

Lahori Lal  
and others  
v.  
Kasturi Lal  
and others  

---

Kapur, J.

I would, therefore, agree with my learned brother Bishan Narain J. in dismissing the appeal but I would found my judgment on the reasons which I have given above.

APPELLATE CIVIL

*Before Kapur and Bishan Narain, JJ.*

SHRI KANWAR JAGAT BAHADUR SINGH,—Appellant

*versus*

THE PUNJAB STATE,—Respondent

**First Appeal from Order No. 56 of 1954.**

1956  

---

May, 11th

*Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 8, 9 and 11—Arbitrator appointed under—Whether a Civil Court—Award of the Arbitrator, whether a decree or an order having the force of a decree—Appeal against the award—Memorandum of Appeal—Court fee leviable.*

*Court Fees Act (VII of 1870)—Whether Schedule I, Article 1, or Schedule II, Article 11, applies—Conflict between various sections and the Schedules—How to be reconciled.*

The land of J. B. was requisitioned by the State on 15th February, 1951, and acquired on 8th February, 1952. The Collector allowed Rs. 1,97,402-14-4 as compensation which was not accepted by J. B. The District Judge, Ambala, was appointed an arbitrator under the Punjab Requisitioning and Acquisition of Immovable Property Act to determine the amount and he enhanced it by Rs. 53,687-11-0. J. B. filed an appeal against the award under section 11 praying for enhancement of compensation by Rs. 2,68,274-5-0 and affixed Court fee stamp of Rs. 4 under Schedule II, Article 11 of the Court Fees Act. The State filed cross objections paying Court fee *ad valorem*. The question as to

what amount was to be paid by the appellant on the memorandum of appeal was referred for decision to the Division Bench.

*Held*, that the Punjab Requisitioning and Acquisition of Immovable Property Act provides for the appointment of an arbitrator who can make an award granting compensation and an appeal lies against this award to the High Court. The arbitrator has not been constituted a Civil Court and the award made by him is not a decree or an order having the force of a decree.

*Held*, that the amount of court fee payable on an appeal against the award of an *arbitrator* under section 11 of Act No. XI of 1953, is governed by Article 11 of Schedule II, and not by Article I, Schedule 1.

*Held*, that the Court Fees Act is an enactment dealing with Revenue and therefore no amount is leviable unless it clearly falls under the provisions of the Court Fees Act.

*Held*, that the only way that the various sections and the Schedules of the Court Fees Act can be reconciled is that section 8 should be confined to orders as understood in the Civil Procedure Code and that where any matter does not fall within a decree or an order having the force of a decree the matter should be held to be covered by Article 11, Schedule II and once it is so held Article I, Schedule I is excluded.

*(Case referred on 1st December, 1954, by the Hon'ble Mr. Justice Kapur, to Division Bench, for decision of the question as to what is the amount of Court fee which is payable .)*

*Appeal against the order of Shri J. S. Bedi, District Judge, Ambala, acting as an Arbitrator, dated the 31st December, 1953, allowing the following sums to the appellant more than what has already been allowed by the State.*

	Rs.	A.	P.
(1) Compensation for the well ... ..	800	0	0
(2) Compensation for the five crops ..	1,460	0	0
(3) Compensation at the rate of Rs. 145-11-0 more than what has been allowed by the State already ..	51,427	11	0
Total ..	53,687	11	0

F. C. MITTAL, H. L. SARIN, and S. C. MITTAL, for Appellant.

S. M. SIKRI, Advocate-General for Respondent.

#### ORDER

Kapur, J. KAPUR, J. This appeal is brought by the petitioner against an order of District Judge J. S. Bedi, who increased the compensation by a sum of Rs. 53,687-11-0. The original petitioner has come up in appeal and the State has filed cross-objections, and one of the questions raised is what is the amount of the court fee which is payable in cases such as these. This is a matter which is coming up quite often and as the sum involved is also a large one I refer this case to a Division Bench for decision and the papers will be placed before the Hon'ble the Chief Justice for its being sent to a Division Bench.

#### JUDGMENT OF THE DIVISION BENCH

Kapur, J. KAPUR, J. The question for determination in these proceedings at this stage is the amount of court-fee which is to be paid by the appellant.

The petitioner was the owner of a large area of land out of which, 1,699 *bighas* and 1 *biswa* in

village Ralli was requisitioned by the State of the Punjab on the 15th February, 1951, and it was acquired on the 8th February, 1952. The compensation allowed to him by the Collector was Rs. 1,97,402-14-4 but the petitioner did not accept this to be adequate and, therefore, Mr. J. S. Bedi, District Judge, Ambala, was appointed as an arbitrator under the Act. He enhanced the amount by Rs. 53,687-11-0. Against this award the petitioner brought an appeal under section 11 of Act XI of 1953, and his prayer is for enhancement of the amount of compensation by Rs. 2,68,274-5-0. He has stamped his memorandum of appeal with Rs. 4 under Schedule II, Article 11 of the Court-fees Act. The State has filed cross-objections, but they have paid court-fee *ad valorem*, and by an order, dated the 1st December, 1954, I referred the question of court-fee to a Division Bench which has been heard by us.

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State  

---

Kapur, J.

Under the Punjab Requisitioning and Acquisition of Immovable Property Act, Act XI of 1953, assessment of compensation is provided for in section 8 and payment in section 9 of the Act. Appeals are provided in section 11. The relevant portion of this section is:—

- “11. Any person aggrieved by an award of the arbitrator made under section 8, may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate.”

Section 22 gives power to make rules, but the rules which are contained in Part V of 1954, Lahore Law Times, page 16 have no rules about appeals under section 11.

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State  

---

Kapur, J.

In order to determine the amount of court-fee reference has to be made to the various sections of the Court-fees Act. Section 4 deals with fees on documents filed in High Courts and section 6 with fees on documents filed in Mufassal Courts. Section 7 of the Act provides for computation of fees payable in certain cases. Its relevant portion runs as under:—

“7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:  
\* \* \* \* \*

Section 8 of this Act deals with fees on memorandum of appeals against order relating to compensation. It provides:—

“8. 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 differences between the amount awarded and the amount claimed by the appellant.”

Section 4 is in Chapter 2, which deals with fees in High Courts and Chapter 3, with fees in other Courts and in public offices.

As to what is the amount of court-fee to be charged in various cases is given in Schedules I and II of the Act. Schedule I deals with *ad valorem* court-fee and Schedule II with fixed fees. Article I of Schedule I is a residuary Article and runs as under:—

“1. Complaint, written statement pleading a set off or counter claim or memorandum

of appeal (not otherwise provided for in the Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.”

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State

Other Articles of Schedule I, are not necessary for the purposes of this case. In Schedule II the only Article which is necessary to be considered is Article 11 which provides:—

Kapur, J.

“ 11. Memorandum (a) to any civil Court of appeal other than a High Court when the appeal Court, or to any Revenue Court or from a decree or Executive Officer an order having other than the High the force of a Court or Chief Con- decree, and is trolled Revenue or presented— Executive authority :

(b) to a High Court or Chief Commissioner, Rupees. or other Chief Controlling Executive or Revenue Authority.

The argument raised on behalf of the appellant is that this case falls under Article 11 of Schedule II in that this is a memorandum of appeal and the appeal is not from a decree or an order having the force of a decree and is presented to a High Court and, therefore, it is liable to a fixed fee of Rs. 4, and he relies on a judgment of the Bombay High Court in *Hirji Virji Jangbari v. Government of Bombay* (1). His submission is that the District Judge was acting as an arbitrator and not as a Court and the award made by him is neither a decree nor an order having the force of a decree. In my opinion, the memorandum of

(1) A.I.R. 1945 Bom. 348

Shri Kanwar appeal before us is not an appeal from a decree or  
 Jagat Bahadur an order having the force of a decree. The Punjab  
 Singh Requisitioning and Acquisition of Immovable  
*v.* Property Act, provides for the appointment of an  
 The Punjab arbitrator who can make an award granting com-  
 State pensation and an appeal lies from this award.  
 Kapur, J. Section 11 of the Act gives to any person aggrieved  
 by the award of the arbitrator a right to appeal to  
 the High Court. The words used in the Act are  
 "award", "compensation" and "arbitrator". No  
 where is the arbitrator constituted a civil Court  
 nor is the award made by him a decree or an order  
 having the force of a decree. The case is very much  
 analogous to *Secretary of State for India v.*  
*Hindustan Co-operative Insurance Society, Ltd.,*  
 (1), where it was held that no appeal lay to the  
 Privy Council from a decision of a High Court  
 upon an appeal under the Calcutta Improvement  
 Act from an award of the Tribunal appointed  
 under that Act assessing compensation in respect  
 of land acquired. It was argued before the  
 Privy Council that the Tribunal is not a Civil Court  
 or a Court subject to the superintendence of the  
 High Court within the meaning of clause 16 and  
 there was no right of appeal to the Privy Council,  
 and Sir George Lowndes pointed out at page 60  
 that the departure made in the local Acts from  
 the provisions of the Land Acquisition Act is that  
 a Tribunal was constituted to take the place of a  
 Court under the Land Acquisition Act and the  
 Tribunal was not a Court for the purposes of  
 section 54 of the Land Acquisition Act, and,  
 therefore, an appeal did not lie to the  
 High Court under the general right of  
 appeal which is given by the Land Acquisition Act  
 but a special provision was made for appeals  
 against the awards of Tribunal, but subject to  
 certain limitations. The Punjab Act is careful to  
 exclude the applicability of the Arbitration Act,

---

(1) I.L.R. 59 Cal. 55 (P.C.)

Act X of 1940. It is not necessary in this case to determine whether this exclusion is effective or otherwise, but it does show that but for section 11 no appeal would be competent. I am of the opinion, therefore, that the award made by an arbitrator is not a decree nor an order having the force of a decree within the words used in Article 11 of Schedule II.

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State  
—————  
Kapur, J.

Counsel for the appellant relied on *Hirji Virji Jangbari v. Government of Bombay* (1), in which the question for determination was the amount of court-fee to be paid in an appeal against an award of compensation under the Defence of India Act. It was there held that the award of an arbitrator was not a decree nor an order having the force of a decree and, therefore, the memorandum of appeal was to be stamped under Article 11 of Schedule II of the Court-fees Act. The learned Judge held that both under the Calcutta Improvement Act as well as under the U.P. Town Improvement Act, the Tribunals making the award were to be deemed to be Courts under the Land Acquisition Act, and the word "order" used in section 8 of the Court-fees Act has the same connotation as the word "order" used in section 2(14) of the Code of Civil Procedure, namely, the formal expression of a decision of a Civil Court which is not a decree. The learned Judge further held that section 8 of the Court-fees Act was not a charging section and was merely a rule for computing *ad valorem* fee and that the court-fee payable was to be determined by Schedules I and II of the Act.

The learned Advocate-General mainly relied on section 8 and submitted that the effect of this section was that in cases where an appeal was brought in regard to an order relating to compensation under any Act for the time being in force

(1) A.I.R. 1945 Bom. 348



Shri Kanwar Jagat Bahadur Singh v. The Punjab State  
 Kapur, J.

for the acquisition of land the amount of fee payable on a memorandum of appeal under the Court-fees Act has to be computed according to the difference between the amount awarded and the amount claimed. He relied on two judgments, one of the Calcutta High Court and the other of the Allahabad High Court. The former is a judgment of Rankin, C.J., on a reference under section 5 of the Court-fees Act. Certain properties which were within the *zemindari* of the appellant were acquired and the Collector directed that the whole of the compensation be paid to the Karnani Industrial Bank. On the matter being referred to the Tribunal it was held that the lands were rent free and the whole of the compensation was to be paid to the Bank and thus the claim of the appellant was rejected and he took an appeal against this award to the High Court. Dealing with the question as to whether section 8 is a charging section or not the learned Chief Justice was of the opinion that the section did not itself impose any fee upon anyone, but it provided rule for computation of fee payable under the Act in a certain class of cases. At page 532, the learned Chief Justice observed:—

“Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an *ad valorem* charge and is not a fixed charge but for that assumption there would be nothing to compute, and the only way in which it can be said that there is a charge which has to be computed is that the charge is imposed by Article 1 of Schedule I. Now, Article 1 of Schedule I, puts a charge upon a plaint or a memorandum of appeal not otherwise,

provided for in this Act presented to any civil or revenue court except those mentioned in section 3. The purpose of section 8 is to say, that, when you come to make a charge under Article 1 of Schedule I, the figure which is to be taken as the appropriate figure under the second column is the figure to be computed by finding out the difference between the amount awarded to the appellant and the amount claimed by him."

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State  
Kapur, J.

He was also of the opinion that provisions of section 8 are themselves sufficient to excluded the applicability of Article 11 of Schedule II to cases of compensation under the Improvement Act. Continuing he said at page 535:—

"Nevertheless, the section has to be taken into account when one is construing the Act as a whole and, on the face of that section, I have no doubt at all that an *ad valorem* fee is chargeable under Article 1 of Schedule I of the Court-fees Act."

The next case relied upon is a case under the U.P. Town Improvement Act, *Debi Chand v. Secretary of State* (1). In that case section 8 was held to be applicable where the appellant was claiming a larger amount of compensation or where the Secretary of State was claiming that he should pay a lesser amount. It was also held that a Tribunal was a civil Court and the award of the Tribunal is a formal expression of its decision which not amounting to a decree is an order as defined in the Civil Procedure Code and, therefore,

---

(1) I.L.R. 1939 All. 142

Shri Kanwar section 8 of the Court-fees Act was applicable to  
 Jagat Bahadur an appeal from award.

Singh

v.

The Punjab  
 State

Kapur, J.

The Court-fees Act is an enactment dealing with revenue and, therefore, no amount is leviable unless it clearly falls under the provisions of the Court-fees Act. Section 4 of the Court-fees Act prohibits the filing of any document in a High Court unless it is stamped with a fee chargeable within the 1st Schedule or II Schedule of the Act. In my opinion, this section makes it clear that a document is to be charged with fees in accordance with Schedules I and II of the Act. In other words, the charging provisions are Schedules I and II. But argues the learned Advocate-General that if it were read in that way section 8 would become superfluous, and he also submits that if in the case of section 7 of the Court-fees Act fees are paid *ad valorem*, there is no reason why they should not be paid *ad valorem* under section 8 which is similarly worded, but I am unable to accept this argument. No doubt section 11 and sections 7 and 8 are similarly worded, but section 7 is only a computing section and what has to be paid in cases which fall under section 7 has to be looked for in Schedules I and II. If there were no Schedule, sections 7 and 8 by themselves would be of no assistance to the State. It is under the provisions of the various Articles of the Schedule that the amount is to be determined.

The Bombay High Court in *Hirji Virji Janghara v. Government of Bombay* (1), has emphasised that the word "order" used in section 8 has the same meaning as the word used in section 2(14) of the Code of Civil Procedure, namely the formal expression of decision of a Civil Court which is not a decree. Both in the case of the Calcutta Act as

well as the U.P. Act the Tribunals were deemed to be Courts and, therefore, the award of compensation would be a formal expression of the decision of a Civil Court which does not amount to a decree. One of the grounds on which the matter was held to be within section 8 in *Debi Chand v. Secretary of State for India and others* (1), was that the award of the Tribunal was an order as defined in the Code of Civil Procedure (see page 148). In the Calcutta case this question does not seem to have been raised. In my opinion, therefore, for a matter to be brought within section 8 there must be an order as defined in section 2(14) of the Act, and as the present case is not such an order as I have held above, section 8 is inapplicable.

Shri Kanwar  
Jagat Bahadur  
Singh  
v.  
The Punjab  
State  
Kapur, J.

If the determination by an arbitrator making an award is not a decree as it is not, considering the rule laid down by the Privy Council in *Secretary of State versus Hindustan Co-operative Insurance Society* (2), and it is not an order, then Article 11 of Schedule II will be applicable and on that ground the residuary Article, i.e., Article 1 of Schedule I will not apply.

Article 1 of Schedule I applies to complaints, written-statements pleading a set-off or counter-claim or memorandum of appeal, and if a complaint and a written statement have the same connotation as they would have in the Civil Procedure Code, there is no reason why the words "memorandum of appeal" should have a different connotation unless the words of the section expressly say so, and in the present case the appeal is being brought not against a decree or an order of a civil Court but against an award of an arbitrator under a special Act.

(1) I.L.R. 1939 All. 142

(2) I.L.R. 59 Cal. 55

Shri Kanwar Jagat Bahadur Singh  
 v.  
 The Punjab State  
 Falshaw, J.

The only way that the various sections and the Schedules of the Court-fees Act can be reconciled is that section 8 should be confined to orders as understood in the Civil Procedure Code, and that where any matter does not fall within a decree or an order having the force of a decree, the matter should be held to be covered by Article 11, Schedule II, and once we hold that, Article 1 of Schedule I is excluded.

The learned Advocate-General referred to an older Allahabad case, *Sheo Rattan Rai v. Mohri* (1), where it was held that an appeal under the Land Acquisition Act has to be stamped as an appeal from an original decree. In this case there is no discussion. All that is stated is that the Taxing Officer had decided that *ad valorem* court-fee was to be paid and it had been paid.

The other case relied upon is a judgment of Lodge, J., in *Sohan Lal Bahely and others v. Province of Bengal* (2), where it was held that the award of an arbitrator under section 19 is neither a decree nor an order having the force of a decree, that a taxing statute must be interpreted in favour of a taxpayer and that the word "requisition" was included in the word "acquisition" as requisition was a temporary acquisition and this interpretation was the ratio of these decisions.

Mr. Sikri also relied upon a judgment of Teja Singh, J., as Taxing Judge in *Punjab Province v. Raja Dhian Singh* (3), but the observations in regard to the definition of the word "order" in section 8 were obiter because the learned Judge had held that section 8 did not govern an appeal

---

(1) I.L.R. 21 All. 355  
 (2) A.I.R. 1946 Cal. 524  
 57 P.L.R. 14

brought by the Province against the amount in an award. Shri Kanwar  
Jagat Bahadur  
Singh

In my opinion, therefore, the amount of court-fee payable on appeal such as the one now before me is governed by Article 11 of Schedule II and not by Article 1 Schedule I. Rs 4 is, therefore, the proper fee in this case. v.  
The Punjab  
State  

---

Kapur, J.

BISHAN NARAIN, J.—I agree.

Bishan Narain,  
J.

### REVISIONAL CRIMINAL

*Before Bhandari, C.J. and Bishan Narain, J.*

MANOHAR LAL,—*Petitioner*

*versus*

THE STATE,—*Respondent*

**Criminal Revision No. 1058 of 1954.**

*Punjab Trade Employees Act (X of 1940)—Section 7(1)—Whether contravenes Articles 19(1)(g) and 14 of the Constitution of India—Restrictions imposed upon the carrying on of business—Whether reasonable—Interpretation of Statutes—Purpose and object of Act—Title and Preamble of the Act—Whether conclusive proof of the intention of the legislature—Constitution of India—Article 14—Legislative classification—Person alleging discrimination to allege and prove it beyond doubt.*

1956

---

May, 23rd

**Held**, that section 7(1) of Trade Employees Act imposes a reasonable restriction on the traders and businessmen and thereby promotes welfare of the people of this country and therefore does not contravene article 19(1)(g) of the Constitution.