
(2018) 02 BOM CK 0022

Bombay High Court (Nagpur Bench)

Case No: 419 of 2010

Mohanlal Chandmal
Phafat

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Feb. 1, 2018

Acts Referred:

- Code of Civil Procedure, 1908, Section 100-A -
- Land Acquisition Act, 1894, Section 4, Section 54 - Publication of preliminary notification and powers of officers thereupon. - Appeals in proceedings before Court

Hon'ble Judges: B.P. Dharmadhikari, Swapna Joshi

Bench: Single Bench

Advocate: S.N. Bhattad, H.R. Dhumale

Final Decision: Dismissed

Judgement

1. By this Letters Patent Appeal, the appellants have challenged the judgment and decree dated 21st August, 2009 passed by learned single Judge in First Appeal No.60/1992, whereby the Appeal was partly allowed and the judgment and award passed by learned District Judge, Akola, was modified and the appellants were granted compensation @ Rs. 65,000/- per hectare instead of Rs. 9000/- per Are.

2. The facts in brief which led to prefer the present Appeal, are that: the land belonging to the appellants was situated at village Adgaon Khurd. The State of Maharashtra issued a notification under Section 4 of the Land Acquisition Act (in short, the "L.A.Act") on 8.5.1983. The possession of the land was, however, obtained on 12.1.1987 by the Land Acquisition Officer ("LAO"). The award came to be passed by the Land Acquisition Officer and compensation was granted to the appellants at the rate of Rs. 25,000/- per hectare. The appellants preferred reference before Collector, Akola against the said order. The

Collector referred the matter to District Judge, Akola and the case was numbered as Land Acquisition Case No.3/1987. The compensation was granted by the Reference Court @ Rs. 900/- per acre. The State challenged the judgment and award dated 22.7.1991 by preferring an Appeal before the learned single Judge. After hearing both sides, the learned single Judge passed the judgment and decree, as aforesaid. The said judgment and decree has been challenged in the present LPA.

3. At the outset, Mr. Dhumale, learned AGP for respondent-State strongly objected to the very maintainability of the present LPA against the judgment passed by the learned single Judge, in exercise of appellate jurisdiction.

4. Mr. Bhattad, learned counsel for appellants contended that as per the provisions of Section 54 of the L.A. Act, Letters Patent Appeal would lie in this Court and there would be no bar as such u/s 100-A of the Code of Civil Procedure (CPC) to the LPA arising out of Section 54 of the L.A. Act 1884, as the amendment u/s 100-A has been made in the year 2002 and it came into force with effect from 1.7.2002 and the said amendment would not be applicable to the land acquisition proceedings which were initiated in the year 1987. He further contended that the Letters Patent is the charter of the High Court and the provisions of special enactment or CPC cannot take away the power of High Court under the Letters Patent.

5. In support of his contentions, Mr. Bhattad placed reliance upon the judgments reported in (1) AIR 2002 SC 1357 in the case of Sharda Devi vs State of Bihar ; (2) 2008 (1) Mh.L.J. 724; in the case of Asha Joshi vs. National Insurance ; (3) 2004 (3) Mh.L.J. 706; in the case of Rahul Sharad vs. Ratnakar Trimbak).

6. As regards Asha Joshi vs. National Insurance (supra), it was held by the Division Bench of this Court that, "the appeal under section 173 of the Motor Vehicles Act from award of Claims Tribunal, the single Judge hearing such appeal does not deliver a judgment in exercise of appellate jurisdiction, such a judgment would be subject to an appeal under Clause 15." In concern with the case of Asha (supra), in Mohd. Riyazur Rehman Siddique vs. Deputy Director Health Services, reported in 2008 (6) Mh.L.J. 941, the full Bench of this Court had expressed its view that the provisions of Section 100-A are prospective in their operation and limitation. It is observed in paragraph 75 as under :-

" 75. It is a settled principle of law that appeal is continuation of original proceedings and the procedural law regulating the right of appeal would be prospective unless and until it is clearly spelt out to the contrary. Equally well settled is the principle that right of appeal being a statutory right can be regulated and/or even taken away by a subsequent legislation. There being no fundamental right or a general right to prefer appeals, the appeals instituted prior to 1st July, 2002 before introduction of Section 100A on the statute of Code of Civil Procedure would be regulated by the present provisions of

7. In the case of *Sharda Devi vs. State of Bihar*, reported in 2002(2) JLJR SC 12, considering the maintainability of the Appeal under Section 54 of the LA Act, the Hon"ble Supreme Court held as under :

"9. A letters patent is the charter under which the High court is established. The powers given to a High Court under the letters patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a single Judge, the right to entertain the appeal would not be excluded unless the concerned statutory enactment excludes an appeal under the letters patent.

13. On the other hand, Mr Mathur has submitted that a letters patent appeal would lie. He points out that almost all High courts have taken the view that a letters patent appeal would lie against a judgment of a single Judge passed in an appeal filed under Section 54 of the said Act. He relies upon the cases of *Mahli Dev v. Chander Bhan*, reported in AIR (1995) Delhi 293, *Mohabbat Singh v. Crown* reported in AIR (1923) Lahore 274, *Narayandas Daga v. Ganpatrao*, reported in AIR (1944) Nagpur 284 and *M.Srinivas v. Jawaharlal Nehru Technological University, Hyderabad*, reported in (1990) 3 Andhra Law times 3.

14. In our view, Mr.Mathur is right. Section 26 of the said Act provides that every award shall be decree and the statement of grounds of every award shall be a judgment. By virtue of the Letters Patent "an appeal" against the judgment of a single Judge of the High Court would lie to a Division Bench. Section 54 of the said Act does not exclude an appeal under the Letters patent. The word "only" occurring immediately after the non-obstante clause in Section 54 refers to the forum of appeal. In other words, it provides that the appeal will be to the High Court and not any other court e.g. the District Court. The term "an appeal" would take within its sweep even a letters patent appeal. The decision of the Division Bench rendered in a letters patent appeal will then be subject to appeal to the Supreme Court. Read in any other manner there would be a conflict between Section 54 and the provision of a Letters Patent. It is settled law that if there is a conflict, attempt should be made to harmoniously construe the provisions.

15. We, therefore, hold that under Section 54 of the said Act there is no bar to the maintainability of a letters patent appeal. We therefore agree with the view taken in *Basant Kumar's* case. The reference is answered accordingly."

8. In the case of *Rahul Sharad vs. Ratnakar Trimbak* (supra), the Full Bench of this Court held that, "no appeal under Letters patent tenable against decree or order passed by Single Judge on or after 1.7.2002 under Section 100A of the Code of Civil Procedure. However, where Letters patent Appeal has already been preferred from the judgment and decree of a single Judge in any appeal from an original decree or order prior to 1.7.2002, such appeal is saved". It is further held that,

(i) Section 100A in the Civil Procedure Code, 1908 substituted by Section 4 of the code of Civil Procedure (Amendment) Act 22 of 2002 takes away the right of Letters Patent Appeal on and from 1st July 2002 in respect of the suit filed before that date where the judgment or order of the single Judge of the High Court in appeal against an original decree or order from such suit is rendered on and after 1st July 2002 i.e., the date on which the amendment to section 100-A is brought into force. No Letters Patent Appeal shall lie from the judgment, decree or order of a single Judge in the first appeal (or by whatever name called) given on or after coming into force of the new Section 100A i.e. 1st July 2002. (ii) The provisions of Section 100-A in the Code of Civil Procedure, 1908 substituted by section 4 of the code of Civil Procedure (Amendment) Act, 2002 shall not apply to the judgment and order of the Single Judge of the High Court in appeal against an original decree or order rendered before 1st July 2002 and the Letters Patent Appeal preferred against such judgment or order on or after 1st July 2002. (iii) In relation to the suit instituted prior to 1st July 2002 and the judgment or order of the Single Judge of the High Court in appeal against an original decree r order rendered before 1st July 2002, the pending Letters Patent Appeal as on 1st July 2002 preferred against such judgment and order of the Single Judge shall remain unaffected by section 100A of the Code of Civil Procedure,1908 as substituted by Section 4 of the Code of Civil procedure (amendment) Act, 2002. (iv) Section 100A as substituted by code of Civil Procedure (Amendment) Act, 2002 has a limited retrospectivity as indicated in clause (i) above and to that extent vested right of the parties to the suit filed prior to 1st July,2002 is extinguished. The fate of Letters Patent Appeal arising out of any appeal from an original decree or order heard and decided by a Single Judge prior to 1st July 2002 remains unaffected by the new Section 100A of the Code. "

10. The full Bench of this Court in the case of *Rahul vs. Ratnakar* (supra), took the same view which is approved by the Hon"ble Apex Court in *Bento De Souza Egipsy vs. Yvette Alvares Colaco*, reported in (2004) 13 SCC 438. Further the Supreme Court in recent case of *Kamla Devi vs. Kaushal Kanwar* and another, reported in 2007(2) Mh.L.J.(SC) 721, referred to *Bento De Souza's* case (supra), wherein it is opined that Section 100-A

of the Code has no retrospective effect and observed that the Letters Patent Appeal filed prior to coming into force of 2002 Act would be maintainable. Significantly, the right of appeal is a substantive right. The vested right of appeal can be taken away only by a subsequent enactment if so provided expressly or by intendment and not otherwise. The Full Bench in the case of Mohd, Riyazur (supra), came to the conclusion in paragraph 80 as under :

"80. In our view, the most appropriate course of action in consonance with the judicial propriety and discipline would have been that the Division Bench dealing with Asha's case (supra) should have referred the matter to a larger Bench rather than expressing the contrary view to that of equi bench judgment in Bhenoy G. Dembla's case (supra) which had been pronounced much earlier. Be that as it may, we would leave the matter at that stage and proceed to discuss paragraph 33 of the judgment in Asha's case (supra) where the bench distinguished the judgment in Bhenoy G.Dembla's case (supra) that the proceedings in that case had arisen from the provisions of Section 10F of the Companies Act. The division bench in Asha's case (supra) had referred to earlier Division bench judgment of this Court in the case of Maharashtra Power Development Corporation Limited's case (supra) which had taken the contrary view and held that the judgment of Company Court pronounced in the appeal under section 10F of the companies Act would not be a judgment and decree within the meaning of the provisions of the Code of Civil Procedure, and therefore, the appeal was not barred in terms of Section 100A of the Code of Civil Procedure. The Division Bench of Bombay High Court in Maharashtra Power Development Corporation Limited's case (supra) was not approved by the Supreme Court in Kamal Kumar Dutta's case (supra), and in fact, diametrically opposite view has been expressed by the Supreme Court which we have already discussed in some detail. It was expected from the learned counsel appearing for the respective parties to bring these judgments to the notice of the Division bench, which, if brought, we have no doubt in our mind that the Bench would have come to a different conclusion and preferably to the one indicated above."

11. Adv. Bhattad has placed strong reliance upon Sharda Devi (supra). Full Bench of this Court in Mohd. Riyazur (supra) looks into a later Constitution Bench judgment of Hon'ble Apex Court in P.S. Sathappan vs. Andhra Bank Ltd : (2004) 11 SCC 672 and then has made following observations, which are sufficient to discard this reliance :-

12. With regard to the case of Sharda Devi's case (supra), in paragraph 84 it was discussed, as under :-

"84.....the Supreme Court was concerned with an appeal to a Division bench against the judgment of a learned Single Judge of the High court as in terms of Section 54 of the Land Acquisition Act. The Court noticed that the expression "only" occurring in Section 54 after non-obstante clause refers to forum of appeal i.e. an appeal would lie to the High court, and not to any other Court and appeal would take within its sweep Letters patent Appeal, while noticing that Section 54 does not specifically excludes the provisions of the Letters Patent. The Court specifically noticed that the right to entertain appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent. The language of Section 100A of the Code of Civil Procedure specifically excludes the application of the Letters Patent. As already held by the Constitution bench of the Supreme Court, the Letters Patent is not akin to constitutional powers. We may also notice here that the judgment of the Supreme Court in Sharada Devi's case (supra) was pronounced on 13th March 2002 i.e prior to 1st July 2002 and none of the contentions which we have considered above were raised before the Supreme Court. In these circumstances, again this judgment is of no help to the appellants."

13. The short question for consideration before this Court is, whether u/s 54 A of the LA Act, LPA is maintainable and whether section 100A of CPC will be applicable to the LPA filed against the judgment and order of learned single Judge.

14. Section 54 of the LA Act deals with any proceedings before the Court. Section 54 of the LA Act reads as under :

" 54. Appeals in proceedings before Court. Subject to the provisions of the code of Civil procedure, 1908 (5 of 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."

15. On a plain reading of Section 54, it is apparent that the appeal from the award passed by the reference Court shall only lie to the High Court, subject to the provisions of Civil Procedure Code, 1908 relating to the appeal from original decrees from the judgment passed in such appeal by the High Court, further Appeal shall lie to the Supreme Court.

16. Thus, analysis of Section 54 would make it clear that further appeal from any decree passed on such appeal by the High Court, shall be governed by the provisions of CPC.

17. Section 100A of CPC reads as under :-

"100A. No further appeal in certain cases - Notwithstanding anything contained in any Letters patent for any High court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a high Court, no further appeal shall lie from the judgment and decree of such Single Judge."

18. Section 100A CPC was amended with effect from 1.7.2002 by Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999 and Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002). As per the provisions of Section 100A where an appeal from an original or appellate decree or order is heard and decided by the single Judge of High Court, no further appeal shall lie from the judgment and decree of such single Judge to the High Court. Justice Malimath Committee examined the issue of further appeal against the judgment of single Judge and the Committee recommended for suitable amendment to Section 100A of the Code, with a view to provide that no further appeal shall lie in this regard. Section 100A has been newly inserted for the purpose of minimising delay in finality of adjudications, barring a further appeal against the decision of single Judge overriding the provisions of Letters Patent or any other law providing such appeal. The said provision provides for abolition of further appeals against judgment of single Judge exercising first appellate jurisdiction. In the case of Salem Advocate Bar Association, Tamil Nadu vs. Union of India, reported in AIR 2003 SC 189, the Hon"ble Apex Court held that the amendment Acts of 1999 and 2002 are not ultra vires to the Constitution and do not suffer from any constitutional infirmity.

19. Learned AGP placed reliance upon the judgment in the case of Mohd. Saud and another vs. Dr. (Maj) Sk. Mahfooz and others, reported in (2010) 13 SCC 517 in which the Hon"ble Apex Court referred to various judgments and observed that after the amendment of Section 100A CPC with effect from 1.7.2000, no LPA shall lie against the judgment and order passed by learned single Judge even in an appeal arising out of proceedings under the special Act, held as under :

"7. The Full Bench by the impugned judgment has held that after the introduction of Section 100A with effect from 1.7.2002, no letters patent appeal shall lie against the judgment or order passed by a learned single Judge in an appeal. The Full Bench has held that the decision of the Division bench of the High Court in Birat Chandra Dagra v. Taurian Exim (P) Ltd does not lay down good law while the decision of the Division bench in V.N.N. Panicker v. Narayan Patil lays down the correct law. The Full Bench has further held that after the amendment of Section 100A w.e.f. 1.7.2002, no LPA shall lie against the order or judgment passed by a learned Single Judge even in an appeal arising out of a proceeding under a special Act.

9. The validity of Section 100A CPC has been upheld by the decision of this Court in Salem Advocate Bar Assn. v. Union of India . The Full benches of the Andhra Pradesh High Court vide Ganla Pannala Bhulaxmi v. A.P. SRTC, the Madhya Pradesh High court in Laxminarayan v. Shivilal Gujar and of the Kerala High Court in Kesava Pillai Sreedharan Pillai v. State of Kerala have held that after the amendment of Section 100A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of a learned single Judge of the High court passed in an appeal. We respectfully agree with the aforesaid decisions.

10. In Kamla Devi v. Kushal Kanwar this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable. In the present case the LPAs were filed after 2002 and hence in our opinion they are not maintainable.

13. What at first glance this argument may appear plausible but when we go deeper into it, we will realize that it has no merit. It would be strange to hold that while two appeals will be maintainable against the interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

14. It may be noted that there seems to be some apparent contradiction in Section 100A as amended in 2002. While in one part of Section 100A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court." (emphasis supplied), in the following part it is stated "no further appeal shall lie from the judgment and decree of such single Judge." Thus while one part of Section 100A refers to an order which to our mind would include even an interlocutory order, the latter part of the section mentions judgment and decree.

15. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District judge there may be two appeals first to the learned Single Judge and then to the Division bench of the High court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of the object of Section 100A, that is, to curtail the number of appeals."

20. The same principle was enunciated in the cases of Geeta Devi v. Puran Ram Raigar {(2010) 9 SCC 84} and Kamla Devi v. Kushal Kanwar and another {(2006) 13 SCC 295}. In view of Section 100A CPC the Letters Patent Appeals filed against the judgment of learned single Judge passed in First Appeals are not maintainable. Since the power of the High Court in exercising the Letters Patent, where a single Judge decided the appeal from the award passed by the Reference Court has been taken away, the Letters Patent Appeal cannot be entertained.

21. In the instant case, in view of the specific bar u/s 100A of CPC, the LPA against the order of learned single Judge passed in First Appeal No. 60/1992 is not maintainable. Hence, we are not inclined to delve deep into the merits of the appeal with regard to the challenge in respect of 30% of deduction towards development as unreasonable and the relief of increase in compensation.

23. In that view of the matter, LPA is liable to be dismissed and the same is dismissed. However, there shall be no order as to costs.