

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FAT No. 533 of 2025
+
CAN 1 of 2025

Badrul Rahaman Mallick and another
-vs-
The ADM(LAR), Nadia and others.

For the appellants : Md. Sarwar Jahan,
Md. Ashraful Huq,
Ms. Tapati Sarkar,
Mr. Soumyajit Roy Choudhury,
Ms. Shalini Sen,
Ms. S. Parvin

For the respondent nos. 2 and 3: Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty.

For the respondent no. 4. : Mr. Amit Meharia,
Ms. Paromita Banerjee,
Mr. Rohan Raj,
Mr. Sayan Dey,
Ms. Shristi Sharma

Heard on : March 18, 2026.

Judgment on : March 18, 2026.

Sabyasachi Bhattacharyya, J.:

1. The affidavit-of-service filed in Court today be kept on record.
2. In the order dated March 5, 2026, the date of the order was erroneously recorded as “March 5, 2025”.
3. Let such error be deemed to stand corrected by reading “March 5, 2026” instead of “March 5, 2025” in the said order.
4. A question arises at the outset as to the maintainability of the present appeal.
5. The appeal has been preferred against an order passed under Section 3H(4) of the National Highways Act, 1956 (hereinafter referred to as “the 1956 Act”).
6. Learned counsel appearing for the appellants cites a Division Bench judgment of the Andhra Pradesh High Court in the matter of *Bollineni Srihari Rao Vs. Competent Authority and Special Collector (L.A.) and others* reported at 2025 Supreme (AP) 498 in support of the proposition that the adjudication of the disputes under the said provision is a deemed decree and accordingly appeals would be maintainability under Section 96

of the Code of Civil Procedure despite the Act not explicitly providing for such appeals.

7. Learned counsel, in his usual fairness, next hands over an unreported judgment of the Hon'ble Supreme Court in *Civil Appeal No(s). 10882-10888 of 2025 (Kalpataru Power Transmission Ltd. Vs. Vinod and others)*.
8. In the said judgment, the Hon'ble Supreme Court, although in the context of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, took into consideration several similar statutes, including the 1956 Act, where the adjudication of disputes as to adequacy of compensation is envisaged.
9. The Hon'ble Supreme Court, upon considering the said provisions, came to the finding that there were several anomalies in the provisions of law in different statutes in that regard and observed that these issues need to be examined by the Law Commission of India and the Ministry of Law and Justice, Government of India, so as to determine whether a statutory remedy of appeal should be provided against judgments/orders passed under the Petroleum Act.

10. It is submitted that, thus, the law is still fluid on such count.
11. On the other hand, learned counsel for the respondent nos. 2 and 3 cites a Division Bench judgment of the Kerala High Court in the matter of *Nafeesa and Another Vs. Deputy Collector & Special Land Acquisition Officer and another* reported at 2013 Supreme (Ker) 569 where the Hon'ble Division Bench had observed that there is no provision in the 1956 Act which provides a right of appeal against the decision by the court on a reference under Section 3H(4) and such a decision is also not given the status of a decree at least using a deeming provision. Therefore, it was held, an appeal under Section 96 of the Code of Civil Procedure (for short, "the Code") will not lie.
12. It was also observed that appeal under Section 104 of the Code also does not lie since such a decision does not fall among those orders enumerated as appealable under the provision of Order XLIII of the Code.
13. The Division Bench also took note of Section 105(1) of the Code, as per which, no appeal shall lie from any order made by a court, that is to say, a civil court, in the exercise of its

original or appellate jurisdiction, save as otherwise expressly provided.

14. Upon a careful consideration of the aforesaid judgments and the relevant provisions of law, we come to the following conclusions:

15. In the 1956 Act, there is no specific provision of appeal against an adjudication under Section 3H(4) of the 1956 Act, although such adjudication is done by a principal civil court of original jurisdiction.

16. It may be noted that all orders passed by civil courts are not appealable. It is a trite principle of law that appeal is a creature of statute and unless specifically provided for in a statute, no appeal lies against any adjudication, be it in the nature of an order or a decree.

17. Section 2(2) of the Code clearly defines a “decree” to mean the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all any of the matters in controversy in the suit and may be either preliminary or final.

18. The decrees which are deemed to be included within the said definition have been specifically mentioned to be rejection of a plant and determination of any question under Section 144 of the Code itself.
19. On the other hand, any adjudication from which an appeal lies as an appeal from an order and any order of dismissal for default have been specifically excluded from the definition of the decree.
20. However, Section 2(2) of the Code operates within the parameters of the Code of Civil Procedure itself.
21. The use of the expression “suit” in Section 2(2) clearly demarcates the zone of operation of the said definition being restricted to a civil suit, adjudicated by a civil court. An adjudication under Section 3H (4) of the 1956 Act, although by a Civil Court, is not in connection with a suit as such. Thus, such adjudication necessarily falls outside the purview of the Code, thus precluding any appeal under Section 96 thereof against such adjudication.
22. Section 104 and Order XLIII of the Code specifically provide for appeals against certain categories of orders. However, the

character of such adjudications as “orders”, as opposed to “decrees” – deemed or regular – is retained.

23. Apart from the two deemed decrees referred to in Section 2(2) of the Code itself, the only other circumstance where an order is deemed as a decree is found in Rule 103 of Order XXI of the Code which stipulates that where any application has been adjudicated upon under Rule 98 or Rule 100 of Order XXI, the order made thereon “shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree”.
24. If the intention of the Legislature was to include an order under Section 3H (4) of the 1956 Act within the definition of decree or a deemed decree as provided in the Code of Civil Procedure, nothing prevented the Legislature from specifically incorporating such an adjudication within the purview of decrees or deemed decrees, as provided in the above illustrative cases.
25. Having not done so, by specific exclusion, such an adjudication has not been included within the periphery of a decree passed by a civil court, nor has any provision of appeal

been provided in the 1956 Act itself against such an adjudication.

26. Thus, in our opinion, the ratio of the judgment delivered by the Division Bench of the Kerala High Court in *Nafeesa's* case (supra) is more apt and tenable in the context of the present discussion.
27. On the contrary, the Division Bench judgment of the Andhra Pradesh High Court in *Bollineni Srihari's* case (supra) did not take into consideration the cardinal principle of jurisprudence that unless specifically provided by a statute, an appeal does not lie from any adjudication at all.
28. Moreover, we do not find anything within the four corners of the Code of Civil Procedure to bring an adjudication under Section 3H(4) of the 1956 Act within the purview of either a decree or a deemed decree or even an appealable order.
29. Thus, the ratio of *Bollineni Srihari* (supra), with utmost respect, is not tenable in the eye of law and accordingly we differ with the view expressed by the Andhra Pradesh High Court in the same and accept the ratio laid down by the Kerala High Court in *Nafeesa's* case (supra).

30. Although the anomaly recognised by the Hon'ble Supreme Court in *Kalpataru Power* (supra) cannot be brushed aside inasmuch as *pari materia* provisions in some other statutes, for adjudication regarding compensation and apportionment thereof, are supplemented by provisions of appeal, for example, Section 54 of the Land Acquisition Act, 1894 and the like, fact remains that a similar provision is not found in the 1956 Act. Since the Legislature, in its wisdom, has not provided for an appeal against an order under Section 3H (4) of the 1956 Act, it is not for the Courts to carve out such a provision, thereby traversing into the Legislature domain.
31. Be that as it may, by necessary implication, even in *Kalpataru Power* (supra), the Hon'ble Supreme Court accepted the view that there is no present provision of appeal in the Petroleum Act (just as in the 1956 Act), which prompted the Hon'ble Supreme Court to recommend the introduction of such a provision in the said Act by the Law Commission of India / Ministry of Law and Justice, Government of India.

32. In such view of the matter, in the absence of any specific provision, the impugned adjudication under Section 3H (4) of the 1956 Act is held to be not appealable.
33. Accordingly, FAT No. 533 of 2025 is dismissed as not maintainable.
34. Consequentially, CAN 1 of 2025 is also disposed of.
35. It is made clear, however, that nothing in the above order shall preclude the appellants from exploring appropriate remedy available to the appellants in law against the impugned order.
36. For such purpose, leave is granted to the learned advocate on record for the appellants to take back the certified copy of the impugned order upon furnishing a photocopy thereof.
37. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)