

(2005) 04 JH CK 0007

Jharkhand High Court

Case No: LPA No's. 105 and 106 of 2004

Banshi Mahto and Others

APPELLANT

Vs

Deputy Commissioner and
Another

RESPONDENT

Date of Decision: April 26, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 110
- Land Acquisition Act, 1894 - Section 54

Citation: (2005) 2 BLJR 843 : (2005) 3 JCR 119

Hon'ble Judges: Altamas Kadir, C.J; R.K. Merathia, J

Bench: Division Bench

Advocate: V. Shivnath, Birendra Kumar and S. Topno, for the Appellant; M.S. Akhtar, SC II, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. When these appeals were filed the office put up a note indicating that in terms of Section 54 of the Land Acquisition Act, 1894, from any decree of the High Court passed in an appeal, an appeal would lie to the Hon'ble Supreme Court of India. The matter was, accordingly, submitted for orders with regard to the maintainability of the Letters Patent Appeal.

2. In order to appreciate the objection indicated by the office, Section 54 of the Land Acquisition Act, 1894, is set out:

54. Appeals in proceedings before Court. -- Subject to the provisions of the Code of Civil Procedure, 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 an 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 XLIV thereof.

3. At first glance, the Letters Patent Appeal appears to be not maintainable in view of the stipulation that an appeal from an order of the High Court would lie to the Supreme Court, but the said question has been considered not only by this Court but also by the Hon'ble Supreme Court in several cases and the issue, in our view, is no longer res Integra, as pointed out by Mr. V. Shivnath, appearing in support of the appeal, as far as the right to maintain Letters Patent Appeal vis-a-vis the provisions of Section 54 of the Land Acquisition Act is concerned. Mr. Shivnath submitted that the said question fell for consideration of the Full Bench of the Patna High Court in its Ranchi Bench in LPA No. 39 of 1988 in the case of State of Bihar v. Smt. Sharda Devi, reported in 1997 (1) PLJR 155. While considering, amongst others the provisions of Clause 10 of the Patna High Court Rules relating to the rules under Letters Patent, it was held in no uncertain terms that a Letters Patent Appeal was not barred u/s 54 of the Land Acquisition Act, 1894. In explaining its conclusion, the Full Bench distinguished the decision of the Supreme Court in the case of Baljit Singh v. State of Haryana, CA No. 1663-1968 of 1982, wherein it had been held that a Letters Patent Appeal was not maintainable in a case arising under the Land Acquisition Act. It was sought to be observed that the judgment of the Supreme Court proceeded not on the basis of any finding as such, but on a concession made by counsel. A similar view was also expressed by the Full Bench of the Delhi High Court in the case of Mahli Devi Vs. Chander Bhan and Others, which was also a case in which the provisions of Clause 10 of the Letters Patent vis-a-vis the provisions of Section 54 of the Land Acquisition Act, 1894 was under consideration. In the said case the view expressed in Baljit Singh's case was recorded as having been based on a concession on an erroneous reading of an earlier decision of the Hon'ble Supreme Court in the case of South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others. The Full Bench of the Delhi High Court also observed that the wording of Section 54 of the Land Acquisition Act merely refers to the forum of appeal and the non-obstante clause did not restrict the right to appeal from one Bench of the High Court to another Bench as was provided for in Clause 10 of the Letters Patent.

4. Mr. Shivnath urged that the view expressed by the Full Bench of the Patna High Court in its Ranchi Bench in the case of Sharda Devi also fell for consideration of the Hon'ble Supreme Court, which affirmed the view expressed by the Full Bench. The Supreme Court clarified the position that the judgment in Baljit Singh's case was based on a concession and also on the judgment in the South Asia Industries case which did not deal with Section 54 of the Land Acquisition Act. Having regard to the view expressed by the Delhi High Court and the Supreme Court, Mr. Shivnath submitted that in keeping with the principles relating to the interpretation of Statutes, a harmonious construction would have to be given to the provisions of Section 54 of the Land Acquisition Act in relation to Clause 10 of the Letters Patent.

In this regard Mr. Shivnath referred to another Full Bench decision of the Nagpur Bench of the Bombay High Court in the case of AIR 1940 39 (Nagpur) and several other judgments which need not detain us.

3. Mr. Shivnath submitted that in the circumstances aforesaid, a Letters Patent Appeal from the decision of the Learned Single Judge in an appeal u/s 54 of the Land Acquisition Act, 1894, is maintainable in law.

6. Mr. M. S. Akhtar, who appeared for the State and the State respondents, urged that interpretation must depend on the text and context and that neither could be ignored, as both are important in interpreting the provisions of a statute. Referring to the observation made by the Supreme Court in the case of Reserve Bank of India v. Peerless General Finance and Investment Company Limited, reported in AIR 1987 SC 1023 Mr. Akhtar contended that a Statute is best interpreted when we know why it was enacted and that it is with this knowledge, that the statute must be read, first as a whole and then section by section clause by clause, phrase by phrase and word by word. Mr. Akhtar submitted that when from a plain reading of Section 54 of the Land Acquisition Act, 1894, it was quite clear that an appeal from an order passed by the High Court in appeal would lie to the Supreme Court, a second appeal from an order of a learned Single Judge would not be maintainable in the High Court itself.

7. Having carefully considered the submissions made on behalf of the respective parties and the decisions as cited, we cannot lose sight of the fact that the objection now being sought to be raised by the office is no longer valid, having been settled upto the Apex Court. After the decision of the Supreme Court in the case of Sharda Devi, it is no longer open for any one to contend before this Court that an appeal, under the Letters Patent from an order of a learned Single Judge in an appeal u/s 54 of the Land Acquisition Act, 1894, would not be maintainable.

8. The appeals, are, accordingly, held to be maintainable and may now be placed for admission after removal of the defects, if any. The office is directed to take note of this decision in future matters involving Letters Patent Appeals from orders passed from appeals u/s 54 of the Land Acquisition Act, 1894.