Collector Of Varanasi vs Gauri Shankar Misra & Ors on 29 August, 1967

Equivalent citations: 1968 AIR 384, 1968 SCR (1) 372, AIR 1968 SUPREME COURT 384, 1968 ALL. L. J. 139, 1968 (1) SCJ 857, 1968 SCD 967, 1968 (1) SCR 372, 1967 2 SCWR 697, 1968 BLJR 114

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Bench: K.S. Hegde, K.N. Wanchoo, R.S. Bachawat, V. Ramaswami, G.K. Mitter

PETITIONER:
COLLECTOR OF VARANASI

Vs.

RESPONDENT:
GAURI SHANKAR MISRA & ORS.

DATE OF JUDGMENT:
29/08/1967

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
WANCHOO, K.N. (CJ)
BACHAWAT, R.S.
RAMASWAMI, V.
MITTER, G.K.

CITATION:
1968 AIR 384 1968 SCR (1) 372
CITATOR INFO :
F 1977 SC 638 (8)

ACT:
Constitution of India, Art. 136--High Court--Whether can function in a capacity other than that of a 'Court--therefore whether special leave can be granted.
Defence of India Act, 1939, s. 19(1)(f)--Appeal to High Court against award of arbitrator--Whether High Court persona designata and also functions as arbitrator or 'court'.

HEADNOTE:

The Government acquired about 500 acres of land from the respondents under the Defence of India Act, 1939, and a settlement was reached in respect of the compensation to be paid for all except about 48 acres of the land. The question of the compensation payable for the remaining land was referred to arbitration under s. 19(1)(b) of the Act to be determined in accordance with s. 19(1)(e) which entitled the respondents to compensation at the market value of the land. The arbitrator considered various sale deeds produced before him but rejected these and fixed the compensation by capitalising the annual profits from the lands. In an appeal against his award by the respondents under s. 19(1)(f) of the Act, the High Court differed from the Arbitrator and enhanced the compensation payable by fixing it on the basis of a sale deed exhibited before the arbitrator.

In appeal to the Supreme Court by special leave given to the appellant Collector, it was contended on behalf of the respondents by way of a preliminary objection that no special leave could have been granted by the Court under Art. 136 as the judgment appealed against %-,as neither that of a court nor of a tribunal; the High Court while acting under s. 19(1)(f) was a persona designata and not a court or a tribunal; proceedings before the arbitrator appointed by the Central Government under s. 19(1)(b) were arbitration proceedings leading to an award made by him, when the matter was taken up in appeal to the High Court, the appeal proceedings did not cease to be arbitration proceedings and their original character continued so that the decision made by the High Court should also be considered as an award and the High Court considered as having functioned as an arbitrator.

Held: (i) While acting under s. 19(1)(f), the High Court functions as a 'court' and not as a designated person. [378E]

Hanskumar Kishanchand v. Union of India, [1959] S.C.R. 1177, disapproved.

The High Court of a State is at the apex of a State's judicial system. It is a court of record and it is difficult to think of a High Court as anything other than a 'court'. No judicial power was ever entrusted to the High Court except as a 'court' and whenever it decides or determines any dispute that comes before it, it invariably does so as a 'court'. That apart, when s. 19(1)(f) specifically says that an appeal against the order of an arbitrator lies to the High Court, there was no justification. for thinking that the legislature

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said something which it did not mean. Furthermore, neither the Act, nor the rules framed thereunder prescribe any special procedure for the disposal of appeals under s. 19(1)(f) and appeals under that provision have to be

disposed of in the same manner as other appeals to the High Court according to its own rules of practice and procedure. [375F-G. 377B-C]
Case law referred to.
(ii) On the facts, the High Court was not right in determining the compensation payable on the basis of the one sale deed as this could not be considered a contemporaneous transaction; the decision of the High Court must therefore be set aside and the case remitted to that court for disposal according to law after giving the parties an opportunity to adduce fresh evidence. [380D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1040 of 1965. Appeal by special leave from the judgment and order dated November 11, 1963 of the Allahabad High Court in First Appeal No. 60 of 1960.

C. B. Agarwala and 0. P. Rana, for the appellant. J. P. Goyal and Raghunath Singh, for the respondents. The Judgment of the Court was delivered by Hegde, J. This appeal by the Collector of Varanasi by special leave under Art. 136 of the Constitution, is directed against the decision dated 11-11-1963 of the High Court of Judicature at Allahabad, in First Appeal No. 60 of 1960 on its file, which in its turn arose from the award made by Shri S. B. Malik, District Judge, Varanasi, in certain land acquisition proceedings under cl. (b) of sub-s. (1) of s . 19 of the Defence of India Act, 1939 (to be hereinafter referred to as the Act).

Before considering the contentions urged on behalf of the parties, it is necessary to set out the salient facts. For the purpose of constructing the Babatpur aerodrome near Varanasi, the Government acquired in the year 1946 about 500 acres of land. Compensation in respect of most of the lands acquired was settled by agreement. But in respect of the lands with which we are concerned in this appeal, 48.01 acres in extent, no settlement was arrived at. Therefore, the question of compensation in respect of those lands was referred to the arbitration of Shri S. B. Malik under cl.

(b) of sub-s. (1) of s. 19 of the Act. In view of s. 19(1)(e), the claimants were entitled to get as compensation the market value of those lands as on the date of acquisition. Before the arbitrator as well as the High Court, the parties were agreed that on the material on the record, the market value in question had to be fixed either on the basis of the sale deeds produced by the claimants or by capitalising the annual profits accruing from those lands. The arbitrator rejected the sale deeds produced before him. He adopted the method of capitalising the annual profits. On the question of annual profits also he rejected the evidence adduced on behalf of the claimants. He determined the same on the basis of the revenue records for Fasli 1355 read with the evidence of the Naib Tehsildar, Jawal Prasad. Aggrieved by the decision of the arbitrator, the claimants went up in appeal to the High Court of Allahabad under s. 19(1)(f). The High Court differed from the arbitrator as to the value to be attached to the sale deeds produced. It opined that the sale deeds produced were reliable and that they evidenced genuine transactions. The High Court fixed the compensation payable on

the basis of Exh. A 42 dated 3-4-1951. The arbitrator had fixed the compensation at Rs. 26,454-12-0. The High Court enhanced the same to Rs. 90,446-3-0. It is against that decision that the Collector of Varanasi has filed this appeal after obtaining special leave from this Court under Art. 186.

Shri Goyal, learned counsel for the respondents has raised the preliminary objection that no special leave could have been granted by this Court under Art. 136 as the judgment appealed against was neither that of a court nor of a tribunal. According to him, the High Court while acting under s. 19(1)(f) was a persona designata and not a court or a tribunal. His argument on this question proceeded thus:

> Sec. 19(1)(b) of the Act empowers the Central Government to appoint as arbitrator a person qualified to be appointed a judge of the High Court; Shri Malik who possessed the required qualifications was appointed by the Central Government to act as an arbitrator; it is true that Shri Malik was District Judge of Varanasi at the time of his appointment, but in law it was not necessary that the person appointed should have been a District Judge, and much less the District Judge of any particular District; therefore, Shri Malik acted as a designated person and not as a court; hence, the award given by him cannot be considered either as a judgment or as a decree or order; it was merely an award; when the matter was taken up in appeal to the High Court, the proceedings did not cease to be arbitration proceedings; its original character continued even before the High Court; therefore, the decision made by the High Court should also be considered as an award and further the High Court in making that award should be considered as having functioned as an arbitrator. In this case, it is not necessary to go into the question whether the decision of the High Court is a decree, judgment or final order. Even according to Shri Goyal, the decision of the High Court is a 'determination' as contemplated in Art. 136. That position he had to concede in. view of the decision of this Court in Engineering Mazdoor Sabha and another v. The Hind Cycles Ltd.(1). In support of his contention that the High Court while acting under s. 19 (1)(f) was not functioning as a court, he placed strong reliance on the decision of this Court in Hanskumar Kishanchand v. Union of India(2). That case dealt with two cross appeals arising from a decision of the Nagpur High Court under s. 19(1)(f). Those appeals were brought on the strength of the certificates issued (1) [1963] Supp. 1 S.C.R. 625(2) [1959] S.C.R. 1177.

by the High Court on 25th August 1949 under ss. 109 and 110 of the Civil Procedure Code. In those cases it was con- tended that the appeals were not maintainable for two reasons viz. (a) the decision appealed against is neither a decree judgment or final order and (b) the decision in question was not that of a court. This Court upheld both these contentions. On the second ground taken, Venkatarama Aiyar, J., who spoke for the Court, observed thus:

> "Under the law no appeal would have lain to the High Court against the decision of such an arbitrator. Thus, the provision for appeal to the High Court under s. 19 (1)(f) can only be construed as a reference to, it as an authority designated and not as a court."

If the conclusion that the appeal under s. 19(1)(f) is only a reference to an authority designated and not an appeal to a court is correct then there is no doubt that this Court could not have granted special leave under Art. 136. Therefore the real question is whether that decision lays down the law correctly when it stated that a High Court while acting under s. 19(1)(f) is not functioning as a court.

There was no dispute that the arbitrator appointed under s. 19(1)(b) was not a court. The fact that he was the District Judge, Varanasi, was merely a coincidence. There was no need to appoint the District Judge of Varanasi or any other District Judge as an arbitrator under that provision. Sec. 19(1)(f) provides for an appeal against the order of the arbitrator. The section reads :

> "An appeal shall lie to the High Court against an award of an arbitrator excepting in cases where the amount thereof does not exceed an amount prescribed, in this behalf by rule made by the Central Government."

It is not in dispute, that in the instant case, the amount fixed by the arbitrator exceeded the amount prescribed by the rules and therefore the claimants had a right to go up in appeal to the High Court. We were informed that neither the Act nor the rules framed thereunder, prescribe any special procedure for the disposal of appeals under s. 19(1)(f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal had reached the High Court it had to be determined according to the rule of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the practice and procedure of that court. This rule was stated by Viscount Haldane L. C. in National Telephone Co., Ltd. v. Postmaster-General(1) thus:

> "When a question is stated to be referred to an established Court without more, it, in my opinion, imports (1) [1913] A.C. 546.

that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."

This statement of the law was accepted as correct by this Court in National Sewing Thread Co., Ltd., v. James Chadwick and Bros. Ltd.(1). It may be noted that the appeal provided in s. 19(1)(f) is an appeal to the High Court and not to any Judge of the High Court. Broadly speaking, Court is a place where justice is judicially administered. In Associated Cement Companies Ltd. v. P. N. Sharma and another(2) Gajendragadkar, C.J., speaking for the majority observed:

> "The expression 'court' in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The Constitution

> recognises a hierarchy of courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these courts exercise., are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions."

The hierarchy of courts in this country is an organ of the State through which its judicial power is primarily exercised.

The fact that the arbitrator appointed under s. 19(1)(b) is either a designated person or a tribunal-as to whether he is a person designated or a tribunal we express no opinion--does not in any way bear on the question whether the 'High Court' referred to under s. 19(1)(f) is a court or not. Our statutes are full of instances where appeals or revisions to courts are provided as against the decisions of designated persons and tribunals. See for example, Advocates Act, Trade Marks Act. Reference in this connection may usefully be made to the decisions in National (1) [1953] S.C.R. 1028, (2) [1965] 2 S.C.R. 366, Sewing Thread Co., Ltd. v. James Chadwick and Bros., Ltd.(1) and the Secretary of State for India in Council v. Chelikani Rama Rao and others(2) Prima facie it appears incongruous to hold that the High Court is not a 'court'. The High Court of a State is at the apex of the State's judicial system. It is a court of record. It is difficult to think of a High Court as anything other than a 'court'. We are unaware of any judicial power having been entrusted to the High Court except as a 'court'. Whenever it decides or determines any dispute that comes before it, it invariably does so as a 'court'. That apart, when s. 19(1)(f) specifically says that an appeal against the order of an arbitrator lies to the High Court, we see no justification to think that the legislature said something which it did not mean. We may now turn our attention to the decision of this Court in Hanskumar Kishanchand v. Union of India(3) on which, as mentioned earlier, Shri Goyal placed a great deal of reliance in support of his preliminary objection. The principal question that arose for decision in that case was whether the decision rendered by the High Court under S. 19(1)(f) was a judgment, decree or final order within the meaning of those words found in S. 109 of the Code of Civil Procedure. The Court accepted the contention of the Solicitor General appearing for the respondent, the Union of India, that it was not a judgment, decree or final order, and that being so, no certificate under ss. 109 and II 0 of the Code of Civil Procedure to appeal to the Federal Court could have been given by the High Court. In that case this Court was not called upon to consider the scope of Art. 136. Therefore, it did not go into the question whether the decision appealed against could be considered as a determination falling within the scope of Art. 136. In arriving at the conclusion that the decision in question is not a judgment, decree or final order, this Court relied on the decisions in Rangoon Botatoung Co. v. The Collector, Rangoon(4), Special Officer, Salsette Building Sites v. Dossabhai Bazonji Motiwala(5). Manavikraman Tirumalpad v. Collector of Nilgris(6), and Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Limited(7). The effect of those decisions is summed up in that very judgment at pp. 1186 and 1187, and this is how it is put:

> "The law as laid down in the above authorities may thus be summed up: It is not every decision given by a Court that could be said to be a judgment, decree or order within the provisions of the Code of Civil Procedure or the Letters Patent. Whether it is so or not will depend on whether the proceeding in which it was given came before (1) [1966] S.C.R. 1028. (2) 43 I.A. 192 (3) [1959] S.C.R. 1177. (4) 39 I.A. 197 (5) 17 C.W.N. 421. (6) I.L.R. 41 Mad. 943. (7) 58 IA. 259.

the Court in its normal civil jurisdiction, or dehors it as a persona designata. Where the dispute is referred to the Court for determination by way of arbitration as in Rangoon Botatoung Company v. Collector, Rangoon (39 I.A 197), or where it comes by way of appeal against what is statedly an award as in The Special Officer Salsette Building Sites v. Dossabhai Bezonji (ILR 37 Bom. 506), Manavikraman Tirumalpad v. The Collector of the Nilgris (ILR 41 Mad. 943), and the Secretary of State for India in Council v.

Hindustan Co-operative Insurance Society Limited (58 IA 250), then the decision is not a judgment, decree or order under either the Code of Civil Procedure or the Letters Patent."

The decisions relied on by this Court merely lay down the proposition that the decision given by the High Court in an appeal against an award is neither a decree, judgment or final order. None of the aforementioned decisions lays down the 'proposition that the High Court while exercising its appellate power did not function as a 'court'. The observation in this Court's judgment that the provision for appeal to the High Court under s. 19(1)(f) can only be construed as reference to it as an authority designated and not as a court, does not receive any support from those decisions. Nor do we find any sound basis for that conclusion. With respect to the learned Judges who decided that case, we are unable to agree with that conclusion. In our judgment, while acting under s. 19(1)(f), the High Court functions as a 'court' and not as a designated person. Our conclusion in this regard receives support from the decision of the Judicial Committee in Secretary of State for India in Council v. Chelikani Rama Rao(1) and others referred to earlier. Dealing with the ratio of its decision in Rangoon Botatoung Co. case(2), this is what Lord Shaw of Dunfermline observed (at p. 198 of the report):

> "It was urged that the case of Rangoon Botatoung Co. v. The Collector, Rangoon(2) enounced a principle which formed a precedent for excluding all appeal from the decision of the District Court in such cases as the pre- sent. Their Lordships do not think that that is so. In the Rangoon Case a certain award had been made by the Collector under the Land Acquisition Act. This award was affirmed by the Court, which under the Act meant "a principal civil Court of original jurisdiction." Two judges sat as 'the Court' and also as the High Court to which the appeal is given from the award of 'the Court'. The proceedings were however, from beginning to end ostensibly and actually arbitration proceedings. In view of the nature of the question to be tried and the pro-

(1) 43 I.A. 192.

(2) 39 I.A. 197.

visions of the particular statute, it was held that there was no right 'to carry an award made in an arbitration as to the value of land' further than to the Courts specifically set up by the statute for the determination of that value."

We have already come to the conclusion that the decision rendered by the High Court under s. 19(1)(f) is a 'determination'. Hence, it was within the competence of this Court to grant special leave under Art. 136. But then it was urged on behalf of the respondents that in view of r. 2, 0.13 of the Rules of this Court, as it stood at the relevant point 'of time, this Court could not have granted special leave as the appellant had not applied for necessary certificate under Art. 133 of the Constitution. In support of this contention, reliance was placed on the decision of this Court in Management of the Hindustan Commercial Bank Ltd., Kanpur v. Bhagwan Dass(1). Under Art. 133, a certificate can be asked for filing an appeal against the judgment, decree or final order of a High Court. As seen earlier, this Court ruled in Hanskumar Kishanchand v. Union of India(2) that the decision rendered by the High Court under s. 19(1)(f) is not a decree, judgment or final order. Hence, the provisions of Art. 133 are not attracted to the present case. Consequently, this case is taken outside the scope of the aforementioned r. 2 of Order 13. As a measure of abundant caution, the appellant has filed CMP 2325 of 1967, praying that this Court may be pleased to excuse him from compliance with the requirements of 0.13, r. 2. In view of the decision of this Court in Hanskumar Kishanchand v. Union of India(2), no useful purpose would have been served' by the appellant's applying for a certificate under Art.

133. Hence, even if we had come to the conclusion that the case falls within the scope of 0. 1 3, r. 2, we would not have had any hesitation in exempting the appellant from compliance with the requirement of that rule. This takes us to the merits of the case. The grievance of the appellant is that the High Court erred in law in awarding compensation on the basis of Exh. 42. The sale evidenced by that deed was effected in the year 1951, nearly five years after the acquisitions with which we are concerned in this case were effected. The sale in question cannot be considered as a contemporaneous transaction. The arbitrator has found that after the close of the second world war, the price of landed property had gone up steeply. This finding does not appear to have been challenged before the High Court. Further, under the deed in question, the land sold was .26 acres in extent. The price fetched by such a tiny bit of land is of no assistance in determining the value of the lands acquired. On behalf of the respondents, we were asked to determine the compensation of the lands acquired on the basis of sale deed Exh. 35 which relates to a sale that took place on 10-6-1947 (1) [1965] 2 S.C.R. 265.

(2) [1959] S.C.R. 1177.

which according to the respondents can be considered as a contemporaneous sale. We are unable to accept this contention. Exh. 35 relates to the sale of land measuring .28 acres. The vendee under that deed is one of the claimants. There is no evidence as to the nature of the land sold under that deed. Under these circumstances, very little value can be attached to that document. We are also of the opinion that none of the sale deeds produced in this case can afford any assistance in

determining the compensation payable to the respondents. They do not evidence sales of lands similar to the acquired lands, at about the time of the acquisition. The High Court did not address itself to the oral evidence adduced in this case for finding out the annual profits for the purpose of capitalisation. It rejected the evidence of the Naib- Tehsildar. For reasons not disclosed. the village papers of 1354 fasli were not produced by the appellant. On the other hand, the village papers of 1355 fasli were produced. In the first place, those records do not show the rent payable in the year in which the acquisitions took place. The acquisitions in question were made in fasli 1354. For the reasons mentioned in its judgment, the High Court felt un- able to place reliance on the village papers of fasli 1355. We do not think that this Court should scan the evidence afresh for determining the just compensation payable. to the respondents. That question has to be gone into by the fact finding court. All that we need say is that the High Court was not right in determining the compensation payable to the respondents on the basis of Exh. 42. Hence its decision cannot be sustained.

For the reasons mentioned above, we allow this appeal and set aside the decision of the High Court and remit the case back to that Court for disposal according to law. Before deciding the case afresh the High Court will permit the parties, to adduce additional evidence on the question of compensation; in particular, they will be allowed to produce and prove contemporaneous sale deeds and the revenue records relating to fasli 1354. Costs of this appeal shall be costs in the cause.

R.K.P.S. Appeal allowed.