

Sahadu Gangaram Bhagade

Vs

Special Deputy Collector, Ahmednagar and Another

Civil Appeal No. 2528 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

30.03.1970

JUDGMENT

HEGDE, J. -

1. This appeal by special leave appears to have been brought as a test case. It arises from one of the 116 cross-objections filed in an appeal brought by the Special Deputy Collector, Ahmednagar, to the High Court of Maharashtra, under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) (to be hereinafter referred to as the Act) against an award made by the arbitrator under Section 8 (1) of that Act. The controversy in this appeal is as to the relevant provision of the Bombay Court-Fee Act, 1959, under which the court-fee is payable on the claim made in the memorandum of cross-objection. According to the appellant on the claim in question a fixed court-fee of Rs. 5/- is payable under Article 13 of Schedule II of the Bombay Court-fee Act, 1959, but according to the State ad valorem court-fee is payable on that claim in question either under Article 1 or Article 3 of Schedule I of the Act. The High Court has come to the conclusion that on the claim made by the appellant ad valorem court-fee is payable under Article 3 of Schedule I of the Bombay Court-fee Act, 1959. The appellant challenges that conclusion.

2. Lands belonging to the appellant and several others situate in Taluka Parmar, District Ahmednagar were requisitioned on March 10, 1944. There after they were acquired on September 22, 1957, under the provisions of the Act. In respect of the said acquisition, the appellant claimed a sum of Rs. 12,173.49 P. as compensation but the Special Land Acquisition Officer offered him only Rs. 3,033.59 P. In view of this difference, the matter was referred to the arbitrator as provided in Section 8 (1) (b) of the Act. The arbitrator awarded a sum of Rs. 5,980.55 P. As against that award, the Special Deputy Collector went up in appeal to the High Court of Maharashtra. The appellant filed a cross-objection claiming an additional compensation of Rs. 3,323.93 P. On that claim he paid a fixed court-fee of Rs. 5/-. The Taxing Officer assessed the court-fee payable at Rs. 250/- and demanded the appellant to pay an additional court-fee of Rs. 245/-. The appellant's revision to the High Court dismissed. Thereafter this appeal was brought.

3. It was urged by Mr. S. V. Gupte, learned Counsel for the appellant that the High Court was in error in holding, that the court-fee in respect of the claim made by his client is payable under Article 3 of Schedule I and not under Article 13 of Schedule II of the Bombay Court-fee Act, 1959. According to him Article 3 of Schedule I applies only to plaint, application or petition (including memorandum of appeal) to set aside or modify any award made by a Civil Court. The arbitrator appointed under Section 8 of the Act is not a Civil Court; he is only a tribunal. Therefore an appeal against his order comes within Article 13 of Schedule II. The learned Counsel for the Special Deputy Collector on the other hand contended that the appropriate article under which the court-fee

is payable is either Article 3 or Article I of Schedule 7(1) of the Bombay Court-fee Act, 1959.

"Where any property is requisitioned or acquired under his Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say, -

(a) where the amount of compensation can be fixed by agreement it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as a Judge of a High Court;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to who such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-section (2) and (3), so far as they are applicable;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940, shall apply to arbitration under this section."

Section 9 says :

"The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award."

Section 11 provides for an appeal to the High Court against the award made by the arbitrator. In the Act there is no provision similar to sub-section (2) of Section 26 of the Land Acquisition Act, 1894, where under every award made by the Lands Acquisition Officer is to be deemed to be a decree of Court. Therefore the question whether the award made under Section 8 of the Act is executable or not is matter that requires further consideration. For the present, we shall proceed on the basis that it is not executable. But Section 9 of the Act requires the competent authority to pay the compensation awarded to the person or persons entitled thereto. Therefore we are unable to accept the contention of the learned Counsel for the appellant that the award made by the arbitrator is something which

has no effect and therefore it cannot be considered as an order. It is true that it is not an 'order' as defined in the Civil Procedure Code, the same having not been made by a Civil Court. But the expression 'order' is not defined in the Act. The award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. Therefore the question whether the order in question is executable or not appears to us to be irrelevant for the purpose of determining the point in issue.

4. Section 5(1) of the Bombay Court-Fee Act, 1959, provides that no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Section 7(1) of that Act provides :

"7 (1). The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act of 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. This provision is similar to Section 8 of the Court-Fee Act, 1870. It clearly applies to an appeal filed under Section 11 of the Act. It is true that provision is not a charging section. It only provides for the computation of the court-fee payable. But that provision makes it clear that it relates to the computation of a court-fee payable on ad valorem basis. It can have no connection with any article providing for the payment of fixed court-fee. Therefore the computation provided under that provision can only be of a court-fee payable under one or the other article in Schedule I. Dealing with the scope of Section 8 of the Court-Fee Act, 1870, Rankin, C.J., in *Anandalal Chakrabarti* ((1931) ILR 59 Cal 528), observed :

"Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases, which it deals with, the amount of fee payable under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an ad valorem charge and is not a fixed charge :

..... The provisions of Section 8, involving as they do that fee in the class of cases dealt with is an ad valorem fee, are themselves sufficient to exclude any question of Article 11 of Schedule II being made applicable to such cases. It is not necessary to consider whether the Tribunal's award, which is an order and not a decree, is an order having the force of a decree. Whatever the effect of that phrase may be, Section 8 shows one perfectly clear that an appeal regarding compensation in a land acquisition case is under Article II of Schedule II, because it is not a fixed fee at all"

6. We see no force in the contention that before Section 7 (1) of the Bombay Court-fee Act, 1959, can be attracted to an appeal, the order under appeal must have the force of a decree. That section does not say so. It would not, therefore, be proper on our part to add the words "having the force of a decree" after the word 'order' in Section 7 (1). In fact that section is so plain as not to require any interpretation. In that view it is not necessary for us to consider any of the

articles in Schedule II of the Bombay Court-fee Act, 1959. All that we have to see is under which article of Schedule I, the court-fee is payable. For the appellant it matters little whether he is asked to pay court-fee either under Article 1 or Article 3 of Schedule I, the court-fee payable under both the articles being the same. We are in agreement with the High Court that Article 3 of Schedule I is the relevant article. That article provides for the payment of ad valorem court-fee at the rates prescribed in Article 1 of Schedule I on appeal petitions.

7. The learned Counsel for the appellant urged that Article 3 of Schedule I of the Bombay Court-fee Act, 1959 is inapplicable because that Article refers to "plaint, application or petition (including memorandum of appeal), to set aside or modify any award otherwise than under the Arbitration Act, 1940".

8. Before Article 3 of Schedule I can be attracted, there must be (1) a plaint, application or petition (including memorandum of appeal); (2) in that plaint, application or petition (including memorandum of appeal), there must be a prayer to set aside or modify any award; and (3) the award in question must not be one under the Arbitration Act, 1940. There is no dispute that the proceedings with which we are concerned in this case fulfill two out of the three requirements enumerated above. The award concerned in the proceedings is not one made under the arbitration Act, 1940 and through his cross-objection the appellant seeks to get the award modified. The only point in controversy is whether the cross-objection filed by the appellant can be considered as "application or petition" within the meaning of Article 3 of Schedule I. The words in the bracket "including memorandum of appeal" in our opinion refer to the word 'petition' immediately preceding those words. In other words the word 'petition' includes the memorandum of appeal as well. The question is whether a cross-objection filed by a respondent in an appeal can be considered as a memorandum of appeal. We have no doubt that it is a memorandum of appeal in substance though not in form. It is a right given to a respondent in an appeal to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross-objection is but one form of appeal. It takes the place of a cross-appeal. It is true that while Article 1 of Schedule I refers to 'cross-objection', Article 3 of that Schedule does not refer to cross-objection as such but that in our opinion make no difference. It is only an inartistic drafting.

9. For the reasons mentioned above, we think that the decision of the High Court in *The Chatusshakhiya Brahmavrinदा Gayaran Trust v. Union of India* (70 BLR 407) is correct. In this view, it is not necessary for us to consider the correctness of the decision of the Punjab High Court in *Shri Kanwar Jagat Bahadur Singh v. The Punjab State*. ((1957) ILR Punj 142)

10. In the result this appeal fails and the same is dismissed - No costs.

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