

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Stone.

1935,
October 21.

T. S. KRISHNAMOORTHY AYYAR (SECOND PETITIONER),
APPELLANT,

v.

THE SPECIAL DEPUTY COLLECTOR OF LAND
ACQUISITION, KUMBAKONAM
(RESPONDENT), RESPONDENT.*

Land Acquisition Act (I of 1894), sec. 3 (d)—Special Judicial Officer appointed under—Decision of, under section 49 of Act—Not an award—Non-appealability of such decision.

The decision under section 49 of the Land Acquisition Act of a Special Judicial Officer appointed by the Local Government under the provisions of section 3 (d) of the said Act is not an award and no appeal lies from such a decision.

APPEAL against the order of the Court of the Subordinate Judge of Kumbakonam dated 18th August 1932 in Original Petition No. 63 of 1930.

K. Sankara Sastri for appellant.

Government Pleader (K. S. Krishnaswami Ayyangar) for respondent.

Cur. adv. vult.

JUDGMENT.

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NAIR J.

MADHAVAN NAIR J.—I agree in upholding the preliminary objection raised by the Government Pleader on the short ground on which my learned brother has upheld it. But I should like to make a few remarks about the decisions in *Secretary of State for India v. Narayanaswamy Chettiar*(1), *Ramachandra Rao v. Ramachandra Rao*(2),

*Appeal No. 72 of 1933.

(1) (1931) I.L.R. 55 Mad. 391.

(2) (1922) I.L.R. 45 Mad. 320 (P.C.)

Rajagopala Chettiar v. H.R.E. Board, Madras(1) and *Maung Ba Thaw v. Ma Pin*(2), lest my silence should be misunderstood as meaning that I think that my remarks in the Full Bench decision in *Rajagopala Chettiar v. H.R.E. Board, Madras*(1) regarding *Secretary of State for India v. Narayana-swamy Chettiar*(3) and *Ramachandra Rao v. Ramachandra Rao*(4) require revision.

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In *Secretary of State for India v. Narayana-swamy Chettiar*(3), the decision strongly relied on by the respondent, RAMESAM J. held that decisions other than awards passed by Courts in disputes under the Land Acquisition Act are decrees and as such appealable as though they were decrees. The learned Judge came to this conclusion because of the amendment of sections 26 and 54 of the Land Acquisition Act by Act X of 1921 and the decision of the Privy Council in *Ramachandra Rao v. Ramachandra Rao*(4). The learned Counsel has not, before us, sought to justify the first ground for the conclusion. As regards the decision of the Privy Council in *Ramachandra Rao v. Ramachandra Rao*(4), I expressed the view that

“their Lordships in that case were dealing with the finality of the High Court’s decree for the purposes of *res judicata* and were not directly concerned about the appealability of the order passed by the District Court”

and that that decision

“does not support the argument that an adjudication on an application stands on the same footing as an adjudication in a suit for the purposes of the definition of a decree under the Code.”

(1) (1933) I.L.R. 57 Mad. 271 (F.B.).

(2) (1934) I.L.R. 12 Rang. 194 (P.C.).

(3) (1931) I.L.R. 55 Mad. 391.

(4) (1922) I.L.R. 45 Mad. 320 (P.C.).

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I am still of the same opinion. I also think that the decision in *Maung Ba Thaw v. Ma Pin*(1) does not affect the opinion that I have expressed in the Full Bench, for, in the case first mentioned their Lordships of the Privy Council were concerned not with the question of the appealability of an order to the High Court, for the order in that case which was one under the Insolvency Act was appealable to the High Court, but with the question whether an appeal lay to the Privy Council, and their Lordships held that an appeal from a decision of the High Court lies to the Privy Council under and subject to the Code of Civil Procedure (obviously meaning sections 109 and 110, Civil Procedure Code); and in holding so, their Lordships followed *Secretary of State for India v. Chellikani Rama Rao*(2) in which, as stated by them,

“when such a right of appeal is given to one of the ordinary Courts of the country, the procedure, orders and decrees of that Court will be governed by the ordinary rules of the Civil Procedure Code.”

(The reference here is obviously to sections 109 and 110, Civil Procedure Code.) The remarks in *Secretary of State for India v. Chellikani Rama Rao*(2) clearly relate to the appealability to the High Court of an order passed by the District Court, the latter order being appealable to the High Court under the ordinary rules of the Civil Procedure Code. (The Code applicable in that case was Act XIV of 1882). This appears to be clear from the fact that their Lordships in *Secretary of State for India v. Chellikani Rama Rao*(2) accept as correct the Full Bench decision,

(1) (1934) I.L.R. 12 Rang. 194 (P.C.). (2) (1916) I.L.R. 39 Mad. 617 (P.C.).

Kamaraju v. The Secretary of State for India(1). Similarly, with reference to the order of the High Court sought to be appealed against to the Privy Council, their Lordships say in *Maung Ba Thaw v. Ma Pin*(2) that that order will also be subject to the rules of the Civil Procedure Code, obviously meaning sections 109 and 110, Civil Procedure Code. I do not think that on the point under consideration the decision in *Maung Ba Thaw v. Ma Pin*(2) affects my interpretation of the Privy Council decision in *Ramachandra Rao v. Ramachandra Rao*(3). The appeal is dismissed with costs.

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STONE J.—This is an appeal from the Land Acquisition Court presided over by the Special Judicial Officer appointed by the Local Government under the provisions of section 3 (d) of the Land Acquisition Act. The Special Judicial Officer in question is the Subordinate Judge of Kumbakonam. The nature of the dispute is as to whether the acquisition should be of the whole or only part of certain houses and grounds. It was raised by the person from whom the land was sought to be acquired, under the provisions of section 49, second proviso, of the Land Acquisition Act. It should be noted that under that proviso the reference by the Collector is to “the Court”, and “the Court” in question means the Court appointed under the Land Acquisition Act and can conveniently be referred to as the Land Acquisition Court. The proceedings in question therefore took place in the Land Acquisition Court. The objections are headed “In the Court of the Subordinate Judge of Kumbakonam”.

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(1) (1888) I.L.R. 11 Mad. 309 (F.B.). (2) (1934) I.L.R. 12 Rang. 194 (P.C.).
(3) (1922) I.L.R. 45 Mad. 320 (P.C.).

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The learned Government Pleader took a preliminary objection to the maintainability of this appeal on the ground that the decision arrived at was not an award and that the section of the Act under which the appeal was brought, that is to say section 54, only gives a right of appeal in the case of awards ; and he cited *Giles Seddon v. Deputy Collector of Madras*(1), *Sarat Chandra Ghose v. The Secretary of State for India*(2) and *Mulraj Khataw v. The Collector of Poona*(3), which decide that, where the decision is not an award, the resulting decision, and in particular a decision under section 49, is not appealable. That line of cases proceeds according to the rule that in the absence of special statutory authority there is no right of appeal, that under the Land Acquisition Act the special statutory authority permitting appeals is limited to awards, and that decisions under section 49 are not awards.

On the other hand, a considerable number of cases were cited, of which *Secretary of State for India v. Narayanaswamy Chettiar*(4) is the most stressed, the others being *Raghunathdas Harjivandas v. The District Superintendent of Police, Nasik*(5), *Venkatareddi v. Adinarayana Rao*(6) followed in 40 Law Weekly, page 37 (Short Notes), *Mahalinga Kudumban v. Theetharappa Mudaliar*(7) and *Paramaswami Ayyangar v. Alamelu Nachiyar*(8), which, it is urged, suggest that, as a consequence of the Privy Council decision in *Ramachandra Rao v. Ramachandra Rao*(9), which

(1) (1912) 17 I.C. 117.

(3) (1913) 15 Bom. L.R. 802.

(5) (1932) I.L.R. 57 Bom. 314.

(7) (1928) 56 M.L.J. 387.

(2) (1919) I.L.R. 46 Cal. 861.

(4) (1931) I.L.P. 55 Mad. 391.

(6) (1928) I.L.R. 52 Mad. 142.

(8) (1926) I.L.R. 49 Mad. 954.

(9) (1922) I.L.R. 45 Mad. 320 (P.C.).

was relied upon in another Privy Council decision, *Maung Ba Thaw v. Ma Pin*(1), and the Privy Council decision in *Secretary of State for India v. Chellikani Rama Rao*(2) which approved of the Full Bench decision in *Kamaraju v. The Secretary of State for India*(3), decisions other than awards passed by Courts in disputes under the Land Acquisition Act are decrees and as such appealable as though they were decrees of ordinary Courts.

On the other hand, the recent Full Bench decision in *Rajagopala Chettiar v. H. R. E. Board, Madras*(4), which was directly concerned with the right of appeal, if any, under the Hindu Religious Endowments Act, has doubted the decision in *Secretary of State for India v. Narayanaswamy Chettiar*(5), and has explained the apparent change introduced by *Ramachandra Rao v. Ramachandra Rao*(6) in a way that suggests that that change is only apparent and not real, turning, as it does, upon the fact that what was there held to operate as *res judicata* was a disposal in appeal, and a decision in appeal was, as the Civil Procedure Code then stood, a decree as defined by the Civil Procedure Code whether in a suit or not.

The discussion of the above cases has resulted in a number of very nice points being argued and we are much obliged to the learned Counsel for the help they have given us in the consideration of those cases, which we should have deemed it our duty very carefully to have analysed, had it

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(1) (1934) I.L.R. 12 Rang. 194 (P.C.).

(2) (1916) I.L.R. 39 Mad. 617 (P.C.).

(3) (1888) I.L.R. 11 Mad. 309 (F.B.).

(4) (1933) I.L.R. 57 Mad. 271 (F.B.). (5) (1931) I.L.R. 55 Mad. 391.

(6) (1922) I.L.R. 45 Mad. 320 (P.C.).

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not appeared that this preliminary objection can be upheld on a much shorter and simpler point.

In *Mahant Bagavathi Doss v. Sarangaraja Iyengar*(1) it was decided by a Bench of this High Court that the Court, at least where it was constituted by the appointment of a Special Judicial Officer under the provisions of section 3(d), was a special Court, that is to say, it was not an ordinary Civil Court but a Court established under the provisions of the Act. From which it follows, and it was there so decided, that no appeal lies from such a Court unless by statute the right to appeal is given. In this statute a right of appeal is given in one class of cases and in one class of cases only, that is to say, where the Court arrives at a decision that amounts to an award. As was pointed out by the Privy Council in *Ramachandra Rao v. Ramachandra Rao*(2) at page 329 :

“There are two perfectly separate and distinct forms of procedure contemplated by the Land Acquisition Act. The first is that necessary for fixing the amount of the compensation and this is described as being an award.”

The present decision is clearly not an award and it appears to us that, whatever you call it, it is a decision of a Court specially constituted under statutory authority, and unless from that decision the right to appeal is given no right to appeal lies. It might well be that it would be otherwise if the Court in question were an ordinary Civil Court to which this matter—the matter in dispute—had been, under powers conferred by the statute, referred for decision by the proper authority. That, however, is not the scheme of the Act. The scheme of the Act contemplates that sometimes the Court

(1) (1931) 33 L.W. 528.

(2) (1922) I.L.R. 45 Mad. 320 (P.C.).

shall be an ordinary Civil Court and sometimes a special Court, specially constituted. In the latter case, except where that Court makes an award, the Act does not make any statutory provision for appeals from that Court. And on this short ground we are of the opinion that the objection succeeds.

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We desire however to observe that the result is unsatisfactory in our opinion. Although it might well be in the contemplation of the Legislature that preliminary points such as those falling under section 49, that is to say, those that are the subject-matter of this present appeal, should not be appealable, it is difficult to believe that it was the intention of the Legislature to prevent persons disputing as to title of the property, as might well be the case where an award having been made, and money due under that award paid into Court, various claimants come forward claiming that money as theirs and endeavouring to establish in support of that claim title to the subject-matter, in respect of which the compensation was paid into Court. It is difficult to imagine that it was intended to shut out all such claimants from all rights of appeal, where the Court in question was a Court specially constituted, and not an ordinary Court, though this result appears to follow when the Court is a special Court from which no appeal lies unless there be a statutory provision to that effect. This however, as was pointed out in *Mahant Bagavathi Doss v. Sarangaraja Iyengar*(1), may result in an anomaly, but one that can only be put right by the Legislature, if the Legislature thinks fit so to do.

(1) (1931) 33 L.W. 528.

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On this short point, therefore, we are of the opinion that the preliminary objection succeeds and the appeal is accordingly dismissed with

G. R.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Cornish, Mr. Justice Varadachariar,
Mr. Justice Wadsworth, Mr. Justice Venkataramana Rao
and Mr. Justice Lakshmana Rao.*

SESHA AYYAR (THIRD DEFENDANT), PETITIONER,

1935,
October 2.

v.

KRISHNA AYYAR AND SIX OTHERS (PLAINTIFFS AND
DEFENDANTS 1, 2, 4 AND 5), RESPONDENTS.*

Lottery—Chit fund, if and when a—Persons participating in a lottery—Guilty under sec. 294-A, Indian Penal Code (Act XLV of 1860), if and when—Persons subscribing to or purchasing tickets in a lottery—Guilty of offence under, or of abetment of offence under, sec. 294-A, Penal Code, if and when—Subscriber to a lottery—Refund of subscriptions paid—Right of—Indian Trusts Act (II of 1882), sec. 84—Applicability of—Maxim “pari delicto”—Applicability.

A kuri or prize chit was started with the object of creating a fund for a temple. It consisted of 625 subscribers, the monthly subscription being Rupees three. The number of months for which subscriptions were to be paid was fifty. The arrangement was that a drawing was to take place every month, one ticket was to be drawn out of the 625 tickets and the subscriber who drew the ticket was to be paid Rs. 150 without any liability to pay for future instalments. That process was to be repeated month after month till the fiftieth