

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RFA Nos. 1915 and 2117 of 2019 (O & M)

Date of decision: 23.01.2020

Surmukh Singh and others

....Appellant(s)

Versus

UOI and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Rajesh Punj, Advocate,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

The present order shall dispose of two appeals i.e. RFA Nos. 1915 and 2117 of 2019 as common questions of facts and law are involved in both the appeals. Reference is being made to ***RFA No. 1915 of 2019, Surmukh Singh and others vs. UOI and others.***

The present appeal has been preferred against the award of the Additional District Judge, Patiala dated 03.07.2014. Vide the said order, the objections under Section 20(H)(4) of the Railway Act, 1989 (in short '1989 Act') for claiming the respective compensation for acquiring *shamilat* land by the Railway Board was declined. The appeal is accompanied by application for condonation of delay of as many as 1672 days in which it has been averred that on an earlier occasion, CWP No. 18418 of 2014 had been filed on wrong advice, which was withdrawn on 05.09.2014 (Annexure A-12). A civil suit had also been filed, which was dismissed on 08.01.2019 (Annexure A-13). Reliance was placed upon various appeals which have been admitted before this Court and, therefore, delay was sought to be condoned.

The appeal is purportedly filed under Section 54 of the Land

Acquisition Act, 1894. Section 20-N of the 1989 Act provides that nothing in the Land Acquisition Act shall apply for acquisition under this Act.

Section 20-N reads thus:-

“20-N. Land Acquisition Act 1 of 1894 not to apply.- *Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.”*

Under the 1989 Act, there is no such provision the counsel could bring to the notice of this Court whereby an appeal can be filed against the decision of the Civil Court of original jurisdiction deciding the issue of apportionment. It is settled principle that appeal is a creature of a Statute and in the absence of any such provision, the appeal would not be maintainable. In the present case, the facts are unique in as much as writ petition had earlier been filed by the petitioners challenging the same order dated 03.07.2014, as mentioned above and the delay is sought to be condoned on that account. The orders passed by the Division Bench on 05.09.2014 (Annexure A-12) reads thus:-

“Learned counsel for the petitioners prays that he be permitted to withdraw the petition so that the petitioners may approach the competent Court for claiming compensation for the Bachat Land.

Dismissed as withdrawn with liberty to the petitioners to approach the Court of competent jurisdiction for redressal of their grievance.”

Admittedly, the petitioners at that point of time, had chosen to approach this Court by filing a writ petition. In the absence of any appeal being provided, they had chosen to withdraw the writ petition and thereafter taken the issue to the Civil Court by filing a civil suit, which has eventually been dismissed on 08.01.2019 (Annexure A-13) on the ground of lack of

jurisdiction. In such circumstances, the petitioners who have been changing tracks at their convenience, cannot be allowed to pursue an appeal which is not maintainable under the 1989 Act and having opted to file a writ petition challenging the order and then withdrawing it. They now cannot come in appeal in the absence of any such provision.

In similar circumstances, an appeal filed against the apportionment issue regarding the land acquired under the National Highways Act, 1956 was dismissed on 12.02.2018 in ***RFA No. 413 of 2018, Sat Pal Singh and others vs. Amarjit Kaur and others.*** The relevant portion reads thus:-

“The present appeal has been filed against the judgment dated 05.12.2017 whereby the learned Additional District Judge, Patiala decided the Reference under Section 3-H(4) of the National Highways Act, 1956 and held that the compensation amount is to be paid to objectors and other beneficiaries/co-sharers in accordance with their respective share in the joint land.

*Resultantly, the present Regular First Appeal has been filed challenging the said finding and seeking that amount of compensation of the acquired land be released in favour of the appellants and not in favour of the respondents as held so. The counsel for the private respondent Nos.7 and 10 has raised the objection regarding the maintainability of the Regular First Appeal. Reliance has been placed upon the judgment passed by this Court in case of **Bhoop Singh and others Vs. Kuria and others, 2015(4) PLR 632** wherein it has been held that appeal is a creation of statute and the National Highways Act, 1956 as such does not provide for an appeal which would be maintainable*

under Section 96 of the CPC and therefore, the appeal was dismissed giving liberty to the appellants to avail any other appropriate remedy. The relevant portion reads as under:

*“21. There is no quarrel on the proposition of law that the appeal is a creation of statute. Unless right to appeal is specifically provided and the forum thereof, no one has right to file appeal. Reference can be made to judgment of Hon'ble the Supreme Court in **Khanna Improvement Trust v. Land Acquisition Tribunal, 1995 (2) SCC 557 and Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others, (2010) 13 SCC 216.***

22. A perusal of the provisions of the Act does not in any way provide that an award passed by the reference court under Section 3-H(4) of the Act is subject to appeal before any court. In the absence thereof, it cannot be opined that such an award is appealable before any court much less, before this Court.

23. The claim of the appellants that the appeal is maintainable under Section 96 CPC is totally misconceived for the reason that the same provides for an appeal from a decree passed by the court. In the case in hand, it has nowhere been provided that the award passed by the reference court under Section 3-H(4) of the Act is a decree, as has been provided for under Section 54 of the Land Acquisition Act, 1894, wherein even the provisions of CPC have been made applicable.

24. For the reasons mentioned above, in my

opinion, appeal against the order passed by the learned Reference Court in a reference under Section 3-H(4) of the Act is not maintainable before this Court. Accordingly, both the appeals are dismissed. However, dismissal of the appeal shall not debar the appellants to avail any other appropriate remedy against the impugned award in accordance with law. Appeal dismissed.”

Counsel for the appellants has mainly tried to distinguish the said judgment on the ground that the present appeal has also been filed under Section 96 of the CPC read with Section 38 of the Punjab Courts Act, 1918 and therefore, an appeal would also lie against the order of the District Judge. Section 38 reads as under:

“38. Appeals from District Judges or Additional Judges -

(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or [Additional District Judge] exercising original jurisdiction shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an [Additional District Judge] in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.”

A decree has been defined under Section 2(2) of CPC as formal expression of an adjudication and basically summarizes and puts in concise terms what was the relief granted to the parties whereas the judgment gives out the reason as such for the grant of said relief.

Perusal of the above said Section would also show the jurisdiction of this Court would be subject to the provisions of the enactment for the time being in force which in the present case the rights of the parties have accrued from the National Highways Act, 1956.

That even Section 38 of the Punjab Courts Act, 1918 in such terms provides the right as provided by any other enactment. Once then an appeal is not provided under the principal Act as such this Court is of the opinion that there is no ground as such made out to differ from the view taken in Bhoop Singh' case (supra)."

Resultantly, the appeals are dismissed as not maintainable and the application for condonation of delay also stand dismissed in the above facts and circumstances.

23.01.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No