

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Deepchand and anr. Vs. Land Acquisition Officer, Collector Rajgarh and ors.

Deepchand and anr. Vs. Land Acquisition Officer, Collector Rajgarh and ors.

SooperKanoon Citation : sooperkanoon.com/497907

Court : Madhya Pradesh

Decided On : Jul-30-1974

Reported in : AIR1975MP55

Judge : G.L. Oza and ;G.G. Sohani, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 26(2), 49(1), 49(5) and 54; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2(2) and 96

Appeal No. : Misc. Appeal No. 55 of 1968

Appellant : Deepchand and anr.

Respondent : Land Acquisition Officer, Collector Rajgarh and ors.

Advocate for Def. : Wagmare, Adv. ;P.L. Mehta, Addl Govt. Adv.

Advocate for Pet/Ap. : Chaphekar, Adv.

Disposition : Appeal dismissed

Judgement :

Sohani, J.

1. This appeal is directed against an order dated 29th April 1969 passed by the Additional District Judge Rajgarh in Civil Miscellaneous Judicial Case No. 3 of 1965.

2. The facts giving rise to this appeal briefly are as follows: the Land Acquisition Officer Rajgarh made a reference under the second proviso to Sub-section (1) of Section 49 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as the Act) for determination of the question as to whether the land in question, which was being acquired by the Land Acquisition Officer for the Municipal Committee Biora, formed an integral part of the appellants' factory and Office buildings. The learned Additional District Judge Rajgarh by his order dated 29th April 1969 held that the land proposed to be acquired did not form an integral part of the appellants' factory and office buildings. Aggrieved by this decision the appellants have preferred this appeal.

3. When this appeal came up for hearing a preliminary objection was raised on behalf of the respondents that the appeal preferred by the appellants was not competent. In reply Shri Chaphekar learned counsel for the appellants urged that the impugned order passed by the learned Additional District Judge has the force of a decree and as such it is appealable according to law. The point was therefore fully argued, and having heard learned counsel for the parties, we have come to the conclusion that the preliminary objection to the maintainability of the appeal must be upheld.

3A. Now the decision under appeal has been given on a reference made to the Court under Section 49(1) of the Act. That decision is obviously not an 'award', and learned counsel for the appellants did not also urge that it was an 'award'. As it is not an award there is no right of appeal against that decision under Section 54 of the Act, which reads as under--

'54. Subject to the provisions of the Code of Civil Procedure. 1908 (V of 1908), applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force an appeal shall only lie in any proceedings under this Act to the High Court from the award or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure. 1908 (V. of 1908) and in Order XLV thereof.'

From a perusal of the aforesaid Section, it is clear that if a person is aggrieved by a decision given by a Court on a reference made to it under Section 49(1) of the Act, no right of appeal has been conferred upon him by the provisions of the Act. It may be useful to refer to the following observations of their Lordships of the Privy Council in *Rangoon Botatoung Co. Ltd. v. The Collector, Rangoon*. (1912) 39 Ind App 197 (PC):--

'It was admitted by the learned counsel for the appellants that it was incumbent upon them to show that there was a statutory right of appeal. As Lord Bramwell then Bramwell J.A. observed in the case of *Sandback Charity Trustees v. North Staffordshire Rly. Co.* (1877) 3 QBD 1. An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment. A special and limited appeal is given by the Land Acquisition Act from the award of 'the Court' to the High Court'.

It is, therefore, clear that unless the appellants are able to refer to a specific provision of law conferring a right of appeal against a decision given by a 'Court' on a reference under Section 49(1) of the Act, this appeal cannot be held to be competent.

4. Learned counsel for the appellants, therefore, contended that the decision in question amounted to a 'decree', and was, therefore, appealable under Section 96 CPC. In support of this proposition. Learned Counsel relied upon the decisions reported in *Ramchandra v. Ramchandra*, AIR 1922 PC 80. *Dalchand v. Secy. of State*, AIR 1917 Cal 148. *Secy. of State v. Narayanaswami*, AIR 1932 Mad 55 and *Kali Prasad v. Government of Bihar*, AIR 1945 Pat 461. Now, the question for consideration before the Privy Council in AIR 1922 PC 80 was entirely different. In that case, in pursuance of land acquisition proceedings a dispute had arisen between one Thulia Bayee and her adopted son as to the character and extent of the estate that she took under a will. Their Lordships of the Privy Council held that the decision on that question operated as *res judicata* in subsequent proceedings between the legal representatives of parties to the earlier dispute as to the nature and extent of the estate that Thulia Bayee took under the will. It is difficult to appreciate as to how this decision can be read as laying down a proposition that a

decision given by a 'Court' under any of the provisions of the Land Acquisition Act amounts to a 'decree'. Moreover in the case before the Privy Council their Lordships have made it clear with regard to the earlier dispute that -- 'What the actual proceedings were that ensued between them is not plain'. As observed by Stone J. in *Krishnamoorthi v. Spl. C. Kumbakonam*, AIR 1936 Mad 514. 'What was there held to operate as res judicata was a disposal in appeal and a decision in appeal was, as the Civil Procedure Code then stood a decree as defined by the Civil Procedure Code whether in a suit or not.' In the same decision. Madhavan Nair J. (as he then was) reiterated his observations made in *Rajagopala Chettiar v. Hindu Religious Endowment Board*, AIR 1934 Mad 103 (2) (FB) as follows:

'As regards the decision of the Privy Council in AIR 1922 PC 80 (*Ramchandra Rao v. Ramchandra Rao*). I expressed the view that. 'Their Lordships in that case were dealing with the finality of the High Court's decree for the purposes of res judicata and were not directly concerned about the appeal ability of the order passed by the District Court and that decision 'does not support the argument that an adjudication on an application stands on the same footing as an adjudication in a suit for the purposes of the definition of a decree under the Code.'

I am still of the same opinion'

5. Be it as it may, a decision given by a Court on a reference under Section 49(1) of the Act cannot be called a 'decree', as defined by Section 2(2) CPC. The adjudication must be in a 'suit' which is instituted by the presentation of a plaint in a civil Court. The fiction that of 'award' shall be deemed to be a 'decree', introduced by Section 26(2) of the Act, is limited in its operation. It is attracted only in the case of an award. It cannot be extended to include any decision given by a Court under the provisions of the Act. No doubt, the decisions reported in AIR 1917 Cal 148, AIR 1932 Mad 55 and AIR 1945 Pat 461 do support the proposition advanced by learned counsel for the appellants, that an appeal lies against an order passed under Section 49(1) of the Act, but, with great respect, we do not agree with the reasoning given in those decisions. To hold that a decision by a Court under Section 49(1) of the Act amounts to a 'decree' would be to slur over the requirements of a 'decree' as defined in Section 2(2) CPC. Our conclusion is

reinforced by the following observations of Stone J. in AIR 1936 Mad 514.

'The present decision is clearly not an award and it appears to us that whatever you call it. It is a decision of Court specially constituted under Statutory authority and unless from that decision the right to appeal is given no right to appeal lies. It might well be that it would be otherwise if the Court in question were an ordinary Civil Court to which this matter, the matter in dispute had been, under powers conferred by the statute, referred for decision by the proper authority. That, however, is not the scheme of the Act. The scheme of the Act contemplates that sometimes the Court shall be an ordinary Civil Court and sometimes a special Court specially constituted. In the latter case, except where the Court makes an award the Act does not make any statutory provision for appeals from that Court. And on this short ground we are of the opinion that the objection succeeds.'

To the same effect are the decisions reported in *Sarat Chandra v. Secy. of State* AIR 1919 Cal 86, and *Mahesh Missir v. Province of Bengal*, AIR 1939 Cal 733. We respectfully agree with the reasoning given in those decisions.

6. As a result of the aforesaid discussion, we hold that no appeal is competent against a decision given, on a reference by a Court under Section 49(1) of the Act. Accordingly this appeal fails and is dismissed. In the circumstances of the case, the parties shall bear their own costs of this appeal.