

Khushi Ram Vs. Inderjit and ors.

Khushi Ram Vs. Inderjit and ors.

SooperKanoon Citation : sooperkanoon.com/889175

Court : Himachal Pradesh

Decided On : Jun-16-1988

Reported in : AIR1989HP65

Judge : V.K. Mehrotra, Ag. C.J.

Acts : [Land Acquisition Act, 1894](#) - Sections 30 and 54; ; [Code of Civil Procedure \(CPC\) , 1908](#) - Section 96

Appeal No. : F.A.O. No. 27 of 1975

Appellant : Khushi Ram

Respondent : Inderjit and ors.

Advocate for Def. : Kedarishwar and; Yoginder Paul, Adv.

Advocate for Pet/Ap. : Harish Behal, Adv.

Judgement :

V.K. Mehrotra, Ag. C.J.

1. Some land was acquired under the provisions of the Land Acquisition Act (for brief the Act) for the construction of Pong Dam. An award was also made. Khushi Ram demanded a share in the amount of compensation claiming to be the son of Raju Ram (since deceased) from his first wife. He made a petition dt. Sept. 12, 1971 which was forwarded by the Collector under Section 30 of the Act to the

court of District Judge, Kangra at Dharamsala. The reference was heard by the learned Addl. District Judge, Dharamsala, who disposed it of by his order dt. Dec. 6, 1975. He dismissed the claim of Khushi Ram who, then, approached this court for redress by filing a first appeal against order (No. 27 of 1975).

2. When the appeal was taken up for hearing, an objection was raised that no appeal lay under Section 54 of the Act against an order made under Section 30 and that, therefore, the present appeal was incompetent.

3. The question whether an order made under Section 30 of the Act was assailable in an appeal under Section 54 or not, has been engaging the attention of various courts in this country for long. The preponderance of judicial opinion is that though an order of this nature cannot be assailed in an appeal filed under Section 54 of the Act, it can be challenged in an appeal under Section 96 C.P.C., subject to payment of the necessary amount of court fee. The solitary case, taking a contrary view, which was brought to my notice, was that of *Lt. Col. Michael A.R. Skinner v. Addl. District Judge 1st Hissar*, 1981 Pun LJ 11. There too, the learned Judge who decided the case did not go into the matter in depth but only considered the question whether an order made under Section 30 of the Act should be permitted to be assailed in the extra-ordinary jurisdiction of the court under Article 226 of the Constitution or, else, the petitioner should be left to pursue his alternative remedy. This is what the learned Judge said in paras 2 and 3 of the report:

'2. The learned counsel for the respondents have argued that the writ is liable to be dismissed on the ground that the Additional District, Judge, Hissar, had jurisdiction to adjudicate upon the applications of the tenants and the Panchayat under Section 30 of the Act and further his impugned award dt. June 24, 1968, was appealable under Section 54 of the Act. In my opinion, this contention must prevail. The learned counsel for the petitioner has not been able to assail the jurisdiction of the Additional District Judge and also the legal proposition that the impugned award was appealable under Section 54 of the Act.

3. In the result, the writ fails and is dismissed with no order as to costs.'

4. Section 54 of the Act is in the following terms:-

'54. Appeals in proceedings before Court. -- Subject to the provisions of the Civil P.C. 1908 (5 of 1908), applicable to appeals from original decree, 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 an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Civil P.C. 1908, and in Order XLV thereof.'

An appeal, therefore lies under this provision from an award or any part of the award. The Act does not contain any definition of 'award'. However, in Section 26 it is provided that:

'(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of Section 23, and also the amount (if any) respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.

(2) Every such 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 Civil P.C. 1908 (5 of 1908).'

5. Award under this provision is confined to the one made 'under this part' which is referable to Part III of the Act which comprises of Sections 18 to 28-A. This is followed by Part IV comprising of Sections 29 and 30. It is obvious that proceedings taken under Part IV are not contemplated as resulting in an award. Obviously, therefore, an order made under Section 30 cannot be said to be included in the category of orders which are made appealable under Section 54 of the Act.

6. That, however, does not leave a person dissatisfied by an order passed under Section 30, without a remedy. The provisions of the Code of Civil Procedure are

applicable to proceedings before the court under the Act by virtue of Section 53, which says :

'Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to all proceedings before the Court under this Act.'

Section 26(2), which has been read earlier, also provides that an award shall be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure. In Clause (d) of Section 3 of the Act, the expression 'Court' means a principal civil court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act. An order made under Section 30 of the Act is an order by a court and is amenable to correction in an appeal filed in accordance with the provisions of the Civil P.C. which applies to the proceedings under the Act. The Code of Civil Procedure; envisages an appeal under Section 96. Cumulatively read, therefore, the aforesaid provisions lead to the conclusion that though an 'order made' under Section 30 of the Act is not subject to any appeal under Section 54 of the Act, an appeal against it would lie under Section 96 of the Civil P.C.

7. The conclusion aforesaid finds support from numerous decisions, some of which were rendered in *T.B. Ramachandra Rao v. A.N.S. Ramachandra Rao*, AIR 1922 PC 80; *Bai Lalita v. Shardaben*, AIR 1970 Guj 37; *Loomchand Sail v. Revenue Divisional Officer*, AIR 1975 Mad 177 and *Dy, Director of Agriculture, Khammam v. Sarvadevabhatla Ramanadham*, AIR 1978 Andh Pra 412.

8. In the premises, it must be held that the present appeal is not competent under Section 54 of the Act, though it is maintainable under Section 96 of the Civil P. C, before this court, inasmuch as, decision under Section 30 of the Act was rendered by the Additional District Judge, Dharamsala.

9. Let the matter be placed before the Registry for a fresh report in regard to the amount of court fee payable by the appellant on this appeal, which shall be treated as one under Section 96 of the Civil P.C. forthwith, whereafter, the appellant will

have a month for supplying the requisite amount of court fee payable, if any. The appeal shall be listed for hearing thereafter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com