

Supreme Court of India

Sonapur Tea Co.(P) Ltd vs State Of Assam on 3 March, 1994

Equivalent citations: 1994 SCC (4) 746, JT 1994 (2) 653

Author: V N.

Bench: Venkatachala N. (J)

PETITIONER:

SONAPUR TEA CO.(P) LTD.

Vs.

RESPONDENT:

STATE OF ASSAM

DATE OF JUDGMENT 03/03/1994

BENCH:

VENKATACHALA N. (J)

BENCH:

VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1994 SCC (4) 746 JT 1994 (2) 653

1994 SCALE (1) 873

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.VENKATACHALA, J.- There was a tea estate in an area of 1617 bighas of land in the District of Kamrup in the State of Assam. That tea estate was requisitioned under the Defence of India Act, 1962 by the Government of Assam and the Defence Department of the Union was put in possession of it in the year 1963. Derequisitioning of a portion of that tea estate having taken place immediately thereafter, the actual tea estate which continued in possession of the Defence Department of the Union, was reduced to an extent of 1435 bighas of land only. However, that tea estate which was not released from requisition before 10-1-1968, as from that date, became a property which was deemed to have been requisitioned under the Requisitioning and Acquisition of Immovable Property Act, 1952, to be referred to hereinafter as 'the Act', by operation of Section 25 of the Act. Even thereafter, the tea estate continued to be in occupation of the Defence Department of the Union and used as before, for its defence purposes. But, the compensation payable under the Act to Appellant 1 for its requisitioned tea estate remained unsettled since no agreement was reached on the amount of such compensation. It appears that

Appellant 1 through its Director, Appellant 2, moved the Deputy Commissioner, District of Kamrup, who was the competent authority under the Act, for referring the matter of determination of the just amount of compensation payable for its tea estate to an Arbitrator, required to be appointed thereunder. Subsequently, Shri D.C. Sangma, District Judge, Land Acquisition Department, Assam, who was appointed as an Arbitrator by the Government of Assam, determined by his award dated 3-10-1972, the amount of compensation payable to Appellant 1 for its requisitioned tea estate to be a sum of Rs 49,08,786.50, thus:

1. Initial one-time compensation 1425 Bhaluka bamboo at Rs 2.50 each totalling Rs 3562.50 960 Jati bamboo at Rs 1.50 each totalling Rs 1440.00 6430 Kotah bamboo at Re 1 each totalling Rs 6430.00 849 Bijuli bamboo at Rs 0.50 each totalling Rs 424.50 143 Raiding cane at Rs 35 each totalling Rs 5005.00 3288 Fuel trees at Rs 20 each totalling Rs 65,760.00

2. Annual recurring compensation ,for:

(a) 21 Jam trees at Rs 30 each totalling Rs 630

(b) 206 Kathak trees at Rs 50 each totalling Rs 10,300

(c) 32 Amalkhi trees at Rs 40 each totalling Rs 1280

(d) 10 Teteli trees at Rs 20 each totalling Rs 200

(e) 03 Lemon trees at Rs 30 each totalling Rs 90 (/) 01 Silikha tree at Rs 20 each totalling Rs 20

(g) 178 Bel trees at Rs 20 each totalling Rs 3560

(h) 167 Mango trees at Rs 60 each totalling Rs 10,020

(i) 005 Madhuriam trees at Rs 20 each totalling Rs 100

(j) 052 Simalu trees at Rs 30 each totalling Rs 1560

(k) 701 Orange trees at Rs 70 each totalling Rs 49,070

3. Annual recurring compensation for 153 bighas, 1 khata and 10 lechas at Rs 350 per bigha for 9 years (from 8-3-1963 to 11-5-1972)

4. Annual recurring compensation for 124 bighas, 0 khata and 2 lechas at Rs 300 per bigha for 9 years (from 8-3-1963 to 11-5-1972)

5. Annual recurring compensation for 1157 bighas, 1 khata and 10 lechas at Rs 125 per bigha for 9 years (from 8-3-1963 to 11-5-1972)

6. Annual recurring compensation for 56, 548 tea bushes at Rs 4 per tea bush for 9 years (from 8-3-1963 to 11-5-1972)

7. Interest at 6 per cent per annum on total amount of compensation from 11-5-1972 till final payment.

2. Feeling that the said award of the Arbitrator was excessive, the Defence Department of the Union through the Deputy Commissioner, Kamrup filed an appeal against it in the Gauhati High Court. That appeal was partly allowed by the High Court, in that, it set aside the award of the Arbitrator except with regard to the compensation fixed under item 1 in the award and remitted the case for being decided afresh by the Arbitrator, by following the guidelines given in its judgment. But the appellants, who felt that the guidelines of the High Court given in its judgment and required to be followed by the Arbitrator in determining the compensation payable for the requisitioned property - the tea estate, were not in consonance with the principles specified in the provisions of the Act, have presented this appeal by special leave.

3. It was submitted by the learned counsel for the appellants that the judgment under appeal, although is a remand order and directs the Arbitrator to make a fresh determination of compensation for the first appellant's requisitioned tea estate, the guidelines contained therein for determination of compensation - (i) that in computing recurring compensation payable for the tea estate, income from tea bushes, fruit-bearing plants or trees or even building in such estate, which existed at the time of requisition, shall not be taken into account, if they were destroyed after requisitioning; (ii) that in computing recurring compensation payable for the tea estate, the use to which the land of the estate is put by the occupant could alone be taken into consideration; and (iii) that the compensation payable for tea bushes, fruit bearing plants and trees growth, buildings etc. in the tea estate which were likely to be destroyed shall be their one-time lump sum value; not being in consonance with the relevant principles specified in the Act, were unsustainable. It was also submitted by the learned counsel for the appellants and rightly, that the appellants will have no objection for setting aside that portion of the judgment of the High Court by which a lump sum compensation awarded by the Arbitrator for fruit-bearing plants, trees and other wild growth in the tea estate was affirmed, if such award of separate compensation for plants and trees and other wild growth in a tea estate separately, is found by us to be unwarranted by the provisions of the Act.

4. As the said submissions of the learned counsel for the appellants merit our consideration, we shall proceed to deal with them.

5. The compensation payable for the property requisitioned under the Act must be determined on the basis of the relevant principles or determinants specified in the Act itself, admits of no controversy. As such principles or determinants are specified in sub-section (2) of Section 8 of the Act, 'It would be advantageous to advert to it. It reads:

"8. (2) The amount of compensation payable for the requisitioning of any property shall, subject to the provisions of sub-sections (2-A) and (2-B), consist of-

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely,-

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition."

6. Sub-section (2) of Section 8, as seen, makes its provision subject to the provisions in sub-sections (2-A) and (2-B) thereof, which envisage revision and re-revision of recurring payment to be made in respect of requisitioned property under clause (a) of sub-section (2). Therefore, when the need to revise or re-revision the recurring payment required to be made under clause (a) of sub-section (2), to meet one or the other contingencies envisaged in either sub-section (2-A) or sub-section (2-B) arises, resort to such revision or re-revision becomes necessary and indeed is obligatory. Since the revision or re-revision envisaged in sub-section (2-A) or subsection (2-B) also refers to recurring payment to be made for the requisitioned property under clause (a) of sub-section (2) of Section 8, it would be advantageous to ascertain, at the first instance, as to what is that "recurring payment", which is required to be made for the requisitioned property under that clause (a), inasmuch as, that recurring payment is the principal sum of compensation payable for the requisitioned property.

7. "Recurring payment" envisaged under clause (a) of sub-section (2) of Section 8, as could be seen therefrom, is a sum equal to the rent which would have been payable for the use and occupation of the requisitioned property if it had been taken on lease during that period. The recurring payment to be made for the requisitioned property under clause (a), therefore, must be a sum which is equal to the rent that might be fetched by the requisitioned property, if it had been leased for the period during which it was under requisition. Although rent payable for a property taken on lease for a period could generally be on yearly or monthly basis, according to the nature of the property, during the period of subsistence of such lease, a recurring payment of compensation envisaged in clause (a) to be made for the requisitioned property has to be fixed on yearly basis, if it is agricultural land or on quarterly basis, if it is any other type of property, as is indicated in Rule 9(2) of the Rules made under the Act.

8. Thus the sum of compensation envisaged under clause (a) of subsection (2) of Section 8 as "the recurring payment" being a sum equal to rent payable for the requisitioned property, during the

period of requisition, as if it is the period of lease, the only course permitted by that clause is, to assess the rental of the requisitioned property on yearly basis, if it is an agricultural land or on quarterly basis, if it is any other property, for payment as an annual recurring payment of compensation or quarterly recurring payment of compensation, as the case may be, for the requisitioned property. Then, as to what sum of compensation becomes payable for the requisitioned tea estate (an agricultural land with tea plantations), as annual recurring payment under clause (a) of sub-section (2) of Section 8, cannot be anything other than the annual rental it would have fetched during the requisitioned period, if it had been leased out during that period. of course, the period of years for which the annual recurring payment determined becomes payable, must be according to sub-section (2-A) or sub- section (2-B), where any of them requires its application.

9. When a tea estate is requisitioned under the Act, it becomes necessary to find out the rental which it could have fetched, if the whole of the tea estate had been leased during the years of requisition. Necessity to find out the rental of the whole tea estate arises because proper management of the 'tea estate' which is subject to regulatory measures contained in the Tea Act, 1953, is not otherwise feasible. When such rental is found out, fixing the sum of recurring payment to be made for it under clause

(a) of sub-section (2) of Section 8 of the Act will pose no problem. The best evidence of rental of a requisitioned tea estate cannot be anything other than the rental fetched by it, if it was the subject of lease earlier to requisitioning. Rental fetched earlier or subsequently under any lease of a comparable tea estate lying in the surrounding area or in any other similar areas, could also prove to be of advantage. When there is evidence of such rental paid or payable under comparable leases of tea estates, ascertainment of the approximate amount of rental which could have been fetched by the requisitioned tea estate during the period of requisitioning could be done by making additions or deductions in the rent paid or payable under comparable leases depending upon the differential plus or minus factors involved in a given situation. When the rent of requisitioned tea estate is so ascertained, it will not be difficult to fix the recurring payment to be made for that tea estate under clause (a) of subsection (2) of Section 8. But if the evidence of comparable leases needed for fixing the recurring payment to be made under clause (a) of sub-section (2) of Section 8 for a requisitioned tea estate is not available, next thing to do is, to look to the evidence of net income from the very tea estate got by its owner or occupier during three to five years previous to its requisitioning and find out therefrom as to what could have been the net annual income which could have been got by the person entitled to the same in the years during which it was under requisition. As to what is required to be made good by way of recurring payment to the owner or lessee or other person entitled to get it, for loss of occupation and user of the requisitioned property during the period of its requisitioning, it must be noted, is not the annual income lost by such person because of requisitioning but what is lost to him by way of annual rental. Therefore, what becomes necessary is, to find out what would have been +,he annual rental fetched by the requisitioned property if it was fetching certain annual net income. It would be so for the reason that the annual rental which may be fetched by a property cannot be equal to annual net income likely to be got by such property, in that, no person would take a property on lease, if he has to pay the whole of its annual income, as annual rent. In the absence of evidence as to how much amount could be paid as annual rental by a

lessee of a requisitioned property, such as a tea estate, it would not be unreasonable to proceed on the basis that no lessee would be ready to pay annual rental of more than two-third likely annual net income from such tea estate, that is, without the possibility of keeping to himself, a marginal profit of at least one-third annual net income, having regard to investment, trouble and risks which he as a lessee undertakes by taking such property on lease.

10. The net annual income of a tea estate during the concerned years, if is found to be either on increase or decrease with the passage of years and normal change in its condition, the annual rental also either increases or decreases, correspondingly. This is again a factor which must weigh in fixing recurring payment to be made under clause (a) of sub-section (2) of Section 8 of the Act. Since tea estates will have been generally owned or managed by companies or partnership firms, the accounts of profits and losses of such estates are bound to be maintained by them. When once such accounts become available, it would not be difficult to ascertain the net income of a requisitioned tea estate for any period of years, on their basis. However, if no evidence of net income of the requisitioned tea estate or any other similar estate, on the basis of which the net income of requisitioned tea estate could be ascertained, becomes available, it becomes necessary to find out the market value of the requisitioned tea estate taking into consideration the amount for which the very requisitioned estate was purchased or the amount for which similar estates were purchased. If the market value of the requisitioned tea estate cannot be so ascertained, any appropriate well recognised method of valuation of property could be adopted for fixing the market value of the requisitioned tea estate. When once such market value of the requisitioned tea estate is fixed, the next exercise would be to find out what percentage of such market value could be regarded as its annual income taking into consideration the market conditions prevailing during the relevant period of requisitioning and on the basis of such annual net income to fix its annual rental and ultimately on the basis of such annual rental to fix the recurring payment liable to be made under Section 8(2)(a) of the Act. It should, however, be reiterated that recurring payment payable under Section 8(2)(a) of the Act for a requisitioned tea estate could be determined not by fixing rental for each type of property comprised in such estate separately but by arriving at a lump sum rental of such estate. In other words, the recurring payment to be made for any period of requisitioning under Section 8(2)(a) should be determined having regard to the annual rental of the requisitioned tea estate as such, i.e., as a single unit and with reference to the condition in which such tea estate could have, in the normal course stood, during the period for which annual rental is fixed.

11. What now remains for consideration is the component of compensation payable for the requisitioned property under clause (b) of sub-

section (2) of Section 8 of the Act to the person interested for all or any of the matters enumerated therein, which is again a principle of determination of compensation specified in the Act. Such matters, as seen from the provision in clause (b) of sub-section (2) of Section 8 of the Act are:

"(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition."

12. As regards the sum payable as compensation under sub- clause (i) to the person interested, it is the sum of pecuniary loss caused due to requisitioning. It would be the loss caused to the person in occupation of the requisitioned property because of the need to suddenly give up possession of such requisitioned property. The pecuniary loss may include certain other losses to be suffered by the person dispossessed from the requisitioned property. For instance, if the requisitioned property is a tea estate, the owner or occupier may have to bear retrenchment compensation payable to labourers working on the estate, resulting in loss or may have to discard certain agricultural implements or machinery or equipments used in cultivation of the requisitioned tea estate, resulting in losses. Such kind of losses suffered by the person dispossessed from the estate, if not remote in character, would be such person's pecuniary loss and the same is required to be made good under this sub-clause. The pecuniary loss envisaged in this sub-clause is like compensation payable in case of property acquired under the Land Acquisition Act, as disturbance compensation.

13. Coming to the sums payable as compensation to the persons interested, in respect of expenses arising on account of vacating the requisitioned premises and expenses on account of reoccupying the premises upon release from requisitioning, envisaged under sub-clauses (ii) and (iii) of clause (b) of sub-section (2) of Section 8 of the Act, they are to be paid when claims are made in that regard at the appropriate stage and supporting evidence adduced therefor. As there is no ambiguity as to the nature of expenses covered under these clauses, it would not be difficult to fix the amount of compensation payable under those heads. Then, the other sum of compensation payable under sub-clause (iv) of clause (b) of sub-section (2) relates to damages (other than normal wear and tear) caused to the property during the period of requisition including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition. The nature of damages envisaged under the sub- clauses, if is seen, these are damages which should be ascertained in respect of requisitioned property after its derequisitioning and not before. Hence, the question of fixing any damages under clause (iv) which has to be paid by way of compensation under sub-section (2) of Section 8 of the Act, cannot arise until the property is derequisitioned.

14. The principles of determination of compensation for a property requisitioned under the Act, are the determinants specified in the Act, itself for the purpose of fixing compensation for the property requisitioned thereunder. We have already adverted to those principles or determinants and amplified them. The provisions in the Act, when specifying the principles or determinants of fixation of compensation, require that they should be applied in fixing the compensation payable for the property requisitioned under the Act, no choice is left. What are the methods which could be followed for fixing the compensation payable for a property as a tea estate requisitioned under the Act in accordance with the principles of determination specified therein, are also indicated by us. Since the award made for the requisitioned tea estate by the Arbitrator and the guidelines given by

the High Court in its remand order for being followed by the Arbitrator in fixing the compensation payable for the requisitioned property under the Act are not made or given conforming to the determinants or principles of determination of compensation for requisitioned property amplified by us, based on the provisions of the Act, the award of the Arbitrator as well as the (remand order) judgment of the High Court under appeal, cannot be sustained. Hence, the award of the Arbitrator as well as the judgment of the High Court are liable to be set aside.

15. In the result, we allow this appeal, set aside the award of the Arbitrator and the judgment of the High Court and remit the case to Government of Assam requiring it to appoint an Arbitrator and place the case before him for determining afresh the amount of compensation payable for the requisitioned tea estate, after affording the parties opportunity to make claims or file objections afresh, if they so desire, and to adduce evidence including that of experts, if any, therefor afresh and order payment of compensation less the amount of compensation if any, already paid, in accordance with law and in consonance with the guidelines laid down in this judgment. The Arbitrator to be appointed shall dispose of the case with utmost expedition and at any rate within a period of four months from the date of his appointment as Arbitrator. However, in the circumstances of this appeal, there will be no order as to costs.

16. The copy of this judgment shall be sent to the Chief Secretary, Government of Assam to take immediate action in the matter of appointment of an Arbitrator and to take such other steps as are permitted under the Requisitioning and Acquisition of Immovable Property Act, 1952 and the Rules made thereunder.