

that the petitioner has not yet acquired any right to release.”

In view of the aforesaid authoritative enunciation and answer to question No. 2 must be rendered in the negative and it must be held that the sentence of life imprisonment is one of indefinite duration until remitted by the appropriate Government and the convict does not acquire any inflexible right to release.

33. In the aforesaid context we must notice that Mr. Malik, had very fairly conceded that if the answer to question No. 1 was returned against him (as has been now categorically done) then he had no case whatsoever on question No. 2.

34. Now the aforesaid two issues completely cover the entire field and these having been decided against the petitioner the writ petition is obviously without merit and is hereby dismissed. In view of somewhat intricate question involved we make no orders as to costs.

Ajit Singh Bains, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. S. Kang and G. C. Mital, JJ.

UNION OF INDIA,—Appellant.

versus

GIRDHARI and another,—Respondents.

Cross Objection No. 36-C-II of 1981

in F. A. O. No. 466 of 1980.

January 8, 1982.

Punjab Requisitioning and Acquisition of Immovable Property Act (Punjab Act II of 1953)—Section 11—Court Fees Act 7 of 1870—Section 8 and Schedule I, Article 1—Memorandum of Appeal under section 11—Court fee payable thereon—Whether to be ad valorem.

Union of India v. Girdhari and another (S. S. Sandhawalia, C.J.)

Held, that the court-fee payable on a Memorandum of Appeal under section 11 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 has to be *ad valorem* in accordance with section 8 read with Schedule I Article 1 of the Court Fees Act, 1870. (Para 16).

Kanwar Jagat Bahadur Singh v. The State of Punjab, A.I.R. 1957 Punjab 32.

Union of India v. Virsa Singh, 1979 P.L.R. 340.

Kanwaljit Singh & Ors. v. The State of Haryana and Ors. F.A.O. No. 269 of 1979, decided on September 3, 1979. OVERRULED.

Cross Objections Under Order 41, Rule 22 C.P.C. praying that these cross-objections may kindly be accepted, compensation with respect to land, and trees of the claimant respondent that had been acquired, may kindly be enhanced over and above the compensation awarded by the Learned Arbitrator by Rs. 23,450, solatium at the rate of 15 per cent and interest at the rate of 6 per cent per annum with effect from 25th May, 1964 on the amount of the enhanced compensation, may kindly be allowed. The cost of these cross-objections may also be awarded.

H. S. Brar, Advocate, for the appellant.

M. S. Bedi, Advocate, for the Respondent.

JUDGMENT

S. S. Sandhawalia, C.J. :

(1) Whether the court-fee payable on a Memorandum of Appeal under Section 11 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, has to be *ad valorem* in accordance with section 8 read with Schedule I, Article 1 of the Court-Fees Act, 1870, or is a fixed one under Schedule II, Article II of the said Act—is the pristinely legal question which falls for determination before this Full Bench. More pointedly at issue is the correctness of the Division Bench judgment (in this context) in *Kanwar Jagat Bahadur Singh v. The State of Punjab* (1).

2. In view of the purely legal nature of the question, it is indeed unnecessary and wasteful to advert to the facts. It suffices

(1) A.I.R. 1957 Pb. 32.

to say that there is a patent discordance of judicial opinion with regard to the court-fee payable on a Memorandum of Appeal under section 11 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953 (hereinafter called 'the Act'), in two Single Bench Judgment of this Court in (*Kanwaljit Singh & Ors. v. The State of Punjab and Ors.* (2), (*Maha Singh & Ors. v. The State of Haryana through Senior Sub-Judge, Gurgaon as Arbitrator*) (3). The issue has, therefore, been pointedly raised with regard to the court-fee payable on Cross-Objections No. 36 of 1981 in F.A.O. No. 466 of 1981 (*Union of India v. Girdhari Lal*), and the matter has been placed before this Full Bench for an authoritative decision.

3. It appears to me that for once the strict discipline of the doctrine of precedents cuts the Gordian knot of controversy cleanly in this context. The issue is now clinched by a binding precedent of the final Court. This obviates any consideration on first principles and even on the language of the statute because I am inclined to take the view that the ratio of *Shahadu Gangaram Bhagade v. The Special Duty Controller, Ahmedabad and another*, (4), now squarely governs the issue and it, therefore, suffices to indicate how the same is clearly and inexorably applicable in the present case as well.

4. It is apt to advert at the very out-set to the Division Bench judgment in *Kanwar Jagat Bahadur Singh's case* (supra), which, as yet holds the field within this jurisdiction. Therein, the identical question before us had come up for consideration. In taking the view the Division Bench was primarily influenced by the undermentioned four premises :—

- (i) that section 8 of the Court-Fees Act was not the charging section, and in fact the charging provisions were Schedule—I and II thereof, with the result that Schedule II, Article 11 would govern the issue ;
- (ii) that the Award of the Arbitrator under the Act not being a decree or an order having the force of a decree,

(2) F.A.O. 269 of 1979 decided on 3rd September, 1979.

(3) F.A.O. 185/80 decided on 15th December, 1980.

(4) A.I.R. 1971 S.C. 1887.

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the matter would come within the language of Schedule II, Article 11 of the Court-fees Act ;

(iii) the primary reliance was placed on the Single Bench judgment in *Hiraji Virji Jangbari v. Government of Bombay*, (5) and the view therein was unreservedly followed, and ;

(iv) the Division Bench dissented from the contrary view of Rankin, C.J., in *Ananda Lal Chakraburty and Ors.* (6) and in *Debi Din v. Secretary of State*, (7).

5. That all the aforesaid premises have now been completely over-turned by *Shahadu Gangaram Bhagade's case* (supra), thus shattering the corner-stone of the ratio in *Kanwar Jagat Bahadur Singh's case* (supra), appears to me as manifest. In order to appreciate this, one has to keep in mind that the relevant provisions of Section 7(1) of the Bombay Court-Fees Act, 1959 which had fallen for interpretation in the Bombay High Court and later⁷ before their Lordships of the Supreme Court as well, and those of Section 8 of the Court-Fees Act, 1870, are in *pari materia* and it is, therefore, apt to juxtapose them against each other :—

Sec. 8 of the Court-Fees Act,
1870.

“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.”

Sec. 7(1) of the Bombay Court-Fees Act.

“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.”

(5) A.I.R. 1945 Bombay 348.

(6) A.I.R. 1932 Calcutta 346.

(7) A.I.R. 1939 Allahabad 127.

6. Having noticed the identity of the two aforesaid provisions, it deserves highlighting that the identical issue now before us came up for consideration before a Division Bench in *The Chatusshakhiya Brahmayrinda Gayaram Trust v. The Union of India*, (8) in the context of section 7 of the Bombay Court-Fees Act. A perusal of the judgment discloses that the crucial question before the Bench was the correctness of the earlier view of the Bombay High Court in *Hiraji Virji Jangbari's case* (supra). In an exhaustive judgment which now bears the seal of approval by the final Court, the Division Bench preferred the ratio expounded by Rankin, C.J., in *Ananda Lal Chakraburty & Ors. Re: case* (supra), after extensively quoting therefrom. They also specifically referred to the view of this Court in *Kanwar Jagat Bahadur Singh's case* (supra), and in an analysis which is remarkable in its detail, they in terms dissented therefrom. Consequently, the earlier Bombay view in *Hiraji Virji Jangbari's case* (supra) was over-ruled and it was in terms held that the court-fee payable on the memorandum of appeal preferred against a Compensation Award would be *ad valorem*, in accordance with Section 7(1) of the Bombay Court-Fees Act read with Schedule I Article 3 thereof.

7. Now what seems to conclude the matter is the fact that an identical question came to be agitated before the final Court in *Shahadu Gangaram Bhagade's case* (supra), again in the context of the Bombay Court-Fees Act. Apparently, the arguments which had earlier found favour in *Kanwar Jagat Bahadur Singh's case* (supra) were raised before their Lordships as well, but met summary rejection at their hands. As regards the stand that Section 8 of the Court-Fees Act being not the charging section and, therefore, Schedule II, Article 11 would apply, their Lordships conclusively repelled the same with the following observations :—

“This provision is similar to Section 8 of the Court Fees Act, 1870. It clearly applies to an appeal filed under Section 11 of the Act. It is true that the provision is not a charging section. It only provides for the computation of the Court-fee payable. But that provision makes it clear that it relates to the computation of a Court-fee payable on *ad valorem* basis. It can have no connection with any Article providing for the payment of fixed

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Court-fee. Therefore the computation provided under that provision can only be of a Court-fee payable under one or the other articles in Schedule 1. _____”

8. Similarly dealing with the contention that the Award of the Arbitrator under the Act not being a decree or an order having the force of a decree and, therefore, the matter would be out of the ambit of Section 7(1) of the Bombay Court-Fees Act and come within the Schedule II thereof, their Lordships of the Supreme Court categorically rejected the same in the following terms :—

“We see no force in the contention that before Section 7(1) of the Bombay Court-Fees Act, 1959, can be attracted to an appeal, the order under appeal must have the force of a decree. That section does not say so. It would not, therefore, be proper on our part to add the words “having the force of a decree” after the word ‘order’ in Section 7(1). In fact that section is so plain as not to require any interpretation. In that view, it is not necessary for us to consider any of the Articles in Sch. II of the Bombay Court-Fees Act, 1959. All that we have to see is under which Article of Schedule I, the Court-fee is payable.....”

9. Then advertng to the earlier view of Rankin, C.J., in *Ananda Lal Chakraburty and Ors. Re : case* (supra), their Lordships, in terms quoted therefrom, and expressly approved enunciation therein.

10. Lastly, their Lordships approved the over-ruling of the earlier view in *Hiraji Virji Jangbari's case* (supra), with the following concluding observations :—

“For the reasons mentioned above, we think that the decision of the High Court in *The Chatusshakhiya Brahmavrinदा Gayaran Trust v. Union of India*, (9), is correct. In this view, it is not necessary for us to consider the correctness of the decision of the Punjab High Court in *Kanwar Jagat Bahadur Singh v. The Punjab State*, (10)”.

(9) (1968) 70 Bom. L. R. 407.

(10) I.L.R. (1957) Pb. 142=(A.I.R. 1957 Pb. 32).

11. It would be manifest from the above that all the four premises on which the ratio of *Kanwar Jagat Bahadur Singh's case* (supra) rested have now been authoritatively demolished. The contentions accepted therein have been expressly rejected by their Lordships of the Supreme Court and the judgment in *Hiraji Virji Jangbari's case* (supra), which was its sheet-anchor, now stands over-ruled. *Ananda Lal Chakraburty and Ors. Re : case* (supra) which had been expressly dissented from, has now been reaffirmed in no uncertain terms by the final Court. It would thus appear that *Kanwar Jagat Bahadur Singh's case* (supra), can no longer hold the field in view of the categorical and authoritative enunciation of the law in *Shahadu Gangaram Bhagade's case* (supra).

12. I would equally wish to dispose of a rather half-hearted argument that *Kanwar Jagat Bahadur Singh's case* (supra), has not been expressly over-ruled by their Lordships of the Supreme Court in view of the quotation therefrom (in paragraph 10 above in *Shahadu Gangaram Bhagade's case*). It deserves highlighting that the Bombay High Court in *The Chatusshakhiya Brahmavrinda Gayaran Trust's case* (supra), had expressly dissented in detail from *Kanwar Jagat Bahadur Singh's case* (supra) and in specifically approving the former, their Lordships would necessarily disapprove of the ratio in the latter case. A larger reading of the Supreme Court judgment leaves no manner of doubt that *Kanwar Jagat Bahadur Singh's case* (supra), is no longer good law. The only construction possible on the concluding observations made by their Lordships is that having settled and declared the law to the contrary, they did not deem it necessary to individually consider and over-rule other judgments including that in *Kanwar Jagat Bahadur Singh's case* (supra).

13. Now apart from the binding precedent of the final Court, in the context of the Bombay Court fees Act, it appears that the weight of precedent under the Court-fees Act of 1870, is equally on the other side. It was the admitted case before us that the High Courts of Bombay and Andhra Pradesh have, in terms expressed their dissent from the view in *Kanwar Jagat Bahadur Singh's case* (supra). The Calcutta, Allahabad and even our predecessor High Court of Lahore in *Puran Chand and others v. Emperor and others* (11), have consistently taken a contrary view. Learned counsel

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for the respondent, even though pressed, was unable to cite any judgment which still holds the field in consonance with *Kanwar Jagat Bahadur Singh's case* (supra)

14. To conclude, it must now be held that *Kanwar Jagat Bahadur Singh's case* (supra), is no longer good law and the same is hereby over-ruled.

15. As a necessary consequence of the above, it would follow that all later Single Bench judgments of this Court, taking the view in line with *Kanwar Jagat Bahadur Singh's case* (supra), are erroneously decided. We would, therefore, over-rule *Union of India v. Virsa Singh*, (12), and, (*Kanwaljit Singh & Ors. v. The State of Punjab and Ors.*) (13).

16. In the light of the aforesaid discussion, the answer to the question posed at the out-set is rendered to the effect that the court-fee payable on a memorandum of appeal, under Section 11 of the Act has to be *ad valorem* in accordance with Section 8 read with Schedule—1 Article 1 of the Court-fees Act, 1870.

17. In view of the consistent stream of precedent in this Court, which we have now reversed, the cross-objector must obviously be afforded some time to make up the deficiency in the court-fee. We accordingly allow a period of two months to do the needful.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain, & M. M. Punchhi, JJ.

RAM PURI,—Petitioner.

versus

THE CHIEF COMMISSIONER and others,—Respondents.

Civil Writ Petition No. 2830 of 1970.

February 18, 1982.

Capital of Punjab (Development and Regulation) Act (XXVII of 1952)—Sections 3 and 8-A—Chandigarh (Sale of Sites and Buildings)—Rules 1960—Rules 11-D and 12—Constitution of India, 1950—Articles 14 and 19 (1) (f)—Section 8-A—Nature and Scope of—Word

(12) 1979 P.L.R. 340.

(13) F.A.O. 269/79 Decided on 3rd September, 1979.