(2019) 08 CAL CK 0184

In the Calcutta High Court

Case No : Civil First Appeal (FA) No. 134 Of 2019, Civil Application (CAN) No. 7201, 7184 Of 2019

Union Of India & Anr — APPELLANT

Vs

Yusuf Ali Sarkar & Ors — RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

West Bengal Court Fees Act, 1870 — Section 8
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 26(2)
Code Of Civil Procedure, 1908 — Section 2(2)
Constitution Of India, 1950 — Article 11

Citation : (2019) 08 CAL CK 0184

Hon'ble Judges : Harish Tandon, J;Abhijit Gangopadhyay, J

Bench : Division Bench

Advocate : P. S. Bose, D. K. Singh, A. K. Srivastava

Judgement

Harish Tandon, J

1. The matter is brought before us for disposal of an application for stay of the operation of the order dated 21st June, 2012 passed by Additional District & Sessions Judge, Fast Track Court, Dakshin Dinajpur at Balurghat in L.A. Case No. 316 of 2008. However, we notice that the Memorandum of appeal contains the valuation statement as 'incapable of valuation'.

2. Admittedly, the present appeal is filed by the Union of India challenging the judgment and order of the Land Acquisition Court by which the compensation awarded by the Collector was enhanced.

3. According to Mr. Bose, learned advocate appearing for the appellants, Section 8 of the West Bengal Court Fees Act, 1870 does not postulate the valuation to be put in a Memorandum of appeal provided the same is filed by acquiring/requiring body and is relatable to the claimant only.

4. Before we proceed to deal with the aforesaid point urged before us, it would

be relevant and profitable to quote Section 8 of the Court Fees Act, 1870 which runs thus:

"8. Fee on memorandum of appeal against order relating to compensation. - 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."

5. It is manifest from the aforesaid provision that the Court Fees payable on the Memorandum of appeal against an order relating to compensation under any Act for acquisition of the property for public purposes shall be computed in accordance with the difference between the amount awarded and the amount claimed by the appellant. The word 'appellant' cannot be given a restrictive meaning so as to make it applicable only to the claimants and not to the acquiring or requisitioning body.

6. The canon of interpretation of the statute does not permit such interpretation, which would render the provision unworkable or make it ambiguous. It is preposterous to suggest that the Memorandum of appeal filed by the claimant shall be valued in terms of Section 8 of the said Act and such provision cannot be made applicable in the event of an appeal filed by the acquiring and/or requiring body. The word 'appellant' has to be given a pedantic meaning to engulf both the claimants as well as the acquiring/requiring body. Any interpretation which frustrates the legislative intent should be guarded against and/or avoided. The full Bench of the Madhya Pradesh High Court delivered in case of The State of Madhya Pradesh -vs- Seth Gowardhandas reported in AIR 1993 Madhya Pradesh 70 throw some light on the said pivotal issue. There was a disagreement in the Division Bench of the said High Court on the payment of Court Fees on the Memorandum of appeal presented under the Land Acquisition Act and also the cross objection in such case. It was held therein that the award passed by the L.A. Court is a decree in view of the amended provision of Section 26 (2) of the Land Acquisition Act and, therefore, Article 11 of Schedule 2 of the Court Fees Act provides the valuation to be inserted in the Memorandum of appeal and the payment of the ad valorem Court Fees leviable thereupon. Even Section 8 of the Act was taken into consideration but the tenet of the judgment and the ratio laid down therein manifestly explained the law applicable in this regard in the following manner :

"19. As a result of the above discussion, we are of the opinion that in the matter of appeals and cross-objections relating to award of compensation under the Land Acquisition Act, the amount of court-fees has to be computed according to the difference between the amount awarded and the amount claimed by the appellant as per mandate of Sec. 8 of C.F. Act, on which Court-fees, as prescribed under Art. 1A of Schedule 1 of the C.F. Act has to be paid and not a fixed court-fees as prescribed under Art. 11, Schedule 2."

7. In a subsequent decision of the Supreme Court in case of Indore Development Authority -Vs- Tarak Singh and Others reported in AIR 1995 Supreme Court 1828, the Apex Court reiterated the ratio laid down in the Full Bench decision of the Madhya Pradesh in the following :-

"The decision of this Court in Diwan Bros. V. Central Bank of India, Bombay, 1976 (Suppl) SCR 664: (AIR 1976 SC 1503), relied on by Shri V.R. Reddy has no application to the facts in this case. Therein, the Special Tribunal was constituted and an application was to be made to the Tribunal for determination of the disputes. In view of the specific language, this Court held that the criteria prescribed under sub-section (2) of S. 2 of the C.P.C. has not been satisfied. Therefore, the order is not a decree and the application is not a plaint as required by C.P.C. Therefore, it was held that fixed Court fee was required to be paid on memorandum of appeal. But, as stated earlier, since the Act has treated the Court under the Central Act as an established Civil Court of original jurisdiction and conferred the power and jurisdiction to determine conclusively the objection regarding the measurement or compensation or title to receive the compensation between the contesting parties, it is a Civil Court under the C.P.C. and the award of the Civil Court under the C.P.C. and the award of the Civil Court is deemed under S. 26(2) to be a decree within the meaning of sub-section (2) of S. 2 of C.P.C."

8. The ratio discernible from the above referred decision leaves no ambiguity in our mind that the Memorandum of appeal against the judgment of the Land Acquisition Court has to be valued in terms of Section 8 of the said Act even when the acquiring or requiring body is the appellant and the ad valorem Court Fees is required to be paid thereupon.

9. The law has to be applied uniformly as the discrimination manifest thereupon would render such provision liable to be struck down having offending the mandate of the Constitution of India.

10. So far as the valuation of the Memorandum of appeal is concerned, there cannot be a different parameters viz. in case the appellant is the claimants and where the appellant is the acquiring or requiring body. It is a matter of valuing the claim for the purpose of attracting the Court Fees and, therefore, unless the legislature clearly exclude the acquiring or requiring body from the purview of Section 8 of the said Act without offending the provisions of the Constitution of India, the position would have been different. Since the legislature do not make any distinction be it real or artificial in valuing the Memorandum of appeal challenging the judgment and order of the Land Acquisition Court, we do not accept the contention of the appellant in this regard.

11. We, therefore, direct the appellant to put a valuation in the Memorandum of appeal in terms of the provision contained in Section 8 of the Court Fees Act, 1870 within a week from date. After the necessary amendment having done in the Memorandum of appeal, the same shall be placed before Stamp Reporter for

revised report.

