FULL BENCH

*Before D. Falshaw, C.J., Daya Krishan Mahajan and S. K. Kapur, JJ.*

DARYODH SINGH,—*Appellant*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

F.A.O. 5-D of 1963.

1965

March 22nd

*Court-fees Act (VII of 1870)—S. 8, Schedule I, Art. I and Schedule II, Article 11—Land Acquisition Act (I of 1894)—S. 54—Memorandum of appeal raising dispute as to the apportionment of compensation inter se various claimants and not to its quantum—Court-fee pagable—Whether ad valorem under Article I of Schedule I or Article 11, Schedule II.*

*Held*, that the dispute as to apportionment would be a dispute relating to compensation and being a dispute under the Land Acquisition Act, where the land has been acquired for a public purpose, the Court-fee has to be computed according to the difference between the amount awarded to the appellant and the amount claimed by the appellant as provided in section 8 of the Court-fees Act. Thus a memorandum of appeal against an order under section 30 of the Act has to be stamped on *ad valorem* basis—a result which really carries out the intention of section 8 of the Court-fees Act. The scheme of the Land Acquisition Act discloses that the Collector, the Court as well as High Court are only called upon to determine the matters pertaining to compensation. The dispute in such matters may relate to the area of the land acquired, its quality and the amount of compensation payable for it as well as the persons who are entitled to the compensation or its apportionment. Whatever form the dispute assumes, it, all the time, is a dispute relating to compensation inasmuch as when land is acquired what the owners or persons having interest in the land are entitled to, is its equivalent in money or in other words compensation. Apportionment, as divorced from compensation, has no meaning. It is the compensation money which has to be apportioned between the various persons having interest in the land acquired. It will be apparent from the definition of "persons interested" in section 2(b) of the Act that this expression includes all persons claiming an interest in compensation to be made on account of the acquisition of the land; and

the definition includes a person to be interested in land if he is interested in an easement affecting the land. This is a very wide definition and that is why, the disputes as to apportionment sometimes assume considerable proportions.

*Regular First Appeal from the order of Shri Hans Raj, Additional District Judge, Delhi, dated 12th December, 1962, ordering that the sum of Rs. 1,15,565.00 nP. be paid to the landowners in the following shares—*

| | | |
|---|---|---|
| *Gordhan Dass-Moti Lal Mohatta Trust* | .. | 1/2 share |
| *Mohd. Yusaf* | .. | 1/4 share |
| *C. S. Jatley, D. S. Jatley and V. S. Jatley in equal shares.* | .. | 1/4 share |

H. S. TYAGI, ADVOCATE, for the Appellant.

S. L. WATEL, M. K. CHAWLA, FOR MR. S. L. SETHI, ADVOCATES, for the Respondents.

JUDGMENT

Mahajan, J. MAHAJAN, J.—The point for the determination of which this Full Bench has been constituted shortly stated is as follows : 'Whether a memorandum of appeal under section 54 of the Land Acquisition Act wherein the only dispute is as to the apportionment of the compensation *inter se* the various claimants and not to its quantum, has to be stamped with a Court-fee stamp in accordance with the provisions of section 8 read with schedule 1, Article 1 (*ad valorem basis*) or with a fixed Court-fee stamp under Article 11, schedule 2 of the Court-fees Act.

It will now be proper to state the circumstances leading to this reference: Five appeals under section 54 of the Land Acquisition Act were placed for hearing before my Lord the Chief Justice. The amount of compensation fixed for the land acquired is not in dispute. However, a dispute arose between the claimants *inter se* as to apportionment of the compensation money. Therefore, the amount of compensation was deposited in the Court under section 31 (2) of the Act by the Collector. The Collector also exercised his jurisdiction under section 30 and referred the disputes as to apportionment of the compensation for decision by the Court. The Court examined the matter and after recording evidence, either rejected the claimant's

claim *in toto* or in part. The dissatisfied claimants have come up in appeal to this Court under section 54 of the Act.

The appellants in all these appeals have paid a fixed Court-fee on their respective appeals. When the appeals came up for hearing before my Lord, the Chief Justice, a preliminary objection was raised by the respondents that the Court-fee paid by the appellants in each one of the appeals was insufficient and, therefore, there were no proper appeals before the Court. The objection is grounded on section 8 of the Court-fees Act.

In reply to this objection, it is maintained on behalf of the appellants that the appeals are properly stamped. The claim in these appeals is for a declaration of title and not a claim to compensation. It is maintained that there is no dispute as to the compensation fixed. The dispute relates merely to its apportionment and is between the claimants *inter se*. Therefore, the dispute is merely on the question of title to the land. The moment the question of title is settled, the dispute as to the apportionment of the compensation money will automatically get determined.

It may be pointed out that this objection is only partially valid. The appeals cannot be dismissed *in toto*, because the memorandum of appeal do bear some Court-fee stamp and to the extent, the claim is covered by the Court-fee paid, it could be allowed if otherwise the claim is sustainable. In this connection, reference may be made to *Joti Parshad* v. *Girnari Mal* (1) (*Amir*) *Shah Mohammad* v. *Syed Shah Mohammad* (2) and *Firm Nihal Chand-Atma Ram* v. *Sardari Mal and others* (3). The objection, however, would be valid to the extent the claim in appeal is not covered by the Court-fee paid. It is common ground in all these cases that the claim in appeal is not fully covered by the amount of Court-fee paid.

According to the respondents, the Court-fee on the claim in appeal is to be paid on *ad valorem* basis on the amount claimed. For this purpose, reliance has been placed on section 8 of the Court-fees Act (hereinafter

(1) 40 P.L.R. 123.
(2) A.I.R. 1931 Lah. 237.
(3) A.I.R. 1926 Lah. 558.

Daryodh Singh
v.
Union of India and others

Mahajan, J.

referred to as the Act) and a direct decision of the Lahore High Court in *Ganesh Das* v. *Kanthu and others* (4).

Section 8 of the Court-fees Act reads as follows :—

> "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."

The learned counsel appearing for the appellants in each of the appeals, on the other hand, contend that section 8 has no application to a case where the amount of compensation is not disputed; but the disptue is merely confined to the apportionment of that amount *inter se* the various claimants. It is this argument, the validity of which fell for determination before my Lord the Chief Justice. My Lord the Chief Justice in view of the importance of the question involved and in view of the decision of this Court in *Kanwar Jagat Bahadur Singh* v. *The Punjab State* (5), directed that the preliminary objection raised as to the question of Court-fee should be settled by a Full Bench. That is how the matter has been placed before us.

Before proceeding to examine the validity or otherwise of the preliminary objection, it will be proper to examine the scheme of the Land Acquisition Act, so far as it is relevant for the purposes of the present controversy. After the necessary notifications for the acquisition of land have been issued and the Collector has issued notices to the claimants under section 9 of the Act and after making such an inquiry into the claims made by the persons interested in pursuance of section 9, the Collector makes an award under his hand of—

(1) the true area of the land;
(2) the compensation which in his opinion should be allowed for the land; and
(3) the apportionment of the said compensation among all the persons known or believed to be interested in the land of whom, or of whose

(4) A.I.R. 1935 Lah. 448.
(5) I.L.R. 1957 Punj. 142=A.I.R. 1957 Punj. 32.

claims, he has information, whether or not they have, respectively appeared before him.

Section 12 of the Act makes the award of the Collector final in certain circumstances. This provision also requires the Collector to give immediate notice of the award to the persons interested who are not personally present. If any person interested has not accepted the award, he has the right by a written application to the Collector to require that the matter be referred by him for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, *the persons to whom it is payable or the apportionment of the compensation among the persons interested.* In addition to section 18, power has been given to the Collector to refer a dispute as to apportionment where the amount of compensation has been settled under section 11, to the decision of the Court,—*vide* section 30 of the Act. Under this provision, it is optional with the Collector to refer the dispute as to the apportionment to the Court or himself decide the dispute and leave the dissatisfied party to claim a reference under section 18 of the Act. The only other provisions that need be noticed are contained in sections 26, 53 and 54. Section 26(2) provided that "every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively of the Code of Civil Procedure, 1908". Section 53 makes the Code of Civil Procedure applicable to all proceedings before the Court under this Act, save in so far as they may be inconsistent with anything contained in this Act. Section 54 is appeal section and is in these terms:—

> "Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees and notwithstanding anything to the contrary in the enactment for the time being in force, an appeal shall only lie in any proceeding 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 XLV thereof."

Daryodh Singh
v.
Union of India and others

Mahajan, J.

The scheme of the Act discloses that the Collector, the Court as well as this Court are only called upon to determine the matters pertaining to compensation. The dispute in such matters may relate to the area of the land acquired, its quality and the amount of compensation payable for it as well as the persons who are entitled to the compensation or its apportionment. Whatever form the dispute assumes, it, all the time, is a dispute relating to compensation inasmuch as when land is acquired what the owners or persons having interest in the land are entitled to, is its equivalent in money or in other words compensation. Apportionment, as divorced from compensation, has no meaning. It is the compensation money which has to be apportioned between the various persons having interest in the land acquired. It will be apparent from the definition of "persons interested" in section 2(b) of the Act that this expression includes all persons claiming an interest in compensation to be made on account of the acquisition of the land; and the definition includes a person to be interested in land if he is interested in an easement affecting the land. This is a very wide definition and that is why, the disputes as to apportionment sometimes assume considerable proportions.

It is in the light of these observations that we have to examine the provisions of section 8 of the Court-fees Act. And if so examined, the matter of Court-fee presents no difficulty for the words of section 8 of the Court-fees Act are clear and unambiguous. The dispute as to apportionment would be a dispute relating to compensation and being a dispute under the Land Acquisition Act where the land has been acquired for a public purpose, the Court-fee has to be computed according to the difference between the amount awarded to the appellant and the amount claimed by the appellant. This interpretation is fully supported by the authoritative pronouncement of an eminent Chief Justice, Sir George Rankin *in re*: *Ananda Lal Chakrabutty and others* (6). I have taken the liberty to quote *in extenso* from the judgment of the learned Chief Justice on this part of the matter. The pertinent observations are at pages 347 and 349 and are as follows:—

"* * * * *

Now, the contention of Dr. Banerjee in the present case is that these appeals are really governed by

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

Art. 11, Sch. 2, Court-fees Act, that the appeals in this case, as the award of the Tribunal is not a decree, are appeals from an order and that they are appeals from an order which has not got the force of a decree. Consequently, according to his argument, the case comes under Art. 11, Sch. 2, which contains a list of fixed fees made chargeable under the Act. On the other hand, it is contended by the learned Senior Government Pleader that the case is governed by S. 8 of the Act, and, that under S. 8, the case comes under Art. 1, Sch. I and which has to be applied in the manner laid down by S. 8. Now, as against that, Dr. Banerjee's contention is, first of all, that S. 8 comes within chapter 3 of the Act and that Chapter 3 of the Act is headed : 'Fees in other Courts and in public offices.' Accordingly he says, first of all, that section 8 does not apply to an appeal in the High Court at all. The second point that he takes is that, in any event, section 8 is not a charging section and that you can give no force to section 8 unless you can find a charging section somewhere in the Act under which it can be applied. Dr. Banerjee's third point is that section 8 does not apply to a case like the present, but only applied to a case where the appeal challenges the correctness of the total amount awarded by the land acquisition authorities for the property taken as a whole. It will be convenient to deal with this last question first. Section 8 is as follows:

> "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."

It is said that, in a case where the claim of the appellant is not that the total amount awarded

Daryodh Singh
*v.*
Union of India and others

Mahajan, J.

is insufficient, but that a portion of it should have been awarded to him, the section does not apply and that upon a reference to the case of *Mangal Das-Giridhari Das* v. *Assistant Collector of Ahmedabad* (7), it will be found that this view has received authoritative recognization. The case itself is no authority for the proposition and, in my opinion, the meaning contended for would be a plain misinterpretation of the section. The section dealing with the amount of fee payable makes a comparison between two things—the amount awarded and the amount claimed by the appellant. It appears to me to be reasonably clear that the comparison can only be between the amount awarded to the appellant and the amount claimed by the appellant. There can be no comparison between the amount awarded to a number of persons and the amount claimed by one individual representing his individual interest. In the present case, the appellants have been given nothing by way of compensation. They claim a substantial sum. It is clear, therefore, that if section 8 applies, the amount of court-fee is to be computed according to the amount of their claim in the present case."

* * * *.

"Whatever the effect of that phrase may be, section 8 shows one perfectly clearly that an appeal regarding compensation in a land acquisition case is not under Article 1, Schedule 2, because it is not a fixed fee at all. In this connection, I will only add that I think the provisions of section 8 have been misinterpreted because section 8 is really a provision (upon the assumption that there is already *an ad valorem* fee laid down by the Act) that the *ad valorem* charge is to be made in a way that is most favourable to the subject. The objection of section 8 is not to impose an *ad valorem* charge; it assumes that that has already been done. If a person is appealing from an award in a compensation matter, there are various ways in

(7) 45 B.L.R. 280=A.I.R. 1921 Bom. 375.

which it might have been thought right to charge him with court-fee. If he is appealing about the total amount of the award and saying that the total amount ought to be so much more, it would be arguable whether or not he ought not to be charged upon that difference. In the same way, if the question as to his right to compensation involves a question of title to land, it might be argued that his appeal should be valued upon the basis of the value of the land that was in dispute. The purpose of section 8, to my mind, is to say that he is to be charged in the most favourable way.

It does not matter what is the difference between the total amount awarded and the amount which he says should have been the total amount awarded. It does not matter whether the question of title involved is a question of title relating to a large and valuable estate. The position is that he, an individual appellant is only interested for this purpose in his own claim for compensation. Whatever may be the matter to be discussed in the end, the point is:

'I have been given so much money as compensation for my interest and I claim by the appeal to get so much more.'

Section 8 says that he is only to be charged upon the further amount that he is claiming by the appeal, that is, the amount of money which he says should be awarded to him in his own individual case in excess of the amount which in fact has been awarded. The business of the section is not, therefore, to impose an *ad valorem* charge, but on the assumption that the Act has already made an *ad valorem* charge to say that it is to be charged upon him in that particular way. It is the least onerous way that could very well be suggested. 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

Daryodh Singh
*v.*
Union of India
and others

Mahajan, J.

*ad valorem* fee is chargeable under Article 1, Schedule 1, Court-fees Act."

* * *".

This is the basic authority on the subject and was followed by the Calcutta High Court again in *Krishna Chandra Das* v. *Lakshmi Narayan Das and others* (8). Not a single decision of the Calcutta High Court has been cited at the bar, which has, in any manner, cast any doubt on the observations of the learned Chief Justice with regard to the applicability of section 8 of the Court-fees Act to an appeal under section 54 of the Land Acquisition Act with regard to the matter of apportionment. The Patna High Court has followed the Calcutta High Court's view in *Krishna Chandra Das' case*. See in this connection *Braja Kewat and another* v. *Madanlal Aggarwala and others* (9). So also the Andhra Pradesh High Court in *M. Dodla Malliah and others* v. *The State of Andhra Pradesh* (10) and the Bombay High Court in *Mangal Das Girdhar Das* v. *Assistant Collector, Ahmdabad* (7).

So far as the Madras High Court is concerned, it has treated an appeal under section 54 of the Land Acquisition Act against an order under section 30 as an appeal from a decree. It has been held that such an appeal requires to be stamped on *ad valorem* basis. In this connection, reference may be made to the decision of the Madras High Court in *Varnasi Subhayya and others* v. *Varnasi Somalingam and others* (11) and in *(Chintakayala) Thammayya Naidu* v. *(Chintakayala) Venkataramanamma and another* (12). In the latter decision, Wallace J. observed as follows :—

> "On the first point, it cannot be doubted that as a general principle where a successful claimant before the District Judge is declared entitled to immediate payment, the appeal against such

(8) A.I.R. 1950 Cal. 434.
(9) A.I.R. 1951 Patna 608.
(10) A.I.R. 1964 Andh. Prad. 216.
(11) A.I.R. 1920 Mad. 223.
(12) A.I.R. 1932 Mad. 438.

an order would be an appeal praying for the recovery of the money from the successful claimant and would have to be valued *ad valorem* as a claim for money: see *Mahalinga Kudumban* v. *Theertharappa Mudaliar*, which enunciates the general practice of this Court."

There has been a lot of controversy in the Madras High Court whether an order under section 30 is an award or a decree. This controversy has arisen with regard to the appealability of such an order. But it seems that this controversy was set at rest by the Full Bench decision of the Madras High Court in *Chikkanna Chettiar alias V. S. Nantappa Chettiar* v. *V. S. Perumal Chettiar and another* (13), wherein it was observed as follows:—

"* * * All controversy is set at rest by the judgment of the Privy Council in *Bhagwati* v. *Ram Kali*. The opinion expressed in *Ramchandra Rao* v. *Ramchandra Rao* was there re-affirmed, notwithstanding the alteration made by the present Code in the definition of the word 'decree'. In the light of the recent pronouncement of the Privy Council *Ramchandra Rao* v. *Ramchandra Rao* must be taken to decide that an order, not merely the order on appeal, but an order determining a reference under section 18 or under section 30—it is admitted that there is no difference in principle between the two sections—is to be regarded as a decree and not as an award."

Thus a memorandum of appeal against an order under section 30 of the Act has to be stamped on *ad valorem* basis—a result which really carries out the intention of section 8 of the Court-fees Act.

The only case in which a discordant note has been struck is the decision of the Rajasthan High Court in *Hakim Martin De Silva* v. *Martin De Silva II and others* (14). With utmost respect to the learned Judges, we are constrained to observe that this decision does not lay down

(13) I.L.R. 1940 Mad. 791.
(14) A.I.R. 1957 Raj. 275.

Daryodh Singh
v.
Union of India and others

Mahajan, J.

the correct rule of law. As a matter of fact, it proceeds on certain erroneous assumptions. The first erroneous assumption made is regarding what was laid down in *Rash Behari Sanyal* v. *Gosto Behari Goswami* (15). According to the learned Judges, the decision in *Rash Behari Sanyal's case* takes a different view of the matter than that was taken by Rankin C.J. in *Ananda Lal Chakrabutty's case*. These observations of the learned Judges are wholly unjustified. The facts in *Rash Behari's* case were as follows:—

> "A Hindu widow had sold immovable property to one Gosto Behari Goswami. This property had been acquired by the Calcutta Improvement Trust compulsorily and certain compensation had been awarded to Gosto Behari Goswami as the owner of the property. The reversioners of the widow's husband claimed that they were entitled to the compensation after the death of the widow because the sale by the widow was not for necessity. The question whether the reversioners were or were not entitled to the compensation money depended on the settlement of the question whether the sale by the widow was for legal necessity or not. This question had to be settled by the Tribunal in order to determine whether the amount of compensation should or should not be handed over to Gosto Behari Goswami, but be invested by the President of the Tribunal under the provisions of section 32 of the Act. The reversioners' claim was negatived by the Tribunal which had the jurisdiction to determine the question by virtue of the provisions of section 77(1)(b) of Bengal Act 5 of 1911. In an appeal against the decision of the Tribunal, a dispute arose as to the proper amount of Court-fee payable and it was held that the proper Court-fee payable was under schedule II, Article 17(iii) of the Court-fees Act, i.e., fixed Court-fee was payable and no *ad valorem* Court-fee as contemplated under section 8 of the Court-fees Act."

On these facts, the learned Single Judge in *Rash Behari's case* observed as follows:—

> "It is quite clear, in my opinion, that the dispute between the Sanyals and Gosto Behari Goswami

(15) A.I.R. 1935 Cal. 243.

cannot in any sense be properly said to be concerned with the amount of compensation payable by reason of the compulsory acquisition of the property owned by Bhuban Mohini. The Sanyals in the proceedings before the President of the Improvement Tribunal were really asking for a declaration and some consequential relief, namely, that the money should be invested instead of being handed over to Goswami.

These observations clearly indicate that there could be no question of section 8 of the Court-fees Act coming into play and that the learned Judge in *Rash Behari's* case did not, in any manner, depart from the rule laid down by Rankin Chief Justice in *re: Ananda Lal Chakrabutty's case.* This is made further clear when the learned Judge proceeded to rely on certain Madras cases and in particular on (*Chintakayala*) *Thammayya Naidu's* case (12), and observed that "a view has been taken that section 8 of the Court-fees Act cannot apply where there is no dispute as regards the amount of compensation awarded but the dispute relates to apportionment." These observations were made in view of the prevailing controversy in the Madras High Court as to whether an order in a reference under section 30 of the Act on the question of apportionment is a decree or an award. On its determination in each case the question as to on what basis Court-fees has to be paid has turned in that Court. However, it has been consistently held in that Court that where such an order is a decree, Court-fees has to be paid on *ad valorem* basis—a view which is entirely in consonance with the provisions of section 8 of the Court-fees Act. Thus it is clear that there is no warrant for the assumption that *Rash Behari's* case takes a different view from the rule laid down in *Ananda Lal's* case.

The learned Judges thereafter proceeded to rely upon the Privy Council decision in *T. B. Ramchandra Rao and another* v. *A. N. S. Ramchandra Rao and others* (16), in support of their conclusion. Again with due respect to the learned Judges, the Privy Council decision is of no help. What their Lordships of the Privy Council in *T.B.*

(16) 1922 P.C. 80.

Daryodh Singh
v.
Union of India and others

Mahajan, J.

*Ramchandra Rao* case were considering was whether the decision on a question of title under section 18 or section 30 of the Act would operate as *res judicata*, when a similar question arose again between the parties in other proceedings. The argument that a decision under section 18 or section 30 on a question of title could not operate as *res judicata* was repelled. It is abundantly clear that their Lordships were not considering the question of Court-fee and the observations relied upon by the learned Judges were not made in the context of the Court-fees Act.

If the matter is looked at from the correct perspective, there can be no manner of doubt that every claim of apportionment involves a claim to compensation. Of course the claim has to be a claim in presenti and not a claim in future as in the case with a claim by a husband's reversioner during the life-time of the Hindu widow with regard to her husband's property. We are, therefore, clearly of the view that the decision of the learned Judges of the Rajasthan High Court cannot be supported either in principle or on authority. Moreover, if this decision is accepted as correct, it would obliterate section 8 of the Court-fees Act from the Statute Book—a result which cannot be envisaged. It appears to us that no exception can be taken to the view enunciated by Rankin, C.J., in *Ananda Lal's case*. Moreover, this decision has held the field up-to-date and has been accepted as correct by the Lahore, Patna and Andhra Pradesh High Courts. We, therefore, hold that the preliminary objection is sound and must prevail.

The learned counsel for the appellants prayed that they may be permitted to make good the deficiency in Court-fees. That is a matter which will properly fall for determination by the Bench hearing the appeal. We may also point out that in certain appeals out of the appeals in which the preliminary objection has been raised, the amount in dispute is more than Rs. 5,000 and it is not understandable how those appeals were placed before the learned single Judge for decision. The office should see which appeals have to go to the learned Single Judge and which appeals have to be placed before a Division Bench and thereafter proceed to place them for hearing as early

as possible. The costs of this reference will be costs in the cause.

Daryodh Singh
*v.*
Union of India and others,

Mahajan, J.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

S. K. KAPUR, J.—I agree.

Kapur, J.

*B.R.T.*

APPELLATE CIVIL

*Before Daya Krishan Mahajan, J.*

NEM CHAND—*Appellant*

*versus*

ROHTAK MUNICIPAL COMMITTEE,—*Respondent*

**Regular Second Appeal No. 1337 of 1957.**

1965

Oct. 18th.

*Punjab Municipal Act (III of 1911)—S. 121(2)—Municipal Committee—Whether sole judge of the fact that a trade causes annoyance, offence or danger to persons residing in the immediate neighbourhood.*

*Held*, that after the coming into force of the Constitution and in view of Article 19(1)(g) every person has a right to carry on his trade or business anywhere he likes, but that right is subject to reasonable restriction that may be imposed. Section 121(2) of the Punjab Municipal Act, 1911, imposes a reasonable restriction and the Judge whether such a restriction is reasonable or not is the Court. The only ground on which the plaintiff could have been refused the license was that his carrying on the business at the particular place would cause annoyance, offence, or danger to the persons residing in the area, where the lime-kiln is situate. If this fact stood proved, the license could have been withheld.

*Regular Second Appeal from the decree of the Court of Shri Bahal Singh, Senior Sub-Judge, with Enhanced Appellate Powers, Rohtak, dated the 18th day of October, 1957, reversing that of Shri B. R. Guliani, Sub-Judge 3rd Class, Rohtak, dated the 31st January, 1951, and dismissing the plaintiff's suit with costs throughout.*

GOKAL CHAND MITTAL, ADVOCATE, for the Appellant.

PREM CHAND JAIN, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the decision of the Senior Subordinate Judge, Rohtak, Mahajan, J.