

(2005) 08 JH CK 0062

In the Jharkhand High Court

Case No : Letters Patent Appeal No's. 783 to 786, 787, 794 to 802, 804, 805 and 792 of 2004

Union of India (UOI)

APPELLANT

Vs

Maklu Mahto and Others

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 104
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 20
Land Acquisition Act, 1894 — Section 54

Citation : AIR 2006 Jhar 78 : (2006) 2 JCR 357 : 2006 BLJ 1 693 : (2006) 2 AIRJharR 383

Hon'ble Judges : Altamas Kabir, C.J.;S.J. Mukhopadhaya, J;M.Y. Eqbal, J

Bench : Full Bench

Advocate : Debi Prasad, for the Appellant; B.N. Dey, for the Respondent

Judgement

1. These matters have all been taken up for consideration together, since the question of maintainability of these appeals are common and arises out of the same set of facts.

2. These appeals arise in respect of judgments and awards passed under the provisions of the Coal Bearing Areas (Acquisition & Development) Act, 1957. The question of maintainability has been raised by the department on account of the provisions of Clause 10 of the Letters Patent, whereunder a Second Appeal from a judgment and decree passed in exercise of the appellate jurisdiction in respect of a decree or order is prohibited.

3. Appearing in support of the appeals, Mr. Debi Prasad, Senior Advocate, submitted that the provisions of the Coal Bearing Areas (Acquisition & Development) Act, 1957 were in pari materia with the provisions of the Land Acquisition Act, 1894 and that the question of maintainability of a Second Appeal in respect of an order and/or award under the Act had been held to be maintainable up to the Hon'ble Supreme Court.

4. Mr. Debi Prasad submitted that the provisions of Section 54 of the Land Acquisition Act, 1894 provided for appeals in the proceedings before the Court, and in the case of *State of Bihar v. Smt. Sharda Devi* (FB) reported in 1997(1) PLJR 155, upon consideration of the provisions of Clause 10 of the Patna High Court Rules relating to the rules under the Letters Patent, it was held that a Letters Patent Appeal, was not barred u/s 54 of the Land Acquisition Act, 1894. Mr. Debi Prasad contended that the said decision of the Full Bench of the Patna High Court was confirmed upto the Supreme Court.

5. Mr. Debi Prasad further submitted that the provisions of Section 54 of the Land Acquisition Act, 1894 were similar to the provisions of Section 20 of the Coal Bearing Areas (Acquisition & Development) Act, 1957 and contain very similar provision for appeals.

6. Mr. Debi Prasad Submitted that recently, a Division Bench of this Court had occasion to consider the maintainability of a Second Appeal under Clause 10 of the Letters Patent from the order of a learned Single Judge in respect of an Award under the provisions of the Land Acquisition Act, 1894 and on consideration of the observations made by the Hon''ble Supreme Court in *Sharda Devi's* case, which took note of the amendment introduced in the CPC by way of Section 100A, the Division Bench held that under the provisions of the Land Acquisition Act, 1894, a Second Appeal would lie in the High Court itself from the judgment and order of a learned Single Judge. Mr. Debi Prasad urged thru having regard to the settled position of law, it must beheld that these appeals were all maintainable also.

7. Appearing for the respondents, Mr. B.N. Dey, learned Advocate, on the other hand, submitted that the decision in *Sharda Devi's* case was no longer good law in view of the introduction of Section 100A in the Code of Civil Procedure, which specifically excluded Second Appeals from an order passed by a learned Single Judge in an appeal from an original or appellate decree. In support of his said submission, Mr. Dey, firstly, referred to the judgment of the Hon''ble Supreme Court in the case of *P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others*, , wherein while considering the provisions of Section 104 of the Code of Civil Procedure, the Hon''ble Supreme Court also had the occasion to refer to Section 100A, which was introduced in the Code by way of an amendment in 2002 and observed that when the Legislature wanted to exclude a Letters Patent Appeal, it specifically did so.

8. Mr. Dey submitted that when a Second Appeal under Clause 10 of the Letters Patent had been specifically excluded by operation of Section 100A of the Code of Civil Procedure, such a Second Appeal would not be maintainable.

9. Reference as also made to the decision of the Hon''ble Supreme Court in the case of *Iridium India Telecom Ltd. Vs. Motorola Inc.*, , wherein while considering various amendments to the Code of Civil Procedure, and referring to the decision of the Hon''ble Supreme Court in the case of *P.S. Sathappan* (supra) as also the

decision in the case of Vinita Khanolkar and Sharda Devi it was observed that a Letters Patent Appeal is the specific law under which the High Court derives its powers. It is not a subordinate piece of legislation. Only a specific provision, like Section 100A could exclude the special law as enunciated in the Letters Patent Appeal. Mr. Dey then referred to a Bench decision of the Patna High Court in the case of Balbhadra Singh @ Balbhadra Nr. Singh Vs. Ram Binod Singh and Others , wherein it was held that in view of the non obstante clause in Section 100A of the Code of Civil Procedure, after the amendment, even if there is no express provision limiting Letters Patent Appeals, or there is a provision of a Letters Patent Appeal, further appeal is barred from the judgment or order passed by a Single Judge in exercise of his appellate jurisdiction.

10. Apart from the aforesaid case, Mr. Dey also referred to the decision of the Hon"ble Supreme Court in the case of Municipal Corporation of Brihanmumbai and Another Vs. State Bank of India, . Mr. Dey urged that the decision in Sharda Devi's case on which reliance has been placed by Mr. Debi Prasad was no longer good law in view of the amended provisions of Section 100A of the CPC and since the Second Appeal from the order of a learned Single Judge in appeal from original order or decree was specifically excluded, the instant appeals must be held to be not maintainable.

11. We have carefully considered the submissions made on behalf of the respective parties and while Mr. Dey's submissions initially appeared to be attractive, we are unable to accept the same, since the matter has been concluded upto the Hon"ble Supreme Court after Section 100A was introduced in the Code by way of an amendment in the year 2002 and such amendment was also taken note of by the Supreme Court while deciding Sharda Devi's case (supra). A definite distinction was made with regard to Sharda Devi's case and it was observed by the Hon"ble Supreme Court that the wordings of Section 54 of the Land Acquisition Act merely refers to the forum of an appeal and the non obstante clause did not restrict the right of appeal from one Bench of the High Court to another Bench as provided in Clause 10 of the Letters Patent.

12. There is no denying the fact that the provisions of the Coal Hearing Areas (Acquisition &. Development) Act, 1957 and those of the Land Acquisition Act, 1894, Act are similar and the provisions relating to appeal are also similar. Consequently, in view of the observations made by the Hon"ble Supreme Court in Sharda Devi's case, as explained further by a Division Bench of this Court in the case of Banshi Mahto and Ors. v. Deputy Commissioner, Hazaribagh and Ors. 2005 (3) JCR 119, these appeals must be held to be maintainable.

Let these appeals be listed for admission on 9th August 2005 at the top.