

(1996) 08 GAU CK 0026
In the Gauhati High Court
Case No : F.A. No. 28 of 1990

Collector of Jorhat and Others

APPELLANT

Vs

Deha Assam Tea Co. (P) Ltd.

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 25, 8(1), 8(2), 8(3)

Citation : (1997) 1 GLR 395

Hon'ble Judges : S. Barman Roy, J;D.N. Baruah, J

Bench : Division Bench

Advocate : M.A. Laskar, S.K. Chand Mohammad and Sk. Muktar, for the Appellant; K.R. Pathak, B. Buzarbaruah and M.R. Pathak, for the Respondent

Judgement

D.N. Baruah, J.—This appeal is directed against the judgment and order dated 15.6.89 passed by the Arbitrator in Arb. Misc. Case No. 47/71 and Arb. Misc. Case No. 59/71 arising out of R.C. Case No. 21/63-64 and R.C. Case No. 33/64-65 Respectively. The facts relevant for the purpose of this appeal are.

2. The claimant-Respondent M/S Deha Assam tea Co.(P)Ltd. owns a tea garden known as Deha Assam Tea Estate at Jorhat. The Collector requisitioned a total area of 364B OK 19Ls of land situated at Deha Bagicha Bongali Gaon and Naginijan Grant under mouza Hulungapar Sibsagar. The said land was requisitioned for construction of staff quarter under the Defence of India Act, 1962 on 14.9.63 and 3.3.64. After the Defence of India Act ceased to have any effect, the Collector requisitioned the said land as per the provisions of Section 25 of the Requisition and Acquisition of Immovable Properties Act, 1952, for short "the Act". The defence personnel continued to occupy the same. Requisition compensation for occupation of the land was assessed by the collector at the rate of five times of the laid revenue for the grant land and for periodic patta land at Rs. 50/- per bigha per year. In total requisition compensation of Rs. 20,304.36 paise had been awarded and thereafter the

annual compensation was paid at the same rate. It may be mentioned here that there was no agreement by and between the parties.

Being dissatisfied with the amount of requisition compensation awarded by the Collector, an application was submitted by the Respondent for adjudication of the proper requisition compensation. On receipt of the same, the Collector referred the matter to the District Judge, Jorhat. At that time Shri S. Haque who was the District Judge, was appointed Arbitrator by the Government, to determine the proper requisition compensation. Thereafter, Shri B.N. Sarma was appointed Arbitrator in the capacity of a District Judge by notification dated 20th November, 1985. Before the Arbitrator the statement of Satyanarayan Agarwalla, the Managing Director, was recorded. He also placed a certified copy of the judgment passed in First Appeal No. 343/73 and other First Appeals by a Division Bench of this Court in respect of land requisitioned for Borjhar airport. In the said judgment, requisition compensation was allowed at the rate of Rs. 300/- per bigha. The lands involved in the said appeals were agricultural land of village Borjhar and the lands requisitioned in the present appeal are also agricultural land of similar nature. The present land is situated about 9 KMs from Jorhat town, whereas the Borjhar land is about 17 KMs from Guwahati city.

3. Taking into consideration the aforesaid judgment, the Arbitrator gave award of Rs. 300/- per bigha. He also awarded Rs. 5/- per bigha as initial compensation. In a sense Rs. 5/- per bigha was for the entire period of requisition. The Arbitrator also awarded interest at the rate of 9% for the first year making it clear that if the amount was not paid within a period of one year from the date of requisition, the rate of interest would be enhanced to 15% till the date of payment.

4. The Appellants have approached this Court by filing the present appeal against the award given by the Arbitrator.

5. We have heard Mr. M.A. Laskar, learned Counsel appearing on behalf of the Appellant. Mr. Laskar urges two points before us first that the amount was enhanced; from Rs. 20/- to Rs. 300/- without there being any basis and secondly the evidence of the witness on behalf of the Respondent - claimant for enhancement of compensation was not sufficient. According to Mr. Laskar under the provisions of the Ad interest and solatium cannot be granted. According to him the Arbitrator awarded the amount most arbitrarily and illegally without jurisdiction. On the other hand, Mr. Pathak, learned Counsel appearing on behalf of claimant Respondent submit before us that the then District Judge Shri B.L. Hansaria, who was appointed Arbitrator, examined eight witnesses. Thereafter, when Mr. B.N. Sarma was appointed Arbitrator another witness, namely, Shri Satyanarayan Agarwalla was examined. According to Mr. Pathak there are ample evidence in favour of the Respondent inasmuch as Satyanarayan Agarwalla, Managing Director gave details about the requisition compensation which the garden was entitled to. According to Mr. Pathak there was no evidence whatsoever from the side of the Collector. Besides, Mr. Pathak submits that the

Arbitrator took into consideration the judgment of this Court in F.A. 343/73 and other first appeals delivered on 15.7.85, Mr. Laskar has challenged this submitting that the Arbitrator took into consideration the judgment of the appeal without being formally proved, inasmuch as, only certified copy of the judgment was produced.

6. On the rival contention of the parties it is to be seen whether the order of the Arbitrator can sustain in law,

7. We have perused the evidence adduced by the Appellant, namely, PW.1 an Office Assistant of the office of the Collector and the 9 witnesses examined by the claimant-Respondent. PW.1 on behalf of the Collector simply proved that possession of the requisitioned land was taken over on a particular date. Except this he did not depose anything in connection with the quantum of compensation. On the other hand, Shri Satyanarayan Agarwalla, Managing Director of the claimant-Respondent gave the details of the compensation. Besides, there is no evidence whatsoever from the side of the Collector against enhancement of the requisition compensation. In view of the positive evidence of PW.8, Satyanarayan Agarwalla (Managing Director) and also the fact that in similar agricultural land of village Borjhar which is 17 KMs away from Guwahati city this Court awarded Rs. 300/- per bigha, we are of the opinion that the enhancement of compensation was just and proper.

The next submission of Mr. Laskar is regarding award of interest.

Mr. Laskar has drawn our attention to a decision of the Apex Court in Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., The Apex Court after considering the entire facts observed thus:

Where a property which was subject to prior requisition comes to be acquired the compensation should be awarded on the basis of the principles adumbrated in the 1952 Act, The amount of compensation can be fixed by agreement u/s 8(1) (b). In the absence of such an agreement it is left to the discretion of the arbitrator, who u/s 8(1)(e) is to hear the dispute. The Arbitrator must determine the amount of compensation which appears to him to be just but he must have regard to Sub-sections (2) and (3) of Section 8. The significant omission of solatium is indicative of the legislative intent necessitating stress on the expressions "just" and "circumstances of each case" occurring in Sub-section (1) (e) of Section 8. Yet another distinguishing feature is the expression "open market" in Section 8(3)(a). The reason why solatium has not been provided is that "open market" contemplates a bargain between a free buyer and a free seller unfettered by the consideration of requisition and consequent acquisition.

The next case cited by Mr. Laskar is Union of India Vs. Kolluni Ramaiah and others, We have gone through the decision.

These cases are not applicable in the present case, inasmuch as, the points decided in those cases are different.

8. The third case referred by Mr. Laskar is Union of India (UOI) and Others Vs. Ajaib Singh and Others, In the said case it was argued by the Appellant Union of India that unlike the Land Acquisition Act, there is no provision in the Act for payment of solatium and interest. Solatium and interest have been awarded in the interest of justice in certain cases. But in the absence of special circumstances, such award of interest and solatium cannot be justified under the provisions of the Act. After considering the submission, the Apex Court held that in the facts of the case, the Arbitrator was in error in allowing solatium and interest without coming to a decision as to the existence of any dispute and failure of the Government to refer the matter to arbitrator. We find that this decision is also not applicable in the present case.

Mr. Pathak has placed before us a decision of the Apex Court in Abhay Singh Surana and Others Vs. Secretary, Ministry of Communication and Others, In paragraph 4 of the said judgment the Apex Court observed thus:

We are of the opinion that the Appellants herein are entitled to the interest for the period from March 1975 to July 31, 1987 when principal amount of compensation had been paid and/or when the premises in question had been derequisitioned and handed back to the owner, on the amount awarded. As to how the interest would vary, but the right of interest was well averred and also should have been considered in the list of the observations of Privy Council in Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission. We are of the opinion that from the period from March 7, 1975 to February 28, 1985 being the date on which the judgment of the High Court was pronounced in this case the Appellants are entitled to the interest on the amount awarded at the rate of 6 per cent per annum and from the period from August 8, 1985 to July 31, 1987 and for that period only at the rate of 12 per cent per annum. Interest will be payable only on the balance amount which remained to be payable to the Appellants i.e. the amount due minus what has been paid from the respective dates.

Another decision cited by Mr. Pathak is Kalimpong Land and Building Ltd. and Another Vs. State of W.B. and Others, In the said paragraph 6 of the said judgment the Apex Court observed thus:

Interest is to make good the loss suffered by the person on delayed payment of the compensation, As is clear from narration of facts, the Appellant has been taking all possible steps for determination of compensation. The denial of interest in the facts and the circumstances of this case would not be in the interest of justice.

Mr. Pathak further relies on a decision of the Apex court in Prabhu Dayal and Others Vs. Union of India, Relying on the judgment of the Apex Court in Union of India v. Hari Krishna Khosla and Harbans Singh v. Union of India, the Apex Court observed that interest for delayed payment should be flowed.

Considering the above, we are of the opinion that in the present case where the

compensations have been resisted by the Collector and Union of India, before the Arbitrator, the Respondent claimants are entitled to interest from the date of award given by the arbitrator. The arbitrator has rightly awarded interest.

The Appellants are given 2 months time to make the payment. The sum of Rs. 5,00,000/- as directed by the interim order dated 4.4.96 shall be deposited within a week from today. The balance amount shall have to be paid within 2 months from today. If payment is not made within the given time, interest will be enhanced to 15% per annum.