

Kunhipennu Vs. Special Tahsildar

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Court : Kerala

Decided On : Nov-07-1960

Reported in : AIR1962Ker25

Judge : M.S. Menon and; T.K. Joseph, JJ.

Acts : Madras Court Fees and Suits Valuation Act, 1955 - Sections 87(2); Land Acquisition Act - Sections 9, 9(3) and 54; Central Court Fees Act, 1870 - Schedule - Article 1

Appellant : Kunhipennu

Respondent : Special Tahsildar

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : T.L. Viswanatha Iyer, Adv.

Judgement :

M.S. Menon, J.

1. The claimant in L. A. O. P. No. 115 of 1955 of the Court of the Subordinate Judge of Kozhi-kode, is the appellant before us, The question for consideration is the amount of the court-fee due of her memorandum of appeal.

2. The Collector awarded a sum of Rs. 5,523-7-4 and the statutory solatium thereon. The Subordinate Judge after discussing the facts and circumstances of the case said ;

'I would, therefore, find that the claimant has not established her right to any enhancement of the compensation awarded by the Collector';

and rejected the claim.

3. The operative portion of the judgment is by no means artistic. But there is no doubt that what the Judge intended to do was to pass an award under Section 26 of the Land Acquisition Act, 1894, for the same amount as was awarded by the Collector.

4. The appellant claims an enhancement of the compensation awarded by a sum of Rs. 20,000 inclusive of the statutory solatium. There can be no doubt that she has to pay an ad valorem court-fee on the said sum,

5. The further question for consideration is whether the fee should be calculated under Article 1, Schedule I to the Court-fees Act, 1870 (Central Act VII of 1870) or under Article 1, Schedule I to the Madras Court-fees and Suits Valuation Act 1955 (Madras Act XIV of 1955), which came into force on 19th May 1955.

6. Sub-section (1) of Section 87 of Madras Act XIV of 1955 says :

'The Court-fees Act 1870 (Central Act VII of 1870), in its application to the State of Madras and in relation to the fees and stamps other than fees and stamps relating to documents presented or to be presented before an officer serving under the Central Government and the Suits Valuation Act, 1887 (Central Act VII of 1887), in its application to the State of Madras are hereby repealed.',

and Sub-section (2) of that section :

'All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision, or otherwise arising therefrom whether instituted before or after such commencement shall, notwithstanding the repeal of the Court-fees Act, 1870 (Central Act VII of 1870) and the Suits Valuation Act,

1887 (Central Act VII of 1887), be governed by the provisions of the said Acts and the rules made thereunder-'

The court-fee payable by the appellant under the Central Act will be Rs. 1,162.44 and under the Madras Act Rs. 1,500.

7. The contention of the appellant is that her memorandum of appeal attracts only the court-fee payable under the Central Act and not the court-fee payable under the Madras Act in view of the provisions of Section 87 (2) of the Madras Act which we have extracted above. In order to succeed in this contention she has to establish -- as we think she has done -- that her appeal arises from proceedings instituted prior to the commencement of the Madras Act on 19th May 1955,

8. In *Firm of M. Chakravarthy Iyengar v. Collector of Madras*, 73 Mad LW 392 a similar question arose for consideration before the High Court of Madras. In that case only the notification under Section 9 of the Land Acquisition Act, 1894, was prior to the commencement of the Madras Act on 19th May 1955. The claim itself was filed on a later date, on 7th June 1955. In spite of that the court held that the court-fee had to be calculated under the Central Act and not under the Madras Act by virtue of Sub-section (2) of Section 87 of the Madras Act.

9. All the arguments advanced before us by the learned Government Pleader in support of his contention that the court-fee in this case should be calculated under the Madras Act were advanced and negatived in that case. There is a full discussion of every aspect of the question by Rama-chandra Iyer, J., and we consider it unnecessary to go over the ground afresh in this judgment.

10. In the case before us we are certainly not called upon to go so far as the Madras High Court has done. The claim in this case in pursuance of the Collector's notice under Section 9(3) of the Land Acquisition Act, 1894, was filed on 14th September 1953, that is, over a year and a half prior to the commencement of the Madras Act on 19th May 1955. That at any rate should be sufficient for the appellant to succeed in her contention that the court-fee should be calculated under the Central Act and not under the Madras Act in view of the provisions of Sub-section (2) of Section 87 of the Madras Act.

11. The claim filed in pursuance of the notice under Section 9 is of paramount importance in land acquisition proceedings- This will be clear from Section 25 of Land Acquisition Act, 1894. That section reads as follows :

'1. When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

2. When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

3. When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.'

12. All the proceedings subsequent to the filing of the claim -- the enquiry and award by the Collector under Section 11, the reference to court under Section 18, the award of the court under Section 26 and the appeals under Section 54 are only further stages in the evaluation of the compensation founded on the claim filed in pursuance of the notice under Section 9 of the Land Acquisition Act, 1894. There can also be no doubt that proceedings under that Act are proceedings contemplated both by Central Act VII of 1870 and Madras Act XIV of 1955. This will be clear from Section 19 (xxii) of the Central Act and Section 72 (xviii) of the Madras Act. They say that nothing contained in those Acts shall render any 'application for compensation under any law, for the time being in force relating to the acquisition of property for public purposes' chargeable with any fee under those enactments.

13. In the light of what is stated above we must hold that the court-fee payable in this case has to be calculated not under the Madras Court-fees and Suits Valuation Act, 1955 (Madras Act XIV of 1955) but under the Court-fees Act, 1870 (Central Act VII of 1870) and direct the appellant to effect the payment on that

basis. We do so.

14. Time allowed : Two weeks from this

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