

Abdulla Vs. State of Kerala

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Court : Kerala

Decided On : Jan-28-2003

Reported in : 2003(1)KLT961

Judge : J.B. Koshy and; P.R. Raman, JJ.

Acts : Land Acquisition Act - Sections 52 and 54; Kerala Court Fees and Suits Valuation (Amendment) Ordinance, 2002

Appeal No. : LAA/2003 against LAR 444/99, 32/2000 and 21/2001

Appellant : Abdulla

Respondent : State of Kerala

Advocate for Pet/Ap. : Tom K. Thomas,; M. Gopikrishnan Nambiar and; R.K. Murali

Judgement :

ORDER

J.B. Koshy, J.

1. In these three matters the question to be decided is whether the enhanced court fees under the Kerala Court Fees and Suits Valuation (Amendment) Ordinance, 2002 (hereinafter referred to as 'Ordinance') is applicable to appeals filed from land acquisition references made before the date of the Ordinance. The appellants

calculated court fee on the basis of the Kerala Court Fees and Suits Valuation Act, 1959 (Act 10 of 1960) (hereinafter referred to as The Act') as existing before the Ordinance even though appeals were filed after the Ordinance which amended the Act enhancing court fees. The Registry raised objections and the matter came before us for consideration. Since the matter relates to the court fees, we have directed the appellants to give notice to the Advocate General and we have heard the Government Pleader in this aspect in detail. It is the contention of the appellants that right of appeal is a substantive right and the above substantive right cannot be impaired or imperilled by putting a new restriction thereon or imposing more onerous condition. Imposition of higher court fee on the basis of amended provision impairs or imperils the substantive right of appeal. Therefore, the appellants are liable to pay court fee only on the basis of unamended provision.

2. Learned Government Pleader mainly relied on a Division Bench decision of this Court in Kochappu v. Somasundaran Chettiar (1991(1) KLT 657). When the Court Fees Act was amended in 1960, the question came up and the Division Bench of this Court decided that in appeals filed after 5.12.1990 the court fee payable is to be calculated only on the basis of the new schedule brought into force along with the promulgation of the Ordinance. But in that case, the court fee payable was reduced by the Ordinance and Amended Act and the Division Bench held that by reducing the court fee the right of appeal is not imperilled or impaired by the imposition of a more onerous condition. What has been conferred under the new enactment is only an additional benefit or advantage to the litigant public. In such situation, a statute which is otherwise procedural in character does not get transmuted to a substantial law. The matter is now governed by the decision of the Supreme Court in State of Bombay v. Supreme General Films Exchange Ltd. (AIR 1960 SC 980). There in paragraph 12 the Supreme Court held as follows:

'12..... an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only, it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.'

The Court referred to its earlier decisions in *Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh* (AIR 1953 SC 221) and in *Garikappati Veeraya v. N. Subbiah Choudhury* (AIR 1957 SC 540).

3. A Division Bench of this Court in *Usha v. Food Corporation of India* (1997 (1) KLT 264) explained the decision reported in 1991(1) KLT 657 (supra) (and following the decision is AIR 1960 SC 980 (supra) reiterated that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only and it impairs or imperils a substantive right. So, unless the Act is specifically made retrospective, the right of appeal is imperilled by the enhancement of court fee. Therefore, the appellant is liable to pay court fee only on the basis of unamended provision as existing on the date of filing of the suit. Admittedly, Ordinance is not retrospective. Section 1 Sub-section (2) says that it shall come into force at once. Learned Government Pleader argued that the decisions of the Supreme Court as well as the decisions of this Court referred to earlier relate to civil suits, but in land acquisition appeals, a different approach has to be taken as no court fee is payable before the Reference Court like paying of court fee in suits. Court fee is payable in appeals from land acquisition award on *advolarum* basis under Section 51 of the Court Fees Act and not on the basis of valuation given in the plaint in a civil case as provided under Section 52. *Advolarum* fee is payable only on the difference between the amount awarded and the amount claimed in the appeal. Section 51 of the Court Fees Act reads as follows:

'51..... Fee on memorandum of appeal against order relating to compensation:- The fee payable under this 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 property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.'

4. Part III of the Land Acquisition Act, 1894 (Section 18 to Section 28) deals with land acquisition references to courts and procedure thereon. But, Section 26(2) of the Land Acquisition Act provides very clearly that every award 'shall be deemed to be a decree and the statement of the grounds of every such award, a judgment

within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively of the Code of Civil-Procedure, 1980 (5 of 1980)'. Section 26(1) requires that award shall be signed by the Judge and the award shall be in writing with grounds for award. Section 54 of the Land Acquisition Act confers the right of appeal to be filed before the High Court from the award or part of the award passed by the Court in reference. Section 54 of the Land Acquisition Act reads as follows:

'54.... Appeals in proceeding before Court: Subject to the provision 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 and 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'.

5. It has been held by the Supreme Court that the proceedings in the Reference Court itself is an original proceeding (see *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr.* (AIR 1988 SC 1652) and, therefore, date of reference is the crucial date. After the amendment of Section 25 of the Land Acquisition Act, the claimants are not even bound by the amount claimed before the Collector but only on the amount claimed before the Court. *Special Land Acquisition Officer (NHV) Dharwad v. Kallangouda and Ors.* (AIR 1994 Karnta.112). Once a reference is made before court, the parties will get substantial right of appeal under Section 52. That right cannot be impaired or taken away except by valid legislation. Since the Ordinance is not introduced with retrospective effect, the court fee payable in the land acquisition appeal is the court fee payable at the time of reference unaffected by the amended provisions which enhanced the court fees. The right of appeal under Section 54 of the Land Acquisition Act is a substantive provision and right of appeal is not impaired by the present Ordinance. In this connection we also refer to the Apex Court decision in *Ramesh Singh v. Cinta Devi* ((1996) 3 SCC 142). In *Ramesh Singh's* case (supra) the Apex Court held as follows:

'..... unless the new Act expressly or by necessary implication makes the provisions applicable retrospectively, the right to appeal will crystallise in the appellant on the institution of the application in Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act.'

A Division Bench of this Court in Kunnappadi Kalliani v. Lekharaj (1996 (2) KLT 106) followed the above decision. There the question was regarding application of Civil Courts (Amendment) Act. While making the amendment of 1996 the Legislature has enhanced the valuation of the subject matter for filing an appeal from the Subordinate Judge's Court to District Court from Rs. 25,000/- to Rs. 2 lakhs with effect from 27.3.1996 and from that date the appeals will lie to the High Court only if the amount is above Rs. 2 lakhs. This Court held that appeals from decree of Subordinate Judges Courts in suits instituted prior to 27.3.1996 would continue to lie in this Court. If they were maintainable in this Court prior to 27.3.1996 as right of appeal is a substantive, right. From the above direction it is clear that as the Ordinance is not retrospective in appeals filed from the reference court, court fee shall be paid only as per the unamended provisions of the Act as existing on the date of reference, otherwise enhancement of court fees while filing the appeals will impair the substantive right of parties.

The Registry is directed to number the appeals.

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