

(2003) 08 AHC CK 0141
In the Allahabad High Court
Case No : C.M.W.P. No. 35114 of 1999

Raja Abhushan Brahma Shah and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 29

Citation : (2003) 4 AWC 3097 : (2003) 95 RD 405

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : V.B. Upadhayay and Hanuman Upadhayay, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the records.

2. That present writ petition has been preferred by the petitioners against the order dated 3.5.1999 passed by the Compensation Officer, Robertsganj, Sonebhadra, Annexure-1 to the writ petition, rejecting the application made by the petitioners as contemplated u/s 29 of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the U.P.Z.A. and L.R. Act) read with relevant rules framed under the Act.

3. The case is brief is that father of the petitioners, namely, late Raja Anand Brahma Shah was superior proprietor of 119 villages in Paragana Agori situated in south of the Kaimur Range in district Sonebhadra, previously in district Mirzapur covering about 713 sq. miles.

4. The State of U.P. brought in by legislation the U.P.Z.A. and L.R. Act, 1950. The said Act did not apply to Paragana Agori at the initial stage, but subsequently, the Act was made applicable by notification dated 30th June, 1953 as contemplated u/s 2 of the Act. On July 1st, 1953 the Government of Uttar Pradesh issued another notification u/s 4 of the Act vesting the Estates situated

in the area south of Kaimur Range, Paragana Agori, consisting of 119 villages.

5. Late Raja Anand Brahma Shah challenged the said notification by way of Writ Petition No. 35114 of 1999 on the ground that the Act merely abolished the interest of intermediary in the "Estates". The word "Estate" defined under the Act meant an area entered into the record of rights. Since no record of rights was maintained for Paragana Agori, it was pleaded by the father of petitioners that the notification issued u/s 4 of the Act did not apply to Paragana Agori in which 119 villages were situated.

6. The writ petition was partly allowed, and the matter was taken up to Hon''ble Supreme Court by the State as well as by the father of the petitioner Raja Anand Brahma Shah. While the appeals were pending in the Apex Court, the 17th amendment of the Constitution was enforced which enlarged the definition of the estate and consequently, Paragana Agori also came within the definition of estate. The Supreme Court dismissed the appeals by order dated 16.9.1996. Aggrieved, Raja Anand Brahma Shah preferred a writ petition in the Hon''ble Supreme Court of India being Writ Petition No. 8 of the 1968. He filed review petition Nos. 42 to 45 of 1967. The Hon''ble Supreme Court on the statement made by the then Advocate General of U.P., by its order dated 23.3.1971 which is Annexure-2 to the writ petition allowed the review petitions to be dismissed as withdrawn.

7. Raja Anand Brahma Shah, father of the petitioners expired on 21.5.1971 and his rights devolved on the petitioners who made an application dated 14.10.1974 for grant of compensation payable under the U.P. Zamindari Abolition and Land Reforms Act. The Compensation Officer thereafter proceeded to determine the compensation for 119 villages of Pargana Agori which had vested in the Estate and he determined the compensation of Khewat area of 61 villages only, vide order dated 6.2.1981 which is subject of appeals pending in this Court, u/s 50 of the Act. The petitioners have challenged the quantum of compensation in the said appeals which are still pending before this Hon''ble Court. It is relevant to State here that forest areas and non-Khewat areas of the 61 villages also is not the subject-matter of the aforesaid appeals as no compensation was determined with regard to non-khewat areas of 61 villages while determining the compensation of the said 61 villages. The judgment of the Compensation Officer in respect of 61 villages is Annexure-3 to the writ petition.

8. In view of the fact that no compensation was determined with regard to the rest of the 58 villages of Paragana Agori, an application was made on 8.8.1980 before the Compensation Officer along with certified copy of the order of Hon''ble Supreme Court of India dated 23.3.1971 and request was made for payment of compensation of non-Khewat areas and forest areas treating it as separate Mahal as directed by the Hon''ble Supreme Court of India by the aforesaid order dated 23.3.1971. The said application has been appended the unit as Annexure-4 to the writ petition.

9. The then Compensation Officer passed the following order on 17.10.1980 :

vkns''k

mHk; i{kksa dks lqk x;k A ekuuh; mPpre U;k;ky; ds vkns''k fnukad 23-3-1971 ij Hkh fopkj fd;k x;k A mRrj izns''k ljdkj dh vkj ls Mh- th- lh- vkj- }kjk fyf[kr vkifRr;ksa fnukad 19-7-1979 ,oa 16-8-1989 ,oa ekSf[kd cgl ls dgk x;k fd ekuuh; loksZPp U;k;ky; esa mRrj izns''k ljdkj }kjk fn;s x;s vk''oklu rFkk rRIEcU/kh fu.kZ; dks /;ku esa j[krs gq, IEiw.kZ {ks= ds IEcU/k esa t- fo- izfrdj ds fooj.k&i= fu;ekuqlkj rS;kj djks x;s A i=koyh ij 19-1-1980 dks izfrdj vf/kdkj }kjk dksbZ vkns''k ugha ikfjr fd;k x;k gS] ftls fjdky djus gsrq ;g izkFkZuk&i= e;/orhZ }kjk fn;k x;k gS A esjs iwokZf/kdkjksa ds vkns''k fnukad 18-1-1980 }kjk leLr xzkeksa dh IEiw.kZ Hkwfe ds ckjs esa dk;Zokgh djus dk funsZ''k fn;k x;k Fkk ftldk ikyu djrs gq, mHk; i{kksa us vius lk{; Hkh izLrqr fd;s gSaa A vc okn vfUre fu.kZ; dh fLFkfr esa gS ftlesa mHk; i{kksa dks lk{; ds vk/kkj ij izfrdj rkfydkvksa dh ''kq)rk ij Hkh fu.kZ; gksuk gS A mlh le; ekuuh; mPp U;k;ky; ds vkns''k fnukad 23-3-1971 vkfn IHkh igyqvksa ij fopkj dj fy;k tk;sxk A vr% fnukad 18-1-1980 ds vkns''k ij orZeku le; esa iqufoZpkj djrs gq, mls fjdky djus dh vko'';drk ugha gS A izkFkZuk&i= fnukad 8-8-1980 fujLr fd;k tkrk gS A

g- vLi''V

17-10-1980

10. By order dated 25.6.1982, Annexure-5 to the writ petition, the Compensation Officer made a request to the Divisional Forest Officer, Obra Forest Division to submit a report regarding income from the Forest. The Divisional Forest Officer submitted a report. The report of the Divisional Forest Officer is also on record as Annexure-6 to the writ petition, is as under :

N.B. : the figures of Revenue shown in Sl. No. 1 and 8 relate to the area falling within the Jurisdiction of Forest Department. But area outside it, were auctioned by Zila Parishad. For complete assessment of income from sale of fishes and Ghats report from Zila Parishad may be brought.

Considering the trend of increase, it can be safely assumed that Income of Agori Estate from these items would have been about 6,000 for the entire Estate of Rs. 3,360 for 58 villages.

SUMMARY ASSESSMENT

OF

ASSESSMENT

SL. No.

ITEM

1.

Timber and firewood

Rs.

2.63.329

2.

Kharl

Rs.

33.073

3.

Bamboos

Rs.

1.28,352

4.

Tendu Leave

Rs.

39,406

5.

Bagal Grass

Rs.

16,721

6.

Gum

Rs.

1,246

7.

Grazing and Radhari

Rs.

3.360

8.

Cjjapar bandiand wood for agriculture. Irrigational and various other use

Rs.

3,480

9.

Petty fellings

Rs.

1,250

10.

Mines and minerals

Rs.

11.

Miscellaneous items

Rs.

3,360

Rs.

4,93,577

I, therefore, assess that the private forests constituted by 58 villages shown in Annexure-1 of erstwhile Agori Estate were capable of producing an income of Rs. 4,93,577 during the year 1953.

S/d D. S. Singh Divisional Forest Officer, Obra Forest Division, D.O. Obra, Mirzapur.

11. Thereafter, an application for interim compensation was also made u/s 29 of the Act before the Compensation Officer, that was rejected by order dated 18.2.1983. The said order is Annexure-7 to the writ petition. The petitioners challenged the said order by way of the Writ Petition No. 15584 of 1983 with the following prayer :

(a) A writ, order or direction in the nature of certiorari quashing the order dated 16.11.1983 of the respondent No. 3.

(b) A writ order of direction in the nature of mandamus commanding the respondents to determine the compensation payable to the petitioner for the entire forest area and other non khewat area of Paragana Agori treating it as a single Mahal.

(c) A writ, order or direction in the nature of mandamus commanding the respondent No. 3 to determine interim compensation for the forest and non-khewat area as a Mahal of Paragana Agori.

(d) Another writ, order or direction as this Hon"ble Court might deem fit and proper under the circumstances of the case.

(e) To award the costs.

12. By order on 15.10.1985 this Court directed the respondent Collector, Mirzapur to determine the interim compensation and pay the same to the petitioners of the aforesaid writ petition within three months of the presentation of the certified copy of this order of Hon"ble High Court or to show cause.

13. Subsequently counter-affidavit was filed by respondent Nos. 1 to 3 in the writ petition. In paragraph 7 of the said counter-affidavit, it was clearly stated that the determination of compensation with regard to 58 villages was in progress and the petitioner will be intimated within short time in accordance with law. In view of the statement made by the respondents in the counter-affidavit, the petitioner was directed to approach the respondents and the writ petition was disposed of by this Court vide its order dated 21.12.1995. In pursuance of the aforesaid order dated 21.12.1995 approached, the respondents for payment of compensation and a draft compensation assessment roll as contemplated u/s 40 of the Act was prepared by the Compensation Officer with regard to 58 villages and was published on 27.11.1998 as contemplated u/s 46 of the Act. The objections have been preferred by the petitioners as well as by the State against the draft notification u/s 46 of the Act, which is pending consideration before the Compensation Officer, and final determination of compensation with regard to 58 villages has not been arrived as yet with regard to the "Estate", which vested in the State in 1953. Insofar as 61 villages are concerned, an interim compensation was allowed on the basis of the order of this Court.

14. The petitioners approached the Compensation Officer for payment of interim compensation with regard to 58 villages also, and consequently, made an application for grant of interim compensation as contemplated u/s 29 of the Act. It is alleged that the Compensation Officer has erroneously and without following the mandatory provisions of law contained in the U.P. Zamindari Abolition and Land Reforms Act rejected the application for grant of interim compensation by order dated 3.5.1999 against which the petitioners approached this Court by way of present writ petition. The following relief has been prayed for by the petitioner ;

(i) Issue a writ, order or direction in the nature of certiorari calling upon the respondents to submit record of the case and quash the impugned order dated 3.5.1999 of the Compensation Officer, Robertsganj, Sonebhadra (Annexure-1 to the writ petition).

(ii) Issue a writ, order of direction in the nature of mandamus commanding the respondents to pay final compensation to the petitioners without further delay.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay interim compensation during the pendency of the

proceedings for payment of final compensation as contemplated u/s 29 of the Act in view of the facts that no determination as contemplated under law has been made within the time stipulated under the Act.

(iv) Issue a writ ; order or direction in the nature of mandamus directing the respondents to pay interest payable under the law on the amount due to the petitioner up to the date the payment is made.

(v) Issue any other writ, order or direction, which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(vi) Award the cost of the petition to the petitioner.

15. It is contended by the counsel for the petitioner that the petitioner(s) being the successor of original proprietor late Raja Anand Brahma Shah are entitled for compensation under the U.P.Z.A. and L.R. Act for the estates taken over by the State Government and since the said properties of the petitioners are vested in the State in 1953, the petitioners are also entitled to compensation within the stipulated time as provided under the Act. It is submitted that because of the failure on the part of the State Government to determine and pay the compensation within the time stipulated under the Act, it is incumbent upon the State Government to pay Interim compensation as contemplated u/s 29 of the Act and also pay the interest on the amount of compensation payable to the petitioner from the date of the compensation became due till the date of actual payment of compensation.

16. It is further contended that the Compensation Officer has failed to discharge his obligation under the law and in particular u/s 29 of the Act and has not paid the compensation for the estates which has been vested in the State in 1953, and it is prayed that the order passed by the Compensation Officer dated 3.5.1999 be quashed and a direction be issued to him to pay interim compensation payable under the Act and also pay the interest due under the Act to the petitioners.

17. According to the respondents, the only legal controversy involved in the writ petition is as under :

(i) Whether the instant writ petition is maintainable.

(ii) Whether the application dated 22.4.1999 may be adjudicated upon by this Hon''ble Court in extraordinary jurisdiction under Article 226 of the Constitution of India.

18. It is contended by the standing counsel appearing on behalf of the respondents that since the order dated 3.5.1999 passed by respondent No. 2 is an interlocutory order against which writ petition under Article 226 of the Constitution of India is not maintainable, as the original case of the petitioners is still pending before the Court below, the objections filed by the petitioner as well as the response thereto filed by the respondents are sub-judice before the Court

below and the controversy regarding the compensation is based on certain factual aspects which can be decided only by the Court below. Therefore, the instant writ petition is not maintainable before this Hon'ble Court.

19. It is submitted that the appeal against the order dated 27.11.1998 is pending before this Court was not taken before the Court below. In view of this matter a fresh stand cannot be taken before the High Court, which has not been taken in the original case before the Court below and that the instant writ is petition based on surmises and a conjecture is liable to be dismissed on this ground alone. It is, further submitted that till the Court below decides the pending objections, interim compensation cannot be granted in favour of the petitioners.

20. It is also submitted that since the factual controversy is involved in the instant writ petition and the original case of the petitioners is still before the Court below, therefore, it would be proper for the petitioners to approach the Court below for getting decided their case and this Court cannot allow their application regarding compensation and the relief sought by the petitioners as such in the aforesaid facts and circumstance of the case of this petition is liable to be dismissed with cost.

21. It is admitted fact that land was acquired in 1953 and no compensation has been paid to the petitioners. In view of the serious controversy, the Court was desirous to know the amount of compensation that was proposed by the Compensation Officer, Robertsganj, district Sonbhadra to the petitioner.

22. A certified copy of the Chart prepared by the Compensation Officer, Robertsganj in accordance with the provisions of Rule 40 of the U.P.Z.A. and L.R. Act has been filed along with supplementary affidavit as Annexure-S.A.-1. From the chart, it is apparent that the Compensation Officer had proposed the sum of Rs. 42,93,652.08 in respect of 58 villages in Paragana Aghori, district Sonbhadra, which was previously in district Mirzapur.

23. The writ petition is maintainable as the Compensation Officer has failed to discharge his obligation under the Act and no compensation has been paid to the petitioner since 1953. In rare and appropriate case like the present, the Court can always take cognizance of even an interim or interlocutory order in exercise of powers under Article 226 of the Constitution of India.

24. Relying upon *Union of India and Others Vs. S.L. Abbas, ; Mrs. Shilpi Bose and others Vs. State of Bihar and others, ; State of Orissa and another Vs. Radheshyam Nanda, ; Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, ; Union of India and Ors. v. Ganesh Dan Singh, 1995 2 SCC 151 ; Balwant Singh and another Vs. State of Punjab, and Abani Kante Ray v. State of Orissa 1994 (1) AWC 214 (SC) (NOC) : 1994 (6) SCC 1998 : 1995 4 SCC 169*, the Division Bench of this Court in *Saroj Mahanta v. Union of India 2003 3 ESC*, held that writ petition under Article 226 of the Constitution of India is maintainable whenever enforcement of statutory or legal right is involved or where there is complaint by the petitioner about the

breach of statutory duty on part of the respondents. The Court can enforce the performance of statutory right or a public duty by public bodies through its writ jurisdiction provided the Court is satisfied that the person approaching the Court in the writ jurisdiction has a legal right to insist on such performance. These conditions are satisfied in instant writ petition and the writ petition is maintainable for these reasons also.

25. The application dated 22.4.1999 can also be decided by this Court in exercise of extraordinary power under Article 226 of the Constitution of India for doing special justice between the parties. It is golden rule that justice may not be done but also shown to have been done. It is not only the duty of the Court to do justice but also to prevent injustice. The Court does not have any dearth of power of adjudication of cases under Article 226 of the Constitution of India but the power is to be exercised with caution and in rarest cases particularly where the State is doing injustice as in the present case under colorable exercise of its power, abusing the process of the Court for stretching the litigation to even about five decades without payment of a single penny towards compensation depriving the opposite party of substantially huge amount and is enjoying the income from the required land.

26. Since the direction is being made for payment of the proposed amount, it is provided that the final compensation made, be determined by the Compensation Officer in respect of all the 119 villages within six months from the date of production of the certified copy of the order even if he has to hold day-to-day proceedings.

27. The final compensation has not been determined since 1953, the proposed amount of compensation by the Compensation Officer may be taken as admitted amount and directed to be paid to the petitioner along with 12 per cent interest within 2 months from the production of certified copy of this order, failing which the State shall pay interest at the rate of 12 per cent compound interest with the half yearly rest till actual date of payment of whole amount of compensation with the interest. Ordered accordingly. The writ petition is allowed. No orders as to costs.