

Mahli Devi Vs. Chander Bhan and Others

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Court : Delhi

Decided On : Mar-23-1995

Reported in : 1995IAD(Delhi)1434; AIR1995Delhi293; 58(1995)DLT162; 1995(33)DRJ121

Judge : M. Jagannadha Rao, C.J.,; Arun Kumar and; D.K. Jain, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 54; [Delhi High Court Act, 1966](#) - Sections 10; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 2 and 110; Government of India Act - Sections 107 and 108; Land Acquisition Act, 1921 - Sections 26; Indian Arbitration Act, 1940 - Sections 39; Trade Marks Act - Sections 76

Appeal No. : L.P.A. No. 18 of 1981

Appellant : Mahli Devi

Respondent : Chander Bhan and Others

Advocate for Def. : P.L. Kalra, Adv.

Advocate for Pet/Ap. : N.S. Vashisht, Adv

Judgement :

ORDER

Arun Kumar, J.

1. The question for consideration by the Full Bench is whether a Letters Patent appeal under Clause 10 of the Letters Patent applicable to this court is maintainable in view of the provisions of Sec. 54 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as the Act). The reference has arisen on the basis of an objection raised by the learned counsel for the respondent questioning the maintainability of the present appeal. Reliance was placed on two judgments of Division Benches of this Court in L.P.A. No. 97 of 1980 (Basant Kumar v. UOI) and L.P.A. 148 of 1988 (Jugti (deceased) through LRs. v. UOI). These judgments are based on a judgment of the Supreme Court dated 30-7-1987 in Civil Appeals No. 1663 to 1668 of 1982 Baljit Singh etc. v. State of Haryana, holding that a Letters Patent appeal is not maintainable against the judgment of a single Judge of the Court. It is noted in the referring order dated 22-8-1994 that the said Supreme Court decision arising in the context of proceedings under the Land Acquisition Act was based on a concession. It was conceded before the Supreme Court that a Letters Patent appeal did not lie against a judgment of a single Judge of the same Court. In view of the fact that the Supreme Court decision is based on a concession, as also in view of certain other decisions noticed in the referring order this reference was made by the Division Bench to the Full Bench.

2. Since the matter is of considerable importance relating to the procedure of this Court, we proceed to answer the reference, though we cannot help noticing the fact [hat in this very appeal in which the reference order was passed, a Division Bench of this court had earlier through a reasoned order passed on 25-1-1992 rejected the objection of the respondent regarding maintainability of the appeal. In all fairness the counsel for the parties should have brought the. said order to the notice of the Bench at the time the reference order was passed on 27-8-1994. The same counsel who are appearing for the parties at present had appeared before the court when the objection about the maintainability of the appeal was decided. Yet when the same objection was raised again on 22-8-1994 before the Division Bench, the earlier order was never brought to the notice of the Court.

3. Coming to the merits of the case it is necessary first to refer to the statutory provisions. Section 54 Land Acquisition Act runs as under:--

'54. Appeals in proceedings before Court.

Subject to the provisions of the Code of Civil Procedure, 1908 (5 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, and in Order XLV thereof.'

Clause 10 of the Letters Patent :--

'And we do not further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of regional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act; and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us. Our heirs or Successors in Our as their Privy Council, as hereinafter provided.'

4. To analyze the argument advanced by the learned counsel for the respondent we would like to put the material provisions of Section 54 of the Act as under:--

'.....notwithstanding anything to the contrary in any enactment for the time being in force.....'

'.....an appeal shall only lie in any proceedings under the Act to the High Court.....'

'.....and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court.....'

5. It has been contended that from a decision of the High Court, the aggrieved party can only 'go' to the Supreme Court subject to other restrictions mentioned in the Section' and there can be no appeal from a Bench of the High Court to a larger Bench of the same Court. In other words according to the learned counsel for the respondent the above provision in the statute bars a second appeal before another Bench of the High Court. The appeal from the judgment of the single Judge to a Division Bench of the same Court is an independent remedy and the statute does not envisage any such remedy. therefore, the same should be deemed to be barred. This contention is based on the words 'and from any decree of the High Court passed on such appeal as aforesaid, the appeal shall lie to the Supreme Court'.

6. Further the argument is that the words such appeal refer to the appeal to the High Court from proceedings under the Act in the Courts below. When the High Court decides the appeal the only remedy available to the party is further appeal to the Supreme Court subject to the other limitations referred to in the Section. On the basis of this interpretation of Section 54 and relying on the non obstante clause contained in the said Section it is submitted that even if the Letters Patent of a High Court provides for an appeal from the judgment of a single Judge of the Court to the Division Bench of the Court, such an appeal would be barred. This is the effect of the non obstante clause contained in Section 54 of the Act, according to the learned Counsel for the respondent. The use of the words 'notwithstanding anything to the contrary in any enactment for the time being in force' in the Section will exclude any provision contained in the Letters Patent conferring a right of

appeal from judgment of a single Judge to the Division Bench.

7. In support of his case the learned Counsel for the respondent has relied on the judgment of the Supreme Court in Civil Appeals Nos. 1663 to 1668/82, Baljit Singh etc. v. State of Haryana (supra). The only other judgment which can be said to support the contention of the learned Counsel for the respondent is a judgment of the Madras High Court in T. Manavikraman Tirumalpadi v. Collector of Nilgiris AIR 1919 Mad 626 . The said judgment while holding that a Letters Patent Appeal is not maintainable in view of Section 54 of the Land Acquisition Act, has proceeded mainly on the basis that the decision of the High Court in appeal under Section 54 of the Act is not a judgment within the meaning of the relevant provisions of the Letters Patent and, therefore, is not appealable. This is not the basis on which the argument has been advanced before us. Moreover, this reasoning does not hold goods any more in view of the amendment of Section 26 of the Land Acquisition Act in the year 1921 by Act 19 of 1921. By the said amendment sub-section (2) was added to Sec. 26. Sub-section (2) reads as under: -

'(2) every such award shall be deemed to be a decree of the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2), and Sec. 2, clause (9) respectively, of the Code of Civil Procedure, 1908 (5 of 1908).'

8. In view of this amendment the statute itself now provides that the award shall be deemed to be a decree and the statement of the grounds on which the award is based shall be deemed to be judgment within the meaning of Sec. 2, C.P.C. When the award itself is to be deemed to be a decree and reasoning contained therein a judgment, it cannot be said that the judgment of the single Judge in an appeal is not a judgment. The basis of the decision of the Madras High Court being that the decision of the single Judge is not a judgment and, therefore, the Letters Patent appeal is not maintainable, no longer survives. therefore, the said judgment of the Madras'High Court is of no assistance.

9. After the amendment of the Act in the year 1921 all the Courts have taken a consistent view that Section 54 of the Act does not bar a Letters Patent appeal. First (his matter came up for consideration in Har Dial Shah v. Secretary of State,

AIR 1923 Lah 275. It was held that Section 54 of the Act does not take away the right of appeal contained in the Letters Patent of the High Court. In this context while referring to the word only which occurs in Section 54, it was observed that the said word did not restrict the right of appeal. It governs the forum of appeal which has to be only the High Court and not the District Court. It was further felt that the object of amendment of the Act in 1921 was to extend the scope of the right of appeal and not to curtail any existing right. It was also observed that Section 54 was mainly an enabling provision and it did not contain any bar to the right of appeal as such. According to this judgment clause 10 of the Letters Patent gives in express terms a right of appeal and it cannot be held that that right has been impliedly taken away by Section 54 of the Act. A similar view was taken in *Narayandas Daga v. Ganpatrao*, AIR 1944 Nagpur 284. Section 54 of the Act came up for consideration in the light of clause 10 of the Letters Patent of the High Court. It was held that the right of appeal under clause 10 against the judgment of a single Judge is not effected by Section 54 of the Act and an appeal from the judgment of a single Judge of the High Court lies to the Division Bench of the Court under clause 10. The same argument was advanced before Division Bench of the Nagpur High Court as has been advanced before us, namely, that appeal against the decision of the High Court could be filed to His Majesty in Council subject to the provisions contained in Section 110, C.P.C. Further it was contended that Section 54 speaks of one appeal in High Court and other to His Majesty in Council if the case fulfills the conditions laid down in Section 110, C.P.C. and, therefore, appeal under clause 10 of the Letters Patent was incompetent. In view of the non obstinate clause referred to above it was argued that Section 54 controls the Letters Patent of the High Court. Relying on the judgment of the Lahore High Court referred to hereinbefore, it was held that the word 'only' in Section 54 does not restrict the right of appeal but was intended to make it clear that the forum of appeal in land acquisition cases is always the High Court and that that Section does not affect the right of appeal from the judgment of single Judge to a Division Bench under clause 10 of the Letters Patent. It was also noticed that the Calcutta High Court had also taken a similar view in *Collector of Dacca v. Gholam Kuddus*, : AIR1936 Cal688 .

10. The question again came up for consideration in *Siri Chand Sheo Lal v. Union of India*, . The case was decided by a Division Bench of the Punjab High Court sitting in Circuit at Delhi. In view of the language of Section 54 of the Act it was observed that this Section did not contain any prohibition against filing of a second appeal unlike sub-section (2) of Section 39 of the Indian Arbitration Act. The word 'only' occurring in Section 54 of the Act did not indicate that only one appeal is provided against the award of the Court. The said word emphasised the fact that the forum of appeal in all such cases would be the High Court. Reliance was again placed on the judgment of the Lahore High Court in *Har Dial Shah's case* AIR 1923 Lah 275 referred to hereinbefore. It will be further seen from this judgment that the emphasis is on the fact that Section 54 does not bar a second appeal. For this purpose comparison was made with the provisions of Section 39 of the Indian Arbitration Act. Sub-section (2) of Section 39 contains a specific bar against a second appeal and, therefore, a Letters Patent appeal would be deemed to be barred in proceedings arising under the said Act. There is no such bar in Section 54 of the Land Acquisition Act and, therefore, there cannot be any implied bar to Letters Patent appeal. A right of appeal is a substantive right of a party given by the Statute or an analogous enactment and cannot be denied to a party by implication or on deemed basis.

11. While on the aspect of comparison with other statutes, Mr. Gopal Narain Aggarwal, Advocate brought to our notice a Full Bench decision of this Court in *Registrar of Companies v. Hardit Singh Giani* (1975) 2 Delhi 1. The Court was dealing with a question of right of appeal under Section 483 of the Companies Act from an order of a single Judge without a certificate from the single Judge who passed the order sought to be appealable against. The appealability of such orders, it was felt, arises in two sets of cases. On the one hand there are cases where statutes expressly bar further appeal which would have otherwise been maintainable under clause 10 of the Letters Patent. An illustration of this is the Delhi Rent Control Act which allowed a second appeal to the High Court under Section 39 but Section 43 of the same Act provided that 'save as otherwise, expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final'. It was in view of the said provision of Section 43 of the Delhi Rent Control Act that the Supreme Court held in *South*

Asia Industries (P) Ltd. v. S. B. Sarup Singh, : [1965]2SCR756 , that no appeal would lie under clause 10 of the Letters Patent. Another instance of such a statute would be Section 39 of the Arbitration Act which allows an appeal to High Court against orders passed under the Act but expressly bars a second appeal. This provision was held to cut down the ambit of clause 10 of the Letters Patent under which otherwise a second appeal would have been competent. It was so held in U.O.I. v. Mohindra Supply Co., : [1962]3SCR497 . In the other set of cases where the statute did not contain any specific bar to right of second appeal was placed Section 54 of the Act and it was observed that the order of the High Court passed in an appeal under Section 54 of the Act was appealable in view of the decision of the Punjab High Court in Shrichand Sheo Lat (supra). Another instance cited of similar statutory provision was that of Section 110-D of the Motor Vehicles Act, 1939. An appeal lies to the High Court against the decision of the Motor Accidents Claims Tribunal. In Municipal Corpn. of Delhi v. Kuldip La! Bhandari, : AIR1970 Delhi37 , a Full Bench of this Court held that an appeal against the decision of a learned single Judge would lie under clause 10 of the Letters Patent to a Division Bench. In Shanti Devi v. G. M. Haryana Roadways, , a Full Bench again held that Letters Patent appeal against the judgment of a single Judge rendered under Section 110D of the Motor Vehicles Act is maintainable.

12. What follows from the aforesaid discussion of the relevant provisions of law and the judicial pronouncements on the subject is that unless a statute itself bars a second appeal in the High Court or makes the judgment of a single Judge of the High Court final (as in case of Sec. 43, Delhi Rent Control Act), the Letters Patent appeal will lie from a judgment of the single Judge of the High Court to the Division Bench of the Court. Section 54 of the Act does not contain any such bar and, therefore, an appeal under clause 10 of the Letters Patent will be maintainable. Here we may notice a judgment of the Supreme Court in National Sewing Thread Co. Ltd. v. James Chadwick & Bros., reported in : [1953]4SCR1028 . The Court was considering the question on the basis of Section 76 of Trade Marks Act. Under the said Section appeal lies to the High Court. The question was whether the decision of the High Court would be a judgment for purposes of considering its appealability under the Letters Patent. It was observed 'ordinarily after an appeal reaches the High Court, it has to be determined according to the rules or practice

and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Thus, Section 76, Trade Marks Act, confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Sec. 76. It has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act.'

13. These observations totally put to rest the entire controversy. Once the appeal comes to this Court rest of the proceedings will be in accordance with the rules of practice and procedure of this Court and in accordance with the provisions of the Charter, i.e. the Letters Patent. The only exception will be when a statute specifically bars such an appeal. As already noticed the statute in this case, i.e. Section 54 of the Act does not contain any specific bar to the right of second appeal. It follows that the second appeal under the Letters Patent, will be available to the party concerned.

14. As already mentioned, in the present appeal itself this Court had occasion to decide the question of maintainability of a Letters Patent appeal in view of provisions of Section 54 of the Act. This was on the basis of the precise objection which has been raised on behalf of the respondent now. After relying on some of the decisions which we have already referred to hereinbefore, an additional reason given was 'the decision in the Letters Patent appeal will also be a decision of the High Court and will then be capable of appeal to the Supreme Court. So there is no inconsistency between Section 54 of the Act and clause 10 of the Letters Patent'.

15. A Full Bench of the Andhra Pradesh High Court in *M. Srinivas v. Jawahar Lal Nehru Technological University, Hyderabad* (1990) 3 A LT 3 took the same view upholding the maintainability of the Letters Patent appeal. A Division Bench of the same High Court of which one of us (Chief Justice M. J. Rao) was a member,

followed the Full Bench decision in its judgment, dated 22-10-1990 in L.P.A. Sr. Nos. 10895/90, 10897/90 and 10896/90. The Division Bench considered all the relevant judgments on the point which included some of the judgments referred to by us and came to the conclusion that Letters Patent appeal against judgments of single Judges in land acquisition matters would be maintainable.

16. We may now deal with the decisions of this Court which have taken a contrary view. These are the judgment dated 8th July, 1991 in L.P.A. 97 of 1980 (Basant Kumar v. U.O.I.) and judgment dated 17th July, 1991 in L.P.A. 148 of 1988 (Jugti (deceased) through LRs. v. U.O.I.). Both these judgments have proceeded on the basis of the decision of the Supreme Court in Civil Appeals Nos. 1663 to 1668/82, decided on 30th July, 1987, entitled Baljit Singh v. State of Haryana. These two decisions of this Court have held the Letters Patent appeals to be not maintainable in cases arising under the Land Acquisition Act solely on the basis of the said Supreme Court decision. Thus, ultimately we have to turn to the Supreme Court decision in Baljit Singh's case. The judgment of the Supreme Court in this case proceeds on the basis of concession by the learned Counsel and does not as such contain any discussion of the relevant legal provisions nor it contains any finding based on any discussion. To quote from the said judgment 'the short question raised is whether the Letters Patent appeal were maintainable under the law. The learned Counsel for the appellants agree that such appeals did not lie on the authority of a judgment of this Court in (South) Asia industries v. Sarup Singh, : [1965]2SCR756, where a four Judge Bench has already held that such an appeal does not lie. On this authority the judgment of the Division Bench of the High Court has to be vacated and consequently the decision of the learned single Judge has got to be restored'. From the above quotation it is clear that the counsel conceded before the Supreme Court that the Letters Patent appeals before the High Court were not maintainable. therefore, there was no occasion for the Court to go into the merits of the question of maintainability of Letters Patent appeal before the High Court. Moreover, a reference was made to the decision in South Asia Industries, : [1965]2SCR756. The said case cannot be said to be an authority for the proposition that Letters Patent appeal in cases arising under the Land Acquisition Act will not be maintainable. The decision in South Asia Industries case is clearly distinguishable. The case pertains to proceedings under the Delhi

Rent Control Act. The appeal before the single Judge of the High Court in cases under the said Act is a second appeal. Under Section 43 of the Delhi Rent Control Act decision in such appeals is final. In view of these two important factors the Supreme Court held that a Letters Patent appeal in such circumstances is not maintainable. Neither of these factors are attracted in case of appeals under the Land Acquisition Act. thereforee, South Asia Industries case is not an authority for deciding the right to Letters Patent appeal in the context of Section 54 of the Land Acquisition Act. For both these reasons, i.e., Baljit Singh's case was based on a concession and secondly the concession itself was based on an erroneous reading of the decision in South Asia Industries case : [1965]2SCR756 , the decision in Baljit Singh's case cannot be said to be a binding precedent for holding that no Letters Patent appeal is maintainable in view of Section 54 of the Act. In Supdt. & Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta, : 1967 CriLJ950 , it was held that authority of decision of Privy Council made on a concession made by the parties, even though principle conceded was accepted by the Privy Council without discussion, cannot be given same value as one given upon a careful consideration of all the relevant material. Further in Lakshmi Shanker Sri-vastava v. State(Delhi Admn.), : 1979 CriLJ207 , in para 11 it was observed by the Supreme Court that a judgment which proceeds on a concession and not on any analysis or examination of the relevant provisions could not be helpful. thereforee, the judgment in Baljit Singh's case (supra) cannot be a binding precedent. From this it follows that the two decisions of this Court holding theLetters Patent appeals to be not maintainable on the basis of Baljit Singh's case cannot be said to be good law. The said decisions do not contain any independent discussion of the relevant issues. They have simply proceeded on the basis of Baljit Singh's case without examining the binding force of the said case.

17. Regarding the effect of the non obstinate clause occurring in Section 54 of the Act it has to be observed :-- Firstly, in view of the aforesaid discussion we do not accept that there is any conflict between the provisions of Section 54 of the Act and clause 10 of the Letters Patent of the High Court. Secondly, the non obstinate clause has to be confined to the choice of forum rather than to the right of appeal. As already discussed the word 'only' occurring immediately after the non obstinate clause in Section 54 refers to the forum of appeal. In other words it confines the

appeal to the High Court only. It does not restrict the right of appeal from one Bench to another Bench of the High Court. The decision of the Division Bench rendered on the Letters Patent appeal will remain a decision of the High Court which will be subject to further appeal to the Supreme Court as per the provisions of Section 54 of the Act. Thirdly, it is a cardinal principle of interpretation that if there is a conflict, attempt should be made to harmoniously construe the provisions as far as possible.

18. Shri Arun Mohan, Senior Advocate has submitted another aspect which deserves to be noticed. Except the decision of the Madras High Court in T. Manavikraman v. Collector of Nilgiris AIR 1919 Mad 626, the Courts have taken a consistent view upholding the maintainability of Letters Patent appeal in the context of the Land Acquisition Act. As already observed the very basis of the decision in the Madras High Court judgment disappeared in view of the amendment of Section 26 of the Act in the year 1921. thereforee, there has been a consistent view upholding the maintainability of Letters Patent appeal for about 75 years now. Such consistency over such a long period of time by itself is a strong reason why the said view should not be departed from. The learned Counsel has referred to Nirshi v. Sudhir Kumar, : [1969]1SCR469 ; India Electric Works Ltd. v. James Mantosh, : [1971]2SCR397 ; and Mahant Dharam Das v. State of Punjab, : [1975]3SCR160 in support of this view. Agreeing with this proposition we consider that it is not desirable to upset the consistent judicial opinion on the point.

19. The result of the above discussion is that we hold that there is no bar to the maintainability of a Letters Patent appeal under clause 10 of the Letters Patent pertaining to this Court in proceedings under the Land Acquisition Act. Reference is answered accordingly. The case will go back to the Division Bench for further proceedings in accordance with law.

20. Before parting with this judgment we would like to place on record our appreciation for the able assistance rendered to the Court by Shri Arun Mohan, Senior Advocate and Shri Gopal Narain Aggarwal, Advocate, on our request.

21. Order accordingly.

