

(1966) 03 GUJ CK 0005

In the Gujarat High Court

Case No : A.O.D. No. 163 of 1965 with First Appeal No's. 164 to 199 and 506 of 1965

Mohan Mulji

APPELLANT

Vs

Special Land Acquisition Officer, Rajpila and Another

RESPONDENT

Date of Decision : 08-03-1966

Acts Referred:

Bombay Court Fees Act, 1959 — Section 40, 46
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Land Acquisition Act, 1894 — Section 18, 53

Citation : AIR 1967 Guj 154 : (1966) GLR 879

Hon'ble Judges : P.N. Bhagwati, J; M.U. Shah, J

Bench : Division Bench

Advocate : S.B. Majumdar, for the Appellant; A.D. Desai, Asst. Govt. Pleader, for the Respondent

Judgement

Bhagwati, J.

(1) This group of appeals raises a short question in regard to payment of court-fee on an application for a reference made to the Collector u/s 18 of the Land Acquisition Act. The facts giving rise to the appeals are identical and it would, therefore, be sufficient if we state the facts relating to First Appeal no. 163 of 1965. The Appellant in this appeal is admittedly a member of a tribe deemed to be a scheduled tribe in relation to the State of Gujarat under Article 342 of the Constitution of India. It appears that certain land belonging to the appellant was acquired by the State of Gujarat under the provisions of the Land Acquisition Act and an inquiry was held by the Special Land Acquisition Officer for the purpose of determining the amount of compensation payable to the Appellant in respect of such acquisition. The Special Land Acquisition Officer made an award dated 2nd March 1963 awarding a sum of Rs. 1378-27 Np. as and by way of compensation to the appellant but the appellant was dissatisfied with the award and he, therefore, made an application to the Special Land Acquisition Officer on 17th May 1963 for a reference under S. 18 of the Land Acquisition Act objecting to the

amount of compensation awarded and claiming a sum of Rs.4,300/-as and by way of compensation. The application did not bear any stamp under the Bombay Court Fees Act, 1959, presumably because the appellant was of the view that by reason of the Notification No. CFA 1061/3529-D dated 13th September 1963 the Appellant was not liable to pay any court fee on the application. On the application the Special Land Acquisition Officer made a reference to the District Court, Broach and the reference was received by the District Court on 22nd October, 1963. The District Court sent the reference to the Civil Judge, Senior Division, Broach, for disposal according to law. When the reference came up before the learned Civil judge for hearing, a contention was raised on behalf of the State that the application of the appellant before the Special Land Acquisition Officer for a reference to the District Court was required to bear court-fee stamp of an amount equal to one half of ad valorem fee on the difference between the amount awarded by Special Land Acquisition Officer and the amount claimed by the appellant under item 15 of 1959, and unless such court-fee was paid by the Appellant, the reference could not be proceeded with and was liable to be dismissed. The issue arising out of this contention of the State was tried by the learned Civil Judge as a preliminary issue and the learned Civil judge accepted the contention of the State and held that the application of the appellant to the Special Land Acquisition Officer for a reference was liable to bear Court-fee Stamp under Item No. 15 of schedule I to the Bombay Court-fees Act, 1959 and he accordingly directed the Appellant to pay deficit court-fee of Rs. 112-50 Np. on or before 27th April 1964. The Appellant did not pay the deficit court-fee directed by the learned Civil Judge and the learned Civil judge, therefore, passed an order rejecting the reference under Order 8, Rule 11 (c) of the Code of Civil Procedure. Similar orders rejecting the References under Order 7 Rule 11 (c) of the CPC were also passed by the learned Civil Judge in respect of the other references. Hence the present appeals against the orders passed by the learned Civil Judge rejecting the References.

(2) There were three contentions urged by Mr. S.B. Majumdar, learned advocate appearing on behalf of the Appellants, in support of the appeals and they were as follows:

(1) The Special Land Acquisition Officer discharging the functions of a Collector u/s 18 of the Land Acquisition Act is a Civil Court discharging judicial functions and the applications made by the Appellants to the Special Land Acquisition Officer were therefore applications filed in a Civil Court and consequently by virtue of the Notification No. CFA 1061/3529-D dated 13th September 1963 the applications were not liable to bear any court-fee stamp under the Bombay Court-fees Act, 1959.

(2) On a true construction of the provisions of Section 18, 19 and 20 of the Land Acquisition Act, the Special Land Acquisition Officer discharging the functions of a Collector is merely a conduit pipe through whom the application for a reference under S. 18 is made to the District Court and the applications made by the

Appellants to the Special Land Acquisition Officer u/s 18 were in effect and substance applications to the District Court and the Notifications Nos. CFA 1064/3529-D dated 13th September, 1963, therefore, governed the applications and the applications could be filed without payment of any court-fee stamp.

(3) Even if the Notification No. CFA No. 1061/3529-D dated 13th September, 1963 did not take an application to the Collector for a reference u/s 18 of the Land Acquisition Act, there was a subsequent notification issued by the Government of Gujarat on 14th June 1965 which amended the earlier notification so as to include within the scope and ambit of the earlier notification an application to the Collector for a reference u/s 18 and the applications made by the Appellants to the Special Land Acquisition Officer for a reference under S. 18 were, therefore, exempt from payment of court-fee by virtue of this later notification.

(3) In order to appreciate these contentions it is necessary to refer briefly to some of the relevant provisions of the Bombay Court-fees Act, 1959. Section 5, sub-section (1) provides that no document of any of the kinds specified as chargeable in the first or second schedule annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such a document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. There are two schedules annexed to the Act but we are concerned here only with the Schedule I. Item 15 of Schedule I refers to application to the Collector for a reference to the Court and prescribes for such application court-fee of an amount equal to one half of ad valorem fee on the difference, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Art. 1 of Schedule I, subject to a minimum fee of fifteen rupees. It is, therefore, clear that an application to the Collector for a reference under S. 18 must bear court-fee stamp of an amount so to one half of ad valorem fee on the difference between the amount awarded by the Collector and the amount claimed by the applicant and if the application does not bear such court-fee stamp, it cannot be received by the Collector. Section 40, paragraph 1 makes this position abundantly clear by providing that no document which ought to bear stamp under the Act shall be of any validity, unless and until it is properly stamped. Like all fiscal legislation, this Act also contains a provision empowering the State Government to reduce or remit the court-fee payable on a document and that provision is to be found in S. 46 which runs as under:

"46. The State Government may, from time to time, by notification in the Official Gazette, reduce or remit, in the whole or in any part of the territories under its administration all or any of the fees mentioned in the first and second schedules to this Act annexed, and may in like manner cancel or vary such order."

The Government of Gujarat, in exercise of the powers conferred by S. 46 issued the notification No. CFA. 1061/352-D dated 13th September 1963 to which

reference has already been made by us and this notification in its operative provision provided as follows:

".....the Government of Gujarat, hereby remits the fees payable by members of such tribes or tribal communities or parts, or groups within such tribes or tribal communities as are deemed to be scheduled tribes in relation to the State of Gujarat under Art. 342 of the Constitution of India in respect of documents of any of the kinds specified in the first or second Schedule to the said Act, to be filed, executed, or recorded in any Civil or Criminal Court."

This notification on its plain language granted exemption from payment of court-fee only in respect of documents of any of the kinds specified in the First or Second Schedule to the Act to be filed, executed or recorded in any Civil or Criminal Court. If there was any document to be filed before a public officer, no exemption from payment of court fee was granted in respect of such document. This was the state of the law when the present appeals reached hearing before us last April. The contention advanced on behalf of the State which found favour with the learned Civil Judge was that since exemption from payment of court-fee under this notification did not extend to documents to be filed before a public officer, an application to the Collector for a reference was not within the exemption granted under the notification and the applications made by the appellants to the Special Land Acquisition Officer therefore required to bear court-fee stamp. The Appellants therefore applied to us for an adjournment of the appeals so as to enable them to move the Government for announcing the notification so as to include specifically within the ambit of the exemption an application to the Collector. We accordingly adjourned the hearing of the appeals and it appears that thereafter the Appellants moved the Government and the Government by a notification No. GH-K-107/CFA-1061/3529-D dated 14th June 1965, issued under S. 46 of the Bombay Court-fees Act, 1959, amended the earlier notification by adding at the end of the notification the words and figures "and in respect of an application specified under No. 15 to the First Schedule of the said Act". The question is whether the applications made by the Appellants to the Special Land Acquisition Officer could be said to be exempt from court-fee by reason of the notification dated 13th September 1963 or at any rate by reason of the amending Notification dated 14th June, 1965.

(4) Before we deal with the specific contentions of the appellants bearing on this point, it is necessary to refer to one general contention urged on behalf of the appellants which, if correct would render it altogether unnecessary to examine the validity of the specific contentions. That contention was that the references having already been made by the Special Land Acquisition Officer acting under S. 18, it was not open to the learned Civil Judge to go behind the references and to examine whether the applications made by the appellants to the Special Land Acquisition Officer were properly stamped under the Bombay Court-fees Act, 1959. It was submitted that the question whether the applications were properly stamped with court-fee stamp or whether the requirement of S. 18 were

satisfied, was a question entrusted by the Legislature to the determination of the Collector - and Collector included Special Land Acquisition Officer - and once the Special Land Acquisition Officer decided in the exercise of his jurisdiction, administratively though it be, that the applications bore proper court-fee stamp and complied with the requirements of S. 18 and made references to the District Court, the learned Civil Judge to whom the references were made over for disposal was not entitled to inquire whether the application were properly stamped or whether the requirements of S. 18 were complied with. The jurisdiction of the District Court and hence of the learned Civil Judge, was confined only to disposing of the references which might be made to him by the Special Land Acquisition Officer and once the references were made, the learned Civil Judge was bound to entertain and dispose of the references. If the order of the Special Land Acquisition Officer making the references was improper or erroneous, the State could challenge the validity or legality of the order by taking appropriate proceedings before the High Court under Art. 226 of the Constitution, but the State could not invite the learned Civil Judge to hold that the order making the references was incorrect or improper. This contention was sought to be supported by reference to the decisions of the Allahabad, Patna, Madhya Pradesh, Punjab and Madras high Courts in Secy. of State Vs. Bhagwan Prasad and Another ; State of Uttar Pradesh Vs. Sri Abdul Karim, ; Lila Mahton v. Sheo Govind, AIR 1956 Pat 108; Kaliyanchand Devilal Vs. Kanchanbai Butilal and Others, ; Hari Krishan Khosla Vs. State of Pepsu, and Sri Venkateswaraswami v. Sub-Collector, Bezwada AIR 1943 Mad. 327 . Reliance was also placed on the decision of Raju, J., in H.H. Maharao Shree Madansinhji Saheb Vs. State of Gujarat, . But as against these decisions we have two decisions of the Bombay High Court, one in Mahadeo Krishna Parkar Vs. The Mamlatdar of Alibag, and the other in G.J. Desai Vs. Abdul Mazid Kadri and Others, where the view has been taken clearly and unmistakably that the Court to which the reference is made by the Collector is entitled to satisfy itself that the reference made by the Collector is a valid reference which it is required to hear and for that purpose it can go into the question whether the reference is validly made by the Collector. These decisions being decisions of Division Benches of the Bombay High Court given prior to the bifurcation of the State of Bombay are binding on us and in view of these decisions it is not open to us to examine the question on principle nor is it open to us to follow the authority of the decisions on which reliance has been placed on behalf of the appellants. Of course, there is a decision of H.H. Maharao Shree Madansinhji Saheb Vs. State of Gujarat, where the view contended for on behalf of the appellants has been accepted but that decision is a decision of a single Judge of this Court and we cannot follow it in preference to the decisions of Division Benches of the Bombay High Court. Faced with these decisions of the Bombay High Court, the appellants tried to escape the ratio of these decisions by contending that the question which arose in those cases was whether the Court to which the reference was made was entitled to examine whether the conditions specified in S 18 were fulfilled and the question was not whether the application made to the Collector for a reference under S. 18 was properly stamped under

the provisions of the relevant Court-fees Act. This latter question, argued the appellants, was a question which the Court hearing the reference was not entitled to inquire into and the decisions of the Bombay High Court did not compel us to hold that the Court was entitled to go into that question. This argument, in our opinion, ignores the true ratio of the decisions of the Bombay High Court referred to above and fails to give due effect to that ratio. What the Bombay High Court held in these decisions was that the Court hearing a reference is entitled to satisfy itself that the reference made to it is a valid reference, for it is only if the reference is a valid reference that the Court gets the jurisdiction to entertain and decide it. The Court would, therefore, a fortiori be entitled to consider every argument which goes to affect the validity of the reference. The reference may not be a valid reference because the conditions specified in S. 18 are not satisfied; as for example, there may be no written application by an interested person or the objection taken in the application may not be of the nature specified in Section 18 or the application may not be within the time prescribed in the proviso to that Section. Equally the reference may not be a valid reference because the application is not properly stamped as required by the Bombay High Court fees Act, 1959, and there is accordingly no valid application as required by S. 18. All these grounds would be grounds affecting the validity of the reference and the Court to which the reference is made can certainly examine these grounds for the purpose of satisfying itself that the reference made to it is a valid reference. We do not see on what principle a distinction can be made between a ground based on non-compliance with the conditions specified in S. 18 and a ground based on the application not being properly stamped under the Bombay Court-fees Act, 1959. If either of these grounds is made out, the Collector would have no jurisdiction to make the reference and the reference would be invalid and if the Court can examine the validity of the former ground, there is no reason why the Court should not be entitled to examine the validity of the latter. As a matter of fact if the application is not properly stamped, it would not be valid by reason of S. 40 and it would be no application at all and the position would be no different than as if no application is made and yet a reference is made by the Collector. We are, therefore, of the view that if the decisions of the Bombay High Court to which we have referred lay down the correct law - which we must accept, they do - the Court to which the reference is made would be entitled to examine whether the application made to the Collector for a reference under S. 18 was duly stamped as required by the Bombay High Court fees Act, 1959. The learned Civil Judge had, therefore, jurisdiction to go into the question whether the applications made by the Appellants to the Special Land Acquisition Officer were properly stamped with court-fees stamp.

(5) Turning now to the first contention urged on behalf of the appellants, that contention proceeds on the hypothesis that the Collector or the Special Land Acquisition Officer acting under S. 18 is a Civil Court. But this hypothesis is in our opinion not well founded and cannot be sustained in view of the decision of a

Division Bench of the Bombay High Court in *Balkrishna Daji Gupte Vs. The Collector Bombay Suburban*, . The question which arose in that case was whether a revisional application was competent from the order of the Collector refusing to make a reference and a Division Bench of the Bombay High Court consisting of Macleod, C.J. and Crump, J., held that no such revisional application was competent and the ground on which both the learned Judges came to this conclusion was that the Collector was not a Court and was not discharging judicial functions, and, therefore, no revision lay against the order of the Collector under S. 115 of the Code of Civil Procedure. This decision was cited with approval by another Division Bench of the Bombay High Court in *G.J. Desai Vs. Abdul Mazid Kadri and Others*, . It is not possible in view of these decisions to accept the contention of the appellants that the Collector or the Special Land Acquisition Officer acting under S. 18 is a Civil Court or that is even discharging judicial functions when he is acting under S. 18. The attempt of the appellants to bring the applications made by them to the Special Land Acquisition Officer within the ambit of the exemption contained in the notification dated 13th September 1963 on this ground must therefore fail.

(6) The second contention urged on behalf of the appellants regarded the Collector or the Special Land Acquisition Officer as a mere conduit pipe through whom an application for a reference under S. 18 of the Land Acquisition Act would in effect and substance be made to the District Court. The argument was that when a claimant makes an application to the Collector or the Special Land Acquisition Officer for a reference, the Collector or the Special Land Acquisition Officer has no discretion to the matter but is bound to make the reference to the District Court and, therefore the Collector or the Special Land Acquisition Officer is merely an intermediary through whom the application passes to the District Court and the application must, therefore, in reality and substance be regarded as an application to the District Court. Now there can be no doubt that if this contention is well founded, the application for a reference would be an application to a civil court and would, therefore fall within the terms of the notification dated 13th September 1963 but we are afraid there is no substance in this contention and it must be rejected. The application which is contemplated by S. 18 is an application to the Collector for making a reference to the District Court and the Collector may either grant the application or reject it. If the application does not comply with the requirements of S. 18 or does not bear the requisite court-fee stamp, the Collector would reject the application and if the application bears the proper court-fee stamp, and complies with the requirements of S. 18, the Collector in either case would dispose of the application; in one case it would be disposed of by an order rejecting it and in the other case it would be disposed of by an order making a reference to the District Court. When a reference is made by the Collector to the District Court on the application, it would be the reference which would come before the District Court for disposal and not the application which would be already disposed of by the Collector. It is, therefore, not possible to hold that the Collector is merely a

conduit pipe through whom the application is routed in its onward journey to the District Court. It is no doubt true that there are some observations in *H.N. Burjorjee v. Special Collector of Rangoon* AIR 1926 Rang 135 to the effect that the provision of an application to the Collector is "only a round about way of enabling the party interested to make an application to the Court and that the Collector for the purposes of the Act is only a conduit pipe" but these observations cannot be accepted by us as laying down the correct law in regard to the true nature of the functions discharged by the Collector. The Collector is a public officer entrusted with the duty to dispose of the application made to him for a reference under S. 18 and if the application is properly stamped with requisite court-fee stamp and complies with the requirements of S. 18, there is a statutory duty incumbent upon him to make a reference and equally if the application does not bear proper court-fee stamp or the conditions specified in S. 18 are not satisfied, he cannot make a reference. The Collector, is, therefore, not merely a conduit pipe but he has an important function to discharge under S. 18. This view which we are taking is wholly supported by the decision of the Division Bench of the Bombay High Court in *G.J. Desai Vs. Abdul Mazid Kadri and Others*, .

(7) That takes us to the last contention urged on behalf of the appellants, namely, that in any event the applications made by the appellants to the Special Land Acquisition Officer were saved from liability to payment of court-fee by reason of the amendment made in the notification dated 13th September 1963 by the amending Notification dated 14th June 1965. Now it is undoubtedly true that by the amending Notification dated 14th June 1965 the words and figures "and in respect of an application specified under No. 15 in the first Schedule to the said Act" were added at the end of the notification dated 13th September, 1963 and the benefit of the exemption granted under the notification dated 13th September 1963 was extended to an application to the Collector for a reference under S. 18 but unfortunately for the appellants, the amendment was not made with retrospective effect with the result that the law in force at the date of the making of the applications was the unamended notification dated 13th September 1963 and not the notification dated 14th June 1965. The appellants could not, therefore, claim the benefit of the exemption granted under the amendment in respect of the applications made by them to the Special Land Acquisition Officer. Some reliance was placed on behalf of the appellants on the facts that words of futurity similar to the words "to be filed, executed or recorded in any Civil or Criminal Court" were not added after the words "in respect of an application specified under No. 15 in the first Schedule to the said Act" and it was contended that this clearly showed that the intention of the Government was that the benefit of the exemption should be available not only to applications to the Collector for reference under S. 18 of the Land Acquisition Act made after the amendment but also to pending applications. This contention is however, not well-founded for the words "to be filed, executed or recorded in any Civil or Criminal Court" are not words of futurity but are words of limitation intended to describe the kinds of documents in respect of which exemption is granted by the

Government and moreover it is well settled that when an action is instituted, the law in force at the date of the institution of the action governs the question of court-fee payable on the action. This last contention urged on behalf of the appellants must also, therefore, be rejected.

(8) It is clear from this discussion that the applications made by the appellants to the Special Land Acquisition Officer were not properly stamped and the references made by the Special Land Acquisition Officer on such applications were, therefore, not valid references. The learned Civil Judge should have, therefor, dismissed the reference as invalid, but the learned Civil Judge instead rejected the references under O. 7 R. 11 (c) of the Code of Civil Procedure, as if the references did not bear the requisite court-fee stamp. The Bombay Court-fees Act, 1959, did not require the references to bear court-fee and there was, therefore, no question of rejecting the references under O. 7 R. 11 (c). The order passed by the learned Civil Judge in each of the references, was, therefore, clearly in the circumstances a wrong order. We, therefore, set aside the order made by the learned Civil Judge in each of the References and direct that the claimant in each reference be given six weeks time from the date of receipt of the record by the learned Civil Judge within which to pay up the deficit court-fee payable on this application. If a claimant pays up the deficit court-fee within the time specified his reference will have to be proceeded with and disposed of by the learned Civil Judge on merits. If, on the other hand, any claimant fails to pay up the deficit court-fee stamp within the time specified, his reference will stand dismissed. There will be no order as to costs of these appeals.

(9) Judgment accordingly.