

Pranay Vs. the State of Mysore and anr.

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Court : Karnataka

Decided On : Dec-03-1971

Reported in : AIR1972Kant296; AIR1972Mys296

Judge : D.M. Chandrasekhar and ;K. Bhimiah, JJ.

Acts : Mysore Court-fees and Suits Valuation Act, 1958 - Sections 19, 20 and 48 - Schedule - Articles 3 and 13; [Land Acquisition Act, 1894](#) - Sections 54; [Requisitioning and Acquisition of Immovable Property Act, 1952](#); Bombay Court-fees Act, 1870 - Sections 7(1) and 8; Court-fees Act, 1870 - Sections 8

Appeal No. : Misc. First Appeal Nos. 91, 131 and 132 of 1972

Appellant : Pranay

Respondent : The State of Mysore and anr.

Advocate for Pet/Ap. : Mr. A. V. Albal

Judgement :

ORDER

1. On each of the memoranda of appeals under Section 54 of the Land Acquisition Act, the appellant has paid court-fee of Rs. 10 only. The office of this Court has raised an objection that ad valorem court-fee is payable on the difference between the amount of compensation claimed by the appellant and the amount awarded by the Court below, in each of these appeals. As the learned Counsel for the

appellant maintained that the court-fee already paid. Is sufficient, these appeals have been posted for orders on the question of court-fee payable in these appeals.

2. A notice under Section 19 of the Mysore Court-fees and Suits Valuation Act, 1958, (hereinafter referred to as the Court-fees Act) was issued to the Additional Government Advocate who appeared and supported the objection raised by the office.

3. Mr. A. V. Albal. learned Counsel for the appellant, contended that Article 3 of Schedule 11 to the Court-fees Act, is applicable to appeals under Section 54 of the Land Acquisition Act and that the court-fee of Rs. 10 paid in each of these appeals, is In accordance with Clause (iii) (1) (a) of that Article.

4. On the other hand, the learned Additional Government Advocate contended that Article 1 of Schedule 1 to the Court-fees Act, is applicable to such appeals, and that ad valorem court-fee is payable on the value of the subject-matter in dispute, computed in the manner provided by Section 48 of the Court-fees Act. i. e. on the difference between the amount of compensation awarded by the Court below and the amount of compensation claimed in the appeal.

5. In order to appreciate these rival contentions, it is useful to set out the relevant provisions of the Court-fees Act.

6. Section 20 of the Court-fees Act provides that court-fee payable under that Act, shall be determined or computed in accordance with the provisions of the Chapters IV, VI and VIII and Schedules I and II.

7. Section 48 of the Court-fees Act, as it stood before it was amended by the Mysore Court-fees and Suits Valuation (Amendment) Act. 1969, (hereinafter referred to as the Court-fees Amendment Act) read :

48. Fee on memorandum of appeal against order relating to compensation

'The 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 property for public purpose shall be computed on the difference

between the amount awarded and the amount claimed by the applicant.'

8. The title to Schedule 1 to the Court-fees Act is 'Ad valorem Fees'. Article 1 in Schedule 1 provides, inter alia, that on a memorandum of appeal presented to any Court court-fee is payable at the rate of 75 paise for every Rs. 10 or part thereof, of the value of the subject-matter in dispute.

9. The relevant part of Article 3 of Schedule II to the Court-fees Act as it stood before it was amended by the Court-fees Amendment Act, read :

Articles Particulars. Court-fee. 8. 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 Code of Civil Procedure, 1908, and not otherwise provided for when presented -

(i) *****

(ii) *****

(iii) to the High Court-

(1) Where an order was passed by a subordinate court or authority-

(a) if the matter relates to suit or proceeding, the value of which exceeds Rs. 1,000
***** Rs. 10

(b) in any other case ***** Rs. 5

10. The Court-fees Amendment Act substituted the words 'decision. award or order' for the word 'order' occurring both in Section 48 and in Article 3 of Schedule II to the Principal Act.

11. In C. R P. No. 1379 of 1967 (Mys), (G. Sridhara Murthy v. The Special Land Acquisition Officer), a Bench of this Court ruled that on a memorandum of appeal under Section 54 of the Land Acquisition Act court-fees chargeable under Article 1 of Schedule 1 to the Court-fees Act and that the mode of determining the amount of court-fee is provided by Section 48 of the Court-fees Act. Their Lordships also

observed that Section 48 or Section 49 of the Court-fees Act, is not the charging section and the charging provisions are Section 20 read with Schedules I and II to the Court-fees Act.

12. However, Mr. Albal argued that the above ruling of this Court, was prior to the amendment of Section 48 and Article 3 of Schedule II of the Court-fees Act by the Court-fees Amendment Act, and that that ruling is no longer applicable after such amendment of Section 48 and Article 3 of the Schedule II. Mr. Albal added that the intention of the legislature in making such amendment, is to relieve claimants from the burden of paying heavy court-fee while putting forth in their appeals their just claims for adequate compensation for acquisition of their property.

13. As seen earlier, the only change brought about by the Court-fees Amendment Act, in Section 48 and Article 3 of Schedule II, is to substitute the words 'decision, award or order' for the word 'order'. The above amendment appears to have been made in view of the observations of a Bench of this Court in M. F. A. of Narasiappa that there was a lacuna in the Court-fees Act which made no court-fee payable in respect of appeals like these under Section 11 of the [Requisitioning and Acquisition of Immovable Property Act, 1952](#). which appeals are not from orders of Civil Courts.

14. The object of amending Section 48 of the Court-fees Act appears to be to remove the distinction between an award of compensation by an Arbitrator and an order of a Court awarding compensation, in regard to court-fees payable on memorandum of appeal from such award or order.

15. However, Mr. Albal argued that the simultaneous amendment of Section 48 and Article 3 of Schedule II by substituting the words 'decision, award, or order' for the word 'order' in both those Provisions, is indicative that these two provisions are interlinked and deal with the same subject-matter and that both of them should be held to be applicable to all appeals, relating to compensation for acquisition of properties for public purposes whether such appeals are under Section 54 of the Land Acquisition Act or under any other law relating to acquisition of property for a public purpose.

16. Merely because the Court-fees Amendment Act has substituted the words 'decision, award or order' for the word 'order' both in Section 48 and in Article 3 of Schedule II to the principal Act it does not follow that the ambit of Section 48 and the ambit of Article 3 of Schedule II after such amendment, are the same or that both of them deal with the same subject-matter. While the ambit of Section 48 comprises of appeals from decisions, awards and orders relating to compensation for properties acquired for public purposes, the ambit of amended Article 3 of Schedule II comprises of appeals presented to Courts from decisions, awards, orders of all kinds if such appeals are not otherwise provided for elsewhere in the Court-fees Act. If court-fee on any appeal from a decision, award or order relating to acquisition of property for a public purpose is provided for in any other provision of the Court-fees Act, Article 3 of Schedule II cannot apply to such appeal.

17. However, Mr. Albal argued that after amendment of Section 48 and Article 3 of Schedule II, an appeal from any decision, award or order relating to compensation for property acquired for a public purpose is governed by Article 3 of Schedule II and not Article 1 of Schedule 1.

18. Merely because the words 'decision, award or orders' occur in Article 3 of Schedule II after amendment, it cannot be inferred that Article 1 of Schedule 1 does not apply to an appeal to a court from a decision, award or order and that every appeal from a decision, award or order is governed by Article 3 of Schedule II. On the other hand, the words, 'not otherwise provided for' in Article 3 of Schedule II, show that that Article is applicable only when no other provision of this Act is applicable to such appeal. There is no reason why Article 1 of Schedule 1 cannot apply to an appeal to a Court from a decision, award or 'order relating to compensation for property acquired for a public purpose. When such appeal is governed by Article 1 of Schedule 1, obviously Article 3 of Schedule II cannot apply to such appeal.

19. However. Mr. Albal advanced another line of argument which runs thus: If a document falls under a general provision and also a special provision, the special provision alone shall be applicable. In cases of awards and decisions relating to compensation for properties acquired for public purposes. Section 48 read with

Article 3 of Schedule II, as amended, are the special provisions since both these provisions specifically refer to 'awards and decisions'. Hence payment of ad valorem court-fee cannot be demanded in appeals against such awards and decisions. Only a fixed court-fee of Rs. 10 or Rs. 5 (depending on whether the subject-matter of an appeal exceeds or is below Rs. 1,000) is payable. Article I of Schedule I which is the general provision is rendered inapplicable to appeals from 'awards and decisions' after the amendment of the Court-fees Act. Both in Section 48 and in Article 3 of Schedule II. decisions, awards and orders have been treated alike and they are put on the same footing and those provisions do not make any distinction between awards and decisions on the one hand and orders on the other hand.

20. Hence, it is illogical to demand ad valorem court-fee in an appeal under Section 54 of the Land Acquisition Act from an order of a court when Only a fixed court-fee of Rs. 5 or Rs. 10 is now payable in appeals from decisions and awards relating to compensation for acquisition of properties for public purposes. So runs the argument of Mr. Albal.

21. The above line of argument proceeds on the basis that for an appeal from a decision or award of compensation for property acquired for a public purpose, a fixed court-fee is payable under Article 3 of Schedule II to the Court-fees Act. But that very basis does not appear to be sound in view of the decision of the Supreme Court in *S. G. Bha-gade v. Special Deputy Collector, Ahmednagar*, : [1971]1SCR146 . There, the question that arose was whether on a memorandum of cross-objection filed in an appeal under Section 11 of the Requisitioning and Acquisition Act. 1952, from an award of an Arbitrator under Section 8 of the Act. ad valorem court-fee is payable under Article 3 of Schedule I to the Bombay Court-fees Act. 1959. or only a fixed court-fee is payable under Article 13 of Schedule II to that Act. Section 7 (1) of the Bombay Court-fees Act is practically identical with Section 48 of the Mysore Court-fees Act. as it stood before it was amended. After referring to Section 7 (1) of the Bombay Court-fees Act, this is what Hegde, J., who spoke for the Court, said at page 1890 :

'This provision is similar to Section 8 of the Court-fees Act, 1870. It clearly applies to an appeal filed under Section 11 of the Act (Requisitioning and Acquisition Act, 1952). It is true that the 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 9 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 articles in Schedule I.'

22. In view of the above decision, it is clear that in an appeal under Section 11 of the Requisitioning and Acquisition Act, as well as in an appeal under Section 54 of the Land Acquisition Act ad valorem court-fee is payable under the Mysore Court-fees Act also.

23. However, Mr. Albal contended that the above pronouncement of the Supreme Court while construing the provisions of the Bombay Court-fees Act, has no application to cases arising under the Mysore Court-fees Act, as the relevant provisions of the two Acts are not in pari materia. Mr. Albal pointed out that the title of Schedule II to the Bombay Court-fees Act reads as 'Fixed Court-fees', while Schedule II to the Mysore Court-fees Act has no title. Mr. Albal pointed out another distinction between the Articles in Schedule II to each of those Acts. While in each of the Articles of Schedule II to the Bombay Court-fees Act a uniform court-fee is specified irrespective of the value of the subject-matter in some of the Articles of Schedule II to the Mysore Court-fees Act, two different amounts of fixed court-fee are specified depending upon whether the value of the subject-matter in dispute, is above or below a particular amount,

24. These differences between the provisions of Schedule II of each of these Court-fees Acts, are, in our opinion too unsubstantial and do not render the decision of the Supreme Court in : [1971]1SCR146 inapplicable for ascertaining the court-fee payable under the Mysore Court-fees Act, in appeals from decision, awards and orders relating to compensation for properties acquired for public purposes.

25. Thus, we reject the contention of Mr. Albal that on a memorandum of appeal under Section 54 of the Land Acquisition Act a fixed court-fee is payable under Article 3 of Schedule II to the Court-fees Act as amended. We hold that ad valorem court-fee is payable on these memoranda of appeals.

26. In each of these appeals, the appellant is granted two months time to pay the deficient court-fee.

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