

(1998) 06 GAU CK 0045

In the Gauhati High Court

Case No : First Appeal No's. 27, 32 and 33 of 1997

Green View Tea and Industries and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Evidence Act, 1872 — Section 3

Land Acquisition Act, 1894 — Section 17(3), 18, 4, 54, 6

Citation : (1998) 3 GLT 105

Hon'ble Judges : V.D. Gyani, Acting C.J.; D.N. Choudhury, J

Bench : Division Bench

Advocate : N.M. Lahiri, B.K. Goswami, G.N. Sahewalla, A.K. Goswami, B. Bora, S. Murarka and B. Goyal, in F.A. 27/97 and Government Advocate in FA 33/97, for the Appellant; P.C. Deka, S.K. Medhi in FA 32 and 33/97 and D. Goswami, in FA 32/97 and Govt. Advocate in FA 27/97, for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. All these three appeals u/s 54 of the Land Acquisition Act, 1894 arise out of the same judgment and award as passed by the learned District Judge, Golaghat in Land Acquisition Case No. 1/95. First Appeal No. 27/97 is filed by the Appellant M/s. Green View Tea & Industries as the compensation awarded in respect of the Appellants land is less. Appeal No. 32/97 has been preferred by M/s. Numuligarh Refinery Ltd., a Govt. of India Enterprise, against the same judgment and award. It was for this company that the land in question was acquired and as such is interested in the matter. First Appeal No. 33/97 is preferred by the Collector, Golaghat being aggrieved by the same judgment and award of compensation at the rate of Rs. 22,000/- per bigha, for 681 bighas 1 katha of land covered by Dag No. 94 under periodic patta No. 2 of Ouguri Chapari Gaon under Marangi Mouza and at the rate of Rs. 75/- per tea bush for 44, 575/- number of tea bushes and directing the opposite party to pay the amount within a period of two months failing which the awarded sum is to carry interest at the rate of 10% P.A.

2. Few basic facts may now be noted. M/s. Green View Tea & Industries is a partnership firm, owning tea estate situated under Marangi Mouza in the district of Golaghat. The ownership and management of this tea estate was transferred sometime in the year 1987 and the present owner M/s. Green View Tea & Industries claim to have developed the tea garden, doing its best for development of the tea estate, having a strength of 170 labourers (as claimed) along with other staff members. M/s. Green View Tea & Industries also claimed to have availed M.T. Loan of Rs. 12,49,651.70 paise from the Assam Co-operative Apex Bank Limited for installing a Tea Manufacturing Unit before acquisition of the tea garden. The land measuring 681 Bighas 1 Katha with tea bushes, garden roads, shed trees and other valuable trees were acquired by the State for the proposed Numuligarh Refinery for which the land was urgently required invoking Section 17(3)(a) of the Act.

3. A notification u/s 4 of the Land Acquisition Act, 1894, for short "the Act" for acquiring large tract of land including the land belonging to the present Appellant, Green View Tea Industries for construction of Numuligarh Refinery was duly published. The Collector, Golaghat made an award determining the compensation @ Rs. 7,000/- per bigha. A reference was made u/s 18 by the Collector, Golaghat to the District Court. The Appellant, M/s. Green View Tea Industries is the owner of the Rajabari Tea Estate and the said tea estate is situated at Marangi Mouza in the District of Golaghat is being managed by M/s Green View Tea Industries, a partnership firm through its constituted attorney Shri Rabi Dutta Agarwalla. The land was acquired along with other tract of land including movable and immovable. This estate was purchased by the said partnership firm from Dr. Amrit Ch. Phukan, of Jorhat by registered sale deed No. 1573 dated 7.9.87. The possession thereof was duly handed over to the firm. The area of the land under reference is 680 Bighas and 1 Katha covered by Dag No. 94 under periodic Patta No. 2 of Ouguri Chapari Gaon. It is an admitted position that M/s Green View Industries received Rs. 2,45,424/- as advance compensation against the amount of compensation determined by the Collector, Golaghat. It is further added that it was received under protest. The land undoubtedly is under possession of the Numuligarh Refinery. The main thrust of Appellant, Green View Industries is that not only the Collector, but also the Court below did not take into account the documentary evidence placed on record. The price of tea bushes, shade trees etc. have not been properly assessed. Rabi Dutta Agarwalla has been examined as witness No. 1 while Ajijur Rahman, Head Assistant, Office of the Deputy Commissioner, Golaghat has been examined as witness for the Opp-parties.

4. The core question that arises for consideration in this appeal is the valuation of land for compensation. The Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, has laid down the following principles which are undoubtedly of great help in resolving the disputes raised by the parties in this appeal. The principles enunciated by the Supreme Court are worth quoting and they must be kept in mind by the Court in determining the

value.

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a Plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act. (dates of Notification under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under (Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instance method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account (sometimes instances are rigged up in anticipation of Acquisition of land).

(9) Even post-notification instances can be taken into account (1) if they are very proximate. (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) Proximity from time angle

(ii) Proximity from situation angle

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in just a position.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser should so.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors Minus factors 1. Smallness of size 1. largeness of area 2. Proximity to a road 2. situation in the interior at a distance from the road. 3. Frontage on a road 3. narrow strip of land with very small frontage compared to depth 4. nearness to deve- 4. lower level loped area requiring the depressed portion to be filled up. 5. regular shape 5. Remoteness from developed locality 6. level vis-a-vis land 6. some special under acquisition disadvantageous factor which would deter a purchaser. 7. Special value for an owner of a adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There can not be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract of block of land of say 1000 eq yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendance hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must

place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

5. The District Judge has also referred to the above principles and guidelines in the impugned judgment but as rightly pointed by Mr. Deka, learned Senior appearing for the Refinery, it is in the application of these principles that he has gone wrong. Mr. Goswami, learned Counsel appearing for the claimant Appellants, on the other hand, maintained that the Collector having made an offer of Rs. 55,000/- per bigha as approved at the meeting held in the Chamber of the Hon'ble Minister on 25.2.93, the same should have been followed in determining compensation as it was binding on the state. Apart from the doctrine of promissory estoppel, the above rate was fully supported by documentary evidence, sale deeds, Exts. 3, 4 and 5 as filed by the claimant Appellant.

6. As for land acquired, the reference Court has determined compensation at the rate of Rs. 22,000/- per bigha, which has been assailed and objected to by other two Appellants, both the state as well as the Refinery.

7. What is the basis for this fixation of rate of Rs. 22,000/- per bigha? The learned District Judge taking into account the above sale deeds, Exts. 3, 4 and 5, the list of names of vendors, dates of sale of land, its price, as submitted by the State, showing the sale price of land as less than Rs. 10,000/- per bigha. Taking one such deal, out of such list showing sale price of Rs. 41,666/- per bigha. The learned Judge has also noted that the land sold at the rate of Rs. 41,666/- per bigha, is "Bari Type Mati", that means a plot of land for residential purpose. To overcome the difficulty, the learned Judge has accepted the submission made by claimants' counsel that a house can well be constructed even in tea garden land, and comes to the conclusion "so the tea land may also be categorised as "Bari Land" (See concluding part of paragraph 12 of the impugned judgment).

8. The learned Judge having concluded as above, proceeds to observe:

In the light of the discussions and decisions, I hold that a sum of Rs. 22,000.00 (twenty two thousand) only per bigha of land will be the appropriate compensation in this case. Hence, the compensation be given accordingly in favour of the claimant/Petitioner M/s Green View Tea Industries as per above rate, after deducting the amount already received.

9. Be it noted that there is neither any comparison nor any appreciation and analysis of documentary evidence, for that matter any evidence. The soul of a judicial decision-reason, is sadly lacking in the impugned judgment. It would not be out of place to refer to Maqbool Hussain Vs. The State of Bombay, which succinctly explains as to what a judicial decision should be:

A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :- (1) the presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between

them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

10. Now let us examine these three sale deeds, Ext. 3, 4 and 5 as filed by claimant-Appellants. The sale deed dated 12.2.85 in favour of Amulya Barman, son of Late Alok Ch. Barman was executed by Soneswar Saikia. Now this is a sale of a piece of land just admeasuring 8 lechas sold for Rs. 4,000/-, the other sale deed dated 12.5.92 in favour of Lakshman Prasad Sahu executed by Shri Bhogeswar Saikia is just 12 Lechas of land sold for Rs. 5,000/-. The third sale deed dated 9.8.89 in favour of Md. Waquique Saikiah executed in favour of Gajanand Prasad Sahu is for 3 kathas of land, and the price fixed was Rs. 25,000/-. There is absolutely no comparison whatsoever between the areas of land as against a huge chunk of land ad-measuring 680 bighas. Now the price paid for few square metres cannot be compared with land ad-measuring 680 bighas. The learned District Judge has also referred to a meeting dated 25.2.93. The Minutes of the said meeting dated 25.2.93 is reproduced hereunder:

MINUTES OF THE MEETING HELD IN THE CHIEF MINISTER'S CHAMBER ON 25.02.93.

The following were : From IBP present 1. Minister, Revenue 1. Chairman & 2. Member, Managing Director, State Planning Board. IBP 3. Chief Secretary. 2. Sri Amitabh 4. Special Commiss- Sinha ioner, Revenue. 3. Smt. Manjusha 5. Commissioner Sarma Industries. 6. Secretary Industries. 7. Addl. Secretary, Revenue. 8. Joint Secretary, Industries. 9. Managing Director, AIDC.

The point regarding fixation of compensation for the land to be acquired for the purpose of Numuligarh Refinery was discussed. After discussion, the following decisions were arrived at.

1. For patta land compensation per bigha should not exceed Rs. 55,000/- per bigha all inclusive. For this purpose Additional Secretary, Revenue and Joint Secretary, Industries have been authorised to make field visit and discuss the matter with the Deputy Commissioner, Golaghat so that there is no problem in taking over this land and handing it over to IBP for construction of the Refinery. If this team arrives at a final decision to pay Rs. 55,000/- per bigha then the Deputy Commissioner will complete formal proceeding and compensation will be paid through the Deputy Commissioner. In case the negotiations cannot be arrived as Rs. 55,000/- per bigha all inclusive, then the land acquisition proceeding would continue.

FOR GOVERNMENT LAND

It was decided that the premium for the Sarkari land should be fixed in such a

manner that the total acquisition cost for the Numuligarh Refinery does not go very high. After detailed discussion it was agreed that as a special case, Government of Assam will fix premium at the rate of Rs. 35,000/- per bigha in the interest of the expeditious completion of the Numuligarh Refinery.

For the purpose, the Revenue Department will take necessary action including taking the matter to the Cabinet for decision, if considered necessary.

68 families which were encroaching Government land earlier have already been paid compensation of Rs. 10,000/- per family. Therefore, the Deputy Commissioner should ensure that these encroachers do not occupy the Sarkari land as remarked for Numuligarh Refinery and residential colony of the Refinery. It was decided that advance possession of the Sarkari land will be handed over to the IBP immediately, which in turn will hand over to the Numuligarh Refinery when the company is formed.

Premium received on Sarkari land will go towards the Government of Assam's equity to the Refinery.

11. Read and re-read of the above minutes of the meeting dated 25.2.93, it would be seen that it is hedged with many ifs and buts. It has stated "if this team arrives at a final decision to pay Rs. 25,000/- per bigha then the Deputy Commissioner will complete formal proceeding and compensation will be paid through Deputy Commissioner". It has further stated "incase the negotiations cannot be arrived at Rs. 55,000/- per bigha, all inclusive, then the land acquisition proceeding would continue." The fact that land acquisition proceedings have continued, itself belies the Appellants' claim based on promissory estoppel.

12. The next question that arises is, to whom was this promise made? It is not at all clear who acted or altered his decision, to his own detriment in pursuance to the alleged promise held out. The claimant Appellant have no answer. The minutes further note," for this the Revenue Department will take necessary action including taking the matter to the cabinet for decision, if considered necessary".

13. A governmental decision so as to constitute promissory estoppel must come from the competent person who is authorised in law to make such a promise. Firstly, there is no such promise made, therefore, the question of promissory estoppel, as raised by the learned Counsel for the claimant-Appellants, does not at all arise. Taking the minutes at their face value, it does not meet the minimal requirement of promissory estoppel. Even assuming for the sake of argument that some kind of decision to avoid delay in the implementation of Numuligarh project was taken, but a policy is not law and the statement of policy is not prescription of binding criteria. More so, when there is nothing on record to indicate that the claimants have in any manner acted to their detriment or altered their position.

14. A letter written by Deputy Commissioner, Dibrugarh has also been referred to by the learned District Judge, although no date, no details and particulars of this letter have been mentioned. There is one order passed by the Deputy Commissioner, Dibrugarh which refers to earlier order dated 20th June, 1990 fixing category-wise valuation of land as detailed below:

1. Highly developed commercial places within notified area ... Rs. 2,00,000 per B.
2. Urban area (the recognised towns within notified area) ... Rs. 1,20,000/-
3. Semi-urban area (the area beyond the notified area but within two miles radius of the town either revenue or Municipal town.) ...Rs. 1,20,000/-
4. Rural area viz paddy field & tea cultivation area ... Rs. 60,000/-
5. Land unfit for cultivation viz. rocky areas, sandy areas Jalduba areas etc. ... Rs. 40,000/-

15. This letter cannot by itself constitute evidence as defined u/s 3 of the Evidence Act. The "evidence" means and includes:

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

16. Now taking this classification on its face value, yet there is no material available on record to hold that the land in question falls within a rural area with paddy fields and tea cultivation area.

17. Let us turn to the deposition of claimant's sole witness Rabi Dutta Agarwal, witness No. 1, who in his statement has stated:

My land was a tea periodic patta land, i.e. a super class land and these are in the record. My name has been mutated in the land record in respect of the acquired land. The land revenue paid for tea land is more than Rs. 2/- per bigha and for the other land the revenue is less than 1 rupee. The collector in his land assessment did not consider the value of the neighbouring lands sold and purchased at the relevant time and also the different rate of compensation paid by either parties in respect of tea garden land by the different Collector of the neighbouring district for acquiring land i.e. ONGC and Oil India Ltd. including other agencies. I filed so many documents in support of my contention. I also filed several sale deeds in relation to the sale and purchase of the neighbouring land. The photo copies are in the record and today, I have filed Ext. 3, Ext.4, Ext.5 are the documents...Though 55,000/- per bigha was assessed by the Collector at his initial stage is not a good rate and although I accepted this but I am not claiming in this reference petition.

18. Mr. Goswami, learned Counsel for the claimant-Appellant in First Appeal No.

27/97 refers to a Reference u/s 18 of the Act. Annexure-Q and pointed out that no objection as such was filed to the Reference petition filed by the Appellant. Non-filing of objections does not necessarily lead to the conclusion that the valuation quoted in the Reference petition is to be accepted as crude market value of the land in question.

19. Mr. Deka on the other hand, invited attention to Land Transfer Sale Deed Statement of tea owners as placed on record by the claimant himself at Sl. No. 7. In this land transfer sale deed statements M/s. Green View Tea Industries claimed Rs. 7,000/- per bigha for the tea class land. This statement is extracted below:

-----										Sl.
Purchaser	Mourangi	Village	P.P.	No.	Dag	No.	No.	Seller	Mouza	
-----										1. P.
Amulia Burman S. Sumeswar Saikia Do Panka 102 38 2. P. Bhageswar Saikia S. Lakhan Pd. Sahu Do Panka 5 390 3. P. Rafiur Rahman S. Gananand Sahu Do Pankiyal 68 159 4. P. Ratnoni Mohan Roy S. Sumeswar Saikia Do Panka 102 33 5. P. Amulia Chandra Burman & Praphulow Ch. Burman S. Sumeswar Saikia Do Do 102 33 6. P. Chandra Mohan Sahu S. Shri R.M. Roy Do Do 67 478 479 7. M/s. Green View Tea & Industries Do Ouguri 2 94 Chapori Gaon										
-----										Sold
Area	Amount of	Registration	No.	Rate per	B-K-Ls.	sale deed	Dt.	of sale deed		
Bigha	-----									
0-0-8	Rs. 4,000/-	No. 466	Rs. 50,000/-	Dt. 12.02.85	0-0-12	Rs. 5,000/-	No. 1379/1188	Rs. 41,666/-	Dt. 12.05.92	
0-0-9	Rs. 3,500/-	No. 87	Rs. 38,888/-	Dt. 7.1.85	0-0-13 1/2	Rs. 5,400/-	No. 88	Rs. 40,000/-	Dt. 7.1.85	
0-1-11	Rs. 9,000/-	No. 1180	Rs. 29,082/-	Dt. 11.4.86	681-1-0	Acquired	land	by	Govt.	

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Factor	Unit	rate	Per	Bigha	of	village	land	revenue		
-----										Da-
alatia	16 10	Rs. 1.60	Do 16 10	Rs. 1.60	Bamalatia	9 10	Rs. 0.90	Doalatia	16 10	
Rs.	1.50	Do	16 10	Bari	Marti	18 10	Rs.	1.80		

20. Mr. Goswami has also referred to Ext. C RLA 81/94/13 dt. 24.5.94, it involves land measuring 46 B. 2K 2L, situated at Athkhel Grant No .2 at Athkhel Mouza. It is evident that this valuation was determined as per the decision of the Valuation Committee and the land is situated far away from the land in question. It is in Nazira in the district of Sibsagar and this determination of valuation cannot be taken as the market value of the land. Mr. Deka and the learned Govt. Advocate has rightly argued that no reliable evidence has been placed on record for enhancement of compensation.

21. So far as the sale deeds are concerned, the same has already been discussed

above. That apart the land covered by these sale deeds, Exts. 3,4 and 5 are in respect of land situated by the side of the National Highway passing through Golaghat Town, as very rightly pointed out by Mr. Deka, learned Counsel appearing for the Numuligarh Refinery Ltd. Small plots of land by the side of the National Highway cannot be compared with a huge area of land measuring 681 Bighas situated about a kilometre away from the National Highway. The learned District Judge was palpably wrong in basing his calculations on such sale deeds Exts. 3,4 and 5. He overlooked the fact that as per this sale deeds the lands were purchased for commercial purpose, whereas the land acquired was a tea garden land in a remote area. The claimant Appellant in First Appeal No. 27/97 have failed to produce any reliable legal evidence for fixing the market value of the land at Rs. 22,000/- per bigha. The findings recorded by the teamed District Judge stands on quick sand, it is, therefore, liable to be quashed and is accordingly quashed.

22. Now coming to the rate per tea bush as awarded by the Reference Court, the only reason assigned for fixing the rate of Rs. 75/-" is based on an award made by a former Chief Justice of this Court as an Arbitrator which has been confirmed in M. A.F. No. 106/92 vide judgment dt. 28.6.96 Ext. 10. The relevant paragraph 14 of the impugned judgment is quoted below:

Another grievance of the claimant/Petitioner is that the rate of per tea bush has been given only at Rs. 15/-. In this contest, the learned Counsel for the claimant/Petitioner has cited an award of the Arbitrator. The xerox copy of the letter has been filed. The Hon"ble Chief Justice Shri S.K. Dutta acted as an Arbitrator and in that arbitration proceeding the compensation per tea bush was assessed at the rate of Rs. 75/-. This rate was however confirmed by a decision of the Hon"ble Gauhati High Court in M.A.(F). 106/92. Ext. 10 is the relevant judgment of the Hon"ble High Court. In that judgment also the value of its tea bush has been filed at Rs. 75/-.

So, in the light of the above, the claimant is also entitled to compensation for the Tea bushes of the rate of Rs. 75/- each deducting the value given at Rs. 15/- per tea bush.

This is the total reasoning about the fixation of rate of Rs. 75/- per tea bush.

23. Mr. Deka, learned Counsel appearing for the Appellant in First Appeal No. 32/97, Numuligarh Refinery, has seriously contested this determination of rate of Rs. 75/- per tea bush which according to him is wholly arbitrary and unreasonable. The award made by the learned Arbitrator is available in the paper book at page 65. The learned District Judge has made no attempt at all to determine the exact number of saplings, their age and the actual number of tea bushes yielding commercial crop. Mr. Deka rightly argued that the District Judge was palpably wrong in assessing and enhancing the rate of tea bushes from Rs. 1 SI- per tea bush to Rs. 75/- on the basis of an award passed by the former Chief Justice who was the Arbitrator in the case Lakwah Tea Estate v. ONGC and the

award was confirmed by the High Court in MAF 106/92 vide Ext. 10, overlooking the relevant facts which ought to have been taken into consideration in fixing the rate of tea bushes. The value of tea bush depend upon the age of particular tea bushes, it is an undisputed position. The rate of Rs. 75/- per tea bush was fixed because of the fact that the tea bushes had been damaged and were required to be replaced by planting new bushes after preparation of the soil but in the case at hand, no such question of replacing of tea bush, planting new bushes and preparation of soil is involved. Thus, on the face of it the costs assessed for damages and replacing the bushes cannot be formed the valuation of the tea bushes. This simple fact has escaped the notice of the learned District Judge, it can be no ground for awarding Rs. 75/- per bush on the basis of the award passed by the former Chief Justice. The facts were altogether different in that case. Krishnamurthy formula was accepted in principle so far as compensation for tea bushes are concerned, as is evident from Memo dt. 22nd November, 1989 addressed to all Commissioners, Deputy Commissioners, S.D.O's and Director of Land Acquisition, Requisition and Reforms. It is reproduced hereinbelow:

I am directed to refer to the letter No. RLQ. 20/72/9, dated 12.9.72 on the subject cited above and after recasting the Krishnamurthy Formula, the Governor of Assam is pleased to fix the following governing factors for determining compensation for tea bushes with effect from 1.4.89.

1. Cost of fresh plantation not exceeding Rs. 45,000/- per hector.

2. Annual net profit from tea bushes per hector Rs. 10,000/-

24. If the award is made the basis of fixing the rate of per tea bush, it was incumbent on the part of the learned District Judge to have determined the age of the bushes. It takes about 6 years for a tea bush to give commercial crop of tea. Now there is no material on record, no reliable evidence to show that what was the actual number of tea bushes yielding commercial crop of tea. On the other hand, there are several letters indicating annual tea yield from page 55 to 64 of the paper book and applications made on 25.5.92 by the claimant Appellant for term loan for developmental purpose of Rajabari Tea Estate and letter dt. 25.2.92 involving 15, 20, Hects. for extension, plantations respectively in the year 1992, 1993 and 1994. The claimant Appellant in their letter dt. 25.5.92 clearly and categorically stated:

Dear Sir,

We forward herewith an application for a Medium Term Loan of Rs. 36,20 lakhs against the total project cost of Rs. 48.0007 lakhs for undertaking development works at the said Rajabari Tea Estate.

We have proposed to undertake the following development works in 3 phases in 1992, 1993 and 1994.

1992 i. Extension Plantation - 15 Hects. ii. New M.F. Tractor - 1 (One) iii. Diesel Water Pump - 1 (One) iv. Fencing - 8 K.M. 1993 i. Extension Plantation - 20

Hects. ii. Fencing - 3 K.M. 1994 i. Extension Plantation - 20 Hects. ii. Fencing - 4 K.M.

The project, we would like to state that it would be technically feasible and economically viable.

The garden has a vast area of virgin land suitable for plantation. Moreover it has adequate manpower....

It is abundantly clear that till the above letter was written the garden was not viable one.

25. The finding arrived at by the learned District Judge as regards the rate of Rs. 75/- per tea bush is wholly without any reason and unsupportable by any reliable legal evidence. It is, therefore, liable to be quashed and accordingly quashed.

26. As a result of the discussion aforesaid, First Appeal No. 27/97 is liable to be dismissed, it is accordingly dismissed. The other two appeals, First Appeal No. 32/97 and 33/97 stands allowed in terms indicated above. There shall be no order as to costs.