(2012) 04 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42068 of 2003

Samar Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 73

Citation : (2012) 9 ADJ 153 : (2012) 4 AWC 5249

Hon'ble Judges : Sunil Ambwani, J;Pankaj Naqvi, J

Bench : Division Bench

Advocate : A.D. Saunders and N.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

1. We have heard Shri A.D. Saunders, Learned Counsel for the petitioner. Learned Standing Counsel appears for the State respondents. The U.P. Zamindari Abolition and Land Reforms Act, 1950 was enforced on 21.1.1951. The Act abolished the Zamindari in the State of U.P. and provided for compensation for loss of income from land revenue and other income on the abolition of zamindari to be paid to the intermediaries. Late Raja Chittar Singh Judev was the zamindar of 28 villages in Distt. Jalaun. With the abolition of zamindari, the Draft Compensation Assessment Rolls were prepared verifying the amount to be paid to him, for various mahals (local area under separate engagement for the payment of land revenue). Late Raja Chittar Singh Judev filed objections on 5.3.1954, to the draft assessment rolls. The objections were decided by the Compensation Officer on 16.9.1954 against which he filed Appeal Nos. 442-443. By judgment dated 11.9.1970 the High Court set aside the order of Draft Compensation Officer dated 16.9.1954 and directed the objections to be decided afresh.

2. Late Raja Chittar Singh Judev filed an application on 18.3.1972 before the Compensation Officer to reinitiate the proceedings of compensation. He also gave an application on 23.10.1972 that the issue with regard to the agricultural

income tax is no longer in dispute and that he should be paid 8 times the compensation of the Agricultural Income Tax. He also submitted an affidavit on 30.11.1972, that the final income of land revenue from his mahals was worked out after deducting the agricultural income tax. He verified in his affidavit that he has already received eight times the amount of land revenue ''pakki nikasi'' and also received the agricultural income tax on which the Compensation Officer passed order on 25.4.1974 that the proceedings of payment be made treating the ZALR Form No. 25 to be the basis of calculation and that eight times the amount of Agricultural Income Tax, which was deducted on ZA & LR From No. 26 to be calculated and paid to him.

3. A reference letter prepared by the Compensation officer dated 4.7.1974 was placed before the Commissioner, Board of Revenue. The Board of Revenue by its letter No. 277/ACC-242 returned the file with observations that after the Compensation Rolls have become final, there is no provision to amend it for payment of any additional compensation on which notices were issued to the intermediary (the zamindar), to consider all the objections raised. Since no one came forward to pursue the matter, the suit was dismissed on 30.9.1981.

4. In the meantime, Raja Chittar Singh Judev, (father of Shri Samar Singh-the petitioner before us), died on 14.12.1976. The petitioner was substituted as plaintiff in Case No. 74 of 1954 after 9 years by an order dated 30.7.1985. He filed Writ Petition No. 26826 of 1995 for directions to comply with the order dated 17.9.1970 of the High Court for deciding the objections afresh.

5. The Writ Petition No. 26826 of 1999, Samar Singh v. State of U.P. was heard and decided on 9.1.2002. A Division Bench of the Court referred to the prayers, of the petitioner to command the respondents to pay compensation with interest to him, in the backdrop that inspite of directions given by this Court dated 11.9.1970, in First appeal No. 442 of 1954 no compensation has been paid, causing harassment to him. The State filed two counters-affidavit in the writ petition. After hearing the parties the Court observed with concern, the inefficiency of the concerned officials of the department, which could not care to reconstruct the record, if really they were missing, the petitioner, however, cannot be penalized for inaction of the respondents. The Court was of the view that the respondents are bound to pay the cost to the petitioner and disposed of the writ petition with following directions :

Accordingly, we give last indulgence of one month to the respondents to search out the records or reconstruct them, permitting the petitioner to supply copies of the relevant documents, if he is having the same and thereafter, the respondents will be duty bound to pass orders one way or the other, in accordance with law within two months therefrom.

In the peculiar facts and circumstances aforementioned, we hold that the petitioner is entitled to get special cost of Rs. 5000/- from the respondents which they must pay within three months from today.

We expect that the Secretary concerned of the State Government will take appropriate action against the concerned officials for inaction for which a cost of Rs. 5000/- has to be directed to be paid to the petitioner.

This writ petition is disposed of accordingly.

Let a copy of this order be handed over to Sri K.S. Kushwaha, learned Standing Counsel within one week for its intimation to and follow up action by the authorities concerned.

Sd/- Binod Kumar Roy, J. Sd/- D.R. Chaudhary, J. 9.1.2002

6. The petitioner filed copy of the judgment of the Court dated 9.1.2002 before the District Magistrate, Jalaun alongwith an application on 29.1.2002. The ADM (F& R), Jalaun ordered the Compensation Officer/SDO/Jalaun, Distt. Jalaun to immediately reconstruct the file for payment of compensation in accordance with the Compensation Rolls. The Compensation Officer/SDO, Jalaun, on receipt of the directions of the District Magistrate dated 8.2.2002 issued a letter dated 28.2.2002 to the petitioner fixing 6.3.2002 for appearance in the office of Tehsildar. The Tehsildar authorized the Lekhpal to inspect the records of 28 villages from the record room. The petitioner again received a letter dated 30.3.2002 fixing 8.4.2002 for appearance alongwith documents in his possession for reconstructing the file. The petitioner appeared on 8.4.2002, and brought to the notice of the Compensation officer the letters dated 23.1.2002, 6.2.2002 and 5.4.2002, by which all the documents in the possession of the petitioner were submitted. The petitioner by way of caution again filed all these documents. He, thereafter, received letters dated 27.3.2003 and 29.3.2003 from the office of the Compensation officer/SDO, Madhogarh, Distt. Jalaun, directing him to supply copy of the judgment dated 11.9.1970 passed by the High Court in the two first appeals, whereas these judgments were already on record.

7. A Contempt Petition No. 671 of 2003 was filed by the petitioner in which notice was directed to be sent on 28.2.2003. In para 24 of the writ petition it is submitted that in the process of reconstruction of file, the compensation rolls were prepared by the Compensation officer/SDO, Jalaun by which an amount of Rs. 31,85,356/-.68 was to be paid in respect of 28 villages of Rampura State. In para 25 it is stated that as soon as all the documents were settled, suddenly the old missing files were traced out and were sent for disposal to the Compensation Officer/SDO, Madhogarh, Distt. Jalaun on 25.4.2003, and once again the petitioner received a notice on 10.5.2003 from the Compensation Officer/SDO, Madhogarh, Distt. Jalaun to attend the hearing on 12.5.2003. The petitioner''s application to rely upon the reconstructed file to release the payment of compensation to the petitioner was rejected. The query on question-answer form filed by the petitioner on 12.6.2003, was also rejected on the ground that inspection of the reconstructed file is not permissible as it is a confidential file.

8. In the order dated 8.7.2003 the Compensation Officer, Madhogarh, Distt. Jalaun framed four issues. Issue Nos. 1 and 2 related to agricultural income tax

and issue Nos. 3 and 4 to the jurisdiction and validity of the provisions of the Act. The Compensation officer/SDM, Madhogarh held that he had no jurisdiction to review the order dated 25.4.1974 passed by his predecessor by which he was asked to decide the matter regarding payment of compensation. It was not open for him to reopen the case. He was directed to comply with the payment of compensation and for refund of the agricultural income tax. He cited previous orders, and rejected the application with the findings that nothing was payable to the petitioner, as the petitioner could not establish that he had paid the agricultural income tax, which is sought to be refunded. The Compensation Officer also held that the petitioner could not produce any documentary evidence, or other material to show that he had any income from the khatas, which were recorded as forest. According to the statement of revenue officials a large income was received from forest, which was recorded in the khatauni. The details of the income and its deposits were not established. The estimates were not supported by any documents about the actual income and the annual production. The returns filed by the intermediary did not show that there was regular forest. There were only shrubs, water channels and some sand dunes. The Compensation Officer also examined the documents to find out whether the income from ''bilatapsia gatas'', for which the land revenue was not fixed, was not included in the "kachchi nikasi''. So far as rent is concerned, the accounts of the year 1352-1355 F. were not supported by any leases issued by him to the farmers. There were no entries of the receipt of these revenues in the revenue records. It was also not established whether these leases were issued prior to abolition of zamindari and whether there was any income from these leases. He did not get the revenue records rectified. The account books did not include, the claims for rent and that intermediary had also not shown this amount in the return filed for agricultural income tax. On these findings the Compensation Officer held that the petitioner was not entitled for compensation of rental claim, which was not recorded in the khatauni.

9. On the issue Nos. 3 and 4 relating to jurisdiction the Compensation Officer found that no oral evidence was led nor any arguments were addressed and found that since these issues have already been decided against the applicant by the High Court, he had no jurisdiction to decide them again. The petitioner''s claim were consequently rejected on 8.7.2003, giving rise to this writ petition.

10. It is stated by Shri Arun Saunders that in the Contempt Case No. 671 of 2003, six counter-affidavits were filed indicating that the petitioner''s claim for compensation was finally rejected by the final order dated 8.7.2003.

11. Shri Saunders submits that the Compensation Officer passed the order dated 8.7.2003 to avoid adverse orders in the Contempt Proceedings in which the matter was fixed on 9.7.2003, and with official bias to save the State from payment of compensation to the petitioner. The petitioner''s father and the petitioner have been running from pillar to post for payment of compensation for last 50 years. The petitioner has also become an old person and is entitled for

payment of Rs. 31,85,356.68 as compensation under the UPZA for abolishing his zamindari over 28 villages and refund of an amount of Rs. 1,23,150/- towards agricultural income tax. He has also demanded 18% interest on these amounts.

12. In the counter-affidavit of Shri Kehari Singh, Tehsildar, Tehsil Madhogarh, Distt. Jalaun at Orai, it is stated in paragraphs 4, 11, 12, 13, 18, 25 and 27 as follows :

4. That the contents of paragraph No. 2 of the writ petition are wrong, hence emphatically denied. It is important to mention here that the compensation granted to the father of the petitioner (i.e. Raja Chittar Singh Judev, Rampura) has already been paid. In this regard father of the petitioner had himself gave an affidavit dated 30.11.1972 before the compensation officer, Jalaun, in which he has accepted that the compensation had been paid to him. A photostat copy of the affidavit and the extract of Z.A. form 38 in which the payments have been made to the father of the petitioner are being filed herewith as Annexures CA-1 and 2 to this affidavit.

11. That in reply to the contents of paragraph No. 13 of the writ petition, it is wrong to say that respondent set tight over the matter and kept the proceeding in abeyance, It is pertinent to mention here that all the relevant original records have been traced out/searched out from the record room of Tehsil Jalaun and the said records have been sent to the S.D.O. Madhavgarh for proper action. It is relevant to mention here that the original case No. 74 of 1954 which was remanded back by this Hon''ble High Court has already been decided on 8.7.2003.

12. That in reply to the contents of paragraph No. 14 of the writ petition, it is stated here that in compliance of the Hon''ble High Court order dated 9.1.2002 passed in civil misc. writ petition No. 26826 of 1995, the original records have been traced out and the special cost of Rs. 5000/- has been paid to the petitioner and after giving sufficient opportunity of hearing, the original case No. 74 of 1954 has been decided on 8.7.2003.

13. That in reply to the contents of paragraph No. 15 of the writ petition, it is stated that in compliance of order of Hon''ble High Court dated 9.1.2002, the original records of the case has been traced out from Jalaun Tehsil record room and the same have been sent to Sub Divisional Officer, Madhavgarh and the case ha been decided in accordance to the law on 8.7.2003.

18. That in reply to the contents of paragraph Nos. 24 and 25 of the writ petition, it is stated that in compliance of Hon''ble High Court''s order dated 9.1.2002, the answering respondents were searching the original records of the case, meanwhile the S.D.O. Jalaun newly prepared a compensation roll and sent to the Deputy Collector, Madhavgarh in the shape of correspondence only for information. During this period the original records of the case were searched out from the record room of the Tehsil Jalaun and were sent to S.D.O. Madhavgarh on 25.4.03 and after going through the records, it was found that the

compensation has been paid to Raja Chittar Singh Judev, therefore, the new compensation rolls prepared by the S.D.O. Jalaun were found baseless and cancelled by the S.D.O. Madhavgarh.

25. That in reply to the contents of paragraph No. 32 of the writ petition, it is stated here that the original records of the case was searched out, wherein it was found that payments have been made to the father of the petitioner, therefore, the newly prepared compensation rolls were cancelled by the S.D.O. Madhavgarh, while the cases regarding the compensation were duly decided without any delay.

27. That in reply to the contents of paragraph No. 34 of the writ petition, it is stated here that on the objection of Raja Chittar Singh Judev four (4) issues were framed and decided according to law, after perusal of the original file of the case, it was found that the payments of the compensation were made to the father of the petitioner, hence the S.D.O. rightly cancelled the newly prepared documents, therefore, there was no need to frame new issues in this regard.

13. It is admitted to Shri A.D. Saunders appearing for the petitioner that the petitioner''s father had received the entire refund of the Agricultural Income Tax, and also Rs. 5000/- awarded as cost.

14. It is relevant to refer to the documents annexed to the counter-affidavit of Shri Kehari Singh. The first document is an affidavit of late Raja Chittar Singh Judev stating on oath that the agricultural income tax of Rs. 15,478/- deduced in 1359 F. from the jagirdari of the 28 villages. The order of the Tax Assessment Officer (Agricultural Income Tax) dated 1.2.1959 was cancelled on which he had received the refund of the entire amount of agricultural income tax paid by him. In para 3 of this affidavit he stated on oath that he was the only Zamindar of the 28 villages in his jagir and apart from him there was no other zamindar nor any other intermediary had any interest in any part of these villages. In paragraph 4 he stated on oath that the State agricultural income tax was deducted from his ''kachchi nikasi'' and that now according to the judgment of the High Court dated 11.9.1970 in Appeal No. 442 of 1954 he is entitled to 8 times the compensation of the said amount. In paragraph 5 he stated on oath that at the time when the statements of his compensation was prepared and of which the copies were given to him, the Agricultural Income Tax was deducted from his total ''kachchi nikasi'' (gross assets) Rs. 15,478.87 as for determining the ''pakki nikasi'' (net assets) and of this ''pakki nikasi'' 8 times was determined as compensation, which he has received in full. In para 6 he stated on oath that the forms relating to compensation, the copies of which were given to him are not available with him. In para 7 he stated on oath that Rs. 15,478/-.87 was deducted as agricultural income tax from his "kachchi nikasi" (gross assets) and that from this amount there was no deduction or addition. In paragraph 8 of the affidavit he stated that on the payment of 8 times the Agricultural Income Tax of Rs. 15,478.87, if any amount is paid to him in excess, he or his heirs will return the said amount and if such amount is not returned, the State Government will be

entitled to recover it from him or from his heirs.

15. The second document annexed to the counter-affidavit is the copy of ZA From No. 38 of Tehsil Jalaun and which records in detail of the serial number (column No. 1); mahals in column No. 2; the name of intermediary (Raja Chittar Singh Judev son of Raja Ram Singh Judev resident of Rampura) in column No. 3; the proposed compensation part of ZA Form 27 (8) in Column No. 4; the interim compensation paid in cash in column No. 5; the interim compensation adjusted in column Nos. 6 and 7; interim compensation u/s 52 in column No. 8; date of determination in column No. 9; the balance of the interim compensation in column No. 10; transfer voucher/account number and date in column No. 11; the deductions made from the interim compensation in column No. 12; the amount payable (the total of column No. 8 and column No. 12) in column No. 13; the bonds in column No. 14; the amount in cash in column No. 15; the interest on amount shown in column No. 8, and column No. 14 in column No. 16; total cash compensation as total of column Nos. 15 and 16 in column No. 17; the voucher number and date of payment of the cash compensation in column No. 18; the date of payment of the voucher by the Sadar or Tehsil treasury in column No. 19; if the payment is in bond, then the serial number of the register of the bond in Form No. 38 in column No. 20; the signature of the Compensation Officer of column No. 21, and subject details in column No. 22. The third document is the order of Compensation Officer dated 16.9.1954.

16. In the supplementary counter-affidavit of Shri Shiv Lal, SDM, Madhogarh, Distt. Jalaun filed on 24.4.2010 it is stated in paragraph 5 and 6 as follows :

5. That the entire due compensation was paid to the petitioner''s father in several installments. From available records the following amounts had been paid to the father of the petitioner:

(i) On 2.9.1953 amount of Rs. 25,288, 10 Ana and 6 paise and Rs. 33,376, 11 Ana and 3 paise and again on 22.7.1952 Rs. 2080, 2 Ana and 6 paise and again on 19.8.1957 Rs. 8026.25 paise was paid.

The photocopy of the relevant extract of the cashbook register is being filed herewith and marked as Annexure SCA 1 collectively, it is further relevant to mention that in his affidavit dated 30.11.1972 Chittar Singh has categorically stated that he has received all the due compensation except the amount deducted towards Agricultural Income Tax (hereinafter referred to the as the AIT) for Fasli year, 1359.

6. That it is pertinent to mention that after receiving the aforesaid amount, the father of the petitioner namely Sri Chittar Singh filed an objection dated 5.3.1954 before the Court of Compensation Officer. The true copy of the objection dated 5.3.1954 is being filed herewith and marked as Annexure SCA 2. A perusal of the same clearly shows that the father of the petitioner alleged that the amount relating to AIT has not been paid to him.

17. In para 7 it is stated that on 16.8.1952 a notice was issued by the Assessing Authority under the Agricultural Income Tax Act to the father of the petitioner for producing and submitting the relevant documents regarding the amount to be paid as Agricultural Income Tax. The Assessing Authority, Jalaun u/s 16(2) of the Agricultural Income Tax Act, 1948 passed an order dated 6.11.1952 assessing Rs. 16,612/- and 5 annas as agricultural income tax paid by the father of the petitioner in Fasli Year, 1359. Against this order the petitioner''s father filed appeals, in which an interim order was passed by the Court of Commissioner, Agricultural Income Tax on 13.12.1992. The Appellate Authority remanded the matter on 11.12.1957 to the Assessing Authority to pass a fresh order, pursuant thereto Assessing Authority by order dated 9.2.1959, passed a speaking order discharging the notice u/s 15 of the Agricultural Income Tax Act, and cancelling the order dated 6.11.1952, whereby Rs. 16,612/- and 5 annas was assessed as agricultural income tax. The petitioner demanded an amount, which has been deducted from the compensation in the form of agricultural income tax. A close scrutiny of the record would sow that no amount was deducted from the Agricultural Income Tax from the compensation assessed and paid to the petitioner''s father. In pursuance to the orders in First Appeal No. 442 of 1954 and 443 of 1954 quashing the order dated 16.9.1954 of the Compensation officer and remanding the matter back to him, the Compensation Officer, Jalaun passed the order on 8.7.2003, which clearly shows that the petitioner is not entitled to any further amount as full compensation has already been paid to him.

18. In the rejoinder-affidavit the petitioner has reiterated that the amount of compensation was not paid, and the whole thing has been confused with the refund of the Agricultural Income Tax.

18-A. The assessment and payment of compensation is provided in Chapter-III and Chapter-IV of the UPZA & LR Act, 1950 by which the zamindari system, which involves intermediary between the tiller of the soil and the State of U.P. was abolished. The Act provided for acquisition of their rights, title and interest and to reform the law relating to land revenue, consequent upon such abolition and acquisition and to make provisions for other matters connected thereof. The provisions of the Act extended the whole of the State of U.P. except the areas, which on the 7th Day of July, 1949 were included in a municipality or a notified area under the U.P. Municipalities Act, 1916 or continues under the Cantonment Act, 1924 or the Town Area under the U.P. Town Areas Act, 1914. The State was empowered u/s 2 to apply the whole or any of the provisions of the Act to certain areas or estates subject to exceptions or modifications, not affecting the substance, as circumstances may require. Section 4 provide for vesting of all the estates in the State, after the issuance of the notification, which was issued on 1st July, 1952 and which is known as date of vesting free from all encumbrances. The consequences of the vesting are provided in Section 6. For the purposes of this case it is useful to note that all rights, title and interest of all intermediaries in every state, in such areas including the land (cultivable or barren), grove land, forest, fisheries, tanks, ponds, water channels, ferries, pathways, abadi sites, hats and bazaars and in all sub-soils in such estates including rights, if any, in mines and minerals, whether being worked or not, or seized were vested in the State of U.P. free from all encumbrances. Similarly all grants and confirmations of title to land in any estate so acquired, or of or to any right or privilege in respect of such land or its land revenue shall, whether liable to resumption or not were determined. Section 6 also provides in Clause (d) that all arrears of revenues, cesses or other dues in respect of any estate so acquired and due from the intermediary or an arrear on account of tax on agricultural income assessed under the U.P. Agricultural income tax Act, 1948, for any period prior to the date of vesting shall continue to be recoverable from such intermediary and may, without prejudice to any other mode of recovery, be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III. Section 6 also provided for recovery of other amounts, and made the interest of the intermediary so acquired in the State not liable for attachment or sale in execution of the decree passed before sch date subject to the provisions of Section 73 of the Transfer of Property Act. Subsection (g), made provisions for mortgaged executed prior to the date of vesting, and the stay of all suit and proceedings previous to the date of vesting.

19. In Chapter-III. Assessment of Compensation, Section 27 provide for entitlement for compensation to every intermediary, whose rights, title or interest in any estate was acquired under the provisions of the Act. The compensation was to be due u/s 28 from the date of vesting, subject to determination of the amount. The amount was to be paid under sub-section (2) with interest at the rate of 2 1/2 % from the date of vesting to the date of determination in cash, and in the case of the amount to be given in bonds, the redemption of the bonds. Section 29 provide for payment of interim compensation in such manner as may be prescribed. Section 30 provide for adjustment of interim compensation and in case of waqf, trust, or endowment, interim compensation was to be deducted from and adjusted against the annuity payable under the Section. Section 32 raises a presumption regarding entries in the records of rights, the correction of clerical error or arithmetical mistakes in the records of rights, and right to establish claim in the civil Court under Sections 33 and 34 of the Act.

20. The method of statement of gross assets of mahal and the determination of gross assets of the mahal is provided in Sections 38 and 39 respectively. The gross assets in respect of the mahal were provided to be the aggregate gross income of the land or estate comprised in the mahal and such income shall comprise; (a) rents including cesses and local rates payable by or on behalf of the tenants, etc., in cash, and where it is paid in kind or partly in cash or partly in kind, the rent computed in accordance with the U.P. Tenancy Act. Where the rent was payable but was not determined, the rent determined at ex-proprietary rates in the case of under-proprietors and ex-proprietary tenants and at hereditary rates in all other cases, except grove-holders.

21. The word ''sayar'' (receipts arising from or on account of natural products, excluding stones and other minerals) u/s 39 included income from hats, bazaars, melas, vested, in the State under clause (a) of Section 6, and fisheries which shall be an amount equal to one-tenth of the total income therefrom during the ten agricultural years immediately preceding the date of vesting. The ''total income'' under Explanation (I) from sayar was to be calculated on the basis of entries in khataunis (records of title) and in Explanation II, the sayar as respects an intermediaries grove shall not include income from the sale of wood, flowers and fruits.

22. Section 40 provide for Draft Compensation Assessment Roll, which was to be signed, u/s 41 by the Compensation Officer. The gross assets and net assets were provided in Sections 42 and 44. The net assets were to be worked out by computing from the gross assets after deducting land revenue or rent to the State Government and in sub-section V an amount on account of agricultural income tax, if any paid or to be paid for the previous agricultural year by the intermediary in respect of his share or interest in the mahal calculated in the manner prescribed.

23. Section 46 provides for preliminary publication of draft compensation assessment roll. Sections 47 and 48 provides for date of hearing of objections and for deciding of objections. The order u/s 48, after deciding the objections was to be treated u/s 49. as decree of a Civil Court by which the appeal lies before the District Judge u/s 50 and thereafter appeal from the order of the District Judge lies u/s 51 to the High Court. Where no objection was received, the compensation assessment roll would become final u/s 52, a copy of which will be supplied to the intermediary u/s 53 and the amount of compensation was to be paid to the intermediary. Section 54 reads as follows :

54. Amount of Compensation.--The amount payable as compensation to an intermediary in respect of his interest in the mahals to which the Compensation Assessment Roll relates shall, except where the interest of the intermediary therein is held by a thekadar, or where the intermediary is a thekadar, be eight times the net assets mentioned in the Roll.

24. In Chapter IV. Payment of Compensation, Section 65 provide the compensation entered in the roll to be paid to the intermediaries. The amount could be paid to the legal representative u/s 67, where the person entitled to the compensation u/s 67 dies. Section 68 provides that the compensation payable shall be given in cash or in bonds or partly in cash and partly in bonds. The deposit of compensation in cases, where the person entitled is a waqf, trust or endowment or a manner suffering from some legal disability is provided u/s 69 to be deposited in bank. Section 70 provides for payment of compensation in case, where there was any suit or proceedings pending, likely to affect right of the person to receive the compensation in whole or in part to be deposited in Court, u/s 70, to be disposed of in accordance with the orders of the Court or authority. The State Government was authorised to make rolls for payment of

compensation u/s 72 of the Act.

25. In the present case" the pleading and the documents annexed to the writ petition would show that compensation roll was prepared in respect of mahals in 28 villages of Raja Chittar Singh Judev. A Form No. 38 providing for all the mahals, the proposed compensation, the interim compensation, the amount payable in cash and in bonds, interest, and the payment of the amount in cash giving number of vouchers and the dates of the year 1955 clearly establishes, with the presumption, which is attached to the official acts that the compensation was prepared and was paid to Late Raja Chittar Singh Judev. The matter of refund of the Agricultural Income Tax, which was to be adjusted if it was paid from the compensation u/s 44(b) of the Act in working out the net assets of an intermediary had travelled upto the High Court. A notice u/s 15 of the Agricultural Income Tax Act was pending adjudication. On 9.2.1959 Shri Babu Lal Singh, the Assessing Authority, Jalaun in the pending case discharged the notice u/s 15 of the Agricultural Income Tax Act, and by which the order dated 6.11.1952 whereby Rs. 16,612 and 5 annas assessed as Agricultural Income Tax was cancelled. He further directed that any amount if deposited towards the payment of the agricultural income tax assessed be refunded.

26. In the order dated 25.4.1974 of the Assessing Officer he noticed the decisions in appeal by Allahabad High Court against the order of the Compensation Officer dated 16.9.1954 and the application of Late Raja Chittar Singh Judev for return of 8 times the amended compensation for his 28 mahals on the exemption of the Agricultural Income Tax. The Compensation Officer found that since he was exempt from the Agricultural Income Tax and the High Court accepted in its judgment dated 11.9.1970 that the compensation may be accordingly amended, he was entitled for preparation of separate files for the 28 villages and for refund of the 8 times the agricultural income tax deducted from his gross assets in payment of compensation.

27. It appears that since the fund was alleged not to be paid, the matter travelled again upto the High Court and in Writ Petition No. 26826 of 1996 filed by Shri Samar Singh-the petitioner as son of Raja Chittar Singh Judev, who had since died on 14.12.1976. The High Court without going into the merits of the matter, took note of the loss of records and directed a special cost of Rs. 5000/- to be paid by the respondents.

28. From the affidavit of Raja Chittar Singh Judev, annexed to the counter-affidavit of Shri Ram Awatar, SDM, Madhogarh, Distt. Jalaun, we find that the issue of refund of 8 times Agricultural Income Tax was concluded in the year 1972 itself. In his application dated 23.10.1972 he had clearly mentioned that the Compensation Officer had wrongly deducted the Agricultural Income Tax from his gross assets. The reference of not receiving compensation in his application dated 23.10.1972 was not regarding the compensation payable to him u/s 54 of the Act, but of the adjustment of the Agricultural Income Tax, which was wrongly deducted from the gross assets, and which he alleged could be easily found out

with the help of ZA Form No. 23 to 27.

29. Since it is admitted that the entire amount of refund of Agricultural Income Tax was received, nothing else was required to be adjudicated or paid as compensation.

30. We do not find in the entire records any statement of fact made by Late Raja Chittar Singh Judev, that he had not received the compensation worked out in accordance with the Act in respect of various mahals. The details of the compensation provided in the ZA Form 38, clearly records the calculations of amount of compensation received by him and the dates on which such compensation was received. The detailed chart shows that the compensation was actually received vide various challans on 16.5.1955. After the entire compensation were received without any protest, against which no appeal was filed before the District Judge, an order came to be passed separately as aforesaid on 9.2.1959 by the Assessing Authority of Agricultural Income Tax, Jalaun, in respect of notice issued u/s 15 of the Agricultural Income Tax Act to late Raja Chittar Singh Judev of Rampura. He was assessed to the Agricultural Income Tax of Rs. 16,612 and 5 annas in 1359 F. His appeal was allowed and the matter was remanded to the Assessing Authority, which allowed refund on 9.2.1959. It is this refund that he pursued with the Compensation Officer and in which the matter traveled upto the High Court.

31. We find it rather interesting, that the report in the counter-affidavit of the missing files, in the office of Tehsildar, Jalaun and the directions issued by the High Court on 9.1(sic)2002 were used by the petitioner to claim the compensation all over again, which was calculated and received by his father. He has relied upon the observations of the High Court, in reinitiating the matter of payment of compensation, whereas his father had not only received the entire compensation, but had also received the refund of the Agricultural Income Tax and costs.

32. The prayers made in the writ petition are entirely misconceived. Shri Samar Singh, the petitioner has taken advantage of the observations of the High Court, to reagitate the matter of payment of compensation and refund of Agricultural Income Tax, which had become final during the life time of his father. Instead of checking up of the records, he has relied upon proceedings of refund of the Agricultural Income Tax, and has taken the benefit of pleading of loss of records, which were subsequently traced out. The writ petition is dismissed with Rs. 10,000/- as cost to be paid by the petitioner to the Collector, Jalaun. The amount will be utilised for the maintenance and upkeep of the record rooms.

