

Collector Vs. Virrinder Kumar and ors.

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Court : Jammu and Kashmir

Decided On : Jun-01-1982

Judge : A.S. Anand and; I.K. Kotwal, JJ.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 Smvt. - Sections 4, 8, 96, 100, 104 and 149 - Order 41, Rule 22 - Order 43, Rule 1 - Schedule - Article 1; ;Jammu and Kashmir State Land Acquisition Act, 1990 Svt. - Sections 52 and 53

Appeal No. : Civil First Appeal No. 26 of 1981

Appellant : Collector

Respondent : Virrinder Kumar and ors.

Advocate for Def. : T.S. Thakur, Adv.

Advocate for Pet/Ap. : S.D. Sharma, Adv.

Judgement :

Kotwal, J.

1. This judgment will govern the disposal of Civil First Miscellaneous Appeal No. 26 of 1981 and the related Cross-objection Petition No. 42 of 1981, as they both arise from the same judgment of District Judge, Rajouri, given in a reference made to him under Section 18 of the State Land Acquisition Act, 1990, hereinafter to be referred -to as the Act.

2. Land measuring 13 kanals and 4 marlas, comprising Khasra Nos. 563 (5 kanals) and 564-min (8 kanals 4 marlas) situate at village Rampur, Rajouri, was acquired by Land Acquisition Collector, Rajouri, for the public purpose of constructing a building for the office of Executive Engineer, Rural Electrification Division, Rajouri. Notification under Section 6 was issued by the Government on 20-7-1974. On the material collected by him, he awarded a sum of Rs. 30,360/- i. e. Rs. 26,400/- by way of compensation and Rs. 3,960/- on account of Jabirana in favour of the respondents by his award dated 21-1-1975. He worked out the compensation at the rate of Rs. 2,000/-per kanal. The respondents not being satis-fled with the award made an application to him seeking a reference under Section 18 to District Judge, Rajouri which was made by him accordingly. The learned District Judge recorded evidence on the issue of the market value of the land acquired and granted compensation at the rate of Rs. 13,000/- per. kanal, besides Jabirana. In all, he enhanced the amount awarded from Rs. 30,360/- to Rs. 2,03,090/- i.e. Rs. 1,76,600/- as market value of the land and Rs. 26,419/- as Jabirana. Besides this he also awarded interest at the rate of 4% per annum on the aforesaid sum from the date possession of the land was taken

by the Collector. Neither the Collector nor the respondents appear to be satisfied with the award. Whereas the Collector has come up in appeal against the aforesaid award, the respondents too have challenged it by way of cross-objections.

3. A preliminary objection has been raised that the cross-objection petition is not maintainable. The objection is based upon two grounds: one, that right to file cross-objection is a substantive right and no such right has been conferred by the Act, and two, that the requisite court-fee payable on the memorandum of cross-objection not having been paid, it is non-existent in the eye of law. It is necessary to dispose of the preliminary objection first.

4. Order 41, Rule 22 of the C. P. C. says that a respondent, even though he may not have preferred an appeal against any part of the decree, may still attack it by taking a cross-objection to it, provided he files the memorandum of cross-objection within one month from the date of his service in the appeal, and provided further that he could have taken the cross-objection as a ground in the appeal, if he were to file an appeal against that part of the decree. Section 52 of the Act makes the procedure prescribed for ordinary civil appeals applicable to appeals under the Act and Sub-section (2) of Section 26 declares that every award made by a District Judge under Section 18 of the Act shall be a decree as defined by Clause (2) of Section 2 of the C. P. C. For the sake of ready reference these provisions are re-produced as below:

'(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 C. P. C.'

X X X X X '52. Subject to the provisions of law in force for the time being in the State relating to the procedure in civil action applicable to appeals from original decree, an appeal shall lie to the State High Court from any part of the award of the Court in any proceedings under this Act.'

5. If, therefore, the provisions of Order 41, Rule 22 apply to appeals under the Act, then there can be no manner of doubt that a respondent in such an appeal shall have a right to file cross-objection. What Section 52, however, makes applicable to appeals under the Act is the procedure alone which is prescribed by the Code for ordinary civil appeals. The immediate question which would, therefore, arise is : is the right to file cross-objection which has been guaranteed under Rule 22 merely a right of procedure? For, if it is not held to be a procedural right, then the provisions of Rule 22 cannot be made applicable to appeals under the Act, either with the aid of Section 52, or even on the general principle of law that when a matter under a special Act comes before an established Court, but the Act does not prescribe any procedure for it, then the ordinary incidents of procedure of that Court shall automatically attach to that matter also.

6. Answer to the aforesaid question has to be in affirmative. Right to file cross-objection is merely an off-shoot of the procedure prescribed for appeals under Order 41. A respondent who fails to avail of the remedy of appeal, acquires an additional opportunity of taking a cross-objection to that part of the decree from which he has failed to appeal, once his adversary files appeal against the decree and the Court on its admission under Rule 11, issues a notice to him by only following the procedure prescribed for the appeal on its admission. In this sense it is the additional rule of procedure under which he can exercise his right of appeal, a cross-objection petition

in effect being an cross appeal. While Sections 96, 100, 104 and Rule 1 of Order 43 confer substantive right of appeal against decree and orders, Order 41 prescribes the procedure to be followed in such appeals. There is ample authority for this view. In *A. L. A. Alagappa Chettiar v. Chockalingam Chetty*, AIR 1919 Mad 784 (FB), one of the two questions referred to the Full Bench was as to whether or not cross-objection could be taken in an appeal against a decision under the Provincial Insolvency Act. This question was answered by the Full Bench in the affirmative, even though the Provincial Insolvency Act did not, in terms, confer any such right on the respondent. The Court held that, since the procedure prescribed in Order 41 applied to appeals under the Provincial Insolvency Act, and right to file cross-objection being merely a right of procedure, the cross-objection petition was maintainable.

7. A similar question arose in *Inayatullah Khan v. Diwanchand Mahajan*, AIR 1959 Madh Pra 58. It was a case where the respondent had filed cross-objection in an appeal under Section 116-A of the Representation of the People Act, 1951, and an objection had been taken that the same was not maintainable because the said Act did not confer any right on the respondent to file a cross-objection. This objection was overruled by the Bench. Chief Justice Mr. Hidayatullah (as he then was) who spoke for the Court said (at p. 61):

'Our conclusion, therefore, is that inasmuch as this Court is enjoined to exercise the same powers, jurisdiction, and authority and to follow the same procedure as it would have exercised or followed in respect of a civil appeal under the Code of Civil Procedure, the right to file a cross-objection against the decision is available to a respondent who otherwise would have felt satisfied with the result of the case and would not have moved for an appeal on his own. In view of the rulings to which we have referred and which we have followed, we are quite clear that the cross-objection is tenable.'

8. The other case which is also direct in point and wherein this question has been decided in terms more specifically, in *Delhi Transport Undertaking of Delhi Municipal Corporation v. Kumari Lalita*, AIR 1972 Delhi 281. Here two appeals i.e. one under Section 110-A of the Motor Vehicles Act, 1939, and the other under Section II of the Requisitioning and Acquisition of Immovable Property Act, 1952, had been filed in the High Court and in each appeal the respondent had filed a memorandum of cross-objection. An identical objection was taken in both the appeals that right to file cross-objection not being a procedural but a substantive right, and as none of the aforesaid two Acts under which the appeals were brought contained a provision for taking a cross-objection, none of the memoranda of the cross-objection was maintainable, even if the procedure prescribed in Order 41, Rule 22 applied to appeals under these Acts. There being some cleavage in judicial opinion on the point, the same was referred to a larger Bench. The objection was negatived by the Bench on the ground that right to file cross-objection under Order 41, Rule 22 not being a substantive right, but being merely a procedural right, the memoranda of cross-objection were clearly maintainable, as the procedure contained in Order 41 applied to appeals under the two Acts. The Bench summed up its conclusion in the following words (at p. 287):

'Thus there is overwhelming authority to hold that cross-objection is not a substantive right given by Order 41, Rule 22 of the Code but is only procedural taking place of cross-objection.'

9. The view that cross-objection can be filed in an appeal to which the provisions of

Order 41 apply, has also been taken in *Jaikrishna Vishwanath v. Sawatram Ramprasad Shop*, AIR 1940 Nag 292. *The Central Provinces Syndicate Pvt. Ltd. v. Smt. Sita Devi*, AIR 1973 Madh Pra 134; *Ramasray Singh V. Bibhisan Sinha*, AIR 1950 Cal 372, and *Lala Khazanchi Shah v. Haji Niaz Ali*, AIR 1940 Lah 438, with which I am in respectful agreement.

10. Reliance on behalf of the appellant was, however, placed upon a few other decisions none of which, except the one given in *M/s. Bokaro and Ramgur Ltd. v. Kathara Coal Co. Ltd.*, AIR 1969 Pat 235, decided the point at issue in terms. In *Zahid Hussain v. B. Khairati Lal Jain*, AIR 1954 All 419, for instance, it was held that cross-objection in an appeal Under Section 75 of the Provincial Insolvency Act, could not be filed because neither the Act itself contained any such provision, nor had the provisions of Order 41, Rule 22 been made applicable to such appeals, without further saying as to whether or not Rule 22 created a substantive or merely a procedural right in favour of the respondent. In *Vadlamudi Venkateswarlu v. Raviapati Ramamma*, AIR 1950 Mad 379 (FB), the limited question before the Full Bench was as to whether or not the respondent could file cross-objection against a co-respondent under Order 41, Rule 22. Similarly in *Excise and Taxation Officer v. Caltex India Ltd.*, AIR 1962 J & K 89, the Bench without in terms deciding the point as to whether or not cross-objection would be taken in an appeal preferred against the judgment given by a single Judge in a writ petition had, after condoning the delay treated the cross-objection as a memorandum of appeal. The other reported case of this Court is the *Assessing Authority v. Jammu Metal Rolling Mills*, 1971 JKLR 605 : (1971 Tax LR 1861) (FB). In this case the Full Bench had ruled that cross-objection could not be filed in a Letters Patent Appeal against a judgment of a single Judge passed in a writ petition. Reliance, in that behalf was placed upon two decisions of Allahabad High Court, viz. *Mt. Daroupadi Devi v. S. K. Dutt*, AIR 1957 All 48, and *Sukhanand Mathura Prasad v. Baikunth Nath*, AIR 1962 All 509, besides a Bench decision of this Court in *Excise and Taxation Officer v. Caltex India Ltd.*, AIR 1962 J & K 89 (supra). None of the Allahabad High Court decisions pertained to a Letters Patent Appeal that had arisen out of a writ petition. In AIR 1957 All 48 (supra) cross-objection had been filed in a Letters Patent Appeal directed against a judgment of a single Judge disposing of a civil second appeal that had arisen out of a suit, *Raghubar Dayal, J.*, as he then was, held the cross-objection not maintainable on two grounds: firstly, that the expression 'decree' had a different connotation than the expression 'judgment' which alone was appealable under the Letters Patent; and secondly, that right to file cross-objection was an independent right like right to seek review. This authority is even otherwise distinguishable. A respondent who could not have filed an appeal, cannot also file a cross-objection to that part of the decree against which he wanted to file an appeal. A party to a second appeal having no right to file a Letters Patent Appeal without seeking leave of the Judge, against whose judgment he wants to file the same, on the parity of the reasoning, has no right to file even cross-objection as a respondent. Cross-objection in the other Allahabad case viz. AIR 1962 All 509 (supra) was again filed in a Letters Patent Appeal which had been directed against a judgment of a single Judge deciding an execution second appeal. What has been held in AIR 1962 J & K 89 (supra) has already been noticed. In none of these cases it was decided in terms as to whether or not right to file cross-objection was a substantive right or a procedural right. That apart, the view taken by the Privy Council in *Mt Sabitri Thakurain v. Savi*, AIR 1921 PC 80 that 'regulations duly made by Orders and Rules under the Civil P. C. 1908, are applicable to the jurisdiction exercisable under the Letters Patent, except that they do not restrict the express Letters Patent Appeal', does not appear to have been noticed by the Full Bench in 1971 JKLR 605 : (1971 Tax

LR 1861) (supra). This decision is, therefore, an authority for the only proposition that cross-objection in a Letters Patent Appeal against a judgment given in a writ petition is not maintainable. With due respects to the learned Judges who constituted the Bench in AIR 1969 Pat 235 (supra), I cannot subscribe to the view taken therein that right to file cross-objection is a substantive right. For what has been stated heretofore, I am clearly of the opinion that a cross-objection petition in an appeal Under Section 52 of the Act is maintainable.

11. Even so, no relief can be given to the respondents on the basis of their cross-objection, for the same cannot be said to be existing in the eye of law. Just as on a memorandum of appeal, ad valorem court-fee is payable on a memorandum of cross-objection in terms of Article 1, Schedule 1 of the Court-fees Act. By virtue of their cross-objection, the respondents' claim enhanced compensation for 13 kanals and 4 marlas of land at the rate of Rs. 20,000/- per kanal against Rs. 13,000/- per kanal awarded by the District Judge. They were in terms of Section 8 read with Article 1 of Schedule 1 of the Court-fees Act, required to pay ad valorem court-fee on the difference between the sum claimed and the sum awarded. On the other hand, they affixed court-fee stamp worth Rs. 2/- only on the memorandum of their cross-objections. Section 4 of the Court-fees Act forbids reception of a document by the High Court which is not duly stamped. It renders the document non est which is either not stamped at all, or has been insufficiently stamped. Mr. Thakur, however, invoked the provisions of S. 149, C. P. C. and prayed that the respondents be permitted to make up the deficiency even at the late stage of arguments. Section 149 no doubt gives discretion to the Court to allow a party to make up the deficiency in payment of court-fee, but it will refuse to exercise it in favour of a party who had deliberately omitted to pay the requisite court-fee when the document initially came to be filed, and the filing of the document on the date on which the deficiency is sought to be made up would be barred by time. Admittedly, the respondents were not in any doubt that ad valorem court-fee under Article 1, Schedule 1 had to be paid on the memorandum of cross-objection when it came to be filed. They did not pay it because perhaps they were not sure whether it would ultimately succeed. They just took a chance and deferred the payment of the proper court-fee till the stage of arguments, intending to pay it only when they could see a ray of hope in its success. Courts can hardly show any indulgence to such bargainers. The cross-objection petition is accordingly rejected.

12. I am pained to notice that even the Registry has failed to put up a note on the memorandum of cross-objection that it did not bear the necessary court-fee stamps. It was its bounden duty to make a note. The Registry, it is hoped, shall be careful in future to immediately put up such a note for appropriate orders of the Court

13. Coming now to the merits of the appeal, Notification Under Section 6, as already noticed, was issued on 20-7-1974. The land acquired is situate in village Rampur Rajouri. There are three sale deeds on the record, that evidence sale of land in this village. Out of these, one relates to the sale of 6 marlas by P. W. Mohan Lal in favour of P. W. Som Raj in Aug., 1968, for a consideration of Rs. 6,000/-. The other relates to the sale of 2 marlas by P. W. Mohan Lal in favour of P. W. Mohd. Iqbal in Feb., 1973, for a consideration of Rs. 3,000/-, and the third relates to the sale of 5 marlas in June, 1974 by P. W. Abdul Rehman in favour of P. W. Abdul Aziz, for a consideration of Rs. 5,000/-. From these sale deeds it clearly transpires that land in this village was selling from Rs. 20,000/- to Rs. 30,000/- per kanal between the years 1968 and 1974. The first two sale deeds may not be really determinative of the market price of the land in

terms of Section 23 of the Act, but the third one is undoubtedly so. It pertains to a sale effected in June, 1974, which means in close, proximity to the date of Notification Under Section 6.

14. Mr. Sharma's contention, however, is that even this sale deed could not be relied upon, for it pertained to a very small area of five marlas, as compared to 13 kanals 4 marlas of land acquired. It is true that sale of small pieces of land cannot provide an index for the market price of big chunks of land. But, this argument is of no avail here, for the rate allowed by the learned District Judge is far less than Rs. 20,000/- per kanal. That apart, the land acquired is situate in the newly developed colony, known as Jawahir Nagar. It is almost in the state-ment of every witness, whether examined on behalf of the respondents or on behalf of the appellants, that the place where the land is situate is fast developing as a residential-cum-commercial colony, and has many Government offices around it. In these circumstances, therefore, it is idle to contend that the market rate of Rs. 13,000/- per kanal allowed by the learned District Judge is by any standard excessive. But for the failure of their cross-objection petition, the respondents could have perhaps claimed even more. (Raghubans Narain Singh v. The Uttar Pradesh Government through Collector of Bijnor, AIR 1967 SC 465, and Smt. Tribeni Devi v. The Collector, Ranchi, AIR 1972 SC 1417).

15. Mr. Sharma, however, appears to be right in contending that the learned District Judge has committed an arithmetical mistake in calculating the total compensation of the land acquired. The District Judge has awarded a sum of Rs. 1,76,600/- which if calculated at the rate of Rs. 13,000/- per kanal comes to Rs. 1,71,600/- only. The award made by the learned District Judge is accordingly modified and the respondents are declared entitled to the following sums:

(i) Compensation for 13 kanals and 4 marlas of land at the rate of Rs. 13,000/- per kanal ... Rs.

1,71,600.00

(ii) Jabitana at the rate of 15% .. Rs.

25,740.00

Total:... Rs.1,97,340.00

(iii) Interest at the rate of 4% per annum on the aforesaid sum from the date possession of the land was taken by the Collector till the date the said sum has been deposited by the Collector. with the District Judge.

16. Leaving the parties to bear their own costs in this court, the appeal is disposed of accordingly.