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INDORE DEVELOPMENT AUTHORITY

v.

TARAK SINGH AND ORS. ETC. ETC.

MAY 1, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Land Acquisition Act, 1894 :*

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*Land Acquisition—Reference Court—Order granting enhanced compensation—Memorandum of Appeal against—Court fee payable on—Held ad valorem Court fee is payable—Section 8 of the M.P. Court Fees Act, 1870 held applicable.*

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*M.P. Court Fees Act, 1870 : Section 8—Schedule II—Article 11—Applicability of.*

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The appellant-authority filed a memorandum of appeal in the High Court against an order by which the Reference Court granted enhanced compensation to the claimants for the lands acquired by the appellant-authority. On this memorandum of appeal the authority paid fixed court fees. However, relying on its Full Bench Judgment reported in *State of M.P. v. Goverdhandas*, (1993) JLJ 280, the High Court passed an order dated 27.10.93 requiring the appellant-Authority to pay *ad valorem* court fee. The appellant Authority filed appeals before this Court contending that it was not a claimant and Section 8 of the M.P. Court fees Act, 1870 was inapplicable and only fixed court fee prescribed under Article 11 of Schedule II of the Act was applicable.

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Disposing the appeals, this Court

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**HELD :** The appellants are required to pay *ad valorem* court fee. It is true that the appellant is not the claimant; but when it seeks to avoid the decree, which is made by the Reference Court, it must be construed that the appellant is seeking to avoid the amount of higher compensation determined by the Reference Court, as claimed by the land owners. Therefore, the appellant is required to pay the court fee on the memorandum of appeal to the extent to which the appellant seeks to avoid the higher compensation awarded by the Reference Court under the Central Act.

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When its legality is challenged by filing the appeal under Section 54, the difference of the amount for which appeal is filed, *ad valorem* court fee under section 8 is required to be paid. Article 11 of Schedule II has no application, since it is expressly covered by section 8 of the M.P. Court Fee Act. [1104-C, 1103-E-F] A

*C.G. Ghanshamdas & Ors. v. Collector of Madras*, AIR (1987) SC.180, relied on. B

*Diwan Bros. v. Central Bank of India Bombay*, [1976] Suppl. SCR 664, held inapplicable.

*State of M.P. v. Goverdhandas*, (1993) JIJ 280, approved. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5645-46 of 1995.

From the Judgment and Order dated 27.10.93 of the Madhya Pradesh High Court in F.A. No. 204 of 1993. D

V.R. Reddy Additional Solicitor General and Vivek Gambhir for the Appellant.

Niraj Sharma, Sakesh Kumar and S.K. Agnihotri for the Respondents. E

The following Order of the Court was delivered :

Leave granted.

The appellant acquired the land under the Land Acquisition Act, 1894 (for short, 'Central Act') and on reference under s.18 the District Judge, Indore enhanced the compensation from Rs. 25,000 to Rs. 88,000 per hectare. Dissatisfied therewith, the appellant filed the memorandum of appeal in the High Court and paid the fixed court fee. By order dated 27.10.83, the appellant was called upon to pay the *ad valorem* court fee. Calling in question the order, the appellant filed these appeals by special leave. F G

The High Court has relied upon its Full Bench decision reported in *State of M.P. v. Goverdhandas*, (1993) JIJ 280. The principal contention of Shri V.R. Reddy, the learned Additional Solicitor, is that the appellant is H

A not a claimant. Section 8 of the M.P. Court Fees Act, 1870 (for short, 'the Act') has no application to the facts in this case. Article 11 of Schedule II of the Act is applicable and that, therefore, they are required to pay only the fixed court fee prescribed thereunder. He also seeks to canvass the correctness of the judgment of the Full Bench in that behalf.

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Having considered the respective contentions, we are of the view that the Full Bench of the High Court of M.P. has laid down the law correctly. Section 3(d) of the Central Act defines the 'Court' to mean a principal Civil Court of original jurisdiction. Section 18 of the Central Act gives right to the claimant or the owner of the land for seeking reference. The Collector is enjoined to make a reference for the determination of the objection raised by the claimant regarding either the measurement of the land or the amount of compensation. Thereafter, the Collector is obligated to make the statement to the Court in the manner prescribed under s.19. On receipt thereof, under s.20, the Court is to cause a notice served as mentioned therein. Under s.22, the Court conducts the proceedings as a Civil Court. Sub-section (2) of s.2 of the CPC defines the decree and s.2(14) of the Act defines 'order'.

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This Court in *C.G. Ghanshamdas & Ors. v. Collector of Madras*, AIR (1987) SC 180, considering the scope of the appeal under s.11 of the Requisitioning and Acquisition of Immovable Property Act (30 of 1952) and the liability of the State to pay the Court fee under s.51 of the Tamil Nadu Court-fees Act, which is *pari materia* with 58 of the Act, considered the controversy and held that the award of the arbitrator is a formal expression of a decision made by a competent authority. Further, it is a decision binding on the parties to the proceedings in which it is made.

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Therefore, the question whether the order in question is executable or not appears to be irrelevant for the purpose of determining the point on the payment of court fee. On consideration of s. 51, of the Tamil Nadu Court Fee Act and 2(2) and 2(14) of the CPC, this Court held that the order awarding compensation under the Act, is an order under s.2(14). When it is sought to be assailed by filing appeal under s.51 of Tamil Nadu Court Fee Act, the appellant is definitely seeking to avoid the compensation awarded under the Act. Therefore, that is an order made by the statutory authority. Accordingly, the appellants were required to pay ad valorem

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court fee on the value of the memorandum of appeal.

The case on hand stands on a higher footing than the one dealt with in Ghanshyamdas's case. Here, the Subordinate Judge, who deals with the reference, is a civil court under the Central Act to determine compensation. By operation of s.26(2), his award is a decree within the meaning of s.2(2) of CPC. It is a formal expression of an adjudication on the compensation awardable or measurement of the land acquired under the Central Act. It is a final adjudication also, unless it can be avoided in any other forum known to law; and it could be avoided only by filing appeal as prescribed in s.54 of the Central Act.

In this context, it is relevant to note s.8 of the M.P. Court Fees Act which reads thus :

"Fee on Memo of appeal against order relating to compensation: —

The amount of fee payable under this Act on a Memo of Appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purpose shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

It is true the appellant is not the claimant. But when the appellant seeks to avoid the decree, which is made by the reference Court, it must be construed that the appellant is seeking to avoid the amount of higher compensation determined by the reference Court, as claimed by the land owners. Therefore, the appellant is required to pay the Court fee on the memorandum of appeal to the extent on which the appellant seeks to avoid the higher compensation awarded by the reference Court under the Central Act. When its legality is challenged by filing the appeal under s.54, the difference of the amount for which appeal is filed, *ad valorem* court fee under s.8 is required to be paid. Article 11 of Schedule II has no application, since it is expressly covered by s.8 of the M.P. Court fee Act.

The decision of this Court in *Diwan Bros. v. Central Bank of India, Bombay*, [1976] Suppl. SCR 664, relied on by Shri V.R. Reddy has no application to the facts in this case. Therein, the Special Tribunal was constituted and an application was to be made to the Tribunal for determination of the disputes. In view of the specific language, this Court held that the criteria prescribed under sub-section (2) of s.2 of the CPC has not

- A been satisfied. Therefore, the order is not a decree and the application is not a plaint as required by CPC. Therefore, it was held that fixed court fee was required to be paid on memorandum of appeal. But, as stated earlier, since the Act has treated the Court under the Central Act as an established Civil Court of original jurisdiction and conferred the power and jurisdiction to determine conclusively the objection regarding the measurement or compensation or title to receive the compensation between the contesting parties, it is a Civil Court under the CPC and the award of the Civil Court is deemed under s.26(2) to be decree within the meaning of sub-section (2) of s.2 of CPC.

- C So, the appellants are required to pay *ad valorem* court fee. The appellants are granted two months' time from today for payment of the deficit court fee. The appeals are accordingly disposed of. No costs.

T.N.A.

Appeals disposed of.