
(2005) 08 KL CK 0028

High Court Of Kerala

Case No: L.A.A. No. 8 of 2003

Jose

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision: Aug. 30, 2005

Acts Referred:

- Court Fees and Suits Valuation Act, 1955 - Article 1
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 51, 52, 72
- Land Acquisition Act, 1894 - Section 51, 52, 54

Citation: (2005) 4 ILR (Ker) 534 : (2005) 4 KLT 520

Hon'ble Judges: K.A. Abdul Gafoor, J; K. Hema, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

K.A. Abdul Gafoor, J.

This case has come up before us, because, the Registry noted a defect that sufficient court fee has not been paid on this appeal and the counsel appearing for the appellant replied that no ad velorem court fee need be paid on this appeal. It is on that point, the matter is posted before us.

2. It is submitted that a claim statement has been filed before the Collector, which, in terms of Rule 378(3) of the Civil Rules of Practice, shall have to be taken as a plaint. In terms of Section 72(xviii) of the Court Fees and Suits Valuation Act, an application for compensation is not chargeable to any court fee. When the reference application which is treated as plaint is thus not chargeable to court fee, necessarily, an appeal from the judgment answering the reference shall also not be chargeable to court fee, it is contended. Hence, it is submitted that a reading of Sections 51 and 52 of the Court Fees and Suits Valuation Act also makes it clear that no court fee is payable on an appeal, u/s 54 of the Land Acquisition Act, 1894, as no court fee is payable "in the court of first instance".

3. It has been held by the Full Bench in the decision reported in Balakrishnan Nambiyar v. Madhavan and Ors. (1978 KLT 843):

"The word "awarded" occurring in Section 51 of the Court-fees Act has to be given a wide and generic sense as meaning "ordered to be paid".

So, Section 51 of the Court Fees and Suits Valuation Act casts a liability to pay fee on "a memorandum of appeal against an order relating to compensation under any Act for the time being in force for acquisition of property for public purpose". Land Acquisition Act is such an Act. So an appeal in terms of Section 54 of that Land Acquisition Act is chargeable with Court fee.

4. The other limb of his contention that court fee payable on an appeal shall be equivalent to the court fee payable at the original stage also does not merit consideration. As per Section 72(xviii) of the Court Fees and Suits Valuation Act, an application for compensation alone is exempted from Court Fee. Appeal and applications are entirely different. Such application is treated as plaint in terms of Rule 378(3) of the Civil Rules of Practice only as a measure of procedure followed in reference case under the Land Acquisition Act. It cannot be taken as institution of a proceedings in "the court of first instance" to attract Section 52 of the Land Acquisition Act. More over, Land Acquisition Appeals are covered by Section 51 and not by Section 52 of the Court Fees and Suits Valuation Act. Therefore, the objection raised by the counsel for the appellant against the note of the Registry is untenable and the appellant has to pay court fee on the appeal based on Section 51 of the Court Fees and Suits Valuation Act, which shall have to be computed in terms of Article 1 in Schedule I to the Court Fees and Suits Valuation Act.

The court fee shall be paid within two weeks from today.