

Kali Pershad Vs. Collector

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Court : Delhi

Decided On : Apr-16-1979

Reported in : 1981RLR73

Judge : Rajindar Sachar, J.

Acts : Requisitioning and Acquisition of Immovable property Act, 1952 - Sections 8; [Code of Civil Procedure \(CPC\), 1908](#) - Schedule - Article 11; [Bombay Court Fees Act, 1959](#) - Sections 7(1); [Court fees Act, 1870](#) - Sections 4 and 8

Appeal No. : Civil Miscellaneous Appeal No. 2736 of 1978 and First Appeal No. 220 of 1978

Appellant : Kali Pershad

Respondent : Collector

Advocate for Pet/Ap. : Hari Shankar and; P.K. Jaitely, Advs

Judgement :

Rajindar Sachar, J.

(1) The properties of the appellant having been requisitioned and he having been dissatisfied with the amount offered, the matter was referred for arbitration and an order had been passed u/s 8 of the Requisitioning and Acquisition of Immovable property Act, 1952 (the Act), awarding certain compensation to the appellant. The

appellant has filed an appeal in this Court. It appears that the appellant has been awarded compensation at 30 paise per sq. feet for covered area while no compensation has been awarded for the uncovered area. The total compensation awarded come to Rs. 2,264.00 per mensem. The appellant is claiming that he is entitled to a monthly compensatiotn worked out at Rs 1.30 P. per sq. ft. for covered area and 25 paise per sq. feet for the uncovered area. While filing the appeal, the appellant has affixed Court fee on the valuation of Rs 15,000.00 per mensem which is less than the amount claimed by him in the appeal. He has also affixed a fixed court fee. By this C.M. No. 2736/88, he raised a point that as there was a dispute, as the law was not clear as to what court fee was to be paid whether fixed or ad valorem, this matter be decided earlier and that is why the matter has come up. The counsel for the appellant, for his contention that a fixed court fee is payable under Article 11 of the Schedule Ii of the Court Fee Act relies on Kanwar Jagat Bahadur S. v. the Punjab State . That Article provides for fixed court fee to be paid in Memorandum of Appeal when the appeal is not from the decree or an order having the force of a decree. The counsel for the respondent however, relied on section 8 of the Court Fees Act, which provides that the amount of fee payable under the Court Fee 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 shall be computed according to the difference between the amount to be awarded and the amount claimed by the appellant. The argument which Mr. Hari Shanker urges was accepted by the Punjab High Court, which took the, view that section 8 of the Court Fees Act should be confined to orders as envisaged in the Civil Procedure Code and that as this matter does not fall within the definition of a decree and is not an order having the force of a decree, the matter should be held to be covered by Article 11 of Schedule II. This reasoning, however, has not been accepted by the Supreme Court in Sahadu Gangaram vs. Spl. Deputy Collector, 1971(1) Slr 146, where the Court rejected the contention that the award made by Arbitrator has no effect and it could not be considered an order. It also rejected the contention that the word 'order' used in Section 8 should be construed and defined as an order under the CPC. It may be mentioned that the Supreme Court was considering the case on an appeal from an order on compensation passed on acquisition under this very Act of 1952. No doubt the

Court was considering Section 7(1) of the [Bombay Court Fees Act, 1959](#) but the same is similar to Section 8 of the Court Fees Act, 1870. The Supreme Court held that the court fee was payable advalorem at the rates prescribed in Schedule 1. Though the Punjab case was referred to and though its correctness was not commented upon because it was not necessary it is apparent that the main basis of the Punjab decision was on the reasoning that the order mentioned in Section 8 must have the force of a decree or must be restricted to as defined in the Cpc and as that reasoning has not been accepted by the Supreme Court, , can no longer be held to be a good law. A faint effort was made by Mr. Hari Shanker that the Supreme Court has not considered Section 4 of the Court Fees Act. Apart from the fact that when there is a direct decision of the Supreme Court on the point, the argument that some other reasoning was not considered to arrive at a contrary conclusion is not open to be canvassed in the High Court, reference to Section 4 is of no avail in any case to the appellant. All that Section 4 requires is that no document of any of the kinds specified in the First or Second Schedule to this Act shall be filed/exhibited unless in respect of such document there is paid a fee of an amount not less than that indicated by either of the said Schedule. I do not see what relevancy it has to the point being canvassed. Once the document bears the court fee advalorem or fixed, as is relevant, the document is admissible and actually that is the reason why Mr. Hari Shanker has moved this application, I may also note that the other courts have also taken the view that in an appeal relating to compensation passed by an Arbitrator under the Act of 1952, the court fee is payable advalorem on the difference between the amount awarded by the Arbitrator and that claimed by the appellant. (See : AIR1959 Cal609) Satya Charan v. State and AIR 1968, AP 748 Srunguri L. Rao v. R.D O., which dissented from : AIR 1975 MP189 Suresh Kumar v. Town Improvement Trust.

(2) It is true that all these three cases were appeals filed against passing of award against the compensation of property and the present case is that of requisitioning but Section 8 of the Court Fees Act is also applicable in the case of requisitioning vide AIR 1946, Cal 524 Sohan Lal v. Province of Bengal; and, therefore, the advalorem court would also have to be paid in the same manner as in the case of acquisition of land. In my view, therefore, advalorem court fee has to be paid in terms of Section 8 read with Article I of Schedule I of the Court Fees Act. As there

could be reasonably some doubt in the mind of the appellant as to what court fee was payable, I would allow the appellant 3 months time to make up the deficiency in the court fee payable on the appeal. Mr. Hari Shanker says that the man is 65 years old and has already spent 8 years in litigation and is naturally very keen to finish this litigation in his life time. Let the case be complete. After the case is complete and if it is not put up, then Mr. Hari Shanker may again move the Court for early hearing.

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