

Assistant Commissioner of Labour

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Court : Chennai

Decided On : Nov-08-1923

Reported in : (1924)46MLJ150

Appellant : Assistant Commissioner of Labour

Judgement :

ORDER

Walter Salis Schwabe, K.C., C.J.

1. This is a stamp reference on the following facts. An award has been made under the Land Acquisition Act with which the party entitled to compensation was not satisfied, and under that Act the matter was referred to the Chief Judge of the Court of Small Causes for disposal, and he increased the award by an amount of Rs. 42,763. Being dissatisfied with that award, the department of Government interested prefers an appeal to this Court, and the question is what stamp that appeal has got to bear.

2. By Section 8 of the Court Fees Act' the amount of 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 land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. ' Now it is argued for the appellant, that is to say the department interested, that that has no application where the Crown is the appellant because there is no difference between the amount awarded and the

amount claimed by the appellant, the appellant in that case not being a claimant at all; and the learned Advocate-General, who appears to represent the Crown as distinguished from the department interested, as the matter is of general importance, agrees with that argument. It is certainly contrary to the dictum on the subject in *Kasthuri Chetti v. Deputy Collector, Bellary* ILR 21 M 269, in which it was said that Section 8 was a special provision applicable to appeals against all orders, including awards relating to compensation for lands under the Land Acquisition Act. But I think on the proper construction of the section it has no application where the Crown is the appellant and that the dictum is too wide.

3. Then it remains for me to consider whether the article applicable is Article (1) of Schedule I or Article 17 (a) (ii) of Schedule II of the Court Fees Act. By the Land Acquisition Act XIX of 1921 a decision of the Court in a case like the present is to be deemed to be a decree under the Code of Civil Procedure of 1908. Schedule I, Article 1 of the Court Fees Act provides the ad valorem fee payable on any memorandum of appeal, not otherwise provided for in this Act, presented to any Civil Court...except those mentioned in Section 3, which has no application here. There is no doubt that this is a memorandum of appeal and, therefore, unless it is provided for elsewhere, it comes under that Article. Turning to Article 17 (A) (ii), of Schedule II, a memorandum of appeal in a suit to set aside an award is provided for, and it was held by the Punjab Chief Court in *Secretary of State v. Baswa Singh* (1913) 17 IC 764, which was tried in 1912, that Article 17 (4) of the then Court Fees Act which corresponds, except in a matter which I will refer to in a moment, with Article 17 (A) (ii) of the present Act, applied to a case similar to the present. I very much doubt whether that was a correct decision under that Act as it stood, because it involves the inclusion of a reference to a Court under the Land Acquisition Act in the words, ' a suit to set aside an award, ' which is certainly not giving the ordinary meaning to those words, because the proceedings before the Small Causes Court or the District Court do not seem to be a suit to set aside an award. It has been held by the Privy Council in *Secretary of State for India v. Chelli Kani Rama Rao* ILR (1916) M 617, that the Court is itself in those cases sitting as an arbitrator and not as an appellate tribunal, though it is true that, in a sense, proceedings before the Court are to set aside the award, for if those proceedings were not taken, there is an antecedent award of the officer which would be

binding. But it is not necessary to give any decision on that point, because the words of the present schedule Article 17 (A) (ii) provide a proper fee on a memorandum of appeal in a suit from a District Munsif's Court or a City Civil Court and another fee on a similar suit from a District Court or Sub-Court. It so happens in this case that the Court which has made the award, the Small Cause Court is not one of those enumerated Courts, whether it is by accident or design is immaterial, and therefore, I consider that Article 17 (A) (ii) does not provide for a fee to be paid on this appeal even if it is looked upon as an appeal from a suit to set aside an award.

4. That being so we are thrown back on Article 1 of Schedule I and the fee must be paid in accordance with the provisions of that Article. The costs of this reference will be paid by the department interested as appellant in the appeal to the Crown.

5. The two appeals not having been consolidated must be treated as separate appeals. Three weeks for the payment of the additional Court fee.

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