

CASE NO.:
Appeal (civil) 14198 of 1996

PETITIONER:
SHARDA DEVI

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 13/03/2002

BENCH:
G.B. Pattanaik, S.N. Phukan & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

1. This Appeal is against a Judgment dated 25th April, 1988.

2. Briefly stated the facts are as follows:

The Appellant claims that by a Registered Deed of Settlement dated 24th April, 1954 the land was settled in favour of one Dev Narayan Prasad. On 19th February 1955, by virtue of Section 3(1) of the Bihar Land Reforms Act, the land vested in the State of Bihar. The Appellant claims that the State has been receiving rent from the said Dev Narayan Prasad. On 9th February, 1962 the said Dev Narayan Prasad sold the said land to the Appellant by a registered Sale Deed.

3. On 18th May, 1979 a notice was issued to the Appellant under Section 3 of the Bihar Land Encroachment Act. The Appellant replied to the Notice. Whilst these proceedings were pending, on 16th January 1982 a Notification was issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the said Act). This was followed by a Declaration under Section 6 on 25th May, 1982. The Appellant filed a claim under Section 9 of the said Act. Similarly, the Circle Officer, on behalf of the State, filed a claim under Section 9 of the said Act. An Award came to be passed in favour of the Appellant on 19th February, 1985. The State filed a Reference under Section 30 of the said Act for determination of the title. The State claimed that they were entitled to receive compensation. On 6th September, 1986 the Land Acquisition Judge held in favour of the Appellant. The State then filed an Appeal which was dismissed on 25th April, 1988.

4. The State then filed a Letters Patent Appeal before the Division Bench. This Letters Patent Appeal was allowed by the impugned Judgment dated 1st May, 1996. The case has been remanded back to the single Judge for decision in the light of the observations made by the Division Bench.

5. When this matter reached hearing on 31st January, 2002 the following Order has been passed by this Court:

"One of the questions that arises for consideration in this case is as to whether Letters Patent Appeal was

maintainable before the Letters Patent Bench against the judgment and decree of the learned Single Judge of the High Court passed in an appeal preferred under Section 54 of the Land Acquisition Act. In Civil Appeal Nos. 1663-1968 of 1982 (Baljit Singh and Ors. etc. vs. State of Haryana & Ors.), a Bench of two Judges of this Court held that no Letters Patent Appeal is maintainable against the judgment of the learned Single Judge of the High Court whereas in the case of Basant Kumar vs. Union of India reported in (1996) 11 SCC 542, a Bench of three Judges, without adverting to the decision in Baljit Singh & Ors. etc. vs. State of Haryana & Ors. (supra) held that such an appeal is maintainable.

We have heard learned counsel for the parties.

On a plain reading of Section 54 of the Land Acquisition Act, we are, prima facie, of the view that no Letters Patent Appeal is maintainable. However, since no reason has been assigned in the case of Basant Kumar vs. Union of India (supra) for holding that the Letters Patent Appeal is maintainable against the judgment of a Single Judge of the High Court passed in an appeal filed under Section 54 of the Act, we are of the view that this case requires to be decided by a Bench of three Hon'ble Judges.

Let this matter be placed before Hon'ble the Chief Justice of India for appropriate orders."

Hence the Appeal has been placed before us.

6. In the case of Baljit Singh and Ors. etc. vs. State of Haryana and Ors., two Judges of this Court have held as follows:

"The short question raised is whether the Letters Patent Appeals were maintainable under the law. The learned Counsel for the appellants agreed that such appeals did not lie on the authority of a Judgment of this Court in Asia Industries vs. Sarup (1965(2) SCR 756) where a four Judge bench has clearly held that such an appeal does not lie. On this authority the Judgment of the Division Bench of the High Court has to be vacated and consequently the decision of the learned Single Judge has got to be restored."

7. The Judgment in Baljit Singh's case is based on a concession. It is also based on the judgment in Asia Industries case. The Judgment in Asia Industries case does not deal with Section 54 of the said Act. In Asia Industries case, the question was whether a Letters Patent Appeal would lie against a decision of the single Judge Bench passed in an Appeal filed under Sections 39 of the Delhi Rent Control Act. Whilst considering this question it was observed as follows:

"The following legal position emerges from the said discussion : A statute may give a right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it under s. 108 of the Government of India Act, 1915, an appeal under s. 39 of the Act will be heard by a single Judge. Any judgment made by the single Judge in the said appeal will, under cl. 10 of the Letters Patent, be subject to an appeal to that

Court. If the order made by a single Judge is a judgment and if the appropriate Legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a single Judge under cl. 10 of the Letters Patent to the High Court. It follows that, if the Act had not taken away the Letters Patent appeal, an appeal shall certainly lie from the judgment of the single Judge to the High Court."

Thus the Court holds that a Letters Patent Appeal will lie unless the concerned statute takes away the right to file Letters Patent Appeal. The Court then considered Sections 39 and 43 Delhi Rent Control Act and held that a combined reading of the two Sections showed that the Order passed by the High Court, in an appeal under Section 39, was to be final. It was held that the provision of finality was intended to exclude any further appeal. This decision is thus based on interpretation of Sections 39 and 43 of the Delhi Rent Control Act. Section 54 of the said Act has no similarity with Sections 39 and 43 of the Delhi Rent Control Act. Asia Industries case does not lay down that a Letters Patent Appeal would not lie against a judgment passed in an appeal under Section 54 of the said Act. Thus the case has no relevance whilst deciding the question whether a Letters Patent Appeal is maintainable against a judgment passed in an appeal under Section 54 of the said Act. In our view the concession made in Baljit Singh's case was wrong.

8. A three Judge Bench of this Court, has in Basant Kumar's case (supra) held as follows:

"The next question is whether the LPA would lie against the judgment of the learned Single Judge? It is a settled legal position that under Section 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a Single Judge necessarily, it being the judgment of the Single Judge, an appeal would lie to the same Court in the form of LPA to the Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the Single Judge. To that extent, the view of the High Court is not correct."

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 get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent.

10. The question which thus arises is whether Section 54 of the said Act excludes an appeal under the Letters Patent. Section 54 of the said Act reads as under:

"54. Appeals in proceedings before Court.- 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 the Supreme Court subject to the provisions contained in section 110 of the

Code of Civil Procedure, 1908, and in Order XLIV thereof."

11. Mr. Sharan submits that Section 54 of the said Act contains a non-obstante clause. He submits that the words "notwithstanding anything to the contrary in any enactment for the time being in force" would also include the provisions contained in a Letters Patent. We are unable to accept this submission. A Letter Patent is not an enactment. It is the charter of the High Court. A non-obstante clause of this nature cannot cover the charter of the High Court.

12. Mr. Sharan next submits that Section 54 of the said Act uses the words "an appeal shall only lie". He submits that the words "an appeal" show that there can be only one appeal to the High Court. He submits that the use of the word "only" indicates that the Legislature intended that there should be only one appeal in the High Court. Mr. Sharan submits that Section 54 also provides that from "such an appeal an appeal shall lie to the Supreme Court". He submits that this makes it clear that Section 54 provides for only one Appeal to the High Court and then an appeal to the Supreme Court. He submits that on a plain reading of Section 54 it is clear that a Letters Patent Appeal would not lie against a Judgment passed by a single Judge of the High Court in an Appeal under Section 54.

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 Devi vs. Chander Bhan reported in AIR (1995) Delhi 293, Mohabbat Singh vs. Crown reported in AIR (1923) Lahore 274, Narayandas Daga vs. Ganpatrao reported in AIR (1944) Nagpur 284 and M. Srinivas Vs. 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 a 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" does not restrict it to only one Appeal in the High 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.

16. The case be now placed before a Division Bench for consideration of the other aspects.

...J.
(G.B. PATTANAIK)

...J.

(S.N. PHUKAN)

..J.
(S. N. VARIAVA)

March 13, 2002.

JUDIS