

Sub-Divisional Officer, Mirzapur

Vs

Raja Sri Niwas Prasad Singh

Civil Appeal No. 751 of 1963

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

09.12.1965

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal by certificate under Art. 133(1)(b) and (c) of the Constitution against the judgment of the High Court of Allahabad in Special Appeal No. 123 of 1960, dated November 21, 1961. By the judgment under appeal the Divisional Bench reversing the decision of a learned single Judge of that Court accepted a petition under Art. 226 of the Constitution filed by the present respondent in the following circumstances.

The respondent Raja Sri Niwas Prasad Singh owned extensive zamindari interests in tahsils Mirzapur and Chunar of Mirzapur District in Uttar Pradesh. The present dispute concerns the assessment of compensation to which the Raja became entitled under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951) from July 1, 1952. Under that Act, the proprietary interest of the Raja in the Zamindari properties situated in the two tahsils vested in the State of Uttar Pradesh. The Sub-Divisional Officers of Mirzapur and Chunar tahsils, who were functioning as Compensation Officers under the Act, prepared draft Compensation Assessment Rolls and they were notified on the official Gazette as required by cl. (a) of s. 46(1) of the Act. A copy of the notice was also served on the Raja along with a copy of the draft Compensation Assessment Rolls as required by cl. (b). The Raja filed objections to the draft Rolls, contending that the amount of compensation should have been higher than what was fixed. It is an admitted fact no notice of the objections filed by the Raja was given to the State of Uttar Pradesh; nor was any intimation of the date of hearing sent. The State Government had, however, issued a notification [No. 145 Z.A.C.-5/158(1953)] on July 29, 1953 instructing all District Officers that in objections cases, in which it was deemed necessary to arrange for the State Government to be represented before the Compensation Officers, the District Officers should specially authorise the Zamindari Abolition Naib Tahsildars to plead on behalf of the State Government. No special authorisation in terms of the notification was, however, issued on the present case, although the Naib Tahsildars without authorisation appeared as a matter of course. As a result of the objections, the Compensation awardable to the Raja for his Zamindari interest in Mirzapur Tahsil was enhanced by about Rs. 3,01,348-5-0. The compensation in respect of his interests in Chunar Tahsil was also substantially enhanced. The final Compensation Rolls were then signed and sealed on various dates, the last being January 31, 1955 in the Mirzapur case December 13, 1954 in the Chunar case. The Raja received the bonds in respect of the original compensation and also a part of the enhanced compensation. A sum of over rupees three lakhs remains still to be paid.

On August 22, 1955 the State Uttar Pradesh filed two applications before the Compensation Officers at Mirzapur and Chunar praying that the objection cases be re-opened and the State Government given a hearing. The main ground on which the State Government claimed to have the proceedings re-opened was that notices of the objections were not issued to the State Government as required by the Act and that the State Government, having no knowledge of the objections, could not appear and contest the case set up the Raja. The State Government claimed that the final Compensation Rolls were not binding upon it. The State Government averred that information about the revision of the Compensation Rolls was received by it for the first time on July 22, 1955 and the applications were moved immediately. The Raja opposed the applications and alleged that the State Government had knowledge of the proceedings and had actually participated on them before the Compensation Officers through its Naib Tahsildars. He urged that the Compensation Rolls had become final and could not be reopened. The Raja also stated that the State Government and its officers had in their possession certain documents from which it could be proved conclusively that the State Government had full knowledge of the objections filed by him. In support of his plea the Raja filed an application on November 11, 1955 before the Compensation Officers, Mirzapur, under O. 11 rr. 12 and 14 of the Code of Civil Procedure for discovery and production of the documents mentioned in the application. The State Government claimed privilege under ss. 123 and 124 of the Indian Evidence Act and the application was rejected the same day by the Compensation Officer. A similar application for discovery and production of documents made before the Compensation Officers, Chunar, on December 15, 1955 was rejected on January 5, 1956 when the State Government claimed privilege. On October 6, 1956 the District Judge, Allahabad, consolidated the two compensation cases pending in Mirzapur and Chunar Tahsils and directed that they should be heard by the Sub-Divisional Officer (Compensation Officer), Mirzapur.

When the cases went before the Sub-Divisional Officer (Compensation Officer), Mirzapur, two fresh applications were filed on August 22, 1957 for discovery, production and inspection of the documents already the subject of the previous applications and some more. The State Government again objected to the last application, claiming privilege and also pointing out that similar applications had already been rejected earlier. The State Government requested the Compensation Officer, Mirzapur (Mr. R. K. Misra) to decide the question whether a second application was maintainable after the first had been rejected. By an order, dated October 12, 1957, Mr. Misra held that the question could be reconsidered and directed the State Government to file objections in detail. Before, however, Mr. Misra could decide the matter finally he was transferred and was succeeded by Mr. Upadhaya as Compensation Officer in the Tahsil. Mr. Upadhaya differed from Mr. Misra and held that the proceedings could not be reopened. He, accordingly, rejected the two applications for discovery and inspection. His order was made on March 31, 1958.

The Raja, thereupon, filed on April 11, 1958, a petition under Art. 226 of the Constitution, impugning the order passed by Mr. Upadhaya and asking that it be quashed by a writ of certiorari. The Raja also asked for a writ of mandamus of direction to the Compensation Officer, to hear and determine his (Raja's) application under O. 11 rr. 12 and 14 of the Code of Civil Procedure. Subsequently, with the court's permission, two more grounds were added on May 5, 1958 and one such ground was the following :-

"Because the Assessment Rolls have become final and they cannot be opened at this stage".

Although the matter in dispute really was whether inspection and discovery had been wrongly disallowed, the High Court at the hearing permitted the Raja to raise the more Fundamental question

: whether the State of Uttar Pradesh was entitled to claim to reopen the proceedings by which compensation was revised. The main ground on which the State Government resisted the plea of the Raja was that it had no notice under the Act of the proceedings for revision. Mr. Justice Jagdish Sahai who heard the petition for writ dismissed it on February 23, 1960, but on appeal his judgment was reversed by the Divisional Bench on November 21, 1960. The Divisional Bench quashed the order, dated March 31, 1958, and issued a writ of prohibition restraining the Compensation Officer, Mirzapur from proceeding with the applications filed by the State Government for the restoration of the objection cases to file. The present appeal has filed against the last order.

It is hardly necessary to set down the reasons given by Mr. Justice Jagdish Sahai and the Divisional Bench in reaching opposite conclusions, or the arguments that were advanced before us in support of the rival cases. The matter is to be resolved on a construction of the sections of the Act and as we proceed to consider them we shall advert to the arguments where necessary.

Chapter III of the Act deals with the Assessment of Compensation. Under s. 27 every intermediary whose rights, title or interest in any estate are acquired under the provisions of the Act is entitled to receive and be paid compensation. The sections that follow lay down how compensation is to be assessed. The first step is to prepare draft Compensation Assessment Rolls in respect of each intermediary. After the draft Compensation Assessment Rolls are ready they are published. Section 46 lays down how they are to be published. It reads :

"46. Preliminary publication of the draft Compensation Assessment Roll.

(1) After the draft Compensation Assessment Roll in respect of any intermediary has been prepared, the Compensation Officer shall -

(a) publish a notice in the Gazette and in such other manner as may be prescribed to the effect that the Statement referred to in section 38 and the draft Compensation Assessment Roll mentioned in section 40 have been prepared and are open to inspection by the persons concerned;

(b) serve or cause to be served on the intermediary concerned a copy of the notice aforesaid along with a copy of the draft Compensation Assessment Roll.

(2) The notice under sub-section (1) shall call upon all persons interested, including a person who claims that the name of the intermediary is, in respect of any share or interest to which such person is entitled, entered in a representative capacity or in the capacity of the Karta of the joint Hindu family, to appear and file objections upon such statement or roll within a period of two months :

Provided that no objection on the ground that the intermediary is entitled to a greater or lesser share or part of the estate or is not entitled to any share or part thereof shall be entertained except when it is on any of the grounds mentioned in the notice or is in pursuance of any order under section 32 or 33."

A notice was in fact published in the Gazette as required by cl. (a) of sub-s. (1) and a special notice was served upon the intermediary as required by cl. (b). The notice in sub-s. (1) is addressed to "persons interested" which term is defined in s. 63 as including all persons whether or not recorded in the record-of-rights claiming to be entitled as intermediaries to the compensation or any part or share therein to be assessed and paid on account of the acquisition of the estates under the Act. The

definition does not include Government but it is not exhaustive. Persons interested are called upon to appear and file objections within 2 months of the publication. The question, therefore, is whether the State Government was bound to appear in answer to a notice published in the Gazette under s. 46 or a separate notice to the State Government was necessary when objections were raised to the amount of compensation. This can only be decided by referring to a few sections of the Act and some of the rules framed under it. The first section to consider is s. 343 which provides :

"343. State Government to be a party in the proceedings under chapters III to V."

(1) The State Government shall be and be deemed to be a party in every proceeding before the Compensation Officer or the Rehabilitation Grants Officer under chapters III to V and every notice to be served or intended to be served on the State Government may be served on the Collector or any authority nominated by the Collector.

(2) Notwithstanding anything contained in the said chapters or clause (d) of subsection (1) of Section 344, the period of limitation for filing of an appeal by or on behalf of the State Government shall be ninety days from the date of the order appealed against.

This section must be construed with ss. 47 to 52. Under s. 47 it is provided that if any objection is filed it shall be registered by the Compensation Officer who shall fix a date for hearing the same and give intimation to the intermediary concerned and to any person who may have appeared in reply to the notice under s. 46. It is contended on behalf of the respondent that no notice to the State Government was necessary because it was not a person interested and had not appeared in reply to the notice under s. 46. It is contended on behalf of the State Government that the State Government was entitled to a notice because the Act intends that it should be a party to every proceeding before the Compensation Officer. Both sides refer to ss. 48 to 52 in aid and construe them in their favour. Under s. 48 it is stated that in hearing and deciding objections the Compensation Officer shall have all the powers of a civil court and, subject to modifications as may be prescribed, must follow the procedure laid down in the Code of Civil Procedure for hearing and disposal of suits relating to immovable properties. The State Government contends that the proceedings before the Compensation Officer are thus equated to a suit and the State Government which has to pay the compensation is in the position of a defendant and must receive notice of the objection. On behalf of the respondent it is contended that the State Government is already a party by virtue of the deeming clause in s. 343 and no notice is therefore required unless the State appears in answer to the Gazette notification. One thing is clear : that a notice to the State Government was not sent in the manner required by s. 343 which says that every notice to be served or intended to be served on the State Government may be served on the Collector or any authority nominated by the Collector. No notice could be given except to the Collector and it was not enough to publish a general notice in the Gazette because notice to the State Government had to be in the manner laid down by the section and no other. If it was desired that the State Government should have notice of the objection, a notice under s. 343 had to issue. No notice was served upon the Collector as laid down in the section and no intimation of the date was sent to the State Government under s. 47 informing the State Government of the date fixed for hearing of the objections. The State Government contends that as under s. 49 the order under s. 48 is deemed to be a decree of a civil court and is appealable under ss. 50 and 51 to the District Court and to the High Court, if a notice had been sent to the State Government it could have availed itself of these sections and appealed against the decision of the Compensation Officer and refer to the special limitation laid down for appeals by State Government

in s. 343(2) quoted above. This, it is contended, indicates that the State Government is to be a party to the proceedings. The other side, on the other hand, contends that as a notice was already published in the Gazette under s. 46 the State Government was bound to appear on its own and the only remedy which it had was by way of an appeal since there is no provision in the Act by which the order of the Compensation Officer, which is deemed to be a decree, can be set aside. The respondent says that the provisions of O. 9 and s. 151 of the Code of Civil Procedure under which the decrees which are passed ex parte, are ordinarily set aside do not apply and contends that since the State Government did not appear and contest the objection to the amount of compensation and did not appeal under s. 50 to the District Court the final Compensation Assessment Roll, which was signed and sealed, became final under s. 52(1) and (2) of the Act and it cannot now be re-opened. This is the case accepted by the Divisional Bench.

We have first to construe s. 343 of the Act which seems to have led to the rival conclusions in the High Court. That section says that the State Government shall be deemed to be a party to every proceeding. Now it cannot be denied that on the objection being made, a proceeding started before the Compensation Officer. The State Government must be deemed to be a party to that proceeding and the only question is what the Act means by saying that "the State Government shall be a party" to every proceeding. The learned Single Judge found the section inartistic but, in our opinion, it clearly conveys two ideas which are quite distinct. By the words "the State Government shall be a party" is intended that the State Government must be joint as a party to every proceeding under the Act. The effect of the words "the State Government shall be deemed to be a party to every proceeding" is that it does not have to apply to be joined as a party even if not so joined. The State Government can always appear without being joined because it is always deemed to be a party. Even if the State Government was left out by the objector and no other party asked that the State Government be joined, the State Government could always intervene not by asking to be joined but as one already deemed to be a party. The section, therefore, works in two-ways. It entitles State Government to take part in any proceeding without being in the array of the parties. It also compels any one starting a proceeding to join the State Government as a party. The result of this section is that when a notice is issued under s. 46(1) the State Government may object to a draft Compensation Assessment Roll if it chooses, but it must be made a party to a proceeding started on an objection by any party. The definition of "persons interested" is not an exhaustive definition and the interest of the State Government is manifest because it is the party which is required to pay the compensation. By virtue of s. 343, therefore, State Government is always a person interested in every proceeding and it was, therefore, incumbent upon the Compensation Officer to send an intimation of the date of hearing to the State Government so that the State Government might make arrangements for opposing the objections if it chose. It is futile to say that because the State Government is deemed to be a party, it was not entitled to the special intimation which the law requires should be given to an intermediary as well as every person interested. There were thousands of such compensation cases and it would be impossible for the State Government to arrange to appear in every objection case without intimation and to watch the proceedings in hundreds of courts for this purpose. It is thus provided by s. 343 that if a notice has to be sent to the District Collector. No general notice can suffice. Till a notice is sent, the State Government will not be deemed to be served. It is, therefore, quite clear that the State Government ought to have been joined by the objection to the proceedings for enhancement of compensation. It is equally clear that even though not joined the State Government was entitled to a special notice, in common with the intermediaries and other persons interested, of the date of the hearing. Since no such intimation was sent the proceedings will not, prima facie, bind the State Government and that in fact is the claim made by the State Government by its applications for the reopening of the proceedings before the

Compensation Officers.

It is contended that under certain notifications all Sub-Divisional Officers were empowered to discharge the functions of a Collector under the Abolition Act and all Assistant Collectors were made ex officio Compensation Officers and the Compensation Officer having notice, the State Government must be deemed to have notice also. This is not correct. The Compensation Officer acts as a court and a court cannot represent a party. A separate notice was necessary.

It was contended that the State Government could have appealed against the decision of the Compensation Officer. An affidavit has been sworn on behalf of the State Government that it did not know the decision of the Compensation Officer till the 22nd July, 1959. The application for reopening the proceedings was filed on the 30th day and would be within time for setting aside and ex parte decree if the intimation did reach the State Government on July 22 for the first time. This matter must be tried and has not been tried. The respondent, however, contends that there is no provision for review; that the Compensation Rolls became final under s. 52; and that the State Government not having appealed, the Compensation Officer cannot reopen the proceedings. This, in our opinion, is not quite correct. The other side relies upon *Craig v. Kanssen* (L.R. [1943] K.B.D. 256.) and contends that failure to serve a notice rendered null and void the order against the State Government and the State Government was entitled to have it set aside and the Compensation Officer has inherent power to set it aside. The other side challenges this inherent power.

No doubt the Code of Civil Procedure is to be used as far as may be and even if O. 9 does not strictly apply the inherent power conferred by s. 151 of the Code of Civil Procedure must be available to the Compensation Officer. It is contended that no general power of review is granted by the Act and as the Civil Procedure Code provides for the manner in which ex parte decrees can be set aside, inherent powers to set aside ex parte decrees may not be invoked by the Compensation Officer and the proceedings before him for reopening the objection case must be without jurisdiction. Reference is also made to s. 61 under which a slip order can be made and it is contended that the Compensation Officer after signing and sealing the final Compensation Assessment Rolls cannot do more than correct slips or errors apparent on the record.

Here the question is not one of reopening the Compensation Roll or the objection case for purposes of making a correction or for review. The question here is that one of the necessary parties to the objection cases was neither joined nor noticed to appear. The most important party, besides the objector, claiming enhancement of the compensation, was the State which has to pay the enhanced compensation. That party had to be joined to the proceedings under s. 343 and a notice or intimation of the date of the hearing had to be sent as laid down in s. 343. Section 343 prescribes not only the manner of serving notices but lays down that the State Government must be joined. Every court and tribunal is entitled to reopen a proceeding which has proceeded ex parte, not because a party has failed to appear but because a notice has not been sent to a necessary party. A decision reached behind the back of a necessary party to whom notice must be sent is not binding upon such a party and the Court may in such a case reopen the proceeding to give the party a chance to state its case.

When the petition for writ was filed the proceedings before the Compensation Officer were at a very early stage. The State Government had applied for reopening of the objection cases and the Zamindari had asked for certain documents to prove that the State Government had notice of the proceedings and had, in fact, appeared through the Zamindari Abolition Naib Tahsildars to contest the objections. The State Government had claimed privilege and the claim of privilege was allowed by the Objection Officer. The Zamindari had thereupon filed the application to challenge the claim

of privilege and to get the order of the Compensation Officer quashed. As we have said earlier the matter was allowed to be enlarged so that the respondent was enabled to claim a writ of prohibition to stifle the case of the State Government for reopening of the objection case. The High Court not only quashed the order by which the documents asked to be produced were held to be privileged, but at the same time issued a writ of prohibition in the case. The question whether the Compensation Officer would or would not allow the objection cases to be reopened still remains to be decided and the High Court was in error in issuing a writ of prohibition when the Compensation Officer had clearly jurisdiction to determine whether to reopen the proceedings. The question of jurisdiction can only be decided after it has been considered by the Compensation Officer and he proceeds to reopen the proceedings. No such question appears to have been raised before the Compensation Officer and in fact it was not so raised even in the petition before the High Court. In such circumstances the writ of prohibition was not called for and ought not to have been issued. It is manifest that the State Government was not sent a notice of the hearing of the objection cases and it has a right to move the Objection Officer to reopen the proceedings. Whether the Compensation Officer would reopen the proceeding or not is a matter for the Objection Officer to decide in the first instance. It cannot be said at this stage that there is no jurisdiction in the Objection Officer to consider the petition of the State Government.

In the circumstances, we dissolve the writ of prohibition which has been issued by the High Court but maintain the order of the High Court quashing the order, dated March 31, 1958. This does not mean that the State Government is bound to produce all the documents. The Compensation Officer will be required to decide, in the light of the decisions of this Court reported in *The State of Punjab v. Sodhi Sukhdev Singh* ([1961] 2 S.C.R. 371.) and *Amar Chand Butail v. Union of India and Other* (A.I.R. 1964 S.C.R. 1658.), whether the claim of privilege raised by the State Government should be sustained or not. That must be done after appropriate affidavits by the heads of the Departments concerned are filed and the claim of privilege is properly examined.

In the result the writ of prohibition issued by the High Court is dissolved but the order quashing the order, dated March 31, 1958, is upheld. The claim for privilege which has not been properly raised shall be raised in accordance with law. The Compensation Officer, who undoubtedly possesses jurisdiction to reopen the case, shall decide whether to reopen it or not after passing an order on the claim of privilege in accordance with the rulings of this Court. The respondent shall be entitled to raise such pleas in opposition as may open to him in law. The appeal is thus allowed in part but in the circumstances the respondent shall pay the costs of the appellant.

Appeal allowed in part.

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