(1964) 03 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No. 251 of 1962

Sulochana Chowdhurani APPELLANT

Vs

The Compensation Officer and Others RESPONDENT

Date of Decision : 10-03-1964

Acts Referred:

Assam State Acquisition of Zamindari Act, 1951 — Section 10(1), 11, 12, 13, 14
Constitution of India, 1950 — Article 226

Citation : AIR 1966 Guw 134

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Advocate : S.M. Lahiri, A.K. Ghose and N.M. Lahiri, for the Appellant; M.C. Pathak, Sr. Govt. Advocate and N.M. Dam, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—As the common question of the interpretation of the provisions of the Assam State Acquisition of Zamindaris Act, 1951 (Assam Act XVIII of 1951) has been raised in these two petitions under Art-M|28 of the Constitution, they are disposed of by one common judgment.

2. The facts in Civil Rule No. 251 of 1962 are that the Petitioner Sulochana Chowdhurani is the widow of one Jitendra Narayan Chowdhury. One Birendra Narayan Chowdhury who was renamed as Jagadindra Narayan Chowdhury after adoption by the Petitioner Sulochana Chowdhurani, inherited annas (sic)/2/6 pies share of Prabatjoar Estate from his father prior to the said adoption and after the said adoption also inherited annas -/2/11 53/56 pies share of Mechpara Estate'' as an adopted son of Jitendra Narayan Chowdhury Jagadindra Narayan Chowdhury. the adopted son of the present Petitioner died on 26th August 1950 He was unmarried and the Petitioner as the adoptive mother alleges that she inherited the aforesaid shares of Jagadindra Narayan Chowdhury in the Prabatjoar Estate and the Mechpara Estate in the Goalpara District The Petitioner then moved for the mutation of her name in respect of her shares in the

aforesaid Estates and certain objections were filed by the present Respondent No. 4 Tejendra Narayan Chowdhury and his late brother Probat Chandra Chowdhury. The Deputy Commissioner of Goalpara by his order dated the 7th March, 1957 mutated the name of the Petitioner in respect of her share in the Estate.

Thereafter the Petitioner adopted one Jayanta Narayan Chowdhury on the 7th June, 1951 but continued to possess the Estate by virtue of an anti-adoption deed dated 7-6-1951. The opposite party No. 4 and his brother late Probhat Chandra Choudhury then instituted a suit in the court of the Additional Subordinate Judge, Lower Assam Districts at Dhubri on the 19th June 1951 against the Petitioner for declaration of the Plaintiff?s title to annas -/2/11 53/50 pies share of the Mechpara Estate and annas -/2/6 pies share in the Prabatjoar Estate. They claimed to be the heirs of Jagadindra Narayan Chowdhury. The Additional Subordinate Judge held the value of the properties to be Rs. 19,57.368 and the Plaintiffs in that suit were directed to pay the deficit court fee The order about the pay-men) of deficit court fee was challenged in this Court But the application was dismissed. As the Plaintiffs, however, could not file the deficit court-fee, the suit was dismissed. Meanwhile the Assam State Acquisition of Zamindaris Act, 1951 Assam Act XVIII of 1951 (hereinafter called ''the Act'') came into force on the 15th June 1956 and a notification was published in which the compensation for the acquisition of the Prabatjoar Estate was assessed by the Compensation Officer The draft compensation statement was prepared and in the final draft it was given out that the present Petitioner was entitled to receive the compensation amount.

3. It is to be pointed out that opposite party No. 4 Tejendra Narayan Chowdhury did not file any objection in these proceedings. He however, filed title Suit No. 30 of 1958 in the court of the Subordinate Judge Lower Assam Districts on the 7th July 1958 against the Petitioner and Jayahta Narayan Chowdhury the second adopted son of the Petitioner, for declaration of their right to the property That suit was dismissed by the court below on the ground that the suit was not maintainable. A first appeal is pending in this Court against that decision of the trial court.

4. Opposite party No. 5 Nihar Kumari Chowdhurani in the Civil Rule No. 252 of 1962 who claims to be the co-widow of Jitendra Narayan Chowdhury, has also filed a suit in forma pauperis claiming her share in the property. The suit and the appeal before this Court are still pending. It appears'' that objection, was taken that the suit was not maintainable. The opposite party No. 4 and opposite party No. 5 in rule No. 252/62 made applications before the Compensation Officer purporting to be one u/s 21(5) of the Act, raising a dispute as to the title of the present Petitioner to receive the compensation amount.

5. It should be pointed out at this stage that the Petitioner had already received a sum of Rs. 21,000 and odd as the first instalment of the compensation amount. Obviously thus the dispute relates to the balance of the compensation amount.

The Compensation Officer came to the conclusion that as the dispute has been raised, he is bound to refer the dispute either to civil court or to the Claims Officer and further, he can u/s 21(5) of the Act keep the amount of the compensation in deposit till the matter which is referred to the Claims Officer or to the civil court has been finally determined. In this view of the matter the Compensation Officer passed an order directing the parties to refer the dispute to the Claims. Officer and further directing that the amount should be kept in deposit till the matter has been finally disposed of by the Claims Officer It is this order of the Compensation Officer which has been challenged under Article 226 of the Constitution in the two petitions giving rise to civil rules Nos. 251, 252 of 1902.

6. Mr. Lahiri who appears for the Petitioner, has contended that having regard to the language of Section 21(5) of the Act and the entire scheme of the Act, the provisions refer to the dispute which arises after the final statement has been made and not to any dispute which had already subsisted between the parties prior to the statement being finalised. His contention is that the legislature has provided for an opportunity to those who are concerned with the property to file objections if they are entitled to receive compensation prior to the statement becoming final But if any right or title to receive the compensation is created subsequent to the finalising of the statement, the person deriving such title gets no opportunity before the statement is finalised for filing objection The legislature has therefore limited the scope of Section 21(5) to the cases where the claimant claims title to the compensation which arises out of any subsequent transaction after the finalisation of the statement and not before that

7. In order to appreciate the point raised is necessary to refer to some of the provisions of the Act. Section 10(1) of the Act lays down that every proprietor or tenure-holder, whose estate or tenure has vested in the State in consequence of a notification issued u/s 8, shall be paid compensation according to the provisions of the Act. Sections 11, 12 and 13 deal with the compensation of gross and net income of the estate on the basis of which the draft compensation statement is prepared, Section 14 deals with the disposal of claims made by any creditors to whom either the estate is mortgaged or there are other creditors of the co-sharers or recorded co-sharers of the property. Section 15 provides for an appeal against the order of the Claims Officer. It should be pointed out that the Act contemplates the appointment of the Claims Officer who will not be below the rank of a Subordinate Judge. After the determination by the Claims Officer u/s 14 or u/s 21(5) an appeal lies u/s 15 to the District Judge and thereafter an appeal lies to the High Court.

8. Section 16 provides for the preliminary publication of the compensation statement and the objections are invited to the preliminary compensation statement. Subsection (4) of Section 16 gives power to the Compensation Officer to decide any objection preferred to the draft statement of compensation Section 17 provides that an appeal, if presented within 60 days of the date of order, shall

lie against any order of the Compensation Officer passed under Sub-section (4) of Section 16 to the District Judge of the district in which the estate or a major portion thereof is situated. It also provides for an appeal thereafter to the High Court. Section 18 provides.

18(1) After disposal of all objections and appeals under Sections 16 and 17, the Compensation Officer shall correct the compensation statement in such a way as to give effect to the order passed on objections and appeals referred to in Sections 16 and 17 and cause the compensation statements so corrected to be finally published in the manner prescribed and on such publications, every entry in the compensation statement, except as provided elsewhere in the Act, shall be final.

(2) After the compensation statement has been published under Sub-section (1) the Compensation Officer shall within the period fixed by the State Government by any general or special order furnish a certificate in the manner and form prescribed stating the fact of such publication, and such certificate shall be conclusive proof of such publication.

Section 19 then gives a right to the Compensation Officer to correct any bona fide mistakes in the final statement. Section 19(8) has been strongly relied upon by the counsel for the Petitioner. Relevant portions of Section 19 provides:

19(1) No correction of the compensation statement after it has been finally published u/s 18 shall be made, except as provided in this Section.

* * *

(3) Every time, in making such corrections as are referred to in Sub-section (2), the Compensation Officer shall cause a draft of the correction to be published in the same manner as the draft compensation statement is required to be published u/s 16, and after considering and disposing of any objections that may be made in the manner provided in the Sub-section (4) of Section 16, shall cause the correction, to be finally published.

9. The argument of Mr. Lahiri for the Petitioner is that even where the Compensation Officer has been given power to correct the final statement, the procedure has to be repeated and the corrections have got to be published, while u/s 21(5) no such procedure is provided for and if Section 21(5) is made to apply to the dispute prior to the final publication, then the power is given to the Compensation Officer to upset the whole final statement without resorting to the procedure laid down u/s 19(3). This will bring about an anomaly and in interpreting a statute such an anomaly should be avoided. We do not think that any such anomaly will arise.

Section 21(5) speaks of the determination of the right of any person mentioned in the final statement to receive the compensation. If any dispute arises as to the title of such a person to receive compensation the dispute is to be determined in accordance with the provisions of Section 21(5). This occasion will necessarily arise after the statement has become final and thus if any action is to be taken u/s 21(5), it will necessarily result in some modification of the final statement. This will not require the correction of the final statement. The contingency contemplated u/s 21(5) will only arise when the person concerned is to receive compensation. Section 21(5) deals with the determination of title to receive compensation and not the correction of the final statement. Whenever any question of correcting the final statement arises, the legislature has provided for a definite procedure under Sections 16 and 19 of the Act. But in the case of Section 21(5) as I have already pointed out, no question of correcting the statement arises.

10. It is then pointed out, that if Section 21(6) is interpreted to affect the dispute which arises prior to the preparation of the final statement of compensation, then it may be that although the point has been raised earlier and has been disposed of finally by this Court in appeal, still the person can agitate the matter again and when it is agitated a second time u/s 21(5) it may be even referred by the Compensation Officer to the Claims Officer and thus there may be a conflict of decision by the Claims Officer and a competent court. This could not have been contemplated by Section 21(5). The plain language, of Section 21(6) does not limit the scope of the application of the Section only to the Cases where the dispute comes into existence after the final statement. It refers to all the disputes which arise as to the title of any such person to receive the amount. When the compensation is to be paid to the Petitioner and somebody else comes and claims that that compensation should be paid to him, the dispute arises at that time and he may be basing his claim on the title to the property which he claimed even prior to the preparation of the final statement.

But nonetheless the dispute arises only when the compensation is to be paid to a person and the claim is made by some other person. It cannot be doubted as a rule of interpretation that if the language is not clear, such an interpretation should be given which will be consistent with the object and the scheme of the Act. But the anomaly can also be avoided if Section 21(5) is interpreted to mean that the power to be exercised by the Compensation Officer is discretionary, in the sense that he is not bound to refer the dispute either to the Claims Officer or to the court in all cases. In a case where the matter has either been already decided by a civil or competent court or is a subject mailer of decision in a pending case before a civil court or where at the earlier stage the dispute has already been decided, then the compensation officer may not exercise his discretion The anomaly may arise only if the Compensation Officer is bound to refer the matter either to the Claims Officer on the competent civil court irrespective of the fact whether the matter has or has not been decided at the earlier stage or by a competent civil court. In our opinion Section 21(5) is discretionary and not mandatory in the sense that in certain circumstances the Compensation Officer may not exercise his discretion to refer the dispute to the Claims Officer or to a competent court. Section 21(5) of the Act runs as follows:

If any dispute arises as to the title of any such person to receive the amount or as to the apportionment of it, the Compensation Officer may, if he thinks fit, keep the amount of compensation or the bonds referred to above in deposit in the manner prescribed, until the Claims Officer or any competent court to whom the parties shall be referred finally determines the dispute, and on such determination the Compensation Officer shall pay the amounts or the portions thereof, to the person or persons entitled to receive the same.

The Compensation Officer is of opinion that the words ''if he thinks fit'' in Section 21(5) only control the discretion so far as keeping the amount of compensation or the bonds in deposit is concerned So far as the reference to the Claims Officer or the competent court is concerned, his view is that the words ''shall be referred'' are mandatory and the reference is bound to be made It should be seen that Section 21(5) does not by itself confer any power to refer it. Both the powers of keeping the money in deposit and reference are co-extensive The Compensation Officer will exercise the power of keeping the compensation in deposit only if he decides to refer the matter to the Claims Officer or any competent court and if the words "if he thinks fit" make the power to keep the, amount in deposit discretionary, obviously "these words must also control the import of the words ''shall'' occurring in the later part of the sentence. Thus the Compensation Officer shall refer the parties to the Claims Officer or the competent court only if he thinks fit to so refer the parties. If the Compensation Officer has discretion in the matter of keeping the amount in deposit, the discretion obviously must be there also with regard to the reference to the Claims Officer or the competent court.

11. It should also be pointed out that if the discretion is not properly exercised, it is always liable to be interfered with by this Court. But it cannot be said that the Compensation Officer has no power to refuse to refer the matter either to a competent court of the Claims Officer. It should also be pointed out that if that interpretation is given then the discretion as to whether the reference is to be made to the Claims Officer or the competent court becomes a naked discretion. Whether matter should be referred to the Claims Officer or to the competent court is a discretionary matter according to the Compensation Officer, while the reference to either the claims Officer or the competent court is compulsory or necessary. The result will be that there will be no guiding principles as to when the matter is to be referred to a competent court and when to the Claims Officer.

The only manner in which Section 21(5) can be interpreted is that the guidance is to be found in the entire scheme of the Act The Act contemplates u/s 14 that the disposal of the claims by creditors is to be made by the Claims Officer and thus if the claim is made by a creditor, u/s 21(5) reference may be made to the Claims Officer and if it is a matter which involves any complicated question of title raised by a creditor, it may be referred to a competent court. It may also be noted that in cases where the matter has already been disposed of by a competent court or is the subject matter of disposal by a competent court or where it has been decided earlier under Sections 16 and 17 of the Act, it will not be a case for reference to the Claims Officer.

12. We have already set out the facts in the earlier part of the judgment which go to show that so far as opposite parties 1 to 4 arc concerned the matter is before this Court in first appeal and the trial court has already given its decision. So far as opposite party No. 5 is concerned a suit has already been filed with an application that the opposite party No. 5 should be allowed to file a suit in forma pauperise. In view of the pendency of these proceedings, the Compensation Officer had no jurisdiction to refer the matter to the Claims Officer u/s 21(5). The Compensation Officer has thus exercised his discretion arbitrarily in referring the parties to the Claims Officer. So far as the direction that the amount should be kept in deposit is concerned, the direction is also improper when the reference to the Claims Officer itself is incompetent in the circumstances of the case. In the result, therefore, we allow these petitions and quash the order of the Compensation Officer by which he has directed the parties to refer the disputes to the Claims Officer and has also directed that the compensation money should be kept in deposit. We make no order as to cost.

