

# HIGH COURT OF ANDHRA PRADESH

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## **FIRST APPEAL No. 8 of 2025**

Between:

Bolineni Srihari Rao

....APPELLANT

AND

Competent Authority and Special Collector  
(L.A.) National Highway-5, Ongole & 11 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **10.04.2025**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
&  
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment?          | Yes/No |

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

**\* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
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.....RESPONDENTS

! Counsel for the Appellant : Sri V. S. R. Anjaneyulu,  
Senior Advocate  
Assisted by Ms. B. Sophia

Counsel for the Respondent No.9 : Sri Marri Venkata Ramana

< Gist :

> Head Note:

? Cases Referred:

1. 2015 LawSuit (P&H) 3173
2. 2015 (4) AWC 3596 All.:MANU/UP/0339/2015
3. AIR 1978 Andhra Pradesh 412
4. 2006 (2) ALT 477 (D.B)
5. 2013 (6) ALT 429 (D.B)
6. AIR 1940 Madras 474 (F.B)
7. 2024 SCC OnLine Mad 4369
8. 2023 SCC OnLine 787
9. (2009) 2 SCC 562
10. (2011) 8 SCC 539
11. 1989 Supp (2) SCC 627
12. 1968 SCC OnLine SC 139
13. (1994) 4 SCC 99
14. 2025 SCC OnLine Bom 307
15. AIR 1931 Mad 586
16. ILR 40 Cal 21 (P.C)

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
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THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**FIRST APPEAL No. 8 of 2025**

**JUDGMENT:** (per Hon'ble Sri Justice Ravi Nath Tilhari)

This Appeal has been filed under Section 96 of the Code of Civil Procedure (in short 'CPC') by the appellant/1<sup>st</sup> respondent in L.A.O.P.No.01 of 2014 (in short 'LAOP') on the file of the Principal District Judge, Prakasam at Ongole (in short 'learned Court') against the Judgment and Decree dated 12.08.2024, passed on a Reference under Section 3 H (4) of the National Highways Act, 1956 (in short 'the Act').

**I. Facts:**

2. Briefly stated the facts for the purposes of the present issue, are that the Project Director, National Highway Authority of India (in short 'NHAI'), Nellore sent requisition for acquisition of an extent of Ac.22.29½ cents patta land and Ac.00.90 cents of government land, situated in Annavarappadu village of Ongole Mandal for formation of bypass road on the eastern side of Ongole town and accordingly notification under Section 3A (1) of the Act was published. Publication under Section 3D (1) of the Act was made in Gazette of India No.1392, dated 20.07.2011, and as per the enjoyment particulars furnished by the Tahsildar, Ongole, the name of Bollineni Srihari Rao, the present appellant, was shown as landowner for an extent of Ac.00.79 cents in Sy.No.152/3B of Annavarappadu village, covered under the acquisition.

Subsequently, a public notice under Section 3G (3) of the Act was issued on 02.12.2011 inviting the landowners and interested persons to file their claims for the lands before the competent authority to establish their claim of title over the lands under acquisition. Later, the award enquiry was conducted on 09.01.2012. One Bollineni Venkataramaiah (the present 2<sup>nd</sup> respondent, deceased) filed representation, submitting that the appellant had no landed property in Sy.No.152/3B of the concerned village and the name of the appellant was wrongly published as landowner in the land acquisition notification. He also stated that his father Bollineni Narayya purchased an extent of Ac.02.12 cents of land from Bollineni Venkata Naraiah and others by registered document dated 17.04.1976 and after the death of his father, he became the landowner and obtained pattadar passbook for that land under Khata No.71 from the revenue authorities. He also claimed that the appellant managed to enter appellant's name in the revenue records by misrepresentation of facts and requested not to pay the compensation to the appellant. The dispute was also said to be pending before the Joint Collector, Ongole and Revenue Divisional Officer, Ongole. The appellant herein (the 1<sup>st</sup> respondent) in LAOP, is said to have not attended the award enquiry and also not to have produced any documentary evidence.

3. The appellant, previously filed W.P.No.26329 of 2012 questioning the action of the Competent Authority and Special Deputy Collector (Land Acquisition), National Highway-5, Ongole, in not paying the compensation for the land admeasuring Ac.00.79 cents acquired. The said writ petition was disposed

of on 04.02.2013, directing the Competent Authority to refer the matter under Section 3H (4) of the Act to the Civil Court for deciding the dispute between the respondents 1 and 2 in LAOP, as to who was entitled to receive the compensation.

4. The appellant herein was the 1<sup>st</sup> respondent in LAOP. The 2<sup>nd</sup> respondent herein was the 2<sup>nd</sup> respondent in LAOP. He died. Respondents No.9 to 11 in LAOP, were substituted in the place of the deceased 2<sup>nd</sup> respondent, who are the respondents 9, 10 and 11 respectively in this appeal.

5. Reference was made under Section 3H (4) of the Act to the competent Civil Court.

6. The appellant filed counter, denying the material averments. He raised various pleas and prayed to declare him as title holder of the schedule property.

7. The 2<sup>nd</sup> respondent also filed counter, denying the claim of the 1<sup>st</sup> respondent/appellant and prayed to pay the entire compensation amount deposited before the said Court by the Competent Authority with interest to be released in his favour, declaring him as the absolute owner of the acquired land, as also to dismiss the claim of the 1<sup>st</sup> respondent/appellant.

8. Respondents No.3 to 7 in LAOP (the present respondents 3 to 7) reported no counter.

9. The 8<sup>th</sup> respondent filed counter, submitting that he was not interested, in the matter. He only discharged his official duties by exercising his powers as Tahsildar and requested to delete his name.

10. The 12<sup>th</sup> respondent in LAOP (also 12<sup>th</sup> respondent herein) filed counter, *inter alia*, submitting that there was dispute between the appellant (1<sup>st</sup> respondent) and herself 12<sup>th</sup> respondent, and claimed share by virtue of 2005 amendment to Hindu Succession Act along with the 1<sup>st</sup> respondent/appellant and denied the claim of the 2<sup>nd</sup> respondent/respondents No.9 to 11.

11. Respondents No.9 to 11, who were substituted in the place of the deceased 2<sup>nd</sup> respondent, filed additional counter, denying the claim of the respondent No.12 and submitting that the 1<sup>st</sup> respondent (appellant herein) and the 12<sup>th</sup> respondent had no right in the land acquired and they were not entitled for compensation deposited before the learned Court.

**II. Order dated 12.08.2024 in LAOP:**

12. The learned Court disposed of the LAOP, declaring the 2<sup>nd</sup> respondent as absolute owner of the petition schedule property, and consequently, entitled for the compensation along with accrued interest in respect of acquisition of land in an extent of 3197.03 square meters (Ac.0.79 cents) situated in Sy.No.152/3B of Annavarappadu village of Ongole Mandal. Since the 2<sup>nd</sup> respondent died during the pendency of the LAOP, respondents No.9 to 11 were held equally entitled for the compensation amount. The petition against the 8<sup>th</sup> respondent was dismissed.

13. Challenging the said judgment dated 12.08.2024, the present appeal has been filed by the 1<sup>st</sup> respondent in LAOP.

### **III. Preliminary Objection:**

14. The preliminary objection was raised by Sri Marri Venkata Ramana, learned counsel, appearing for the 9<sup>th</sup> respondent, that the present appeal is not maintainable under Section 96 CPC.

15. We proceed to decide the preliminary objection with respect to the maintainability of the present appeal under Section 96 CPC.

16. We heard Sri Marri Venkata Ramana, learned counsel, on the preliminary objection, and also in reply, Sri V. S. R. Anjaneyulu, learned senior counsel, assisted by Ms. B. Sophia, learned counsel for the appellants.

### **IV. Submissions of learned counsels:**

#### **i) For Respondent raising Preliminary Objection:**

17. Sri Marri Venkata Ramana, learned counsel, submitted that the right to appeal is a statutory right. Unless the statute confers the right of appeal, the appeal cannot be filed. He submitted that the Order under challenge was passed under Section 3H (4) of the Act on a reference made, by the Civil Court. An Order passed under 3H (4) of the Act is not made appealable under the National Highways Act. So, the Order passed under Section 3H (4) of the Act is not appealable. He submitted that the provisions of Section 96 CPC have not been made applicable. Therefore, an appeal, by taking recourse to Section 96 CPC cannot be filed and is not maintainable.

18. He placed reliance in ***Bhoop Singh v. Kuria***<sup>1</sup> of Punjab & Haryana High Court to contend that in the said case, the appeal was filed under Section

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<sup>1</sup> 2015 LawSuit (P&H) 3173

96 CPC, challenging the judgment of the learned Additional District Judge, Rewari in a reference under Section 3H (4) of the National Highway Act, wherein also, the dispute was regarding apportionment of compensation amongst the claimants and the matter was referred by the Competent Authority for decision to the learned District Judge, who had decided the dispute, and in the said case, it was held by Punjab & Haryana High Court that the appeal under Section 96 CPC was not maintainable.

19. Sri Marri Venkata Ramana, learned counsel, also placed reliance in the case of ***Sri Gurudwara Committee Chakeri Aerodrum v. Union of India***<sup>2</sup> to contend the same.

**ii) For Appellants:**

20. Sri V. S. R. Anjaneyulu, learned senior counsel, submitted that the appeal under Section 96 CPC is maintainable. He submitted that when reference is made under Section 3H (4) of National Highway Act to the Competent Civil Court and such Court decides such reference with respect to the apportionment or the eligibility of the person for the compensation, the same is a 'decree' within the meaning of Section 2 (2) of CPC. The dispute having been decided by the Civil Court, and such judgment being decree, would be appealable under Section 96 CPC.

21. He referred to the judgment in ***Dy. Director of Agriculture v. S. Ramanadham***<sup>3</sup> to content that under the old Land Acquisition Act (Act 1/1894) an Order passed under Section 30 of the said Act, which related to

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<sup>2</sup> 2015 (4) AWC 3596 All :: MANU/UP/0339/2015

<sup>3</sup> AIR 1978 Andhra Pradesh 412



apportionment of the compensation awarded amongst the claimants and decided by the Civil Court on reference made under Section 30 was held to be a decree and subject to appeal under Section 96 CPC.

22. He further placed reliance in the cases of ***Motte Rajaram v. Revenue Divisional Officer/Land Acquisition Officer<sup>4</sup>***, ***Pittala Lachavva v. Deddeti Venkataiah<sup>5</sup>***, ***Chikkanna Chettiar v. V. S. Perumal Chettiar<sup>6</sup>*** and also ***Ramachandiran v. Saravanan<sup>7</sup>***, which was a case under the National Highways Act, to contend the same proposition, as also in the judgment of the Hon'ble Apex Court in the case of ***Vinod Kumar v. District Magistrate<sup>8</sup>*** to argue the scope of Section 3H (4) of National Highways Act pointing out the Scheme of the Act 1956.

#### **V. Point for Determination:**

23. The point that arises for consideration and determination is:

"Whether an Order passed by the Principal Civil Court of original jurisdiction deciding the dispute of apportionment, on a reference made to it under Section 3H (4) of the National Highways Act by the Competent Authority under the said Act is appealable under Section 96 of CPC?"

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<sup>4</sup> 2006 (2) ALT 477 (D.B)

<sup>5</sup> 2013 (6) ALT 429 (D.B)

<sup>6</sup> AIR 1940 Madras 474 (F.B)

<sup>7</sup> 2024 SCC OnLine Mad 4369

<sup>8</sup> 2023 SCC OnLine SC 787

**VI. Analysis:**

24. We have considered the aforesaid submissions of the learned counsels for the parties and perused the material on record.

25. Section 3H of the National Highways Act, 1956 reads as under:

**“3H. Deposit and payment of amount.—**

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

**(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.**

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this

behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

26. A perusal of Section 3H (4) of the Act makes it evident that if any dispute arises as to the apportionment of the amount or any part thereof or to any person, to whom the same or any part thereof is payable, the Competent Authority under the Act shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

27. So far as the reference by the Competent Authority under National Highways Act under Section 3H (4) to the Principal Civil Court of original jurisdiction is concerned, there is no dispute. In cases covered under Section 3H (4) of the Act, the Competent Authority under the Act has to make reference to the Principal Civil Court of original jurisdiction for decision.

28. In the present case, initially such reference was not made, but was later on made pursuant to the Order passed by this Court dated 04.02.2013 in W.P.No.26329 of 2012.

29. The question is when a reference is made under Section 3H (4) of the Act to the Principal Civil Court of original jurisdiction and the same is decided, the decision of the Principal Civil Court of original jurisdiction would be appealable or not, and if it is appealable, under which provision of law?

30. The main contention of Sri Marri Venkata Ramana, the learned counsel for the respondents, raising the preliminary objection, is that Section 96 CPC has not been made applicable to the National Highways Act and the

National Highways Act also does not provide specifically for filing appeal against the Order made by the Principal Civil Court of original jurisdiction in a reference under Section 3H (4) of the Act. In his submission, the right of appeal is statutory right and the statute, i.e., the National Highways Act, has not conferred such a right against an adjudication made on reference. The appeal would not be maintainable and the recourse to Section 96 cannot be taken. His further contention based on ***Bhoop Singh*** (supra) is that such an adjudication is an 'award' and not 'decree'.

31. The crux of the matter lies if the Order of the nature as in the present case passed on a reference under Section 3H (4) of the Act is a decree or Order or it is an award.

32. The present appeal has been filed under Section 96 CPC. The issue is, if the appeal is maintainable under Section 96 CPC. No other provision of law has been pointed out for the maintainability of the appeal.

33. Section 96 of CPC reads as under:

**“Section 96: Appeal from original decree.**

**(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.**

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

<sup>1</sup>[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value

of the subject-matter of the original suit does not exceed <sup>2</sup> [ten thousand rupees.]]”

34. So, as per Section 96 CPC an appeal lies from every decree passed by any Court exercising original jurisdiction. But, if otherwise is provided expressly by the Code or by any other law for the time being in force an appeal shall not lie against such decree under Section 96 CPC. For maintainability of an appeal under Section 96 CPC, the judgment under challenge must be a decree. If it cannot be a decree, then it not being a decree, the provision of Section 96 CPC could not be attracted. So, the moot question is if the judgment under challenge is a decree. The meaning of 'decree', so as to attract Section 96 CPC and make the appeal maintainable, becomes of importance.

**Decree:**

35. Section 2 (2) of CPC defines 'decree' which reads as under:

"Section 2 (2): decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [\* \* \*] section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation .-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”

36. In view of this definition of 'decree' under Section 2 (2) CPC, unless there is anything repugnant in the subject or context 'decree' is formal expression of adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It may be either preliminary or final.

37. In ***S. Satnam Singh v. Surender Kaur***<sup>9</sup> the Hon'ble Apex Court held that for determining the question as to whether an order passed by a Court is a decree or not, it must satisfy the following tests, as laid down in para-16, which is as follows:

“16. For determining the question as to whether an order passed by a court is a decree or not, it must satisfy the following tests:

- “(i) There must be an adjudication;
- (ii) Such adjudication must have been given in a suit;
- (iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;
- (iv) Such determination must be of a conclusive nature; and
- (v) There must be a formal expression of such adjudication.”

**There must be an adjudication:**

38. It cannot be disputed that when a reference is made under Section 3H (4) of the National Highways Act to the Civil Court, there is an adjudication on the rights of the parties either with respect to eligibility for compensation or its apportionment or both. In the present case an adjudication has been made.

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<sup>9</sup> (2009) 2 SCC 562

**Such adjudication must have been given in a suit:**

39. In ***Ethiopian Airlines v. Ganesh Narain Saboo***<sup>10</sup> the question was, whether the proceedings before the Consumer Forum were suits. The Hon'ble Apex Court observed that the term 'suit' was not defined in the Carriers Act nor was it provided in the said Act that the term 'suit' will have the same meaning as in the Civil Procedure Code. Therefore, the term 'suit' had to be understood in its ordinary dictionary meaning. It was observed that in that sense, term 'suit' was a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. Referring to the *Black's Law Dictionary*, it was observed that the word "suit" means "any proceeding by a party or parties against another in a Court of law". In common parlance, the term "suit" was taken to include all the proceedings of a judicial or quasi-judicial nature in which the disputes of the aggrieved parties are adjudicated before an impartial forum. It was observed that the proceedings before the Consumer Forum fall squarely within that definition.

40. Paragraphs 59 to 63 of ***Ethiopian Airlines*** (supra) are as under:

"59. The term "suit" has not been defined in the Carriage by Air Act, 1972 nor is it provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the term "suit" has to be understood in its ordinary dictionary meaning. In that sense, the term "suit" is a generic term taking within its sweep all the proceedings initiated by a party for realisation of the right vested in him in law. In this view of the matter, we have to look to the dictionary meaning of the word "suit".

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<sup>10</sup> (2011) 8 SCC 539

**60.** According to *Black's Law Dictionary*, the word “suit” means “any proceeding by a party or parties against another in a court of law”. In common parlance, the term “suit” is taken to include all the proceedings of a judicial or quasi-judicial nature in which the disputes of the aggrieved parties are adjudicated before an impartial forum. Proceedings before the Consumer Fora fall squarely within that definition.

**61.** It has been held in *Patel Roadways Ltd.* [(2000) 4 SCC 91] that the proceedings before the Consumer Forums come within the sweep of the term “suit”. This judgment has been approved by a Constitution Bench of this Court in *Economic Transport Organization* [(2010) 4 SCC 114 : (2010) 2 SCC (Civ) 42] . Therefore, the controversy involved in this case is finally settled and we are bound by the decision of the Constitution Bench and this case has to be ruled in terms of what has been decided by the Constitution Bench in *Economic Transport Organization* [(2010) 4 SCC 114 : (2010) 2 SCC (Civ) 42] .

**62.** In the same vein, the US Supreme Court has read the term “suit” broadly, finding that a “suit” is “any proceeding in a court of justice, by which [a person] pursues that remedy in a court of justice which the law affords him,” vide *Upshur County v. Rich* [34 L Ed 196 : 135 US 467 (1889)] . Likewise: (L Ed p. 199)

“...‘ ... The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit.’ [Ed.: As observed in *Weston v. City Council of Charleston*, 7 L Ed 481, p. 487 : 27 US 449 (1829).]”

**63.** The Michigan Supreme Court similarly found that “the word ‘suit’, as applied to legal controversies, both by the legal profession and others, is now used and recognized as a generic term of broad significance, often understood and used, even by legislatures and courts, to designate almost any proceeding”. (Vide *Patterson v. Standard Accident Insurance Co.* [178 Mich 288 : 144 NW 491 (1913)] )”



41. In ***Pandurang Ramchandra Mandlik v. Shantibai Ramchandra Ghatge***<sup>11</sup> the Hon'ble Apex Court observed that in its comprehensive sense the word 'suit' was understood to apply to any proceeding in a Court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between the parties in a court of justice the proceeding by which the decision of the court was arrived may be a suit. Referring to Section 26 of CPC, the Hon'ble Apex Court in ***Pandurang Ramchandra Mandlik*** (supra) observed that a 'suit' is a proceeding which is commenced by a plaint. Section 26 provides that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

42. Therefore, so far as the requirement of the 'suit' is concerned, when a reference under Section 3H (4) of the National Highways Act, there would be no proceedings instituted by the parties by filing any application in the form of plaint. The reason is that the reference is made by the competent authority under the Act itself. So, in the comprehensive sense once the reference has been made by the competent authority to the Principal Civil Court of original jurisdiction and the right is litigated i.e., the right for eligibility of compensation or its apportionment between the parties and in those proceedings the decision is given by the Court following the rules of procedure that may be considered at par the suit.

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<sup>11</sup> 1989 Supp (2) SCC 627

**It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit:**

43. While making adjudication the rights of the parties on the subject of dispute are determined. Such rights have been determined in the present case, and unless interfered with such determination is of a conclusive nature.

**There must be a formal expression of such adjudication:**

44. In *Shakuntala Devi Jain v. Kuntal Kumari*<sup>12</sup> the first question was, whether the appeal from the Order disposing the objections under Section 47 CPC was incompetent, in view of the fact that the memorandum of appeal was not accompanied by certified copy of the Order appealed from? Considering the definition of 'decree' under Section 2 (2) CPC, it was observed and held that the decree shall be deemed to include the determination of any question within Section 47. In the said case, the contention was raised that the decree was a formal expression of the adjudication, but as in that case no formal decree was drawn up. The determination under Section 47 was said to be a judgment and the appeal having been admitted, it was the contention that it must be presumed that the Court had dispensed with filing of the copy of the judgment. With respect to the said contention, the Hon'ble Apex Court rejected. It was observed that in some Courts, the decision under Section 47 was required to be formally drawn up as a decree and in that case the memorandum of appeal must be accompanied by a copy of the decree as well as the judgment. But in some other Courts no separate decree was drawn up embodying the adjudication under Section 47. In such a case, the decision

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<sup>12</sup> 1968 SCC OnLine SC 139

under Section 47 was the decree and also the judgment, and the filing of a certified copy of the decision was sufficient compliance with Order 41 Rule 1 CPC.

45. Paragraph No.5 of ***Shakuntala Devi Jain*** (supra) reads as under:

“5. Moreover an order under Section 47 is a decree, and the High Court had no power to dispense with the filing of a copy of the decree. Ordinarily a decree means the formal expression of an adjudication in a suit. The decree follows the judgment and must be drawn up separately. But under Section 2(2), the term “decree” is deemed to include the determination of any question within Section 47. This inclusive definition of decree applies to Order 41 Rule 1. In some courts, the decision under Section 47 is required to be formally drawn up as a decree and in that case the memorandum of appeal must be accompanied by a copy of the decree as well as the judgment. But in some other courts no separate decree is drawn up embodying the adjudication under sec 47. In such a case, the decision under Section 47 is the decree and also the judgment, and the filing of a certified copy of the decision is sufficient compliance with Order 41 Rule 1. As the decision is the decree, the appeal is incompetent unless the memorandum of appeal is accompanied by a certified copy of the decision. Our attention was drawn to the decision in *Bodh Narain Mahto v. Mahavir Prasad* [AIR 1940 Pat 176] where Agarwala, J. seems to have held that where no formal decree was prepared in the case of a decision under Section 47 the appellant was not required to file a copy of the order with the memorandum of appeal. We are unable to agree with this ruling. The correct practice was laid down in a *Kamala Devi v. Tarapada Mukherjee* [15 CLJ 498] where Mookerjee, J. observed:

“Now it frequently happens that in cases of execution proceedings, though there is a judgment, an order, that is, the formal expression of the decision is not drawn up. In such cases the concluding portion of the judgment which embodies the order may be treated as the order against which the appeal is preferred. In such a case it would be sufficient for the appellant to attach to his

memorandum of appeal a copy of the judgment alone, and time should run from the date of the judgment. Where, however, as in the case before us, there is a judgment stating the grounds of the decision and a separate order is also drawn up embodying the formal expression of the decision, copies of both the documents must be attached to the memorandum, and the appellant is entitled to a deduction of the time taken up in obtaining copies thereof.”

46. The Hon’ble Apex Court in ***Shakuntala Devi Jain*** (supra) observed that where there is judgment in cases of execution proceedings, an order, that is, the formal expression of the decision was not drawn up. The concluding portion of the judgment which embodied the order may be treated as the order against which the appeal was preferred. In such a case, it would be sufficient for the appellant to attach to his memorandum of appeal a copy of the judgment alone, and time should run from the date of the judgment.

47. We have referred to the aforesaid judgments to state the position in law as laid down in ***Shakuntala Devi Jain*** (supra) that even if a formal expression of adjudication is not drawn up, as in many Courts with respect to the adjudication under Section 47 CPC, formal expression of the decision is not drawn up, still it would be appealable; the operative part of the judgment being taken as formal expression of the adjudication. Thus, even if there is no formal expression of the adjudication separately drawn, it cannot be said that such an adjudication is not a decree. The judgment containing that operative part would be taken as the formal expression of adjudication and filing the copy thereof would be sufficient compliance for filing appeal. Not drawing formal expression of the adjudication, would not be a consideration to contend that it

is not a decree. So, even in the absence of formal expression of the adjudication, if there is adjudication which determines the rights of the parties with regard to all or any of the matters in controversy by the Court, that would be a decree covered under Section 2 (2) CPC.

48. In our view, therefore, an adjudication by the Civil Court on a reference made to it under Section 3H (4) of the National Highways Act has all the attributes of a 'decree'.

49. But, still to be appealable under Section 96 CPC, the remedy of appeal should not be expressly barred either by Code of Civil Procedure or by any other law for the time being in force.

**VII. Whether appeal barred by CPC or National Highways Act:**

50. Learned counsels for both the parties submit that there is no provision for appeal from an Order under Section 3 H (4), under the National Highways Act. They are also in agreement that the National Highways Act does not specifically bar filing of the appeal nor it makes the Order of the Civil Court on reference under Section 3H (4) of the Act, to be final and conclusive. There is also no dispute that the Code Civil Procedure does not expressly bar an appeal from such an adjudication.

51. We would refer to the judgment of the Hon'ble Apex Court in ***Deep Chand v. Land Acquisition Officer***<sup>13</sup>. In that case notification under Section 4 (1) and Declaration under Section 6 of the Land Acquisition Act 1894 were published in the State Gazette. The appellant therein had objected under

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<sup>13</sup> (1994) 4 SCC 99

Section 49(1) of the Act to the acquisition. Reference was made under Section 49 (1) to the Civil Court, which answered the reference against the appellant. In appeal, the objection was raised that the appeal was not maintainable, as the Order of the Civil Court was not a decree. The High Court upheld the objection and dismissed the appeal as not maintainable. The question before the Hon'ble Apex Court was whether the decision of the Civil Court on reference under Section 49 (1) of the Act was a decree. Section 49 (1) of the Land Acquisition Act 1894 provided that if any question shall arise as to whether any land proposed to be taken under the said Act does or does not form part of a house, manufactory or building within the meaning of that section, the Collector shall refer the determination of such question to the Court. It was observed that the Order of the Civil Court on a reference under Section 49 (1) of the Act was not an award within the meaning of Section 26 (2). Section 26 provided for the Form of Awards, under Sub-section (1) and sub-section (2) of Section 26 provided that every such award shall be deemed to be a decree within the meaning of Section 2 (2) CPC. Consequently, there was no doubt that an Order passed under Section 49 (1) of the Land Acquisition Act was not appealable under Section 54 of the Act. Section 54 of the Act provided for Appeals from the Award or from any part of the Award to the High Court.

52. The only question then in ***Deep Chand*** (supra) was whether an Order of the Civil Court on a reference under Section 49 (1) was a 'decree' within the meaning of Section 2 (2) CPC so as to make it appealable under Section 96 CPC. It was observed that where a legal right of a party to a dispute

has to be adjudicated by the Courts of ordinary civil jurisdiction ordinary rules of civil procedure become applicable, and an appeal lies, if not otherwise provided for by such rules, that is to say, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer right of appeal, an appeal lies.

53. It was held in ***Deep Chand*** (supra) that under Section 49 (1) a right was given to the owner of the land to object to the putting of the Act into force when only a part of any house, manufactory or other building was sought to be acquired and called upon the State to acquire whole of such house, manufactory or building. Therefore, what was given was a right to object only to acquisition of part of the building etc., without acquiring the whole of the house, manufactory building. The Court had to examine whether the objection was sustainable requiring the whole of the property, to be acquired. The Hon'ble Apex Court made a distinction between the adjudication under Section 49 (1) on a reference and the adjudication on a reference under Section 30 i.e., determination of title to receive compensation under Section 30. It was observed that the title to receive compensation would be in issue under Section 30 and such a decision attains finality and binds the parties. The decision therein was conclusive between the parties unless it was varied or reversed by any competent Court on appeal. The Court held that it was a decree under Section 2 (2) of CPC. But that analogy was inapplicable to the determination under Section 49 (1) as there, it was observed that no rights of the parties to adjudication were involved. The Hon'ble Apex Court observed that the Order

under Section 49 (1) was not an award and therefore, it was not deemed a decree under Section 26 (2) and therefore, it would not be appealable under Section 54 nor not under Section 96, as it would not be a decree there being no such decision/determination at par the determination made under Section 30 of the Act 1894.

54. Paragraph – 5 of ***Deep Chand*** (supra) reads as under:

“5. The question, therefore, is whether the decision by the civil court on a reference under Section 49(1), second proviso of the Act is a decree within the meaning of Section 2(2) of CPC. **There can be no doubt that where a legal right of a party to a dispute, has to be adjudicated by courts of ordinary civil jurisdiction ordinary rules of civil procedure become applicable, and an appeal lies, if not otherwise provided for by such rules, that is to say, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer right of appeal an appeal lies.** Decree means a formal expression of an adjudication which the court conclusively and finally determines the rights of the parties with regard to all or any of the matters in controversy in the suit. We need not decide whether a reference under Section 49(1) is a suit. However, the immediate question that arises is whether the objection raised for acquisition on the premise that the property proposed for acquisition is a part only of the house, manufactory or building is decided, does it amount to an adjudication. In *Black's Law Dictionary* (6th Edn.) at p. 42 “adjudication” is defined as:

“*Adjudication*.— The legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved.”



55. The Hon'ble Apex Court in ***Deep Chand*** (supra) observed that so far as Section 49 (1) was concerned, the determination was of the convenient use and enjoyment of the unacquired portion of the land or a building, manufactory or the other house. If the answer was in favour of the landowner, the only choice left to the Government was either to acquire the whole property or drop the proposed acquisition and no other consequence. In other words the law said that acquire the whole property or to leave it. But for the acquisition, the owner was entitled to use the property in any manner he intended to make use or enjoy it.

56. So, from the judgment in ***Deep Chand*** (supra) what is observed is that, if it is adjudication made on reference to the Civil Court under Section 49 (1), the same is neither a decree within the meaning of Section 2 (2) CPC nor is an award under Section 26 (1) deemed to be decree under Section 26 (2) and consequently, not appealable neither under Section 54 of the Land Acquisition Act or under Section 96 of CPC. But with respect to an adjudication made on a reference under Section 30 by the Civil Court, it was held that the adjudication is with respect to the right of the parties to receive compensation and such decision would attain finality and would be binding on the parties and would be conclusive, unless the same be varied by the competent Court on appeal. Consequently, it was held that it was a decree under Section 2 (2) of CPC.

57. The principle of law, as laid down in ***Deep Chand*** (supra) is that where a legal right of a party to a dispute has to be adjudicated by Court of ordinary civil jurisdiction, ordinary rules of civil procedure become applicable,

and an appeal lies, if not otherwise provided for by such rules. We are therefore of the view that in a reference under Section 3H (4) of the National Highways Act, the determination is of the same nature as the determination made under Section 30 of the Land Acquisition Act 1894, with respect to entitlement to the compensation or the apportionment amongst the persons entitled. Such a determination is made by the ordinary civil Court. In making such determination in such proceedings, the Courts apply ordinary rules of civil procedure. The rights which are determined, are final between the parties. Therefore, that would be a decree within the meaning of Section 2 (2) CPC.

58. The National Highways Act does not provide that appeal shall not lie from adjudication of Principal Civil Court of original jurisdiction on a reference made under Section 3H (4) of the National Highways Act. The National Highways Act also does not provide that the adjudication made by the Civil Court on a reference made under Section 3H (4) of the National Highways Act shall be final and no appeal shall lie against such adjudication. So, in the absence of any such prohibition, against filing of appeal against such adjudication made by the Civil Court on a reference under Section 3H (4) of the National Highways Act, it cannot be said that such adjudication would not be appealable, though it has all the attributes of a decree under Section 2 (2) of CPC, even if there may be no formal expression of the adjudication prepared separately.

59. In ***Deep Chand*** (supra) it was clearly held that appeal lies if not otherwise provided for by such rules, that is to say, notwithstanding that the

legal right claimed, arises under a special statute which does not in terms confer a right of appeal, an appeal lies. The right to receive compensation may be arising under the National Highways Act on such determination in favour of the claimants, but in the absence of any prohibition to file appeal as also the absence of specific provision conferring the right of appeal, the determination being decree under Section 2 (2) CPC, such determination would be appealable under Section 96 CPC.

**VIII. Consideration of judgments cited by learned Counsels:**

60. Now we come to the judgments cited by the learned counsels for the parties.

61. In ***S. Ramanadham*** (supra), the learned single Judge of this Court considered the judgment of the Privy Council in ***Ramchandra v. Ramchandra*** {ILR (1939) All 460} (equivalent to ***AIR 1939 PC 133***), as also the judgment of the Madras Full Bench of the Madras High Court in ***Chikkanna v. Perumal*** (AIR 1940 Mad 474), and held that an Order under Section 30 of the Land Acquisition Act, 1894 was not an award, but only a decree. In view thereof, it was further held that Section 54 of the Land Acquisition Act, 1894, which provided for appeal against the award or part of the award, was not attracted to file the appeal, but the appeal would lie under Section 96 CPC, the determination under Section 30 being a decree.

62. At this stage, this Court would make reference to section 30 of the Land Acquisition Act 1894, which reads as under:

**“30. Dispute as to apportionment**

.When the amount of compensation has been settled under section 11, **if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”**

63. Section 30 of the Land Acquisition Act 1894, provided that when the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

64. A comparative reading of Section 30 of the Land Acquisition Act 1894, and the present Section 3H (4) of the National Highways Act, shows that both are on the same subject, i.e. with respect to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, i.e., the entitlement of the claimants for the amount of compensation and in case of dispute, the reference is to be made for decision, under Section 30 of the Land Acquisition Act 1894, to Court, and under Section 3H (4) of the National Highways Act, to the Principal Civil Court of original jurisdiction. The reference is to be made under Section 30 of the Land Acquisition Act 1894, by the Collector and under Section 3H (4) of the National Highways Act by the Competent Authority. Under both the Acts, on such reference, it is to be decided by the Court.

65. In ***S. Ramanadham*** (supra) the dispute was of the nature under Section 30 of the Land Acquisition Act 1894, i.e., the same as under Section 3H

(4) of the National Highways Act, and though it was under Section 30 of the Land Acquisition Act 1894, but we are of the view that the principle as laid down in the said case, that such determination by the Civil Court is a 'decree' is fully applicable and attracted to the same kind of determination, for entitlement of the claimants or apportionment amongst them, under Section 3H (4) of the National Highways Act.

66. In ***Motte Rajaram*** (supra) also, a Division Bench of the High Court of Judicature at Hyderabad (erstwhile High Court of AP) which was also a case under Section 30 and 54 of the Land Acquisition Act, 1894, held that Section 54 of the Old Act did not deal with the decision rendered under Section 30 of the Land Acquisition Act. There also an appeal was filed under Section 54 being aggrieved from the determination of the Civil Court under Section 30 of the Act 1894. Following the Madras Judgment in ***Mahalinga v. Theetharappa*** {1929 AIR Madras 223} as also ***Ramachandra v. Ramachandra*** {1922 AIR PC 80}, the same proposition was laid down, that the determination under Section 30 was not an 'Award' and consequently, Section 54 was not attracted. In the said case, it was held that the appeal filed before the Appellate Court under Section 96 CPC was maintainable and consequently, the second appeal before the High Court under Section 100 of CPC was also maintainable.

67. In ***Motte Rajaram*** (supra), the combined High Court referred to Section 26 (2) of the Land Acquisition Act, which 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 (2) CPC and

Section 2 (9) CPC respectively. It was also observed that Section 30 of the Land Acquisition Act did not use the expression 'award' postulated under Section 26 (2) of the Land Acquisition Act that, under which an award shall be deemed to be a decree and judgment and therefore, when an award was passed under that part of the Act, the same itself was to be treated as a decree and judgment. Decision rendered in a dispute between the parties *inter se* shall all the more liberality has to be treated as a decree and judgment.

68. In ***Pittala Lachavva*** (supra), which is also a case under Section 30 of the Land Acquisition Act 1894 and the question was as to the maintainability of the regular appeal under Section 96 CPC, another coordinate Bench of the combined High Court held that an appeal lies to the Competent Civil Court under Section 96 CPC.

69. In ***Ramchandiran*** (supra), the Madras High Court only observed, that the objection was raised by the registry on the point of maintainability of appeal under Section 96 CPC from an Order under Section 3H (4) of the Act but later had accepted the explanation given by the counsel that in view of Section 2 (2) CPC, the appeal was maintainable. So far as this judgment is concerned, the acceptance of the explanation with respect to the maintainability by the registry of the Madras High Court which initially raised the objection as to the maintainability of the appeal, in the absence of any discussion by the Madras High Court, laying down any law, on that aspect, is considered not relevant for the purposes of this case. The Madras High Court had simply observed that the registry accepted explanation regarding maintainability.

70. In ***Vinod Kumar*** (supra), on the scheme of the National Highways Act, 1956, the Hon'ble Apex Court elaborately observed that once any land was acquired under the Act 1956, the Competent Authority is obliged to pay an amount by way of compensation. There was a procedure prescribed under Section 3G of the Act, 1956. Sub-clause (5) of Section 3G makes it abundantly clear that if the amount determined by the competent authority under sub-section (1) or sub-section (2) of Section 3G was not acceptable to either of the parties, the amount will have to be determined by the arbitrator who may be appointed by the Central Government on the strength of an application by either of the parties. Section 3H provided that the amount determined towards compensation under Section 3G would have to be deposited by the Central Government in accordance with the rules. It was only after such amount was deposited by the competent authority that, the possession of the land could be taken, and that sub-clause (4) of Section 3H talked about apportionment of the amount.

71. The Hon'ble Apex Court in ***Vinod Kumar*** (supra) pointed out the fine distinction between determining the amount to be paid towards compensation and the apportionment of the amount and observed that the legislature had thought fit to confer powers upon the Principal Civil Court of original jurisdiction to determine the dispute arising as to the apportionment of the amount and also explained the reason as to why such jurisdiction was conferred on the Principal Civil Court of original jurisdiction. It was observed that in apportioning the compensation, the Court had to give to each claimant

the value of the interest which he had lost by compulsory acquisition. So stated, the proposition might appear simple, but in its practical application numerous complicated problems arose in apportioning the compensation awarded. The difficulty experienced was due to the nature of a variety of interests, rights and claims to land which had to be valued in terms of money. The compensation awarded for compulsory acquisition was the value of all the interests which were extinguished and that compensation had to be distributed equitably amongst persons having interest therein and the Court must proceed to apportion the compensation so that the aggregate value of all interests was equal to the amount of compensation awarded. But in the valuation of competing interests, which from its very nature was dependent upon indefinite factors and uncertain data, considerable difficulty was encountered. Indisputably, in apportioning compensation the Court could not proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which were lost. The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto.

72. In ***Vinod Kumar*** (supra) the Hon'ble Apex Court observed that the only general principle one could state is that apportionment under sub-clause (4) of Section 3H of the Act, 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land in



accordance with the nature and quantum of the respective interests. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

73. The aforesaid judgment in ***Vinod Kumar*** (supra), though on Section 3H (4) of the National Highways Act, is not on the point in issue regarding the maintainability of the appeal under Section 96 CPC from an Order passed on reference under Section 3G (4), by the Principal Civil Court of original jurisdiction.

74. In ***Sojar v. Krishnath***<sup>14</sup> another case on which reliance has been placed by the learned counsel for the appellant, the Bombay High Court found that the determination of dispute as to the apportionment of the amount or any part thereof was decided by the Competent Authority under the Act itself. It was observed that such Competent Authority had exceeded its jurisdiction for the reason that in case of such dispute, in view of Section 3H (4), the matter should have been referred by the Competent Authority to the Principal Civil Court of original jurisdiction. This judgment, in our view, is also not on the point of maintainability of appeal under Section 96 CPC.

75. In ***Bhoop Singh*** (supra), cited by the learned counsel for the respondents, raising the preliminary objection, the Punjab & Haryana High Court held as under in paras-17 to 20 as under:

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<sup>14</sup> 2025 SCC OnLine Bom 307

“17. There is no quarrel on the proposition of law that the appeal is a creation of statute. Unless right to appeal is specifically provided and the forum thereof, no one has right to file appeal. Reference can be made to judgment of Hon'ble the Supreme Court in *Khanna Improvement Trust v. Land Acquisition Tribunal*, (1995) 2 SCC 557 and *Municipal Committee, Hoshiarpur v. Punjab State Electricity Board*, (2010) 13 SCC 216.

18. A perusal of the provisions of the Act does not in any way provide that an award passed by the reference court under Section 3-H(4) of the Act is subject to appeal before any court. In the absence thereof, it cannot be opined that such an award is appealable before any court much less, before this Court.

19. The claim of the appellants that the appeal is maintainable under Section 96 CPC is totally mis-conceived for the reason that the same provides for an appeal from a decree passed by the court. In the case in hand, it has nowhere been provided that the award passed by the reference court under Section 3-H(4) of the Act is a decree, as has been provided for under Section 54 of the Land Acquisition Act, 1894, wherein even the provisions of CPC have been made applicable.

20. For the reasons mentioned above, in my opinion, appeal against the order passed by the learned Reference Court in a reference under Section 3-H(4) of the Act is not maintainable before this Court.”

76. A reading of para-2 of **Bhoop Singh** (supra) shows that the High Court therein proceeded that the appeal was filed against the 'award' passed by the learned Additional District Judge, Riwari in a reference under Section 3H (4) of the National Highways Act, 1956. So, what appears to us is that the Court proceeded that on a reference made to the learned Additional District Judge, the judgment passed was an 'award', and on the reasons that Section 96 CPC provides for appeal only against a decree and as the appeal was against the award the appeal was not maintainable under Section 96 CPC. The appeal was

said to be the creation of a statute and as under the National Highways Act the appeal was not provided against the judgment passed in reference under Section 3H (4), which was termed as 'award', the appeal was held not to be maintainable.

77. In ***Mahant Bagavathi Doss Bavaji v. M. Sarangaraja Iyengar***<sup>15</sup> the Madras High Court referred to the judgment in ***Ramachandra Rao v. Ramachandra Rao***<sup>16</sup> to point out the distinction between the 'award' with respect to the Land Acquisition Act and the 'decree'. In the said case, as referring to ***Ramachandra Rao*** (supra), it was observed that

“the award as constituted by Statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under Section 31, sub-section (2), the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award.”

78. Placing reliance on the said judgment in ***Ramachandra Rao*** (supra), the Madras High Court, in the said case, in which the appeal was filed, held that the same was not an award, but was a decree.

79. With respect for the detailed consideration made by us, we are not in agreement with the view taken in ***Bhoop Singh*** (supra) that an Order passed

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<sup>15</sup> AIR 1931 Mad 586

<sup>16</sup> ILR 40 Cal 21 (P.C)

on reference under Section 3H (4) of the National Highways Act is an 'award' and not 'decree'.

80. In ***Sri Gurudwara Committee Chakeri Aerodrum*** (supra), the facts were that the Competent Authority under National Highways Act made a reference under Section 3H (4) of the Act to the Civil Court for adjudication of a dispute in regard to the apportionment of compensation between two claimants. The Additional District Judge therein recorded that an agreement had been arrived at between the two claimants and an Order was passed directing the payment of compensation to Sri Tarsem Singh, Sachiv, Gurudwara Shree Guru Singh Sabha Harjender Nagar, Kanpur and Prabandhak, Harjender Nagar Inter College, Kanpur. The appellant therein filed writ proceedings before the learned single Judge challenging the two orders, the Order of the Competent Authority making the reference and the Order of the Additional District Judge after the reference deciding the issue on referring to the compromise. The learned single Judge directed that the writ petition be converted into a civil revision petition under Section 115 CPC on the ground that the writ petition would not be maintainable. The issue raised before the Hon'ble Apex Court was that against the Order of the Additional District Judge, a revision would lie, but challenging the validity of the Order or reference of the Competent Authority, the same could be questioned only under Article 226 of the Constitution of India. The contrary argument was that the writ petition was not maintainable to challenge the final Order of the Additional District Judge and the appellant could not be allowed to challenge the reference Order while

pursuing the remedy of revision under Section 115 CPC against the final Order of the District Judge. The issue before the Hon'ble Apex Court was whether the appellant had remedy of revision under Section 115 CPC to challenge the Order of the Competent Authority making a reference under Section 3H (4) of the National Highways Act. The Hon'ble Apex Court held that whether the Order of reference by the Competent Authority shows with or without jurisdiction or contrary to law could be decided only under Article 226 of the Constitution of India. The Order of reference lies at a foundation of the ultimate Order of the Principal Civil Court under Section 3H (4) of the Act. If the Order of reference itself was not valid, necessary consequences would have to follow, in accordance with law. Observing that the basic position in law i.e., difference between the jurisdiction under Section 115 CPC which was against the Order of the Additional District Judge, but not against the Order of the Competent Authority making reference under the Act which could be seen only under Article 226 of the Constitution of India, it not being a Court, the Order of the learned single Judge of the High Court, directing the conversion of the petitioner under Section 115 CPC was legally erroneous.

81. The aforesaid judgment in ***Sri Gurudwara Committee Chakeri Aerodrum*** (supra), in our view, is also not on the point, as involved herein. It is on the point, whether the writ petition under Article 226 of the Constitution of India would lie to challenge the Order of the Competent Authority by making reference and Order cannot be challenged under Section 115 CPC. The Order of reference was the foundation for passing the Order by the Additional District

Judge. So, if any challenge made under Article 226 of the Constitution of India against the reference Order, if the reference Order goes, the final Order, could also not be sustainable and therefore, the writ petition under Article 226 of the Constitution of India, which challenged the reference Order could not be directed to be converted into revision petition under Section 115 of CPC which is not a case, in the present case.

**IX. Right of Appeal statutory:**

82. There cannot be a dispute on the submission advanced by the learned counsel for the respondent that the Appeal is a statutory right. But, we are not in agreement with the submission, for the discussion made that because the National Highways Act does not provide for appeal, an adjudication on a reference under Section 3H (4) cannot be appealed under Section 96 CPC.

83. There is a reason for the legislation not for providing specifically under the National Highways Act for 'appeal' against the adjudication made by Civil Court on a reference under Section 3H (4). The reason is obvious. The reference is made on the point of apportionment of compensation amongst the litigating parties who have raised the dispute before the competent authority, by the competent authority to the Court of civil jurisdiction. The legislature thought it fit not to provide specifically under the National Highways Act for appeal against such adjudication because once the reference is made under Section 3H (4) of the National Highways Act, the matter goes out of the provisions of the National Highways Act. Under the National Highways Act, till the deposit of the compensation and its apportionment or distribution in cases

where there is no dispute, the matter remains under the Act. After the award is made under the Act and the compensation in terms thereof is deposited and there is no dispute with respect to the apportionment amount of compensation, or to the person to whom is payable, the award is final, and for those awards, if party is aggrieved, the remedy is provided under the Act. Once the amount has been deposited, and there is no dispute, the matter comes to an end so far as the acquisition and determination of compensation is concerned. But, if the dispute is between the parties with respect to entitlement or for apportionment amongst them, they have to go to Civil Court on a reference made, and on adjudication being made between the parties, falling within the expression 'decree', appealable under Section 96 CPC, there was no need for the legislature to provide specifically under the National Highways Act for filing of the appeal. Had it been the intention of the legislature that such determination should be final and not appealable, then the legislature might have provided under the National Highways Act, to the contrary. In that case, the determination in spite of being 'decree' would not have been appealable in view of the expression "save where otherwise expressly provided by any other law for the time being in force". But, it did not provide to the contrary so as to limit the right of appeal under Section 96 CPC i.e., not against the adjudication made on a reference under Section 3H (4) of the National Highways Act. Therefore, there is a statutory right to appeal under Section 96 CPC.

**X. Conclusions:**

84. Thus considered, we conclude that the adjudication by the Principal Civil Court of original jurisdiction on a reference made under Section 3H (4) of the National Highways Act is a 'decree' within the meaning of Section 2 (2) CPC. It is not an 'award' under the National Highways Act. So, in the absence of any prohibition the under Code of Civil Procedure as also under the National Highways Act, such adjudication would be appealable as decree under Section 96 CPC, irrespective of the fact that the National Highways Act does not provide for any appeal under the Act against the adjudication of the Civil Court on reference under Section 3H (4) of the National Highways Act.

**XI. Result:**

85. We hold that the appeal under Section 96 CPC is maintainable. The preliminary objection is overruled.

86. List the appeal for admission.

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

Date: 10.04.2025  
Dsr

Note:  
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