

(1976) 11 GAU CK 0006
In the Gauhati High Court
Case No : First Appeal No. 1 of 1970

Socklatings Tea Co.(P.) Ltd

APPELLANT

Vs

Collector of Sibsagar

RESPONDENT

Date of Decision : 12-11-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1), 23(1), 28, 28

Citation : AIR 1977 Guw 61

Hon'ble Judges : B. N. SARMA, J and IBOTOMBI SINGH, J

Bench : Division Bench

Advocate : Prashanta K. Goswami, G. Sarma, as Govt. Advocate, Advocates appearing for Parties

Judgement

Sarma, J.—This is an appeal against the award dated 30th June, 1969 of the learned District Judge, U. A. D. Jorhat in Land Acquisition case No. 157 of 1961 arising out of an application under S.18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) filed in L. A. case No.88 of 195960 before the Collector at Jorhat. The facts may be stated, in brief, as below.

2. An area of 22 B. 4K. O Lecha of land pertaining to Socklating Grant (F. C. Grant No. 1) in Khangia Mouza of Jorhat Subdivision belonging to the appellant Socklating Tea Co. (P) Ltd. was acquired by the Collector of the District Sibsagar for construction of a crude oil pipe line from Naharkatia to Gauhati, vide preliminary Notification No. RLA. 138/60/2 dated 1141960 and declaration No. RLA. 138/60/14 dated 2681960 under Ss. 4 and 6 of the Act, respectively. The Collector by his award under S.11 of the Act awarded a sum of Rs. 7,980/ as compensation for the land without the trees etc. There were tea bushes on this land the number of which was disputed. According to the Collector the number of bushes was only 3,117, whereas, according to the appellant there were 7164 bushes, which were destroyed. The Collector awarded a sum of Rs. 15,586.15 P. for the tea bushes on the basis of 3117

bushes at the rate of Rs. 5/ per bush as against the claim of the appellant at the

rate of 12.50 per bush. An additional compensation at the rate of 15% was allowed by the Collector on the above amount, as required under S. 23 (2) of the Act.

3. Besides the compensation for the land and the tea bushes the appellant claimed an additional sum of Rs. 24,684/ by way of reinstatement on the basis of the price of a similar area of other land, estimated cost of replantation on such land and the estimated cost of upkeep of the newly planted area for seven years till it could yield income. The Collector rejected this claim. Being aggrieved by the award of the Collector the appellant filed an application under S. 18 of the Act and it was referred to the Judge by the Collector for disposal.

4. Before the learned District Judge, who heard the application under S. 18 of the Act, the appellant did not claim any enhanced compensation for the land itself, but claimed enhanced compensation in respect of tea bushes and the additional compensation by way of reinstatement, as mentioned above.

5. On a consideration of the evidence adduced before him by the parties, the learned District Judge accepted the figure of tea bushes over the acquired land to be 7164 as claimed by the appellant. He, however, thought that the compensation claimed by the appellant at the rate of 12.50 P. per bush was exorbitant. It appears the learned District Judge laboured under a mistaken impression that the Collector awarded compensation for the tea bushes at the rate of 2.50 P. per bush. With this impression he thought that compensation at the rate of Rs. 3.50 P. per bush would be adequate. Accordingly he enhanced the compensation for the tea bushes by Rs. 7,164/ i.e. at the rate of Re. 1/ per bush. The claim for additional compensation by way of reinstatement, as mentioned earlier, was however rejected. The learned District Judge also ordered that the appellant would be entitled to get interest at the rate of 6% per annum on the enhanced amount in case this amount was not paid within six months from the date of the award. No additional compensation under S. 23 (2) was however allowed on the enhanced compensation.

6. Mr. P.K. Goswami, the learned counsel for the appellant submitted before us that the compensation awarded by the learned District Judge in respect of the tea bushes is wholly inadequate and unjustified, which is apparent on the face of the record inasmuch as the Collector awarded compensation at the rate of Rs. 5/ per bush whereas the District Judge awarded the same at Rs. 3.50 per bush. He further submitted that the learned Judge was wrong in rejecting the claim of the appellant for additional compensation by way of reinstatement. According to him, upon the evidence on record, the appellant is entitled to get not less than Rs. 12.50 P. per bush and also a sum of Rs. 24,684/ as additional compensation by way of reinstatement as mentioned above. He also made a grievance that the learned District Judge was wrong in not granting any additional compensation under S. 23 (2) on the excess amount awarded by him and in passing a conditional order in regard to the interest as mentioned above. According to him if the Judge chose to give interest he could not but give the same from the date

of occupation till payment, as provided in S. 28 of the Act.

7. The contention of the appellant that the compensation awarded by the learned Judge for the tea bushes is not adequate is well founded. As we have already noticed the Collector awarded a sum of Rs. 15,586.15 P. for the trees, that means, the tea bushes. It appears the learned Judge committed two glaring mistakes in assessing compensation for the tea bushes. The Collector awarded compensation for only 3117 bushes as against the claim of the appellant for 7164 bushes. The Judge accepted the figure of the appellant. He also purportedly enhanced the compensation from Rs. 2.50 P. to 3.50 P. per bush. In that case he should have enhanced the compensation by 17,281.50 P. i. e. at the rate of Rs. 3.50 P. in respect of 4047 bushes for which the Collector did not grant any compensation and a further sum of Rs. 3,117/ for 3117 bushes. By his award the learned Judge awarded only Rs. 7,164/ by way of excess compensation. This was evidently a mistake.

8. Then again, the learned Judge laboured under a wrong impression that the Collector assessed the compensation for the tea bushes at the rate of 2.50 P. per bush. The Collector by his award awarded Rs. 15,586.15 P. for the trees. It is nobodys case that there was any other tree except the tea bushes. Compensation for 3117 bushes at the rate of Rs. 5/ per bush comes to Rs. 15,085.00. It is not understood how the figure was worked out at Rs. 1,586.50. Evidently compensation for the bushes was assessed at the rate of Rs. 5/ per bush. This was, admitted by Jagadananda Bharali, Supervisor Kanangu who was examined on behalf of the Collector as D.W. 1. The learned Judge, therefore, could not, in law, award compensation for the tea bushes at any rate below Rs. 5/ per bush.

9. Now the question is whether the appellant is entitled to get such compensation at the rate of Rs. 12.50 per bush, as claimed and if not, what would be the adequate compensation.

10. In support of its claim the appellant examined three witnesses, namely, C.W. 1 (Claimants witness) Nukul Chandra Bhuyan, C.W. 2 Gunananda Sarma and C.W. 3 Tarun Sarma. C.W. 1 Nukul Chandra Bhuyan served as Assistant Manager and Senior Manager under the Jorahaut Tea Co. Ltd. for about 30 years. At the relevant time he was the Financial Adviser of the Assam State Financial Corporation which advance money to the tea gardens on assessment and valuation report submitted by him, after inspection of the gardens concerned. He said that he inspected Socklatings Tea Estate when the appellant Company applied for a loan in 1961, December, and submitted valuation report for the land, tea etc. He also inspected the garden, including the acquired land, at the request of the appellant after the acquisition. He stated that each acre of land contained approximately 1742 trees, that means, tea bushes and these were approximately 40/45 years old. The bushes were mostly hybrid, with Assam variety at places. Assam variety tea bushes would be 5 to 10 per cent. According to him life of the hybrid bushes is about 80 years and its yield remains good till

about 60 years and thereafter the yield starts diminishing. In cross-examination he said that the tea yield per tree would be 8 oz. and on the assumption that these bushes would yield good tea for another 10 years, till they attained 60 years, the yield per tree during 10 years would come to 80 oz. i.e. about 5 lb. Calculating the price of tea at the rate of Rs. 2.50 P. per lb. which is the average price in the market, the gross income from one tea bush per 10 years comes to 12.50. He further stated that the cost of production per lb. of tea would be /12/ annas to /14/ annas.

11. C.W. 2 Gunananda Sarma who is the Head Mohurar of the garden corroborated the evidence of C.W. 1 in regard to the yield and the price of tea in the market. In support of his evidence he proved a production statement which was marked Ex. 1 and three sale statements marked Exts. 2, 3 and 4, C.W. 3 Sarma who was the Manager of the garden at the time simply proved the claim petition Ext. 5 which was submitted by him. There was practically no evidence on the side of the Collector to rebut the evidence of C.Ws. 1 and 2 with regard to the yield and income from the tea bushes. C.W. 1 Nakul Chandra Bhuyan is an independent and respectable witness. There is no reason to disbelieve his evidence.

12. Now, according to C.W. 1 Shri Bhuyan, the gross income from each tea bush during 10 years comes to Rupees 12.50 P. According to him cost of production per lb. is about /12/ to /14/ annas. If we take the cost of production as /13/ annas per lb. in average, and accept the tea yield per bush to be 5 lb. in course of 10 years, the net income per bush, after deduction of the cost of production, comes to Rs. 8.50 per bush for 10 years. In the claim petition Ext. 5 the appellant has claimed compensation on the basis of 7 years income. They cannot, therefore, now claim the same on the basis of income for 10 years. If the net income per bush during 10 years is Rs. 8.50 P. the same for 7 years comes to Rs. 5.95 P. In any case the appellant cannot get more than Rs. 6/ per bush. Mr. G. Sarma, the learned counsel appearing for the State conceded and very fairly, to this rate. We accordingly assess the compensation for the tea bushes at the rate of Rs. 6.00 per bush.

13. The next question is whether the appellant is entitled to get any compensation by way of reinstatement as claimed. The appellant has claimed Rs. 6,975/ on account of estimated cost of purchasing a similar area of land at the rate of Rs. 300/ per bigha, Rs. 4,020.60 P. on account of the estimated cost of replanting tea bushes over such area and Rupees 13,688.68 P. on account of the estimated cost of upkeep of the newly planted area for seven years till the Company gets income from the same. In all, the appellant has claimed Rs. 24,684.00 P. under these heads.

14. We do not think that the appellant is entitled to get any compensation under any of the above heads. It has already been paid the price of the land according to the market rate. If the appellant

wants to go for new plantation it can purchase land with the compensation it has been awarded for the land. The appellant itself has estimated the further income yielding age of the tea bushes at seven years and accordingly they have been paid compensation for its loss of income for seven years. After this, we fail to understand, how the appellant can claim further compensation by way of reinstatement.

15. Mr. P.K. Goswami, the learned counsel for the appellant submitted that the appellant is entitled to get compensation under the 5th clause of S. 23 (1) of the Act. This clause provides for payment of reasonable expenses, if any, in case the person interested is compelled to change his residence or place of business in consequence of the compulsory acquisition of the land. It is not the case of the appellant that, because of the acquisition, it has been compelled to change its residence or place of business. Admittedly only a small fraction of the area under plantation has been acquired. Neither, under any other clause of S. 23 (1) of the Act, such compensation by way of reinstatement is payable. In support of the appellants claim for additional compensation by way of reinstatement Mr. Goswami relied on a passage from Cripps on Compulsory Acquisition of Land, Eleventh Edition, at page 696 which runs as below:

"There are some cases in which the income derived, or probably to be derived, from land would not constitute a fair basis in assessing the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all cases to which the principle of reinstatement is applicable. But we may instance churches, schools, hospitals, houses of exceptional character, and business premises in which the business can only be carried on under special conditions or by means of special licences."

16. We do not think that in the instant case the income derived or probably to be derived from the land would not constitute a fair basis for assessing the value of the owner, to attract the principle of reinstatement. The above passage is based on some English decisions. In England grant of reinstatement was formerly governed by the provisions of R. 5 of S.2 of the Land Acquisition Act of 1919 which was reenacted in R. 5 of S. 5 of the Act of 1961, which provides as below:

"Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement."

17. We may also usefully quote the following passage from the book of Cripps at page 907 which runs as below:

"Before the Acquisition of Land Act, 1919, reinstatement value, instead of market value, was sometimes given so as to give proper effect to the principle of compensation on the basis of value to the owner. Generally it was only given in respect of property which was of such a nature (for example, a school, church, hospital, house of exceptional character, business premises in which the business could only be carried on under special conditions or by means of a special licence) that there was no market or general demand for such property; and a market value deducted from the income derived would not constitute a fair basis in assessing the value to the owner.

This principle was substantially enacted in R. 5 of S. 2 of the Act of 1919, is reenacted in R. 5 of S. 5 of the Act of 1961."

18. We do not think that the property of the appellant, which was acquired in the instant case, answers the description as mentioned in the above passage, to warrant grant of any reinstatement value.

19. Mr. Goswami failed to place before us any direct decision, either English or Indian on the point before us. He sought to rely on two decisions namely Province of West Bengal v. Raja of Jhargram, AIR 1955 Cal 392 and Bara Oora Tea Co. v Secretary of State for India, (1901) ILR 28 Cal 685. On a careful perusal. we find that none of these cases has got any bearing on the present case. In the above circumstances we find that the learned

District Judge was perfectly justified in rejecting the claim of the appellant on account of reinstatement.

20. As a result of the foregoing discussion we enhance the compensation for the trees (tea bushes) on the acquired land to Rs. 42,984 (For 7164 tea bushes at the rate of Rs. 6/ per bush) as against the sum of Rs. 22,750.15 P. awarded by the learned Judge. The appellant will also get additional compensation over this amount at the rate of 15% as provided in S.23 (2) of the Act. The Collector granted additional compensation on the amount assessed on the tea bushes. The learned District Judge, however, did not grant any such additional compensation over the enhanced amount, perhaps, under the impression that tea bushes cannot be treated as land. Land under S.23 (1) of the Act includes standing trees as well, as will be evident from the second clause thereof and also from the definition of land in S.3 (a). The learned District Judge was also not justified in awarding interest under S.28 in the manner he did. Section 28 is in the following terms :

"28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

21. Though the section gives discretion to the Court to award or not to award interest, if the Court chooses to grant interest, it has got to grant such interest as laid down in the section i.e. at 6 per centum from the date on which the Collector took possession of the land till the date of payment of the excess amount into the Court. It has been held by this Court in Collector of Darrang v. Phanibhusan, AIR 1955 Assam 124 that unless there are special reasons to the contrary interest ordinarily should be granted to the claimant specially when there is a big difference between the award given by the Collector and the amount eventually awarded by the Court. In the instant case we do not find any such special reason not to grant interest to the appellant over the excess amount. We accordingly direct that the appellant shall be paid interest on the excess amount granted by this Court as well as the District Court at the rate of 6 per cent from the date of taking possession till the amount is deposited in Court, as provided in S.28 of the Act.

22. The appeal is allowed to the extent as indicated above. There is no order as to costs.

IBOTOMBI SINGH, J. : I agree.

Appeal partly allowed.