
(1977) 08 MP CK 0020

In the Madhya Pradesh High Court

Case No : First Appeal No. 50 of 1974

Shantilal Soganmal and Another

APPELLANT

Vs

Town Improvement Trust, Ratlam and Others

RESPONDENT

Date of Decision : 25-08-1977

Acts Referred:

Court Fees Act, 1870 — Article 11, 8

Madhya Pradesh Town Improvement Trust Act, 1960 — Section 147, 78

Citation : AIR 1978 MP 8 : (1977) MPLJ 690

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;G.G.Sohani, J;C. Kondaiah, J

Bench : Full Bench

Judgement

Shiv Dayal, C. J.

This is an appeal u/s 147 of the Madhya Pradesh Town Improvement Trust Act, 1960, When the matter was placed before a learned single Judge, the question arose whether the court-fee paid on the appeal was adequate. Court-fee of Rs. 30 has been paid and not ad valorem court-fee. In Suresh Kumar v. Town Improvement Trust, Bhopal, 1975 Jab LJ 468 : (AIR 1975 Madh Pra 189), the Hon'ble Taxing Judge (Raina J.) held that on such appeal ad valorem court-fee is payable on the difference between the compensation claimed and the compensation awarded. Since the learned single Judge thought that in view of certain other decisions of the Nagpur High Court and the Bombay High Court and since the decision in Sahadu Gangaram Bhagade Vs. Special Deputy Collector, Ahmednagar and Another, did not decide the above question, he referred the matter to be decided by the Larger Bench, i. e. how the matter has come up before us.

The decision of Raina, J. was rendered and the reference by the learned single Judge was made prior to the decision of the Supreme Court in Diwan Brothers v. Central Bank of India, Bombay (AIR 1976 SC 1603) on going through which we are of the opinion that on the basis of that authority the point referred to us must be held to have been settled. Section 8 of the Court-Fees Act reads thus:

"Section 8. The amount of 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 requisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

Article 11 in Schedule 2, Court-Fees Act, provides as follows:

"Art. 11. Memorandum of Appeal when the appeal is not from a decree or an order having the force of a decree.

(a)

When presented to the High Court.

Seven rupees and fifty Paise

(b)

When presented to a Civil Court other than the High Court

Three rupees.

The crux of the matter is whether a decision rendered u/s 78 of the M. P. Improvement Trust Act, 1960, is an order having the force of a decree for the purposes of Article 11 in Schedule 2 of the Court-Fees Act.

Section 72 of the M. P. Improvement Trust Act, 1960, provides for compensation. Section 73 provides for the constitution of a Tribunal to assess the compensation. Section 78, Sub-section (1) confers powers on the Tribunal as regards the procedure. Sub-sec. (2) attaches finality to the decision given by the Tribunal and Sub-section (3) of Section 78, reads thus:

"Section 78 (3) Every decision of the Tribunal and every order made by the Tribunal for the payment of money shall be enforced by a competent civil Court within the local limits of whose jurisdiction it was made as if it were a decree of that Court."

Sections 147, 148 and 149 of the said Act are as under:--

"Section 147. Appeal from the decision of the Tribunal-- Any person aggrieved by the decision of the Tribunal may-

(a) where the value of the claim of such person before the Tribunal exceeds Rs. 500 appeal to the High Court within 90 days from the date of the decision.

(b) in any other case appeal to the Court of the District Judge having jurisdiction over the Trust area, within 60 days from the date of such decision." Section 148-

"Section 148. Procedure in such appeals--The provisions of the Code of Civil Procedure, 1908 (V of 1908), with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act." Section 149-

"Section 149. Execution of order of High Court-- Every order passed by the Court of the District Judge or the High Court on appeal under this Act shall be enforced, on application, by a competent Civil Court within the local limits of whose jurisdiction the award or order appealed against was made, as if it were a decree of that Court"

In *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, , a similar question arose for consideration under the Displaced Persons (Debts Adjustment) Act, 1951. Their Lordships have held as follows (at p. 1514) :--

"The term "decree" used in Schedule II, Article 11 of the Court-Fees Act is referable to a decree as defined in Section 2(2) of the Civil P. C. The decision of the Tribunal constituted under Displaced Persons (Debts Adjustment) Act either allowing a claim or rejecting a claim, though described as a decree in the Act, does not make it a decree within the meaning of the Court-Fees Act. The decision does not fulfil the requirements of a decree within the meaning of Schedule II, Article 11 of the Court-Fees Act. Therefore, the memorandum of appeal filed by a person aggrieved by the decision of the Tribunal squarely falls within the ambit of Schedule II, Article 11 of the Court-Fees Act and ad valorem court-fees under Schedule 1, Article 1 are not payable."

In view of this decision of the Supreme Court, nothing remains to be decided by this Court as regards the applicability of Article 11 in 2nd Schedule of the Court-Fees Act. Following the Supreme Court decision we hold that in an appeal u/s 147 of the M. P. Town Improvement Trust Act from a decision given u/s 78 of the same Act, ad valorem court-fees on the difference between the amount claimed and the amount awarded is not required to be paid, the court-fees payable on such appeal will be under Article 11 in Schedule 2 of the Court-Fees Act.

This is our answer to the question referred to us.