

## LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice Abdul Qadir.*

HAR DIAL SHAH, ETC. (PLAINTIFFS)—*Appellants,*  
*versus*  
 SECRETARY OF STATE FOR INDIA (DEFENDANT),  
*Respondent.*

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July 26

Letters Patent Appeal No. 50 of 1922.

*Court fee—Letters Patent Appeal—whether section 4 of the Court Fees Act, VII of 1870, is applicable to an appeal from the judgment of a Single Judge—Forum of appeal—Land Acquisition Act, I of 1894, section 54, as amended by Act XIX of 1921, explained—Jurisdiction of a single Judge—Letters Patent Appeal—Division Bench.*

*Held*, that section 4 of the Court Fees Act is not applicable to a Letters Patent Appeal from the judgment of a single Judge, and therefore no Court fee is leviable except Rs. 2 prescribed for an application to the High Court.

*Bhadul Pande v. Manni Pande* (1), and *Raghubar Singh v. Jethu Makton* (2), followed.

*Held also*, that the word “only” in section 54 of the Land Acquisition Act, as enacted by Act XIX of 1921, does not restrict the right of appeal but was intended to make it clear that the forum of appeal in Land Acquisition cases is always the High Court whether the amount of compensation awarded by the Court of first instance does or does not exceed Rs. 5,000 and whether that Court is the Court of a District Judge or that of a Subordinate Judge or an Assistant Judge, and that the section does not affect the right of appeal from the judgment of one Judge to a Division Bench under clause 10 of the Letters Patent.

*Ranshodbhai Vallubhai v. The Collector of Kaira* (3) and *Ahmedbhai Habibbhai v. Waman Dhondu* (4), distinguished as obsolete.

*Rangoon Bobatoung Company, Ltd., v. The Collector, Rangoon* (5), referred to.

*Held also*, that under the rules framed by the High Court under section 108 (1) of the Government of India Act, an appeal

(1) (1921) L. L. R. 44 All. 13.

(3) (1909) I. L. R. 33 Bom. 371.

(2) (1922) 85 Indian Cases 675.

(4) (1913) I. L. R. 38 Bom. 337.

(5) (1912) I. L. R. 40 Cal. 21 (P. C.).

from the award of a District Judge in a Land Acquisition case is cognizable by a single Judge if the amount involved in the appeal does not exceed Rs. 5,000 and his decision dismissing the appeal constitutes a "judgment" within the meaning of clause 10 of the Letters Patent.

Section 26 sub-section 2, Land Acquisition Act (added by Act XIX of 1921), referred to.

*Appeal from the judgment of Mr. Justice Martineau, dated the 16th January 1922.*

MOTI SAGAR AND TEK CHAND, for Appellants.

JAI LAL, GOVERNMENT ADVOCATE, for Respondent.

The judgment of the Court was delivered by —

SIR SHADI LAL C. J.—This is an appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Martineau confirming an award made by the District Judge, Hoshiarpur, under the Land Acquisition Act. The first question, upon which we are invited to express our opinion, is whether a memorandum of appeal from the judgment of a single Judge is chargeable with a Court fee as prescribed by the Court Fees Act. Now, section 4 of the aforesaid Act is the only provision of the law which deals with fees to be levied in respect of documents to be filed, exhibited or recorded in the High Court, and the relevant portion of that section is in the following terms:—

"No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court \* \* \* \* \* in the exercise of its jurisdiction as regards appeals from the judgments of two or more Judges of the said Court or of a Division Court \* \* \* \* \* unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document."

It is manifest that an appeal from the judgment of a single Judge cannot come within the scope of this provision, because it is neither an appeal from the judgment of two or more Judges nor an appeal from the judgment of a Division Court. The expression "Division Court" is not defined in the Statute, but there

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can be no doubt that a Division Court must consist of at least two Judges, and that a Judge sitting alone cannot be described as a Division Court. In this connection I would refer to section 108 of the Government of India Act, which enacts that the jurisdiction conferred upon a High Court may, subject to the rules framed by it, be exercised by one or more Judges, or by Division Courts, constituted by two or more Judges of the High Court. In England the corresponding phrase is Divisional Court, and a Divisional Court in English Law means a Court consisting of two or more Judges which transacts certain business which cannot be disposed of by a single Judge.

Section 4 of the Court Fees Act does not, therefore, include within its purview an appeal from the judgment of a single Bench, and we have not been referred to any other law which prescribes Court fees for a memorandum of appeal of this description. There is absolutely no reason why a distinction should have been drawn between an appeal under the Letters Patent from the judgment of a single Judge, and that from the judgment of two or more Judges, and why the former class of appeals should have been exempted from Court fees. It seems to me that this is a *casus omissus*, but the Courts must administer the law as they find it and have no right to add to, or subtract from, it on the principle of analogy.

Upon the wording of the section, which does not admit of any doubt, I must hold that no Court fee is leviable on a memorandum of appeal from the judgment of a single Judge, except, of course, the Court fee of Rs. 2 prescribed for an application to the High Court; and I find that the Allahabad High Court as well as the Patna High Court has taken the same view, *vide Bhadul Pande and others v. Manni Pande and others* (1) and *Raghubar Singh and others v. Jethu Mahton* (2).

Before proceeding to deal with the merits of the case, I must adjudicate upon the preliminary objection raised by the learned Government Advocate that only one appeal is allowed from the award of a District Judge made in a case under the Land Acquisition Act, and that as the appellants have already exhausted that right of appeal, they are not entitled to prefer another appeal

(1) (1921) 1 L. R. 44 All. 13.

(2) (1922) 65 Indian Cases 675.

from the appellate judgment delivered by Mr. Justice Martineau. In support of this objection Mr. Jai Lal places his reliance upon section 54 of the aforesaid Act which section as enacted by the Land Acquisition (Amendment) Act, XIX of 1921, runs as follows :—

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“ 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 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 His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and Order XLV thereof.”

It is contended that this section contemplates only two appeals in proceedings under the Act :—

- (1) an appeal from the award of the Court of first instance to the High Court, and
- (2) an appeal to His Majesty in Council from a decree passed on appeal by the High Court;

and that the word “ only ” used in the section lends support to the view that no other appeal is allowed by the legislature. I consider that this contention is not well founded. It will be observed that the word “ only ” does not restrict the right of appeal but was intended to make it clear that the *forum* of appeal in Land Acquisition cases is always the High Court and not the District Court ; and that it is immaterial whether the amount of compensation awarded by the Court of first instance does or does not exceed Rs. 5,000 and whether the Court of first instance is the Court of a District Judge or that of a Subordinate Judge or an Assistant Judge. The result is that the judgments of the Bombay High Court in *Ranchhodbhai Vallubhai v. The Collector of Kaira* (1) and *Ahmedbhoy Habibbhoy v. Waman Dhondhu and others* (2) laying down the rule that if, in a compensation case heard by an Assistant Judge, the amount does not exceed Rs. 5,000 the appeal lies to the District Court and not to the High Court, must now be regarded as obsolete. It seems to me that when an appeal has been preferred to the High Court, the first portion of the aforesaid section which alone deals with the *forum* of appeal

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in India is exhausted, and in order to determine whether the said appeal is to be heard by a single Judge or a Division Bench, and whether the judgment of the single Judge is final or not, we must turn to the rules framed by the High Court regulating its jurisdiction, and to the law, if any, governing the right of appeal from the judgment of a single Judge to a Division Bench. The section does not profess to deal with either of these matters. Now, the rules framed by this Court, under section 108 (1) of the Government of India Act provide that an appeal from an award in a Land Acquisition case is cognizable by a single Judge if the amount involved in appeal does not exceed Rs. 5,000 and clause 10 of the Letters Patent gives a right of appeal from the judgment of one Judge to a Division Bench. There can be no doubt that the decision of Mr. Justice Martineau dismissing the appeal preferred by the appellants constitutes a "judgment" within the meaning of the aforesaid clause; indeed, sub-section (2) of section 26 of the Land Acquisition Act which has been added by the Amending Act of 1921, shows that the statement of the grounds of an award is to be deemed to be a judgment even within the restricted sense in which the expression is used in section 2 of the Civil Procedure Code.

It is beyond dispute that clause 10 of the Letters Patent gives in express terms a right of appeal, and I cannot hold that that right has been impliedly taken away by section 54 of the Land Acquisition Act, more especially when I find that the section is merely an enabling section and was enacted in order to give a right of appeal to His Majesty in Council, which right was not, as held by their Lordships of the Privy Council in *Rangoon Bobatoung Company, Limited, v. The Collector, Rangoon* (1) recognized by the old section as it existed prior to the Act of 1921. The object of the amendment was to extend the scope of the right of appeal and not to curtail any existing right. It must be remembered that section 111 of the Civil Procedure Code prohibits an appeal to His Majesty in Council from the judgment of a single Judge of a High Court established by the Letters Patent; and the reason for this prohibition is that an appeal from such judgment is provided for in the Letters Patent.

and that an aggrieved party should not be permitted to appeal directly to His Majesty in Council, but that he should, in the first instance, appeal under the Letters Patent to the other Judges of the High Court.

It is obvious that if the preliminary objection raised on behalf of the respondent be accepted, there would be no appeal either to a Division Bench of the High Court or to the Privy Council, and I cannot give effect to a contention which leads to this absurdity. I must, therefore, overrule the objection that no appeal lies to the Division Bench.

[ *The remainder of the judgment is not required for the purpose of this report—Ed.* ]

ABDUL QADIR J. :—I concur,

C. H. O.

*Appeal accepted.*

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