

SH BENOY MAZUMDAR (DEAD) BY LRS. A

v.

THE COLLECTOR OF CACHAR

SEPTEMBER 3, 1996

[K. RAMASWAMY AND FAIZAN UDDIN, JJ.] B

*Assam Land (Requisition and Acquisition) Act, 1948—Sections 7(1A), 8(1A)—Compensation for land acquired—Nature of land being fallow, uncultivated or barren S.7(1) has no application—The Act is also not arbitrary—Constitution of India, Art, 14—Land Acquisition Act, 1894—S.23(1).* C

*H.P. Baruah v. The Collector of Sibsagar, Assam, AIR (1976) SC 68, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1843 of 1994. D

From the Judgment and Order dated 26.2.82 of the Assam High Court in F.A. No 29 of 1965.

N.R. Choudhary and Som Nath Mukherjee for the Appellant. E

S.N. Choudhary and S.A. Syed for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arises from a very elaborate and well considered judgment of the Division Bench of the Assam High Court made on February 26, 1982 in First Appeal No. 29/65. The admitted position is that on February 13, 1959, 60 bighas of land was requisitioned under the Assam Land (Requisition and Acquisition) Act, 1948. Ultimately, by publication of the notification under Section 8(1A) of the Act the land was acquired for the public purpose for settlement of the refugees from Bangladesh. The Land Acquisition Officer applying the provisions of Section 7(1A) of the Act determined the compensation @ Rs. 297.69 rounded off to Rs. 300 per bigha. On appeal, the Division Bench has confirmed the same but awarded interest at 6% from the date of taking possession till date of payment. Thus, this appeal by special leave. F  
G  
H

- A Shri Choudhary, learned counsel for the appellant, contended that the land was taken on grant from the Government on August 8, 1872 for special cultivation. Therefore, the compensation was required to be determined under Section 23(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the "Act") as envisaged under Section 7(1) of the Act. As specified in sub-section (1) of Section 7 of the Act, his contention focuses
- B mainly on the question whether the land is lying fallow or is for special cultivation. The learned counsel contends that the courts below have not properly understood the contents of the documents and interpreted the law in that perspective and, therefore, this Court is required to go into that question. He further contended that though Section 7(1A) of the Act which
- C has been specifically incorporated in the Assam Land (Requisition and Acquisition) Act, 1964 reiterates what is stated in Section 11 thereof, it is violative of Article 14 of the Constitution. In support thereof, he places strong reliance on a dissenting judgment dated September 28, 1981 of one of the Judges of a Full Bench of five Judges in C.R. No. 28/67 and batch.
- D Shri Choudhary, learned senior counsel appearing for the State, placing reliance on the Judgment of this Court in *H.P. Baruah v. The Collector of Sibsagar, Assam*, AIR (1976) SC 68, contended that the controversy has been concluded by the said judgment in which it was held that for uncultivated or fallow land and that Section 7(1) stands applicable. In view of the respective contentions, the question that arises for consideration is :
- E what is the nature of the land acquired?

The reference Court raised issued No. 3 in that behalf and considered the question elaborately. It held thus :

- F "From the perusal of Ext. 12 I find that there are certain limitation even though the lands are redeemed grants. I do not find anything in support of the claimant at pages XXV and XXVI of introduction of Assam Land Revenue Manual, Vol. I, that the lands acquired were not grains but fee simple estate pure and simple. It is an undisputed fact that the acquired lands were assessed with revenue
- G by Assam Act No. XXIV of 1948 which Act was passed before the passing of the Assam Land (Requisition and Acquisition) Act, 1948. It may be true that the words "special cultivation" might not appear in the rules passed before 1876 but that does not go to show that the acquired lands were sold to the company as fee
- H simple Estate, pure and simple and by virtue of that the company

became the proprietor of land as like that of a fee simple estate. A  
 These rules passed in different times are embodied in the Assam  
 Land Revenue Manual and those rules from a part of this book.  
 Under these circumstances, I am convinced that the acquired lands  
 are grants for special cultivation.

From the evidence placed above, I am not in a position to accept B  
 the contention of the claimant that there were thatch, shed tress  
 and seedlings etc. when the lands were requisitioned. From the  
 evidence it is also found that even seedlings were sometime raised  
 on the slope of the tilla by the garden labourers on payment of C  
 rent to the garden. So this cannot be construed as that lands were  
 utilised by the garden for the purpose for which those were given.  
 The claimant has failed to show with any documentary evidence  
 that paddy and thatch were raised in some portion of the acquired  
 lands before the lands were requisitioned. On the other hand, the  
 objector's witnesses, some of whom are official witnesses, said that D  
 at the time of requisition the lands were lying patty. I, therefore,  
 find no substance in the argument that the lands were not fallow,  
 uncultivated or not utilised at the time when these were requisitioned."

After elaborate consideration, it was held that the land was fallow E  
 uncultivated and not unutilised at the time when the property was requisitioned. The Division Bench of the High Court again elaborately considered the nature of the grant, nature of the acquisition and the nature of the factual possession of the land as on the date of the requisition and it relied upon another Division Bench judgment of that Court in First Appeal Nos. F  
 67- 68/69 decided on February 23, 1982 and concluded thus :

"The expression in the ease of land with respect to which any  
 settlement has been made for special cultivation or which is included in any grant, if such land is lying fallow or uncultivated or is not utilised for the purpose for which the grant or settlement was made or for the purposes unidentical thereto", has to be given coherent and pragmatic interpretation, the words 'fallow' or 'cultivated' also being understood in the context of the concept of special cultivation for which the grant was meant. 'Fallow' according to the Webster's New Twentieth Century Dictionary, means H

A and that has laid a year or more untilled or unseeded to kill weeds,  
 make the soil richer etc. land which has been ploughed or tilling  
 of and without sowing it for a season. It means left cultivated or  
 planted. According to the same Dictionary, utilisation means utilis-  
 ing or being utilised. To utilise is to profitable account or use, to  
 B make useful, as to utilise natural resources. Thus, all the three  
 expressions, namely, fallow, uncultivated and not utilised have to  
 be understood in the context of special cultivation for which the  
 grant was made, Cultivation of the land for a purpose foreign to  
 special cultivation or utilisation of the land for a purpose different  
 C from that which the grant was made, would be as much cultivation  
 or unutilisation."

D Applying the above principle we do not find any infirmity in the  
 findings of the Reference Court that the land involved in this case  
 was covered by Section 7(1A) of the Act and it would not fall  
 under Section 7(1) of the Act. In this views of the matter the sale  
 deeds and the Jamabandi classification which does not indicate the  
 use of the land become irrelevant. Besides, the Jamabandi is dated  
 the 5th November, 1959 while the land become irrelevant. Besides,  
 the Jamabandi is dated the 5th November, 1959 while the land was  
 requisitioned in 1954 and subsequently acquired in 1959 by  
 E notification dated 13.2.1959."

F The said ratio was applied to the facts in this case and it was held  
 that since the lands were fallow uncultivated lands they got attracted and  
 accordingly it was held that Section 7(1A) was inapplicable. Though Shri  
 Choudhary sought to impress upon us that the land is fallow and, therefore,  
 the land falls within Section 7(1A), that would be seen under the recital  
 and the grant that would establish that the lands were assigned by a grant  
 for special cultivation. Under the Assam Act of 1964, with a view to remove  
 the ambiguity as to the "special cultivation" under sub-section (2) of Section  
 G 11, the expression has been defined to mean cultivation which involves,  
 either owing to the nature of the crop or owing to the process of cultivation,  
 a much larger expenditure of capital per acre than is incurred by most of  
 the cultivators in the State and includes cultivation of tea. It would be seen  
 that the special cultivation was meant to includes cultivation involving  
 higher capital outlay per acre than the expenditure incurred for cultivation  
 H by the cultivators in the State and also a cultivation of the tea which against

the special cultivation involves higher investment of higher capital outlay. In view of the concurrent findings recorded by the reference Court as well as the High Court that the land remained as fallow, uncultivated or barren land, necessarily the conclusion would be that the grant contained that the land was meant for special cultivation. Consequently, Section 7(1) has no application to the determination of the compensation as per the prevailing market value as on the date of the acquisition under the Act. We do not find that the Act is arbitrary. The Full Bench of five Judges in the above judgment, per majority, has elaborately gone into the question and concluded that Section 7(1A) is not arbitrary. The reason appears to be that the land having been assigned by the Government, when it is needed for a public purpose, what the assignee would get in return is the land revenue; after use and enjoyment thereof, he would be compensated with the payment of the land revenue envisaged under Section 7(1A) of the Act. It is settled law by catena of judgments of this Court including one by the Constitution Bench that the prescription of the principle for determination of the compensation is not violative of Article 14 of the Constitution. Even in *Bhim Singhji v. Union of India*, the Constitution Bench of this Court has held that the payment of compensation for the surplus vacant land acquired under the Ceiling Act under Section 6(ii) in the sum of Rs. 2,00,000 was not illusory. Considered from this perspective, we hold that the determination of the compensation under Section 7(1A) is not violative of Article 14 of the Constitution. The majority of the Full Bench of the five Judges of the Assam High Court has rightly concluded the issue. Accordingly, we hold that there is no illegality in the impugned judgment. Moreover, when the High Court has consistently interpreted a local law in a particular way, this Court would be slow to disturb their interpretation unless compelling circumstances so warrant. The High Court has not applied wrong principle of law in determining the compensation warranting interference.

The appeal is accordingly dismissed but, in the circumstances, without costs.

G.N.

Appeal dismissed.