

(1969) 03 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 448 of 1966

The State of U.P.

APPELLANT

Vs

Kanwar Durgeshwar Dayal

RESPONDENT

Date of Decision : 11-03-1969

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 32, 33, 34, 35

Citation : (1969) 2 UJ 324

Hon'ble Judges : M. B. Shah, J;A. N. Gover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Grover, J.—This is an appeal by special leave from a judgment of the Allahabad High Court (Lucknow Bench) arising out of proceedings relating to compensation in respect of the lands of the respondent under the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter termed the "Act".

2. The respondent was a zamindar of village Khaitha Ghazipur in the district of Sitapur. In the draft compensation assessment roll which was prepared owing to the vesting of his land in the State under the Act the Compensation officer proposed payment of Rs. 7894-150 as compensation to the respondent; On the publication of the aforesaid assessment roll he preferred objection. According to the respondent certain items of annual income which should have been taken into consideration for determination of compensation had been ignored. Out of these we are concerned with two items only which were (a) the annual rent of Rs. 612-2-6 from Lakshmiji Sugar Mills Mehooli together with another amount of Rs. 85/- payable by its proprietor and (b) Rs. 1593-11-0 being the annual rent for a plot let out to various persons as building sites. The Compensation Officer looked at the record of rights for the year 1859 Fasli where a total annual rental of only Rs. 125-14-5 had been entered. He looked further at the Kabuliatnamas which had been produced but did not accept them as good evidence of the rent

which was being paid to (he respondent. It was observed that the Kabuli-atnamas had been executed by two persons, Kishori Lal and Ajudhia Prasad Kishori Lal had not been examined as a witness and although Ajudhia Prasad had died no one else had been examined for proving that the rents mentioned in the Kabuli-atnamas were being actually paid. He also took other factors into consideration and held that the respondent had failed to establish that an income of Rs. 697-2 6 had actually accrued to him from the building site of the factory during the relevant year. With regard to the other item of Rs. 1593-110 the Compensation Officer similarly held, after discussing the evidence, that the respondent had not substantiated his claim.

3. Respondent No. 1 preferred an appeal to the High Court where the sole controversy centered on the proper appreciation of the evidence on both points. After fully discussing the material on the record the High Court came to the conclusion that the respondent was getting an income of Rs. 688-2 6 from Lakshmiji Sugar Mills, Meholi. As regards the other item of Rs. 1593-11-0 this is what the High Court said-

"The learned Standing Counsel has not been able to support this finding. In our view the statements of the appellant and his siledar supported by the large number of Qabuliyats filed should have been accepted as reliable evidence of the fact that some home did accrue to the appellant from these building sites. It will be for the Compensation Officer now to determine with reference to the Qabuliyats and plot numbers as to what income did actually accrue to the appellant from the building sites. This he will have to find from the bahi khata Qabuliyats and the entries that may be available in the village papers. Rents are noted in the Qabuliyats and the bahi khata entries were duly proved by the zildar. The Compensation Officer can thus determine the rent from the Qabuliyats, but obviously the appellant could not get anything more than what was payable under the Qabuliyats."

The appeal was allowed and the Compensation Officer was directed to amend the draft compensation assessment role by adding the two items of income and then determine the amount of compensation payable to the respondent.

4. Mr. Bishan Narain for the State has sought to raise two points before us. The first is that the High Court did not take into consideration the provision of Section 32 of the Act which relates to presumption regarding entries in the record of rights. Indeed, according to Mr. Bishan Narain, it was not open in the proceedings under the Act for the purpose of determining compensation to look to any other evidence except the entries contained in the record of rights. Consequently it is urged that even if the presumption arising u/s 32 was rebuttable it had not been rebutted by the respondent. In addition the conclusion of the Compensation Officer which was based on a proper appreciation of evidence should have been accepted by the High Court as correct. Our attention has been invited on the first point to a number of provisions of the Act and in particular to Section 3(12) which gives the definition of an "intermediary";

Section 27 which provides for payment of compensation to an intermediary; Section 31 which relates to proceedings relating to assessment and payment of compensation; Section 32 which is headed as 'Presumption regarding entries in the record of rights and Section 46 which provides for preliminary publication of the draft compensation assessment role Section 32 is in the following terms;

"Subject to the provisions of Sections 23 and 33, every entry in the record-of rights prepared or revised under the provisions of the United Provinces Land Revenue Act, 1901. for the previous agricultural year shall, for purposes of assessment and payment of compensation under this Act, be deemed to describe correctly, except as provided in Section 46, the rights, title and interest of every intermediary in the estate or part to which it relates.

Provided that any modification, alteration, or correction made in the record-of-rights, whether before or after the date of vesting under the provisions of the United Provinces Land Revenue Act. 1901, or as a consequence of any decree or order of any court, shall be taken into account by the Compensation Officer."

According to Mr. Bishan Narain the substantive provisions do not justify the heading and according to them it is only the entries in the record of rights on the basis of which compensation can be assessed and awarded under the Act, In our opinion there is nothing in Section 32, particularly, when it is read with Sections 33, 34 and 35 that follow which derogates from the general law that entries in the record-of-rights are to be presumed to be correct but the presumption can always be rebutted by proper evidence being adduced. However, it is unnecessary to express any final view in the matter as the contention which has been pressed strenuously by Mr. Bishan Narain finds no mention whatsoever in the judgment of the High Court. In other words it appears that before the High Court the decision of the Compensation Officer was not sought to be supported as undoubtedly it could be done, by referring to the provisions on which reliance has been placed before us. It is significant that according to the High Court no entries are to be made in village papers regarding rents of building sites and therefore, the absence of such entries from the record of rights could be of no consequence. This view was not challenged by the appellant even in the grounds contained in the petition for special leave. In view of the entire circumstances we are not inclined to allow nor has any cogent ground been made out for a new point being raised for the first time in this court and that also in an appeal by special leave. On the second point nothing much could be said for the simple reason that the High Court in an appeal, was fully competent to reappraise the evidence and come to its own conclusion on the amount of rental which was being received by the respondent in respect of the plots which, had been leased out to the Mills and to other persons as building sites.

We have not been shown any such infirmity in the judgment of the High Court which would justify interference with conclusions of fact. The appeal consequently fails and it is dismissed with costs.