

Sahadu Gangaram Bhagade vs Spl. Deputy Collector, Ahmadnagar And ... on 30 March, 1970

Equivalent citations: 1971 AIR 1887, 1971 SCR (1) 146, AIR 1971 SUPREME COURT 1887, 1971 (1) SCJ 717, 1972 MAH LJ 70, 1970 SCD 799, 1971 (1) SCR 146, 1973 BOM LR 903

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah, A.N. Grover

PETITIONER:

SAHADU GANGARAM BHAGADE

Vs.

RESPONDENT:

SPL. DEPUTY COLLECTOR, AHMADNAGAR AND ANOTHER

DATE OF JUDGMENT:

30/03/1970

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SHAH, J.C.

GROVER, A.N.

CITATION:

1971 AIR 1887

1971 SCR (1) 146

ACT:

Requisitioning and Acquisition of Immovable Property Act 30 of 1952, ss. 8 and 11--Award as to compensation by arbitrator--Appeal and cross-objections filed--Court-fee payable on cross-objections under provisions of Bombay Court Fee Act, 1959--Fixed fee to be paid under Art. 13 Sch. II or ad valorem fee under Art. 3 Sch. 1.

Bombay Court-Fee Act, 1959, s. 7(1), Art. 3 Sch. I, Art. 13 Sch. II--Award of arbitrator under s. 8 of Requisitioning and Acquisition of Immovable Property Act. 1952--Whether an 'order'--'Order' under s. 7 whether must have force of decree--Cross-objections whether included in expression 'memorandum of appeal' in Art. 3 Sch. I--Art. 13 Sch. II whether applicable to cross-objections.

HEADNOTE:

Lands belonging to the appellant in District Ahmednagar were acquired under the provisions of the Requisitioning and Acquisition of immovable Property Act 30 of 1952. The appellant was not satisfied with the compensation awarded by the Special Land Acquisition Officer. The matter was referred to the arbitrator as provided in s. 8(1)(b) of the Act. The arbitrator increased the compensation whereupon the Special Deputy Collector went in appeal to the High Court. The appellant filed cross-objections on which he paid fixed court-fee of Rs. 5/- purporting to do so under Art. 13 of Schedule II of the Bombay Court-fee Act, 1959. The High Court however on objection taken by the State, held that Art. 13 Schedule II was not applicable to the case but the matter fell under Art. 3 of Schedule I and therefore ad valorem court-fee had to be paid on the cross-objections filed by the appellant. The appellant challenged the decision of the High Court in an appeal to this Court by special leave. Reliance on behalf of the respondent was placed upon s. 7(1) of the Bombay Court-fee Act which provided that the amount of court-fee payable under the Act on a memorandum of appeal against an order of compensation relating to acquisition of land for public purposes "shall be computed according to the difference between the amount awarded and the amount claimed by the appellant". The contentions urged on behalf of the appellant were : (i) that the award of the arbitrator was not an 'order'. (ii) that an order to come within s. 7(1) must have the force of a decree; (iii) that Art. 3 of Sch. I was inapplicable because it only referred to plaints, applications or petitions (including memorandum of appeal) but not to cross-objections which were expressly referred to in Art. 1, Sch. 1.

HELD : (i) The contention that the award made by the arbitrator was something which had no effect and therefore it could not be considered as an order, was not acceptable. It is, true that it is not an 'order' as defined in the Civil Procedure Code, the same having not been made by a civil court. But the expression 'order' is not defined in the Act. The award of the arbitrator is undoubtedly a 'formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. The question

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whether the order in question was executable or not is irrelevant for the purpose of determining the point in issue. [150 C-D]

(ii) Section 7(1) clearly applies to an appeal filed under the Act. It is not a charging section. It only provides for the computation of the court-fee payable. But that provision makes it clear that it relates to the computation of a court-fee payable on ad valorem basis. It can have no

connection with any Article-providing for the payment of fixed court-fee. Therefore the computation provided under that provision can only be of a court-fee payable under one or the other article in Sch. I. [150 H]

Section 7(1) does not say that the order under appeal must have the force of a decree. It would not therefore be proper to add the words "having the force of a decree" after the word 'order' in s. 7(1). [151 F]

(iii) A cross-objection is a memorandum of appeal in substance though not in form. It is a right given to a respondent in an appeal to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross-objection is but one form of appeal, It takes the place of a cross-appeal. It is true that while Art. 1 of Sch. I refers to 'cross-objection' Art. 3 of that Sch. does not refer to crossobjection as such but that makes no difference. It is 'only inartistic drafting. [152 E-F]

The High Court was therefore right in holding that ad valorem courtfee had to be paid by the appellant on his cross-objections.

Anandalal Chakrabarti, [1931] I.L.R. 59 Cal. 528, applied.

The Chatusshakhiya Brahmavrinnda Gayaran Trust v. Union of India, . 70 B.L.R. 407, approved.

Shri Kanwar Jagat Bahadur Singh v. The Punjab State, [1957] I.L.R. Punjab 142, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2528 of 1969.

Appeal by special leave from the order dated March 6, 1969 of the Bombay High Court in Civil Revision Application No. 187 of 1967.

S. V. Gupte, P. H. Parekh and R. B. Datar, for the appellant.

G. L. Sanghi, B. D. Sharma for, S. P. Nayar, for the respondents.

The Judgment of the Court was delivered by Hegde, J. This appeal by special leave, appears to have been brought as a test case. It arises from one of the 116 crossobjections filed in an appeal brought by the Special Deputy Collector, Ahmednagar to the High Court of Maharashtra, under S. 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) (to be hereinafter referred to as the Act) against an award made by the arbitrator under S. 8(1) of that Act. The controversy in this appeal is as to the relevant provision of the Bombay Court Fee Act, 1959 under which the court--

fee is payable on the claim made in the memorandum of cross-objection. According to the appellant on the claim in question a fixed court-fee of Rs. 5 is payable under Art. 13 of Sch. 11 of the Bombay Court-Fee Act, 1959 but according to the State ad valorem court-fee, is payable on that claim in question either under Article 1 or Art. 3 of Sch. I of that Act. The High Court has come to the conclusion that on the claim made by the appellant ad valorem court-fee is payable under Art. 3 of Sch. I of the Bombay Court-Fee Act, 1959. The appellant challenges that conclusion.

Lands belonging to the appellant and several others situate in Taluka Parmar, District Ahmednagar were requisitioned on March 10, 1944. Thereafter they were acquired on September 22, 1957 under the provisions of the Act. In respect of the said acquisition, the appellant claimed a sum, of Rs. 12,173/49 P. as compensation but the Special Land Acquisition Officer offered him only Rs. 3,033/59 P. In view of this difference, the matter was referred to the arbitrator as provided in s. 8 (1) (b) of the Act. The arbitrator awarded a sum of Rs. 5,980/55 P. As against that award, the Special Deputy Collector went up in appeal to the High Court of Maharashtra. The appellant filed a cross

-objection claiming an additional compensation of Rs. 3,323/93 P. 'On that claim he paid a fixed court-fee of Rs.

5. The Taxing Officer assessed the court-fee payable at Rs. 250 and demanded the appellant to pay an additional court-fee of Rs. 245. The appellant's revision to the High Court was summarily dismissed. Thereafter this appeal was brought. It was urged by Mr. S. V. Gupte, learned Counsel for the appellant that the High Court was in error in holding that the court-fee in respect of the claim made by his client is payable under Art. 3 of Sch. I and not under Art. 13 of Sch. 11 of the Bombay Court-Fee Act, 1959. According to him Art. 3 of Sch. I applies only to plaint, application or petition (including memorandum of appeal) to set aside or modify any award made by a civil court. The arbitrator appointed under s. 8 of the Act is not a civil court; he is only a tribunal. Therefore an appeal against his order comes within Art. 13 of Sch. II. The learned Counsel for the Special Deputy Collector on the other hand contended that the appropriate Art. under which the court-fee is payable is either Art. 3 or Art. I of Sch. I. In support of his contention he placed great deal of reliance on S. 7(1) of the Bombay Court-Fee Act, 1959.

Section 8(1) of the Act reads "Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,-

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as a Judge of a High Court;

(c) the Central Government may, in any parti-

cular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate as assessor for the same purpose;

(d) at the commencement of the proceedings before. the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of subsections (2) 'and (3), so far as they are applicable;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 shall. apply of arbitration under this section."

Section 9 says "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".

Section 11 provides for an appeal to the High Court against the award made by the arbitrator. In the Act there is no provision similar to sub-s. (2) of s. 26 of the Land Acquisition Act, 1894 whereunder every award made by the Lands Acquisition Officer is to be deemed to be a decree of court. Therefore the question whether the award made under s. 8 of the Act is executable or not is a matter that requires further consideration. For the present, we shall proceed on the basis that it is not executable. But S. 9 of the Act requires the competent authority to pay the compensation awarded to the person or persons entitled thereto. Therefore we are unable to accept the contention of the learned Counsel for the appellant that the award made by the arbitrator is something which has no effect and therefore it cannot be considered as an order. It is true that it is not an 'order' as defined in the Civil Procedure Code, the same having not been made by .a civil court. But the expression 'order' is not defined in the Act. The award of the arbitrator is undoubtedly a formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. Therefore the question whether the order in question is executable or not appears to us to be irrelevant for the purpose of determining the point in issue. Section 5(1) of the Bombay Court-Fee Act, 1959, provides that no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for .such document. Section 7(1) of that Act provides :

"7 (1) The amount of fee payable under this 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."

This provision is similar to s. 8 of the Court-Fee Act, 1870. It clearly applies to an appeal filed under s. 11 of the Act. It is true that provision is not a charging section. It only provides for the computation of the court- fee payable. But that provision makes it clear that it relates to the computation of a court-fee payable on ad valorem basis. It can have no connection with any Art' providing for the payment of fixed court-fee. Therefore the computation provided under that provision can only be of a court-fee payable under one or the other article in Sch. 1. Dealing with the scope of s. 8 of the Court-fee Act, 1870 Rankin C.J. in Anandalal Chakrabarti(1) observed :

"Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases, which it deals with, the amount of fee payable under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the ' Act there is a charge which is an ad valorem charge and is not a fixed charge,;

..... The provisions of s. 8, involving as they do that fee in the class of cases dealt with is an ad valorem fee, are themselves sufficient to exclude any question of Art. 11 of Schedule 11 being made applicable, to, such cases. It is not necessary to consider whether the Tribunal's award, which is an order and not a decree, is an order having the force of a decree. Whatever the effect of that phrase, may be, section 8 shows one perfectly clear that an appeal regarding compensation in a Land Acquisition case is not under Article 11 of Schedule 11, because it is not a fixed fee at all....."

We see no force in the contention that before s. 7(1) of the Bombay Court-Fee Act, 1959 can be attracted to an appeal, the order under appeal must have the force of a decree. That section does not say so. It would not, therefore, be proper on our part to add the words "having the force of a decree" after the word 'order' in s. 7(1). In fact that section is so plain as not to require any interpretation. In that view, it is not necessary for us to consider any of the Articles in Sch. II of the Bombay Courtfee Act, 1959. All that we have to see is under which Art. of Sch. I, the court-fee is payable. For the appellant it matters little whether he is asked to pay court-fee either under Art. 1 or Art. 3 of Sch. I, the court-fee payable under both the Arts. being the same. We are in agreement with the High Court that Art. 3 of Sch. I is the relevant Art. That Art. provides for the payment of ad valorem court-fee at the rates prescribed in Art. 1 of Sch. I on appeal petitions. (1) [1931] I.L.R.59 Cal. 528.

The learned Counsel for the appellant urged that Art. 3 of Sch. I of the Bombay Court-fee Act, 1959 is inapplicable because that Art. refers to "plaint, application or petition (including memorandum of appeal), to set aside or modify any award otherwise than under the Arbitration Act, 1940". Before Art. 3 of Sch. I can be attracted, there must be (1) a plaint, application or petition (including a

memorandum of appeal); (2) in that plant, application or petition (including memorandum of appeal), there must be a prayer to set aside or modify any award and (3) the award in question must not be one under the Arbitration Act, 1940. There is no dispute that the proceedings with which we are concerned in this case fulfil two out of the three requirements enumerated above. The award concerned in the proceedings is not one made under the Arbitration Act, ;1940 and through his cross objection proceedings the appellant seeks to get the award modified. The only point in controversy is whether the cross-objection filed.by the appellant can be considered as "application or petition" within the meaning of Art. 3 of Sch. 1. The words in the bracket "including memorandum of appeal" in our opinion refer to the word 'petition' immediately preceding those words. In other words the word 'petition includes the memorandum of appeal as well. The question is whether a cross-objection filed by a respondent in an appeal can be considered as a memorandum of appeal. We have no doubt that it is,a memorandum of appeal in substance though not in form. It is a right given to a respondent in an appeal to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross objection is but one form of appeal. It takes the place of a cross-appeal. It is true that while Art. 1 of Sch. I refers to 'cross-objection Art. 3 of that Sch. does not refer to cross-objection as such but that in our opinion makes no difference. It is only an inartistic drafting.

For the reasons mentioned above , we think that the decision of the High Court in The Chatusshakhiya Brahmavinda Gavaran Trust v. Union of India(1) is correct. In this view, it is not necessary for us to consider the correctness of the decision of the Punjab High Court in Shri-Kanwar Jagat Bahadur Singh v. The Punjab State(2).

In the result this appeal fails and the same is dismissed. No costs.

G.C. Appeal dismissed.

(1) 70 B. L. R. 407.

(2) [1657] I.L.R. Punjab p. 142.