(1959) 09 AHC CK 0037

In the Allahabad High Court

Case No : Writ Petition No. 103 of 1958

Raja Vijai Pratap Singh APPELLANT

Vs

State of Uttar Pradesh and another RESPONDENT

Date of Decision : 26-09-1959

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 52

Citation : (1961) 31 AWR 154

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : Iqbal Ahmad and Shiva Gopal, for the Appellant; Kesri Bir Prasad for standing Counsel for opp. Party, for the Respondent

Final Decision : Disposed Of

Judgement

J.K. Tandon, J.—The Petitioner was Taluqdar of Rehwa estate in the district of Bahraich. He owned 58 villages described in Schedule A to this petition By a notification u/s 4 of the UPZA and LR Act, 1950 all his interest in the said villages as Taluqdar was acquired under the said Act and he became entitled to payment of compensation in lieu thereof.

2. Ch. III of the UP ZA and LR Act lays down the procedure for determination of compensation payable to intermediaries whose estates have been acquired under the Act. Section 39 provides the manner in which gross assets, as respects a Mahal, shall be computed and Section 40 contains provisions for the preparation of Draft Compensation Assessment Roll in respect of each intermediary separately. Section 42 says how the gross assets of an intermediary shall be arrived at. Then comes Section 44 which requires net assets of every intermediary to be determined. Section 46 says that after the Draft Compensation Assessment Roll in respect of any intermediary has been prepared the same shall be published in the manner laid down in it, while persons desiring

to file objections will also be required to do so within, a period of two months. The next two sections make provision for the hearing and deciding of objections. u/s 49 the order of the Compensation Officer deciding an objection is to be deemed to be a decree of a civil court and an appeal therefrom to the District Judge is permitted by Section 50. The next two Ss. 50A and 51 are not relevant at the present occasion. Section 52 provides as under:

52. (1) Where no objection has been filed in regard to the draft Compensation Assessment Roll in pursuance of the notice u/s 46 or where such objections are filed and have been finally disposed of and the draft Compensation Assessment Roll amended, altered or modified accordingly, the Compensation Officer shall sign the same and also affix his seal thereto.

(2) The Compensation Assessment Roll when so signed and sealed shall become final.

U/S. 53 a copy of the Compensation Assessment Roll is to be delivered free of charge to the intermediary concerned by the Compensation Officer. The next relevant provision is Section 60 which says that the amount of compensation determined u/s 54 or 55 as payable to an intermediary shall be declared by the Compensation Officer in respect of his interest in the Mahal to which the Compensation Assessment Roll relates & the Compensation Officer shall record it in the Roll in his own writing. Then comes Section 61 which says that except as provided by or under the Act, no correction shall be made in the Compensation Assessment Roll after it has become final. Sub S. (2) of this section, however, permits the Compensation Officer at any time before the payment of compensation to correct any clerical or arithmetical mistakes in the Compensation Assessment Roll or any error arising therein from any accidental slip or omission. This he may do suo motu or on an application filed by the person interested.

3. In the present case there is no dispute that the Compensation Assessment Roll in respect of 58 villages had been finalised on 27-12-54. The amount of compensation payable to the Petitioner on the basis of the final Compensation Assessment Roll was also determined and entered in the final Compensation Roll. Nearly ten months after the finalisatior of the Compensation Assessment Roll the same was amended by the Compensation Officer by reducing the amount of compensation initially determined by Rs. 1, 15, 144. This decrease was with respect to 12 villages mentioned at serial Nos. 1 to 12 in the list given in Schedule A. The amount of compensation which was determined originally at Rs. 3,02,660-13-4 was thus reduced to Rs. 1,87,516 13-4. When the Petitioner, whose case is that the above change was made without notice to him, got in formation about the alteration made in the Compensation Roll he preferred objections. It is said that those objections are still pending.

4. One further change was made in the Compensation Assessment Roll on 30-12-57. This time the change was occasioned by the fact that in the case of

certain villages a minustatement was prepared on account of Compensation. In other words, the net assets of the Petitioner were computed in their cases below zero on the minus side. What the compensation authorities, therefore, decided was to consolidate the Compensation Assessment Roll of the villages, which bad been acquired, and reduced the aggregate net assets of the intermediary by the amount of the minus assets. In this way a further decrease in the sum of Rs. 47,974-2-4 was effected in the compensation payable to him. The amount of the total compensation payable to the Petitioner was thus reduced to the figure Rs. 1,46,353-110. The Petitioner has challenged the second alteration also made in the Compensation Assessment Roll and holding that they were illegal and without authority of law he filed the present petition asking that the said two orders be quashed.

5. So far as the facts go there is no dispute. Nevertheless the Respondents are justifying their action in the case of the first deduction on the strength of the proviso which was inserted in R. 39B, Sub-R. (2) sometime in 1955 and in the case of the 2nd on the ground that since all the 58 Villages belonging to the Petitioner had been acquired by one transaction they were entitled in assessing the final compensation to deduct the minus assets.

6. The provisions of the UPZA and LR Act relating to the assessment of compensation have been noticed above. The Scheme of Ss. 39 to 44 in accordance with which the net assets on an intermediary are determined, contemplate in the first place the Compensation Officer shall find out the gross assets of a Mahal and having done so he shall proceed to determine the gross assets of each intermediary in the Mahal and in the end find out his net assets in the Mahal in accordance with Section 48. The unit for payment of compensation is thus a Mahal and it is in that context that the Compensation Assessment Roll is prepared. Section 54 also provides that the amount of compensation payable to an intermediary shall be in respect of his interest in the Mahal. In other words every intermediary is entitled to be paid compensation for his interest in a Mahal which is to be treated as the unit and basis of the compensation payable to him. Section 60 requires that the amount determined u/s 54 as compensation payable to an intermediary shall be declared by the Compensation Officer and entered in his own writing in the Compensation Assessment Roll. u/s 52 the final Compensation Assessment Roll which is prepared after all the objections in respect of the Draft Roll Published earlier have been disposed of shall be signed and also sealed by the Compensation Officer. It further provides that the Compensation Assessment Roll when so signed and sealed shall become final. Once the Compensation Assessment Roll has, therefore been signed and sealed a legal sanctity attaches to it. It becomes final and the amount entered in it on account of the net assets of an intermediary becomes final between the parties, viz. the intermediary on the one hand, the State on the other. It cannot be altered thereafter except in so far as the law may have permitted it.

7. u/s 60 the amount of compensation payable to the intermediary which is

worked out on the basis of the final Compensation Assessment Roll has also to be entered in the Roll This again has to be done by the Compensation Officer in his own writing. The underlying idea throughout these provisions is that the Compensation Assessment Roll and the entries made there under have a finality about them. They are not to be altered, varied or amended except as the law may have permitted It is in accordance with the document that compensation becomes payable and neither party can ask or pay more or less. Section 61 of the Act, however, gives power to the Compensation Officer to remove errors in it if they are errors arising from any accidental slip or omission or have been due to any arithmetical or clerical mistake. As a matter of fact sub S. (1) of this section has by Providing in these terms:

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

restricted the powers of the Compensation Officer to effect alterations in the Compensation Roll on the grounds mentioned in sub S (2) only. The law does not permit the Compensation Officer to effect any change in it unless he can attribute them to any error arising from any accidental slip or omission or due to any clerical or arithmetical mistake.

8. In the present case admittedly no such mistake or error existed in the Compensation Assessment Roll which was finalised on 27-12-1954. The amount of compensation which was later entered in it under the hand of the Compensation Officer did not also similarly suffer from any such defect. The changes which have been made in it were done because

(1) Subsequently in 1955, long after the Compensation Assessment Roll had been finalised Rule 39B(2) had been amended by the insertion of a new proviso, and

(2) the aggregate net assets of the intermediary were reduced by deducting therefrom the amount called as minus assets.

9. It is not possible by any stretch of reasoning to hold for a moment that the deductions becoming necessary on account of a subsequent change in the rules relating to the determination of proportionate agricultural income tax were due to any accidental slip or omission or any clerical or arithmetical mistake. On the other hand, the statement, as it was prepared and finalised in December, 1954 was in accordance with the rules then in force. There was thus on the Respondents own showing no error or mistake in its preparation at the moment it was prepared. If later after the Rolls has been finalised the law is amended unless the law itself provides that it shall have retrospective operation and further that any rolls already finalised shall also be amended accordingly it will not authorise the authority concerned to effect any changes much less entitled him to do so on the pretext of removing any mistake or error. I have not been able to find anything in the proviso that was added to sub R. (2) of R. 39B in 1955 to give it retrospective operation. As a matter of fact the further question

can also be raised, viz. '"'Whether the State Government had power under the law to make a rule with retrospective operation", but it is not necessary to deal with this aspect further, because as I have said earlier, there is nothing in this proviso or elsewhere to show that it was to have retrospective operation. That being so the Compensation Officer went clearly wrong in interferring with the Compensation Assessment Roll in 1957 on the strength of the amendment made in 1955. His action was not only contrary to law but wholly without jurisdiction. It has no legal effect.

10. Coming to the second alteration by which the amount was once again reduced by Rs. 47,974-2-4 a reference to the relevant provisions of the UP ZA and LR Act. 1950 has already been made above. Under its provisions the unit of assessment and for payment of compensation is the interest of an intermediary in a Mahal. The scheme of the ZA and LR Act envisages the acquisition of estates and although all the estates in the State of Uttar Pradesh were acquired by one notification u/s 4 of the Act simultaneously and at one time, nevertheless in law each estate was acquired so to say separately for the purpose of determination and payment of compensation. Article 31 of the Constitution contemplates that whenever property is acquired by the State for a public purpose, as was the case here, compensation shall be payable therefor by the State. If therefore, the State acquired so many estates it has to pay compensation for each of them.

11. It is in this background that the scheme for payment of compensation contained in the ZA and LR Act shall need to be construed and given effect to. If, therefore, an intermediary is entitled to a certain amount as compensation in respect of his interest which has been acquired in any Mahal the law entitles him to receive that compensation and the State also is bound to pay it. Because the net assets of a certain estate happen to turn out on the minus side and as a result of which he in the ultimate analysis gets no compensation therefor will not entitle the State to adjust the minus assets in the assets of other estates belonging to the Petitioner which too might have been acquired. If this proposition is accepted viz. that the Compensation Officer can adjust the minus assets in the assets of the other estates the inevitable result will be that in the case of estates with minus assets not only there will be an acquisition but with the acquisition the State will get some further amount from the person whose property is acquired. This can never be the intention underlying Article 21 of the Constitution or of the provisions contained in the ZA and LR Act,

12. Again, therefore, I shall hold that the alteration made in the Compensation Assessment Roll by the Compensation Officer by which he reduced the amount by Rs. 47,974-2-4 was ultra vires and without jurisdiction.

13. As no other ground has been urged for or against I hold that this petition must succeed. The order of the Compensation Officer dated 20-10-1955 and the order dated 3012-1957 are quashed. The Petitioner will get his costs from the Respondents.