

(2004) 12 GAU CK 0045

In the Gauhati High Court

Case No : Review Application No. 54 of 1998

Green View Tea and Industries

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Land Acquisition Act, 1894 — Section 17(3A), 4, 54, 6

Citation : (2005) 1 GLT 561

Hon'ble Judges : D. Biswas, Acting C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : G.N. Sahewalla, A.K. Goswami and B. Goyal, for the Appellant; P.K. Goswami, P.C. Deka and S.K. Medhi, for the Respondent

Judgement

D. Biswas, A.C.J.

1. First Appeals Nos. 27, 32 and 33 of 1997 were disposed of by a common judgment and order dated 24.6.1998. The said appeals were preferred u/s 54 of the Land Acquisition Act, 1894 against the award made by the L.A. Judge, Golaghat in Land Acquisition Case No. 1 of 1995. First Appeal No. 27 of 1997 was filed by M/s. Green View Tea and Industries for enhancement of the compensation. First Appeal No. 32 of 1997 was filed by M/s. Numaligarh Refinery Ltd. and First Appeal No. 33 of 1997 was preferred by the Collector, Golaghat, challenging the compensation awarded by the learned L.A. Judge.

2. A Division Bench of this Court dismissed the First Appeal No. 27 of 1997 filed by M/s. Green View Tea and Industries, and allowed the two other appeals filed by M/s. Numaligarh Refinery Ltd. and the Collector, Golaghat. The prayer for enhancement of compensation was rejected, the amount of compensation awarded by the learned L.A. Judge was reversed and that of the Collector was restored.

3. Being aggrieved thereby, M/s. Green View Tea and Industries filed an

application for review of the aforesaid Judgment which was registered as Review Application No. 54 of 1998 under provisions of Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure.

4. The aforesaid review application was dismissed by the Judgment and Order dated 25.8.1999. The Division Bench observed as follows:

An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 of the CPC. In exercise of the jurisdiction under Order 47, Rule 1 of the CPC it is not permissible for an erroneous decision to be "reheard and corrected". A Review of a judgment by the same court is designed for the limited purpose and can not put to be used as "an appeal in disguise". In the instant case the Claimant/ Review applicant based claim for enhancement firstly on the basis of minutes of the meeting held in the Chief Minister's Chamber on 25.2.93 for compensation of the land at the rate of Rs. 55,000/ - per bigha. The Appellate Court did not act upon the above. The Appellate Court held that the claimant/Appellant failed to produce reliable legal evidence for fixing market value of land at Rs. 22,000/ - per bigha. Similarly the Appellate Court on analyzing the evidence on record held that the Reference Court fell into error in fixing Rs. 75.00 (seventy five) per tea bush without any reason which was not supportable by any legal evidence; The Review applicant contested the findings of the Appellate Court. The above are the conclusion of facts arrived at by the Appellate Court, which cannot be corrected in Review. No obvious and patent error is discernible requiring us to exercise the power of Review.

5. The review applicant M/s. Green View Tea and Industries preferred Civil Appeal No. 796 of 2001 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by the order dated 17th February, 2004 set aside the Judgment of this Court and remitted the review application to this Court for hearing and disposal in accordance with law.

6. We have heard Mr. G.N. Sahewalla, learned senior counsel assisted by Mr. A.K. Goswami, learned Counsel for the review applicant and also Mr. P.K. Goswami, learned senior counsel and Mr. P.C. Deka, learned senior counsel for the Respondents.

The facts in brief:

7. On 4th November, 1992, a notification u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as the Act, was issued in the Official Gazette followed by another notification on 5.10.1993 u/s 6 of the Act acquiring 681 bighas 1 katha of land belonging to M/s. Green View Tea and Industries. This land included tea bushes, garden road, shed trees and other valuable trees. The acquisition process was completed invoking powers u/s 17(3-A) of the Act because of urgency. After acquisition, the Collector took possession of the land and handed over the land to M/S Numuligarh Refinery Limited. The Collector, Golaghat

determined the compensation for land at the rate of Rs. 7,000/ - per bigha and Rs. 15/ - for each tea bush. The L.A. Judge determined the value of the land at the rate of Rs. 22,000/ - per bigha and Rs. 75/ - for each tea bush while disposing of the reference.

8. Mr. G.N. Sahewalla, learned senior counsel appearing for the review applicant argued that the learned L.A. Judge though took into account the documentary evidence, but failed to correctly assess the value of the land and the price of tea bushes, shed trees etc. According to Shri Sahewalla, the learned L.A. Judge re-determined the value of the land @ Rs. 22,000/ - per bigha which is also much below the prevailing market value at the relevant time. Mr. Sahewalla further submitted that the proposal for acquisition u/s 17(3-A) of the Act was sent on 20th August, 1992 by the Deputy Commissioner, Golaghat with a request to approve the compensation at the uniform rate of Rs. 55,000/ - per bigha irrespective of class, for both Government and Patta land. A few days thereafter the notification u/s 4 of the Act was published in the official gazette. On 25th February, 1993, a meeting was held where the Chief Minister, Revenue Minister and other top officials were also present including the Chairman and Managing Director of IBP. In this meeting, there was a decision that the compensation for patta land should not exceed Rs. 55,000/ - per bigha. In case of Government land, the premium was fixed at Rs. 35,000/ - per bigha. In view of the disagreement expressed by the review applicant, the Government passed an order canceling the proposal for payment of compensation at the rate of Rs. 55,000/ - and eventually directed the Collector to fix the value of the land at the rate of Rs. 7,000/ - per bigha. The review applicant accepted the advance payment of 80 percent under protest, and handed over the possession of the land. Shri Sahewalla pleaded for fixation of value @ Rs. 55,000/ - per bigha,

9. Mr. Sahewalla relied upon the observation of the Hon"ble Supreme Court in the Civil Appeal to justify the claim of the review applicant for enhanced compensation. It may be noticed that the Hon"ble Supreme Court set aside the Judgment and Order passed in the review application with the following observation:

(i) The Deputy Commissioner was of the view that the compensation should be at the rate of Rs. 55,000/ - per bigha and the State Government accepted the same.

(ii) The applicant placed on record the cases of other similarly situated tea estates in respect of which the Government has directed payment of compensation at the rate of Rs. 55,000/ - per bigha.

(iii) The orders passed by the Government and issued by the Deputy Commissioner, Tinsukia on 4th August, 1992 show that even for land not suitable for cultivation compensation was payable at the rate of Rs. 40,000/ - per bigha.

(iv) The oral evidence on record show that the Government was prepared to pay Rs. 55,000/ - per bigha, but it was only the Appellant who has taken a rigid

stand demanding a higher price.

(v) Certain documents, Ext. 6, 7 and 8, prima facie show that in similar cases of acquisition in Sibsagar District, for arable land, the estimate of compensation was Rs. 55,000/ - per bigha.

(vi) The High Court disagreed with the valuation of the tea bushes made by the L.A. Judge, but failed to reassess it being the Court of First Appeal.

10. Mr. Sahewalla has also drawn our attention to the following observation of the Hon"ble Supreme Court in support of his argument:

We had suggested to the parties that, if they both consent, we would decide the matter here itself and thereby two possible further rounds of litigation could be avoided. While Mr. Shanti Bhushan, learned Senior Counsel for the Appellant was prepared for this, the learned Addl. Solicitor General declined to accept this suggestion. Hence, despite our being satisfied that the Appellant had a case for review, we refrain from deciding what relief, if any, should be granted on such review, and leave it to the judgment of the High Court.

11. Keeping in mind the observation of the Hon"ble Supreme Court reproduced above, we would like to address the question relating to rate of compensation of the land. It may be mentioned here that the Collector awarded Rs. 7,000/ - per bigha as compensation for the land acquired. The learned L.A. Judge on appreciation of the evidence on record raised the amount of compensation to Rs. 22,000/ - The High Court while disposing of the appeals, quashed the rate assessed by the learned L.A. Judge and restored that of the Collector. Similarly, rate of compensation for tea bushes @ Rs. 15/ - for each tea bush awarded by the Collector was restored.

12. Mr. Sahewalla, learned Counsel argued that in the meeting held on 25.2.1993 in presence of the Chief Minister and the Revenue Ministry, it was decided to pay compensation at the rate of Rs. 55,000/ - all inclusive and, accordingly, the Collector also sent the proposal to the Government for approval. Shri Sahewalla argued that the compensation cannot be anything less than Rs. 55,000/ - per bigha for patta land as per promise/offer made. There is no dispute that a decision was taken in the meeting dated 25.2.1993 for payment of compensation not exceeding Rs. 55,000/ - per bigha and the Additional Secretary in the Revenue Department and Joint Secretary in the Industries Department were authorized to take up the matter with the Collector, Golaghat. It was further decided that in the absence of consensus, the land acquisition proceeding would continue. In the said meeting it was decided that the rate of compensation for Government land shall be Rs. 35,000/ - per bigha. The decision of the meeting could not be materialized as the review applicant insisted for higher amount of compensation. The Collector, having no other alternative, proceeded with the requisition and paid 80 per cent of the amount as assessed by him at the rate of Rs. 7000/ - per bigha.

13. The decision in the meeting dated 25.2.1993 was to pay compensation not exceeding Rs. 50,000/- per bigha for patta land. It was not a rigid offer fixing the rate at Rs. 55,000/- per bigha. The element of flexibility is ingrained in the words "not exceeding". It was a guideline to the Collector to go for negotiation. It cannot be said that the value of the land proposed to be acquired was assessed at the rate of Rs. 55,000/- per bigha. There apparently no offer from the Government to the review applicant except the attempt made by the Additional Secretary and the Collector to negotiate the value at the rate of Rs. 55,000/- . The Collector initially proceeded on wrong premises that the Government had determined the value at Rs. 55,000/- per bigha. The letter dated 2nd April, 1993 (exhibited before the learned L.A. Judge) shows that the earlier message dated 10th September, 1992 and 21st September, 1992 indicating the uniform rate of Rs. 55,000/- per bigha were cancelled by the Government. By this letter dated 2nd April, 1993, the Government directed the Collector to fix valuation for patta land strictly as per the provisions of the Land Acquisition Act. The amount once offered for a negotiated settlement, in our view, does not reflect the actual market value of the land involved and this offer cannot bind the Government once the negotiation has failed. Valuation of the land by way of negotiation is contemplated only when there is an urgency in the matter. Otherwise, in all cases, the Collector is to determine the market value in compliance with the provisions of the law. There being no promise on the part of the State enforceable in law, it was, therefore, appropriate on the part of the Collector at the first instance and the learned L.A. Judge while disposing of the reference to determine the actual market value of the land.

14. The learned L.A. Judge fixed the value of land at Rs. 22,000/- per bigha primarily relying upon the evidence of Shri Rabi Dutta Agarwal, attorney of the review applicant, and the sale-deeds tendered by him in evidence. The Government decision to pay compensation at the rate of Rs. 55,000/- per bigha and the amount paid for the land in the neighbouring districts must have weighed with the learned, L.A. Judge in coming to the above conclusion. Before the evidence on record are taken into consideration, it would be apposite to refer to Ext. 2 series, the orders passed by the Collector, on different dates. The order dated 22.9.1992 shows that the Collector initially directed assessment at the rate of Rs. 55,000/- per bigha as approved by the Government. The order dated 25.9.1992 shows that in pursuance of the above direction, preliminary estimate was prepared and a sum of Rs. 5,96,42,851/- was assessed as compensation payable. By the order dated 12.4.1993, the Collector recalled the aforesaid orders on the ground that the Government had cancelled the approval for payment of compensation at the rate of Rs. 55,000/- per bigha. The Collector, thereafter, fixed the rate at Rs. 10,876/- per bigha as per provisions of the Act of 1894. The order dated 12.4.1993 is quoted below:

Seen Govt. letter No. RLA 24/92/59 dt. 2.4.93, cancelling the bigha rate of Rs. 55,000/- already approved by Govt. and communicated vide letter No. RSS 587/92/13 dt. 10.9.92 and message No. RSS 587/92/16 dt. 21.9.92 and

requesting to fix bigha rate as per provisions of the L.A. Act, 1894.

In view of above the bigha rate is re- fixed at Rs. 10,876/ -. As per provisions of the L.A. Act, 1894.

Prepare revised preliminary L.A. estimate accordingly and submit the same to the requiring deptt. to place the estimate amount at the disposal of Collector, Golaghat.

15. The State Government did not approve payment of compensation at the rate of Rs. 10,876/ - per bigha as fixed by the Collector and instead directed payment at the rate of Rs. 7000/ -. The Collector while determining the market value of the land relied upon the sale deeds pertained to the nearest village namely, Pankial of the same Mouza. These sale deeds were executed during the years 1988 to 1992. The average value of the land sold in different transactions have been worked out and, accordingly, Rs. 10,876/ - was fixed to be the market value of the land in question. The State Government by the letter dated 22nd July, 1993 re-fixed the value at Rs. 7,000/ - excluding the value of 12 laches of bari land relatable to one of the five documents. Thus, there has occurred a difference in the rate fixed by the Collector and the rate indicated by the State Government.

16. The learned L.A. Judge taking into consideration the compensation paid for the lands in the neighbouring districts and the sale deeds, Exts. 3, 4 and 5 tendered in evidence by the review applicant, determined the value of the land at Rs. 22,000/ -. The three sale deeds, though contemporaneous, were executed alienating small pieces of land measuring 8 Lechas, 12 Lechas and 3 Kathas only. The lands sold by these three sale deeds situate by the side of National Highway. The value of small plots of land by the side of National Highway cannot be the basis for working out the value of huge area of land measuring more than 681 bighas acquired in this case. Ext. 3 is a registered sale deed by which the land was sold at the rate of Rs. 50,000/ - per bigha. Similarly Ext. 4 shows that the land was sold at Rs. 41,666/ - per bigha. By Ext. 5, the land was sold at Rs. 40,000/ - per bigha. This is the only evidence adduced before the learned L.A. Judge. This Court has to re-determine the market value afresh on the basis of this evidence keeping in mind the proximity from the time angle and the situation and classification of the land. There is no doubt that the State Government once suggested Rs. 55,000/ - per bigha. This suggestion in all probability was made keeping in mind the compensation paid in Dibrugarh and other neighbouring districts. The review applicant refused to accept this and insisted for more resulting in failure of the negotiation. The amount paid as compensation in respect of the lands in neighbouring districts may be one of the factors for determination of market value, but it cannot be the sole basis for such determination. The oral as well as the documentary evidence produced in this case are not adequate enough to arrive at a decision with mathematical precision. Keeping in mind all the relevant factors and the evidence on record, this Court is unable to accept the applicant's contentions that compensation be paid at least at the rate of Rs. 55,000/ - per bigha. This Court is also unable to

subscribe to the view of the learned L.A. Judge for payment of compensation at the rate of Rs. 22,000/ - per bigha for want of adequate corroborative evidence. There is no evidence on record to show that similar classes of land in the neighbourhood was sold at Rs. 22,000/ - per bigha. Rather, we find some basis in the order dated 12.4.1993 passed by the Collector determining the value at Rs. 10,876/ -. The Collector had taken into consideration five sale deeds relating to the lands in the same Mouza executed and registered prior to 1992. The Government decision to reduce it further by excluding the value of the bari land, in our opinion, is not acceptable in the circumstances available in this case. Having regard to the compensation paid for similar classes of land in the neighbouring districts, the initial decision of the Government to pay compensation at the rate of Rs. 55,000/ - per bigha and the documents of sale exhibited in this case, we think that it would be appropriate not to disturb the assessment made by the Deputy Commissioner in his order dated 12.4.1993 which provides for payment of compensation at the rate of Rs. 10,876/ -. The price offered for lands in other districts may be a good piece of evidence, but the districts, referred to i.e. namely-Sibsagar and Dibrugarh are far away from Golaghat District. That apart, the price paid for the lands in those districts do not appear to have been tested in any court of law. The payment in those cases might have been on the higher side. We, therefore, order payment after recalculation at the rate of Rs. 10,876/ - per bigha as determined by the Collector.

17. With regard to the value of the tea bushes, it would appear that the learned L.A. Judge fixed the rate at Rs. 75/ - on the basis of the award made by a former Chief Justice of this Court in an arbitration proceeding. The Court was of the view that the learned L.A. Judge failed to determine the exact number of saplings, their age and the number of tea bushes yielding commercial crop. The rate was enhanced from Rs. 15/ - to Rs. 75/ - simply on the basis of the award passed by a former Chief Justice as an arbitrator in respect of a dispute between Lakwa Tea Estate v. ONGC.

18. The judgment delivered by this Court in MAF No. 106 of 1992 affirming the compensation at the rate of Rs. 75/ - per tea bush is available at page 327 of the paper book. It would appear from para- 10 of the Judgment that while fixing the rate of compensation for tea bushes, the arbitrator has given reasons and this Court found the reasons to be just and proper. In that case compensation was claimed by Lakwa Tea Estate for damages of tea bushes by ONGC in the year 1983. The and of the applicant company was acquired in the year 1992. If escalation of price is a relevant factor, the price of the tea bush in the year 1992 can under no circumstances be less than Rs. 75/ -. It would appear from the evidence of P.W.1, Shri Rabi Dutta Agarwal, that they had claimed Rs. 100/ - per tea bush. That apart, Ext. 6 also reveals the number of tea bushes and their actual age. The Government letter dated 12.9.1972 has been referred to by the Collector in his order dated 21.5.1994 (at page 27 of the paper book). By this letter, the Government clarified that tea bushes of the age of four years and less

are to be treated as saplings. The number of tea bushes worked out by the Collector indicates that there are tea bushes above the age of four. The order in this behalf passed by the Collector (at page- 27 of the paper book) shows that he had valued the tea bushes/saplings in accordance with the Government circular dated 22.11.1989. The order reads as follows:

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 1.4.1989.

1. Cost of fresh plantation not exceeding Rs. 45,000/ - per hectore.
2. Annual net profit from tea bushes per hectore Rs. 10,000/ -

19. This Court, while disposing of the appeals, held that there is no evidence on record to justify the enhancement of the price of the tea bushes to Rs. 75/ -. In this connection, apart from Ext. 6 we have the evidence of P.W.1, Shri Rabi Dutta Agarwal. The evidence relevant is to the issue quoted below:

...44,075 tea bushes were damaged during the acquisition as per report of the Collector and for these tea bushes the Collector assessed Rs. 15/ - per bush. I demanded Rs. 100/ - per tea bush. While considering the price of the tea bushes, the Collector took into consideration the Krishna murthy formula which was adopted in 1972.

This witness, in addition to the above statement, also relied upon the Judgment of this Court in MAF No. 106 of 1992 in which the rate of Rs. 75/ - was approved. D.W.1, examined by the Respondent State, has not uttered a single word about the value of the tea bushes. The Krishnamurthy Formula is in the nature of guidelines and does not have statutory backing. In our considered opinion, the formula needed annual revision to keep pace with the rising prices. There was obviously no revision after 1989. The Collector is otherwise required by law to assess the actual compensation on the basis of the market price. Apparently this has not been done in the instant case. Mr. Goswami, learned senior counsel tried to show that the compensation in the arbitration proceedings was assessed because of damage caused to the tea plantation by flood water mixed with crude oil and had no relevance for determining the compensation for damage to the tea bushes in respect of the acquired land. We are of the view that compensation for damage is to be assessed irrespective of the cause of damage. We do not feel inclined to agree with the learned Counsel that compensation of Rs. 15/ - for each tea bush is just and proper. At least, it does not reflect the market value of the tea-bush. In this context, it would be appropriate to quote hereinbelow the reasons recorded by the Arbitrator:

...The Government of Assam issued a circular letter dated 12th September, 1972 (Ex. 74) laying down a formula for assessing the value of a tea bush. Sri Krishnamurthy the then Secretary in the Revenue Department was the author of

this formula and hence it came to be known as "Krishnamurthy formula" (Ex. 74), the main factors laid down by this formula for assessing the value of a tea bush are two viz. the highest gross profit earned in the previous three years (which to a large extent depends on the amount of crops) and the cost of replantation as approved by the Tea Board from time to time. The Tea Board approved Rs. 11,250 per hectare as the replantation cost in 1972. Since then, the Tea Board has not revised the replantation cost although such cost has gone up many times. There have been several hikes in labour wages, stiff rise in the salaries of the managerial and clerical staff, rise in the price of fertilizers, rice etc. Claimant's witness Shri Manmohan Singh, Manager of Hanuwal T.E. said in his deposition that the National Agricultural Reconstruction Development Bank (NARD Bank) approved Rs. 72000/- as the present replantation cost per hectare and this has been submitted to the Tea Board. Obviously, if this figure is approved by the Tea Board, the price of a tea bush in an average garden will be between Rs. 65 to Rs. 70....

20. This Court while disposing of the MAF No. 106 of 1992 did not find any fault with the above reasoning. This Court further noticed that the Arbitrator fixed the value at Rs. 75/- for each tea bush with the observation that it was on the lower side. The value of the matured tea bush, therefore, could not be below Rs. 75/- during the year 1992. The circular dated 22.11.1989 cannot reflect the value prevailing in 1992. We, therefore, tend to act upon the decision of the Division Bench in the aforesaid Appeal in coming to the conclusion that the review applicant be paid compensation for each tea bush at the rate of Rs. 75/-.

21. In the result, the review application is allowed. First Appeal No. 27 of 1997 referred by the review applicant is allowed to the extent that they will be entitled to compensation for land at the rate of Rs. 10,876/- per bigha and at the average of Rs. 75/- per tea bush. Consequently, First Appeal Nos. 32 and 33 of 1997 are partially allowed. The common judgment dated 24.6.1998 accordingly stand reviewed.