
(1980) 09 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6348 of 1979

Mahabir Sahai

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

Date of Decision : 29-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 14(8), 17, 17(1), 17(2), 41

Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 21

Citation : (1980) AWC 693 : (1981) RD 28

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : Janardan Sahai, for the Appellant;

Final Decision : Allowed

Judgement

R.R. Rastogi, J.—This is tenure-holder's petition under Article 226 of the Constitution and the dispute is about the compensation payable to the Petitioner for trees standing on the land which has been declared to be surplus. There are a large number of trees, most of which are fruit bearing trees, standing on such land. In the draft compensation roll no compensation whatsoever was assessed for these as payable to the Petitioner. He filed objection to that draft compensation roll which was dismissed by the Prescribed Authority. On appeal the matter was remanded with a direction to the Prescribed Authority to appoint a Commissioner to report about the number of trees, their ages etc. After remand the Prescribed Authority did appoint such a Commissioner who gave his report. The Prescribed Authority, however, again took the view that the tenure-holder was not entitled to compensation for the trees because he had failed to prove the annual income from the same.

2. Being aggrieved, the Petitioner filed an appeal which has been dismissed by the II Additional District Judge, Shahjahanpur on 10-5-1979. The learned Addl.

District Judge as well has taken the same view that since the Petitioner has failed to prove the annual average fair value of the trees in dispute, he was not entitled to any compensation in respect of the same. The Petitioner has sought for quashing these orders.

3. After hearing counsel for parties I find that the approach of both the Prescribed Authority and the Additional District Judge on the matter in dispute was wholly erroneous in law. Chapter III of the U. P. Imposition of Ceiling on Land Holdings Act (hereafter "the Act") provides for determination and payment of amount of compensation. This chapter opens with Section 17 which lays down the manner of calculation of amount. Sub-section (1) of this section is relevant for the present purposes and reads:-

17 (1) Subject to the provisions of Sub-section (2), every tenure-holder, whose surplus land has vested in the State under the provisions of this Act, shall be entitled to receive and be paid amount as laid down in the Schedule and as determined in the manner provided here-in-after."

Part IV of the Schedule to the Act which has been provided u/s 17 of the Act, in respect of trees provides as follows:-

(C) trees-

- (1) Fruit bearing trees-Eight times of the annual fair average value of fruit crops.
- (2) For young fruit trees which have not yet fruits-Cost of the plant and expenditure on labour on planting.
- (3) Trees whose value lies mostly in the timber thereto-Eight times the annual fair average value of the such trees.

Explanation:-For the purposes of item (C) the expression average value in relation to a tree, means the arithmetic mean of 20 years profit accruing from such tree.

4. Chapter III of the U. P. Imposition of Ceiling on Land Holdings Rules framed under the Act provides for determination and payment of compensation. Rule 21 says that as soon as possession of the surplus land has been taken by the Collector under Sub-section (8) of Section 14, he shall cause the following statements to be prepared in respect of tenure-holder concerned and send to the Prescribed Authority having jurisdiction to assess and pay the amount for the surplus land-

- (i) Statement in CLH Form 8 showing particulars of surplus land
- (ii) Statement in CLH Form 9 showing particulars of buildings and machinery wells, tube well, pucca irrigational channels and trees existing on the surplus land.
- (iii) Statement in CLH. Form 10 in respect of arrears of land revenue OP other dues recoverable u/s 41 of the Act by adjusting from amount

5. It would be seen therefore that every tenure-holder whose surplus land has vested in the State is entitled to receive and be paid amount as laid down in the Schedule and as determined in the manner provided hereafter. The mode of calculation of the amount has been mentioned in the Schedule and the manner for determining the same is contained in Chapter III of the Rules. Rule 21 clearly lays down that as soon as possession of the surplus land has been taken by the Collector, he shall cause statements in CLH Forms 8 9 and 10 prepared in respect of trees. It is CLH Form 9 which is relevant. A look at that will go to show that the amount payable for the trees is to be determined in the manner provided in the Schedule and is to be mentioned therein in the Schedule the trees have been divided into three categories; fruit bearing trees, young fruit trees which have yet not borne fruits and timber trees. A certain mode has been provided for calculating the amount of compensation payable for each of the three categories of the trees.

6 There is no provision in the Act or the Rules placing an obligation on a tenure-holder to maintain any regular account in regard to the income" annually received by him in respect of the trees therefore merely because the tenure holder did not furnish any such evidence before the Prescribed Authority! He could not be deprived of the compensation to which he was legally entitled the approach of the Prescribed Authority and the Additional District Judge has been absolutely erroneous in that behalf. It was incumbent upon the Prescribed Authority to determine the amount payable to the tenure-holder In respect of the trees and only then the draft assessment roll could be prepared "and the tenure holder called upon to file objections thereto. On this view of the matter the case will have to be referred back to the Prescribed Authority to determine the amount payable to the tenure-holder for the trees standing on the surplus land

7. The writ petition is hence allowed and the impugned orders are quashed The Prescribed Authority is directed to determine the amount payable" for the trees standing on the surplus land of the Petitioner in accordance with law The Petitioner is entitled to costs.