Supreme Court of India
Ganga Devi & Ors. Etc vs State Of U.P on 11 February, 1972
Equivalent citations: 1972 AIR 931, 1972 SCR (3) 431
Author: A Ray
Bench: Ray, A.N.

PETITIONER:
GANGA DEVI & ORS. ETC.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT11/02/1972

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
BEG, M. HAMEEDULLAH

CITATION:
1972 AIR 931 1972 SCR (3) 431
CITATOR INFO :
R 1981 SC1215 (6)

ACT:
U.P. Zamindari Abolition and Land Reforms Act, 1950, s. 39 (1) (e) (i) and (ii)--Average annual income how determined--Forest income, if includes income derived by processing wood.

HEADNOTE:
The forests of the appellants vested in the respondent-State as a result of the notification under the U.P. Zamindari Abolition and Land Reforms Act. 1950, and the Compensation Officer determined the basis of compensation.
In appeal by the respondent the High Court held that the Compensation Officer in determining the compensation was wrong in arriving at the iverage annual income by adding the annual income, under s. 39(1) (e) (i) on the basis of a period of 25 years and the appraisement of the annual yield, under s. 39(1)(e)(ii), on the date of vesting.
In appeals to this Court,
HELD : (1) The High Court Was correct in holding that the average annual income from forest under s. 39(1)(e) of the Act could not be computed by arithmetical addition of the figures arrived at on the basis of cl. (i) and on the basis of cl. (ii). The section speaks of computation of average

annual income from forest, (i) on the basis of income for a period of 20 to 40 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. Under the first clause. the actual income derived from the forest for a number of years before the date of vesting as the Compensation Officer may consider reasonable is to be taken and the average calculated. Under the second clause the annual yield as on the date of vesting is to be appraised. This should be done, inter alia, by taking into consideration the number and age of trees, the area of cultivation and the produce. Therefore, the compensation officer has to compute the 'average annual income' by taking recourse to both the methods but not by adding the figures on the basis of cl. (i) and on the basis of cl. (ii) [435 D-H; 436 A-B]

(2) The High Court rightly held that forest income was referable to price of the standing timber. Hence any income which the appellants derived by processing wood, was income in the nature of trade and would not be forest income. [436 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 41 to 46 of 1967.

Appeals from the judgment and order dated September 1, 1965 of the Allahabad High Court in First Appeals Nos. 513 of 1955 etc. L887upCI/72 M. C. Chagla, S. R. Agarwala, A. T. M. Sampath and E. C. Agarwala, for the appellants (in all the appeals). L. M. Singhvi and O. P. Rana, for the respondent (in all the appeals).

The Judgment of the Court was delivered by Ray, J. These six appeals are by certificate from the judgment dated 1 September, 1965 of the High Court at Allahabad, Lala Triloki Nath and Lala Digambar Prasad filed four appeals and the State two in the High Court against the order dated 6 September, 1955 of the Compensation Officer. During the pendency of the appeals the Lalas died and the appellants were brought on record. The High Court allowed the appeals filed by the State and allowed in part the appeals filed by the appellants. The appellants have come up by certificate in these six appeals.

Each of the Lalas held equal one half share in each of the forests in the villages of Chharba and Prithipur in Dehra Dun District. By a notification dated 1 July, 1952 under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called the Act) the entire forest vested in the State of Uttar Pradesh.

On 2 May, 1953 the Lalas received the Draft Compensation Assessment Rolls under section 46 (1 ) (b) of the Act which showed annual compensation to be paid to the Lalas as nil. The Lalas thereafter

on 20 May, 1953 filed their objections against the draft compensation roll and claimed compensation under the provisions of the Act.

With regard to village Chharba the Lalas claimed that it was a valuable sal forest comprising 225 acres. The Lalas assessed the worth of the forest at Rs. 3,40,000. They claimed that sayar income during the 10 agricultural years immediately preceding the date of vesting should be computed separately and added to the gross income from the forests. They further claimed that income by selling poola grass was to be within sayar income. The next head of claim was that they did not have accounts of the income of the forest for the previous 20 years 'but they were able to produce accounts for four years from 1944 up to 1947 and the share of each of the Lalas on the basis of the income derived for the said four years came to Rs. 1274-12-0 and on the basis of the appraisement of the annual yield on the date of vesting it came to Rs. 5457/-. On this basis each of the Lalas claimed Rs. 46740/as compensation in respect of village Chharba.

With regard to the Prithipur forest the Lalas claimed that they had worked the forest during the years 1945 to 1952 and that the average annual income of each of their share from the Prithipur forest on the basis of 20 agricultural years immediately preceding the date of vesting came to Rs. 5106/-. The Lalas stated that on the basis of appraisement of the annual yield on the date of vesting of the forest Prithipur the share of each came to Rs. 7955/-. On this basis each of the Lalas claimed a sum of Rs. 101 1 14 and odd as compensation for the forest Prithipur. The Compensation Officer decided that the income from the poola grass, was not sayar income but forest income and disallowed income from poola grass in entirety. The Compensation Officer however allowed some sayar income in each forest and decided that the average annual income of the forest under section 39(1) (e) of the Act should be calculated on the basis of the period of 25 years immediately preceding the date of vesting and not 20 years as the Lalas had claimed. With regard to the forest in village Chharba the Compensation Officer arrived at the figure of Rs. 55292/- consisting of Rs. 4300/- as sayar income and Rs. 50992/- as the forest income for computation of average annual income on the basis of the period of 25 years and thus arrived at the annual income of Rs. 2211-8-0 under section 39(1)(e)(i) of the Act. With regard to the computation of average annual income on the appraisement of the annual yield of the forest on the date of vesting as contemplated in section 39 (1) (e) (ii) of the Act the Compensation Officer held that the representative area was not specified by the Lalas with enumeration or location and the enumeration figures of the Lalas were based on estimated and presumed calculations.

The Lalas appraised Rs. 11000/- as the annual yield on the date of vesting. The Compensation Officer found that the forest had been felled about 6 to 8 years before vesting and the age of the crop for that reason could not be more than 8 years for coppice. The Compensation Officer thus appraised Rs. 800/- as the annual yield and determined Rs. 2211-8-0 and Rs. 800/- aggregating Rs. 3011-8-0 as the average annual income to be added to the gross assets for assessment of compensation.

With regard to the forest in village Prithipur the Lalas claimed Rs. 5106/- as the annual income for a period of 20 agricultural years immediately preceding the date vesting and appraised the annual yield on the date of vesting at Rs. 7955/-. The Lalas claimed one tenth of the sayar income for 10

agricultural years at Rs. 2007-8-0. The Compensation Officer disallowed income from poola grass but allowed sayar income of Rs. 23550/- and added the same to the forest income of Rs. 113914/- aggregating Rs. 137464/- on the basis of a period of 25 years and thus arrrived at the average annual income of the forest under section 39(1) (e) of the Act at Rs. 5496-8-0. The Compensation Officer appraised the annual yield at Rs. 1650/- add thus arrived ,it 'the total sum of Rs. 7146-8-0 to be added as. gross assets of forest income.

In the High Court the State contended that the Compensation Officer was in error in adding the annual income on the basis of a period of 25 years and the appraisement of the annual yield in order to arrive at the average annual income under section 3 9 (1) (e) of the Act. The contentions of the Lalas in the High Court were these : First, the income from poola grass was sayar income and should have been allowed and added separately to the average annual income. With regard to Prithipur forest it was said that the Compensation-Officer wrongly rejected the sayar income for the Fasli years 1352 and 1353 amounting to Rs. 4600/- and Rs. 4500/- respectively. Secondly, the average annual income from forest should have been determined on the basis of income for a period of 20 and not 25 years. Thirdly, the Compensation Officer was in error in not accepting the whole income of the Prithipur forest for the Fasli years 1352, 1356, 1357 and 1358 by holding that the income during those four years had been derived by processing wood and therefore the income was made by activities in the nature of trade and was not forest income. Fourthly, the Compensation Officer should have accepted the appraisement of the annual-yield of the forest on the date of vesting as claimed by the Lalas. The High Court came to the conclusion that the Lalas were entitled to income from poola grass as sayar income and thus allowed the appeals of the Lalas in part. The sayar income is not to be clubbed with the average annual income but is to be dealt with separately.

Sayar income is dealt with in section 39(1)(c) of the Act. Sayar is not defined in the Act but in section 3 (26) of the Act the word 'sayar' is to have the meaning assigned to it in the United Provinces Tenancy Act, 1939. In the 1939 Tenancy Act sayar includes whatever is to be paid or delivered by a lessee or licensee on account of right of gathering produce. forest rights, fisheries and the use of water for irrigation from artificial sources. Therefore the income derived by 'the landlord from persons who have been given licences to cut an remove poola grass from forest has been held by the High Court to be sayar. We agree with the reasoning of the High Court. The High Court was correct in holding that the sayar income during 10 agricultural years immediately preceding the date of vesting should be taken into consideration in determining the gross assets under section 39 of the Act.

Counsel for the appellants submitted that the High Court did not deal with the finding of the Compensation Officer with regard to income from poola grass for the Fasli years 1352 and 1353 in respect of Prithipur forest. The Lalas claimed for the Fasli year 1352 a sum of Rs. 4600/- and for the Fasli Year 1353 a sum of Rs. 4500/- as income from poola grass. The Compensation Officer gave the additional reason for rejecting the income from poola grass for these two years that in the extract of khatauni it was not mentioned as to what the source of income was. Exhibit P-3 being the extract from khatauni for the Fasli year 1352 would show that Rs. 4600/- was the rent for clause 13 sawai items. Again, Exhibit P-10 for the Fasli year 1353 in respect of Prithipur forest would show the sum of Rs. 45001/- on account of rent for sayar. Therefore when the Compensation Officer will deal with

sayar income he will take into consideration Exhibits P-3 and P-10 for the Fasli years 1352 and 1353.

In the High Court it was contended that the Compensation Officer was wrong in taking 25 years to be the period on the basis of which annual average income of the forest was to be computed under section 39(1)(e) of the Act. The High Court did not accept that contention. This contention was not re- peated in this Court.

The High Court held that the Compensation Officer was wrong in arriving at the average annual income by adding the annual income on the, basis of a period of 25 years and the appraisement of the annual yield on the date of vesting. The High Court said that the two clauses in section 39 (1)

(e) of the Act were independent methods of finding out the average annual income from forest and it was not intended that the average annual income should be arrived at by adding the two methods. Section 39(1)(e) of the Act speaks of computation of average annual income from forest (i) on the basis of income- for a period of 20 to 40 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. The two are separate matters. It cannot be said that the Compensation Officer will adopt either of the clauses. The Compensation Officer has to refer to both the clauses in order to compute the average annual income from forest. The High Court is correct in holding that the average annual income from forest under section 39(1)(e) of the Act cannot be computed by arithmetical addition of the figures arrived at on the basis of clause (i) and on the basis of clause (ii). It is the average annual income from forest which is to be computed. The words of importance are 'average ,annual income'. Under the first clause the actual income de-

rived from the forest for a number of years before the date of Vesting as the Compensation Officer may consider reasonable is to be taken and the average calculated. Under the second clause the annual yield as on the date of vesting is to be appraised. The Compensation Officer is to compute the average income by taking recourse to both the methods. The second clause which speaks of appraisement of the annual yield will be done inter alia by taking into consideration the number and age of trees, the area of cultivation and the produce.

In the present appeals the High Court found on the materials that the forest had been felled almost completely during the last 9 or 10 years preceding the date of vesting. The evidence further established that there were no mature trees for felling and that the bulk of the crop that had existed had grown within a period of 8 years. It was therefore clear that the whole of the forest's income derived during those 9 or 10 years for which accounts of the Lalas were available represented the whole growth of the forest during the last 40 years and even if the forest had been gradually cut during the last 40 years the income derived would not have been substantially more than what have been derived during the last 9 or 10 years preceding the date of vesting. The High Court assessed the evidence. We do not find that there is any error in regard to the appreciation or assessment of evidence by the High Court and the conclusion that under section 3 9 (1) (e) of the Act the annual average income of Prithipur forest came to Rs. 4396.56 and of village Chharba at Rs. 2039.68.

Counsel for the appellants contended that the Compensation Officer did not consider the entire forest income for the Fasli years 1352, 1356, 1357 and 1358 for the Prithipur forest on the ground that the entire income was not the sale price of forest but that the Lalas worked the forest and a portion of the income was from the sale of the timber of that forest. The High Court rightly held that the forest income was referable to the price of the standing timber and income which the Lalas derived by processing wood would not be within forest income.

For these reasons we uphold the judgment and order of the High Court with this modification that when the Compensation Officer will deal with the income from poola grass as sayar income as derived by the High Court the Compensation Officer will also take into consideration the income from poola grass for the Prithipur forest for the years 1352 and 1353 Fasli.

In the facts and circumstances of the case the appeals are dismissed. The parties will pay and bear their own costs.

V.P.S. Appeals dismissed.