# Durgi Devi & Ors vs State Of U.P on 5 April, 1978

## Equivalent citations: 1978 AIR 1124, 1978 SCR (3) 595

## Author: Ranjit Singh Sarkaria

## Bench: Ranjit Singh Sarkaria, N.L. Untwalia, P.S. Kailasam

PETITIONER:
DURGI DEVI & ORS.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT05/04/1978

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
KAILASAM, P.S.

CITATION:
1978 AIR 1124 1978 SCR (3) 595
1978 SCC (3) 101
CITATOR INFO :
R 1981 SC1215 (5)

ACT:
U.P. Zamindari Abolition and Land Reforms Act, 1950 Sections 39(1) (e)(i) and Section 44 read with Rule 34 of U. P. Zamindari Abolition & Land Reforms Rules 1952-Scope of-Whether the compensation officer is required to appraise the annual yield of the forests on the date of vesting and take such yield also. into consideration while assessing the average annual income from the forests under clause (e) of Sec. 39(1)-Whether 15% deduction is permissible by way of management expenses tinder Section 44(c)-Period to be taken into consideration under sub clause (1) of section 39(1)(e) of the Act, what is Computation of compensation.

HEADNOTE:
On the issuance of a Notification under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, all rights and interests of the intermediary (landlord)

including the forests in village Dhalani and Sorna, vested in the State of U.P. with effect from the date of vesting i.e. July 1, 1952. A draft compensation Roll under Section 40 of the Act, was prepared by the Compensation Officer in respect of the intermediary's interests in the said villages and served upon the Latter, who whereupon filed objections against the Roll. The intermediary claimed Rs. 64,971-9-7 more than the one shown as due to him in the draft roll. Purporting to act under Section 39(1)(e)(i) of the Act, the Compensation Officer held that the sale proceeds of the forests in the area of village Sorna during 35 years immediately preceding the date of vesting, aggregated to Rs. 6,13,334-8-3. He divided this figure by 35 and took the resultant figure, i.e Rs. 17,524/- as the annual income from the forests in village Sorna. But as Rs. 1775-14-6 had already been included in the gross assets, he deducted this amount and thus fixed the annual income from the forests in the village, at Rs. 15,748-1-6. From this figure, he further deducted 15% for management cost and held that the intermediary was entitled to a further sum of Rs. 13,471-11-6 over and above the one shown as due to him in the draft Compensation Roll.

The intermediary filed an appeal in the High Court against the said findings which amounted to a decree under the Act, and the State filed its cross objections. The High Court held that the Compensation Officer in preparing the Compensation Roll had committed two errors : Firstly, he completely excluded from consideration the provisions of sub-clause (ii) of clause (e) of Section 39(1) and did not either appraise the annual yield of the forests or take the same into consideration. Secondly, he did not give any reason for taking the period of 35 years under Sub-Clause (i) of Section 39(1)(e) as the measure for calculating the annual average income from the forests. After appraising the evidence on record, the High Court held that it was just and proper that the number of years to be adopted in calculating the average annual income under sub-clause (i) of Section 39(1)(e) should be 20 years. On this basis, the High Court divided the sum of Rs. 6,13,334-8-3 that bad been worked out by the Compensation Officer in respect of the income from sales of forests in Village Sorna, by 20, and arrived at the figure Rs. 30,666-11-3. The High Court further held on an interpretation of clause (e) of Section 39(1), that the Compensation Officer was bound to apperaise the annual vield of the forests on the date of vesting, under sub-clause (ii) of Section 39(1)(e) and take such vield- also into consideration. Relying mainly on the evidence of Shri D. D. Chopra (a retired Divisional Forest Officer examined by the intermediary), the High Court found that the yield of the forest, Apprased Linder clause (ii) of Section 39(1) (e) of the Act, would be Rs. 47,128/- The High Court further appears to have added the

596

figures worked out by it under sub-clauses (i) and (ii) of Section 39(1)(e) and then divided the same by two. By this process, considering all the circumstances of the case, the High Court found that the fair amount to be fixed as the average annual income from the forests in Village Sorna, would be Rs. 40,000/-. It further held that no amount could be legally deducted under Section 44 from this figure by way of management expenses or for any other purpose. The Compensation Officer was directed to prepare finally the Compensation Roll on the basis of Rs. 40,000/- being the annual income from the forests, after adding to it the average income from Sayar. Thus, the intermediary's appeal was partly allowed. The cross-objections of the respondent-State were dismissed.

Dismissing the appeals by certificate, the Court

HELD:

1. (a) Clause (1)(i) of Section 39(1)(e) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 gives a discretion to the Compensation Officer to take any figure from 20 to 40 agricultural years for the purpose of calculating the average annual income from the forests. The words "considered reasonable" in sub-clause (i) enjoin a duty on the Compensation officer to exercise this discretion reasonably and not arbitrarily. Rule 34, gives guidelines for determining the period for which average income shall be taken under the aforesaid sub-clause (i). For determining such period , the Compensation Officer has to take into consideration several factors, namely, the class of the forest, the periodical fellings made therein during the 40 years preceding the vesting, the income received year after year during the 40 years preceding the vesting the species of the trees in the forest and their age and class, the condition of forest etc. [603 G-H, 604 A]

(b) In the instant case, for fixing the number of years at 35 under Sub-Clause (i) of Section 39(1)(e), the Compensation Officer had not given any reason m;liatever related to the criteria in Rule 34(1). On the other hand, the High Court took due note of the factors, in clauses (i), (ii), (iv) and (v) of Rule 34(1), in determining the period of 20 years for calculating the average annual income. In determining the period at 20 years, the High Court rightly gave weight to the fact that its exploitation bad been scientific and prudent, and it had started yielding income from sale of trees only during 10 or 11 years preceding the date of vesting and even on the date of vesting its condition was good. Since the first fellings were within 20 years of the vesting, it was reasonable to determine the period at 20, the same being the minimum fixed in the statute. Thus, the determination of such period as 20 years by the High Court. in the facts of the case, comports best with the guid elines indicated in Rule 34(1). [604 F-H]

2. A plain reading of clause (e) of Section 39(1) shows that its sub-clauses (i) and (ii) do not provide for two

alternative methods of calculating the average annual income of the forest. The conjunction "and" at the end of sub-clause (i) cannot be read as "or". It conjoins the two sub-clauses, and in effect, read in the context of "shall" in the opening part of clause (e), mandates the Compensation Officer to take both the factors into consideration in assessing the average annual income from the forest. The reason why the Legislature has made compliance with the requirement of this Sub-Clause (ii), also, obligatory, appears to be to ensure that the compensation assessed has a reasonable nexus and proportion to the actual and potential value of the forest as on the date of vesting. If a forest has been repeatedly, wholly and indiscriminately exploited within forty years or less immediately before the vesting, its actual and potential value as a forest on the date of the vesting might be far less than the one calculated on the basis of its average annual income of the preceding 20 to 40 years as the case may be. In such a case, average annual income calculated merely on the basis of the income for a period of 20 to 40 years preceding the vesting, may cause fortuitous inflation in the assessment of compensation. Conversely, if a forest has been very little exploited in the preceding forty years and is well-preserved and well-developed

597

on the date of vesting, then calculation of its average annual income on the basis of sub-clause (i) alone, without taking into account its potential yield oil the date of the vesting, will make the compensation assessed wholly illusory, having no relation whatever to the value of the forest as at the date of vesting. Entry of the appraised annual yield of the forest on the date of vesting, into computation under clause (e), operates as a counterpoise against fortuitous inflation or deflation in the assessment. [605 A-E]

3. (a) There is no warrant for reading "and" in clause (c) of Section 44 as "or". The Legislature appears to have advisedly used the expression "cost of management" in conjunction with the expression "Irrecoverable arrears of rent". The former takes its color from the latter in association with which it occurs. From the context, it appears that the expression "cost of management" is confined to the cost of management in the collection of rents. The Scheme of Section 44 also supports this construction. Under that scheme a particular deduction is authorised with reference to income from a particular source. A comparative study of Sections 39(1) and 44 would show that there is no clause in the latter Section which specifically authorises deduction of 15% from the income referable to clause (e) of the former. [606 D-F]

(b) The High Court was, therefore, right in holding that 15% towards the cost of management could not be deducted by the Compensation Officer in respect of the income from forest

calculated under clause (c) of Sec. 39(1). [607 C-D]

JUDGMENT:

CIVIL, APPELLATE JURISDICTION : Civil Appeal Nos. 2478- 2479/68 From the Judgment and Decree/Order dated 9-12-1973 of the Allahabad High Court in First Appeal No. 503 of 1955. V. S. Desai, K. J. John and A. K. (Mrs.) Verma for the Appellants in C.A. 2479/68 and Respondents in C.A. 2479/68. G. N. Dikshit, M. V. Goswami and O. P. Rana for the Respondent in C. A. 2478/68 for the Respondent in C. A. 2478/68. and appellant in C.A. No. 2479/68. The Judgment of the Court was delivered by SARKARIA, J.-These two cross-appeals on certificate arise out of a judgment, dated December 9, 1963, of the High Court of Judicature at Allahabad.

The appellants in Civil Appeal 2478 of 1968 are the heirs and legal representatives of Shri R. B. Jodha Mal Kuthiala, who was an intermediary (landlord) in the State of Uttar Pradesh and possessed two villages, Dhalani and Sorna. There are huge tracts of forests in the area of these villages. On the issue of a notification under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short the Act), all rights and interests of the intermediary, including the forests in villages Dhalani and Sorna, vested in the State of U.P. with effect from the date of vesting, i.e. July 1, 1952.

A draft Compensation Roll purporting to be under Section 40 of the Act was prepared in respect of the intermediary's interests hi the said Villages, and served upon the intermediary who thereupon, filed two objections against the Roll. The intermediary claimed Rs. 64,971/79/7 more than the one shown as due to him in the draft Roll.

Purporting to act under Section 39 (1) (e) (i) of the Act, tile Compensation Officer held that the sale proceeds of the forests in the area of village Sorna during 35 years' immediately preceding the date of vesting, aggregated to Rs. 6,13,334/8/3 (after deducting Rs. 22,000/relating to the income from the forests in village Dhalani). lie divided this figure by 35 and took the resultant figure, i.e. Rs. 17,524/as the annual income from the forests in Village Sorna. But .is Rs. 1,775/14/6 bad already been included in the gross assets, 'lie deducted this amount and thus fixed the annual income from the forests in this Village, at Rs. 15,748/1/6. From this figure, he further deducted 15% for management cost and held that the intermediary was entitled to a further sum of Rs. 13,471/11/6 over and above the one shown as due to him in the draft Compensation Roll. With these findings, the Compensation Officer disposed of the objections of the intermediary by his order, dated October 28, 1955.

Against this order of the Compensation Officer, which under the Act amounts to a Decree, to aggrieved intermediary preferred an appeal to the High Court. The State also filed cross-objections. The High Court held that the Compensation Officer in preparing the Compensation Roll had committed two errors : Firstly, he completely excluded from consideration the provisions of sub-clause (ii) of clause (e) of Section 39 (1) and did not either appraise the annual yield of the forests or take the same into consideration. Secondly, he did not give any reason for taking the

period of 35 years under subclause (i) of Section 39(1) (e) as the measure for calculating the annual average income from the forests. After appraising the evidence on record, the High Court held that it was just and proper that the member of years to be adopted in calculating the average annual income under sub- clause (i) of Section 39(1)(e) should be 20 years. On this basis, the High Court divided the sum of Rs. 6,13,334/8/3 that had been worked out by the Compensation Officer in respect of the income from sales of forests in Village Sorna, by 20, and arrived at the figure Rs. 30,666/11/3. The High Court further held on an interpretation of clause

(e) of Section 39(1), that the Compensation Officer was bound to appraise the annual yield of the forests on the date of vesting under sub-clause (ii) of Section 39(1)(c) and take such yield also into consideration. Relying mainly on the evidence of Shri D. D. Chopra (a retired Divisional Forest Officer examined by the intermediary), the High Court found that the yield of the forest, appraised under clause

(ii) of Section 39(1) (e) of the Act, would be Rs. 47,128/-. The High Court further appears to have added the figures worked out by it under sub-clause's (i) and (ii) of Section 39(1) (e)- and then divided the same by two. By this process, considering all the circumstances of the case, the High Court held that the fair amount to be fixed as the average annual income from the forests in Village, Sorna, would be Rs. 40.000/-. It further held that no amount could be legally deducted under Section 44 from this figure of the annual average income, by way of management expenses or for any other purpose. The Compensation Officer was directed to prepare finally the Compensation Roll on the basis of Rs. 40,000/being the annual income from the forests, after adding to it the aver-

age income from Sayar. Thus, the intermediary's appeal was partly allowed. The cross-objections of the respondent State were dismissed.

After obtaining a certificate under Article 133(1)(a) of the Constitution (as it then stood), the heirs of the intermediary (since deceased) aggrieved by the partial dismissal of their claim by the High Court, have preferred Civil Appeal 2478 of 1968; while the State in the cross- appeal (C.A. 2479 of 1968) assail the judgment of the High Court whereby the intermediary's claim was partly accepted, Both the appeals will be disposed of by a common judgment. Three questions fall to be considered in these appeals :

> First, whether the High Court was right in taking a period of 20 years only under sub-clause (i) of Section 39(1)(e) for the purpose of calculating the average annual income of the fores's from Village Sorna ? Second, whether the Compensation Officer was required to appraise the annual yield of the forests on the date of vesting and take such yield, also, into consideration while assessing the average annual. income from the forests under clause (e) of Section 39 (1) ? The whether under clause (c) of Section 44, 15% is deductible from the average annual income from a forest worked out in accordance with clause (e) of Section 39(1) ?

The first is a mixed question of law and fact; while the last two turn on an interpretation of Sections 39 and 44 of the Act and the Rules framed thereunder. It will, therefore be appropriate to notice

here the provisions material for our purpose. These provisions are extracted hereunder "39. Gross assets of a mahal.-(1) Gross assets as respects a mahal shall 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, under- proprietors, sub-proprietors permanent tenure- holders, permanent lessees in Avadh, grantees at a favourable rate of rent or grove-holders-

(i) in cash, and

(ii) where rent is payable in kind or partly in cash or partly in kind the rent computed in accordance with the provisions of the United Provinces Tenancy Act, 1939, and (where the said Act does not provide for such computation, in the manner prescribed),

(iii) where rent is payable, but has not been 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.

Explanation.-In this clause the word "tenants" includes persons deemed to be hereditary tenants under Sections 12, 13, 14 and 16 but does not include any other tenant of sir,

(b) the amount computed at the rates applicable to ex-proprietary tenants of similar land for land in the personal cultivation of or held as intermediary's grove, khudkasht or sir by all the intermediaries in the estate in which hereditary rights do not accrue, and, in the case of the sir--

(i) in which hereditary rights accrue, at hereditary rates, and

(ii) referred to in Section 17, the rent payable by the tenant therefore,

(c) sayar, including income from hats, bazars, 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 agricultural years preceding the date of vesting;

> "Explanation I.-'Total income' from sayar under this sub- clause shall be calculated on the basis of entries in khatauni which shall be deemed to be correct unless' proved to the contrary by entries in any public document. Explanation II.-For purposes of this section 'sayar' as respects an intermediary's grove shall not include income from the sale of wood, flowers or fruit.
>
> (d)average annual income during the four agricultural years immediately Preceding the date of vesting from rents of building sites vested in the State;
>
> (e) average annual income from forests, which shall be computed-

(i) on the basis of the income for a period of twenty to forty agricultural years immediately preceding the date of vesting; as the Compensation Officer may consider reasonable, and

(ii) on the appraisement of the annual yield of the forest on the date of vesting;

(f) where royalties are payable on account of mines and minerals the average income on account of royalties calculated on the basis of the annual returns filed by the intermediary for the assessment of cess or income-tax during the period of twelve agricultural years preceding the agricultural year in which the date of vesting falls or any shorter period for which such returns have been filed;

(g) where royalties are not payable and mines are worked directly by an intermediary, the average annual income from such mines calculated on same basis as specified in clause (f).

(2) Where the mahal is comprised of an area situate in more than one village, the provisions of sub-section (1) shall apply as if the portions situate in each village were a separate mahal.

"44. Net assets of an intermediary. For purposes of Section 40, the net assets of an intermediary in respect of a mahal shall be computed by deducting from his gross assets the following, namely

(a) any sum which was payable by him in the previous agricultural year to the State Government or superior landholder on account of land revenue or rent and cesses or local rates in respect of his share or interest in the mahal;

(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;

(c) cost of management and irrecoverable arrears of rent equal to fifteen per centum of the gross assets;

(d) where the intermediary holds any land in his personal cultivation or as khudkasht, intermediary's grove or Sir in (other than sir in which hereditary rights accrue), an amount computed at ex-proprietary rates, less the deductions (i) to (iii) hereinafter mentioned, for such portions only of the land in his personal cultivation or held as khudkasht, grove and or sir as is mentioned in Section 18;

(i) the agricultural income-tax, if any, payable th erefore in the previous agricultural year in respect of the land to be ascertained in the prescribed manner;

(ii) the land revenue, cesses and local rates payable therefore in the previous agricultural year to be ascertained in the prescribed manner, and

(iii) fifteen per centum of such amount on account of matters referred to in clause (c);

(e) the average of the income-tax paid in respect of the income from royalties mentioned in clause (f) of Section, 39 computed over the period mentioned in the said clause and the cost of collection at such rates as may be prescribed;

4-315SCI/78

(f) ninety-five per centum of the gross income determined under clause (g) of Section 39, which shall be deemed to be the part of the income reserved to him in respect of the rights contained in Chapter VI.

Explanation.-For the purposes of this Section, land revenue which has been assigned, released, compounded, or redeemed by reason of any grant or confirmation made by or on behalf of the State or any other competent authority in favour of such intermediary shall not be deemed to be a sum payable as land revenue to the State Government."

The material part of Rule 34 of the U.P. Zamindari Abolition & Land Reforms Rules, 1952, framed under the Act, runs as follows "34. Section 39(e). (1) The Compensation Officer shall. for the purpose of determining the period for which average shall be taken under sub-clause (i) of clause (e) of Section 39 of the Act, call upon the intermediary to furnish within a period to be fixed a written statement showing-

(i) the class of forest (e.g. high forest, coppice with standards, scrub, etc.);

(ii) the periodical fellings made therein during the 40 years immediately preceding the date of vesting;

(iii) the income received year after year during the 40 years immediately preceding the date of vesting;

(iv) the principal species of trees in the forest and their approximate age and class;

(v) the condition of the forest at the date of vesting and any other particulars which may be material for determining the period aforesaid.

" (2)..... "(3) After considering the report of the officer of the Forest Department and hearing the intermediary and such other persons as he may like to be heard, the Compensation Officer shall make an order determining the period and the average annual income from the forest and shall record his reasons therefore."

The facts revelvant to the first question may now be noted. According to the "written statement" of the intermediary, the annual income received from the forests during the 40 years immediately preceding, the date of vesting from Village Sorna, was as follows :

> "1942-43.-For lumpsum sale for Rs. 25,000/- ballies for supply (based on information received from our predecessor in title Mr. E.C. Thatcher).
>
> 1946-47.-Rehrapur Rs. 4209-8-3. 1948-49.-Lumpsum sale of coppice with standard unregulated fellings Rs. 3,01,000-0-0. 1949-50.-Lumpsum sale, selection fellings Rs. 2,47,000-0-0.
>
> 1951-52.-Lumpsum sale, coppice with standard regulated fellings Rs. 81,125-0-0. Note :-Dobri and Dhalani Estates were purchased in Jan. 1948 and Rehrapur was purchased in 1946. Hence the figures prior to these dates are not available."

The Compensation Officer and the High Court have not accepted the sale for Rs. 25,000/-, because neither Mr. Thatcher, who was the then owner of the forest, had been examined, nor had any agreement between him and the supposed purchaser been filed. No accounts of the sales were furnished.

The only contention of Mr. V. S. Desai, appearing for the appellant (intermediary), is that this item of sale in 1942- 43 was wrongly excluded.

We find no merit in this contention. This is a concurrent finding of fact and we see no reason to disturb it. There is no dispute with regard to the remaining four items of income from sales in 1946-47, 1948-49, 1949-50 and 1951-52. The total of these four items comes to Rs. 6,35,334-8-3. It is further common ground that out of these items, Rs. 22,000/- pertain to the sale of forests in Village Dhalani. After deducting the same, the balance comes to Rs. 6,13,334- 8-3.

The issue before the Compensation Officer was : What should be the number of years by which this figure of the total income, was 'to be divided to ascertain the average annual income of the forest in Village Sorna ? The contention of the intermediary was that for this purpose it should be divided by the number of sale-years only. This contention was rejected-and we think rightly-by the Compensation Officer But he wrongly fixed this number at 35. Clause (1) (i) of Section 39(1) (e) gives a discretion to the Compensation Officer to take any figure from 20 to 40 agricultural years for the purpose of calculating the average annual income from the forests. The words "considered reasonable" in sub-clause (i) enjoin a duty on the Compensation Officer to exercise this discretion reason- ably and not arbitrarily. 'Rule 34, extracted above, gives guidelines for determining the period for which average income shall be taken under the aforesaid sub-clause (i). For determining such period, the Compensation Officer has to take into consideration several factors, namely, the class of the forest, the periodical fellings made therein during the 40 years preceding the vesting, the income received year after year during the 40 years preceding the vesting, the species of the trees in the forest and their age and class, the condition of forest, etc. Mr. Dikshit contends that the factors enumerated in sub- clauses (iv) and (v) of Rule 34(1) furnish more important criteria than those

indicated in the other sub-clauses for determining the period for which the average is to be taken. It is pointed out that the Uttar Pradesh Legislative Assembly had passed a resolution on August 8, 1946 to abolish Zamindari or big estates in the State; that since this intermediary bad purchased the forest in question in 1948, he must be presumed to. be fixed with the knowledge that the days of the Zamindari which he was purchasing were numbered. With this background proceeds the argument the intermediary must have mercilessly exploited the forest, leaving nothing to be acquired under the Act, 1950, excepting stumps or small saplings of tender age. We are afraid this argument is not based on any evidence, whatever. Mr. Dikshit referred to the evidence of Babu Singh (D.W.4.) to show that the trees left in this forest at the date of vesting were hardly 3" in diameter.

We have gone through the evidence of Babu Singh (D.W.4). Far from supporting Mr. Dikshit's contention, it knocks the bottom out of it. Babu Singh was a forest contractor. Babu Singh testified that be had purchased one coupe of the forest in Village Sorna for Rs. 53,000/from the Forest Department of the State for the year ending March 1953. This means he purchased this coupe after the date of vesting. He stated that the trees purchased by him were of diameters varying from 4" to 12". The forest had a larger number of Kokath trees and less of Sal. The very fact that soon after the vesting, sale of one coupe of the forest fetched Rs. 53,000/-, shows that it had not been mercilessly exploited. This fact of sale of one coupe of this forest by the State soon after the vesting, rather lends great strength to the finding of the High Court that its average annual income, estimated under clause (e) of Section 39(1) would not be less than Rs. 40,000/-. By no stretch of imagination, Babu Singh's evidence could be read as showing that the annual yield from the forest on the date of vesting, was negligible.

For fixing the number of years at 35 under sub-clause (i) of Section 39(1)(e), the Compensation Officer had not given any reason whatever related to the criteria in Rule 34(1). On the other hand. the High Court took due note of the factors in clauses (i), (ii), (iv) and (v) of Rule 34(1), in determining the period at 20 years for calculating the average annual income. In determining this period at 20 years, the High Court rightly gave due weight to the fact that its exploitation had been scientific and prudent, and it had started yielding income from sale of trees only during 10 or 11 years preceding the date of vesting and even on the date of vesting its condition was good. Since the first fellings were within 20 years of the vesting, it was reasonable to determine the period at 20, the same being the minimum fixed in the statute. Thus, the determination of such period as 20 years by the High Court, in the facts of the case, comports best with the guidelines indicated in Rule 34(1).

The Compensation Officer, as mentioned earlier, did not appraise the annual yield of the forest on the date of vesting. A plain reading of clause (e) of Section 39(1) shows that its sub-clauses (i) and (ii) do not provide for two alternative methods of calculating the average annual income of the forest. The conjunction "and" at the end of sub-clause (i) cannot be read as "or". It conjoins the two subclauses, and in effect, read in the context of "shall" in the opening part of clause (e), mandates the Compensation Officer to take both the factors into consideration in assessing the average annual income from the forest. The reason why the Legislature has made compliance with the requirement of this sub-clause (ii), also, obligatory, appears to be to ensure that the compensation assessed has a reasonable nexus and proportion to the actual and potential value of the forest as on the date of vesting. If a forest has been repeatedly, wholly and indiscriminately exploited within forty years or

less immediately before the vesting, its actual and potential value as a forest on the date of the vesting might be far less than the one calculated on the basis of its average annual income of the preceding 20 to 40 years as the case may be. In such a case, average annual income calculated merely on the basis of the income for a period of 20 to 40 years preceding the vesting, may cause fortuitous inflation in the assessment of compensation, conversely, if a forest has been very little exploited in the preceding forty years and is well-preserved and well- developed on the date of vesting, then calculation of its average annual income on the basis of sub-clause (i) alone, without taking into account its- potential yield on the date of the vesting, will make the compensation assessed wholly 'illusory, having no relation whatever to the value of the forest as at the date of vesting. Entry of the appraised annual yield of the forest on the date of vesting, into computation under clause (e), operates as a counterpoise against fortuitous inflation or deflation in the assessment. in the view we take we are fortified by a decision of this Court in Ganga Devi v. State of Uttar Pradesh, where it was pointed out that in computing the average annual income under clause (e) of Section 39(1), the Compensation Officer has to refer to both these sub-clauses (i) and (ii). He cannot adopt either of these sub-clauses. It was also pointed out that under sub-clause (ii) the annual yield on the date of vesting is to be appraised by taking into consideration, inter alia, the number and age of the trees, the area under forest and the produce. The High Court in the instant case, while determining the yield under sub- clause (ii) has relied upon the evidence of Mr. Chopra, a retired Forest Officer, who took all the relevant factors into consideration. The High Court also accepted the evidence of Chaudhri Babu Singh, Forest Contractor, which was to the effect that for the year ending March 1953, the sale of one coupe of this forest by the Forest Department of the State, fetched Rs. 53,000/-. No fault therefore, can be found with the High Court's finding that on the date of vesting, the annual yield of the forest, appraised under subclause (ii) of clause (e) was not less than Rs. 47,128/. The figure worked out by the High Court under sub-clause (i) by dividing the total income of sales during the preceding 10 or 11 years, i.e. Rs. 6,13,334-8-3 by 20, was Rs. 30,666-11-3. The total of these figures thus worked out under sub-clauses

(i) and (ii), comes to Rs. 77,794/-. If this figure is divided by 2, the average annual income under clause (e) would come to Rs. 38,897/-. The High Court rounded off and raised this figure to Rs. 40,000/-. We do not want to disturb that approximation because the sale of a coupe of the forest for the year immediately following the vesting, showed that the appraised yield of the forest on the date of vesting could be around Rs. 50,000/-.

The last question that remains to be considered is, whether the High Court was right in holding that the Compensation Officer was not competent to deduct under clause (c) of Section 44, 15% from the estimated income of the forest, for management expenses.

Mr. Dikshit contends that the word "and" in clause (e) of Section 44 should be read dis-conjunctively so as to convey the sense of "or". 'If it is so construed proceeds the argument-15% for management cost has got to be deducted from the "gross assets" calculated under Section 39(1) from each of the sources indicated therein, including the income from forests assessed under clause (e) of that Section. We are unable to accept this argument.

There is no warrant for reading "and" in clause (c) of Section 44 as "or". The Legislature appears to have advisedly used the expression "cost of management" in conjunction with the expression "irrecoverable arrears of rent". The former takes its colour from the latter in association with which it occurs. From the context, it appears that the expression "cost of management" is confined to the, cost of management in the collection of rents. The scheme of Section 44 also supports this construction. Under the scheme of Section 44, a particular deduction is authorised with reference to income from a particular source. A comparative study of Sections 39(1) and 44 would show that there is no clause in the latter Section which specifically authorises deduction of 15% from the income referable to clause (e) of the former. To elaborate the point, deduction under clause (d) of Section 44 is relatable to income coming under clause (b) of Section 39. Sub-clause

(iii) of clause (d) of Section 44 specifically imports and applies the deduction under the preceding clause (c), to the income from the land in the personal cultivation of the intermediary. Clause (e) of Section 44 specifically refers to clause (f) of Section 39 and makes the cost of collection of income from royalties deductible at such rates as may be prescribed. Again, the deduction under clause (g) of Section 44, has by specific reference, been made applicable to the income from the source under clause (g) of Section 39(1). Had Mr. Dikshit's argument, that clause (c) of Section 44 contemplates an omnibus deduction which encompasses all the sources of income assessed under clauses

(a) to (g) of Section 39(1) been correct, there was no neces-

sity to specify the quantum and nature of deductions separately in clauses (e) and (f) of Section 44 and then relate them by specific reference to sources of income under clauses (f) and (g) of Section 39(1). If clause (c) of Section 44 were applicable proprio vigore to income from Khudkasht land, there was no necessity to incorporate it by specific reference in clause (d)(iii) of the same Section. In other words, the deduction mentioned in clause (c) of Section 44 could have no application to the income assessed from the source under clause (b) of Section 39, but for the special provision made in sub-clause (iii) of clause (d) of Section 44. Construed consistently with the context and scheme of Section 44, it appears that the deduction mentioned in clause (c) of Section 44 was not intended to apply to the income from forest assessed under clause (e) of Section 39(1). The deduction under clause (e) of Section 44 appears to be confined to the rental income assessed under clause (a) of Section 39(1), or the income from Khudkasht lands assessed under clause (b) of Section 39(1) to which it has been notionally applied by specific incorporation in sub-clause (iii) of clause (d) of Section 44. The High Court was, therefore, right in holding that 15% towards the cost of management could not be deducted by the Compensation Officer in respect of the income from forest calculated under clause (e) of Section 39(1). Nor could the words "gross assets" occurring at the close of clause (c) in Section 44, be divorced from the context of rents and construed in the spacious sense in which they have been used in Section 39. Their meaning and scope in the context is confined to the income from rents. If these words are torn out of the context and interpreted in the comprehensive sense in which they are used in Section 39, this will lead to wholly unreasonable oppressive and absurd results. This was demonstrated by the learned Judges of the High Court, with reference to the income from mines worked directly by an intermediary, calculated under clause (g) of Section 39(1). Clause (f) of Section 44 provides' that 95 per centum of the gross income determined under clause (g) of Section 39 would be deductible for the purpose of computing the net

assets of the intermediary from this source. If the contention of Mr. Dikshit, that 15% deduct on under clause (c) of Section 44 is applicable to all sources of income, including from the mines under clause (g) of Section 39(1) is correct, then the income from mines directly worked by the intermediary Will suffer a double deduction 95% plus 15% under clauses (f) and (c) of Section

44. This means, instead-of paying any compensation to the intermediary, an exaction of 10 per cent will be made from him. Such could never be the intention of the Legislature. We have therefore no hesitation in repelling this contention of Mr. Dikshit. No other point has been argued before us. In the result, both the appeals fail and are dismissed, with no order as to costs.

S.R. Appeals dismissed.