
(1998) 11 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 3559 of 1991

Sonapur Tea Co. (P) Ltd.

APPELLANT

Vs

Collector of Kamrup

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1)
Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1985 —
Section 7
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 25, 6(1A),
7, 7(1), 7(2)
Requisitioning and Acquisition of Immovable Property Rules, 1953 — Rule 8

Citation : (1998) 4 GLT 354

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee, K.R. Pathak, M.R. Pathak and B. Buzarbaruah, for the Appellant; B.P. Bora and P.N. Choudhury, C.G.S.C., for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for a direction on the Respondents to pay the requisition compensation for the land of the Petitioner occupied by the Central Government for defence purposes and for a direction on the Respondents either to acquire the said land or to derequisition and hand over the vacant possession of the same to the Petitioner in its original condition.

2. The relevant facts as stated in the writ petition are that the Petitioner company owns a tea estate in the State of Assam and possession of 143 B 4 K 8 L of land out of the tea estate of the Petitioner was taken over by the Central Government between 8.3.63 and 6.9.63 for the purpose of an Air Force Station pursuant to requisition orders passed by the Revenue Department of Govt. of Assam and Collector, Kamrup, Guwahati and permanent constructions were made thereon by the Defence Department of the Central Government, Ceiling Case No. 41/73 was initiated against the Petitioner by the Collector, Kamrup, Guwahati and

an area of 9934 B 4 K 2 L including the aforesaid requisitioned land under the Defence Department of the Central Government were determined to be the surplus area of the Petitioner and was proposed to be acquired under the Assam Fixation of Ceiling on Land Holding Act, 1956 as amended by the Amendment Act of 1971. The Petitioner, however, filed a writ petition numbered as Civil Rule No. 418/76 before this Court and by judgment dated 9.6.88 a Division Bench of this Court held inter alia that portion of land of the Petitioner over which permanent structures have been made either by the Central Government or by the State Govt. have to be excluded from the purview of the aforesaid Ceiling Act. Review Application No. 30/90 was filed against the said judgment dated 9.6.88 but the same was dismissed by order dated 12.9.90 of this Court. Aggrieved, the Union of India filed SLP No. 2394/91 before the Supreme Court against the aforesaid judgment of this Court but the said SLP was dismissed by the Supreme Court on 1.4.91. In the meanwhile, for the period from 8.3.63 to 11.5.72, the Collector, Kamrup, Guwahati prepared an Award for requisition compensation to be paid to the Petitioner for the land under the possession of the Defence Department of the Central Government. But the Petitioner sought for a Reference to the Arbitrator and accordingly a Reference was made to the District Judge, Kamrup, Guwahati for arbitration and the District Judge, Kamrup, Guwahati by his order dated 3.10.72 passed in Misc. (Arbitration) Case No. 189/72 gave his Award. Against the said Award, the Collector, Kamrup, Guwahati, filed First Appeal No. 62/73 before this Court and by judgment and order dated 5.1.82 this Court remanded the case to the arbitrator for fresh determination of the requisition compensation. Aggrieved by the judgment and order dated 5.1.82, the Petitioner preferred Civil Appeal No. 3671/89 before the Supreme Court which was pending at the time of filing the present writ petition. In the meanwhile, the Collector, Kamrup, Guwahati, however, paid the requisition compensation to the Petitioner for the period from 8.3.63 to 11.5.72 as per the Award of the Arbitrator and on the basis of the said Award of the Arbitrator determined an amount of Rs. 26,36,935.06 as the requisition compensation for the period from 12.5.72 to 30.8.76 and requested the Defence Department of the Central Government to deposit the said requisition compensation. The Defence Department of the Central Government, however, did not deposit the said amount of requisition compensation for the period 12.5.72 to 30.8.76 and instead continued to be in possession of the said land. On these facts as stated in the writ petition, the Petitioner has prayed for a direction on the Respondents to pay the requisition compensation to the Petitioner for the period from 12.5.72 to 30.8.76 and for the period thereafter and for a direction on the Respondents either to acquire the said land or derequisition the said land and hand over vacant possession of the land in question.

3. In their affidavit-in-opposition, filed on 30.8.92, the Respondent Nos. 1 and 2, namely, the Collector, Kamrup, Guwahati and the State Government of Assam, have inter alia, stated that acquisition proceeding in respect of the land in question was initiated in the year, 1971 and show cause notice in Form I was

issued under the Requisitioning and Acquisition of Immovable Property Act, 1952, but Form J under the said Act could not be published for competing the acquisition proceeding as in the mean while proceeding for acquisition of the said land was initiated under the provisions of the Assam Fixation of Ceiling on Land Holding Act, 1956 as amended by the Amendment Act of 1971. But subsequently, this Court in Civil Rule No. 418/76 held that the land which was in possession of the Defence Department of the Central Government and on which permanent construction had been made had to be excluded from the purview of the Ceiling Act from the date of requisition. The Collector then issued notification in Form J under the Requisitioning and Acquisition of Immovable Property Act, 1952 and published the same on 15.5.92 and steps were being taken for publication of the agreement in Form K for finalisation of compensation amount for acquisition of the said land under the said Act. Regarding the requisition compensation for the period from 12.5.72 to 30.8.76 the Respondent Nos. 1 and 2 in their affidavit-in-opposition have stated that though the Collector, Kamrup, directed the Defence Department of the Central Government to deposit the compensation amount of Rs. 26,30,000.00 for the period from 12.5.72 to 30.8.76, the said amount was not deposited by the Defence Department and instead the Defence Department has contended that the amount of Rs. 48,23,102.00 paid as requisition compensation for the period from 1963 to 1972 should be recovered from the Petitioner as the same was not correctly determined. In the aforesaid affidavit-in-opposition the Respondent Nos. 1 and 2 have further stated that a sum of Rs. 3,60,000/- has been paid to the Petitioner for acquisition of land and since the acquisition of land could not be completed, the Defence Department or the Central Government has also demanded that the aforesaid amount should also be recovered from the Petitioner.

4. An affidavit-in-opposition has also been filed on 17.9.91 by the Respondent No. 3, the Union of India, Ministry of Defence, stating inter alia, that since the Award of Arbitrator dated 3.10.72 for requisition compensation for the period from 8.3.63 to 11.5.72 has been set aside by this Court, the amount of Rs. 48,23,112.00 paid to the Petitioner towards requisition compensation for the aforesaid period pursuant to the said Award was recoverable from the Petitioner and for such recovery Certificate case No. 1/88 has been initiated. The Respondent Nos. 1 and 2 have further stated in the said affidavit-in-opposition that the Collector, Kamrup, has prepared the Award for Rs. 26,36,935.00 for the said period on the basis of earlier Award dated 3.10.72 of the Arbitrator, but as the said Award of the Arbitrator has been set aside by this Court in First Appeal No. 62/73 and the matter has been remanded to the Arbitrator, the said amount of Rs. 26,36,935.00 was not payable to the Petitioner until a fresh Award is made by the Arbitrator. with regard to acquisition of land, the Respondent No. 3 has stated in the said affidavit-in-opposition that the Government of India, Ministry of Defence, in their letter dated 22.12.70 and subsequent corrigendum dated 23.3.71 accorded sanction of acquisition compensation for the aforesaid 1434 B 4 K 8 L of land at the cost of Rs. 4.76 lakhs and notice in Form I u/s 7(1) of the

Requisitioning and Acquisition of Immovable Property Act, 1952 in respect of the said area of land was issued by the Deputy Commissioner, Kamrup on 19.5.71 and 14.6.71 and a sum of Rs. 3.60 lakhs out of Rs. 4.76 lakhs was also paid to the Petitioner as 80% of the compensation amount as on account payment and the Petitioner accepted the same without protest. But before final notice in Form J was published in the Assam Gazette the State Government initiated proceeding for requisition of the said land under the Ceiling Act. Affidavit-in-reply and additional affidavits have been filed by the Petitioner and similarly additional affidavits-in-opposition have also been filed by the Respondents.

5. At the hearing Mr. J.P. Bhattachajee, learned Counsel for the Petitioner, submitted that the land of the Petitioner was initially requisitioned under the Defence of India Act, 1962 but with effect from 10.1.68, the Defence of India Act, 1962 ceased to operate and in Requisitioning and Acquisition of Immovable Property Act, 1952 Section 25 was inserted by way of amendment with effect from 10.1.68. It was provided in the said Section 25 of the Requisitioning and Acquisition of Immovable Property Act, 1952 that any immovable property requisitioned under the Defence of India Act, 1962 and not released from such requisition before 10.1.68 shall from that date be deemed to be requisitioned by the competent authority under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952. Mr. Bhattacharjee submitted that since this was a case of deemed requisition under the Requisitioning and Acquisition of Immovable Property Act, 1952, the requisition compensation will have to be paid to the Petitioner for the entire period of requisition in accordance with the provisions of Section 8 of the said Act. Mr. Bhattacharjee further submitted that Section 6(1-A) of the Requisitioning and Acquisition of Immovable Property Act, 1952 was amended by the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1985 and as per Section 6(1-A) of the Act as amended, the Central Government has to release the land of the Petitioner from requisition unless the said land was acquired u/s 7 of the said Act within a period of 17 years with effect from the date of commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970. He contended that the aforesaid period of 17 years from the date of commencement of Requisitioning and Acquisition of Immovable Property Act, 1970 was over in the year 1987 but the land of the Petitioner has not been acquired u/s 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952. He referred to the provisions of Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 and Rule 8 of the Requisitioning and Acquisition of Immovable Property Rules, 1953 and submitted that under the said provisions first a notice in Form I was to be given to the owner of the property to show cause as to the property should not be acquired and only thereafter a notice of actual acquisition was to be given in Form J and until a notice in Form J was issued the requisitioned property does not vest absolutely in the Central Government Mr. Bhattacharjee pointed out that in the instant case notice in Form I was issued to the Petitioner on 2.6.71 to show cause as to why the land would not be acquired

and a show cause reply was also filed on 21.6.71 but no notice in form J for actual acquisition of the aforesaid land was issued within 17 years from the date of commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970 and the said notice in Form J was issued only on 5.8.92 by which time the 17 years period as stipulated in Section 6(1-A) of the Requisitioning and Acquisition of Immovable Property Act, 1952 for acquisition of land u/s 7 of the said Act had expired. According to Mr. Bhattacharjee, the aforesaid land of the Petitioner can, therefore, be acquired only under the provisions of the Land Acquisition Act, 1894 after payment of compensation to the Petitioner in accordance with said Act. He finally submitted that since the Petitioner has been deprived of the enjoyment of its properties without payment of requisition compensation in accordance with the provisions of Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952, this is a fit case in which this Court should direct payment of compensation and recurring annual compensation to the Petitioner for the period from 12.5.72 in accordance with the provisions of Section 8 of the said Act as explained by the Supreme Court in its judgment in Civil Appeal No. 3671/84 which has been disposed of in the meanwhile. He further submitted that since the aforesaid land has also not been validly acquired under the Requisitioning and Acquisition of Immovable Property Act, 1952, the Court should direct the Collector, Land Acquisition, to complete the acquisition proceeding under the Land Acquisition Act, 1894 and pass an Award within the time fixed by the Court determining the compensation payable after giving opportunity to the Petitioner in accordance with the provisions of the said Act and to pay the compensation for land acquisition within a specified time. Alternatively, Mr. Bhattacharjee submitted that in case the Court holds that the acquisition had been validly initiated under the Requisitioning and Acquisition of Immovable Property Act, 1952 by issuing notice in Form J and such proceeding is still pending, then necessary direction be issued to the Respondents to complete the acquisition proceeding under the said Act assessing the just fair compensation and by direct payment of the said compensation within a specified time to the Petitioner.

6. Mr. B.P. Bora, learned Sr. G.A., Assam, appearing for the Respondent Nos. 1 and 2, submitted that the requisition compensation under the Requisitioning and Acquisition of Immovable Property Act, 1952 for the period from 8.3.63 to 11.5.72 was earlier determined by the Arbitrator by his Award dated 3.10.72 and on the basis of the said Award the Collector determined the requisition compensation for the period from 12.5.72 to 30.8.76, but by orders passed by the Supreme Court in the aforesaid Civil Appeal No. 3671/84 on 3.3.94 the matter was remitted to the Government of Assam for appointing an Arbitrator and for placing the case before him for determining afresh the amount of compensation payable for requisitioning the area in accordance with law. He stated that in accordance with the said judgment, the Government of Assam has already appointed the District Judge, Kamrup, Guwahati as the Arbitrator for determining the compensation amount afresh by notification dated 13.8.97. Mr.

Bora submitted that it is only after the Arbitrator determined the amount of requisition compensation afresh then the Petitioner would be paid the requisition compensation in accordance with the Award made by the said Arbitrator. Regarding acquisition of land, Mr. Bora submitted relying on the averments made in para 15 of the counter-affidavit filed on behalf of the Respondent Nos. 1 and 2 on 30.8.97 that proceedings were initiated to acquire the land and a notice in Form I was issued but the Petitioner demanded the return of the land or in alternative acquisition of the land under the Land Acquisition Act, 1894 and, therefore, the matter was referred to the State Government and on instruction of the State Government acquisition proceedings were started u/s 4(1) of the Land Acquisition Act, 1894. In the acquisition proceedings an ad hoc payment of Rs. 3,50,000/- was made to the Petitioner on compassionate ground and the Petitioner received the said amount under protest. Thereafter as per communication received from the Additional Solicitor General of India, dated 6.5.91, the Form J was issued in the Assam Gazette dated 5.8.92. In the said para 15 of the counter-affidavit of the Respondent Nos. 1 and 2 it has been further stated that the value of the land was fixed at Rs. 50,035 per bigha and an estimated amount of Rs. 8,13,59,677.70 was prepared and submitted to the Defence Estate Officer by letter dated 5.10.93 for depositing the estimated amount so that the amount could be paid to the owner of the land. According to Mr. Bora, there were no laches on the part of the Collector in not completing the acquisition proceeding.

7. Appearing on behalf of the Defence Department of the Central Government, Mr. P.N. Choudhury, learned CGSC, however, submitted that the land was acquired within the time limit specified in Section (1-A)(b) of the Requisitioning and Acquisition of Immovable Property Act, 1952. He referred to the order dated 1.4.91 passed by the Supreme Court in SLP (Civil) No. 2394/91 which indicated that the learned Additional Solicitor General of India submitted before the Supreme Court that acquisition proceedings which have been pending since 1971 was likely to be completed in immediate future and for this reason the Central Government did not wish to press the SLP against the judgment of this Court in Review application No. 30/90 filed in Civil Rule No. 418/76. Mr. Choudhury contended that the Petitioner did not object to the said submission of the learned Additional Solicitor General of India before the Apex Court. He further pointed out that out of the compensation of Rs. 4.76 lakhs sanctioned by the Central Government for acquisition of the land, the Petitioner had already received Rs. 3.60 lakhs and the balance amount of Rs. 1.16 lakhs had been deposited with the Collector, Kamrup, Guwahati for payment to the Petitioner. According to Mr. Choudhury, therefore, this is a clear case in which the Petitioner company had acquiesced and given its implicit consent to the acquisition of the land under the Requisition and Acquisition of Immovable Property Act, 1952 and the acquisition proceedings under the said Act could be said to have been completed. He referred to the notice in Form J which was published in the Assam Gazette on 8.6.92 in L.A. Case No. 49/91 u/s 7 of the Requisitioning and Acquisition of

Immovable Property Act, 1952 and the rules made thereunder to show that the land has been acquired. He further explained that the proceedings for acquisition of land were initiated in the year 1971 and the delay for completing the acquisition proceedings was not due to any inaction of the Defence Department of the Central Government but was due to the action taken by the State Government in acquiring the land under the Ceiling Act. He submitted that for this delay the Defence Department cannot be made liable to pay recurring requisition compensation after 1971 and compensation for acquisition of land at market value of the land after 1971. Mr. Choudhury further submitted that in case it is held that the land had not been acquired within the time limit fixed by Section 6 of the Requisitioning and Acquisition of Immovable Property Act, 1952 and that the Land Acquisition Act, 1894 was applicable to the acquisition of land of the Petitioner, in that case, the Defence Department of the Central Government was in possession of the land prior to 1971 and, therefore, the Petitioner can get compensation on the basis of market value of the land as in the year 1971. Mr. Choudhury submitted that Rs. 8,13,59,679.70 estimated as compensation for acquisition of the land has not been accepted by the Central Government as would be clear from the affidavit-in-opposition of the Respondent No. 3. He cited the decision of the Supreme Court in the case of Allahabad Development Authority Vs. Nasiruzzaman and Others, in which the Apex Court has held that once possession of the land was taken, the land would be vested in the Government and acquisition proceedings do not lapse. Regarding the requisition compensation from the year 1963 to 1971, Mr. Choudhury submitted that the said requisition compensation has to be determined in accordance with the judgment of the Supreme Court in Civil Appeal No. 3671/84 Sonapur Tea Co. Limited and Ors. v. State of Assam, 1994 4 SCC 746.

8. It is not disputed between the parties that for the period of requisition from 1963 till the land was acquired, the requisition compensation will have to be determined by the Arbitrator in accordance with Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 and the judgment of the Supreme Court in the case of Sonapur Tea Co. (P) Ltd. and Ors. v. State of Assam (supra). It further appears from the copy of the notification dated 13.8.97 of the Government of Assam Revenue (L.R.) Department, Land Acquisition Branch, that pursuant to the said judgment of the Supreme Court, the District Judge, Kamrup, Guwahati has already been appointed as Arbitrator for determining afresh amount of compensation and the said Arbitrator will have to determine the same in accordance with the aforesaid judgment of the Supreme Court.

9. The real dispute between the parties in this case is as to whether the land of the Petitioner stood acquired either under the Requisitioning and Acquisition of Immovable Property Act, 1952 or the Land Acquisition Act, 1894 and if so, the date of such acquisition, Sub-section (1-A) of Section 6 and Sub-section (1) and (2) of Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 as amended by the Requisitioning and Acquisition of Immovable Property

(Amendment) Act, 1985 and Rule 8 and Forms I and J of the Requisitioning and Acquisition of Immovable Property Rules, 1953 are quoted herein below for easy reference:

REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT. 1952

6. Release from requisitioning:

(1)

(1-A) Notwithstanding anything contained in Sub-section (1), the Central Government shall release from requisition-

(a) any property requisitioned or deemed to be requisitioned under this Act before the commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970 on or before the expiry of a period of 17 (seventeen) years from such commencement;

(b) any property requisitioned under this Act after such commencement, on or before the expiry of a period of 17 (seventeen) years from the date on which possession of such property was surrendered or delivered to, or taken by, the competent authority u/s 4.

Unless such property is acquired u/s 7 within the period of 17 (seventeen) years aforesaid.

(2)

(3)

(4)

(5)

(6)

7. Power to acquire requisitioned property-

(1) Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property, by publishing in the official Gazette a notice to the effect that the Central Government has decided to acquire the property in pursuance of this section:

Provided that before issuing such notice, the Central Government call upon the owner of, or any person who, in the opinion of the Central Government, may be interested in, such property to show cause why the property should not be acquired, and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it seems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the

requisitioned property shall, on and from the beginning of the day on which the notice is so published, best absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end.

(3)

(4)

(5)

THE REQUISITING AND ACQUISITION OF IMMOVABLE PROPERTY RULES, 1953

8. Acquisition of requisitioned property:

A notice imder Sub-section (1) of Section 7 of the Act calling upon the owner or any other person interested in a requisitioned property to show cause wliy the property should not be acquired, shall be in Form "I". A notice of achial acquisition shall be in Form "J".

FORM "I" (See Rule 8) NOTICE

Whereas the Central Government is of opinion that the property described in the Scheduled hereto annexed which is subject to requishion should be acquired for a public purposes only-

Now therefore, in exercise of powers conferred by Sub-section (1) of Section 7 of the said Act, the Central Government do hereby call upon Shri being the owner of the said property to show cause within fifteen days of the date of service of this notice upon him wiyy the said property should not be acquired

SCHEDULE

Signature Designation

Seal

To

FORM "J" (See Rule 8) NOTICE

Whereas a notice under the proviso to Sub-section (1) of Section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (No. 30 of 1952) was issued by the Central Government to Shri-being the owner of the said property calling upon him to show cause within the period Specified therein why the said property should not be acquired;

And whereas the said period has expired and no cause has been shown against the said notice/the cause shown against the said notice has been considered;

Now, therefore, in exercise of the powers of Sub-section (1) of Section 7 of the said Act, the Central Government having been satisfied that it is necessary so to do, do hereby acquire the said property.

SCHEDULE

Signature Designation

10. Clause (b) of Sub-section (1-A) of Section 6 quoted above would show that it applies to property requisitioned after commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970. Since the land of the Petitioner was requisitioned before such commencement, the said Clause (b) on which reliance has been placed by Mr. Choudhury has no application to the facts of the present case. Clause (a) of Sub-section (1-A) of Section 6 makes it clear that the Central Government has to release from requisition any property deemed to be requisitioned under the Act before the commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970 on or before expiry of a period of 17 years from such commencement. In the instant case, the land was deemed to have been requisitioned u/s 25 of the Requisitioning and Acquisition of Immovable Property Act, 1952 with effect from 10.1.68 and, therefore, it was to be released from requisition on expiry of 17 years from the date of commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970. Sub-section (1-A) of Section 6 of the Act, however, provides that the property so requisitioned need not be released if such property was acquired u/s 7 of the Act within the aforesaid period of 17 years from the commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970. It is thus clear that the land of the Petitioner has to be released on completion of 17 years from 1970 unless it was acquired u/s 7 of the Act within the aforesaid period of 17 years. A reading of the proviso to Section 7(1) quoted above would show that before issuing notice for acquisition of property subject to requisition a notice has to be issued to the owner of the property or any other person interested therein to show cause as to why the property should not be acquired and Rule 8 of the Rules quoted above prescribes that such show cause notice is to be issued in Form I. But Sub-section (2) of Section 7 of the Act read with Rule 8 of the Rules provides that the requisitioned property shall vest absolutely in the Central Government free from all encumbrances and the period of requisition shall end on and from the beginning of the day on which the notice of actual acquisition is published in Form J. Thus unless the notice of actual acquisition is published in Form J, property does not vest in the Central Government and the period of requisition of such property does not come to an end. Admittedly, in this case notice was issued in Form I in the year 1971 to the Petitioner to show cause as to why the land will not be acquired but the notice of actual acquisition of the land in Form J was not issued within the period of 17 years from the date of commencement of the Requisitioning and Acquisition of Immovable Property Act, 1970 and was issued only on 8.6.92. Thus the land of the Petitioner has not been acquired u/s 7 of the aforesaid Act within the period of 17 years as specified in Sub-section (1-A) of Section 6 of the said Act.

11. It is also difficult to accept the submission of Mr. Choudhury, learned C.G.S.C., that the Petitioner company had acquiesced and had given its implicit

consent to the acquisition of its land under the Requisitioning and Acquisition of Immovable Property Act, 1952. The Collector, Kamrup and the State Government in their counter-affidavit filed on 30.6.97 have clearly stated that the Petitioner company in its reply to the show cause notice in Form I u/s 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, and the rules made thereunder demanded return of the land and in the alternative demanded that the land be acquired under the provisions of Land Acquisition Act, 1894. In the order dated 1.4.91 of the Supreme Court in SLP (Civil) No. 2394/91 it is recorded that the learned Additional Solicitor General of India submitted that as acquisition proceedings pending since 1971 are likely to be completed in immediate future the Central Government did not wish to press the SLP. From the language of the said order dated 1.4.91 of the Supreme Court it is difficult to conclude that the Petitioner company had given its implicit consent to the acquisition of the land under the Requisitioning and Acquisition of Immovable Property Act, 1952.

12. The Petitioner company, however, appears to have given its consent to the acquisition of the land under the Land Acquisition Act, 1894. In its objection/reply dated 21st June, 1971 to the show cause notice in Form I issued, a copy of which has been annexed to the Additional Affidavit of the Petitioner filed on 24.2.97 as Annexure-F, the Petitioner has stated in para 8 that if the land cannot be released, the same should be acquired under the provisions of the Land Acquisition Act, 1894 and adequate compensation should be paid to the Petitioner company. It further appears from para 15 of the counter Affidavit of the Respondent Nos. 1 and 2 filed on 30.8.97 that after receipt of said objection/reply of the Petitioner the matter was referred to the State Government and on advice of the State Government, land acquisition proceedings were started u/s 4(1) of the Land Acquisition Act, 1894 for acquiring the land. This would also be evident from the letter dated 31.10.95 of the Deputy Commissioner and Collector, Kamrup, to the Defence Estate Officer, Guwahati, which is extracted herein below:

GOVERNMENT OF ASSAM OFFICE OF THE DEPUTY COMMISSIONER:KAMRUP:
GUWAHATI

No. LA.49/91/152/2151 Dated 31.10.95

To

The Defence Estate Officer, Guwahati Circle, Guwahati-3.

Sub: Acquisition requisitioned land belonging to Sonapur Tea Co. (P) Ltd. for Defence purpose.

Ref: Your letter No. 45/103/ACC/119 dated 20.10.95.

Sir,

with reference to your above letter, I am to inform you that in the year 1971 a

proceeding for acquisition of land measuring 1434 B-OK-18 Lessas was initiated under RAIP Act, 1952 and Notices u/s 7(1) of the said Act in Form "J" was issued. The land owner M/s. Sonapur Tea Company submitted show cause demanding return of the land if it required be acquired the same should be acquired under L.A. Act, 1894. The matter was referred to the State Government and L.A. proceeding under u/s 4(1) of the L.A. Act, 1894 was started and considering the delay that may be caused in completing the L.A. proceeding an ad hoc payment of Rs. 3,60,000.00 (Rupees three lakhs sixty thousand) and not Rs. 3,70,000.00 as mentioned earlier was paid to Land Owner on compassionate ground without executing Form "K" or "L" as it was not necessary under the L.A. Act.

However, the said amount was received by the land owner on protest.

It is, further, informed that this amount will be deducted while making payment of acquisition cost.

The present proceeding was started under the R.A.I.P. Act, as directed by the Addl. Solicitor General, Govt, of India, vide his letter No. 9543/91 dated 6.5.91.

You are, therefore, requested to deposit the estimated amount at the earliest to avoid any further complicity.

Yours faithfully, Deputy Commissioner and Collector, Kamrup, Guwahati.

13. From the aforesaid facts, it is clear that the Petitioner had given its consent to the acquisition of land under the Land Acquisition Act, 1894 and for payment of compensation as per the said Act and the matter was referred to the State Government and thereafter land acquisition proceeding was started u/s 4(1) of the Land Acquisition Act, 1894, but the payment of compensation to the Petitioner for the acquisition of the land was delayed on the one ground or the other. In such a case where the owner of the land has given its consent to the acquisition of land under the Land Acquisition Act, 1894, the land cannot be said to be acquired until the Government decided to acquire the land and pay compensation under the said Act. Once, however, the Government decided to acquire the land and pay compensation under the Land Acquisition Act, 1894 and started proceedings u/s 4(1) of the Act, the land stood acquired with effect from the date of initiation of proceedings u/s 4(1) of the said Act as the possession of land was already with the Government, but the Government will have to pay the compensation to the owner of the land determined in accordance with the provisions of the said Act. In several decisions, the Supreme Court has taken a consistent view that once possession of the property is taken over for the purpose of acquisition of the property under the Land Acquisition Act, 1894, the property vests absolutely in the Government and the land acquisition proceedings thereafter cannot lapse. *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, and *Allahabad Development Authority Vs. Nasiruzzaman and Others*, Therefore, no direction can be given in this case to the Respondents to release the land to the Petitioner.

14. Similarly, once it is held that the land of the Petitioner stood acquired under the Land Acquisition Act, 1894, from the date of initiation of the proceedings for acquisition of the said land u/s 4(1) of the said Act, the Petitioner will not be entitled to requisition compensation with effect from the date of initiation of such proceedings under the said Act. Instead, the Petitioner would be entitled to compensation for such acquisition as determined in accordance with the Land Acquisition Act, 1894 on the basis of the market value of the land as on the date of initiation of action u/s 4(1) of the said Act, taking the condition of the land to be the same as it was prior to its requisition in the year 1963. But no award determining the compensation in accordance with the provisions of the Land Acquisition Act, 1894, appears to have been made by the Collector as yet and only an ad hoc payment of Rs. 3.60 lakhs has been received by the Petitioner company under protest. The estimate of Rs. 8,13,58,677.00 in the letter dated 5.10.93 of the Collector to the Defence Estate Officer, Guwahati Circle, as compensation for acquisition has also not been made by the Collector in accordance with the provisions of the Land Acquisition Act, 1894.

15. In the result, this writ petition is disposed of with a direction to the Collector, Kamrup, to find out the date of initiation of the action u/s 4(1) of the Land Acquisition Act, 1894, in respect of the land of the Petitioner and intimate the said date to the learned District Judge, Kamrup, the Arbitrator, within one month from the date of receipt of a certified copy of this judgment. Thereafter the aforesaid Arbitrator will within six months from the date of receipt of certified copy of this judgment make its award for requisition compensation for the period of requisition from the year 1963 till the date of acquisition of the land by initiation of action u/s 4(1) of the Land Acquisition Act, 1894 and will follow the judgment of the Supreme Court dated 3.3.94 in Civil Appeal No. 3671/84 reported in Sonapur Tea Co. Limited and Ors. v. State of Assam, 1994 4 SCC 746. while making the award. Similarly, within six months from the date of receipt of certified copy of this judgment, the Collector, Kamrup, shall make the award for compensation of acquisition of the land on the basis of market value of the land as on the date of initiation of action u/s 4(1) of the Land Acquisition Act, 1894 in accordance with the provisions of the said Act, taking the condition of the land to be the same as it was prior to its requisition in the year 1963. The Respondents are further directed to pay the aforesaid requisition compensation and acquisition compensation as determined in the respective awards to the Petitioner within a period of six months of the respective awards after adjusting the amounts already paid to the Petitioner towards such requisition compensation and acquisition compensation.

Considering, however, the entire facts and circumstances of the case, the parties shall bear their own costs.