REFERENCE UNDER THE COURT-FEES ACT.

Before Rankin C. J.

1931

June 19, 23.

ANANDALAL CHAKRABARTI

v.

KARNANI INDUSTRIAL BANK, LTD.*

Court-fees—Appeal—Award by Calcutta Improvement Tribunal—Court-fees Act (VII of 1870), s. 8, Sch. I, Art. 1.

In an appeal from an award of the Calcutta Improvement Tribunal, on a question of apportionment of compensation, the court-fee payable on the memorandum is governed by section 8 of the Court-fees Act and an *ad valorem* fee, under Schedule I, Article 1, is payable.

REFERENCE under section 5 of the Court-fees Act, 1870.

These three appeals were against three awards of the President of the Calcutta Improvement Tribunal. Certain properties were acquired for the Calcutta Improvement Trust and portions of the properties were within the *zemindâri* of the appellants. The Collector directed that the whole of the compensation regarding those portions be paid to the Karnani Industrial Bank and the matter was referred to the Tribunal. The Tribunal held that the lands in question were rent-free lands and awarded the whole of the compensation to the bank, rejecting the claim of the appellants. On that, these appeals were filed in the High Court and a court-fee of Rs. 5 was paid on each memorandum as under Schedule II, Article 11 of the Court-fees Act. The Stamp Reporter was of opinion that *ad valorem* fee had to be paid. On that, these references arose.

Sharatchandra Banerji, Bipinchandra Mallik and *Pashupati Sen* for the appellants.

*Reference made by the Registrar, Appellate Side, High Court, dated May 11, 1931, in Appeals from Original Decree, No. 274 of 1931.

The Senior Government Pleader, Saratchandra Basak and *the Assistant Government Pleader, Nasim Ali,* for the Government.

Cur. adv. vult.

RANKIN C. J. These are three appeals from an award of the Calcutta Improvement Tribunal and the question which arises is the question of the proper amount of court-fee payable on the appeals. The appellants are *zemindârs* and it appears that a certain property in Diamond Harbour Road has been compulsorily acquired; portions of the property acquired lie within the ambit of the *zemindâries* of the appellants. The Tribunal has held, however, that the property is revenue-free property and no part of the *mâl* lands of the appellants. Consequently, the Tribunal has allotted the whole of the compensation to the Karnani Industrial Bank, rejecting the claim of the *zemindâr* appellants to any portion thereof. From that decision, the *zemindârs* have appealed to the High Court.

The question arises in part, because of the recent decision of the Privy Council in the case of *The Secretary of State for India in Council* v. *The Hindusthan Co-operative Insurance Society, Limited* (1), where it was held that the amendment of the Land Acquisition Act of 1894 made by the Indian legislature in 1921 did not have the effect of making the awards of the Calcutta Improvement Tribunal decrees for purposes of appeal to His Majesty in Council. It may be pointed out that, prior to 1921, appeals under the Land Acquisition Act were always dealt by this Court for purposes of court-fee as appeals from decrees and the same appears to have been the case in other High Courts such as the Allahabad High Court: see the case of *Sheo Rattan Rai* v. *Mohri* (2). The matter, however, has been carefully argued upon this occasion and a very careful and able argument has been addressed to me

(1) (1931) I. L. R. 59 Calc. 55; L. R. 58 I. A. 259.

(2) (1899) I. L. R. 21 All. 354.

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by Dr. Banerji. Dr. Banerji has correctly reminded the Court that the Court-fees Act is really a taxing statute and that it is a principle to be applied as regards any charging section in such a statute that the subject is not to be made liable except upon the plain words of the enactment.

Now, the contention of Dr. Banerji in the present case is that these appeals are really governed by Article 11 of Schedule II of the Court-fees Act, that the appeals in this case, as the award of the Tribunal is not a decree, are appeals from an order and that they are appeals from an order which has not got the force of a decree. Consequently, according to his argument, the case comes under Article 11 of Schedule II, which contains a list of fixed fees made chargeable under the Act. On the other hand, it is contended by the learned Senior Government Pleader that the case is governed by section 8 of the Act and that, under section 8, the case comes under Article 1 of Schedule I, which has to be applied in the manner laid down by section 8. Now, as against that, Dr. Banerji's contention is, first of all, that section 8 comes within Chapter III of the Act and that Chapter III of the Act is headed "Fees in other courts and in public offices." Accordingly, he says, first of all, that section 8 does not apply to an appeal in the High Court at all. The second point that he takes is that, in any event, section 8 is not a charging section and that you can give no force to section 8 unless you can find a charging section somewhere in the Act under which it can be applied. Dr. Banerji's third point is that section 8 does not apply to a case like the present, but only applies to a case where the appeal challenges the correctness of the total amount awarded by the Land Acquisition authorities for the property taken as a whole.

It will be convenient to deal with this last question first. Section 8 is as follows: "The amount

"of fee payable under this Act on a memorandum of "appeal against an order relating to compensation "under any Act for the time being in force for the "acquisition of land for public purposes shall be "computed according to the difference between the "amount awarded and the amount claimed by the "appellant." It is said that, in a case where the claim of the appellant is not that the total amount awarded is insufficient, but that a portion of it should have been awarded to him, the section does not apply and that upon a reference to the case of *Mangaldas Girdhardas Parekh* v. *The Assistant Collector of Prantij Prant, Ahmedabad* (1), it will be found that this view has received authoritative recognition. The case itself is no authority for the proposition and, in my opinion, the meaning contended for would be a plain misinterpretation of the section. The section dealing with the amount of fee payable makes a comparison between two things—the amount awarded and the amount claimed by the appellant. It appears to me to be reasonably clear that the comparison can only be between the amount awarded to the appellant and the amount claimed by the appellant. There can be no comparison between the amount awarded to a number of persons and the amount claimed by one individual representing his individual interest. In the present case, the appellants have been given nothing by way of compensation. They claim a substantial sum. It is clear, therefore, that, if section 8 applies, the amount of court-fee is to be computed according to the amount of their claim in the present case.

I come now to the argument which is based upon the fact that section 8 occurs in Chapter III. There is authority for the proposition that the mere heading of a chapter is to be dealt with as though it were a preamble and that it cannot be used to cut down the clear words of the sections which are

(1) (1920) I. L. R. 45 Bom. 277, 280.

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contained in the chapter. The present case does not appear to me to be exactly within that proposition. But if one looks carefully at the Act, one finds this: First of all, by section 4, so far as the Appellate Side of the High Court is concerned, the charges contained in the first and second Schedules of the Act are imposed. By section 6, so far as other courts are concerned, the charges contained in the same two schedules are imposed. Whatever is meant by a particular Article in the schedule, it is clear that it cannot have one meaning under section 6 and another meaning under section 4. When we come to section 8, it is, I think, very important to remember the observation which Dr. Banerji made that section 8 is not in itself a charging section. Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases which it deals with, the amount of fee payable under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an *ad valorem* charge and is not a fixed charge: but for that assumption there would be nothing to compute, and the only way in which it can be said that there is a charge which has to be computed is that the charge is imposed by Article 1 of Schedule I. Now, Article 1 of Schedule I puts a charge upon a plaint or a memorandum of appeal not otherwise provided for in this Act presented to any civil or revenue court except those mentioned in section 3. The purpose of section 8 is to say that, when you come to make a charge under Article 1 of Schedule I, the figure which is to be taken as the appropriate figure under the second column is the figure to be computed by finding out the difference between the amount awarded to the appellant and the amount claimed by him. It is

clear enough that section 8 necessarily involves that there is an *ad valorem* charge laid down either under section 4 or under section 6 and contained in the first schedule. The argument that section 8 occurs in Chapter III must, therefore, be an argument to the effect that, while in the High Court the way in which the fee is to be computed is at large, there is a provision which says how to compute it in the case of an appeal to a subordinate court. At the present moment, there does not lie an appeal to a subordinate court from an award made under the Land Acquisition Act; but it was pointed out in the case, on which Dr. Banerji relied, Full Bench case of *Krishna Mohan Sinha* v. *Raghunandan Pandey* (1), that at the time when section 8 was enacted Land Acquisition appeals might go either to the High Court or to the District Court. Is it right then to hold that, while a Land Acquisition appeal to the lower court would be within Article 1 of Schedule I and, therefore, must be within the same Article if it was an appeal to the High Court, the provisions of section 8 as to computation of the fee would apply to the lower court only? As to that, I confess that I feel little difficulty, because section 8, for this purpose, is exactly on the same footing as section 7. Section 7 deals with the way in which court-fee is to be computed in the case of suits. Curiously enough, in one of the sub-sections of section 7, there is a reference to memorandum of appeal. That does not necessarily refer to the High Court. We have always applied in this High Court the rules laid down in section 7 for the purpose of valuing an appeal. If, for instance, any question arises about the proper valuation of an appeal, where the relief claimed is a declaration with consequential relief, the matter has always been governed, so far as appeals to this Court are concerned, by applying the rules laid down in section 7, notwithstanding that they occur in Chapter III. That is a practice which has

(1) (1924) I. L. R. 4 Pat. 336, 351.

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been accepted by everybody ever since the Court-fees Act came into existence and there is no more difficulty in regarding section 8 in the same way than there is in the case of Section 7. The provisions of section 8, involving as they do that the fee in the class of cases dealt with is an *ad valorem* fee, are themselves sufficient to exclude any question of Article 11 of Schedule II being made applicable to such cases. It is not necessary to consider whether the Tribunal's award, which is an order and not a decree, is an order having the force of a decree. Whatever the effect of that phrase may be, section 8 shows one perfectly clearly that an appeal regarding compensation in a Land Acquisition case is not under Article 11 of Schedule II, because it is not a fixed fee at all. In this connection, I will only add that I think the provisions of section 8 have been misinterpreted because section 8 is really a provision (upon the assumption that there is already an *ad valorem* fee laid down by the Act) that the *ad valorem* charge is to be made in a way that is most favourable to the subject. The object of section 8 is not to impose an *ad valorem* charge, it assumes that that has already been done. If a person is appealing from an award in a compensation matter, there are various ways in which it might have been thought right to charge him with court-fee. If he is appealing about the total amount of the award and saying that the total amount ought to be so much more, it would be arguable whether or not he ought not to be charged upon that difference. In the same way, if the question as to his right to compensation involves a question of title to land, it might be argued that his appeal should be valued upon the basis of the value of the land that was in dispute. The purpose of section 8, to my mind, is to say that he is to be charged in the most favourable way. It does not matter what the difference is between the total amount awarded and the amount which he says should have been the total amount awarded. It does not matter whether the question of title involved is a

question of title relating to a large and valuable estate. The position is that he as an individual appellant is only interested for this purpose in his own claim for compensation. Whatever may be the matter to be discussed in the end, the point is "I "have been given so much money as compensation "for my interest and I claim by the appeal to get so "much more." Section 8 says that he is only to be charged upon the further amount that he is claiming by the appeal, that is, the amount of money which he says should be awarded to him in his own individual case in excess of the amount which in fact has been awarded. The business of the section is not, therefore, to impose an *ad valorem* charge, but on the assumption that the Act has already made an *ad valorem* charge to say that it is to be charged upon him in that particular way. It is the least onerous way that could very well be suggested. Nevertheless, the section has to be taken into account when one is construing the Act as a whole and, on the face of that section, I have no doubt at all that an *ad valorem* fee is chargeable under Article 1 of Schedule I of the Court-fees Act. I propose, therefore, so to hold in this case and to say that these appeals are not to be accepted until the further court-fees demanded by the Registrar have been paid: The appellant must of course have a proper opportunity to put in the amounts.

N. G.