KARNATAKA HIGH COURT

Ghouse Saheb

Vs.

Sharifa Bi

Misc. First Appeal No. Nil

(D.S. Tewatia and K. Jagannatha Shetty, JJ.)

29.06.1977

JUDGEMENT

K. Jagannatha Shetty, J.

1. This appeal is directed against the judgment and decree of the Civil Judge, Bellary made in Land Acquisition Case No. 86 of 1972 on a reference made under Section 31 (2) of the said Act.

2. The appellant has paid a fixed court-fee of Rs. 10 under Article 3 (iii) (1) (a) of Schedule II of the Karnataka Court-Fees and Suits Valuation Act, 1958 (shortly called "the Court-Fees Act"). The office has refused to register the appeal on the ground that the court-fee paid was insufficient and the appellant ought to have paid court-fee under Section 48 read with Article 1 of Schedule I of the Court-Fees Act. The appellant on the other hand, contended that the matter involved in the appeal being limited only to the apportionment of the compensation awarded, Section 48 has no application.

3. The decision on these contentions turns on the scope of Sections 48 and 49 of the Court-Fees Act and the scheme provided there under. It will be, therefore, convenient to refer to the relevant provisions of the Court-Fees Act. Section 4 which is a charging section, provides levy of fee on documents in courts and public offices. Section 20 provides how fee payable under the Court-Fees Act shall be determined or computed. It states that such determination shall be in accordance with the provisions of Chapter IV, Chapter VI, Chapter VIII and Schedules I and II. Sections 21 to 47 falling under Chapter IV deal with different kinds of suits and provide the manner of computation of fees. Sections 50 and 51 provide for valuation of suits not otherwise provided for in the said section. Sections 48 and 49 are the only two sections providing for payment of fee on memorandum of appeals.

4. We will now proceed to consider the scope of Section 48 of the Court-Fees Act. Section 48

reads :

> "48. Fee on memorandum of appeal against decision, award or order relating to compensation.- The fee payable under this Act on a memorandum of appeal against a decision or an award or order relating to compensation under any Act for the time being in force for the acquisition of property for public shall be computed on the difference between the amount awarded and the amount claimed by the applicant." It will be convenient at this stage to refer to Section 49 also. Section 49 provides :
> "49. Save as provided in Section 48, the fee payable in an appeal shall be the same as fee that would be payable in the court of first instance on the subject-matter of the appeal." To make the picture complete, it is necessary to set out the relevant articles in Schedules I and II. Article 1 of schedule I reads:

"Article	Particulars	Proper fee
(1)	(2)	(3)
1. Plaint, written statement, pleading a set, off or counterclaim or memorandum of appeal presented to any court. When the amount or value of the subject-matter in dispute (i) does not exceed ten repees (ii) exceeds ten rupees for every ten rupees, or part thereof, in excess of ten rupees Seventy-five naye paise."		Seventy-five naye paise.
Article 3 (iii) (1) (a) of Schedule II provides:		
"3. Memorandum of appeal from a decision or an award or order inclusive of an order determining any question under section 47 or Section 144 of the Civil Procedure Code, 1908, and not otherwise provided for when presented-		
(iii) to the High Court- (1) Where the order was passed by a subordinate Court or other authority (a) If the order relates to a suit or proceeding, the value of which exceeds one thousand rupees. Ten rupees. (b) In any other case		Five rupees."

It is manifestly clear that Article 1, Schedule I by itself is not attracted if Section 48 does not govern the matter in this appeal. Section 49 evidently has no application to this appeal as no court-fee was paid by the appellant in the Court of first instance. Then there is no other provision

governing the matter except Article 3, Schedule II. If, therefore, Section 48 has no application to the matter in dispute, the fixed court-fee paid by the appellant under Article 3, Schedule II may be sufficient.

5. While considering the scope of Section 48, we may remind ourselves that the Court-Fees Act is really a taxing statute and it is a high principle that the subject is not to be charged or made liable except upon the plain words of the Act. Section 48 consists of two parts: The first part covers all appeals arising out of a decision, or an award or order "relating to compensation" for compulsory acquisition of a property for public purpose. The second part directs that the fee on such appeals shall be computed on the difference between the amount awarded and the amount claimed by the applicant, it was argued for the appellant and also for the interveners that the claim in this appeal does not relate to the difference between the amount claimed and the amount awarded to the appellant, but involves a right to receive the compensation, and therefore Section 48 is not attracted to the matter. It was also urged that the determination of the right to receive the compensation will be a 'decree and not a decision, or award or order', and since the appeal against 'a decree' is not referred to in the first part of the section, the section has no application to the matter in this appeal.

6. We quite see the distinction that is sought to be made out by learned counsel for the appellant. The Land Acquisition Act does make a distinction between the claim for compensation, and the right to receive it. If there is a dispute relating to the adequacy of compensation awarded, the Collector is enjoined to refer such dispute under Section 18 (1) But a dispute arising after the compensation is settled under Section 11, as to the apportionment of compensation or as to the persons to whom it is payable falls to be referred under Section 30. This position has been more fully explained by the Supreme Court in *Dr. G. H. Grant v. The State of Bihar*[1], It was observed therein that an award by the Collector, strictly speaking, quantifies the offer of the appropriate Government made to the person interested in the land notified for acquisition: the latter may accept the offer, but is not bound to accept it. He may ask for a reference to the Court for adjudication under protest as to the sufficiency of the amount. It was also observed therein, that under Section 18, the Deputy Commissioner is bound to make reference on a petition filed by a person interested within the time prescribed by law; but he is, under Section 30, not enjoined to make a reference. He may relegate the person disputing the apportionment or as to the right to compensation, to agitate his right in a suit, and pay the compensation in the manner declared by his award. The distinction, in our view, may still be high-lighted. In one case, the claimant disputes the amount awarded for acquisition of his property and claims more compensation while in the other, he does not seek more compensation, but agitates his right to receive it. In the former case, the dispute in essence, relates to the quantum of compensation while in the other, it relates to antecedent right, title or interest in the property acquired. The dispute regarding the adequacy of compensation will be between the claimant and the Land Acquisition Officer, but the dispute as to the right to compensation will be between one claimant and the other. But in either case, it seems to us that the decision whether on the adequacy of compensation or to the

right to receive it, must necessarily relate to the compensation awarded in a given case, because when once the property is vested in the State upon acquisition, the only right that remains in the person interested is to receive the compensation awarded thereof, and nothing more.

7. With that, we now again turn to Section 48. The language of the section, in our view, is clear and unambiguous. When the words of a section or an enactment are themselves clear and precise, it is a settled principle that no more is necessary than to expound those words in their natural and ordinary sense. It is seen that the first part of the section refers to a memorandum of appeal against a decision or an award or order relating to compensation for the acquisition of property for public purpose. The words 'relating to compensation' found therein should not be narrowly construed so as to confine them only to the question of adequacy of compensation. The word 'relate' means 'bring into relation', 'establish' or 'have reference to'. That means, if the appeal is against a decision or an award or order adjudicating a dispute with reference to compensation awarded in respect of a property acquired for public purpose, then the fee payable on the appeal shall be

[1] AIR 1966 SC 237 at p. 243

computed in the manner provided by the second part of Section 48. The second part states that the fee shall be computed on the difference between the amount awarded and the amount claimed by the applicant. There will be a difference between the amount awarded and the amount claimed not only in a claim for compensation but also in a case where there is a right to compensation to be adjudicated. Therefore, the appeal relating to both these matters squarely fall within the ambit of Section 48.

8. A similar view was taken as far back in 1932 by Rankin, Chief Justice of the Calcutta High Court in Re Ananda Lal, AIR 1932 Calcutta 346 at p. 349. That perhaps was the first case which arose on the controversy to which we are now called upon to decide. The learned Chief Justice neatly summarized his view in the following manner:

> "It does not matter what is the difference between the total amount awarded and the amount which he says should have been the total amount awarded. It does not matter whether the question of title involved is a question relating to a large and valuable estate. The position is that he as an individual appellant is only interested for this purpose in his own claim for compensation. Whatever may be the matter to be discussed in the end, the point is:

I have been given so much money as compensation for my interest and I claim by the appeal to get so much more.

> "Section 8 says that he is only to be charged upon the further amount that he is claiming by the appeal, that is, the amount of money which he says should be awarded to him in his own individual case in excess of the amount which in fact has been awarded....."

The above view has been reiterated by the same High Court in *Kali Gopal Chatterjee v. T. Banerjee*[2], The principles stated by Rankin Chief Justice in Re. Ananda Lal's case AIR 1932 Calcutta 346 have also been followed by a Full Bench of the Punjab High Court in *Daryodh Singh v. Union of India*[3], The Delhi High Court also took a similar view in *Custodian of Evacuee Property, New Delhi v. Daryodh Singh*[4], But the Rajasthan High Court has struck a discordant note in *H. Martin De Silva v. Martin De Silva II*[5], That High Court has observed that the view taken by Rankin, Chief Justice in Re. Ananda Lal's case was not followed later by the Calcutta High Court in *Rash Behari Sanyal v. Gosto Behari Goswami*[6], That observation, in our opinion, appears to be not correct. In Kali Gopal Chatterjee's case, Mukherji, J., after explaining the decision in Rash Behari Sanyal's case, has observed that the view taken in the latter case was not contrary to the decision of Rankin, Chief Justice in Re. Ananda Lal's case. The Rajasthan High Court has also placed reliance on the decision of the *Privy Council in Ramachandra v. Ramachandra*[7], but we find that that case is no authority for the proposition mooted before us. In that case the Privy Council was considering the question of *res judicata* of a decision on a title under Section 18 or Section 30 of the Land Acquisition Act. Lord Buckmaster observed in that case that an award made under the Land Acquisition Act is different from a decree on the dispute

[2] AIR 1968 Cat 365 [4] ILR (1971) 1 Del 59 [6] AIR 1935 Cal 243
[3] ILR (1966) 2 Punj 481 [5] AIR 1957 Raj 275 [7] AIR 1922 PC 80

between the interested people as to the extent of their interest. But, this suggested difference between a decree and an award in the land acquisition proceedings, as we have earlier noticed, makes no difference in the application of Section 48.

9. The learned counsel for the appellant, in support of his contention, has also relied upon the decision of the Madras High Court in *Mahalinga v. Theetharappa*[8], in which it was observed that a decision on a reference under Section 30 is not an award, but such a decision, however, is appealable under Section 96 of the Civil Procedure Code, on which the court-fee shall be paid on ad valorem bash under Article 1, Schedule I. With respect, we are unable to agree with that view. If the appeal is under Section 96 of the Civil Procedure Code and Section 48 is not attracted, Article 1, Schedule I stands excluded for computing the court-fee on ad valorem basis, Article 1, Schedule I cannot by itself operate without first determining the valuation in the appeal as provided under Section 48, or under Section 49.

10. It is no doubt true that the determination of a dispute upon a reference under Section 30 will be a 'decree' for the purpose of appeal, as observed by the Privy Council in Ramachandra's case AIR 1922 PC 80 and also in *Bhagawati v. Ram Kali*[9], But the omission to use the word 'decree' in the first part of Section 48, makes, in our opinion, little difference in the position of law as the word 'decision' referred to therein, appears to be wide enough to cover a 'decree' also.

11. We are, therefore, of the view that the appellant has to pay the court-fee under Section 48 read with Article 1 Schedule I of the Court-Fees Act.

12. We grant the appellant four weeks' time to make good the deficit court-fee. Order accordingly.

[8] AIR 1929 Mad 223
[9] AIR 1939 PC 133