

Niadar and Others

Vs

State of Haryana and Another

D. Nos. 3490, 3673, 3674, 3689-3699, 3700-3703, 4168 and 4169 of 1989

(R. M. Sahal, A. M. Ahmadi, Ranganath Misra JJ)

25.01.1991

ORDER

1. These petitions were filed as appeals under Section 54 of the Land Acquisition Act. Since they were not accompanied by any certificate from the High Court that they raised substantial questions of law which were fit to be decided by this Court, the Registry of this Court has sought direction as to whether they should be treated as appeals under the aforesaid section or as special leave petitions under Article 136 of the Constitution of India.

2. Section 54 of the Land Acquisition Act is extracted below :

"54. Appeals in proceedings before court. - Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

It has stood in this form since 1921 except that the expression, 'His Majesty in Council' was substituted, in 1950 with words 'the Supreme Court'. Prior to 1921, there was no right to appeal to the Privy Council. The section was amended by Section 3 of the Land Acquisition (Amendment) Act 19 of 1921 as it was held by the Privy Council that in the absence of any provision in the Act no appeal against the decree of the High Court under the Land Acquisition Act could be entertained. But the amendment while permitting an appeal made it subject to the provisions of Section 110 and Order 45 of the Civil Procedure Code. The substantive right of appeal conferred by Section 54 was thus circumscribed and it could only be entertained either if the valuation of the subject matter was as specified or the question of law raised was substantial. In 1950, when the Supreme Court was set up under the Constitution, its original, constitutional, appellate and special jurisdictions were spelt out in Articles 131 to 136. The appellate jurisdiction arising out of civil proceedings was provided by Article 133. Originally it provided for an appeal as a matter of right if the subject matter of dispute was not less than the specified amount or the High Court certified it to be fit case for being decided by this Court. In 1973, the article was amended and the jurisdiction to entertain an appeal arising out of civil proceedings became confined to grant of certificate by the High Court that the case involved a substantial question of law and that in the opinion of the High Court the said question needed to be decided by this Court. In keeping with this amendment Section 110 of the Civil Procedure Code which provided for an appeal on valuation of the subject matter to Supreme

Court was omitted in 1976. Order 45 which provided for appeals to the Privy Council before 1950 and to the Supreme Court thereafter was also amended in 1976. Its Rules 2 and 3 which are relevant are extracted below :

"2. Application to court whose decree complained of. - (1) Whoever desires to appeal to the Supreme Court shall apply by petition to the court whose decree is complained of.

(2) Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the court under sub-rule (1).

3. Certificate as to value or fitness. - (1) Every petition shall state the grounds of appeal and pray for a certificate -

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the court the said question needs to be decided by the Supreme Court.

(2) Upon receipt of such petition, the court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted."

These rules require a person desiring to approach this Court to move first the High Court by a petition, from whose decree, appeal is sought, stating the substantial question of law which needs to be decided by this Court. The court thereafter is required to certify if the requirements of sub-clauses (i) and (ii) of sub-rule (1) of Rule 3 of Order 45 were satisfied.

3. It is thus clear that an appeal under Section 54 of the Land Acquisition Act would lie to this Court only on a certificate granted by the High Court in terms provided in Order 45. Since, admittedly, the petitioner did not approach the High Court as required by Section 54 of the Land Acquisition Act read with Order 45 of the Civil Procedure Code, the matters cannot be registered under Section 54. The Registry is directed to register these appeals as special leave petitions under Article 136 and place them for preliminary hearing before a suitable bench.

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