

(1979) 11 DEL CK 0018

In the Delhi High Court

Case No : Regular First Appeal No. 464 of 1970 and Civil Miscellaneous Appeal No. 450 of 1979

Rajinder Anand etc.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-11-1979

Acts Referred:

Citation : (1980) RLR 39

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : D.R. Dhamija and Vijay Kishan, for the Appellant;

Judgement

Avadh Behari Rohtagi, J.

(1) By this application the appellants assert that no decree need be prepared by this court while deciding an appeal under S. 54 of the Land Acquisition Act, 1894 (the Act). Impatient of court procedure they say : "Why frame a decree in appeal. Do as the court of the District Judge does. A judgment is enough." Now in all appeals under s. 54 decided by this court decrees are prepared. It is said that this is not required in law. The argument is that as in the case of the district court, so in the case of the appellate court, the decision amounts to a decree as is provided in s. 26 of the Act. This is the point that arises for decision on this application.

(2) S. 26 appears in part Iii of the Act which is headed as "Reference to Court and procedure thereon." An important section of this part is S. 18. That provides for reference to the court. "Court" means a principal civil court of original jurisdiction [S. 3(d)]. The court of district judge is the principal civil court of original jurisdiction. District Judge includes the additional district judge. The district judge hears the reference made under S. 18 of the Act. At the conclusion of the hearing the district judge makes the award. [s. 26 is then reproduced.]

(3) Section 26 says that the award of the court shall be in writing signed by the

judge. It shall specify the amount awarded under S. 23 of the Act and the grounds of awarding the said amount of compensation. Sub-s. (2) provides that "every such award shall be deemed to be a decree and the statement of the ground of every such award a judgment within the meaning of s. 2 clause (2), and s. 2, cl. (9), respectively, of the Code of Civil Procedure, 1908".

(4) This sub section imports a fiction. By a deeming provision the award of the court is a decree and the statement of grounds a judgment. Therefore, all that the District Judge does is to make an award and state the grounds of awarding such amount or compensation as he determines in the reference. His award is deemed a decree and the statement of grounds a judgment. No separate decree sheet is prepared by the district judge because of this deeming provision. [In pare 5, sec. 54 is reproduced]

(5) On the analogy of s. 26 it is contended that there is no need to prepare a decree in appeal. It is said that the judgment of the High court should be deemed to be a decree by applying the deeming provisions of sub-s. (2) of s. 26. I do not agree. S. 26 is explicit in its term. It applies only to the award of the district judge. The fiction imported by it cannot be extended by analogy to appeals which are decided by the High Court under Sec. 54 of the Act. This court has to pass a judgment. A decree has necessarily to be prepared. This court does not make an "award" in the sense that expression is used in s. 26 of the Act. S. 54 is differently worded. It does not employ any fiction. The truth is that the reference Procedure is different from the appellate procedure.

(6) An appeal lies to the High Court from the award of the district judge. This is the meaning of the words "from the award, or from any part of the award, of the court" used in s. 54. Therefore, the point of distinction is this. The district judge makes an award on reference. From the award an appeal lies to the High Court. The Court passes a decree in appeal. From the decree of the High Court passed on appeal, an appeal lies to the Supreme Court. Therefore, the High Court must prepare a decree in the appeal. This is the conclusion I arrive at on a plain reading of the statute.

(7) Appeal under s. 54 is "subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees". Therefore, the procedure prescribed for appeals under the Code has to be followed in respect of appeals under the Land Acquisition Act. A decree must Therefore be prepared as is done in other appeals from original decrees.

(8) The analogy of reference is false. Reference is a creation of the Act. This remedy is peculiar to the Act of 1894. A special procedure is designed which provides for a reference. S. 26 applies to the stage of reference. When the matter reaches the stage of appeal the procedure has been equated with the procedure followed in other appeals under the C.P.C. For example in reference no court fee is to be paid. In appeal full court fee is required. In appeal the CPC will govern and guide us and not s. 26 of the Act.

(9) Counsel for the appellants has referred me to *Har Dial v. Secretary of State*, Air 1923 Lah 275 and AIR 1944 284 (Nagpur) . These cases deal with letters patent appeal under clause 10 of the Letters Patent. They do not deal with the point raised before me.

(10) It is then said that the powers of appellate court are the same as that of the original court. This is not true about procedure. Part Hi of the Act provides for "reference to court and procedure thereon". S. 54 says : "Follow the procedure of the Code of Civil Procedure."

(11) As a matter of legislative history it is useful to notice that before the amendment of s. 54 in 1921, an appeal lay to the High Court. No second appeal was competent. There was no right of appeal to the Privy Council (See *Rangoon Batatoung Co. v. The Collector*, 39 I.A. 197. But under the new section consequent to Act Xix of 1921, a further right of appeal to the Privy Council was provided. Now on abolition of appeals to Privy Council appeal lies to the Supreme Court. On a plain reading of the statute there is no manner of doubt that this court in appeal under s. 54 of the Act is required by the express provision of the statute to prepare a decree. From the decree of this court appeal lies to the Supreme Court.

(12) I caused enquiries to be made from the other High Courts to ascertain the practice prevailing there. The majority of the High Courts, like us, are preparing decrees in appeals under s. 54 of the Act. Rajasthan, Madras, Gujarat, Kerala, Gauhati, Jammu and Kashmir, Bombay and Patna High Courts have replied that they invariably prepare a decree in an appeal decided by the High Court under s. 54. Only two High Courts have replied in the negative. These are High Courts of Madhya Pradesh and Himachal Pradesh.

(13) The correct procedure Therefore is to prepare a decree in appeal under s. 54 of the Act. This appears to be a requirement of the law. The appellate court has no jurisdiction to dispense with the preparation of the decree. Decree must be prepared as is done in appeals from the original decrees under the Code.

(14) There Is yet another reason why decree must be prepared. Judgment is a statement of reasons. Decree is the formal expression of adjudication of the court. It is the decree that is executed and not the judgment. If no decree is prepared there will be nothing to execute. Nor can an appeal be preferred to the Supreme Court if no decree is prepared.