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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LA.APP. 178/2018

SARKAR DAULAT MADAR

MAKBUJA (KHERA KHURD)

..... Appellant

Through: Mr. Vikram Saini & Ms. Chhaya
Sharma, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.09.2018**

CM No.36658/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

LA.APP. 178/2018 & CM No.36657/2018 (for stay)

3. This appeal under Section 54 of the Land Acquisition Act, 1894 against an order on a Reference under Section 30-31 of the Act is listed subject to office objection as to the court fees paid thereon.
4. The appellant has paid court fees of Rs.200/-. According to the Registry, ad-valorem court fees have to be paid.
5. The counsel for the appellant had the appeal listed by making endorsement that he will satisfy this Court that ad-valorem court fees is not to be paid.
6. The counsel for the appellant draws attention to Section 8 of the Court Fees Act, 1870 as under:



“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 Act 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.”

and contends that an appeal under Section 30-31 of the Land Acquisition Act is only regarding apportionment of compensation and will not fall under Section 8 of the Act. However, on enquiry, under which provision it will then fall, the counsel for the appellant seeks one week’s time and states that prevalent practice has been that no court fees is payable on such appeals and he has confirmed so from his seniors as well.

7. The prevalent practice cannot be a substitute for law.

8. Even otherwise, Section 8 provides for an appeal against an order “relating to compensation under any Act for the time being in force for acquisition of land for public purpose”. It does not make any distinction between an appeal for enhancement of compensation or an appeal for enhancement of share awarded in the compensation. Once Section 8 of the Act provides for “compensation under any Act”, it would mean the entire Land Acquisition Act and would not be restricted to compensation under Sections 18 to 27 of the Land Acquisition Act.

9. Mr. Sanjay Kumar Pathak, Advocate for Land Acquisition Collector (LAC) present in Court, on enquiry states that the appellant will have to pay court fees on the difference claimed.

9. The counsel for the appellant states that the share of the appellant in the compensation awarded has been held to be 20%, while according to the



appellant, it should be 100%.

10. Mr. Sanjay Kumar Pathak, Advocate states that the appellant will have to pay court fees on the additional 80% claimed. However, he is also unable to cite any provision of law or case law, though states that there are some judgments to this effect.

11. While Section 26 of the Land Acquisition Act provides for the order / judgment on a Reference under Section 18 to have the force of a decree, no such provision is found with respect to Reference under Section 30-31 of the Act.

12. A perusal of the Court Fees Act shows the same in Schedule II thereof, at Serial No.11, to be providing for court fee of Rs.2/- only on memorandum of appeal when the appeal is not from a decree or an order having force of a decree and is presented to a High Court. Once it is found that the order on a Reference under Section 30-31 has not, under the Land Acquisition Act, been given the force of a decree, the possibility of an appeal as the present one, falling under Serial no.11 of Schedule II of the Court Fees Act and fixed court fees being payable on such appeal, cannot be ruled out.

13. The counsel for the respondent no.1 appearing on advance notice to also look into the said aspect.

14. Mr. Sanjay Kumar Pathak, Advocate is requested to, as Amicus Curiae assist the Court on the aforesaid legal question.

15. List on 20th September, 2018.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 10, 2018/‘gsr’..

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