

CALCUTTA HIGH COURT

Satya Charan Sur

Vs.

State of W.B

Reference under Court-fees Act in F.A.T. No. 1775 of 1956

(B.N. Banerjee, J.)

24.06.1958

ORDER

B.N. Banerjee, J.

1. This is a reference under Section 5 of the Court-fees Act.
2. The Registrar of the Appellate Side of this Court, as the Taxing Officer, referred two questions for consideration, on the ground that they were matters of general importance, viz., :-
 - "I. If the question, whether acquisition was made for public purposes or not should be gone into, in computing Court fees under Section 8 Court fees Act, in at appeal against an order of the Arbitrator appointed under Act XXX of 1952.
 - II. Whether fixed Court-fee is payable under Schedule II, Article 11 of the Court-fees Act in an appeal against the order of the Arbitrator, in view of the Bombay decision reported in *Hirji Virji Jangbari v. Govt., of Bombay*¹."
3. The circumstances giving rise to the above two questions may be summarised as herein below:
4. Two plots of land were requisitioned for military purposes under sub-rule (1) of Rule 75A of the Defence of India Rules. On the expiry of the Defence of India Act, 1939 the lands in dispute continued to remain under requisition, at first under the provisions of the Requisitioned Land (Continuance of Powers) Ordinance 1946, (Ordinance XIX of 1946) and thereafter under the Requisitioned Land (Continuance of Powers) Act, 1947 (Act XVII of 1947).
5. Under Section 5 of the Requisitioned Land (Continuance of Powers) Act 1947, power was given to the appropriate Government to acquire requisitioned land under certain circumstances. The material portions of Section 5 of the said Act (Act XVII of 1947) are quoted herein below :-

¹ AIR 1945 Bom 348

"5 (1). Subject to the provisions of Sub-Section (3) the appropriate Government may, at

any time when any requisitioned land continues to be subject to requisition under Section 3, acquires such land by publishing in the Official Gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section.

(2) * *

(3) No requisitioned land shall be acquired under this section except in the following circumstances, namely :-

(a) where any works have during the period of requisition been constructed on, in or over the land wholly or partly at the expense of Government and the appropriate Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government; or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination of the appropriate Government, be excessive having regard to the value of the land at that time and the owner declines to accept the release from requisition of the land without payment of compensation from Government.

(4) Any decision or determination of the appropriate Government under Sub-Section (3) shall be final and shall not be called in question in any Court."

6. In exercise of the powers conferred on it under Section 5 of the aforesaid Act, the Government of India decided to acquire the plots of land in dispute, along with other plots of land and caused publication of a notice, under Section 5(1) of the said Act, dated February 18, 1949, in the Calcutta Gazette of the date March 3, 1949.

7. The Requisitioned Land (Continuance of Powers) Act, 1947 was repealed by the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act XXX of 1952). Under Section 7 of the latter Act power was given to the Central Government to acquire requisitioned property for a public purpose. The material portions of Section 7 of Act XXX of 1952 are quoted below : -

"7 (1). Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the property in pursuance of this section :
Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in, such property to show cause why the property should not be acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end.

(3) * *

(4) Any decision or determination of the Central Government under Sub-Section (3) shall be final and shall not be called in question in any Court."

8. Section 24 of Act XXX of 1952 is the repealing section and repealed amongst other Acts, as already stated, the Requisitioned Land (Continuance of Powers) Act, 1947. Section 24 proviso (b) of the said Act is to the following effect :

"Anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under either of the said Acts or the said Ordinance shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing was done or action was taken."

9. The compensation payable for the disputed lands, acquired as aforesaid, could not be settled by agreement. Thereupon, the matter was referred to an Arbitrator appointed by the Central Government, under Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952. By an order made on August 25, 1956, the Arbitrator awarded a sum of Rs. 4378-15-6 as the balance of compensation payable, together with interest, after taking into consideration certain sums already paid to the claimant appellant.

10. Dissatisfied with, the award of compensation, the claimant appellant preferred an appeal to this Court and valued the claim at Rs. 25,000/-. But court-fee stamps of the value of Rs. 5/- only were affixed on the memorandum of appeal.

11. Ground No. 23 of the Memorandum of Appeal is as follows :-

"For that the Arbitrator ought to have allowed the compensation as prayed for in the petition of the claimant to the extent of Rs. 29,275/- as shown item by item therein."

12. The Stamp Reporter was not prepared to accept a fixed court-fee of Rs. 5/-, as paid by the claimant appellant, but called upon the appellant to pay ad valorem court-fee on the difference between the amount of the award and the amount claimed by the appellant, namely, court-fees amounting to Rs. 1350/-.

13. The appellant disputed this demand by the Stamp Reporter. Thereupon, the matter was placed before the Registrar, Appellate Side, as the Taxing Officer for orders. Before the Taxing Officer the appellant filed a written statement and the stand taken by the appellant may be briefly summarized as herein below :-

(a) "Section 8 of the Court-fees Act is not attracted to the present case as the acquisition of the lands in question was not for public purposes. The acquisition was made for the alleged Kalyani Project. This project was obviously for acquiring lands at a lesser price, developing and parceling the same out into different plots and selling them plot by plot in

the market to the intending purchasers at a higher price. It was and is merely a commercial enterprise on the part of the Government and such enterprise cannot be said to be for any public purpose within the meaning of Section 8 of the Court-fees Act. Computation of Court-fees in this particular case cannot therefore be made according to the principle laid down therein.

(b) The appeal is against an award of an Arbitrator appointed under the relevant Statute (Act XXX of 1952). The award is not a decree and the Arbitrator is not a Court. The award is that of the Arbitrator, who is merely a *persona designata* under a particular Act and his Award is not a decree, nor is it an order having the force of a decree. Accordingly the appeal is governed by Article 11, Schedule 11 of the Court-fees Act and a fixed court-fee of Rs. 5/- is payable."

14. The Taxing Officer, although himself of the opinion that *ad valorem* Court-fee was payable, on the difference between the claim and the award, considered the two arguments advanced by Mr. Mitter on behalf of the appellant, as questions of general importance and made a reference under Section 5 of the Court-fees Act.

15. At the hearing of the reference Mr. Mitter advanced the same two-pronged argument before me, as hereinbefore indicated.

16. Elaborating the first branch of the contention, Mr. Mitter, learned Counsel for the appellant, argued that whether a particular acquisition of property was or was not for public purpose was a justiciable issue. Generally speaking that is so and it has been so held by the Supreme Court in three recent decisions, namely, in the case of *State of Bombay v. Bhanji Munji*², *State of Bombay v. Ali Gulshan*³,; and *State of Bombay v. R.S. Nanji*⁴ But the question in this case is not whether public purpose is at all justiciable but whether such a question can be gone into by a Taxing Officer in the matter of computation of court-fees, payable on a Memorandum of Appeal against an award under Act XXX of 1952.

17. In my opinion, such a question should not be considered in the aforesaid context. An acquisition under the Requisitioned Land (Continuance of Powers) Act, 1947 can only be made for the purposes of Government or where the appropriate Government considers that the cost of restoration of the requisitioned land could be excessive. State purposes, Union purposes and Government purposes must be treated as public purposes. There can be no real government purpose, unless the purpose benefits the members of the community at large who are governed by that Government. What is more, under the Requisitioning and Acquisition of Immovable Property Act, acquisition can be made only for public purposes and anything done or any action taken, including any order, notification or order made or issued, in exercise of the powers conferred by or under the Requisitioned Land (Continuance of Powers) Act, 1947 amongst other Acts named in Section 24 of the Requisitioning and Acquisition of Immovable Property Act, shall be deemed to have been done or taken in exercise of the powers conferred by the Requisitioning and Acquisition of Immovable Property Act. Therefore acquisition proceedings started under the Requisitioned Land (Continuance of Powers) Act must be treated as acquisition for public purposes, under the provisions of the Requisitioning and Acquisition of Immovable Property Act. Both the Requisitioned Land (Continuance of

Powers) Act, 1947 and the Requisitioning and Acquisition of Immovable Property Act of 1952 provided that any decision or determination by the appropriate Government to acquire shall be final and shall not be called into question in any Court.

18. That being so, a Stamp Reporter or a Taxing Officer, whose duty is to determine proper court-fees payable on the Memorandum of Appeal, challenging the compensation awarded need not go into the question whether the acquisition itself was for a public purpose. To determine such a question would entail going into questions, such as, that the apparent purpose was not the real purpose or that the purpose which the Govt. thought to be one as benefiting the community at large was not to be regarded or treated as such or that a fraud must be deemed to have been perpetrated on the statute in making, under the garb of public purpose, acquisition of property really for private purpose.

19. These are not matters relevant for determination of court-fee payable on a Memorandum of appeal against an award for payment of compensation under Act XXX of 1952, because they go to the merits of the appeal and also to the root of the acquisition itself.

20. There is another aspect of the matter which may be considered in this connection. An appeal against the quantum of compensation, payable under an award, proceeds on the basis that the acquisition was a valid acquisition, namely, an acquisition for public purpose and that the only question involved in such an appeal was assessment of just compensation for the property validly acquired. That being so, the question, of the nature raised in the first branch of the argument of Mr. Mitter, is absolutely irrelevant in the present context and should not be gone into. The appeal proceeds only on the footing that the acquisition was a valid acquisition according to law, for a public purpose and the appellant had a right to be paid just compensation therefor.

21. I now turn to the second branch of the argument advanced by Mr. Mitter. In support of the second branch of the argument Mr. Mitter strongly relied on the decision in AIR 1945 Bombay 348. It is necessary for me to refer to that case in some detail. In the aforesaid case, under the provisions of Rule 75A, Defence of India Rules, 1939, Plot No. 113 in the Sion-Matunga Estate belonging to the appellant was acquired by Government for and on behalf of the Defence Authorities. As no agreement could be arrived at between the claimant and the Government with regard to the amount of compensation payable, the Government of Bombay appointed Mr. M.S. Noronha, Chief Judge of the Court of Small Causes, Bombay, as Arbitrator under Section 19(1)(b), Defence of India Act, 1939, to determine the amount of compensation payable to the claimant. The Arbitrator fixed the amount claimed payable to him at Rs. 45,855/-. The claimant being dissatisfied with this amount filed an appeal in which he claimed a further sum of Rs. 47,896-8 in addition to the amount awarded to him by the Arbitrator. Dispute arose as to the court-fees payable on the Memorandum of Appeal and a reference under Section 5 of the Court-fees Act was made by the Registrar. I quote below the relevant extracts from the judgment of N.J. Wadia, J. in the aforesaid reference :-

(a) "The question referred to for my decision is whether the appellant should pay ad valorem court-fee on the Memorandum of Appeal on the additional sum of Rs. 47,890/8/- claimed by him, or whether he is liable to pay only fixed court-fee as contended by him

under Article 11 of Schedule 2, Court-fees Act. Mr. Patwardhan who appeal's for the Government of Bombay contends that the appellant is liable to pay ad valorem court-fee under the provisions of Section 8, Court-fees Act.....

..... It is contended by Mr. Mahimtura who appears for the claimant that the appeal falls under Article 11 of Schedule 2, Court-fees Act, which provides that a fixed court-fee should be paid on a Memorandum, of Appeal when the appeal is not from a decree or an order having the force of a decree."

(b) "The order of the Arbitrator in this case is not a decree, nor is it an order, having the force of a decree, there being no provision in Section 19, Defence of India Act, or in the rules made thereunder, corresponding to Section 26, Land Acquisition Act, by which awards made under the Act are deemed to be decrees. Mr. Patwardhan concedes this and admits that though under Rule 9 of the Rules framed under Section 19, Sub-Sections (2) and (3). Defence of India Act the award of the Arbitrator is final and binding on the parties concerned, it cannot be executed as a decree or order of a Civil Court and the only way in which it can be enforced is by a suit. He contends, however, that even though the award is not a decree, or an order having the force of a decree, it is nevertheless an order within the meaning of Section 8, Court-fees Act. In support of his contention he relies upon a decision of the Calcutta High Court in Anandalal Chakrabutty In re, ILR 59 Cal 528 : AIR 1932 Calcutta 346. In that case in a reference made under Section 5, Court-fees Act, Rankin, C.J. held that in an appeal from an award of the Calcutta Improvement Tribunal, on a question of apportionment of compensation, the court-fee payable on the Memorandum of Appeal is governed by Section 8 of the Court-fees Act and an ad valorem court-fee under Article 1 of Schedule 1 is payable. It was argued in that case, as it has been argued before me, that the award of the Tribunal was not a decree and that the appeal against the award was an appeal from an order which had not got the force of a decree and the appellant was therefore liable only to pay fixed court-fee under Article 11 of Schedule 2, Court-fees Act. That contention was overruled. Reliance is also placed on the decision in *Debi Din v. Secy. of State*⁵, That was also a reference under Section 5, Court-fees Act and the question was whether in an appeal against an award by a tribunal under U.P. Town Improvement Act of 1919 ad valorem court-fee was payable under Section 8, Court-fees Act, on the difference between the amount awarded and the amount claimed by the appellant, or whether fixed court-fee was payable under Article 17(iv) of Schedule 2. It was held that ad valorem court-fee was payable under Section 8.

It is to be noted however that both in the Calcutta Improvement Act (5 of 1911), under which the award in ILR 59 Cal 528 : AIR 1932 Calcutta 346, had been made and in the U.P. Town Improvement Act of 1919, under which the award in ILR (1939) All 142 : AIR 1939 Allahabad 127, had been made there are express provisions that the Tribunals making the awards are to be deemed to be Courts under the Land Acquisition Act. Section 69 Calcutta Improvement Act, of 1911 provides that the Board may acquire land under the provisions of the Land Acquisition Act for carrying out any of the purposes of the Act. Section 70 provides that a Tribunal should be constituted for the purpose of performing the functions of the Court in reference to the

acquisition of land for the Board under the Land Acquisition Act; and Section 71 provides that for the purpose of acquiring

⁵ ILR (1939) All 142 : AIR 1939 All 127

land under the Act for the Board the Tribunal shall be deemed to be the Court and the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act and shall be final. Sections 56, 57 and 58, U.P. Town Improvement Act of 1919, contain similar provisions by which the Tribunal acquiring land under the Land Acquisition Act is deemed to be the Court for the purpose of the Land Acquisition Act and the award of the Tribunal is deemed to be the award of the Court under the Land Acquisition Act. There is no provision in Section 19, Defense of India Act and in the rules made thereunder, by which the award of the arbitrator can be deemed to be an award of the Court under the Land Acquisition Act. Both these cases are therefore distinguishable from the present case. Since the award in each of those cases, though not a decree, was to be treated as an award of a Court, it was an "order" as defined in Section 2, Sub-Section (14), Civil Procedure Code, namely, the formal expression of a decision of a Civil Court which is not a decree. The award of the arbitrator in the present case cannot be regarded as an "order" within the meaning of Section 8, Court-fees Act. The Court-fees Act itself does not define the word "order" for the purposes of Section 8, and, in the absence of such definition, the word must be taken to mean an order as defined in Section 2(14), Civil Procedure Code. In ILR (1939) All 142 : AIR 1939 Allahabad 127, the word "order" in Section 8, Court-fees Act was taken to mean an "order" as defined in the Code of Civil Procedure and it was on this ground that Benntit, J. held that an appeal from the order would be governed by Section 8, Court-fees Act, since the Tribunal under the U.P. Town Improvement Act was, under the provisions of that Act, deemed to be a Court. The award of the arbitrator in the present case is not an order of this kind since the arbitrator under Section 19, Defense of India Act, is not a Court. Section 8, Court-fees Act, is not itself a charging section. It merely provides a rule for computing ad valorem fee payable under the Act in certain classes of cases on the assumption that under some other provision of the Act an ad valorem fee and not a fixed fee is chargeable."

22. With very great respect, I dissent from the judgment of Wadia, J. Section 8 of the Court-fees Act does not use the expression "order" simpliciter but uses the expression "order relating to compensation 'under any Act' for the time being in force". (Underlined (here in") by myself). That being so, there is no reason why the expression "order" in Section 8 of the Court-fees Act must be treated as an order under Section 2(14), Civil Procedure Code.

23. It is true that Arbitrators appointed under Section 7 of the Requisitioning and Acquisition of Immovable Property Act do not sit as courts in the same sense as Tribunals do under the Calcutta Improvement Act or the U.P. Town Improvement Act. But the status of an Arbitrator is not of any relevancy. The real question is whether an award by an Arbitrator made under Section 7 of the Requisitioning and Acquisition of Immovable Property Act is an "order relating to compensation." In my opinion, an award made under Section 7 of the Requisitioning and Acquisition of Immovable Property Act is not a mere expression of opinion. It is an order directing the competent authority, under Section 2(b) of the Act, to pay to the person, found entitled to the compensation, a particular sum of money in such manner and within such period as may be specified in the order. Section 9, dealing with payment of money, makes the position clear and I quote the said section herein below :

"Section 9 :- 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."

The persons named in the award in such manner and within such time as the award may direct. (Sic.) It is the aforesaid characteristic that makes an award basically an order of binding force.

24. In the above view of the matter I hold that an award under Section 7 of the Requisitioning and Acquisition of Immovable Property Act is an order within the meaning of Section 8 of the Court-fees Act, although it may not be a decree or an order having the force of a decree.

25. In dealing with an award given by an Arbitrator under Section 19 of the Defense of India Act, 1939, Lodge, J. held in a case reported in *Sohan Lal Bahety v. Province of Bengal*⁶, that

"an award given by an arbitrator under Section 19 of the Defense of India Act, 1939 is neither a decree nor an order having the force of a decree Rules 6 and 20 of the Defense of India Rules notwithstanding; but Section 8 of the Court-fees Act is applicable to such an award and in an appeal against such an award court-fee under Schedule 1 of Article 1 of the Act was payable on the difference of the amount awarded by the Arbitrator and that claimed by the appellant."

26. I respectfully agree with the aforesaid decision and the reasons given in the said decision.

27. I, therefore, answer both the points, referred by the Taxing Officer under Section 5 of the Court-fees Act, in the negative and hold that an award made under Section 7 of the Requisitioning and Acquisition of Immovable Property Act is an order within the meaning of Section 8 of the Court-fees Act and in an appeal against such an award court-fee under Schedule 1 Article 1 of the Court-fees Act is payable on the difference of the amount awarded by the Arbitrator and that claimed by the appellant.

Answers in the negative.

⁶50 Cal WN 820 : (AIR 1946 Cal 524)