Court-fees and Suits Valuation Act, 1959 (referred to as the Kerala Act) raise a question of construction of Section 51 of the said Act.

2. Section 51 of the Kerala Act reads:

"The fee payable under this 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."

3. The point to be decided is whether the appellants are bound to include in their valuation of the appeals the statutory solatium of 15% on the market value which they are entitled to get under the Land Acquisition Act on the excess compensation claimed in the appeals and pay court-fee thereon.

4. In (Koppaka) Brahmanandam Vs. Secy. of State, Anantakrishna Ayyar, J., took

the view based on Section 8 of the Central Court-fees Act (Act 7 of 1870) almost identical to Section 51 of the Kerala Act, that the appellant is bound to include the solatium also in the valuation of the appeal and pay court-fee on the total amount. The learned Judge observed:

"It seems to me to be clear that the extra amount of compensation claimed by the appellant in an appeal should u/s 8. Court-fees Act, include also the 15 per cent, of the market value and that he should pay court-fees on the total amount including the 15 per cent. He cannot, it seems to me, value his appeal only at the excess market value claimed by him in the appeal, and at the same time in case of success, not only claim to have that excess market value decreed to him but also claim that the appellate decree should automatically give him an additional 15 per cent. of the said excess market value. An appeal is different from the claim put forward by him before the Collector. When once the Court, on a reference to it u/s 18, Land Acquisition Act, determines the amount of compensation to be awarded for the land acquired, the claimant, if dissatisfied with the amount of compensation so awarded by the Court, should, in case he prefers an appeal value his appeal at the figure which represents the difference between the amount of compensation awarded to him and the amount of compensation that he claims in the appeal. The amount of compensation awarded to him includes, in my view, the 15 per cent. also of the market value, and the extra amount of compensation that he claims in the appeal should also include the 15 per cent, of the excess market value which he claims in the appeal.

Of course, it is open to an appellant in a land acquisition appeal, as in any other appeal, in which he claims a sum of money from the other side, to give up a portion of his claim and confine his claim to any particular amount to which he may restrict his claim in appeal. In such cases he is of course bound to pay court-fee only on the amount to which he has so confined his claim in the appeal; but in such a case, in the event of success in his appeal the decree of the appellate Court should award only the amount claimed by him in the appeal, and no more: *Mahomed AH Amjad Khan v. Secy. of State* ILR (1903) Cal 501. In the case before me, the appellant, while valuing his appeal at the extra market value only, claims in the event of success an extra 15 per cent. also. To entitle him to do so I think, on a proper construction of Section 8, Court-fees Act, that he is bound to include in the valuation of his appeal the extra 15 per cent. also and pay the court-fee due on the total amount."

5. In the appeal filed against the award in L. A. R. 3 of 1967 on the file of the Sub Court, Kottayam, which gives rise to one of the references there is no prayer in the memorandum of appeal for grant of the solatium in case additional compensation is decreed by this Court. On the other hand, in the appeal filed against the award passed in L. A. O. P. 81 of 196G on the file of the Sub Court, Kozhikode, -- the subject of the other reference -- there is a prayer in the appeal memorandum for the grant of solatium along with the enhanced compensation claimed in the appeal. In the former appeal therefore the valuation of a payment

of court-fee for the appeal is correct even going by the decision in (Koppaka) Brahmanandam Vs. Secy. of State, but we do not want to rest our decision on that ground.

6. The decision in (Koppaka) Brahmanandam Vs. Secy. of State, was followed without much discussion by the Travancore-Cochin High Court in Abdulrahiman Kunju v. State, AIR 1955 Trav-Co 110 and by the Travancore High Court in Velayudhan Pillai Narayana Pillai v. Sirkar, 46 Trav LR 151. The decisions of the Madras High Court and the Travancore-Cochin High Court were followed by a single Judge of the Gujarat High Court in Chandulal Pitamberadas Vs. Special Lands Acquisition Officer, Eastern Railways, Ahmedabad, in interpreting Section 7(1) of the Bombay Court-fees Act (36 of 1959) the wording of which is similar to Section 51 of the Kerala Act.

7. Counsel for the appellants relied on the Full Bench decision of the Andhra Pradesh High Court in Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, where in interpreting a similar provision in Section 48 of the Andhra Pradesh Court-fees and Suits Valuation Act (7 of 1956) their Lordships dissented from (Koppaka) Brahmanandam Vs. Secy. of State, and did not follow AIR 1955 Trav-Co 110. The view was taken by the Andhra Pradesh High Court based on provisions corresponding to Sections 11, 15, 25, 28, 30 and 36 of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962) that

"while solatium u/s 25 (2) may form part of the compensation to be awarded by the Collector u/s 12, it does not form part of the award which the Court has to pass u/s 28 (1) though it is required u/s 25 (2) to add 15 per cent. on the amount of market-value awarded by it which will be in the nature of a direction to the Collector to pay just in the same way as he is directed to pay interest."

P. Jaganmohan . Reddy, C. J., observed:

"An examination of the provisions of the Acquisition Act unfettered by any authority would incline us to the view that while solatium u/s 23 (2) may form part of the compensation to be awarded by the Collector u/s 11, it does not form part of the award which the Court has to pass u/s 26, though it is required u/s 23 (2) to add 15 per cent, on the amount of market-value awarded by it, which will be in the nature of a direction to the Collector to pay, the amount just in the same way as he is directed to pay interest. The reason for excluding solatium from the award to be passed by the Court is perhaps due to the solicitude of the Legislature not to over-burden the owner whose lands are acquired against his will with payment of court-fee thereon. This assumption of ours is fortified by the provisions of Section 48 of the Court-fees Act itself, which require payment of court-fee on the difference between the amount awarded and the amount claimed. We have already shown that the amount which an owner is required to claim includes neither solatium nor interest, but only compensation for all his interests in that land. It is therefore clear that solatium u/s 23 (2) forms part of

neither the claim nor of the award, and consequently, no court-fee is payable on such amount."

8. Section 25 (1) deals with the matters to be considered by the Court in determining the amount of compensation to be awarded for land acquired under the Kerala Land Acquisition Act, Section 25 (2) reads:

"In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition."

Section 28 (1) is to the effect that every award passed by a court under Part III of the Kerala Land Acquisition Act shall specify the amount awarded under clause first of Sub-section (1) of Section 25 and also the amounts, if any, respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. Sub-section (2) of Section 28 provides that every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Clause (2) of Section 2 and Clause (9) of Section 2, respectively, of the Code of Civil Procedure, 1908. Section 30 reads:

"If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay Interest on such excess at the rate of four per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

9. There is no reference to the inclusion of the amount to be granted u/s 25 (2) in the award to be passed by Court u/s 28 (1) of the Kerala Land Acquisition Act, though it is necessary to include payment of interest due u/s 30. The award of the Collector u/s 11 should also include the amount mentioned in Section 25 (2). But it need not contain a provision for interest payable u/s 36.

10. Section 30 enables the court to direct the Collector in the award u/s 26 (1) to pay interest on the excess compensation decreed from the date of dispossession of the claimant to the date of payment of the excess in court. In *Patel Anandilal Harilal Vs. The Additional Special Land Acquisition Officer, Ahmedabad*, it was held that the expressions "amount awarded" and "amount claimed" in Section 7(1) of the Bombay Court-fees Act (36 of 1959) do not include interest awarded or claimed as it is distinct from "compensation" mentioned in the Land Acquisition Act and no court-fee need be paid even on the interest on the excess compensation claimed in the appeal from the date of dispossession to the date of the award passed by the court.

11. Even apart from the language of Section 7(1) of the Bombay Court-fess Act on which emphasis was made by the learned Judges, their conclusion gains support from the principle stated by their Lordships of the Supreme Court in

State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, construing the expression "amount or value of the subject-matter in dispute in appeal" in Article 1, Schedule I of the Bombay Court-fees Act (36 of 1959). Their Lordships had to consider the question whether, in the light of the provision, in the Bombay Act, it is necessary for a defendant to include also the pendente lite interest decreed by the trial court in valuing the subject-matter of the appeal. In holding that it is not necessary Raghubar Dayal, J., speaking for the court, observed:

"Mr. Gupte has rightly conceded that it is well settled that the plaintiff has to value his appeal against the dismissal of his suit on the amount of the claim he had made in the plaint and has not to include the interest due on the amount claimed up to the date of instituting the appeal, that the defendant has not to include that amount of future interest subsequent to the date of the decree till the institution of the appeal in the valuation of the appeal for the purposes of court-fee and that no court-fee is to be paid on the amount of costs decreed in the suit when the party aggrieved appeals against the decree.

On what principle are these amounts not treated as forming part of the value of the subject-matter in dispute in appeal? Such value is to be determined on the substantial allegation in the plaint or from the pleas in the memorandum of appeal with respect to the point in dispute between the parties and sought to be determined by the Court. Such are necessarily the points affecting the rights of the parties sought to be adjudicated by the court. Claims not based on any asserted right but dependent on the decision of the disputed right and reliefs in regard to which are in the discretion of the Court do not come within the purview of the expression "subject-matter in dispute in plaint or memo of appeal" ".

This difference in the language of Article 1, Schedule I of the Bombay Court-fee Act (36 of 1959) and Section 51 of the Kerala Act cannot in any way affect the principle of the decision of the Supreme Court being followed in the cases before us. The right of the appellant to get 15 per cent. of the market value u/s 25 (2) is not a matter in dispute either before the Land Acquisition Court or in the appeal filed against the award. The matter in dispute before the Land Acquisition court and in appeal is only the quantum of compensation payable u/s 25 (1). The amount payable u/s 25 (2) is dependent on the compensation to be fixed u/s 25 (1) and it must fall or stand with the amount to be fixed u/s 25 (1). The fact that award of interest and costs under Sections 34 and 35. Civil P. C., is a matter of discretion of the court cannot in our view alter the position. As was stated by their Lordships of the Supreme Court a plaintiff whose suit is dismissed has to value the appeal on the plaint claim and he need not include the interest from the date of suit to the date of filing the appeal. We are therefore of the view, that the principle in State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, should apply to the appeals before us and the court-fees paid for the memoranda of appeals are sufficient.

12. The award of solatium u/s 25 (2) is not even a matter for judicial discretion but of statutory duty on the Land Acquisition Officer and the court. Solatium has

to be granted by court whether the party asks for it or not. What the court must necessarily grant the party need not claim and even if he formally claims it is only a reminder to court of its duty and not a prayer for adjudication of any controversy between him and the State.

13. When the award passed by a court u/s 28 (1) contains directions to the Collector to pay interest u/s 30 and to pay the solatium u/s 25 (2) they will form part of the award and in construing the word "award" in Section 28, it may not be possible to exclude these directions. We therefore do not want to rest our decision on the observation of the Andhra High Court that the award to be passed u/s 28 (1) need not include the amount covered by Section 25 (2).

14. Section 51 of the Kerala Act provides for payment of court-fee on the difference between the "amount awarded" and the "amount claimed" by the appellant. What do the words "amount awarded" and "amount claimed" mean? The term "amount awarded" can refer only to the amount awarded by the trial court and this can only mean the amount decreed towards the claim of the appellant in the Land Acquisition Court. The use of the expression "amount awarded" in Section 51 of the Kerala Act should therefore refer to the compensation decreed u/s 25 (1) towards the claim of the appellant.

15. Now we shall consider the scope of the expression "amount claimed by the appellant" in Section 51 of the Kerala Act. The said expression if understood in the light of Section 27 need not specifically include the 15 per cent. of the market value to be awarded. The said provision is binding on a claimant even in the appellate court. In the application for reference u/s 20 it is not necessary to include the solatium u/s 25 (2) in claiming the amount of the compensation. It is not open to the appellant to claim towards compensation anything more in the appellate court than what he could have claimed in the court to which reference has been made u/s 20 and the claim so far as that court is concerned has to be understood in the light of the provisions of the Land Acquisition Act. We are therefore of the view, that the court-fees paid for the memoranda of appeals are sufficient.