
(1965) 12 BOM CK 0003

In the Bombay High Court

Case No : Civil Renv. Application No. 369 of 1963

Mohanlal Hochandra Doshi

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 02-12-1965

Acts Referred:

Bombay Court Fees Act, 1959 — Section 40, 5
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1967 Bom 224 : (1966) 68 BOMLR 555

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : T.N. Walawalkar, for the Appellant; V.S. Deshpande, Asst. Govt. Pleader, for the Respondent

Judgement

(1) This is a revisional application on behalf of the original applicant in Land Acquisition Reference No. 8 of 1961 decided by the Court of Civil Judge, Senior Division, Kolhapur, by its judgment and order dated September 19, 1962. The learned Judge disposed of Land Acquisition Reference Nos. 8 of 1961 and 17 of 1960 by a common judgment. The learned Judge did not try the references on merits or on questions of facts. On behalf of the State Government it was contended before him that the written applications made by the applicants to the Collector u/s 18 of the Land Acquisition Act that the matters be referred by the Collector for determination by the Court had been insufficiently stamped with the Court-fees stamp of 65 nPs. Under Article 15 of Schedule (1) of the Bombay Court Fees Act, an application to the Collector for a reference to the Court u/s 18 of the Land Acquisition Act was required to bear Court fees stamp of 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 Article 1 of Schedule I, subject to a minimum stamp of fifteen rupees. The contention under those circumstances was that the applications did not bear sufficient Court fees stamp and were therefore invalid. The Collector was, therefore, not competent to make the above references to the Court. The

Court negated the contention made on behalf of the applicant that the reference Court was not invested with power to decide that reference made by the Collector u/s 18 was not competent or invalid. It negates the contention that it had no jurisdiction to decide the question of the applications being sufficiently stamped and that the question was liable to be finally decided and disposed of by the Collector. In arriving at its above findings the Court refer to the decisions in the cases of *nanu Kothari ILR (1906) 30 Bom 275* and *Mahadeo Krishna Parkar Vs. The Mamlatdar of Alibag*, . It negated the contention that these decisions related to the question of bar of limitation only. It took the view that the observations of this court in those decisions were sufficient to show that the reference Court was bound to examine the fact as to whether the Collector had made the reference in accordance with the conditions of section 18. The Court was therefore, entitled to see that there was a valid duly stamped application before the Collector asking for reference. The Court found that the applications for reference had not been sufficiently stamped and were invalid and the reference was, therefore, not competent. It also negates the contentions made on behalf of the applicants that u/s 149 of the CPC the applicants should be allowed to make good the deficiency in the Court fees stamp. In that connection it observed that a reference under the Land Acquisition Act cannot be held to be "Civil Proceedings" and the provisions in section 149 were not applicable. It found that u/s 40 of the Court Fees Act in cases relating to applications for reference u/s 18 of the Land Acquisition Act directions for payment of further Court fees stamp could only be given by the head of the office where the original application was filed. Having made the above findings the order that the Court passed was that "the applications and papers received from the Collector be returned. The amounts of compensation, if received in Court, be returned to the Collector".

(2) In support of this revisional application on behalf of the applicant Mr. Walawalkar has once again contended that the question of deficiency in Court fees paid in respect of an application u/s 18 of the Land Acquisition Act was liable to be finally disposed of by the Collector who reserved the application. That is the result of the scheme u/s 5 of the Bombay Court Fees Act. The contention is further developed by reference to the provisions in section 40 of the Act. The matter of deficiency under that section is liable to be ascertained and durable at the instance of the Head of the Officer receiving the relevant document. It is contended that in deciding the question of deficiency of Court fees stamp paid in respect of the application submitted to the Collector u/s 18, the lower Court has acted entirely without jurisdiction. Two further alternative contentions are made as follows: (1) If the Court was entitled to consider the question of deficiency of Court fees stamp the provisions of section 149 of the CPC were applicable and the application of the applicant to cure deficiency should have been granted (2) In the whole of the defence statement the question of deficiency in Court fees stamp had not been raised. The question was for the first time raised at the time of the final arguments. The Court below should not have allowed that question to

be raised at that late stage. For these reasons also the judgment and the findings made by the court below are liable to be reversed.

(3) In reply Mr. Deshpande, the learned Assistant Government Pleader, has contended that it has been repeatedly held in cases dealing with applications filed before the Collector after expiry of the time prescribed that the reference Court has jurisdiction to examine the fact as to whether in making the reference the Collector had complied with the conditions contained in Section 18. The lower Court was therefore right in holding that it had jurisdiction to consider the question of deficiency in Court fees stamp. In that connection direct reliance is placed by Mr. Deshpande on the provisions in section 40 of the Court Fees Act. Mr. Deshpande has also contended that it is clear from the language in section 149 of the CPC that the provisions therein do not apply to any application made u/s 18 to the Collector for reference to Court.

(4) Apparently the above main contention was not made in the defence statement filed before the Court. Mr. Deshpande has not been able to argue that the contention was not made only at the stage of arguments.

(5) In connection with the questions raised it is necessary to refer to the relevant provisions in section 5 and 40 of the court Fees Act which runs as follows:

"5 (1) No document of any of the kinds specified as chargeable in the first or second schedule to this Act 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 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."

"(2) when any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises in the High Court, be referred to the taxing officer"

(6) Sub-section (3) and (4) provide scheme similar to that in sub-section (2) respectively for documents to be filed, exhibited or recorded in City Civil Court and other Civil Courts.

"40. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped.

"But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the Office, as the case may be, or, in the case of the High Court, any Judge of such Court, may, if he thinks fit order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance."

(7) Obviously the sub-sections (2),(3) and (4) of section 5 contemplate that differences of opinion may arise between a suitor or his pleader on the one hand and the charging officer of the High Court and/or of the City Civil Court and/or any other Court on the other as regards the Court fees payable in respect of documents tendered to be filed, exhibited or recorded in Court. In Sub-sections (2),(3) and (4) provision is made as regards the manner in which and the authority by whom such disputes must be finally decided. Now, it is not possible that in respect of documents to be received or furnished by public officer differences of similar kind will not arise. Even so there is no provision in the Act for decision of such differences by any person other than the public officer who receives or furnishes the document. Having regard to this scheme of section 5 it is permissible to hold that under sub-section (10 of section 5 as regards fees chargeable and payable in respect of a document received or furnished by him it is the duty and obligation of the public officer receiving or furnishing any document to decide finally the question about quantum of fees payable on such document. Thus he must receive or furnish chargeable document after he is satisfied that in respect of such document specified proper fee has been paid. It is clear that when the officer furnishes chargeable document to a member of the public it cannot be and should not be permissible for him or any one else to contend that the fee, in fact, charged and paid in respect of the document furnished is insufficient and for that reason the document is invalid. Prima facie a public officer who receives or furnishes documents chargeable to fees decides the question of sufficiency of the fees in respect of the documents. Apparently in section 5 there is not attempt to confer jurisdiction on Court of Law or even on any other public officer to consider the question of insufficiency of fees paid in respect of chargeable documents once received or furnished by a public officer.

(8) Now, it is true that section 40 refers to mistakes and inadvertence of a public officer in connection with receipt of chargeable documents in public office without the same being properly stamped. It also provides in that connection that an order may be made that such documents be properly stamped. It further provides that on such document being sufficiently stamped the same "and other proceedings relating thereto shall be as valid as if it had been properly stamped in the first instance" This provision goes to show that the question that chargeable document was received in public office through mistake or inadvertence without being properly stamped is liable to be considered only by the head of the office and not by any Court of Law. conversely the language of section 40 and 5 makes it abundantly clear that such question in respect of any document, filed, exhibited or recorded in a Court of Law without being properly stamped can be decided only by the presiding Judge of the Court. It appears that having regard to the language of these sections the question of insufficiency of stamp on documents received by a public and/or an administrative office is not liable to be considered by Courts.

(9) It is true that paragraph 1 of section 40 clearly provides that unless and until a chargeable document is properly stamped. It shall not be of any validity. When

this provision is applied to documents received by any public officer having regard to the section paragraph in S. 40 it would be within the exclusive jurisdiction of the head of the office receiving such document to consider the question of insufficiency of stamp if it is raised. Apparently, ends of justice require that it should not be open to any authority other than the head of such officer to consider such question. This appears to me to be the only reasonable construction and true effect of the provisions in Ss. 5 and 10.

(10) One of the purposes of the Land Acquisition Act is to provide for determination of the amount of compensation to be paid on account of acquisition. The scheme is that the Acquisition Officer being an administrative officer makes an award that can only be questioned by a reference to Court under S. 18. The result is that important and valuable property rights are dependent on the provisions in s. 18. Having regard to the contents of S. 18 it is clear that a written application for requesting a reference must be made to the Collector. In this case the written application was made by affixing Court fee stamp of 65nPs. The Collector being the public officer as referred to in S. 5 as well as the officer for receiving applications was bound to consider the question of sufficiency of the stamp affixed. Not only did he receive the application but he acted upon the application to discharge his obligation to make a reference to Court. What was before the Court for disposal was not the application for reference but the reference made by the Collector. The Court was not directly concerned with the validity of the application made to the Collector for reference. Though reference by the Collector results from and is consequence of the application made for the purpose the language of S. 18 does not suggest that the reference once made is invalidated because of technical defect in payment of Court fees stamp. In this connection it is to be noticed that the period of time for making application for reference is fixed under Cls. (a) and (b) in the provisions in sub-section (2) of S. 18. Thus it is clear that application for reference is not liable to be made or accepted after the expiry of the time prescribed. An application for reference made after the expiry of the prescribed period is for all purposes null and void. The importance of this is that in connection with the question of sufficiency is stamp on such application the decision of the Collector should be held to be final. In cases where he rejects applications for want of proper stamps the same can be renewed after affixing sufficient stamp. If this question is left over to be decided at any subsequent date heavy loss may result to an applicant-claimant. This situation requires that question or sufficiency of stamp ought to be finally decided by the Collector as at the date of his receiving applications and the same is not liable to be reconsidered after the time prescribed by Cls. (a) and (b) in the p provisos in sub-section (2) of S. 18 expires.

(11) Mr. Deshpande has relied upon the decisions in Mahadeo Krishna Parkar Vs. The Mamlatdar of Alibag, ; G.J. Desai Vs. Abdul Mazid Kadri and Others, . The ratio of these decisions is that the conditions prescribed by S. 18 of the Land acquisition Act are the conditions to which power of the Collector to make the

reference is subject and these conditions must be fulfilled before the Court can have jurisdiction to entertain the reference. The first decision rests on the opinions of the Judicial committee in the case of *Nusserwanji v. Mr. Mynodeen Khan* 6 I A 134 . In that report at p. 155, the relevant observations are:

"Wherever jurisdiction is given to a Court by an Act of Parliament, or a Regulation in India and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."

In the above decision the question before the Court related to the application for reference under S. 18 before the Collector being beyond the time prescribed by Clauses (a) and (b) in the provisos to sub-section (2) of S. 18 of the Land Acquisition Act. The Court negatives that the questions of limitation so prescribed by the above sub-clauses (a) and (b) are liable to be finally adjudicated upon by the Collector. The Court observed that the jurisdiction of the Court to consider the reference made by the Collector was dependent on the Collector complying with the conditions prescribed in S. 18. The condition prescribed was that the application for reference must be made within the time mentioned in sub-clauses (a) and (b). For these reasons the Court held that the reference made, on the application made beyond time prescribed in sub-clauses (a) and (b), but the Collector did not comply with the conditions of S. 18. The Court would therefore be without any jurisdiction to consider the reference. The reference must be held to be invalid. Relying upon the decisions the contention that is made by Mr. Deshpande is that one of the conditions prescribed by S. 18 is that the reference must be made on an application made to the Collector. In the result according to Mr. Deshpande the application must be valid application. There is great substance in this contention. It is however necessary to notice that under the scheme of the Court Fees Act the question of sufficiency of stamp in respect of documents received by public officers is liable to be finally disposed of by administrative officers and Courts have no jurisdiction to deal with the question. It requires further to be noticed that insufficient stamp does not affect the application in its inception. An application for reference to Court may be totally defective if it is made by an incompetent person such as a lunatic. The defect of insufficient stamp does not render the application inherently invalid. Under S. 40 of the Act the defect of insufficient stamp is curable by making further payment at a subsequent stage. The direct consequence is that the defect does not make the document entirely invalid. In this case it has not been found by the prescribed authority the head of the office which received the application that it was improperly and insufficiently stamped. It was not within the jurisdiction of the court below to hold that the application was insufficiently stamped. Further, when the Court found that the application was insufficiently stamped it was its duty to inform the Collector of the fact and to call upon the Collector to consider the question about directions to be issued for having the application sufficiently stamped; and thus to have it validated. In fact the Court was only concerned to

decide the reference made to it and was not bound to decide the question of insufficiency of stamp on the application.

(12) As in my view the Court below had no jurisdiction to make the finding that the application was not sufficiently stamped the applicant is entitled to succeed in this application. The findings and order dated September 19, 1962 made by the Court below are set aside. The Land Acquisition Reference No. 8 of 1961 is restored to the file of the Court of the Civil Judge, Senior Division, Kolhapur, for consideration of the reference in the usual manner. The respondent will pay costs to the applicant. Rule is made absolute.

(13) Appeal allowed.