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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP (C) No. 3864/2007

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Reserved on : September 26, 2008
Pronounced on : October 20, 2008

Major General Kapil Mehra & Ors.

. . . Petitioners

through :

Petitioner No.1 in-person.

VERSUS

Union of India

. . . Respondent

through :

Mr. Sanjay Poddar, Advocate
for the respondent/LAC.

CORAM :-

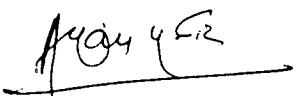
THE HON'BLE MR. JUSTICE A.K. SIKRI

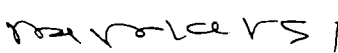
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see LA.A. No. 149/2007.


(A.K. SIKRI)
JUDGE


(MANMOHAN SINGH)
JUDGE

October 20, 2008

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LA. App. No. 149/2007 & CM No. 7434/2007
and
WP (C) No. 3864/2007

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Reserved on : September 26, 2008
Pronounced on : October 20, 2008

1) LA. App. No. 149/2007 & CM No. 7434/2007

Major General Kapil Mehra . . . Appellant

through : In-person.

VERSUS

Union of India & Anr. . . Respondents

through : Mr. Sanjay Poddar, Advocate
for the respondent No.1/LAC.
Mr. Gaurav Sarin, Advocate
for the respondent No.2/DDA.

2) WP (C) No. 3864/2007

Major General Kapil Mehra & Ors. . . Petitioners

through : Petitioner No.1 in-person.

VERSUS

Union of India . . . Respondent

through : Mr. Sanjay Poddar, Advocate
for the respondent/LAC.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

1. CM No. 7434/2007 in LA. App. No. 149/2007

The appellant had moved this application under Section 149 of the Code of Civil Procedure, 1908 seeking extension of time in paying the court fee. Before we deal with the prayer made in this application, it would be apposite to throw some light on the background facts giving rise to filing of this appeal and the writ petition.

2. The respondents issued Notification dated 13.11.1959 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') acquiring certain land situated in village Mehrauli. After making the award, possession was taken and while doing this exercise, plot of land situated in Vasant Kunj Residential Scheme in Mehrauli covered by khasra No. 1300-Min old, 697 New, measuring 12 bigha, which belonged to the appellant, was also taken possession of by the respondents. The appellant questioned this action of the respondents on the ground that his land was not covered by the aforesaid notification. WP (C) No. 1134/1992 filed by him was allowed vide judgment dated 30.1.1996 accepting his plea and declaring the acquisition proceedings with respect to the land of the appellant as illegal and quashing the same. The respondents were directed to restore the possession of the appellant's land to him within 90 days. It was also observed that if for any reason it was not possible to restore possession, the appellant would be entitled to

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alternate equal area of land. SLP of the DDA filed against that judgment was dismissed by the Supreme Court on 18.11.1996. Even when the land was not restored or alternate land allotted to the appellant, he filed Civil Contempt Petition No. 461/1996 on 16.12.1996. After issuance of the notice in this contempt petition, the respondents issued fresh notification under Section 4 and Section 17 of the Act on 19.2.1997 acquiring the appellant's land. According to the appellant, this was blatantly a *mala fide* act on the part of the respondents to circumvent the court orders and to escape the noose of contempt. The respondents, however, justified the action of acquisition *inter alia* on the ground that DDA was unable to return the plot as the same had been amalgamated in the huge residential scheme called Vasant Kunj and the plot of the petitioner had become a part and parcel of Vasant Kunj in March 1987 itself. It was also stated by DDA in its affidavit filed on 26.2.1997 that it was unable to allot an equal area of land elsewhere and the DDA would be paying the market value of the plot as prevalent in Vasant Kunj as on 19.2.1997 when Section 4 notification was issued.

Be that as it may, the appellant did not challenge the Notification dated 19.2.1997. The Land Acquisition Collector made his award No. 2/98-99 on 18.9.1998. According to the appellant, the compensation fixed was dismal, low and not the market value of the land prevailing in Vasant Kunj as on 19.2.1997. Therefore, he sought reference under Section 18 of the Act. The said reference has been answered by the learned Addl. District Judge in his impugned

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award dated 24.2.2007 fixing the market value at Rs.24 lacs of his plot (which comes to approximately Rs.200/- per sq. yd.). According to the appellant, the market value of the residential leasehold plot at Vasant Kunj at the relevant time was approximately Rs.50,000/- per sq.yd. Therefore, the appellant feels dissatisfied with the impugned award and he has preferred the present appeal for enhancement of the compensation @ Rs.50,000/- per sq.yd. The compensation claimed is Rs.60 crores (approx.) as against Rs.24 lacs awarded to him by the learned ADJ. However, on this differential the appellant does not want to pay the court fee. Hence, the instant application.

3. It was stated in para 11 of this application that the system demands payment of court fee, which would be around Rs.60 lacs (approx.) in the present case, in the beginning itself, at the time of filing of the appeal, which is totally unjust and amounts to state banditry against a weak law abiding citizen. Prayer made in this application was that the appellant be allowed to affix the court fee at a later stage when the enhancement, that may be allowed by this Court, is announced. Along with the application, he gave an affidavit undertaking to give the court fee at that stage. However, the appellant, who appeared in-person, took altogether different stand at the time of arguments. He raised the plea that *ad valorem* court fee on the amount of differential claimed in the appeal is not payable as per the provisions of the Court Fees Act, 1870 which requires only fixed court fee to be

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paid in such cases. The appellant has gone to the extent of arguing that in case it is held that *ad valorem* court fee is payable, then such a provision in the court fee is unconstitutional. It is for this reason WP (C) No. 3864/2007 is also preferred by the appellant for declaring Section 8 of the Court Fees Act, 1870 as unconstitutional. The question of considering the prayer made in the writ petition would arise only if it is decided that the appellant is required to pay the *ad valorem* court fee. Therefore, it would be advisable to first address the issue of payment of court fee, namely, whether fixed or *ad valorem*.

4. The appellant referred to Article 1 of Schedule I of the Court Fees Act, 1870 and Article 17(iv) of Schedule II, which are as under :-

"Article 1 to Schedule-I

AD VALOREM FEES

		<u>Proper Fee</u>
1. Plaint, written statement pleading a set off or counter claim	When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees	Six annas
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of	Five rupees

one thousand rupees, up to five thousand rupees

When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees

Ten rupees

When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees

Fifteen rupees

When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees

Twenty rupees

When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.

Twenty rupees

When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees

Twenty-five rupees

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.

Article 17(4) to Schedule-II

17. Plaint or memorandum of appeal in each of the following suits :-

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Ten rupees

(iv) to set aside an award;

5. His first submission based on the aforesaid provisions was that *ad valorem* court fee as per Article 1 of Schedule I was required only in an appeal filed against the judgment of a civil court or revenue court. He submitted that that was not the case here inasmuch as the reference court, which decided reference under Section 18 of the Act was a '*Special Court*' specially convened through a notification issued under Section 3(d) of the Act vide which the concerned Addl. District Judge was given powers to decide such references. He was, therefore, not acting as a civil court or revenue court while dealing with these references. However, reference petition filed under Section 18 of the Act was not a suit. Likewise, the said reference was answered by an '*award*' which was not a decree. Therefore, such a court functioned in the capacity of a Special Tribunal giving the powers under the Act and labeling the award given by it as '*deemed decree*' under Section 26(2) of the Act was merely a fiction. In support of this argument, he relied upon the following two judgments :-

- (a) ***Saibesh Chandra Sarkar v. Sir Bejoy Chand Mahatap Bahadur***
XXVI Calcutta Weekly Notes 506

This was a case relating to the Act itself and after analyzing the nature of proceedings before the reference court under Section 18 of the Act, the Calcutta High Court observed as under :-

"The "Court" means the principal Civil Court of Original Jurisdiction unless the local Government has appointed a Special Judicial Officer to perform the functions of the Court under the Act, and the provisions of the Code of Civil

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Procedure are to apply to proceedings before the Court under the Act.

The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. [See *Bhandi Singh v. Ramadhin Roy*, 10 C.W.N. 991 (1905)]

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....The person aggrieved by the award whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested may apply to the Collector for a reference to the Court. The "Court", by which is meant the principal Civil Court of Original Jurisdiction or a Judicial Officer specially empowered to perform the functions of the Court under the Act has to decide the questions referred to the Court. That being so, it is not reasonable to hold that the Act, while creating a special Court to decide such questions intended an adjudication of any question relating to apportionment by the Ordinary Civil Courts."

- (b) ***Naresh Chandra Bose v. Hira Lal Bose & Ors.***,
XX Calcutta Weekly Notes 360

This is again a case where the Calcutta High Court held that a court constituted under the Land Acquisition Act was a Special Tribunal constituted to hear references against the orders passed by the Calcutta Improvement Trust.

At this stage, we may only comment that in the first case the issue was as to whether the jurisdiction of civil court was barred in view of the special remedy provided under the Act by constituting a Special Court which was to hear references against the orders passed by the Land Acquisition Collector/authorities.

In the second case, issue was as to whether the said Tribunal was also a Court and had the power to call for the records of other

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courts and the High Court answered the question in the affirmative holding that power to call for records is a power which is undoubtedly inherent in the Judge and on Land Acquisition Court and consequently in the Special Tribunal.

6. In support of the submission that award of the reference court cannot be termed as '*decree*', the appellant relied upon the judgment of the Supreme Court in *Diwan Bros. v. Central Bank of India, Bombay & Ors.*, (1976) 3 SCC 800. In that case, appeals were preferred against the order passed by the Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951. Question was as to whether such an award would be a decree as the appellant was seeking higher amount than what was claimed before the Tribunal under the said Act. The Apex Court held that the said order would not be a '*decree*' and, therefore, *ad valorem* court fee was not payable. After discussing the history and background behind Displaced Persons (Debts Adjustment) Act, 1951, the Supreme Court observed that it would appear that the intention of the Parliament was to bring out a legislation which would provide for a cheap and expeditious remedy to the displaced persons and entrust the work to a tribunal which may be able to decide the claims quickly instead of leaving the displaced debtors or creditors to follow the dilatory and cumbersome process of the civil courts. Further, the Act is a beneficial statute meant for advancing the cause of the displaced debtors and creditors by conferring substantial benefits on them if they are able to prove their claims and

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in these circumstances, it is clear that the Legislature could never have intended that the claimants should have to pay heavy court fees either in getting their claims adjudicated by the tribunal or even in filing appeals against the decrees of the tribunals. It was further held that under the Act the decree which the tribunal passes is not a decree of the civil court but a decree passed by a tribunal in a proceeding under Section 5 and Section 9 of the Act. Whether a claim is disallowed or allowed, the order passed by the tribunal would be a decree in both cases. But is it a decree for Article 11 of Schedule II is the question.

In the process, the Supreme Court also interpreted the definition of 'decree' as appearing in Section 2(2) of the CPC as per which the following three essential conditions are necessary :-

- (i) that the adjudication must be given in a suit;
- (ii) that the suit must start with a plaint and culminate in a decree; and
- (iii) that the adjudication must be formal and final and must be given by a civil or revenue court.

7. The Apex Court was of the opinion that the Tribunal constituted under the 1951 Act cannot be called a court. The proceedings before the tribunal start with an application and not a plaint and lastly the claim before the tribunal is a proceeding and not a suit. Hence, none of the requirements of a decree are to be found in the decision given by the tribunal even though the Legislature may have described the decision as a decree. A mere description of the decision of the tribunal as a decree does not make it a decree within the meaning of

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the Court Fees Act. Moreover the objection of the Act is to benefit displaced persons by providing them a cheap and expeditious remedy. It was also held that in case of a fiscal statute the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening as far as possible the burden of court fees on the litigant. Thus where an adjudication given by a tribunal could fall within two provisions of the Court Fees Act, one of which was onerous for the litigant and the other more liberal, the court would apply that provision which was beneficial to the litigant.

8. The submission of the appellant was that the constitution of reference court/tribunal under Section 18 of the Act is also to provide succour to those who are granted lesser compensation by the LAC. He highlighted the facts of his own case and submitted that when such a meagre compensation is awarded to him as against the real market value of the land, asking the appellant to pay *ad valorem* court fee would be totally unjust and would amount to depriving a person to avail appropriate remedy available in law. The appellant also referred to and relied upon the judgments of the Bombay High Court in *Hirji Virji Jangbari v. Government of Bombay*, AIR 932) 1945 Bombay 348 and Punjab High Court in the case of *Kanwar Jagat Bahadur Singh v. The Punjab Estate*, AIR 1957 Punjab 32, where those High Courts had taken the view that fixed court fee is payable.

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9. The aforesaid submissions of the appellant appear to be attractive, more particularly when these are examined in the context of the facts of the appellant's case wherein he was deprived of his land illegally and the respondents woke up initiating the acquisition proceedings only after realizing their folly that the appellant was dispossessed of his land on the basis of purported notification which did not cover his land. Furthermore, when according to the appellant he is given farcical amount of Rs.24 lacs against his demand and expectation of Rs.60 crores (approx.). No doubt, asking the appellant to pay court fee of Rs.60 lacs even before his claim on merits is considered would be onerous. However, we are concerned here with the legal provisions which govern the case and hold the field.
10. Arguments of the appellant, we are constrained to note, already stand answered by the Apex Court and other courts in subsequent judgments. We may first refer to the judgment of the Supreme Court in the case of *C.G. Ghanshamdas & Ors. v. Collector of Madras*, (1986) 4 SCC 305. Significantly, the judgments of the Bombay High Court in *Hirji Virji Jangbari* (supra), the Punjab High Court in *Kanwar Jagat Bahadur Singh* (supra), and also of this Court in *Mangal Sen v. Union of India*, AIR 1970 Delhi 44, which had followed the Punjab High Court, were overruled by the Supreme Court in this case.
11. When the question of payment of court fee for the land under the Requisitioning and Acquisition of Immovable Property Act, 1952 (which is *pari materia* with the Land Acquisition Act) came up for

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consideration, there were two conflicting views expressed by different High Courts. In the aforesaid judgments of the Bombay, Punjab and this Court, view taken was that in such appeals filed against the award of the reference court, fixed court fee is to be affixed. View of some other High Courts was that *ad valorem* court fee is to be paid. The Supreme Court while overruling the judgments of those courts which had taken the view that fixed court fee is payable, affirmed the view that *ad valorem* court fee is payable in such cases. While holding this view, the Supreme Court discussed the issue in the following manner:-

"18. In *Satya Charan Sur v. State of W.B.*, Air 1959 Cal 609, the High Court of Calcutta while following the decision in *Ananda Lal Chakrabutty* case expressly dissented from the view expressed in *Hirji Virji Jangbari* case. After the Bombay Court Fees Act, 1959 came into force a similar question arose for consideration in *C.B.G. Trust v. Union of India*, (1968) 70 Bom LR 407 regarding the proper court fee payable on an appeal filed against an award made under the Requisitioning Act. In the Bombay Court Fees Act, 1959 Section 7(1) provided that the amount of fee payable under that 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 should be computed according to the difference between the amount awarded and the amount claimed by the appellant. The language of that section was similar to the language of Section 51 of the Act and of Section 8 of the Court Fees Act, 1870. A Division Bench of the High Court of Bombay, which heard the said case held that the court fee payable on the memorandum of appeal preferred against award made under Section 8 of the Requisitioning Act was as prescribed by Article 3 of Schedule I read with Section 7(1) of the Bombay Court Fees Act, 1959. They disapproved the decision of the Bombay High Court in *Hirji Virji Jangbari* case and followed the decision of the Calcutta High Court in *Ananda Lal Chakrabutty* case. An identical question came before this Court for consideration in *Sahadu Gangaram Bhagade v. Spl. Deputy Collector*, (1971) 1 SCR 146 : (1970) 1 SCC 685 : AIR 1971 SC 1887. In that case this Court approved the view expressed by the Calcutta High Court in *Ananda Lal Chakrabutty* case and in *C.B.G. Trust* case and held that the contention that the award made by the Arbitrator had no effect and, therefore, it could not be considered as an order, was not acceptable. The Court proceeded to hold that though

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the award was not an order as defined in the Civil Procedure Code, 1908 having not been made by the civil court but since the expression 'order' had not been defined in that Act, the award of the Arbitrator was undoubtedly a formal expression of a decision made by a competent authority which was binding on the parties to the proceedings in which it was made. The learned counsel for the appellants tried to distinguish this decision from the present case on the ground that while the expression 'order' had not been defined in the Bombay Court Fees Act, 1959 which arose for consideration in the said decision, in the present case it had been defined as stated earlier by stating in Section 3(iv) of the Act that the expression used and not defined in the Act, but defined in the Code of Civil Procedure should have the meaning respectively assigned to them in the said Code, and in view of the above distinction the decision in *Sahadu Gangaram Bhagade case* would not govern the present case. We do not find much substance in the above contention. On carefully going through the decision of this Court in *Sahadu Gangaram Bhagade case* we find that the decision did not really turn upon the presence or the absence of the definition of the word 'order' in the Bombay Court Fees Act, 1959 although there is a reference to this aspect of the matter in the course of the decision. The relevant part of the decision in *Sahadu Gangaram Bhagade case* at page 150 reads like thus : (SCC p. 688, para 3)

Section 11 provides for an appeal to the High Court against the award made by the Arbitrator. In the Act there is no provision similar to sub-section (2) of Section 26 of the Land Acquisition Act, 1894 whereunder every award made by the Land Acquisition Officer is to be deemed to be a decree of court. Therefore, the question whether the award made under Section 8 of the Act is executable or not is a matter that requires further consideration. For the present, we shall proceed on the basis that it is not executable. But Section 9 of the Act requires the competent authority to pay the compensation awarded to the person or persons entitled thereto. Therefore we are unable to accept the contention of the learned counsel for the appellant that the award made by the Arbitrator is something which has no effect and therefore it cannot be considered as an order. It is true that it is not an 'order' as defined in the Civil Procedure Code, the same having not been made by a civil court. But the expression 'order' is not defined in the Act. *The award of the Arbitrator is undoubtedly a formal expression of a decision made by a competent authority. Further it is a decision binding on the parties to the proceedings in which it is made. Therefore the question whether the order in question is executable or not appears to us to be irrelevant for the purpose of determining the point in issue.*

(emphasis added)

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19. The portion of the judgment of this Court which has been underlined clearly brings out the effect of an award. This Court has held that the award of the Arbitrator is undoubtedly a formal expression of a decision made by a competent authority. We are also of the view that much reliance cannot be placed on the definition clause found in Section 3(iv) of the Act since the definitions given in that section have to be read subject to the context in which the expressions defined therein appear in the Act. Section 3 of the Act states that in the Act 'unless the context otherwise requires' the words and expressions defined in that section shall carry the meaning given to them in various clauses in that section. It is relevant to note that in Section 51 of the Act which arises for consideration before us the word 'order' does not appear in isolation. The section states that the fee payable under the Act on a memorandum of appeal against an order *relating to compensation in any Act for the time being in force for the acquisition of property for public purposes* shall be computed on the difference between the amount awarded and the amount claimed by the appellants. The 'order' referred to in Section 51 of the Act need not therefore be an 'order' of a civil court as defined in Section 2 (14) of the Code of Civil Procedure but should be an 'order' relating to compensation under any Act for the time being in force for the acquisition of property for public purposes. There is no doubt that the award passed by the Arbitrator under the Requisitioning Act is a formal expression of a decision made by a competent authority which is binding on the parties and it relates to compensation payable under an Act for the time being in force for the acquisition of property for the public purposes. Hence we are of the view that even though the expression 'order' simpliciter has to be understood in the sense in which that expression is defined in Section 2(14) of the Code of Civil Procedure, the word 'order' found in Section 51 of the Act has to be read differently having regard to the words which qualify that expression in that section, namely, 'relating to compensation under any Act for the time being in force for the acquisition of properties'. The said order need not be an order of a civil court only. It can be of any statutory authority. But it must determine compensation for a property acquired under a law of acquisition of property for public purpose. The award made under Section 8 of the Requisitioning Act satisfies these tests. We do not, therefore, find any substance in this contention too. Since according to us the appeal before the High Court filed under Section 11 of the Requisitioning Act falls squarely under Section 51 of the Act, court fee has to be paid on *ad valorem* basis as provided in Article 1 of Schedule I of the Act. It follows that the residuary article i.e. Article 3(iii)(A) (1)(a) of Schedule II to the Act is not attracted. The High Court was right in following its earlier decision in *Y. Venkanna Choudhary case* and directing the appellants to pay court fee on *ad valorem* basis under Section 51 of the Act."

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12. The judgment of the Supreme Court of *Diwan Bros.* (supra), on which heavy reliance was placed by the appellant, came up for discussion before the Apex Court again in the case of *Indore Development Authority v. Tarak Singh & Ors.*, 1995 Supp. (3) SCC 25. That was a case which specifically dealt with appeals under Section 54 of the Act against award of the reference court claiming higher compensation than the compensation awarded by the reference court under Section 18 of the Act. In no uncertain terms the Supreme Court held that reference court under Section 18 of the Act was a 'civil court' and by virtue of Section 26(2) its award is a 'decree' within the meaning of Section 2(2) of the CPC. This judgment, in fact, clinches the entire issue, raised by the appellant, against him. In this binding precedent, the Supreme Court has given a categorical opinion that *ad valorem* court fee would be payable in view of Section 8 of the M.P. Court Fees Act, 1870 (which is *pari materia* with Section 8 of the Court Fees Act, 1870). Following discussion contained in the said judgment would be of use to us :-

"6. The case on hand stands on a higher footing than the one dealt with in *Ghanshyamdas case*. Here, the Subordinate Judge, who deals with the reference, is a civil court under the Central Act to determine compensation. By operation of Section 26(2), his award is a decree within the meaning of Section 2(2) of CPC. It is a formal expression of an adjudication on the compensation awardable or measurement of the land acquired under the Central Act. It is a final adjudication also, unless it can be avoided in any other forum known to law; and it could be avoided only by filing appeal as prescribed in Section 54 of the Central Act.

7. In this context, it is relevant to note Section 8 of the M.P. Court Fees Act which reads thus:

"8. *Fee on memorandum of appeal against order relating to compensation:* The amount of fee payable under this Act on a memorandum of appeal against an order relating

to compensation under Any 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.”

13. The earlier judgment of the Supreme Court in *Diwan Bros.* (supra) was held to be not applicable, as is clear from the following discussion :-

“9. The decision of this Court in *Diwan Bros. v. Central Bank of India*, (1976) 3 SCC 800 relied on by Shri V.R. Reddy has no application to the facts in this case. Therein, the Special Tribunal was constituted and an application was to be made to the Tribunal for determination of the disputes. In view of the specific language, this Court held that the criteria prescribed under sub-section (2) of Section 2 of the CPC has not been satisfied. Therefore, the order is not a decree and the application is not a plaint as required by CPC. Therefore, it was held that fixed court fee was required to be paid on memorandum of appeal. But, as stated earlier, since the Act has treated the court under the Central Act as an established civil court of original jurisdiction and conferred the power and jurisdiction to determine conclusively the objection regarding the measurement or compensation or title to receive the compensation between the contesting parties, it is a Civil Court under the CPC and the award of the Civil Court is deemed under Section 26 (2) to be a decree within the meaning of sub-section (2) of Section 2 of CPC.”

14. This judgment, in fact, leaves no manner of doubt that the court fee payable is *ad valorem* as per Section 8 of the Court Fees Act; the reference court is a ‘civil court’; its award is a ‘decree’ as per Section 26 of the Land Acquisition Act; and thus Article 1 of Schedule I would apply and not Article 17(4) of Schedule II of Court Fees Act. No doubt, provision like this, as already pointed out above, may be onerous to persons like the appellant and would even appear to be unjust. However, the provision, as it stands and is interpreted by the Supreme Court, mandates that *ad valorem* court fee is payable.

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We may also point out at this stage that the judgment of the Punjab High Court in *Kanwar Jagat Bahadur Singh* (supra) was overruled by the Punjab High Court in the same year itself in the case of *Sahdev Singh, Rajeshwar Singh v. Punjab State*, AIR 1957 Punjab 222. This view was reiterated by the same High Court in ILR 96(2) Punjab 481 holding that *ad valorem* court fee is payable. No doubt, thereafter by legislative amendment the States of Punjab & Haryana have fixed Rs.100/- as the court fee payable on such appeals. The remedy, therefore, lies with the Legislature to correct the situation in case it finds the provisions burdensome.

With these observations, this application is disposed of.

15. WP (C) No. 3864/2007

Since we have held that *ad valorem* court fee is payable in view of Section 8 of the Court Fees Act, 1870, the question is as to whether this provision is *ultra vires*.

16. It was argued by the petitioner that forcing a citizen to pay such substantial *ad valorem* court fee, who is divested of his land, would clearly be unjust and an unreasonable restriction on his right to approach the court and seek judicial remedy. Such a fee loses the character of 'fee' and assumes the character of a 'tax', which would clearly be inadmissible, was the contention. Heavy reliance was placed on the judgment of the Supreme Court in the case of *P.M. Ashwathanarayana Setty & Ors. v. State of Karnataka & Ors.*,

1989 Supp (1) SCC 696. In that case, the Apex Court was concerned with levy of court fee under Karnataka Court Fees and Suits Valuation Act, 1959 as well as the Rajasthan Court Fees and Suits Valuation Act, 1961. Under those provisions, court fee payable was 10% of the amount claimed. The court formulated the following three questions which fall for determination :-

- “(1) The first question is whether the levies of court fee under the Karnataka Act and the Rajasthan Act satisfy the requirement of the concept of a ‘fee’ or partake the character of a ‘tax’ in absence of any correlation between the fee and the value of the services by way of quid pro quo?
- (2) The second question is whether the levy of court fees on ad valorem basis, without an upper limit, renders the impost a tax, inasmuch as having regard to the very nature of the services, which consists of adjudication of disputes, a state is inevitably reached after and above which an ad valorem levy, the proportionate increase in the value of the subject matter, ceases to be a ‘fee’ and becomes a ‘tax’?
- (3) The last question is whether, insofar as the provisions of Section 29(i) read with entry 20 in Schedule I to the Bombay Act are concerned, singling out of a class of litigation viz., applications for grant of probate and letters of administration for levy of ad valorem court fee without the benefit of the upper limit of Rs.15,000 prescribed in respect of all other suits and proceedings exposes that class of litigants to a hostile discrimination and is violative of Article 14?”

17. The aforesaid questions were answered in the following manner :-

“(1) Fee or Tax

A fee is a charge for the special service rendered to a class of citizens by government or governmental agencies and is generally based on the expenses incurred in rendering the services. If the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service and there is a broad and general correlation between the amount so raised and the expenses involved in providing the services, the impost would partake the character of a ‘fee’ notwithstanding the circumstance that the identity of the

amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. The correlation between the amount raised through the 'fee' and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation. The concept of fee does not require for its sustenance that every member of the class on whom the fee is imposed, must receive a corresponding benefit or degree of benefit commensurate with or proportionate to the payment that he individually makes. It would be sufficient if the benefit of the special services is available to and received by the class as such. It is not necessary that every individual composing the class should be shown to have derived any direct benefit. (paras 35 and 36)

A fee has also the element of a compulsory exaction which is shared in common with the concept of a tax as the class of persons intended to be benefited by the special services has no volition to decline the benefit of the services. A fee loses its character as such if it is intended to and does go to enrich the general revenues of the State to be applied for general purposes of government. The object to be served by raising the fee should not include objects which are, otherwise, within the ambit of general governmental obligations and activities. The concept of fee is not satisfied merely by showing that the class of persons from whom the fee is collected also derives some benefit from those activities of government. Such benefit is not one intended as special service to it but derived by it as part of the general public. A fee which at the inception is supportable as one might shed its complexion as a fee and assume that of a tax by reason of the accumulation of surpluses or the happening of events which tend to affect and unsettle the requisite degree of correlation. (paras 35, 36 and 40)

In the present case though the statements of receipt and expenses on the administration of justice do not contain any break up of the figures between expenditures on administration of civil justice and criminal justice but having regard to the figures, a reasonable estimate of the proportion of the former is possible and the figures indicate and establish the requisite relationship between the fee and the value of the services by way of quid pro quo. (para 47)

(2) **Ad valorem court fee, without an upper limit: Whether ceases to be a 'fee' and becomes a 'tax'?**

When a broad and general correlation between the totality of the fee on the one hand and the totality of the

expenses of the services on the other is established, the levy will not fail in its essential character of a fee on the ground alone that the measure of its distribution on the persons or incidence is disproportionate to the actual services obtainable by them. The argument that the levy of court fee on ad valorem basis involves an erroneous postulate that judicial time and the service of the machinery of justice is consumed and utilized in direct proportion to the amount or value of the subject matter, is not acceptable. The correlation of the services to the fee cannot be decided on the basis of how the correlation operates in each individual case. The conceptual nature of the fee cannot be tested on the basis of the degree of quid pro quo in the case of each individual payer of the fee. There might, conceivably, be cases where a particular individual contributor may not derive any benefit at all, though as a member of the class he has no option but to make the contribution. There is no force in the contention that beyond a point the impost ceases to have the quality of a fee. This cannot be a legitimate and permissible ground of invalidation. However, if the scheme of distribution of the burden is so arbitrary, so unreasonable and disproportionate as to offend the requirements of Article 14, the levy will be violation of Article 14. (paras 49, 67, 68, 69 and 72)

(3) Hostile Discrimination

The levy of court fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants - the court fee in the present case amounting to Rs.6,14,814 - is discriminatory. There is no intelligible or rational differentia between the two classes of litigations and having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. Where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs.15,000 on the court fee is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. The impost was never sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate 'fee' for another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else. The High Court was, therefore, justified in striking down the impugned provisions as being violation of Article 14. (paras 90 to 93)

18. Learned counsel for the respondents, on the other hand, pointed out that the aforesaid judgment of the Supreme Court came up for

discussion in the subsequent case, namely, *Secretary to the Government of Madras & Anr. v. P.R. Sriramulu & Anr.*, (1996) 1 SCC 345. In this case the Supreme Court has comprehensively discussed the issue relating to payment of court fee, including the aspect as to when such court fee can assume the character of a tax. It was also a case relating to the Land Acquisition Act. Certain lands belonging to the respondent Nos. 1 & 2 had been acquired. Those respondents had sought reference under Section 18 of the Act for enhancement of compensation. The reference court increased the compensation to some extent which was not to the satisfaction of the respondents. They accordingly preferred appeals to the High Court under Section 54 of the Act for further enhancement of the compensation. As per the provisions of the Madras Court Fee and Valuation Act, 1955, on such appeals *ad valorem* court fee @ 7.5% of the total claim, without any upper limit, is payable. The respondents perceived this provision to be highly discriminatory which compelled the appellants to pay *ad valorem* court fee at such a higher rate and, therefore, they challenged the aforesaid provisions of levy of court fee as exorbitant, arbitrary, unreasonable and unjustified. It was their submission that it had no bearing or relationship to the cost of administration of justice and, therefore, though termed as court fee, the amount extracted was really a levy of tax. It was argued by the respondents therein that the court fee must be related to the cost of administration of justice and cannot be used as a means of taxation for the purpose of raising the revenue to the Government for its

general administration. It was also argued that pattern³⁷ of levy of court fee prior to 1955 was only to levy an *ad valorem* fee up to certain limit and thereafter the fee was on a reduced scale and that the scale of fee in other states of the country was also on different basis and not on the basis of *ad valorem* fee without limit. On the basis of these pleas, prayer was made to declare such a provision as invalid.

19. The High Court of Madras found force in the aforesaid submissions and accepting the arguments of the respondents allowed the writ petition holding that there was no idea of *quid pro quo* in the levy @ 7.5% flat rate without limit as there was no necessity to raise the court fees as compensation for the cost of service rendered and to meet any increased cost in the administration of civil justice and also that there was no principle of rationalization justifying demand at a flat rate. The High Court, thus, opined that under these circumstances the impost inherently bears within more the concept of tax rather than fee, which was grossly disproportionate, unreasonable and arbitrary.

20. The Supreme Court set aside the aforesaid judgment of the High Court in the appeal preferred by the Government of Madras. Perusal of the judgment would show that the court, in detail, traced the history with regard to the levy of court fees in the country on the litigating parties since Mughal period and thereafter during the British rule in India. It acknowledged that the administration of justice is

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one of the main functions of the State along with large area of activity as in modern times functions of the State have become too extensive. The State has not only to maintain a system of administration of justice for the maintenance of law and order, but it has also to provide a system to enable its citizens to canvass their rights against the wrongs done to them as well as to the State itself, statutory bodies and government corporations, which were the largest litigants. In this backdrop the court formulated four questions which arose for consideration and these are as under :-

“8. In the present appeal and writ petition before us, it may be noted that the questions that arise out of the arguments addressed to us by the learned counsel for the parties, may be formulated as under :-

- (1) What is the nature of the fees taken in court within the meaning of Entry 3, List II, in 7th Schedule of the Constitution? Whether the fee so charged is a tax or a fee?
- (2) Whether it is a colourable exercise of legislative power, inasmuch as the State in fact is raising tax under the guise of levying a fee because the levy is excessive to such an extent as to be a pretence of a fee but it is not a fee in reality?
- (3) Whether the levy of court fees on ad valorem basis without an upper limit renders the impost a tax inasmuch as having regard to the very nature of services, which consist of adjudication of disputes, a state is inevitably reached wherein after and above an ad valorem levy, the proportionate increase in the value of the subject-matter ceases to be a fee and becomes a tax?
- (4) Whether the impugned impositions are fees – there being no correlation between the services and the levy and because the State makes a profit out of the administration of civil justice as it does not spend the entire money on administration of civil justice but also in administration of criminal justice and a large surplus is left out even after meeting the expenses of the administration of justice?”

21. The Court thereafter proceeded to take note of few earlier judgments wherein the question of fee and tax had come up for consideration and pointed out that in the case of *Secy., Govt. of Madras, Home Deptt. v. Zenith Lamp*, (1973) 1 SCC 162, the Constitution Bench of the Court had taken the view that the fees taken in courts cannot be equated with taxes. In para 12 of the judgment, earlier decision in the case of *P.M. Ashwathanarayana Setty* (supra) {on which reliance was placed by the appellant herein} is taken note of and discussed at length. Applying the test laid down in those judgments, the court did not find favour with the view taken by the High Court, as is clear from the following discussion :-

“14. Having regard to the decisions and various pronouncements cited above it is difficult to accept the reasoning and the view taken by the High Court in the impugned judgment. As discussed above if the essential character of the levy is that some special service is intended as quid pro quo to the class of citizens which is intended to be benefited by the service and a broad and general correlation between the amount so collected and the expenses incurred in providing the services is found to exist, then such levy would partake the character of a ‘fee’, irrespective of the fact that such special services for which the amount by levy of fee is collected incidentally and indirectly benefit the general public also. In order to establish the correlation between the amount recovered by way of ‘fee’ and the expenses incurred in providing the service they should not be examined so minutely or be weighed in golden scale to discern any difference between the two. It is not necessary to ascertain the same with any mathematical exactitude for finding the correlation but the test would be satisfied if a broad and general correlation is found to exist and once such a broad correlation between the totality of the expenses on the services rendered as a whole on the one hand and the totality of the amount so raised by way of the fee, on the other, is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the impost to embark upon its effect in the individual cases. If the aforesaid relation is found to exist in the levy of the fee, the levy cannot be said to be wanting in its essential character of a fee on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services made available to them. In view of this proposition of law the view expressed by the

High Court that ad valorem levy of court fee in an individual case far exceeds the maximum value, in terms of money, qua that contributor and hence the concept of correlation fails and renders the levy invalid and illegal cannot be accepted for the simple reason that the correlation is not in the context of individual contributors, the test being its ascertainment on a comprehensive basis keeping in view the value of the totality of the service, qua the totality of receipts. According to *D.D. Marco*, the author of the *First Principles of Public Finance*, page 33,

“the fee must be equal in the aggregate to the cost of production of the services. That is the aggregate amount of the fees which the State collects from individual customers must equal the aggregate expenses of production.”

Thus the test of the correlation is to be reckoned at the aggregate level and not at the individual level as is also the view taken in *Ashwathanarayana Setty* case.

15. As pointed out earlier with reference to the decisions of this Court the State enjoys the widest latitude where measure of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria, adjustment and balancing of various conflicting social and economic value and interests. It is for the State to decide what economic and social policy it should pursue. It is settled law that in view of the inherent complexity of the fiscal adjustments, the Courts give a large discretion to the legislature in the matter of its references of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustment of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or there are better ways of adjusting the competing interests and the claims as the legislature possesses the greatest freedom in such areas. It is also well settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no fool proof device exists, the Court should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the Equal Protection clause. Having regard to these settled principles the impugned Judgment of the High Court could not be sustained.

(emphasis supplied)”

22. Argument of the respondents based on *P.M. Ashwathanarayana Setty* (supra) was repelled in the following words :-

“20. Learned counsel for the respondents, however, submitted that this Court in the case of Ashwanatha Narayana Setty (supra) ultimately did not approve the scheme of ad-valorem levy of Court Fees without upper limit and urged that the said decision cannot be taken as an aid in support of the contention of the appellant that the ad-valorem levy of Court Fee without upper limit is justified and legal. It is true that in the last sentence of para 88 in the said report this Court observed as under :

“though the scheme cannot be upheld, at the same time, it cannot be struck down either.”

While laying emphasis on the aforesaid observation, learned Counsel for the respondents ignored the view expressed in paras just preceding the said observation, wherein it has been emphatically stated that it is difficult to say that the ad-valorem principle which may not be an ideal basis for distribution of a fee can be said to be so irrational so as to incur any unconstitutional infirmity. From the entire discussion of the said decision it is clear that this Court did not strike down the ad-valorem levy of Court Fees without upper limit and at the same time has expressed displeasure with regard to the scheme and it is for this reason that certain suggestions were made in para 95 of the said report in regard to the rationalisation of the Court Fees under the "Rajasthan Act and the Karnataka Act" where the rate of Court Fees was 10 per cent ad-valorem which is not the case here before us.”

23. The Court, thus, upheld the aforesaid provision. At the same time, it would be of interest to point out that in para 21 of the judgment the Court took note of the fact that State of Madras had amended its Court Fee Rules with effect from 11.9.1968 whereby the uniform levy of 7.5% *ad valorem* court fee had been given up and the slab system with a tapering scale had been adopted. As a parting shot, the Court also made the following pertinent observations :-

“22. Before parting with these matters, we may point out that it could not be disputed that the administration of justice is a service which the State is under an obligation to render to its subject. There can be no two opinions that the amount raised from the suitors by way of fee should not normally exceed the

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cost of the administration of justice because, possibly there could be no justification with the State to enrich itself from High Court fees or to secure revenue for general administration. The total receipts from the Court fees should be such as by and large can cover the cost of administration of justice. There should also be some measure of uniformity in the scales of Court fees throughout the country as there appears to be a vast difference in the scales of Court fees in various States of the country. The feasibility of a fixed maximum chargeable fee also deserves serious consideration."

24. When we apply the aforesaid principles to the facts of this case, it is difficult to accept the submission of the appellant that provision for payment of *ad valorem* court fee is unjust or arbitrary or it partakes the character of tax. In Delhi, the *ad valorem* court fee is not only based on slab system with a tapering scale, the amount of court fee payable is also substantially less than the subject matter of the judgments in the cases of *P.R. Sriramulu & Anr.* and *P.M. Ashwathanarayana Setty* (supra). The *ad valorem* court fee is progressively scaled down which gets significantly reduced and reaches a figure of less than 1% with value of suit at Rs.4 lakhs. From that amount onwards the court fee payable is less than 1%. Such a court fee cannot be treated as extortion in the form of tax.

No doubt, in some cases, like the one at hand, even when the court fee scale is not very high, it may act as hardship. However, when the constitutionality of a provision is judged, one cannot go by individual cases. That is never the yardstick to determine such issues. We, therefore, cannot accept the plea of the appellant that Section 8 of the Court Fees Act, 1870 is discriminatory and violative of Article 14 of the Constitution.

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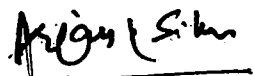
25. Our parting comments still would be that the respondent/
Government should address the issue as to whether court fee in the
appeals under Section 54 of the Act should be *ad valorem* or the
appellant should be made to pay the fixed court fee, as has been
done by the States of Punjab & Haryana. We hope that due
consideration to this aspect shall be given by the authorities at the
appropriate level and some decision taken thereon. But for these
comments, otherwise, we do not find any merit in the writ petition,
which is accordingly dismissed.

No costs.

26. LA. App. No. 149/2007

As we have held that the court fee is payable by the appellant,
we grant two months' time to the appellant to make up the
deficiency in the court fee.

List the appeal on 18th December 2008.


(A.K. SIKRI)
JUDGE


(MANMOHAN SINGH)
JUDGE

October 20, 2008
nsk

— Court fee not filed