courtkutchehry.com
Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 11/09/2026

(1957) 05 AHC CK 0025

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No''s. 1423 and 1424 to 430 of 1956

Masroor Ali Khan APPELLANT

Vs

The Compensation Officer and The State of U.P. RESPONDENT

Date of Decision : 07-05-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 27, 34, 38, 39, 39(1)

Citation : (1957) 27 AWR 605

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : P.M. Verma, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—These are seven applications under Article 226 of the Constitution for a writ of certiorari quashing the order finalising the compensation assessment rolls u/s 52(2) of the UPZA and LR Act (hereinafter referred to as the Act) and further to quash orders passed by the Compensation Officer, Puranpur, on the applications made by the Petitioners u/s 61 of the Act, and further for issue of a writ of mandamus directing the opposite party No. 1, the Compensation Officer, Puranpur, to amend the draft assessment compensation rolls of the Petitioners so as to include the forest income and republish notices u/s 46. of the Act.

2. All these petitions can be disposed of by one judgment as common questions have been raised in these petitions.

3. The Petitioners were the owners of certain zamindari properties till the 1st of July 1952 when the Zamindari was acquired by the State of Uttar Pradesh under a notification of the date published u/s 4 of the Act. A waqf Alal-Aulad was created by one Muhammad Badrul Hasan Khan on whose death his son Sri Shamshul Hasan became mutwalli as well as the lambardar The Petitioners are all beneficiaries under the waqf except Shamshul Hasan Khan Petitioner in Writ

No. 1430 of 1956 who is the mutwalli of the waqf. Large areas in the estate Acquired under the Act were covered by forest which is the main source of income. In the statement of gross assets prepared by the Compensation Officer in accordance with the provisions of Section 38 of the Act the column in the form provided for "forest income" was left blank. After the statement of gross assets had been prepared draft compensation assessment rolls, as required by Section 40 read with Section 42 of the Act, were prepared on the basis of the said statement. Obviously as the forest income was not shown in the statement prepared u/s 38 the draft compensation assessment rolls for the Petitioners omitted to calculate compensation having due regard to the forest income. The notices along with a copy of the said draft compensation assessment rolls were served on the Petitioners as required by Section 46(1)(b). According to the Petitioners, the notices were not properly served on the Petitioners other than Shamshul Hasan Khan. Thereafter the draft compensation assessment rolls were made final on various dates in respect of different villages. Shamshul Hasan Khan mutwalli and lambardar, however, filed objections to the draft compensation assessment rolls and statements of gross assets in respect of all the mahals u/s 46 of the Act. The opposite party No. 1 on 9-10-1954 allowed those objections and in granting compensation the income derived from forest was taken into consideration. In January 1955 the Petitioners sent by post applications to the Compensation Officer drawing his attention to the mistakes in the statements of gross assets prepared u/s 38 and also inviting his attention to the order passed by him on the objections filed by Shamshul Hasan Khan and praying that similar corrections be made in the draft compensation assessment rolls prepared in respect of the Petitioner''s estates. On 6-7-1955 the applications were rejected on the ground that the applications were time barred and did not come u/s 61 of the Act. On 17-9-1955 the Petitioners filed fresh applications. u/s 61 of the Act for the same relief. On 8-12-1955 these applications were heard and 12-1-1956 was fixed for the delivery of judgment. On that date no judgment was delivered to the knowledge of the Petitioners. The Petitioners came to know in April 1956 that their applications u/s 61 had been dismissed by the Compensation Officer by his order dated 30-12-1955. Thereafter the present petitions were filed in July 1956 for the reliefs which I have already mentioned.

4. The orders passed by the Compensation Officer rejecting the petitions u/s 61 have been challenged on three main grounds by the Petitioners. Firstly, it is contended that the statements of gross assets were null and void as no notices were issued to the Petitioners in accordance with Rule 34 of the Rules framed under the Act. Secondly, it is contended that the draft compensation assessment rolls prepared on the basis of incorrect statements of gross assets were themselves illegal and any order passed finalising those draft compensation assessment rolls were illegal. Lastly, it was contended that the orders passed by the Compensation Officer on the applications filed u/s 61 were manifestly erroneous and should be quashed by this Court. In this connection it is pointed out that the Compensation Officer himself had corrected the statements of gross

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…

assets on the objections filed by Shamshul Hasan Khan as he had found that the forest income was not given in the statements of gross assets prepared u/s 38. The present petition of Shamshul Hasan Khan relates to only two villages in respect of which his objections were rejected by the Compensation Officer. The final orders passed by Compensation Officer which are impugned by these petitions are the orders of 30-12-1955 rejecting the Petitioners'' applications for the amendment of the draft compensation assessment rolls u/s - 61. It is therefore that order which has got to be examined and seen whether that order is either without jurisdiction or erroneous on the face of it. All the three points raised can be disposed of together.

5. It is necessary to refer to certain provisions of the Act. Section 27 of the Act provides that;

Every intermediary whose rights, title or interest in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided.

6. Section 65 of the Act lays down that:

There shall be paid to every intermediary as compensation in respect of the acquisition of his rights, title and interest in every estate the amount declared in that behalf u/s 60.

The procedure for the ascertainment of the compensation payable to each intermediary is provided in Sections 38 to 60 of the Act. Section 38 provides for the preparation of a statement of gross assets of a mahal and reads as follows:

38. The Compensation Officer shall, before proceeding to prepare the Compensation Assessment Roll of any intermediary as respects any mahal prepare a statement of gross assets

(a) Where the mahal is comprised of area situate in not more than one village, of the mahal, and

(b) where the mahal is comprised of area situate in more than one village, separately of the portion in each village.

7. Section 39 then provides how the gross assets are to be ascertained. Section 39(1)(e) provides that:

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 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 appraisement of the annual yield of the forest on the date of vesting." Sections 38 and 39 therefore provide for a complete procedure by which a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…

statement of gross assets of a particular mahal which has been acquired is to be prepared. After the gross assets, which means the income derived from a particular mahal, has been ascertained the draft compensation assessment roll is prepared and the tentative amount of each intermediary whose land has been acquired as compensation is to be ascertained on the basis of the gross assets derived from each mahal. Sections 42 to 45 of the Act provide for the calculation of the gross assets and net assets of an intermediary. After the draft compensation assessment roll has been prepared u/s 46 the Compensation Officer has to:

(46)(1)(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 a joint Hindu family to appear and file objections upon such statement or roll within a period of two months.

8. A careful examination of Section 4 makes it clear that the notice is to be published inviting objections by persons interested not only in respect of draft compensation assessment rolls but also the statement of gross assets prepared u/s 38, Shamshul Hasan Khan therefore after the notice u/s 46 had been issued to him objected to the correctness of the statements, of gross assets prepared u/s 38 and the consequent draft compensation assessment rolls. He, as a co-sharer in the mahal, was certainly interested in objecting to the gross assets statements prepared in respect of the mahal u/s 38. The objections filed u/s 46 are then heard and a final order has to be passed u/s 48 which is appealable. Thereafter a final compensation assessment roll is prepared u/s 52, a copy of which is to be supplied to the intermediary concerned. Section 60 then provides that the Compensation Officer will then declare the amount calculated u/s 34 or 55 as the amount payable as compensation, to the intermediary. Section 61 of the Act reads as follows:

61(1) Except as provided by or under this Act, no correction shall be made in the Compensation Assessment Roll after it has become final.

(2) The compensation Officer having jurisdiction may at any time before the payment of compensation, either of his own motion or on an application filed by a person interested, correct any clerical or arithmetical mistakes, in compensation Assessment Roll or any error arising therein from any accidental slip or omission.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…

It is the order refusing to exercise his powers u/s 61(2) of the Act which has been challenged by means of these petitions and it was strenuously contended by the counsel for the Petitioners that the Compensation Officer has ignored the provisions of Section 61(2) and has not appreciated the fact that mistakes have occurred in the compensation assessment rolls from an accidental slip or omission in the statements of gross assets prepared u/s 38 of the Act.

10. There are two main grounds on which the Compensation Officer rejected the petitions. Firstly, it was held that the statements were prepared according to the land records available and as such there was no accidental slip, and secondly that such an objection had already been rejected and the compensation assessment rolls had become final and the remedy of the Petitioners, if any, was to go up in appeal against that order. On an objection being filed by Shamshul Hasan Khan the mutwalli in respect of some of the mahals the statement prepared u/s 38 was corrected, and the forest income which was not given in the statement of the gross assets was added by the order of the Compensation Officer himself. In view of this decision by him it cannot be said that the statement was correctly prepared u/s 38. On the finding arrived at by the Compensation Officer himself on the objection of Shamshul Hasan Khan there was an omission in the statement prepared u/s 38. There was therefore an omission in the statement of gross assets prepared u/s 38 within the meaning of Section 61(2) The Compensation Officer therefore in my opinion committee a manifest error in ignoring his own decision and holding that there was no omission in the statements of gross assets prepared u/s 38.

11. It was, however, contended by the counsel for the State that even if it be assumed to be an omission in the statements of gross assets Section 61(2) only gives power to the Compensation Officer to correct any clerical or arithmetical mistake in the compensation assessment roll and not in the statement of gross assets. There is no substance in this contention. A power has been given to the Compensation Officer to correct any clerical or arithmetical mistake in the compensation assessment roll if such clerical or arithmetical mistake has resulted from any accidental slip or omission. Obviously the mistake in the compensation assessment roll has resulted from the omission in the statement of gross assets. It is an arithmetical mistake inasmuch as the amount of compensation had been incorrectly worked out on the basis of the erroneous statement of gross assets.

12. The Standing Counsel has, after I had heard the arguments, filed an application praying that he should be permitted to file a supplementary counter affidavit in the case. I have permitted him to file a supplementary counter-affidavit and that forms part of the record.

13. It has been contended by the Standing Counsel that the Petitioners, other than Shamshul Hasan Khan, had already filed objections u/s 61 which were disposed of by the Compensation Officer on 6-7-1955. Thereafter two applications were filed, one u/s 46 and the other u/s 61, which were disposed of by the order which is impugned by means of the present petition. In view of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…

fact that the Compensation Officer had already decided the matter on 6-7-1955 on the ground that it was not a case covered by Section 61, the remedy of the Petitioners, if any was to come to this Court against that order and not to wait for the disposal of the second application. It is true that the Compensation Officer had rejected the petitions filed by the present Petitioners earlier on 6-7-1955, but from the perusal of the order it appears that the Compensation Officer was under the impression that no application at this stage could be made u/s 61 inasmuch as due notice was served on the Petitioners earlier and they failed to file objections within time u/s 46. The Compensation Officer has not considered, the application on merits. There is no limitation prescribed u/s 61 for making an application. The only limitation placed on the power of the Compensation Officer is that before the compensation is actually paid he can correct the compensation assessment roll. In the present case it is open for the Petitioners to come to this Court when the application is finally rejected by the Compensation Officer.

14. The next contention raised by the Standing Counsel was that the Forest Officers'' report was before the Compensation Officer when the Statement of the gross assessment was prepared u/s 38 and it cannot therefore be said that there was any fresh material before the Compensation Officer on which he could come to the conclusion that the statement was wrongly prepared u/s 38. As I have already pointed out, the Compensation Officer on the objection filed by Shamshul Hasan Khan had already held that the forest income was not shown in the statement of gross assets prepared u/s 38 and consequently the compensation assessment roll in respect of Shamshul Hasan Khan was not correctly prepared. The Compensation Officer should not ignore the subsequent order passed by him on the objection filed by Shamshul Hasan Khan.

15. It was then strenuously contended that notices were properly served on the Petitioners and their remedy was to file objections u/s 46 and the remedy was not u/s 61. I have already dealt with this point in the earlier part of my judgment. There is therefore no force in this contention.

16. As regards Writ No. 1430 of 1956 filed by Shamshul Hasan Khan, it is clear that he had already filed an objection in respect of a number of villages on the ground that the statement of gross assets was not properly prepared. His objections were allowed in respect of all the villages except two. Thereafter Shamshul Hasan Khan himself moved another application u/s 61 in respect of these two villages which was rejected by the Compensation Officer by his order dated 30-I-1955. Writ No. 1430 of 1956 relates to that order. It cannot be said that there was any clerical or accidental mistake so far as his compensation assessment roll is concerned. The Compensation Officer on his objection filed u/s 46 had already rejected it in respect of these two villages and the question therefore of correcting them again by means of an application u/s 61 could not be raised. It was very strenuously urged by the counsel for the Petitioner that on the perusal of the Forest Officer''s report which was accepted by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…

Compensation Officer in respect of other villages the statement prepared so far as Shamshul Hasan Khan is concerned if respect of these two villages was also wrongly prepared. As I have already stated, it cannot be regarded that any accidental or clerical mistake was committed and consequently his objection was rightly rejected.

17. I therefore allow petitions, other than petition No 1430 of 1956, quash the order passed by the Compensation Officer, and direct him to dispose of the applications filed by the Petitioners in the light of the observations made by me according to law; petition No. 1430 of 1956 is dismissed; but in the circumstance; of the case, I make no orders as to costs.

Order according.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/masroor-ali-khan-appellant-hash-the…