

(1980) 04 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No's. 681/682 (N) of 1971

State of Uttar Pradesh and Others

APPELLANT

Vs

Maharaj Dharminder Prasad and Others

RESPONDENT

Date of Decision : 16-04-1980

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 44
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 37A, 38

Citation : AIR 1980 SC 1184 : (1980) 3 SCC 280 : (1980) 12 UJ 549

Hon'ble Judges : S. Murtaza Fazal Ali, J; P. S. Kailasam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Murtaza Fazal Ali, J.—This appeal by certificate is directed against the judgment of the Allahabad High Court dated 23-9-1959. We have gone through the effective judgment of the High Court rendered by Justice Lakshami Prasad and we find ourselves with complete agreement with the view taken by the learned judge as also with the reasons given by him.

2. Mr. Dikshit appearing for the appellant/State submitted two points before us. In the first place it was argued that in view of the provisions of Section 44(b) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 read with Rule 37(A) and Rule 38 in assessing the compensation, the amount on account of agricultural income tax to be paid for the previous year had to be taken into consideration. It was submitted that although the respondents had filed appeals against the District Agricultural income tax Officer who was the Collector to the appellate Court and ultimately succeeded in getting the order of the Collector set aside by the Commissioner who remanded the case for a fresh assessment, the decision of the Commissioner was wholly irrelevant because u/s 44(b) it was the amount which was assessed by the first authority which alone had to be considered. Section 44(b) runs thus:

44(b): 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.

3. Rule 37(A) also gives the basis on which the income tax is to be deducted. Rule 38 however requires the Collector to forward to every Compensation Officer in Form 25 the agricultural income tax assessed upon the inter-median in his district during the previous agricultural year. We are however unable to agree with the argument of Mr. Dikshit because what Section 44(b) read with the Rules contemplates in that the agricultural income tax which is to be taken into account should be the amount of income tax which has been finally assessed and not one which is under appeal. Justice Lakshmi Prasad in his well reasoned judgment has pointed out that the Government itself issued various circulars to the Compensation Officers not to finalise the compensation and to await the decision of various references and appeals made against the Collectors order assessing the agricultural income tax. For these reasons there fore, the first contention raised by Mr. Dikshit is over-ruled.

4. It was then pointed out that the respondent not having filed any objections to the compensation assessed, the compensation became final particularly when the respondent accepted the compensation paid. In the first place in view of the circulars sent by the Government, it cannot be said that the compensation was, final. Secondly, the acceptance of the compensation by the respondents under protest and without prejudice did not show that compensation had been finalised or that the same was accepted by the respondents unconditionally so as to estop them from challenging the same. This contention also therefore fails. The High Court has passed a very just and equitable order by directing the Collector to redetermine their assessment in the light of the order of the Commissioner after which the compensation would be finally fixed u/s 44(b) of the Act on the basis of the final assessment made by the Collector. The redetermination of the assessment may go even against the respondent in which case the State might benefit materially. This was therefore not a proper case where the State should have come up in appeal to this Court or asked for a certificate from the High Court.

5. For the reasons given above, we do not find any merit in this appeal. The order of the High Court is therefore confirmed and the appeal is dismissed. The appellant will be entitled to one set of costs of the Court only.