

Benoy Mazumdar (Dead) By Lrs.

Vs

Collector of Cachar

Civil Appeal No. 1843 of 1994

(K. Ramaswamy, Faizanuddin JJ)

03.09.1996

ORDER

1. This appeal by special leave arises from a very elaborate and well-considered judgment of the Division Bench of the Assam High Court made on 26-2-1982 in First Appeal No. 29 of 1965. The admitted position is that on 13-2-1959, 60 bighas of land was requisitioned under the Assam Land (Requisition and Acquisition) Act, 1948 (25 of 1948). Ultimately, by publication of the notification under Section 8(1-A) of the Act the land was acquired for the public purpose for settlement of the refugees from Bangladesh. The Land Acquisition Officer applying the provisions of Section 7(1-A) of the Act determined the compensation @ Rs 297.69 rounded off to Rs 300 per bigha. On appeal, the Division Bench has confirmed the same but awarded interest at 6% from the date of taking possession till date of payment. Thus, this appeal by special leave.

2. Shri Choudhary, learned counsel for the appellant, contended that the land was taken on grant from the Government on 8-8-1872 for special cultivation. Therefore, the compensation was required to be determined under Section 23(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, "the Act") as envisaged under Section 7(1) of the Act. As specified in sub-section (1) of Section 7 of the Act, his contention focuses mainly on the question whether the land is lying fallow or is for special cultivation. The learned counsel contends that the courts below have not properly understood the contents of the documents and interpreted the law in that perspective and, therefore, this Court is required to go into that question. He further contended that though Section 7(1-A) of the Act which has been specifically incorporated in the Assam Land (Requisition and Acquisition) Act, 1964 (15 of 1964) reiterates what is stated in Section 11 thereof, it is violative of Article 14 of the Constitution. In support thereof, he places strong reliance on a dissenting judgment dated 28-9-1981 of one of the Judges of a Full Bench of five Judges in CR No. 28 of 1967 and batch. Shri Chaudhary, the learned Senior Counsel appearing for the State, placing reliance on the judgment of this Court in Hemendra Prasad Baruah v. Collector of Sibsagar [(1975) 2 SCC 322 : AIR 1976 SC 908], contended that the controversy has been concluded by the said judgment in which it was held that for uncultivated or fallow land Section 7(1) stands applicable. In view of the respective contentions, the question that arises for consideration is what is the nature of the land acquired ?

3. The Reference Court raised Issue 3 in that behalf and considered the question elaborately. It held thus :

"From the perusal of Ext. 12 I find that there are certain limitations even though the lands are redeemed grants. I do not find anything in support of the claimant at pages XXV and XXVI of Introduction of Assam Land Revenue Manual, Vol. I, that the lands acquired were not grains but fee simple estate pure and simple. It is an

undisputed fact that the acquired lands were assessed with revenue by Assam Act No. XXIV of 1948 which Act was passed before the passing of the Assam Land (Requisition and Acquisition) Act, 1948. It may be true that the words 'special cultivation' might not appear in the rules passed before 1876 but that does not go to show that the acquired lands were sold to the company as fee simple estate, pure and simple and by virtue of that the company became the proprietor of land as like that of a fee simple estate. These rules passed in different times are embodied in the Assam Land Revenue Manual and those rules form a part of this book. Under these circumstances, I am convinced that the acquired lands are grants for special cultivation.

From the evidence placed above, I am not in a position to accept the contention of the claimant that there were thatch, shed trees and seedlings etc. when the lands were requisitioned. From the evidence it is also found that even seedlings were sometimes raised on the slope of the tilla by the garden labourers on payment of rent to the garden. So this cannot be construed as that lands were utilised by the garden for the purpose for which those were given. The claimant has failed to show with any documentary evidence that paddy and thatch were raised in some portion of the acquired lands before the lands were requisitioned. On the other hand, the objector's witnesses, some of whom are official witnesses, said that at the time of requisition the lands were lying patty. I, therefore, find no substance in the argument that the lands were not fallow, uncultivated or not utilised at the time when these were requisitioned."

4. After elaborate consideration, it was held that the land was fallow, uncultivated and not utilised at the time when the property was requisitioned. The Division Bench of the High Court again elaborately considered the nature of the grant, nature of the acquisition and the nature of the factual possession of the land as on the date of the requisition and it relied upon another Division Bench judgment of that Court in First Appeals Nos. 67-68 of 1969 decided on 23-2-1982 and concluded thus :

"The expression 'in the case of land with respect to which any settlement has been made for special cultivation or which is included in any grant, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes unidentical thereto', has to be given coherent and pragmatic interpretation, the words 'fallow' or 'cultivated' also being understood in the context of the concept of special cultivation for which the grant was meant. 'Fallow' according to the Webster's New Twentieth Century Dictionary, means land that has been lying a year or more untilled or unseeded to kill weeds, make the soil richer etc., land which has been ploughed or tilled without sowing it for a season. It means left uncultivated or unplanted. According to the same dictionary, utilisation means utilising or being utilised. To utilise is to profitably account or use, to make useful, as to utilise natural resources. Thus, all the three expressions, namely, 'fallow', 'uncultivated' and 'not utilised' have to be understood in the context of special cultivation for which the grant was made. Cultivation of the land for a purpose foreign to special cultivation or utilisation of the land for a purpose different from that which the grant was made, would be as much cultivation or unutilisation.

Applying the above principle we do not find any infirmity in the findings of the

Reference Court that the land involved in this case was covered by Section 7(1-A) of the Act and it would not fall under Section 7(1) of the Act. In this view of the matter the sale deeds and the Jamabandi classification which does not indicate the use of the land become irrelevant. Besides, the Jamabandi is dated 5-11-1959 while the land was requisitioned in 1954 and subsequently acquired in 1959 by notification dated 13-2-1959."

5. The said ratio was applied to the facts in this case and it was held that since the lands were fallow uncultivated lands they got attracted and accordingly it was held that Section 7(1-A) was inapplicable. Though Shri Choudhary sought to impress upon us that the land is fallow and therefore, the land falls within Section 7(1-A), that would be seen under the recital and the grant that would establish that the lands were assigned by a grant for special cultivation. Under the Assam Act of 1964, with a view to remove the ambiguity as to the "special cultivation" under sub-section (2) of Section 11, the expression has been defined to mean cultivation which involves, either owing to the nature of the crop or owing to the process of cultivation, a much larger expenditure of capital per acre than is incurred by most of the cultivators in the State and includes cultivation of tea. It would be seen that the special cultivation was meant to include cultivation involving higher capital outlay per acre than the expenditure incurred for cultivation by the cultivators in the State and also a cultivation of the tea which against the special cultivation involves higher investment of higher capital outlay. In view of the concurrent findings recorded by the Reference Court as well as the High Court that the land remained as fallow, uncultivated or barren land, necessarily the conclusion would be that the grant contained that the land was meant for special cultivation. Consequently, Section 7(1) has no application to the determination of the compensation as per the prevailing market value as on the date of the acquisition under the Act. We do not find that the Act is arbitrary. The Full Bench of five Judges in the above judgment, per majority, has elaborately gone into the question and concluded that Section 7(1-A) is not arbitrary. The reason appears to be that the land having been assigned by the Government, when it is needed for a public purpose, what the assignee would get in return is the land revenue; after use and enjoyment thereof, he would be compensated with the payment of the land revenue envisaged under Section 7(1-A) of the Act. It is settled law by a catena of judgments of this Court including one by the Constitution Bench that the prescription of the principle for determination of the compensation is not violative of Article 14 of the Constitution. Even in *Bhim Singhji v. Union of India* [(1981) 1 SCC 166], the Constitution Bench of this Court has held that the payment of compensation for the surplus vacant land acquired under the Ceiling Act under Section 6(11) in the sum of Rs 2,00,000 was not illusory. Considered from this perspective, we hold that the determination of the compensation under Section 7(1-A) is not violative of Article 14 of the Constitution. The majority of the Full Bench of five Judges of the Assam High Court has rightly concluded the issue. Accordingly, we hold that there is no illegality in the impugned judgment. Moreover, when the High Court has consistently interpreted a local law in a particular way, this Court would be slow to disturb their interpretation unless compelling circumstances so warrant. The High Court has not applied wrong principle of law in determining the compensation warranting interference.

6. The appeal is accordingly dismissed but, in the circumstances, without costs.