

Harbans Kumari and Others

Vs

State of Uttar Pradesh

Civil Appeal Nos. 171, 171-A - 171-D of 1968

(A. P. Sen, Jaswant Singh, A.D. Koshal JJ)

06.10.1978

JUDGMENT

JASWANT SINGH, J. –

1. These five appeals by certificates under Article 133(1)(c) of the Constitution granted by the High Court of Judicature at Allahabad shall be disposed of by this judgment as they raise a common question relating to the interpretation of Section 39(1)(e) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) (hereinafter referred to as 'the Act').

2. As the facts giving rise to these appeals are identical, it shall suffice to narrate the facts of the case culminating in Appeal 171 of 1969. The predecessor-in-interest of the appellants, the late Jodha Mal, owned several private forests in the State of U.P. including the one consisting of three compartments comprising a total area of 484.57 acres in village Rajiwala Attick Farm, Mahal Sansar in District Dehradun. On the vesting of the said forest in State of U.P. by virtue of Section 4 of the Act, the question arose about the assessment and payment of compensation therefore to the heirs of the intermediary. On service of draft compensation roll prepared under Section 40 of the Act, each one of the appellants filed separate objections in regard thereto before the Compensation Officer, Dehradun, who disposed of the same by his order dated August 31, 1953 holding that the average annual income from the said forest which could be taken into consideration while computing its compensation was Rs. 4,551 as disclosed by the appellants' accounts for a period of 22 years preceding the date of vesting in terms of clause (i) of Section 39(1)(e) of the Act and Rs. 450 was its annual yield on the date of vesting as per terms of clause (ii) of Section 39(1)(e) of the Act. Dividing the sum total of these two figures by 2, the Compensation Officer held that Rs. 5001 was the annual income from the aforesaid forest to the intermediaries. Aggrieved by the computation of compensation, the respondent preferred an appeal to the High Court of Judicature at Allahabad under Section 50 of the Act. The appellant also filed a cross appeal claiming that the average annual income as assessed by the Compensation Officer was too low. Being of the view that while computing the average annual income from the forest, both the results arrived at by working both the clauses of Section 39(1)(e) of the Act had to be looked into and considered and it had to be objectively decided as to what the average annual income from the forest would be. The High Court held that Rs. 2,000 and not Rs. 450 was the income under clause (ii) of Section 39(1)(e) of the Act. On the aforesaid basis, the High Court came to the conclusion that Rs. 3000 and not Rs. 5001 was the average annual income on the basis of which gross assets had to be calculated in computation of compensation in respect of the aforesaid forest. The High Court by its judgment and decree dated December 10, 1963, disposed of the appeal and the cross appeal in the manner indicated above. Aggrieved by the judgment and decree of the High Court, the appellants have come up in appeal to this Court. The respondent has also filed objections with regard to the item of Rs. 2000.

3. Mr. Lal Narayan Sinha appearing on behalf of the appellants has raised a very short point. Assailing the method adopted by the High Court in computing the compensation, he has urged that the High Court has missed the real purport and meaning of the provisions relating to the computation of compensation and that the relevant portion of Section 39 of the Act did not authorise the High Court to calculate the compensation by taking a mean of the aforesaid two figures. He has further urged that having worked out the average annual income according to the method indicated in clause (i) of Section 39(1)(e) of the Act, the High Court was not required to work out the annual yield of the forest on the date of vesting. We regret we cannot accede to this contention. Section 39(1)(e) of the Act provides as follows :

39. Gross assets of a mahal. - (1) Gross assets as respects a mahal shall be the aggregate gross income of the land or estate comprised in the mahal and such income shall comprise -

(e) average annual income from forests, which shall be computed -

(i) on the basis of the income for a period of twenty to forty agricultural years immediately preceding the date of vesting as the Compensation Officer may consider reasonable; and

(ii) on the appraisalment of the annual yield of the forest on the date of vesting.

4. It will be noticed that the opening words of the above quoted section which is couched in very emphatic terms govern not only clause (i) but also clause (ii) of Section 39(1)(e) of the Act. Consequently neither of the two factors mentioned in Section 39(1)(e) of the Act can be ignored while computing the average annual income. Now so far as the connotation of the word 'average' is concerned, it does not admit of any doubt. According to Shorter Oxford English Dictionary, the word 'average' means 'arithmetical mean : to estimate by dividing the aggregate of a series by the number of its units'. The same is the connotation of the word 'average' according to the Random House Dictionary of the English Language where the total receipt has been stated to mean the total receipt from sales divided by the number of the units sold.

5. On a true construction of Section 39(1)(e) of the Act, it appears to us that the Legislature cast an obligation on the Compensation Officer to work out the compensation by computing the average annual income giving due weight to both the factors mentioned in the aforesaid in the aforesaid clauses (i) and (ii). Accordingly we are of the view that the High Court was correct in computing the average income by adding up the two figures, i.e. of Rs. 4551 and Rs. 2000 and arriving at a mean on that basis. The position is also not *res integra* as in *Smt. Durgi Devi v. State of U. P.* ((1978) 3 SCC 101) this Court held that the average annual income has to be arrived at by taking into consideration not only the income referred to in clause (i) of Section 39(1)(e) but also the estimated annual yield of the forest on the date of vesting. The following observations made therein are apposite : (p. 110, para 18)

A plain reading of clause (e) of Section 39(1)(e) shows that its sub-clauses (i) and (ii) do not provide for two alternative methods of calculating the average annual income of the forest. The conjunction "and" at the end of sub-clause (i) cannot be read as "or". It conjoins the two sub-clauses, and in effect, read in the context of "shall" in the opening part of clause (e), mandates the compensation officer to take both the factors into consideration in assessing the average annual income from the forest. The reason why the Legislature has made compliance with the requirement

of this sub-clause (ii), also, obligatory, appears to be to ensure that the compensation assessed has a reasonable nexus and proportion to the actual and potential value of the forest as on the date of vesting. If a forest has been repeatedly, wholly and indiscriminately exploited within forty years or less immediately before the vesting, its actual and potential value as a forest on the date of the vesting might be far less than the one calculated on the basis of its average annual income of the preceding 20 to 40 years as the case may be. In such a case, average annual income calculated merely on the basis of the income for a period of 20 to 40 years preceding the vesting, may cause fortuitous inflation in the assessment of compensation. Conversely, if a forest has been very little exploited in the preceding forty years and is well-preserved and well-developed on the date of vesting then calculation of its average annual income on the basis of sub-clause (i) alone, without taking into account its potential yield on the date of the vesting, will make the compensation assessed wholly illusory, having no relation whatever to the value of the forest as at the date of vesting. Entry of the appraised annual yield of the forest on the date of vesting, into computation under clause (e), operates as a counterpoise against fortuitous inflation or deflation in the assessment.

6. Again in *Ganga Devi v. State of U. P.* ((1972) 3 SCC 126) it was pointed out by this Court that in computing the average annual income under clause (e) of Section 39(1), the compensation officer has to refer to both these sub-clauses (i) and (ii). He cannot adopt either of these sub-clauses. It was also pointed out that under sub-clause (ii) the annual yield on the date of vesting is to be appraised by taking into consideration, inter alia, the number and age of the trees, the area under forest and the produce.

7. For the foregoing reasons, we find no merit in these appeals which are dismissed with costs.

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