

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Stone.

1931,
January 22.

MAHANT BAGAVATHI DOSS BAVAJI, DHARMAKARTHA OF
SRI VENKATESAPERUMAL DEVASTHANAM (RIVAL CLAIMANT),
APPELLANT,

v.

M. SARANGARAJA IYENGAR (FIRST CLAIMANT),
RESPONDENT.*

Land Acquisition Act (1 of 1894), ss. 3 (d) and 54—Land Acquisition Court—Chief Judge of Small Cause Court appointed as “its special judicial officer”—If, a principal Civil Court of Original Jurisdiction—Decrees of the said Court—If appealable—Code of Civil Procedure (Act V of 1908), sec. 96—“Awards” and “Decrees”—Distinction between.

A Land Acquisition Court, constituted by the appointment of the Chief Judge of the Court of Small Causes in Madras as its “special judicial officer”, is not a “principal Civil Court of Original Jurisdiction” within the meaning of section 3 (d) of the Land Acquisition Act (1 of 1894), but it is a special Court having its own statutory status which does not follow the status of the Court ordinarily presided over by the person who happens to be appointed as its Judge. Neither section 54 of the Land Acquisition Act nor section 96 of the Code of Civil Procedure confers on the High Court a power to act as a Court of Appeal from the decisions which are not “awards” but “decrees” of the said Court.

Distinction between “awards” and “decrees” of the Land Acquisition Court pointed out.

APPEALS from the decrees of the Special Court at Madras in Land Cases Nos. 19 and 20 of 1925.

T. C. A. Bhashyam and M. E. Rajugopalachari for appellant.

C. Narasimhachari for respondent.

* Appeals Nos. 395 and 396 of 1928.

JUDGMENT.

BAGAVATHI
DOSS BAVAJI
v.
SARANGARAJA
IYENGAR.

On this appeal being called on, a preliminary objection was taken on behalf of the respondent that the appeal was incompetent as no appeal lay from the Land Acquisition Court when that Court, as in this case, was constituted by the appointment of a "Special Judicial Officer." The objection is founded upon alternative arguments, viz., either (i) the Chief Judge of the Small Cause Court who was the "Special Judicial Officer" appointed in this case (see Local Rules and Orders, page 84) is a *persona designata* so as to make the Court he constitutes fall within no general class from which appeal to the High Court lies, or (ii) by virtue of the fact that the "Special Judicial Officer" appointed was, in this case, the Chief Judge of the Small Cause Court, the Court he constitutes falls within the class of Small Cause Courts, and accordingly in that case also no appeal lies to the High Court.

In our view, in this case, "the Court," within the meaning of the Land Acquisition Act, was constituted by the Local Government's appointing a special Judicial Officer to perform the functions of the Court. It follows, therefore, that this was a special Court and was not "a principal Civil Court of Original Jurisdiction," within the meaning of section 3 (d) of the Land Acquisition Act. The question then arises whether, when the matter in dispute and litigated before such a Court leads not to the making of an "award" but to the pronouncement of a "decree," any appeal lies to the High Court from the "decree" of such a Court.

Before, however, we consider this matter, it is necessary to advert to the meaning of the term "award" as used in the Land Acquisition Act and to consider whether the trial Court in this matter made an "award" or issued a "decree."

BAGAVATHI
 DEVI BAVADI
 ?
 SARANGARAJA
 IYENGAR.

There is clearly a distinction between an "award" within the meaning of that Act and a "decree"; see *Ramachandra Rao v. Ramachandira Rao*(1) and *Rangoon Botatoung Company v. The Collector, Rangoon*(2). Many decisions which can be made under this Act are not "awards"; for example, an order made under section 32 is not an "award." Section 54 also clearly distinguishes between "decrees" and "awards."

When one comes to define the term "award" so as to see where the functions of an award end, one finds that the matter has already been fully considered by the Judicial Committee; for, in *Ramachandra Rao v. Ramachandra Rao*(1) their Lordships observed :

"The award as constituted by Statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under section 31, sub-section(2), the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, . . ."

It is thus apparent that the judgment now appealed from was not an "award" but was a "decree" and is so termed in the memorandum of appeal.

As was pointed out by LORD BRAMWELL in *Sandbach Charity Trustees v. North Staffordshire Railway Co.* (3), cited with approval by the Judicial Committee in *Rangoon Botatoung Company v. The Collector, Rangoon*(2), "an appeal does not exist in the nature of things: a right of appeal from any decision of any tribunal must be given by express enactment." Their Lordships of the Judicial Committee added at 39 I.A., *loc. cit.*

(1) (1922) I.L.R. 45 Mad. 320 (P.C.).

(2) (1912) L.R. 39 I.A. 197, 200.

(3) (1877) 3 Q.B.D. 1.

“ A special and limited appeal is given by the Land Acquisition Act from the award of ‘ the Court ’ to the High Court. No further right of appeal is given. Nor can any such right be implied.”

BAGAVATHI
DOSS BAVAJI
P.
SARANGARAJA
IYENGAR.

The express right of appeal is to be found in section 54 which provides, *inter alia*, as follows :—

“ 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 lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court . . . ”

Notwithstanding this express limitation and the pronouncement above referred to of the Judicial Committee to the effect that a limited right of appeal alone is given, it is argued on behalf of the appellant that, because section 53 applies the provisions of the Code of Civil Procedure, (and although such application is “ save in so far as they may be inconsistent with ” the provisions of the Land Acquisition Act), therefore, we must apply section 96 of the Code of Civil Procedure and say that, as “ the Court ” within the meaning of the Land Acquisition Act falls within the term “ any Court ” within the meaning of section 96 (1) of the Code of Civil Procedure, therefore, an appeal lies not only from awards but from decrees of “ the Court ” to the High Court.

Whatever weight there may be in this argument, when one is considering the position where the appeal is from “ the Court ” where such Court is “ a principal Civil Court of Original Jurisdiction ” within the meaning of section 3 (d) of the Land Acquisition Act, the point raised by the present objection is not touched, unless one can find the authority which makes the High Court “ the Court authorized to hear appeals from the decisions of such Court ” within the meaning of section 96 of the Code of Civil Procedure, for, in the absence

BAGAVARETI
DOSS BAVANI
v.
SARANGARAJA
ITENGAR.

of such authority, there is no competent appellate Court, or, if there be, it is not the High Court.

We invited the appellant's Counsel to indicate where such authority is to be found, and the only authority he could suggest was the authority conferred by section 54 of the Land Acquisition Act. That is to say, as that section says that, subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, appeals shall only lie to the High Court from awards, therefore, appeals lie to the High Court from the Court, and therefore the High Court is authorized to hear appeals from "the Court," and, therefore, the High Court is a court authorized to hear appeals within the meaning of section 96 of the Code of Civil Procedure, not only from "awards" but also from "decrees." We cannot so construe the authority conferred by section 54. The authority by that section conferred is an authority to hear appeals from "awards." We can find no other authority conferring upon the High Court the power to act as a Court of appeal from the specially constituted Court from whose decision this appeal is brought. It is urged that this results in an anomaly, because an appeal would have lain had the Court been a "principal Civil Court of Original Jurisdiction." As to whether an appeal would lie in such a case we express no opinion. But, in the present case, it is clear that the court in question was not a "principal Civil Court of Original Jurisdiction." It was a special Court specially constituted. It has its own statutory *status* and does not follow the *status* of the Court ordinarily presided over by the person who happens to be appointed as its judge. No authority has been conferred upon the High Court to hear appeals from such special court except in the case of an "award," and if this results in an anomaly, the remedy is in an

alteration of the law not in a construction of the existing Act which would do violence to the most elementary rules of construction.

It follows that the preliminary objection is upheld, and the appeals are dismissed with costs.

G.R.

BAGAVATHI
DOSS BAVAJI
v.
SARANGARAMA
IYENGAR.

APPELLATE CIVIL.

*Before Mr. Justice Curgenven and Mr. Justice
Bhashyam Ayyangar.*

THE OFFICIAL RECEIVER OF SECUNDERABAD,
APPELLANT,

1930,
October 2.

v.

GUMIDELLI LAKSHMINARAYANA (DEAD) AND SIX
OTHERS, RESPONDENTS.*

Courts—British Indian and Foreign—Courts of Foreign countries, British Colonies, etc.—Position of, quoad British Indian Courts—Extra-territorial jurisdiction—Foreign Court—Meaning outside Code of Civil Procedure—Vesting order in insolvency by Foreign Court—Operation on insolvent's property within British India—Whether will prevail against previous attachment of property effected by Court in British India—Foreign and domestic receivers.

In the contemplation of the general law of British India, there are only two kinds of Courts—British Indian Courts and Foreign Courts—and whatever is not a British Indian Court is a Foreign Court; so that, *quoad* the Courts of British India, the Courts, for example, of foreign countries, British Colonies, and assigned tracts like Secunderabad stand upon an

* Original Side Appeal No. 55 of 1929.