(1964) 09 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule 274 of 1962

Umananda Roy APPELLANT

Vs

The Compensation Officer and Others RESPONDENT

Date of Decision : 17-09-1964

Acts Referred:

Assam State Acquisition of Zamindari Act, 1951 — Section 10(8), 13, 16, 16(3), 18(2)
Assam State Acquisition of Zamindaris Rules — Rule 9
Constitution of India, 1950 — Article 226, 320

Citation : (1964) 09 GAU CK 0001

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

Bench : Division Bench

Advocate : S.M. Lahiri, N.M. Lahiri and J.P. Bhattacharjee, for the Appellant; M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—By a notification dated the 27th February 1959 the tenures of the Petitioner Umananda Roy and his brothers were acquired by the State of Assam with effect from the 15th April 1959 under the Assam State Acquisition of Zamindaris Act, 1951 ? Assam Act XVIII of 1951 (hereinafter called ''the Act''). On, the 19th November 1959 a notice was issued by the Compensation Officer, Goalpara, Dhubri to Sachindra Mohan Roy Petitioner?s brother asking him to submit a return under the Act, Sachindra Mohan Roy on the 7th April 1960 submitted a return showing all the particulars and all the information required in form ''B'' for ascertainment or determination of compensation. By an order dated the 25th July, 1960 the Compensation Officer asked the Manager of the Gauripur Acquired Estate to prepare the Draft Compensation Statement on certain datas. The Compensation Officer prepared a Draft Compensation State merit and published it, purporting to have been issued on the 9th January, 1961 and a copy of this was sent only to Sachindra Mohan Roy. The contention of the Petitioner is that no copy was sent to him. The Petitioner?s brother Sachindra Mohan Roy by an application dated the 17th March 1961 filed objection against the Draft

Compensation Statement but that was rejected by an order dated the 21st March 1961 on the ground that it was time barred. Thereafter the Compensation Statement was finally published on the 11th July, 1961 and the Compensation Officer furnished the certificate on the 3rd August 1961 to the effect that the draft has been finally published u/s 18(2) of the Act. On the 18th July, 1961 the Compensation Officer by his order passed an award whereby the amount of compensation was fixed at Rs. 10,784.10 nP. for the entire tenures numbering about 18 and covering an area of 980 bighas, 18 kalas and 14 dhurs of land and passed an order for payment of ad-interim compensation of Rs. 602.83 nP. for the period of two vears and two months and twenty-five days. A copy of the final compensation statement was sent to the Petitioner. The Petitioner?s brother on the 22nd August 1961 filed an application before the Compensation Officer, Dhubri contending inter alia that in preparation of compensation statement Khamar lands of the Petitioner were not taken into consideration at all and no compensation whatsoever was paid in respect of the said Khamar lands and that the value of the said lands was much more than the lands in possession of the tenants. A report was called for by the Compensation Officer from the Manager. Gauripur Acquired Estate, and a report was called for from the Circle Inspector by - the Manager, Gauripur Acquired Estate. The Circle Inspector estimated the annual income of the Khas land of the Petitioner to be Rs. 8,000 and thereafter the Manager, Gauripur Acquired Estate of Respondent No. 2 submitted a report on the 30th November 1961 to the Compensation Officer about the value. The Compensation Officer by his order dated the 4th January 1962 held that rents in kind realised by the tenure holders'' were excluded from the Compensation,'' Statement as the tenure holders failed to produce any Touzis in respect of the land, but dismissed the application on the ground that he had no power to revise the final compensation statement. Representation was filed before the Government against this order. But no orders have been passed. In these circumstances the present petition has been filed by the Petitioner Umananda Roy under Article 226 of the Constitution for setting aside the entire proceedings of the compensation.

2. Mainly the ground is that the Compensation Officer violated the mandatory provisions of the Act and the rules made thereunder which required him to send a copy of the draft compensation statement to every co-sharer including the Petitioner separately and as the notice was not sent, the entire proceedings are ultra vires.

3. In the counter-affidavit filed on behalf of the Compensation Officer it is staled that the Petitioner lives jointly with his elder brother Sachindra Mohan Roy at Gauripur, and the return was submitted by Sri Sachindra Mohan Roy in form ''B'' for self and on behalf of his other 3 co-sharers including the Petitioner. This return was filed through their pleader Sri Shyam Prasad Chakravarty. Sachindra Mohan Roy submitted to the Manager of Gauripur estate on the 15th April 1959 only the (sic), that is, papers and documents as mentioned in Section 8(5) of the Act regarding cash rents realised from the tenants. The draft compensation

statement was served on the tenure holders. Shri Sachindra Mohan Roy received his own copy on the 11th January 1961 and the copies of the Petitioner and other two brothers were also received by their eldest brother Sachindra Mohan Roy on 25-1-61, and as the tenures were joint properties of the Petitioner and his three brothers, the requirements of rides 5 and 9 of the Rules framed under the Act were complied with by the Compensation Officer. It is denied in the counter-affidavit that the Petitioner had no knowledge of the proceedings before getting the final compensation statement. He had know ledge from the beginning through his elder brother.

4. Thus two main questions arise for consideration in this case, firstly whether the provision requiring sending a copy of the draft compensation statement to each tenure holder has or has not been complied with in the present case and secondly whether the provision is mandatory.

5. Section 16 of the Act provides:

16(1). The Compensation Officer, after determination of the compensation payable in respect of the interests of the proprietors and tenure-holders under the provisions of Section 13, shall prepare the compensation statement as provided for in Sub-section (8) of Section 10.

(2) The Compensation Officer shall cause a draft of the compensation statement to be published in the manner prescribed calling for objections from any persons interested in it, to be submitted within a period prescribed.

(3) A copy of such draft compensation statement shall be sent In the manner prescribed to the persons whose names appear in the compensation statement.

* * * * *

Only the relevant portion of the section is quoted above.

In exercise of the powers u/s 31 of the Act certain rules have been framed. Rule 9(a) which is the relevant rule reads as follows:

9(a) The draft Compensation Statement shall be published by (i) affixing a copy thereof to the notice board of the Deputy Commissioner and the Sub-divisional Officer within whose jurisdiction the vested estate or tenure lies and also by affixing a copy to the notice board of the Compensation Officer. A copy of the draft Compensation Statement referred to in Section 16(3) shall be sent by Registered Post A/D to each interested person whose name appears in the Compensation Statement.

Mr. Lahiri for the Petitioner contends that Section 16(3) enjoins upon the Compensation Officer to send in the manner prescribed a copy of the compensation statement to persons whose names appear in the compensation statement. Rule 9, prescribed the manner of service on the persons whose names appear in the compensation statement. Rule 9 makes it obligatory to send the copy of the draft compensation statement by registered post A/D. It is not disputed that the name of the Petitioner appears separately from his brothers in the compensation statement. The only question is whether there has been sufficient compliance with the provisions of the rules and Section 16 of the Act when a copy addressed to him was received by his elder brother.

6. Section 16(3) consists of two requirements. The first is that the copy of the draft compensation statement should be sent to the persons whose names appear in the compensation statement and the second is that it should be sent in the manner prescribed. Mr. Lahiri''s contention is that both the requirements arc obligatory and as admittedly the copy was not sent by registered post, it cannot be said that the requirements of Section 16(3) have been complied with. The principles on which it can be held that certain provision is mandatory or directory are no longer in dispute. It is not only the use of the word ''shall'' or ''may'' which is decisive of the interpretation that the provision is mandatory or directory. The object of the Act and the purpose for which the provision has been made have got to be considered by the court in finding out the intent of the legislature.

As pointed out by Sir Arthur Channell in his judgment in the case of Montreal Street Rly. Co. v. Normandin 1917 A.C. 170 : AIR 1917 PC 142.

When the provisions of a statute ralate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

This passage was approved by their Lordships of the Supreme Court in the case of Stale of State of U.P. Vs. Manbodhan Lal Srivastava, where the question was one about the interpretation of Article 320 of the Constitution. This view was also adopted by the federal Court in the case of AIR 1945 67 (Federal Court) Applying this test in the present case if the contention of the Petitioner is accepted that both the requirements are mandatory, the result will be that the entire proceedings will have to be held to be invalid, even though the notice was properly served on the other co-sharers.

Under the provisions of the Act the tenure is treated as a whole and the compensation is assessed on treating the entire tenure as a whole. It cannot, therefore, be said that by not issuing the notice in the manner provided under the rules, namely by registered post A/D the object of the Act will be affected and further it is plain that if on account of the failure to issue notice under registered post with A/D the proceedings are held to be in valid, it will result in a good deal of inconvenience. In my opinion, therefore, so far as the requirement of notice by registered post A/D is concerned it cannot be said to be mandatory. If it is proved from the record that the notice has otherwise been served, the proceedings will not be vitiated merely because the service was not effected by registered post A/D.

7. In the case of The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, dealing with the question of notice to the members of the Senate of the Utkal University at p. 888 (of SCR) : (at p 219 of AIR) their Lordships of the Supreme Court observed:

Several English authorities were cited about the effect of an omission to give notice to even one member of a body entitled to receive it, in particular a decision of the Privy Council in AIR 1934 62 (Privy Council) We do not think it necessary to examine the general principle at any length because, in our opinion, this case is governed by its own facts. It may well be that when there is a statutory requirement about notice the provisions of the statute cannot be evaded or ignored. It may also be, though we do not stop to enquire whether it is, that when the constitution of a non-statutory body requires notice to be given, then also there cannot be any relaxation of the rule.

The reason for the stricter rule laid down in the cases filed before us is that though an incorporated body like a University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the '' manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. In dividable assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate resolutions which purport to have been passed at it. But this is only when such inflexible rigidity is imposed by the incorporating constitution. The position is different when, either by custom or by the nature of the body or by its constitution and rules greater latitude and flexibility are permissible. Each case must be governed by its own facts and no universal rule can be laid down; also it may well be that in the same body certain things, such as routine mailers, can be disposed of more easily and with less formality than others. It all depends on the nature of the body and its rules.

8. But so far as the sending of the copy to every co-sharer is concerned in whatever manner it may be, it is obligatory. If one of the co-sharers whose name appears in the compensation statement is not served with draft copy of the compensation statement, he is deprived of the opportunity to file any objection and so far as his interest in the property is concerned, it is affected by the act of the publishing authority on whom there is a duty cast to issue such a notice to him. Though the manner of the service of the notice may not be a mandatory requirement, the necessity of serving a copy of the draft statement is in our

opinion mandatory and unless it can be shown that the notice was served on the Petitioner, the proceedings so far as he is concerned, will be illegal and invalid. There is nothing in the Act which shows that the representation of the joint family by the karta is permissible in proceedings under this Act.

The opposite party in the counter-affidavit only states that the Petitioner was living jointly with his brother. But that does not absolve the Compensation Officer of his duty to send a copy to the Petitioner whose name appears in the draft compensation statement. There is nothing to show that Sri Shyama Prosad Chakravarty who is alleged by the opposite party to have tiled the return, was authorised by the Petitioner to act on his behalf. It is admitted by the opposite party that the copy of the draft compensation statement meant for the Petitioner was served on his brother Sachindra Mohan Roy. If the service on the elder brother with whom the Petitioner is said to have been living jointly, was sufficient compliance with the provisions of Section 16(3).then it was not necessary to mention the name of the Petitioner separately in the compensation statement. The Petitioner thus was deprived of his opportunity to file objection to the draft compensation statement. If he had been given a notice he may have succeeded in satisfying the Compensation Officer that the draft compensation statement was not correct. In this view of the matter we allow this petition and direct the Compensation Officer to give an opportunity to the Petitioner to file objections to the draft compensation statement and thereafter dispose of the objection according to law. As, however, the Petitioner himself awaited the representation to the Government and did not approach this Court earlier, he is not entitled to any cost of this petition and the parties will bear their own costs.