

Executive Engineer, Khb Division Vs. Babu Krishna Waskar

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Court : Karnataka

Decided On : Dec-07-1995

Reported in : ILR1996KAR1095; 1996(2)KarLJ93

Judge : J. Eswara Prasad and ;A.B. Murgod, JJ.

Acts : Karnataka Court Fees and Suits Valuation Act, 1958 - Sections 48

Appeal No. : M.F.As. Nos. 2805 to 2807 of 1995

Appellant : Executive Engineer, Khb Division

Respondent : Babu Krishna Waskar

Advocate for Pet/Ap. : R.S. Hegde and ;Nyayamrita, Advs.;Government Adv.;S.N. Hatti, Adv.

Judgement :

ORDER

Eswara Prasad, J.

1. These Appeals are presented by the Agricultural Produce Market Committee and the Karnataka Housing Board respectively, challenging the quantum of compensation awarded to the claimants in Land Acquisition Proceedings under Reference under Section 18 of the Land Acquisition Act. They paid fixed Court fees of Rs. 15/- (by the Agricultural Produce Market Committee) and Rs. 2/- (by the

Karnataka Housing Board) on the quantum of Appeal. The office raised objections with regard to Court fees, stating that the appellants have to pay ad-valor Court fees on the amount they are contesting in these Appeals. Section 4(ii) of the Karnataka Court Fees and Suits Valuation Act, 1958 is relied upon by the Registry in the office objections.

2. Learned Counsel for the appellants contended that neither Section 48 nor Section 4 of Court Fees Act is applicable to the Appeals filed by the beneficiaries against the awards made pursuant to Reference under Section 18 of the Land Acquisition Act. They contend that the Court fees is payable under Section 49 of the Court Fees Act, read with Section 4, under Schedule II, Article 1 (3) (iii).

3. Learned Government Advocate appearing on notice, contended that the Court fees is payable under Section 48 of the Court Fees Act, whether it is an appeal filed by the claimant or by the beneficiaries. He further submits that even Appeals are to be treated as documents for the purpose of Section 4 of the Court Fees Act and that the ad-valor Court fees is to be paid.

4. Several Division Benches of this Court have taken the view that no Court fee is payable by the beneficiaries on Memoranda of Appeals, when they question the award, as they are not 'applicants' within the meaning of Section 48. It was further held that when the acquisition is made by the Government on behalf of the beneficiary, no Court fee is payable by virtue of Proviso to Section 4 of the Court Fees Act.

5. In view of the contentions and the Decisions of this Court, the Question for Consideration is, whether the appellants, who are public bodies and the beneficiaries to the acquisition that was made by the State, are liable to pay ad-valor Court fees on Memoranda of Appeals.

6. Section 48 of the Court Fees Act reads as follows :

'The fee payable under this Act on 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 purpose shall be computed on the

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

This is a special provision made relating to the Memorandum of Appeal filed against a decision or an award or order relating to compensation for acquisition of property for public purpose. The computation of Court fees has to be made on the difference between the amount awarded and the amount claimed by the applicant. The word 'applicant' under Section 48 is referable to the application under Section 18 of the Land Acquisition Act. Under sub-section 2 of Section 18 of the Land Acquisition Act, an application may be made by a person who does not accept the award, stating the grounds on which the objection to the award is taken. Any person interested and who has not accepted the award, may make the application under Sub-section 1. The person who makes the application under Section 18 is the applicant for seeking Reference by the Collector, for the determination of the Court. The word 'applicant' referred under Section 48 of the Court Fees Act is the applicant under Section 18 of the Land Acquisition Act. It, therefore, follows that the applicant is none other than the claimant whose lands are acquired. It therefore, follows that only in Appeals preferred by the claimant-applicant, claiming enhanced compensation over and above the amount awarded by the Civil Court, Section 48 is attracted. It does not apply to Appeals preferred, either by the State or by the beneficiaries, who question the quantum of compensation awarded by the Court. It is, therefore, held that the appellants are not liable to pay Court fees under Section 48 of the Court Fees Act.

7. Now, coming to the submissions with regard to Sections 4 and Section 49 of the Court Fees Act, Section 49 is applicable to Appeals which are not covered by Section 48. The fee payable under Section 49 in an Appeal, shall be the same as the fees that would be payable in the Court of first instance on the subject matter. In that view of the matter, the contention relating to the applicability of Sub-article (iii) of Article 1 of Schedule II of the Court Fees Act, cannot be accepted, as the said provision will be applicable only if there is no provision in the Act.

8. It was then contended by the learned Government Advocate that Proviso to Section 4 of the Court Fees Act is attracted and the Appeal should be treated as a 'document' within the meaning of Section 4 and ad-valorem fees should be paid.

Under Section 4 of the Court Fees Act, if an appeal is to be treated as a document, it shall not be received unless the fees chargeable under the Act is paid thereon. It, therefore, follows that if the Court fees chargeable under Section 49 of the Act is paid on the Memorandum of Appeal, it can be received, provided the Court fees is paid as provided under Section 49, in the Court of first instance. As no Court fee is payable in the Court, dealing with the Reference under Section 18 of the Land Acquisition Act, it follows that no Court fees is payable on the Memorandum of Appeal preferred by the beneficiary against the award.

9. The learned Counsel for the claimants submitted that ad-valor Court fee is payable even if the appellant is the beneficiary. In support of his contention, he relies on a Decision of Supreme Court in *INDORE DEVELOPMENT AUTHORITY vs . TARAK SINGH AND OTHERS ETC.*, : [1995]3SCR1100 The Supreme Court had an occasion to deal with Section 8 of the Madhya Pradesh Court Fees Act and held:

'In this context, it is relevant to note Section 8 of the Madhya Pradesh Court Fees Act which reads thus:

'Fee on Memorandum of appeal against order relating to compensation:-

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 purpose shall be computed according to the difference between the amount awarded and the amount claimed by the appellant'.

It is true that the appellant is not the claimant. But, when the appellant seeks to avoid the decree, which is made by the reference Court, it must be construed that the appellant is seeking to avoid the amount of higher compensation determined by the reference Court, as claimed by the land owners. Therefore, the appellant is required to pay the Court fee on the memorandum of appeal to the extent on which the appellant seeks to avoid the higher compensation awarded by the reference Court under the Central Act. When its legality is challenged by filing the appeal under Section 54, the difference of the amount for which appeal is filed, ad valorem Court fee under Section 8 is required to be paid. Article 11 of Schedule II

has no application, since it is expressly covered by Section 8 of the Madhya Pradesh Court fees Act.'

10. Under Section 8 of the Madhya Pradesh Court Fees Act, whoever is the 'appellant', Court fee is payable on the difference between the amount awarded and the amount claimed by the appellant, whereas under Section 48 of the Karnataka Court Fees and Suits Valuation Act, Court Fee shall be paid on the difference of the amount awarded and the amount claimed by the 'applicant'. It is only when the applicant under Section 18 of the Land Acquisition Act is the appellant, ad-valor Court fee is payable and not otherwise. Under Madhya Pradesh Court Fees Act, Court fee is payable by any appellant, whether he is applicant under Section. 18 of the Land Acquisition Act or the beneficiary.

11. Before parting with the case, we have to appreciate the valiant effort made by the learned Government Advocate in contending that huge amounts are lost by way of Court fees on the Memoranda of Appeals preferred by the beneficiaries. Unfortunately, Section 48 limits the liability for payment of Court fees only to the appeals preferred by the aggrieved claimants and does not cover the beneficiaries. It may be necessary for the Legislature to intervene and bring about suitable amendments to the Act, providing for payment of Court fees on the Memoranda of Appeals filed by the beneficiaries also.

Communicate a copy of this order to the Chief Secretary to the Government of Karnataka.

Office objections rejected. Registry to number the Appeals and post for Admission.

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