

Debi Din Vs. Secretary of State

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Court : Allahabad

Decided On : Oct-17-1938

Reported in : AIR1939All127

Appellant : Debi Din

Respondent : Secretary of State

Judgement :

Bennet, J.

1. This is a reference by the Taxing Officer of the following question to me as Taxing Judge:

Is the court-fee payable on a memorandum of appeal against an award by a Tribunal, constituted under the U.P. Town Improvement Act of 1919, under Section 8, Court-fees Act, on the difference between the amount awarded and the amount claimed by the appellant, or is a fixed court-fee payable

2. The matter has been fully argued by learned Counsel for the appellant and various rulings have been laid before me. The grounds for the appellant are comprised in an application dated 25th October 1937. The facts of the present case are that there was a decision of the Improvement Trust Tribunal at Cawnpore in regard to compensation to be paid to Debi Chand and Debi Chand has filed this first appeal before the High Court claiming Rs. 1,00,000 more compensation than

has been awarded to him. The appellant has paid a court-fee of Rs. 10 only and he claims that this amount is sufficient under the Court-fees Act, Schedule 2, Article 17(iv), as the court-fee on a memorandum of appeal to set aside an award. On the other hand the Taxing Officer and Stamp Reporter consider that the court-fee should be ad valorem under Section 8, Court-fees Act, and that there is a deficiency of Rs. 1415. The contest is which of these two portions of the Court-fees Act should be applied. Taking first Schedule 2, Article 17(iv) this prescribes a fee of Rs. 10 for 'plaint or memorandum of appeal in ouch of the following suits :...(iv) to set aside an award.'

3. Now the Article in question implies that there should, be a suit and there should be a plaint or memorandum of appeal and the plaint or memorandum of appeal should mils that an award should be set aside. This implies that before the plaint and ward should have been given between the parties. Such an award would arise where the parties without reference to the Court agree that some question as regards their legal rights should be settled by arbitration and an award is given by the arbitrators. One of the parties is then dissatisfied with the award and he files a suit in Court asking for a declaration that the award should be set aside. If the trial Court or the Appellate Court grants such a declaration the result is that there is no award and that the rights between the parties which the award had purported to settle remain undecided. Now the present case is not a proceeding of that nature. The appellant before the High Court does not ask that the award of the tribunal should be set aside and that he should have no other relief. On the contrary what he asks for is that an award should be granted by this Court in appeal giving him an amount of compensation which is Rupees one lakh greater than the compensation awarded by the Court below. He therefore contemplates that as a result of the appeal there will be an award decreed by this Court. Such an appeal cannot be described as an appeal to set aside an award. The remedy of setting aside the decision of the lower Court would only be a part of the remedy asked and there is the further remedy of granting a larger award. The present appeal therefore will not come under Schedule 2, Article 17(iv).

4. It may be noted that the essential distinction between that Article and the present appeal is that the Article deals merely with a declaration whereas the

remedy asked by the appellant is the obtaining of a sum of money by a decree. The two matters are essentially different. This distinction has been pointed out by a ruling of a Bench of the Rangoon High Court reported in *Special Collector of Rangoon v. Ko Zi na* (1928) 15 A.I.R. Rang. 197 and the relevant passage is at p. 284. Learned Counsel relies on a decision of a learned single Judge of this Court, King J., which has not been reported and which is dated 28th July 1931 in *Secy. of State v. Babu Ramji Das* First Appeal No. 348 of 1931. In that case, King, J. did hold that an appeal against an award of a Tribunal under the U.P. Town Improvement Act would come under Article 17(iv) of Schedule 2, Court-fees Act, and a fixed court-fee of Rs. 10 was sufficient. He did not consider the difficulties which I have just pointed out and apparently they were not brought to his notice. Neither was his attention drawn to a Bench ruling of the Allahabad High Court reported in *Sheo Rattan Rai v. Mohri* (1899) 21 All. 354 where it was held that an appeal against the distribution of an award under the Land Acquisition Act was an appeal which could not be stamped merely with a fixed court-fee as an appeal from an order, but as the record shows an ad valorem court-fee was required as an appeal from a decree, and Rs. 21-12-0 was further required which was paid. The grounds which led King J. to give his decision were that the appeal before him was not by the party claiming compensation but by the Secretary of State asking that the amount of compensation should be decreased. Section 8, Court-fees Act, states as follows:

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.

5. The Section uses the words

the difference between the amount awarded and the amount claimed by the appellant.

6. The view of King, J. was that the words 'amount claimed by the appellant' meant the amount which the appellant claimed to receive and could not be applied to the amount which the appellant claimed he should pay. He held that in the case of an

appeal by the person claiming compensation against the decision of the tribunal of an Improvement Trust, such as the present one before me, the appeal would properly bear an ad valorem court-fee under Section 8, Court-fees Act, but that in the case of an appeal by the Secretary of State this Section would not apply. In regard to the difficulty felt by King J. in applying the words 'amount claimed by the appellant' to the Secretary of State the construction of these words in the method which I have mentioned does not seem to have occurred to him, and on this view there is no difficulty in applying the words to the Secretary of State who is claiming that he should pay a less amount. On the other hand, the decision of King J., involves a great difficulty in bringing the case at all under Article 17(iv) of Schedule 2, because as I have pointed out the appellant asks for an award to be granted and not for the mere setting aside of an award. The view therefore of King, J. involves a greater difficulty than the difficulty which he sought to avoid.

7. The Rangoon case was a case on an appeal by the Government against the award of a District Court asking that that award should be decreased, and the Bench of the Rangoon High Court held that if Section 8, Court-fees Act, was not applicable the provisions of Article 1, Schedule 1 must be applied and the result would be the same in either case that an ad valorem court-fee must be paid. Another point was mentioned by learned Counsel in regard to the judgment of King J. and that was that the Town Improvement Act speaks of the decision of the tribunal as an award and therefore apparently he contrasted it with a decision of the District Judge under the Land Acquisition Act which by an Amending Act, Act 19 of 1921, must be deemed to be a decree under the Code of Civil Procedure, and he proceeds to say that as it was an appeal against the decree therefore an ad valorem court-fee will be payable under Schedule 1, Article 1. This appears to imply that King J. thought that an ad valorem fee under Article 1, Schedule 1 is stated to be on a memorandum of an appeal from a decree. The words from a decree' do not occur in this Article, and there seems no reason to read those words into the Article as they are not there. No such distinction therefore can be drawn in regard to Article 1, Schedule 1 between appeals from decrees and appeals which are not from decrees. Section 8 speaks of an appeal against an order relating to compensation and does not state that the order should amount to a decree. Against applying the words in Section 8 learned Counsel for the

appellant next argued that the word 'order' would not cover the order of a tribunal because he said it is not an order of a Civil Court; alternatively his argument was that the word 'order' would not cover the award by a tribunal. Now the word 'order' is defined in Section 2, Civil P.C. '...'order' means the formal expression of any decision of a Civil Court which is not a decree'

8. The U.P. Town Improvement Act, Act 8 of 1919, provides in Sections 57 and 58 (a) as follows:

57. A Tribunal shall be constituted, as provided in Section 59, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

58. For the purpose of acquiring land under the said Act for the Trust:

(a) the tribunal shall (except for the purposes of Section 51 of that Act) be deemed to be the Court, and the president of the tribunal shall be deemed to be the Judge under the said Act.

9. These provisions show that the Tribunal is deemed to be the Court under the Land Acquisition Act. Section 3(d), Land Acquisition Act, states:

The expression 'Court' means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special Judicial Officer within any specified local limits to perform the functions of the Court under this Act.

10. These provisions show clearly that the Tribunal is a Civil Court. There is no doubt that the award of the Tribunal is the formal expression of its decision, and as learned Counsel for appellant claims that this award is not a decree, [see U.P. Act 3 of 1920, the U.P. Town Improvement (Appeals) Act] it follows under the definition in Section 2(14), Civil P.C., that the award is an order of a Civil Court. Accordingly therefore Section 8, Court-fees Act, will apply.

11. Some argument was made in regard to an order passed by me on 7th March 1934 on an application for refund of excess court-fee in F.A. No. 3 of 1933 which

was an application for refund in an appeal against an award of the Improvement Trust Tribunal of Allahabad. The application set out that an excess amount had been paid and a claim was made for refund. The office note was that the refund should be made and there was no contest on the point and my order was 'let the application be granted'. There was no point raised before me by the Registrar as Taxing officer that the refund should not be made and this decision was not given in my capacity as Taxing Officer but was apparently given as Application Judge. This decision therefore has no bearing on the point as there was nothing decided on the merits. There is a decision of a learned single Judge of this Court, Ganga Nath J., dated 30th March 1987 in F.A. No. 194 of 1934 where there was an appeal against the award of the Improvement Trust Tribunal of Cawnpore by a person claiming that the compensation awarded to him should be increased. He asked for a refund of an excess court-fee paid. The learned single Judge considered that Section 8, Court-fees Act, applied to the case which was exactly the name as the present and he further considered that King J. had laid down that dictum in F.A. No. 348 of 19312 and accordingly the excess was refused as it was held that the ad valorem court-fee was necessary. Some reference was made by learned Counsel for appellant to a ruling of their Lordships of the Privy Council, Secy. of State v. Hindusthan Co-operative Insurance Society . That case dealt with a claim that an appeal lay from a decision of the Calcutta High Court in such a matter to His Majesty in Council. In the Bengal Act 5 of 1911 setting up the Calcutta Improvement Trust there was a Section 71 repealing Section 54, Land Acquisition Act, which Have a right of appeal under that Act to the High Court, and it was further provided that the award of the Tribunal shall be Anal. There was also a Bengal Act, 18 of 1911, providing for appeals to the Bengal High Court in certain cases. No part of this decision has any application to the present matter because the present case is not one dealing with a right of appeal but the proper court-fee on an appeal, and further the U.P. Town Improvement Act does not repeal the provisions of Section 54, Land Acquisition Act.

12. For there reasons I consider that the court-fee payable on a memorandum of appeal against an order by a Tribunal, constituted under the U.P. Town Improvement Act of 1919, does come under Section 8, Court-feet Act, on the difference between the amount awarded and the amount claimed by the appellant

and it should not be a fixed court-fee under Schedule 2, Article 17(iv). I may add that in my opinion, Section 8 will apply whether the appellant is the person claiming compensation or whether the appellant is the Secretary of State.

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