

SUPREME COURT OF INDIA

U.P. Avas Evam Vikas Parishad

Vs.

Sheo Narain Kushwaha & Ors.

C.A.No.3615/2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

25.04.2011

ORDER

SLP (Civil)No.5950 of 2006

R.V. Raveendran.J,

1. Leave granted. Heard.

2. The appellant, for whose benefit certain lands (including the land of respondents) at village Daulatpur, District Kanpur were acquired, filed an appeal before the Allahabad High Court challenging the judgment of the Reference Court which increased the compensation for the acquired land of respondents from Rs.10,250/- per bigha to Rs.1,10,250/- per bigha. The said appeal has been dismissed summarily by a division bench of the Allahabad High Court, by the impugned non-speaking order dated 20.12.2005 upholding the award of Rs.1,10,250/- per bigha as compensation. The High Court has stated that it was doing so, in exercise of the power under Order 41 Rule 11 of the Code of Civil Procedure ('Code' for short). The said order is challenged in this appeal by special leave.

3. The appeal in question was filed under section 54 of the Land Acquisition Act, 1894 (for short 'LA Act') which provides that an appeal shall lie in any proceedings under that Act, to the High Court from the award of the Reference Court, subject to the provisions of the Code of Civil Procedure, applicable to appeals from original decrees. An appeal is a proceeding where a higher forum reconsiders the decision of a lower forum, on questions of fact and/or questions of law, with power to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision. In Hari Shanker vs. Rao Girdhari Lal Chowdhury (AIR 1963 SC 698) this court held :

"....A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure."

4. Section 96 of the Code provides that save where otherwise expressly provided in the body of the Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court. Order 41 of the Code regulates appeals from original decrees. Rule 11 of Order 41 relates to power to dismiss appeals without sending notice to lower court and sub-rules (1) and (4) thereof, relevant for our purpose, are extracted below :

"11. Power to dismiss appeal without sending notice to Lower Court.-

(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal.

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(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment."

5. It is evident from sub-rule (1) that an appellate court can dismiss an appeal after a preliminary hearing without calling for the records of the trial court and without issuing notice to the respondent, if it is satisfied that the appeal has no merit. Sub-rule (1) does not however state that such dismissal can be without assigning any reasons.

6. Sub-rule (4) provides that where the appellate court, not being the High Court, dismisses an appeal under sub- rule (1), it shall deliver a judgment recording in brief, its grounds for doing so. Sub-rule (4) by implication therefore provides that if the appellate court is the High Court, and it chooses to dismiss a first appeal at the stage of preliminary hearing, without issuing notice to the respondent and without calling for records, it need not deliver a formal brief judgment as is required by other appellate fora. A `judgment', even a brief one, which is required to be rendered by appellate courts other than High Courts, should necessarily refer to the pleadings, nature of relief, the points for consideration and the decision thereon. But sub-rule (4) does not say that if the appellate court which dismisses the appeal is the High Court, no reasons be assigned for dismissing the appeal. Sub-Rule (4) of Rule 11 does not enable the High Court to dismiss first appeals by one line orders to the effect that `appeal is dismissed' or by non-speaking orders. The order of the High Court dismissing the first appeal should be sufficiently reasoned to disclose the application of mind to the grounds of appeal and make out that the High Court was resorting to dismissal in limine as it found the appeal either to be vexatious or wholly without merit. Order 41 Rule 11 of the Code, while relieving the High Court from the obligation to write a `judgment', does not dispense with the obligation to assign reasons in brief, when summarily dismissing the appeal.

7. Unless the order is reasoned, there will be no way of knowing whether the appellate court has examined the appeal before deciding that it did not deserve admission. As a limited right to appeal to Supreme Court is available against the appellate judgments of the High Court, unless there are reasons in the order of dismissal, it will not be possible for the Supreme

Court to examine whether the High Court has rightly rejected the appeal. The appellant who has filed the first appeal in pursuance of a statutory right to file such appeal, paying necessary court fee, can legitimately expect reappraisal of the evidence and re-determination of the questions raised, unless the statute providing for the appeal provides otherwise.

8. This court has repeatedly pointed out that any dismissal of an first appeal even at the preliminary hearing stage, should be supported by brief reasons. In *Kiranmal Zumerlal Borana Marwadi vs. Dnyanoba Bajirao Khot*¹- this court observed :

"As numerous points both of law and facts appear to have been raised in the appeal, which again were sought to be canvassed before us, in fairness to the parties and to us, some reasons ought to have appeared in the judgment indicating what appealed to the High Court to be in entire agreement with the learned trial Judge. Let it be remembered that it was the first appeal against the decision of the trial Court and therein the appellant can and has raised serious questions of law and disputed decision on facts. We, therefore, think that this is pre-eminently a fit case which ought to have been admitted and disposed of on merits."

In *Jayanmti De vs. Abani Kanta Barat*² -this Court observed thus :

"We are not satisfied that the High Court has considered the appeal on merits. Even if the dismissal is under Order 41 Rule 11 and the High Court is not required under Sub-rule (4) to record in brief its grounds for doing so, it is not a carte blanche to enable the appellate court to avoid recording any reason whatsoever. We think that the appeal required consideration on merits. We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal of the same on merits and in accordance with law by stating the reasons."

9. Under section 54 of the LA Act, a party aggrieved by the award of the Reference Court is entitled to file an appeal against the award of the Reference Court as of right. Such appeals which mostly relate to the correctness of the quantum of compensation or apportionment, raise both questions of facts as well as questions of law. The provisions of Order 41 of the Code are made applicable to such appeals. The High Court, should therefore, if it wants to dismiss an appeal summarily without issuing notice, assign brief reasons, though not required to render a 'brief judgment'. Subject to the requirements and limitations placed by the statute providing for the appeals, appeals may be disposed of summarily, where so provided. 'Summary decision' refers to a decision which is short and quick and not elaborate. But it does not mean 'non-reasoned dismissal', as any order appealable in law has to be reasoned. A dismissal in limine refers to dismissal at the outset. Summary dismissal or dismissal in limine does not refer to a dismissal without assigning reasons.

10. In this case the Land Acquisition Collector has awarded Rs.10,250 per bigha. The Reference Court awarded Rs.1,10,250 per bigha. The Reference Court stated that one bigha is equivalent to 2250 sq.yds. and it was awarding Rs.45/- per sq.yd. On that basis, that is at

the rate of Rs.45 per sq.yd. the price of a bigha comprising 2225 sq.yds. would be Rs.1,01,250 and not Rs.1,10,250. Thus even without a detailed examination, there is an error apparent on the face of the award of the Reference Court. The other grounds raised by the appellant also deserved examination and consideration, particularly having regard to the fact that several other appeals relating to the same notification, against similar fixation of market value by the Reference Court were already admitted by the High Court and pending consideration.

11. We may refer to another unconnected but relevant aspect relating to the use of locally prevalent units of measurement. A `bigha' as a unit of measurement varies in extent in different parts of India. The Advanced Law Lexicon (P. Ramanatha Iyer: 3rd Edition, Vol.1; page 528) states that in upper India, one bigha refers to 3025 sq.yd. of land, whereas in Bengal, it is equal to 1600 sq.yd. We are informed in Delhi and Punjab, a Bigha equals 1008 sq.yd. The Reference Court states that a bigha is equal to 2250 sq.yds. In public documents, deeds of conveyance and judicial orders, it is advisable to use units of measurement which have the same meaning in all parts of the country. For example, the term `gunta' is prevalently used to refer to one-fortieth of an acre in Maharashtra, Karnataka and Andhra Pradesh. But the word refers to the same extent of measurement in all states. On the other hand, a word like `Bigha', describing a unit of measurement which refers to different extents in different states, or different parts of the same state, should be avoided. Description by standard units of measurement will be the solution. Be that as it may.

12. We are of the view that the appeal filed by the appellant raised sufficient grounds which require to be dealt with and decided by the High Court on merits. We therefore allow this appeal, set aside the judgment of the High Court and remand the matter to the High Court for disposal of the appeal on merits.

Judgment Referred.

¹(1983) 4 SCC 0223

²AIR 2000 SC 3578