
(1960) 11 AHC CK 0001

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 3557 of 1957

Mahant Bhambool Nath Ji

APPELLANT

Vs

Compensation Officer of Bal Rampur and another

RESPONDENT

Date of Decision : 16-11-1960

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 40

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 40

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 40

Citation : (1961) 31 AWR 403

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : Gopi Nath Kunzru and Banarsi Das, for the Appellant;

Judgement

V.D. Bhargava, J.—This is a petition u/Arts. 226 and 227 of the Constitution challenging an order passed by the Compensation Officer of Balrampur. There is an Asthan of Devi Patan Temple, which is a religious and charitable institution and is managed through a Sarbarakar. At the time when the present writ petition was filed Mahant Bhambool Nath Ji was the Sarbarakar and this petition has been filed by him on behalf of the Asthan. There was a Mela Devi Patan which was being held in the month of April each year in Patan on various plots belonging to the temple. These plots inter alia were Nos. 1044/1, 1044/2, 1049, 236,237, 1045, 1051, 1054, 238 and 1048 and it yielded considerable income. Out of these ten plots plot No. 238 was banjar and plot No. 1048 was being used as a pathway. After the coming into operation of the UP ZA and LR Act these two plots being banjar and pathway vested in the State Government, while the remaining plots remained with the Petitioner. The Petitioner has given various incomes that he received from the year 1350 Fasli to 1359 Fasli and the average income per year was roughly about Rs. 13,073-7-7. The Patwari of the village had not entered the incomes of the years previous to 1359 and it was only entered in 1359 Fasli as Rs. 13,000.

2. Somewhere in the year 1953 draft compensation rolls were prepared by the Compensation Officer, Balrampur, and u/s 40 a sum of Rs. 1300 was shown as the average income of the plots vested in the State. The final assessment was also made giving Rs. 1300, as compensation. The case of the Petitioner is that he had absolutely no intimation or any notice of these proceedings. He has further said that even his predecessors had also no notice of any of these proceedings. On 10-1-56, the Petitioner was paid Rs. 4961-4-0 as compensation for three years, i.e. 1359 to 1361 Fasli regarding the two vested plots. Subsequently, in September 1956, the Land Reforms Commissioner UP directed the opposite party No. 1 for having recourse to S. 61(2) of the UP ZA & LR Act & to make reduction in the compensation assessment roll by reducing the annual Sayar income of the Mela from Rs. 1300 to Rs. 325 and a notice was sent on 10-10-56, to the Petitioner requiring him to appear on 29th of October for the purpose of explaining to the opposite party what portion of the income of 1359F has been vested in the Gaon Samaj.

3. A reply was filed saying that the two plots had vested in the Gaon Samaj and that the income of the Mela was not Rs. 1300 but would be something about Rs. 13000 annually and, therefore, the amount instead of being reduced should be increased. The Compensation Officer came to the conclusion that so far as the reduction is concerned, it would be only an arithmetical error and though the Petitioner may have been entitled to a higher compensation, as that was not an arithmetical or clerical error he is not entitled to correct it. Therefore, this petition has been filed challenging the compensation roll which was fixed without any notice to him and, therefore, was bad in law.

4. A preliminary objection has been taken by the State that this writ petition is a belated one. The assessment roll was completed somewhere on 30-5-54, and this petition was filed as late as 23 12 57, i.e. more than three years after that.

5. The earliest time when the Petitioner could be said to have known of the assessment was 10-1-56. He had no knowledge of any proceedings before that. It is not the case of the Respondents that notices had been sent of these proceedings to the Petitioner or that he was informed of the final result. So far as para 11 of the affidavit is concerned, which categorically stated that no intimation or any notice was ever served upon the Petitioner or his predecessor at any time regarding any proceedings for determination of the compensation rolls, the Respondents have not been able to deny this paragraph. They have further said that ordinarily when a final compensation roll is prepared a copy of it is served on the intermediary and a receipt is taken But so far as the present Petitioner is concerned, from the record the Respondent have not been able to trace any receipt evidencing that the copy of the final compensation roll was ever received by the Mahant of the temple. Thus it is quite clear from the affidavits filed that so far as the intimation of the proceeding is concerned, till the final roll was prepared the Petitioner was not in the knowledge of it.

6. When for three years Rs. 4961/ - was paid as compensation for the two plots

only, the Petitioner may have under the impression that it was a part of the compensation payable to him. That might have been liable to increase if he had been given a proper notice. He may have taken that now it is no use reopening the proceedings and, therefore, he may have been satisfied with the draft compensation. He may not have thought fi(sic) to go in appeal to the higher authorities as provided under the law, nor he may have considered it fit to come to this Court for challenging the amount which had been awarded. But when in September 1956 a notice was given for still reducing it on the ground that Rs. 1300/- compensation was for whole area and as only two plots were taken and actually the amount was reduced by the order of 3-9-57, then he had a grievance that originally he was made to believe that this amount was compensation for two plots and now it is being reduced to Rs. 325/. If by certain action of the Compensation Officer he was led to believe and to act upon that belief that that was the compensation of two plots and, therefore, he was deprived of filing an appeal or coming to this Court the Compensation Officer at this stage cannot take the objection on the ground of the delay in filing the writ petition. Therefore, under the peculiar circumstances of the case though the writ petition has been filed about two years after the first knowledge, but as that knowledge was different from what it was later on, I do not think I would be justified in rejecting this petition on the preliminary ground.

7. So far as the determination of compensation is concerned, S. 40 of the UP ZA & LR Act provides that the Compensation Officer shall prepare a draft compensation assessment roll. He will show therein the gross assets and net assets, the arrears of the land revenue etc., the amount of loans etc, and other particulars which may be required.

8. After the draft compensation and assessment roll in respect of any intermediary has been prepared, the Compensation Officer shall u/s 47 publish a notice in the gazette and in such other manner as may be prescribed to the effect that the statement referred to in S. 38 and the draft compensation assessment roll mentioned in S. 40 have been prepared and are open to inspection by the persons concerned. He has also to 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. This provision is a mandatory provision, which the Compensation Officer has got to follow and in this case there is not the least suggestion on behalf of the Respondents that this provision was observed. S. 46 also provides for objections being filed, S. 47 prescribes that if any objection is filed within the time it would be registered by the Compensation Officer who shall fix a date for the hearing of the same and shall give intimation thereof to the intermediary therein. This again was not done as no objection could be filed on account of the lack of the knowledge of the proceedings and, therefore, no intimation of the date was given.

9. S. 48 prescribes that there would be a hearing. In hearing the objections filed u/s 46 for this purpose the Compensation Officer is to be deemed to be a civil

court and the procedure laid down in the CPC relating to immoveable property have to be complied with.

10. Thus, it is apparent from Ss. 40 to 48 that it is a judicial proceeding and the very concept of a judicial proceeding is that it shall not take place without notice. Even if it was not a judicial proceeding in its strict sense but was a quasi judicial proceeding even then an opportunity should have been given. The Petitioner should have been served with a notice thereof. The Compensation Officer without observing any of these mandatory provisions of law prepared the compensation assessment rolls u/s 48, which according to S. 49 becomes decree of a civil court. S. 50 gives a right of appeal to the person aggrieved which he can file either to the district court or to the High Court depending on the valuation of the compensation. The Petitioner again has been deprived of this right of filing an appeal because he did not know of the compensation roll proceedings at all. Therefore the proceedings before the Compensation Officer determining the compensation were wholly vitiated on account of non-compliance of the mandatory provisions of the law and so the Petitioner would not be bound by any of those proceedings.

11. The subsequent proceedings which depended on the original proceedings and which were not challenged by the Petitioner possibly under misapprehension that the amount of Rs. 1650 which would be one third of 1950/- was probably for three years for two plots only. This would be the real cause of complaint to the Petitioner when that amount was reduced to Rs. 325. Under the circumstances. I think the order of the Compensation Officer determining the compensation u/s 52 has to be set aside. After setting aside of the compensation order on the basis of which the order dated 16-7-57, had been passed cannot stand and is hereby quashed. The proceeding will be relegated to the stage of S. 46. The Compensation Officer will observe the procedure as laid down in the UP ZA and LR Act and make a fresh compensation assessment roll after following those provisions. The Petitioner is entitled to his cost