

A SACHIDA NAND LAL @ SACHIDA NAND SHAH

v.

STATE OF BIHAR, (NOW JHARKHAND)

(Civil Appeal No. 6442 of 2000)

NOVEMBER 7, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Appeal: Letter Patent Appeal from order in first appeal – Power of Division Bench of High Court hearing LPA –
C *Held: Division Bench of High Court has same powers as exercised by Single Judge of High Court in appeal from original decree – Letters Patent before Division Bench is not in the nature of appeal from an appellate decree i.e. second appeal but it is continuation of appeal from original decree.*

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In land acquisition proceedings, the appellant-claimant was aggrieved with the award of compensation. He sought reference for enhancement of the compensation amount. Reference Court partly allowed the reference. Still dissatisfied, appellant filed appeal in
E the High Court. Single Judge of High Court partly allowed the appeal. Against the said order, a Letter Patent Appeal was filed before Division Bench of High Court. Division Bench of High Court without entering into questions of
F fact and law dismissed the appeal. Hence the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. The appeal from original decree was
G preferred by the claimant before the High Court, which was heard by the Single Judge of the High Court. S.54 of the Land Acquisition Act provides for filing Appeals in proceedings before the Court. In view of express provision as to filing of appeal under the Act as also the

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provision relating to filing of Letters Patent as applicable to the High Court of Patna, an order passed by a Single Judge of the High Court can be challenged by filing an intra-Court appeal before a Division Bench of the same Court. The claimant was, therefore, justified in exercising the right of filing Letters Patent Appeal and accordingly, appeal was preferred before a Division Bench. [Paras 11 and 12] [834-F-G; 835-B-C]

1.2. Since the appeal before the Single Judge was appeal from original decree, i.e. First Appeal, the Division Bench ought to have considered the correctness or otherwise of the order passed by the Single Judge by exercising same powers as exercised by the Single Judge in the appeal from original decree. The Letters Patent before the Division Bench was not in the nature of appeal from an appellate decree, i.e. Second Appeal, but it was continuation of appeal from original decree, i.e. First Appeal. In the circumstances, the Division Bench committed an error of law in dismissing the appeal in limine by a brief order without considering the merits. [Para 13] [835-D-F]

Asha Devi v. Dukhi Sao, AIR (1974) SC 2048 and *Gaudiya Mission v. Shobha Bose & Anr.* JT (2008) 1 SC 384, relied on.

Case Law Reference:

AIR (1974) SC 2048 relied on Para 15

JT (2008) 1 SC 384 relied on Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6442 of 2000.

From the final Judgment and Order dated 1.3.2000 of the High Court of Judicature at Patna, Ranchi Bench, Ranchi in L.P.A. No. 362 of 1999.(R).

A Gopal Prasad for the Appellant.

B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

B **C.K. THAKKER, J.** 1. The present appeal is filed against judgment and order dated June 22, 1999 passed by a single Judge of the High Court of Patna (Ranchi Bench) in Appeal from Original Decree Nos. 228 and 229 of 1989 and confirmed by the Division Bench on March 01, 2000 in Letters Patent Appeal No. 362 of 1999.

C 2. Shortly stated the facts of the case are that on February 16, 1978, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued for acquisition of land bearing Khata Nos. 277 and 107 situated in the town of Lohardaga of Ranchi for construction of agricultural market-yard. According to the appellant, the Collector divided the land into two categories; (i) category 'ka' and (ii) category 'kha'. The land situated up to 150 feet from the road was categorized as 'ka' whereas land situated beyond 150 feet from the road was categorized as 'kha'. The Collector assessed the value of the land of category 'ka' at the rate of Rs.48,500/- per acre and category 'kha' at the rate of Rs.32,335/- per acre. It was, however, the allegation of the appellant that the Deputy Secretary, Government of Bihar illegally and without any reason or ground and without authority of law reduced the rate to Rs.25,000/- and Rs. 16,000/- per acre for category 'ka' and 'kha' respectively. Accordingly, an award was passed on May 05, 1980 on that basis.

G 3. The appellant being aggrieved by the award sought reference for enhancement of compensation under Section 18 of the Act which was registered as Land Acquisition Case No. 498 of 1981. Similar references were also sought by other land owners. All the references came up for hearing before the Court of learned Subordinate Judge, Ranchi and the learned Judge by judgment and order dated July 06, 1987 partly allowed the

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reference. For the land of category 'ka', the Reference Court fixed compensation at the rate of Rs.48,000/- per acre and for category 'kha', it was fixed at the rate of Rs.24,250/- per acre. The Court also awarded solatium at the rate of 30% and interest @ 6% with effect from June 01, 1979. A

4. The appellant challenged the judgment and order passed by Reference Court by filing First Appeal No. 229 of 1989 in the High Court of Patna, Ranchi Bench. The learned Single Judge before whom the appeal came up for hearing partly allowed it. So far as the land of category 'ka' is concerned, he enhanced compensation from Rs.48,000/- per acre to Rs.66,000/- per acre. He, however, declined to interfere with the rate of 'kha' category of land and no enhancement at all was granted to the said land, though the Reference Court had observed in the order that category 'kha' would get 50% amount of compensation of the land of category 'ka'. B
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5. In the circumstances, the appellant- claimant approached the Division Bench of the High Court by filing Letters Patent Appeal No.363 of 1999. The Division Bench of the High Court disposed of the Letters Patent Appeal by a cryptic order dated June 22, 1999 which read as under; E

"Heard counsel for the appellant.

We do not find any merit in this Letters Patent Appeal which is accordingly dismissed." F

6. The above order passed by the Division Bench of the High Court in the Letters Patent Appeal is challenged by the appellant in the present appeal. Initially when the matter was placed for admission hearing, the following order was passed by this Court on August 28, 2000; G

"Issue notice limited to the question, whether the High Court is right while enhancing the rate of compensation of category 'Ka' land to Rs. 66,000.00 per acre but maintaining the category 'Kha' land at Rs. 24,250.00. The H

A *case of the petitioner is that the rate of the land of 'Kha' should have been at least half of the rate of the 'Ka' property as held by the referring Court."*

(emphasis supplied)

B 7. On November 13, 2000, the petition was called out for hearing. Service of notice was complete, but none appeared for the respondent and hence leave was granted. It was thereafter placed for final hearing before the Court, but it was brought to the notice of the Court that in the light of bifurcation
C of two states of (i) Bihar and (ii) Jharkhand, the subject matter in the appeal related to the State of Jharkhand. Fresh notices were, therefore, issued and opportunity was given to the State of Jharkhand to make submissions.

D 8. We have heard the learned counsel for the parties.

E 9. The learned counsel for the appellant contended that the Division Bench committed an error of law in dismissing the Letters Patent Appeal without entering into the merits of the matter. He also submitted that the Division Bench ought to have allowed the appeal by enhancing the amount of compensation.

F 10. In our opinion, however, the matter deserves to be allowed on the first ground and it would not be appropriate for this Court to express any opinion on the second question on merits of the matter.

G 11. As already observed earlier, after the Reference Court decided the Reference, Appeal from Original Decree was preferred by the claimant before the High Court. It was heard by the learned Single Judge of the High Court. Section 54 of the Act provides for filing Appeals in proceedings before the Court. It reads as under;

H *Appeals in proceedings before Court.*—Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 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.

12. In view of express provision as to filing of appeal under the Act as also the provision relating to filing of Letters Patent as applicable to the High Court of Patna, an order passed by a single Judge of the High Court can be challenged by filing an intra-Court appeal before a Division Bench of the same Court. The claimant was, therefore, justified in exercising the right of filing Letters Patent Appeal and accordingly, appeal was preferred before a Division Bench.

13. Since the appeal before the learned Single Judge was Appeal from Original Decree, i.e. *First Appeal*, the Division Bench ought to have considered the correctness or otherwise of the order passed by the learned Single Judge by exercising *same powers* as exercised by the learned single Judge in the appeal from original decree. The Letters Patent before the Division Bench was not in the nature of appeal from an appellate decree, i.e. *Second Appeal*, but it was continuation of appeal from original decree, i.e. *First Appeal*. In the circumstances, in our opinion, the Division Bench committed an error of law in dismissing the appeal *in limine* by a brief order quoted hereinabove without considering the merits.

14. The law on the point is well-settled as regards the power of the Division Bench while dealing with and deciding Letters Patent Appeal from an order passed by a single Judge in exercise of power as a Court of Appeal.

15. In *Asha Devi v. Dukhi Sao*, AIR 1974 SC 2048, a similar question came up for consideration before this Court. There, a First Appeal came up for hearing before a Single

A Judge of the High Court and was disposed of. Against the said
order, a Letters Patent Appeals was filed. A preliminary
objection was raised on behalf of the respondents that since it
was an appeal from a decree passed by a Single Judge of the
High Court in First Appeal, the appeal before the Division
B Bench was in substance and in reality in the nature of Second
Appeal and questions of law only could be agitated in such
Letters Patent Appeal.

C 16. Negating the contention and holding that the scope
of appeal before the Division Bench was similar to one before
a Single Judge, this Court stated;

D “There is no dispute that an appeal lies to a Division Bench
of the High Court from the judgment of a Single Judge of
that Court in appeal from a judgment and decree of a court
subject to the superintendence of the High Court. The only
question is whether the power of a Division Bench hearing
a Letters Patent appeal under Clause 10 of the Letters
Patent of Patna High Court or under the analogous
E provisions in the Letters Patent of other High Courts is
limited only to a question of law under Section 100 of the
CPC or has it the same power which the Single Judge has
as a first Appellate Court in respect of both questions of
fact and of law. The limitations on the power of the Court
imposed by Sections 100 and 101 of the CPC cannot be
F made applicable to an Appellate Court hearing a Letters
Patent appeal from the judgment of a Single Judge of that
High Court in a first appeal from the judgment and decree
of the court subordinate to the High Court, for the simple
reason that a Single Judge to the High Court is not a Court
subordinate, to the High Court”.

G 17. The above observations in Asha Devi make it explicitly
clear that an intra-Court appeal is required to be considered
and decided by the Division Bench of the High Court on the
same footing as an appeal considered and decided by a single
H Judge of the Court.

18. A similar question again arose before this Court recently in *Gaudiya Mission v. Shobha Bose & Anr.*, JT 2008 (1) SC 384. There also, a single Judge of the High Court of Allahabad decided the First Appeal against which Letters Patent Appeal was filed before a Division Bench. There also, the Division Bench without entering into questions of fact and law, dismissed the appeal as if it was in the nature of Second Appeal. Setting aside the order passed by the Single Judge, following the law laid down by this Court in *Asha Devi* and remitting the matter to the Division Bench of the High Court for fresh disposal in accordance with law, this Court held that the order passed by the Division Bench was liable to be set aside and the matter was required to be decided on all questions, i.e. on questions of fact as also on questions of law.

19. The same principle applies in the present case also. The order passed by the Division Bench of the High Court dismissing the Letters Patent Appeal cannot be said to be in accordance with law and the said order deserves to be set aside. Accordingly, the appeal is allowed and the order passed by the Division Bench is set aside. The appeal stands allowed and the matter is remanded to Division Bench which will now hear the parties on merits and decide the case in accordance with law by a reasoned judgment. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

20. Before parting with the matter, we may clarify that we have not expressed any opinion on merits of the matter one way or the other. All the observations made by us hereinabove have been made only for the purpose of deciding the present appeal. As and when the matter will be placed for hearing before the Division Bench, the same will be decided strictly on its own merits without being influenced by the above observations.

21. The appeal is accordingly allowed.

D.G.

Appeal allowed.