
(2018) 04 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2618 of 2015

RAJIV SARIN AND ANOTHER

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 — Section 4, 4(1), 4(2), 4A, 5, 5(b), 12, 18, 19, 20, 21, 25, 25(2)
Transfer of Property Act, 1882 — Section 73

Citation : (2018) 04 UK CK 0007

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : Siddhartha Singh, P.C. Bisht

Final Decision : Allowed

Judgement

1. Before dealing with the matter pertaining to the issue and the relief sought by the petitioner for the payment of interest on the land vested in favour

of the State by the impact of Section 4 of the Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (hereinafter to be referred

to as the "Act of 1960"), certain legal aspects are required to be considered. Section 4 of the said Act is quoted hereunder:-

"4. Acquisition and modification of existing rights in land. (1) As soon as may be after the commencement of this chapter, the State

Government may, by notification published in the official Gazette, declare that as from a date to be specified therein (referred to in this Act as the appointed date)-

(a) the rights, title and interest of hissedar in respect of khaikari land shall cease and vest, except as hereinafter provided, in the State free from all

encumbrances, and

(b) without prejudice to the provisions of (a) a tenure-holder in Kumaun or Uttarakhand shall in the land held by him as such possess the rights, title

and interest (with the modifications or liabilities provided by or under this Act).

2. The Act of 1960, was enforced in the area as defined of sub-section (2) of section (1). As a consequence of promulgation of the said Act, and

particularly, in view of the impact of the provisions contained under Section 4, pertaining to the acquisition and modification of the existing rights of the

land, all lands would stand vested with the State w.e.f. 1st January, 1978.

Section 4-A of the said Act is quoted here under:-

4-A. Vesting of interest of hissedar in the forest land.- With effect from July, 1 1978, the rights, title and interest of every hissedar in respect of

forest land shall cease and shall vest in the State Government free from all encumbrances, and the provisions of this Chapter and Chapter V shall

mutatis mutandis apply to a forest land as they apply to a khaikari land.

3. On an interpretation of Section 4-A would rather be that w.e.f 1st January 1978, all rights, title and interest of every hissedar (shall cease to exist

and vests in the State free from all encumbrances). Meaning thereby, whatsoever right was existing in favour of the hissedar, prior to 1st January,

1978 will stand extinguished. The Legislature under Section 5 of the Act had dealt with the consequences which would follow as a result of acquisition

contemplated under Section 4 of the Act.

4. The KUZALR Act of 1960 as made enforceable by its publication in official Gazette w.e.f 17th September, 1960, was an Act to provide for the

acquisition of rights, title and interests of the persons between the State and the tiller of the Kumaon Division and in Uttarakhand Division and for the

introduction of Land Reforms therein. Section 4 of the Chapter II dealt with acquisition and modification of the existing rights of the land. It

contemplates that on issuance of such notification bringing an area within the ambit of the Act of 1960, immediately on its publication in the official

Gazette, the implication which would follow is that all rights, title and interests of hissedar in respect of khaikari land (with which we are concerned)

will cease to exist in favour of the hissedar and will vest in the State Government free from all encumbrances. Consequently, the impact of the

acquisition of the hissedari rights on a khaikari land would be that it would stand

vested in the State w.e.f. 1st July, 1978, as contemplated under

Section 4-A of the Act. The impact would further be that the land thus notified would automatically vests in the State free from all encumbrances.

5. Section 5 of the Act of 1960 has an overriding effect as the legislature has provided a non-obstinate clause in the said section, whereby irrespective

of any contract to the contrary or any agreement entered into between any parties, the said provision of vesting and the consequential effect of vesting

as a result of the notification u/s 4 will have an overriding effect. Subclause (a) of Section 5 provides that the hissedar will extinguish all his rights over

the sub-soil in the notified area including the rights, if any in the mines and minerals as the same will cease to exist and vest with the State Govt. free

from all encumbrances. Even as per the Section 5 of sub-clause (b) all grants and confirmations of the title of to a khaikari land in the area as notified

u/s 4, all privileges accruing from such grants will stand determined. Even so much so, the legislature has contemplated the rights, title and interests

over khaikari land so acquired will not be liable for an attachment for sale in execution of any decree or other processes of any civil or revenue Court,

or to any attachment existing at the appointed date on which the notification is issued. It is an impact that any order of attachment passed before such

date shall be subject to the provisions of Section 73 of the Transfer of Property Act, 1882 and the same will cease to exist and be enforced.

6. As a consequence of assumption of rights u/s 4A and u/s 5 of the Act, Section 18 of the Act deals with the entitlement of compensation in respect

of the khaikari land for the purposes of assessment and payment of compensation of the acquisition of rights made in favour of the State u/s 4 read

with Section 4-A of the said Act. On the statement of the compensation and on its determination u/s 19 of the Act provides that hissedar would be

entitled for compensation u/s 12 of the Act, which is quoted hereunder:-

â??12. Hissedar entitled to receive compensation â?" Every hissedar whose rights, title or interest are acquired under section 4, shall be entitled to

receive and be paid compensation as hereinafter provided.â??

7. On a preliminary publication as required u/s 20 of the Act to be made for quantifying the compensation in favour of the hissedar whose land has

been vested as a consequence of notification section 4-A of the Act of 1960, and be sent to hissedar. The Legislature has provided that if any hissedar

whose khaikari land is taken over, is aggrieved by the vesting of land under section 4A or is aggrieved by the determination of compensation u/s 18

read with Section 19 of the Act, may file his objection before the Competent Authority u/s 21 of the Act of 1960, the same would be disposed of in

terms of the procedure contemplated u/s 22 of the Act.

8. On a decision being taken on the objection thus preferred pertaining to the compensation, the decision of the Compensation Officer had been made

subject to appeal u/s 23 of the Act of 1960 before Collector, which reads as under :-

â??23. Appeal to the Collector.â??

Notwithstanding anything contained in any law, any person aggrieved by the order of the Compensation Officer deciding the objection under section

22 in so far as it relates to the amount of compensation may appeal to the Collector who shall decide the appeal in the manner prescribed and the

decision of the Collector shall be final.â??

9. The provision of Section 12, deals with the entitlement of a hissedar for a compensation to be paid to him under the Act as a consequence of the

Notification u/s 4 and Section 5 of vesting of the land with the State. A proposed statement of compensation as provided u/s 18, deals with its

payability u/s 19 to the hissedar in the light of the provisions contained u/s 12. The legislature u/s 21 entitles a hissedar, who is aggrieved against the

determination of compensation u/s 12, 18 and 19 read harmoniously has been provided with a recourse of filing of an objection u/s 21 which has to be

disposed of in accordance with the procedure as contemplated u/s 22 of the Act. The Appellate provision u/s 23 of the Act, deals with an appeal

against an order or a decision taken u/s 22 which means a decision on the disposal of the objection for determination of compensation, as contemplated

u/s 12 of the Act. Once the legislature, while providing that the Appellate Forum has confined its jurisdiction only against their decision of the objection

its ambit cannot be widened for any interest which is independently contemplated u/s 25 (2) the Act.

10. At this stage, it would be necessary to make clear that once the objection is being considered u/s 22 of the Act, it confines to the determination of

compensation made by the Compensation Officer u/s 18 and Section 19 of the Act and thus the provisions of appeal u/s 23 would only be confined to

the order passed by the Compensation Officer, determining the compensation under Section 18 and 19 of the Act. Meaning thereby, in other words,

there is no appeal contemplated against the imposition of interest which is statutory in nature as provided under sub-section 2 of Section 25 which is

a legal consequence to follow in an event of vesting of a land u/s 4-A of the Act.

11. In the case at hand, admittedly, the petitioner's khaikari land was vested u/s 4-A and the issue pertaining to the determination of compensation

after being contested before the Allahabad High Court and the dismissal of the writ petition No. 8927 of 1988 by the Division Bench of Allahabad

High Court, the matter had travelled to the Hon'ble Apex Court by way of Civil Appeal No. 4772 of 1998 in Rajiv Sarin and another v. State of

Uttarakhand and others.

12. The said Civil Appeal has been decided by the Constitution Bench of the Hon'ble Apex Court by the judgment dated 9th August, 2011. The

Constitution Bench of the Hon'ble Apex Court has ultimately held as under:-

72. In view of the above, the present appeal is partly allowed while upholding the validity of the Act in particular Sections 4A, 18(1) (cc) and

19(1) (b) of the KUZALR Act, we direct the second respondent, i.e. Assistant Collector to determine and award compensation to the appellants by

following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated by this Court

hereinabove. The appellants will also be entitled to interest @ six percent per annum on the compensation amount from the date of dispossession till

the date of payment provided possession of the forest was handed and taken over formally by the Respondent physically and provided the appellant

was totally deprived of physical possession of the forest. However, we would like to clarify that in case the physical/actual possession has not been

handed over by the appellants to the State government or has been handed over at some subsequent date i.e. after the date of vesting, the interest on

the compensation amount would be payable only from the date of actual handover/physical possession of the property in question and not from the

date of vesting. In terms of the aforesaid findings, the present appeal stands disposed of. No costs.

13. The facts upto this stage with regard to the directives issued by the Hon'ble Apex Court pertaining to the determination of compensation and

the entitlement of interest @ 6% per annum, on the compensation amount thus determined from the date of possession till the date of payment is not

disputed by the respondent and the same has attained finality after the Honâ??ble Apex Courtâ??s judgment.

14. It is the contention of the petitioner that in pursuance to the judgment of the Honâ??ble Apex Court dated 9th August, 2011, the compensation as

determined under the Act has been paid to the petitioners only on 27th May, 2016 i.e. after filing of the writ petition. It was on 14.10.2015 since the

interest was not being determined u/s 25(2) of the Act, the petitioner had to file present writ petition for the following reliefs:-

â??A. Issue a writ order or direction in the nature of mandamus commanding respondent no. 3 to calculate the interest @ 6% per annum from the

date of vesting i.e. 1.1.1978, which is also the date of transfer of possession and to release the same in favour of the petitioners.

B. Issue a writ order or direction in the nature of certiorari quashing the part of order dated 3.6.2014 passed by respondent no. 3 in regard to denial of

interest on the illusory ground of not providing the actual date of delivery of possession.

C. Issue any other suitable writ order or direction which this Honâ??ble Court may deem fit, just and proper under the facts and circumstances of

the case.

D. Cost of the petition be awarded in favour of the petitioners.â??

15. This Court directed respondents to file counter affidavit vide its order dated 15th October, 2015. The counter affidavit had been filed by the

respondents, to which the rejoinder affidavit has also been filed by the petitioner. The pleadings have been exchanged and with consent case is being

heard and disposed of finally.

16. The sole contention of the learned counsel for the respondents, as taken in the counter affidavit is that the writ petition for the relief claimed would

not be maintainable for the reason that being aggrieved against the order impugned in the writ petition denying the payment of interest to the petitioner

which otherwise he was statutorily entitled under Section 25 of the Act, he has preferred an appeal and since the appeal was pending, he could not

have sought the relief for the payment of interest @ 6% per annum w.e.f. date of vesting i.e. 1st January, 1978.â??

17. In response to it, the learned counsel for the petitioner submits that the appeal, which has been preferred, has been preferred under a wrong advise extended to petitioner for the reason that against an order passed u/s 23 of the Act, there is no appeal contemplated under the Act, against an order entailing the determination of interest under sub-section (2) of Section 25 of the Act and hence the appeal was filed under a wrong advise extended to the petitioner. This will not create a bar in filing the writ petition for the relief claimed. Consequently, it is the submission of the learned counsel for the petitioner as well as born out from the record i.e. annexure 6 to the writ petition that the petitioner had later on withdrawn the appeal as it was not pressed before filing of the writ petition. Even otherwise also, filing of the appeal apart from the fact that it was not maintainable would not have any bearing for the reason that the controversy pertaining to the entitlement of interest to the petitioner has already been decided by the Constitution Bench of Hon'ble Apex Court vide its judgment dated 9th August, 2011. As such, the respondents were bound to comply with the directions issued by the Hon'ble Apex Court in para 72 of the said judgment.

18. The Hon'ble Apex Court, while parting the judgment has observed that the payment of interest would be subject to the fact that the possession of the land has been taken over by the respondent physically and the appellants are totally deprived of physical possession of the forest land. In response to it, the learned counsel for the petitioner submits that after the vesting of the land u/s 4-A of the Act w.e.f. 1st January, 1978, the respondents have issued Form d0m0v0fo0 vkdkj izi= 1/4 fu;e 2 nsf[k;s 1/2 ? kksâ?k.kk dk izi= (annexure 8 to the writ petition), which according to the petitioner under Rule 2 of the Rules as framed under the Act, the right, title and possession of the property has been taken over by the State and the said fact has been fortified by the Assistant Collector, Karnprayag, District Chamoli. Further to fortify his stand that the land as a matter of fact has been actually taken over by the respondents, he has placed reliance on the Khatauni, which has been issued by the respondents, in which the land has been recorded as 'Jungle' as would be apparent from the entries made in column '7' in pursuance to the G.O. No. 596 Revenue 1978 dated 5th March, 1979 and the name of the petitioners have been deleted.

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19. An entry in this regard has been made by the Patwari on 6th May, 1983. Even otherwise also, the statement has been made by the learned

counsel for the petitioners at Bar that the petitioner is no more in possession of the land as the same has already stand vested with the State.Â Â

20. Hence, the writ petition is allowed. A mandamus is issued to the respondents to forthwith pay the interest @ 6% per annum on the compensation

as determined by the Honâ??ble Apex Court vide its judgment dated 9th August, 2011, amount from the date of dispossession till the date of

payment. The order dated 3rd June, 2014 as passed by respondent no. 3, so far it relates to denial of payment of interest is hereby quashed.Â

21. No other point was pressed by the parties.

22. No order as to costs.