

(1971) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : F.A. No. 2 of 1970

State of Madhya Pradesh

APPELLANT

Vs

Prabhudayal

RESPONDENT

Date of Decision : 11-03-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110, 115
Constitution of India, 1950 — Article 227
Court Fees Act, 1870 — Section 12, 3, 4, 5, 8
Land Acquisition Act, 1894 — Section 11, 23, 23(2), 26, 26(2)

Citation : (1971) MPLJ 757

Hon'ble Judges : S.R. Vyas, J; S.B. Sen, J

Bench : Division Bench

Judgement

S.B. Sen, J.

This is a cross objection by the Respondent in an appeal filed by the State under the Land Acquisition Act. The Respondent by this cross-objection wants an enhancement of compensation which originally awarded by the District Judge is Rs. 74,825, with solatium of 10 per cent from 27-11-1965. In this cross objection under Order 41, Rule 22, CPC the Respondent is attacking not only the compensation amount but is also claiming solatium at 15 per cent as against the 10 per cent already awarded. By way of enhancement in compensation he claims Rs. 8,000. On this enhanced Rs. 8,000 he also claims solatium at 15 per cent. He has paid court-fee on the amount of excess claim of compensation, that is, on Rs. 8,000, but has not paid court-fee on the claim of this additional solatium.

The question immediately before us is whether the Respondent should pay court-fee on this difference. He has not paid court-fee on the difference in solatium. The only point involved is whether he has to pay court-fee on this difference.

The matter went before the Taxing Officer who has reported that the Respondent has to pay court-fee on this difference in solatium and the case is therefore placed before us.

A single Judge of this Court in, Ramkumar v. State of M.P First Appeal No. 58 of 1966. by his order dated 21-12-1966 expressed the view that in terms of Section 8 of the Court-fees Act, court-fee has to be computed according to the difference between the amount awarded and the amount claimed by the Appellant. It is also held that the amount of 15 percent which is claimed as solatium is capable of arithmetical calculation and therefore separate court-fee has to be paid. The learned Single Judge has followed (Koppaka) Brahmanandam Vs. Secy. of State, and also Abdul Reheman Kunju v. State AIR 1955 Travancore 110. Both these High Courts had held in the respective cases that court-fee is leviable on 15 per cent solatium which a person claims u/s 23(2) of the Land Acquisition Act over and above the amount awarded as compensation.

These two decisions, however, were noticed by a Full Bench of the Andhra Pradesh High Court in Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, , and the Full Bench differed from the view taken by the Madras and the Travancore-Cochin High Courts mentioned above. As this is a decision of the Full Bench we would like to consider the matter at some length.

Appeal is a creation of statute and lies only when it is provided by statute. Section 54 of the Land Acquisition Act provides an appeal:

54. ... an appeal shall only lie in any proceeding under this Act to the High Court from the award of the Court and from any decree of the High Court passed on such appeal as aforesaid... to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure....

Now appeal will lie only subject to the provisions of the CPC Code. If that is so, the CPC provides appeals against decrees. It is Section 26 of the Land Acquisition Act that makes the award a decree. Sub-section (2) of this section which makes the award a decree refers to Sub-section (1) of Section 26:

26. Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of Section 23 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.

From this Sub-section it is clear that the award consists of the details given in Sub-section (1) of Section 23 It has no reference to Sub-section (2) of Section 23. Solatium is provided only in Sub-section (2) of Section 23. Therefore, if we consider the "appeal" u/s 54, it will only be against a decree ; and it can be considered to be a decree only under Sub-section (2) of Section 26 which excludes the grant of solatium. Therefore, no appeal is provided against any order on solatium.

Section 8 of the Court Fees Act on which reliance was placed, says only that:

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 acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the Appellant.

Learned Counsel for the Respondent who filed the cross-objection submitted that we have to make a distinction between "compensation" and "award". u/s 26 of the Land Acquisition Act, strictly speaking, only that part of the award is a decree which gives the amount payable under Sub-section (1) of Section 23 and its sub-clauses, The total compensation given u/s 23(1) and (2) cannot be, considered as an award. Section 8 of the Court-fees Act, however, refers to "compensation under any Act". But we should not be misled by the words "compensation under any Act", as at the end of the section the words used are:

...shall be computed according to the difference between the amount awarded and the amount claimed by the Appellant.

Therefore, it cannot be said that in case of compensation the court fee payable will be on the difference of compensation. The words "compensation" and "award" have been used without making any difference between the two. Under the Land Acquisition Act compensation is awarded. Therefore, the use of the words "compensation" and "award" will not make any difference.

As already stated, appeal is provided under the statute, that is, u/s 54 and that appeal will be under the CPC which provides appeal against a decree. u/s 26(2) of the Land Acquisition Act the decree is only that part which does not speak of solatium. It is therefore clear that solatium is not the subject-matter of appeal. There may, however, be a revision on this question as Section 115, CPC may or may not apply; but immediately we are not concerned with that.

A decision of the Calcutta High Court referred to by Newaskar J., in Ramkumar v. State (supra) has been noted on page 285 of the commentary on the Court Fees Act by M.N. Basu (Ninth edn.) which says that court-fees on statutory allowance are not leviable (F.A. No. 314 of 1917).

The Full Bench decision of the Andhra Pradesh High Court Kesireddi Appala Swamy v. Special Tahsildar (supra) has discussed the question of solatium and they are of the view, which we are now holding, that is,-

Under Land Acquisition Act, 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% 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.

We must not be understood to say that solatium is not a part of the award. But when appeal has to be filed against the award as a decree, we have to omit the portion which mentions solatium.

In this case the dispute is that solatium granted was 10 per cent and the Respondent claims that solatium should be 15 per cent, that is, 5 per cent more than what has been awarded. If court-fee is not to be paid on solatium, court-fee is not also required to be paid on the part of the cross-objection where the quantum of solatium has been disputed. We may also conceive of a case of an Appellant not challenging the award at all but going up in appeal only on the ground that solatium has been granted at a percentage less than what he is entitled to. In that event the appeal will not be entertained as no appeal would lie. He may have his other remedies. Whether the Respondent will be allowed to agitate the question of solatium at the time of the hearing of the appeal is a question we are not deciding at this stage as irrelevant for our present purpose. The only question we are concerned with now is whether the Respondent is liable to pay court-fee.

For reasons stated above we do not think the Respondent is liable to pay court-fee on the part which covers solatium. In this, we respectfully differ from the view expressed by Newaskar J. in *Ramkumar v. State* (supra) and are in agreement with the view of the Andhra Pradesh High Court expressed in the Full Bench decision already referred to.

[The Additional Government Advocate applied for review of this Order delivered on 17-12-1970. Following is the Order passed on 11-3-71 on the review petition-]

We have taken our Order dated 17-12-1970 for review at the instance of the Additional Government Advocate. The Taxing Officer gave his decision on 9-11-1970. As the Appellant did not comply with the order of the Taxing Officer the matter was placed before us on 8-12-1970 for default. It was possibly understood that if no explanation is made for the default or time is not granted for payment of deficit court-fee, the appeal would be dismissed, which could only be done by the Court. But on that date, the counsel asked for some time. The case was therefore, adjourned, to 9-12-1970.

In the meantime, it appears the Appellant had filed an application on 30-11-1970 being interlocutory application No. 1651/70. This application was not brought to our notice on 8-12-1970, when the question of default came up, but was specifically put up on 9-12-1970 and argued. On that date the argument was only whether the decision of the Taxing Officer was justified under law. The Govt. Advocate appeared on all the dates and no question was raised about the jurisdiction of the High Court to look into the decision of the Taxing Officer. We, therefore, passed an order on 17-12-1970 disagreeing with the Taxing Officer about the amount of court-fee to be paid without discussing the question of jurisdiction.

It is true that the application dated 30-11-1970 (No. 1651 /70) could not be entertained if Section 5 of the Court Fees Act is applicable. We feel that the question of jurisdiction should have been taken up. We agree with the view expressed by Bose J., in *Kalyansingh and Ors. v. Horilal and Ors.* 1936-43 Taxing

decision 57 where his Lordship has held that an order of the Taxing Officer is final u/s 5 of the Court Fees Act and is not open to appeal, revision or review. This view is also supported by the decisions in Mt. Bhagwanti Vs. Mt. Dhanwani and Others, and Santosh Kumar Ganguly and Another Vs. Registrar, Appellate Side, High Court and Another, . The last case also has considered the power under Article 227 of the Constitution and has held that the High Court has no power to interfere with the order of the Taxing Officer.

The question however, is whether in the present case we are justified in interfering with the order of the Taxing Officer. We are, therefore, to see what is the duty of a Taxing Officer and how he has been appointed. He has undoubtedly been appointed u/s 5 of the Court Fees Act by the Chief Justice and when he acts as such Taxing Officer u/s 5 of the Court Fees Act his decisions become final and the cases cited above will be fully applicable. But according to us the Deputy Registrar who has no doubt been appointed by the Chief Justice u/s 5 of the Court Fees Act could not have acted in this case as a Taxing Officer u/s 5. This section only, confers jurisdiction regarding court-fees under Chapter II only. We may therefore, quote Section 5:

When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suit of(sic) attorney, as to the necessity of paying a fee or the amount thereof, the question shall under the(sic) difference arises in any of the Said High Courts, be referred to the Taxing Officer, whose decision thereof shall be final, except when the question is, in his opinion one of general importance, in which case he shall refer it to the final decision of the Chief Justice, of such High Court or such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, Whose decision thereon shall be final, except when the question is in his opinion one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section.

Therefore, the authority and finality of his order depends on the question of court-fee under Chapter II.

Under Chapter II the relevant section for the payment of court-fee is Section 4. As that section consists of several clauses we quote below the relevant portion:

No document of any of the kinds specified in the first or second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction.

Thus, only when the question of payment of court-fee arises regarding documents of any of the kinds specified in the First or Second schedule that

Section 4 applies. We have, therefore, to refer to the First and Second schedules. In the first schedule, which is the schedule for ad valorem court-fees, we do not find any court-fee mentioned for an appeal under the Land Acquisition Act. Article 1-A speaks of the payment of court-fees for documents not otherwise provided in the Act. We quote below Article 1-A:

1-A. Plaint, written statement, pleading, a set-off, or counter claim or memorandum of appeal (not otherwise provided in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3.

Therefore, this article only applies when it is not provided under this Act, that is the Court Fees Act. Section 8 of the Court Fees Act, however, provides for appeals relating to compensation under the Land Acquisition Act, in fact, for all acquisitions of immoveable property. It says:

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 acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the Appellant.

18 We may in this connection refer to a decision of the Calcutta High Court in *Anandlal Chakrabarti v. Karnani Industrial Bank Ltd.* ILR 59 Cal. 528 This case has not dealt with the problem directly and has not considered the power of the Taxing Officer u/s 5 of the Court Fees Act, but there are certain observations regarding Section 8 about its occurrence in Chapter III of the Court Fees Act. The observations of His Lordship are that:

In an appeal from an award of the Calcutta Improvement Trust on a question of apportioning of court-fee payable on the memorandum is governed by Section 8 of the Court Fees Act and an ad valorem fee under Schedule I, Article 1 is payable.

A careful reading of this case would indicate what his Lordship was deciding was whether the court-fee chargeable would be under Article 1, Schedule I of the Court Fees Act. His Lordship did not exclude the application of Article 1, Schedule I, simply because Section 8 occurs in Chapter III. The point before us is whether Section 5 makes the order of the Taxing Officer final in view of Section 8 of the Court Fees Act. It is quite true that Section 8 is not exclusively a charging section, but while we read Section 5 of the Court Fees Act it is clear that it applies to court-fee paid under this Chapter (Chapter II). When we have to pay court-fee u/s 8 it is not paid under Chapter II. It is quite true that ad valorem court fee has to be paid, but that ad valorem court-fee is not fully in accordance with Article 1, Schedule I of the Court Fees Act; but it should be read along with Section 8 of the Court Fees Act. It, therefore, cannot be said that the court-fee payable is under Chapter II only. Let us now come to Chapter III. Then the difficulty will be about the payment of court-fee which his Lordship had felt in the Calcutta decision *Anandlal Chakrabarti v. Karnani Industrial Bank Ltd.* (supra) and

that was solved when he referred to Section 8 of the Court Fees Act. Thus, there is a Special provision by which we can utilize Article 1, Schedule I. But that does not mean that court-fee is payable under Chapter II. Whether we use Schedule I, Article 1 with the help of Section 8 of the Court Fees Act or Section 8 is used with the help of Article 1, Schedule I, it is clear that we cannot say that court-fee is payable under Chapter II. In this view of the matter, Section 5 cannot be interpreted to mean that the decision of the Taxing Officer is final.

Under Section 12 of the Court Fees Act this Court has jurisdiction to determine the amount of court-fees to be paid and, therefore, we had jurisdiction to set aside the order of "the Taxing Officer" and direct the Appellant to pay court-fees as stated above. We, therefore, do not think that our order dated 17-12-1970 directing the payment of court-fee altering the decision of the Taxing Officer was without jurisdiction.

Court fee held not payable on amount of solatium claimed in cross-objection.