

## Harbans Kumari And Ors vs State Of Uttar Pradesh on 6 October, 1978

**Equivalent citations: AIR 1981 SUPREME COURT 1215, 1979 (2) SCC 232, AIR 1980 (NOC) 4 (SC), 1981 ALL. L. J. 705, 1979 ALL. L. J. 705, 1978 UJ (SC) 934, 1979 2 SCC 239, (1979) SCR 28 (SC), (1978) REVDEC 347**

PETITIONER:

HARBANS KUMARI AND ORS.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH

DATE OF JUDGMENT 06/10/1978

BENCH:

ACT:

U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act 1 of 1951) Section 39 (1) (e), interpretation of- Computation of compensation.

HEADNOTE:

on the vesting of the forests belonging to the appellants in the State of U.P. by virtue of Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act 1 of 1951), the question arose about the assessment and payment of compensation therefor to the heirs of the intermediary. The compensation officer held that the average annual income from the said forests which could be taken into consideration while computing its compensation was Rs. 4551/- as disclosed by the appellants' accounts for a period of 22 years preceding the date of vesting in terms of clause (i) of Section 39(1)(e) of the Act and Rs. 450/- was its annual yield on the date of vesting as per terms of clause (ii) of Section 39(1)(e) of the Act. The compensation officer held that Rs. 5001/- was the annual income from the aforesaid forest to the intermediaries. The High Court in appeal held that Rs. 2000/- and not Rs. 450/- was the income under clause (ii) of Section 39(1)(e) of the Act and therefore came to the conclusion that Rs. 3000/- was the average annual income on the basis of which gross assets had to be calculated in computation of compensation in respect of the said forest.

Dismissing the appeals by certificate the Court,

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HELD: 1. The opening words of Section 39(1)(e) of the U.P. Zamindari Abolition Act, 1950 which is couched in very emphatic terms govern not only clause (1), but also clause (ii) of the Section. Consequently neither of the two factors mentioned in Section 39(1)(e) of the Act can be ignored while computing the average annual income. The connotation of the word 'average' does not admit of any doubt. [31A-B]

(ii) On a true construction of Section 39(1)(e) of the Act, it is clear that the Legislature cast an obligation on the compensation officer to work out the compensation by computing the average annual income giving due weight to both the factors mentioned in the aforesaid clauses (i). and (ii). He cannot adopt either of these sub-clauses. 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. [31C, 32E]

Durgi Devi and Ors. v. State of U.P. [1978] 3 SCR p. 595, Ganga Devi v. State of U.P., [1972] 3 S.C.C. 126; applied.

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#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 171, 171A 171D of 1969.

From the Judgment and decree dated 10-12-1963 of the Allahabad High Court in First Appeal No. 511/55.

Lal Narain Sinha, P. P. Singh, J. B. Dadachanji, K. John and J. Sinha for the Appellants.

G. N. Dikshit and M. V. Goswami for the Respondent. The Judgment of the Court was delivered by JASWANT SINGH, J. These five appeals by certificates under Article 133(1)(c) of the Constitution granted by the High Court of Judicature at Allahabad shall be disposed of by this judgment as they raise a common question relating to the interpretation of section 39(1) (e) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act No. 1 of 1951) (hereinafter referred to as 'the Act').

As the facts giving rise to these appeals are identical, it shall suffice to narrate the facts of the case culminating in Appeal No. 171 of 1969. The predecessor-in- interest of the appellants, the late Jodha Mal, owned several private forests in the State of U.P. including the one consisting of three compartments comprising a total area of 484.57 acres in village Rajiwala Attick Farm, Mahal Sansar in District Dehradun. On the vesting of the said forest in the State of U.P. by virtue of section 4 of the Act, the question arose about the assessment and payment of compensation therefor to the heirs of the intermediary. On service of draft compensation roll prepared under section 40 of the Act, each one of the appellants, filed separate objections in regard thereto before the Compensation officer, Dehradun, who disposed of the same by his order dated August 31, 1953 holding that the

average annual income for the said forest which could be taken into consideration while computing its compensation was Rs. 4,551/- as disclosed by the appellants' accounts for a period of 22 years preceding the date of vesting in terms of clause (i) of section 39(1)(e) of the Act and Rs. 450/- was its annual yield on the date of vesting as per terms of clause (ii) of section 39(1) (e) of the Act. Dividing the sum total of these two figures by 2, the Compensation officer held that Rs. 5,001/- was the annual income from the aforesaid forest to the intermediaries. Aggrieved by the computation of compensation, the respondent preferred an appeal to the High Court of Judicature at Allahabad under section 50 of the Act. The appellant's also filed cross appeals claiming that the average annual income as assessed by the Compensation officer was too low. Being of the view that while com-

puting the average annual income from the forest, both the results arrived at by working both the clauses of section 39(1)(e) of the Act had to be looked into and considered and it had to be objectively decided as to what the average annual income from the forest would be, the High Court held that Rs. 2,000/- and not Rs. 450/- was the income under clause (ii) of section 39(1)(e) of the Act. On the aforesaid basis, the High Court came to the conclusion that Rs. 3,000/- and not Rs. 5,001/- was the average annual income on the basis of which gross assets had to be calculated in computation of compensation in respect of the aforesaid forest. The High Court by its judgment and decree dated December 10, 1963, disposed of the appeal and the cross appeal in the manner indicated above. Aggrieved by the judgment and decree of the High Court, the appellants have come up in appeal to this Court. The respondent has also filed objections with regard to the item of Rs. 2,000/-.

Mr. Lalnarayan Sinha appearing on behalf of the appellants has raised a very short point. Assailing the method adopted by the High Court in computing the compensation, he has urged that the High Court has missed the real purport and meaning of the provisions relating to the computation of compensation and that the relevant portion of section 39 of the Act did not authorise the High Court to calculate the compensation by taking a mean of the aforesaid two figures. He has further urged that having worked out the average annual income according to the method indicated in clause (i) of section 39(1)(e) of the Act, the High Court was not required to work out the annual yield of the forest on the date of vesting. We regret, we cannot accede to this contention. Section 39(1) (e) of the Act provides as follows:-

"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 .....

(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 appraisalment of the annual yield of the forest on the date of vesting."

It will be noticed that the opening words of the above quoted section which is couched in very emphatic terms govern not only clause (i) but also clause (ii) of section 39 (1) (e) of the Act. Consequently neither of the two factors mentioned in section 39(1)(e) of the Act can be ignored while computing the average annual income. Now so far as the connotation of the word 'average' is concerned, it does not admit of any doubt. According to shorter oxford English Dictionary, the word 'average' means arithmetical mean to estimate by dividing the aggregate of a series by the number of its units'. The same is the connotation of the word 'average' according to the Random House Dictionary of the English Language where the total receipt has been stated to mean the total receipt from sales divided by the number of the units sold.

On a true construction of section 39(1)(e) of the, Act, it appears to us that the legislature cast an obligation on the Compensation officer to work out the compensation by computing the average annual income giving due weight to both the factors mentioned in the aforesaid clauses (i) and

(ii). Accordingly, we are of the view that the High Court was correct in computing the average income by adding up to two figures i.e. Of Rs. 4,551/- and Rs. 2,000/- and arriving at a mean on that basis. The position is also not res integra as in Smt. Durgi Devi & Ors. v. State of U.P.(1) this Court held that the average annual income has to be arrived at by taking into consideration not only the income referred to in clause (i) of section 39(1) (e) but also the estimated annual yield of the forest on the date of vesting. The following observations made therein are apposite.

"A plain reading of clause (e) of section 39(1) shows that its sub-clauses (i) and (ii) do not provide for two alter native 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 imme-

(1) [1978] 3 S.C.R. 595=[1978] 3 S.C.C. 101.

diately 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 than 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 forests 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."

Again in *Ganga Devi v. State of Uttar Pradesh*(1) it was pointed out by this Court 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.

For the foregoing reasons, we find no merit in these appeals which are dismissed with costs.

S.R.

Appeals dismissed.

(1) [1972] 3 S.C.C. 126.