

Union of India Vs. Usha Sodhi

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Court : Delhi

Decided On : Aug-18-2000

Reported in : AIR2000Delhi405

Judge : Arijit Pasayat CJ.,; D.K. Jain and; Mukul Mudgal, JJ.

Acts : Requisition and Acquisition of Immovable Property Act, 1952 - Sections 11 ;
[Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : LPA 7 of 1987

Appellant : Union of India

Respondent : Usha Sodhi

Advocate for Pet/Ap. : Mr. Saurabh Kirpal, Adv

Judgement :

ORDER

Arijit Pasayat, CJ.

1. Cleavage in views of two Division Benches of this Court is the reason for the reference made to the Full Bench. Only question that needs determination is whether a Letters Patent Appeal under clause 10 of the Letters Patent applicable to the High Courts of Lahore, Punjab & Haryana and Delhi High Courts (in Short Letters Patent) read with Section 5(1) of Delhi High Court Act, 1966 (in short High

Court Act) is maintainable from a decision of a single Judge of the High Court when exercising jurisdiction under. Section 11 of the Requisition and Acquisition of Immovable Property Act, 1952 (in short, the Act).

2. In *M/s Banwari Lal & Sons v. UOI* 1972 (2) 2nd 521, a Division Bench held that decision of the single Judge was appealable. It was held that the decision of the single Judge was a judgment for the purpose of Clause 10 of the Letters Patent. But, later on, in *Banwari Lal & Sons v. Union of India* AIR 1981 DEL 366, another Division Bench held that the decision of the single Judge was merely an award and thus reversing an award of the arbitrator, the Court was substituting its own award for the award passed by the Arbitrator. The earlier decision in *Banwari Lal's* case (supra) was treated to be in the nature of obiter. For the sake of convenience the two *Banwari Lal* cases referred to above shall be hereafter referred to first *Banwari Lal* and second *Banwari Lal* case respectively.

3. Before going into the issue, it is necessary to take note of few provisions of the Act which have great relevance for deciding the same. Under the Act compensation has to be paid by the Government to the owner of the property which has been requisitioned. Quantum of compensation is determined by mutual negotiations. An Arbitrator is appointed to decide an issue under Section 8(1)(b) of the Act in the event of disagreement. Decision of the Arbitrator can be challenged in appeal before the High Court under Section 11 of the Act. Award was given in all these cases by the Arbitrator i.e. an Addl. District Judge. In each case an appeal was preferred before the learned single Judge who has been pleased to dismiss the challenge on the ground, that there was delay in filing a certified copy of the award. These LPAs have been filed against the decision of the learned single Judge. A preliminary issue regarding maintainability of such appeal arose in view of the conflict of decision as noted above, and the matter was directed to be placed before a Full Bench and that is how these appeals are before us.

4. Shri Saurabh Kirpal, learned counsel appearing for the UOI, appellant in each case, submitted that the true import of decision rendered by the Supreme Court in *Collector of Varanasi Vs . Gauri Shanker Mishra*, : [1968]1SCR372 has been lost sight of by the Division Bench in second *Banwari Lal's* case (supra). There is no

appearance on behalf of the respondent.

5. In our opinion, the only question that needs to be adjudicated is whether the decision rendered by the learned single Judge in an appeal under Section 11 of the Act is a judgment as held in first Banwari Lal's case (supra) or an award or adjudication as held in second Banwari Lal's case (supra). For the aforesaid purposes Section 8(1)(b) and 11 need to be noted. They read as follows:

'8. Principles and method of determining compensation-

(1) here any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say.

(a) xxx xxx xxx

(b) where no such agreement can be reached, the Central Government shall appoint an arbitrator a person who is, or has been or is qualified for appointment as a Judge of a High Court.

'11. Appeals from award in respect of compensation: Any person aggrieved by an award of the arbitrator made under section 8, may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate.

6. 'Gauri Shanker's case (supra) related to an appeal under section 19 of the defense of India Act. It was held by the Apex Court that the High Court was functioning as a Court and not as a persona designata. In an earlier case relating to the said Act, and same provision in Hans Kumar Kishanchand Vs . Union of India : [1959]1SCR1177 , the Apex Court had held that while hearing an appeal under the Act, the High Court was not acting as a Court but was acting as a persona designata and therefore the decision of the Court was not a determination for the purpose of Article 136 of the Constitution of India, 1950, (in short the Constitution). It was held that .the decision of the Court can only be as a persona designata or as a Court. In the former case, the decision would not be judgment while in the latter case, it would tantamount to judgment. In Gauri

Shanker's case (supra), the Apex Court observed that broadly speaking the Court is a place where justice is administered. It is a well settled rule that when the statute directs that appeal shall be to a Court already established then the appeal must be regulated by the practice and procedure of that Court. The expression 'Court' in the context denotes the trial constituted by the State as part of ordinary hierarchy which is inherent with judicial power. The High Court of a State is apex Court of the State judicial system. It is a Court of record. In the aforesaid background it was held by the Apex Court that it is difficult to think of a High Court as anything other than a Court.

7. At this juncture, we think it necessary to deal in some detail as to what a judgment signifies. Clause 10 not only makes the High Court a Court of appeal from other Civil Courts and Courts subject to the High Court's special superintendence but also invests it with appellate jurisdiction in such cases as may, after the date of publication of Letters Patent, be made subject to appeal to it by any law made by a competent legislative authority for India.

8. 'Judgment' has been defined in the Code of Civil Procedure, 1908 (in short CPC) indicating that it is a statement of grounds of decree or order. It is judicial determination, decision of a Court. It denotes the reasons given for its decision. The words 'Judgment' and 'Final Order' have acquired a technical meaning. 'Judgment' means 'the declaration or final determination of the rights of the parties in the matter brought before the Court' and 'final Order' means an order which finally determines the rights of the parties and brings the case to end.' (See S. Kuppuswami Rao Vs . King . These words were given the same meaning by the Privy Council in construing Section 109 of the CPC (See. Ramchand Maujimal v. Goverdhandas etc AIR 920 PC 86), By the federal Court in construing Section 205 of the Government of India Act of 1935 (in S. Kuppuswami's case supra) and by the Apex Court in construing Articles 133 and 134 of the Constitution (See. Sardar Syedna Tahar Saifuddin Vs . State of Bombay, : AIR 1958 SC253 , Jethannd & Sons Vs . State of UP, : [1961]3SCR754 , and State of .of U.P Vs . Sajjan Singh (Col) : 1965 CriLJ94) Encyclopedia of Laws of England states that judgment is the determination of a Court declaring rights to be recognised and remedies to be awarded between the parties upon facts found by the Court or jury

or admitted by the parties or upon their default in the course of proceedings instituted for the redressal.

9. Black defines it as determination or sentence of law, pronounced by a competent judge or Court; as the result of an action or proceeding instituted in or before such Court or Judge, affirming that upon the matters submitted for its decision, legal duty or liability does or does not exist.

10. 'Judgment' is that which decides the case, one way or the other in its entirety and it does not mean a decision or order of interlocutory character, which merely decides some isolated point, not affecting the merits or result of the entire suit. It is a remedy prescribed by law for redress of injuries; and suit or action is the vehicle or means of administering it. What that remedy may be, is, indeed the result of deliberation and study to point out; and therefore the style of the judgment is, not that it is decreed or resolved by the Court, for then the judgment might appear to be their own.

11. In *State of Bihar Vs. Ram Narain*, : 1957 CriLJ567, which was dealing with a matter under Section 494 Cr.P.C.1898, it was held that the word 'judgment' is a word of general import and means only judicial determination or decision of a Court. Even if judgment is to be understood in a limited sense it does not follow that an application during the preliminary enquiry...is excluded. In *Gurdit Singh Vs. State of Punjab*, : [1974]3SCR896, it was observed that judgment is affirmation by law of the legal consequences attending, approved or admitted state of affairs of all facts. Its recording gives an initial confirmation of a preexisting relation or establishes a new one on pre existing grounds. An order is the decision made during the progress of the cause, either prior to or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by pleadings and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

12. Judgment as has been noticed in *Corpus Jurisdiction Secundum Vol.48* is a word difficult to define or prescribe by limits or boundaries. It may be used in strict technical sense to final determination of the rights of the parties in an action or in

general or popular sense indicating the decision or conclusion at which one has arrived upon a given question and in a specified and very limited use, it has been described as legalistic term for a particular record.

13. In *Corpus Jurisdiction Secundum*, (Vol.49) it has been stated that in its broadest sense, a judgment is a decision and sentence of the law given by a Court of justice or other competent Tribunal as a result of proceedings instituted therein or the final consideration and determination, of a Court on matters submitted to it in an action or proceedings, whether or not execution follows thereon. More particularly, it is a judicial determination of matter submitted to a Court for decision which determines whether, a legal duty or liability, does or does not exist, or that with respect to a claim in suit, no cause of action exists or no defense exists. In the broad sense a decision of any Court is a judgment, including Courts of enquiry, admiralty or probate. A judgment is the judicial act of a Court by which it accomplishes the purpose of its creation. It is judicial declaration by which the issues are settled and the rights and liabilities of the parties are fixed as to the matters submitted for decision. In other words, a judgment is the end of law; its rendition is the object for which jurisdiction is conferred and exercise and it is the power by means of which a liability is enforced against a particular person.

To put it differently a judgment is a judicial act which settles the issues, fixes rights and liability of parties and determines the proceedings, and it is regarded as a sentence and is pronounced by the Court on the action or question before it. As a general rule decisions, opinions, findings or verdicts do not constitute a judgment or decree but merely form the basis on which the judgment is subsequently rendered.

14. In *Halsbury's Laws of England*, Vol. 26, (para 501) it has been stated that the words 'order' and 'judgment' are sometimes used as though 'order' was the genus of which 'judgment' was a species; e.g 'to constitute and order a final judgment nothing more is necessary than that there should be a proper contestation, and a final adjudication between the parties' (See *Re. Faithfull, ex parte Moore* (1985) 14 QBD 627)

15. It is to be noted that Hans Kumar's case (Supra) was based on two premises, namely, judgment of single Judge was not given in ordinary jurisdiction of the High Court but in special jurisdiction and therefore, that order was not a judgment . The two premises are inseparable from each other. One can not exist without the other. The first premise expressed in Hans Kumar's case is no longer valid in view of the subsequent decision in Gauri Shanker's case (supra). It would follow that second premise also ceased to be valid.

16. In view of what has been stated by the Apex court in Gauri Shanker's case(supra) the theory that an appeal takes colour from the original proceedings is not to be carried too far. Similarly view was also expressed by a Full Bench of this Court in the Municipal Corporation of Delhi Vs . Kuldip Singh Bhandari and Ors, : AIR1970 Delhi37 . The three relevant aspects which need to be considered are:

- (1) The nature of Tribunal
- (2) The original proceeding before it, and
- (3) The nature of the decision given by it.

It would not be correct to say that because of Tribunal was not a Court or proceeding before it was not a suit or its decision was not a judgment but an award the High Court hearing an appeal against its decision would not be a Court or that its decision in the appeal would not be a judgment. The following observations in National Telephone Company Ltd. v. Postmaster General (1913) AC 546 clearly apply to such a case:

'Where by statues matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same' (per Lord Parker of Wadding ton)'.

17. Judged in the aforesaid premises, judgment of a learned single Judge would be a judgment within the meaning of Clause 10 of Letters Patent and be appealable to the Appellate Bench of the High Court. The provisions of defense of

India Act to which Gauri Shanker's case (supra) related stand in pari material with the Act. The inevitable conclusion is that first Banwari Lal's case(supra) was correctly decided. The second Banwari Lal's case was not correctly decided. Reference is accordingly answered. The matter be placed before the DB for further rehearing.

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