Achutananda Purohit and Others

Vs

The State of Orissa

Civil Appeals Nos. 312 to 314 of 1972

(Y.V. Chandrachud, V.R. Krishna Iyer, N.L. Untwalia JJ)

26.03.1976

JUDGMENT

KRISHNA IYER, J. -

1. Three civil appeals, stemming from three revision petitions to the High Court of Orissa under the Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952) (for short, the Act) have reached this Court, thanks to special leave granted to the appellant, who is common in all the cases. The High Court, after deciding various issues, remanded the cases to the Compensation Officer under the Act, after overruling most of the contentions pressed before it by the appellant.

2. Shri Achutananda Purohit, appellant, was the intermediary in respect of vast forests and other lands comprised in the estate of Jujumura in the district of Sambalpur. This estate vested in the State on April 1, 1960 by force of the Act and the crucial question agitated before us, consequentially, turns on the quantum of compensation awardable under Chapter V of the Act. The appellant has received around Rs. 3,00,000 but much more, according to him, is due and this controversy can be settled by examining his specific points.

3. Shri Purohit, appellant, is an advocate by profession and is 83 years old. He has argued in person and with passion. We have listened with patience to all his submissions, good, bad and indifferent. If we may anticipate ourselves, none of the nine submissions has appealed to us, save to the extent the High Court has upheld. Even so, a minimal narration of the facts and a brief consideration of each argument is necessary and we proceed to do so. While his arguments did not impress us, we were touched by his concluding words that he had been born and had grown in an adivasi village, in the only Brahmin family and, in his evening years of life, proposed to give a substantial part of the compensation the State would give him for adivasi welfare. Although he waxed sentimentally on this note, he did not convince us on his contentions. With these prefatory observations, we proceed to formulate the many points urged and give our findings and reasons, on after the other.

4. We are directly concerned with the issue of compensation which is dealt with, as earlier stated, in Chapter V of the Act. The Compensation Officer is charged with fixing the quantum in the prescribed manner. A compensation assessment roll containing the gross asset and net income of each estate, together with the compensation payable in respect of such estate, has to be prepared by him. Of course, when there is joint ownership, Section 24 stipulates that the compensation shall be determined for the estate as a whole and not separately for each of the shares therein. Section 26 has great relevance as it lays down the method of arriving at the gross asset and Section 27 has like significance as it focuses on the manner is which the net income from an estate shall be computed by deducting certain items from the gross asset of the estate. Section 28 states how the amount of

compensation is to be determined and the methodology of payment. There are a few other sections in Chapter VI which deal with payment of compensation. The Act also provides for appeal, second appeal and revision, the last being to the High Court and the earlier ones being to the Collector and a Board constituted under Section 22. The rule-making power is vested in the government under Section 47 and there is a routine 'removal of difficulties' clause contained in Section 50. These furnish in bare outline the provisions with which we are directly concerned.

5. Against the background of law just projected, we may set out Shri Purohit's points which, if we may say so, are substantially the same as have been argued by him in revision before the High Court with partial success. For convenience of reference, we may extract the statement by the High Court of the contentions urged before it (and repeated before us) by the appellant :

> (1) The provisions of Section 37(3) read with Section 26 (2)(b)(v) of the Act make it clear that the date of vesting is the last date by which the calculation of compensation should have been made. As admittedly compensation had not been calculated by the date of vesting, the Compensation Officer lost his statutory jurisdiction to do so. It is this Court which, by its order dated April 10, 1969 in Civil Revisions Nos. 201, 202 and 203 of 1968 conferred new jurisdiction on the Compensation Officer to deal freshly with the case and therefore notwithstanding anything contained in the Act, the compensation has to be calculated according to the directions given by the Court :
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> (2) The Court was fully aware of the statutory provision in Section 26(2)(b)(v) of the Act, but in spite of it, the direction was that the Divisional Forest Officer should make the appraisement. There was no direction that this report of the D.F.O. should be further subject to the approval of the Chief Conservator of Forests. The calculation made by the Chief Conservator of Forests therefore has no statutory force but could be just a piece of evidence. But as the Court directed that no further evidence on behalf of the State should be received Ext. A/1 is inadmissible in evidence;
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> (3) Assuming that in spite of the directions of the court the Compensation Officer is entitled to follow the procedure laid down in Section 26(2)(b)(v), the expression 'subject to the approval of the Chief Conservator of Forests' does not refer to the appraisement made by the D.F.O. but refers to his appointment;
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> (4) Assuming that Section 26(2)(b)(v) would have full force, what it contemplates is that the appraisement must be made by the D.F.O., and it is subject to the approval by the Chief Conservator of Forests. But what has happened here is that the Chief Conservator himself made the appraisement without referring to the appraisement made by the D.F.O. and as such the appraisement made by the Chief Conservator is invalid;
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> (5) The report of the Chief Conservator of Forests is also invalid because of the fact that the appraisement is made only with reference to the area of the disputed forests without taking into consideration the density of growth therein;
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> (6) Unlike in case of fisheries etc., where the actual income is to be included in the gross assets, in the case of forests, the assumed income and not the actual income is to be included. During the agricultural year immediately preceding the abolition, the

> petitioners had not actually derived any income from the forests and as such they were under no obligation to pay any income-tax on such income. Therefore, deduction of income-tax from the gross assets is illegal and unwarranted;
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> (7) The slab-system of calculation of compensation is the Act providing smaller multiples for estates yielding larger income is unconstitutional;
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> (8) Compensation money should be so calculated that the purchasing power of the amount of compensation to be paid on the date of actual payment will not be less than its purchasing power on the date of vesting; and
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> (9) Interest should be calculated at not less than 12% per annum from the date of vesting till payment.

The meat of the matter, the primary question agitated in the appeal, lopping off the fringe issues of lesser import, consists in the statutory methodology and functionaries prescribed by the Act for quantifying the compensation and the compliance therewith by the statutory machinery in the case of the appellant. But before examining this essential issue we may dispose of the minor points pressed, so that the deck may be cleared for dealing with what deserves to be dealt with.

6. Point No. 9 in the catalogue already given relates to the claim for 12% interest on the amount of compensation as against the statutory rate of 2 1/2%. The policy of the law of agrarian reform postulates the extinguishment of ancient privileges and cornering of land resources, and the socioeconomic yardstick is different from what applies to ordinary purchases of real estate and this is manifest in the special provisions contained in Article 31A and Article 31B of the Constitution. A similar principle applies to the award of interest which may sometimes be notional when feudal interests are puffed out. We cannot import the notion of prevailing bank rates in such situations. The dynamic rule of law, with a social mission, makes a meaningful distinction between rights steeped in the old system and compensation for deprivation of those interests, on the one hand, and the ordinary commercial transactions or regulation of rights untinged by social transformation urges, on the other. This gives rationality to the seeming disparity. Holmes once commented :

> It is revolting to have no better reason for a rule of law then that so it was laid down in the time of henry IV.
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> Here there is good reason to depart from the old rule of full compensation and it perhaps legitimates the reduced rate of recompense. Moreover, the high Court has rightly pointed out that the validity of Section 37(3) of the Act which fixes a small rate of interest on the compensation amount has been upheld by the Supreme Court in Gajapati Narayan's case (K. C. Gajapati Narayan Deo v. State of Orissa, 1954 SCR 1 : AIR 1953 SC 375).

7. Point No 8 has only to be stated to be rejected. The contention is that on the date of vesting, which was well over two decades ago, the purchasing power of the rupee was much higher than its present value. It is more or less a world phenomenon that the erosion in value of the unit of currency has been taking place, but his invisible devaluation owing to the inflationary spiral does not affect the quantum of monetary compensation prescribed by statute. For the purposes of the law, the rupee of long ago is the same as the rupee of today, although for the purposes of the marketplace and cost-of-living, the housewife's answer may be different. Law is sometimes blind.

8. The next point in the reverse order is equally unsubstantial and may be disposed of right away. The appellant challenges the slab system of compensation provided in the Act which awards smaller multiples for estates yielding larger incomes, on the score of violation of the fundamental rights under the Constitution. The short answer is that Article 31(3) read with Article 31(2) bars any challenge to the amount of compensation on acquisition by the State subject to compliance with the prescriptions in the said sub-articles, on the ground that the amount so fixed or determined is not adequate. Presidential assent has been accorded to this State Act and so the ban operates. Moreover, Article 31A repels the applicability of Articles 14, 19 and 31 to the acquisition by the State of any estate or of any rights therein etc. This provision directly demolishes the contention of the appellant.

9. Point No. 6 in the list of contentions earlier reproduced is also bereft of force and we may make short shrift of it. The argument is that for certain reasons the appellant could not derive any actual income from the forests taken over by the State from him and therefore there was no income-tax payable on any agricultural income from these forests. The contention is that therefore in arriving at the net income the deduction of income-tax is not permissible. Here again, the flaw in the submission consists in misreading Section 27 of the Act which expressly states that the net income from an estate shall be computed by deducting from the gross assets of such estate any sum

which was payable by the intermediary as income-tax in respect of any income ..... derived from such estate for the previous agricultural year.

No income, therefore no income-tax, and therefore no deduction, is the syllogism of Shri Purohit. He forgets that in the case of forests it is the assumed income and not the actual income that forms the basis of calculation of compensation. Indeed, if the actual income were to be the foundation for computation of compensation on the premise that no actual income has accrued, the compensation might be zero. On the other hand, statutory compassion is provided for on the formula of assumed income in the previous year. Similarly, an assumed income-tax also has to be worked out and deducted. If a notional income on the assumed basis can be used for fixing compensation, a notional income-tax can be calculated and deducted. The confusion that vitiates the argument is prompted by a circular letter of government regarding non-deductability of income-tax due to the State from the amount of compensation lying to the credit of estate-holders. We have examined the circular letter and are satisfied that it has no relevance to a situation like the present and it deals with a totally different matter. In short, Section 27 properly constructed, cannot lend itself to the meaning imputed to it by the appellant.

10. The serious question that survives for consideration is covered by the remaining points which more or less overlap. The statutory scheme of compensation for forest lands consists of a machinery for assessment of the net income which is multiplied on a sliding scale and the method of challenge to the determination by the aggrieved owner or State. Section 26(2)(b)(v) is relevant here and may be set out :

> (26). (2) 'gross asset' when used with reference to an estate means the aggregate of the rents, including all cesses, which were payable in respect of the estate for the previous agricultural year .....
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> (b) by the raiyats or any other persons cultivating the land other than the land settled with the intermediary or intermediaries under sub-section (1) of Section 7 and includes -

(v) gross income from forests calculated on the basis of the appraisement made of annual yield of the forests on the date of vacating by a Forest Officer subject to the approval of the Chief Conservator of Forests, such Forest Officer being not below the rank of a Divisional Forest Officer to be appointed in this behalf by the State Government.

11. The expression 'Forest Officer', used here, has been explained in Section 26. So the first step is for the Government to appoint Forest Officers from out D.F.O. in the Forest Department, for the purposes of the Act. Those officers ascertain the income from the forest concerned and the figure so fixed is subject to the approval of the C.C.F. (Chief Conservator of Forests), presumably the top expert in the department. The power to approve implies the power to disapprove or modify but not to report or arrive at an income de hors the Forest Officer's report altogether.

12. The section is clear that the gross income from forests must be calculated on the basis of appraisal of the annual yield on the date of vesting, by a Forest Officer and, secondly, by the Chief Conservator of Forests screening is and approving it. Indeed, preliminary to the appraisal operation, the intermediary receives a notice in Form 'D' (Rule 13) and he is expected to furnish a return of the relevant particulars and supporting information to enable correct appraisement. In the present case, the appellant did submit the 'D' return to the Compensation Officer and adduced some evidence to substantiate it. The Compensation Officer passed an order adverse to the appellant, whereupon he filed an appeal to the Collector which was rejected. A second appeal followed before the Board of Revenue which was dismissed. Later, revision petitions were filed before the High Court and G. K. Misra, J. set aside the order disallowing the inclusion of the income from forests for ascertainment of compensation and directed a remand to the Compensation Officer. The said order (the relevant portion of which we are concerned) runs thus :

He would immediately call upon the Divisional Forest Officer to make appraisement within three months from the receipt of the record. The appraisement can be scientifically done by looking to the age of trees as they stand now. It is open to the petitioners to give evidence that after the date of vesting many of the trees and forest produce have been removed. Besides, the evidence already on record would be taken into consideration. The Divisional Forest Officer who would make the appraisement will be examined as a witness for the Compensation Officer and would be subjected to cross-examination. No other evidence would be permissible as the State has not chosen to give any other evidence. Under Rule 13(1-c) of the Orissa Estates Abolition Rules, 1952 the compensation officer may rely upon such other materials as may otherwise be ascertained by him. But in such a case the materials must be brought to the notice of the petitioners who would be entitled to cross-examine the witnesses connected there with and may give rebutting evidence. The compensation case is to be disposed of by the compensation officer within six months from today (April 10, 1969) with intimation to this Court.

13. Strictly speaking, the statutory requirement is for initial appraisal of the annual income by the Forest Officer. The use of the expression 'Divisional Forest Officer' is erroneous although Forest Officers are appointed from among Divisional Forest Officers. Equally clearly, a slight error has crept into the Judge's order because he does not made any reference specifically to the statutory requirement of approval of the Chief Conservator of Forests of the appraisement made by the Forest Officer.

14. However, what followed is interesting though erroneous. The District Forest Officer (who, incidentally, happens to be a Forest Officer under the Act, having been appointed as required

thereunder) made his appraisal of the annual income and submitted to the Chief Conservator who altered the annual yield and reduced it substantially. But he pointed out that the Forest Officer had omitted to include the income from kendu leaves and added that sum to the income from forests. Even so, the total figure was less that what the Divisional Forest Officer had recommended. The Compensation Officer accepted the report of the Chief Conservator and made the statutory calculation on that date. Both the State and the appellant filed appeals to the Collector which were dismissed. A second appeal was filed by the appellant before the Board of Revenue without success. Then followed three revision petitions to the High Court which led to the order of remand now attacked before us in the present appeals.

15. From this narrative, what follows is that the Chief Conservator had substituted his appraisement which was accepted by the statutory tribunal. Indeed, there was a fundamental difference in the basis adopted by the Forest Officer and the Chief Conservator in the matter of assessing the income of the forests in question. We need not go into this detail except for the purpose of noticing that what the Chief Conservator did was not to approve wholly or in a modified form what the Forest Officer did but to make his own appraisal independently and without reference to the report of the statutory functionary, viz., the Forest Officer. This was wrong and contrary to Section 26, as was contended by the appellant and in a way accepted by the High Court.

16. We are in agreement with the course adopted by the High Court and the reasoning which has prevailed with it. The direction given by the learned Judge in the remand order is correct although it may require a little clarification. Having heard the appellant at some length, we see no flaw in the High Court's on this aspect of the matter. It is astonishing that anyone should urge, as the appellant did, that the date of vesting is the last date by which the calculation of compensation should have been made and since that had not been done, the compensation officer had become functus officio in awarding compensation. Before the date of vesting the State never can, nor does, fix the compensation through the Compensation Officer in any of the agrarian reform laws, and those compensation operations are post-statutory exercises. Therefore there is no substance in the functus officio argument. If the officer had no jurisdiction, the land would be gone because of the vesting provision and no compensation would be forthcoming for want of jurisdiction - A consequence the appellant never wants. Technicality can be frightened away by technicality. Nor is it right to contend, as the appellant did, that the Compensation Officer's jurisdiction was created by the order of remand by the High Court. No, it was created by the statute and canalised by the order of remand.

17. It follows that, after the present second remand, the reappraisal of the annual net income cannot be done solely by the Forest Officer without securing the approval of the Chief Conservator. Nor can the Compensation Officer bypass the Chief Conservator on the misunderstood strength of the High Court's first order of remand. The true legal drill is - and this holds good after the second remand order - that the Forest Officer will do the appraisement of the annual income, forward his report to the Chief Conservator of Forests who will take the said report into consideration and, if necessary, make modifications therein or approve it with such changes as he deems fit. Certainly, the Chief Conservator cannot be ignored by the Compensation officer nor can the Chief Conservator ignore the assessment made by the Forest Officer and go through an independent exercise. The integrated process has already been explained by us and will be followed in the proceedings to ensue on remand. We may make it clear that now that a Forest Officer has made an appraisement, the chief Conservator of Forests will apply his mind to it and approve it as a whole or with such modifications as he thinks necessary and forward it to the Compensation Officer. This will, among other things, save time. Thereafter, the appropriate statutory course will follow. Substantially, this is

what has been done by the learned Judge when allowing the revisions and remitting the case back to the Compensation Officer.

18. The takeover of the forests of the appellant was effected as early as 1960 and 16 years have passed without the intermediary being out of the litigative woods. The High Court has stated that a large part of the delay has been.

due to laches committed from time to time by the officers who have been charged with the duty to calculate the compensation. It is again due to mistakes committed by the authorities concerned that the matter is being remitted back to the Compensation Officer for disposal.

The force of these observations constrains us to direct that the proceedings before the Compensation Officer shall be completed within six months from today. In this context, it is perhaps not irrelevant to remember that the appellant, a freedom-fighter, is an 83-year-old man and, at this stage of his life, the State should show commiseration not merely in quickly disposing of the proceedings but also in not being cantankerous in awarding and disbursing the balance compensation. With these directions and observations we affirm the orders under appeal but, while dismissing the appeals, direct the parties to bear their costs in this Court.

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