

BOMBAY HIGH COURT

Hirji Virji Jangbari

Vs

Government of Bombay

(N Wadia, J.)

11.08.1944

JUDGMENT

N.J. Wadia, J.

1. This is a reference made by the Taxing Officer under Section 5 of the Court-fees Act. Under the provisions of Rule 75A of the 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) of the Defence of India Act, 1939, to determine the amount of compensation payable to the claimant. The arbitrator fixed the amount payable to him at Rs. 45,355. The claimant being dissatisfied with this amount filed an appeal in which he claimed a further sum of Rs. 47,896-8-0 in addition to the amount awarded to him by the arbitrator.

2. The question referred for my decision is whether the appellant should pay ad valorem Court-fee on the memorandum of appeal on the additional sum of Rs. 47,896-8-0. claimed by him, or whether he is liable to pay only fixed Court-fee as contended by him, under Clause 11 of Schedule II of the Court-fees Act.

3. Mr. Patwardhan who appears for the Government of Bombay contends that the appellant is liable to pay ad valorem court-fee under the provisions of Section 8 of the Court-fees Act. That section provides that the amount of fee payable under the Act on a memorandum of appeal against an order relating to compensation under any Act for 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. On the other hand it is contended by Mr. Mahimtura who appears for the claimant that the appeal falls under Clause 11 of Schedule II of the 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. Mr. Vakil, Assistant Solicitor to the Central Government at Bombay, who had asked for permission to be heard in the matter as the Government of India are interested: in the question, also supported the contention of Mr. Mahimtura.

4. 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 of the Defence of India Act or in the rules made thereunder, corresponding to Section 26 of the Land Acquisition Act, by which awards made under that 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), of the 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 of the Court-fees Act. In support of, his contention he relies on a decision of the Calcutta High Court in *Anandalal Chakrabarti v. Kamani Industrial Bank, Ltd*¹ In that case in a reference made under Section 5 of the 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 is governed by Section 8 of the Court-fees Act and an ad valorem fee under Article 1 of Schedule I 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 II of the Court-fees Act. That contention was overruled. Reliance is also placed on the decision in *Debi Chand v. Secretary of State for India*² That was also a reference under Section 5 of the Court-fees Act, and the question was whether in an appeal against an award by a tribunal under the U. P. Town Improvement Act of 1919 ad valorem Court-fee was payable under Section 8 of the 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 II. 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 (V of 1911) under which the award in *Anandalal Chakrabarti v. Karnani Industrial Bank, Ltd.* had been made, and in the U.P. Town Improvement Act of 1919, under which the award in *Debi Chand v. Secretary of State for India* 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 of the 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 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 of the 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 of the Defence 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), of the Code of Civil Procedure, 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 of the 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) of the Code of Civil Procedure. In Debi Chand's case the word " order " in Section 8 of the Court-fees Act was taken to mean an " order" as defined in the Code of Civil Procedure, and it was on this ground that Bennet J. held that an appeal from the order would be governed by Section 8 of the 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 of the Defence of India Act is not a Court.

5. Section 8 of the 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. Whether the memorandum of appeal in the case before me is liable to ad valorem fee or fixed court-fee has to be determined with reference to the provisions of Schedules I and II of the Act. The appeal in this case not being from a decree or an order having the force of a decree is liable only to fixed court-fee under Clause 11 of Schedule II of the Court-fees Act.

Cases Referred.

1(1931) I.L.R. 59 Cal. 528

2(1939) All. 142