PETITIONER:
THE MANIPUR TEA CO. PVT. LTD.

Vs.

RESPONDENT:
THE COLLECTOR OF HAILAKANDI

DATE OF JUDGMENT: 13/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:
THE 13TH DAY OF DECEMBER 1996
present:
Hon'ble Mr.Justice K. Ramaswamy
Hon'ble Mr.Justic G.T.Nanavati

Dr.A.M.Shighvi, Sr.Adv., Manoj Arora, Ms.S.Hazarika, Ms.H.Wahi, Advs. With him for the appellant

S.N.Chaudhary, Sr.Adv. and S.A.Syed, Adv. with him for the Respondent

O R D E R

The following Order of the Court was delivered:

Leave granted.

We have heard learned counsel on both sides.

These appeals by special leave arise from the judgment of Division Bench of Assam High Court, made on August 17, 1992 in First Appeal Nos.67/87 and 11-14/88. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the "Act") were published on 5.9.1981, 21.9.1982, 23.9.1982 and 24.9.1982 acquiring 123 Bighas 11 Cottahs and 13 Chitaks of the appellants' tea Estate for laying Railway tracks. The Collector by his award dated March 19, 1985 and also by another award dated March 25, 1985 awarded in respect of the lands acquired a sum of Rs.17,59,975/- against the total claim of Rs.1,77,92,238/- on the computation made in that Court enhanced the compensation to Rs.43,89,038/- with solatium, and interest thereon in the sum of Rs.67,60,730/- has been awarded as additional compensation. On appeal, the High Court reduced the compensation from Rs.43,89,038 to Rs.40,89,038/-. feeling aggrieved by the impugned judgment, these appeals have been filed by the appellant.

Dr. A.m. Singhvi, learned senior counsel appearing for the appellant, contents that the High Court and the reference Court committed a grievous error in relying upon the sale statistics earlierelied on by the Land Acquisition Officer without examining any witness which formed basis for his award. The Courts also had wrongly rejected three sale deeds Exs.17(1) to 17(3) proved on behalf of the appellant and, therefore is clear error of law in reaching that conclusion. On the face of it, we find force in the contention. The sale statistics relied on by the Land

Acquisition Officer are not unless persons connected with the sale deeds and the documents, also made part of the record, are examined. Therefore, the sale statistics cannot ipso facto form a basis to determine the compensation. As regards the three sale deeds relied on by the appellant, both the High Court as well as the reference Court came to the conclusion that they relate to the agricultural land while the acquisition is in respect of tea garden. Therefore, they could not form the basis to determine compensation. Moreover, it was also found that they relate to sale transactions which took place 5 years prior to the date of the notification published under section 4(1). Neither the vendees were examined as witnesses. Therefore, the rejection of those sale deeds is perfectly in accordance with law. They do not form any base for determination of the compensation. It is settled law that the burden is on the claimants to prove by adducing cogent, reliable and acceptable evidence the market value under Section 23(1) of the Act. The burden does not shift over to the Government but it is the duty of the duty of the Court to assess the evidence adduced by the claimants and determine the compensation on the touchstone of prudent purchaser in the open market, i.e., whether he would offer market value at the rates proposed by the Court. The evidence has to be put to the test whether the sale deed or the evidence adduced would offer the market value higher than that has been determined by the Land Acquisition Officer. The compensation awarded by the Land Acquisition Officer is an offer that blinds the Government but it is not conclusive. It is for the claimants to prove as to what would be the reasonable compensation which the land is capable of fetching in the open market. The question is: whether the Land under acquisition, if put to the private sale in an open market, would be capable to secure the same price as offered by way of determination of the compensation after compulsory acquisition. Considered from this perspective, the Court considered the evidence adduced and determined the compensation. The High Court and the reference Court, therefore, correctly applied the test and did not accept three sale deeds produced by the appellant in determining the compensation which relate to the agricultural land; not the tea garden or estate. Having rejected the sale deeds relied on by the appellant to do justice to the respondent, they relied on sale statistics relied by the Land Acquisition Officer. Under these circumstances, we do not find any ground in the approach adopted by the Courts below.

It is then contended that tea garden always secured higher market value than the paddy fields. In that behalf, reliance was placed upon Section 42 of the West Bengal Estate Acquisition Act, 1953 and similar provision in Assam Land Acquisition Act and Assessment Ordinance, 1989, as applicable, to show that the market value of tea garden is required to be determined at the rate twice the value of paddy. A distinction has been made between the two in determination of compensation, by the statute as tea gardens are required to be assessed at the rate 2-1/2 times higher than the paddy fields. Therefore, the said yardstick is required to be adopted in determining the compensation. We do not agree with the contention.

The principle of determination of the compensation under Section 23(1) of the Act is entirely different and distinct from the principles applicable in determining the compensation under Land Reforms Act. What is required to be determined is the prevailing market value of the Land as on the date of the notification published under Section 4(1) of

the Act and, therefore, the principle for determination of the compensation under the Land Reforms Act or the Acquisition Act has no relevance or bearing.

It is then contended that the courts below have committed error in not granting escalation charges for the determination of the compensation to the tea garden. In that behalf, it is contended that the reference Court proceeded in paragraph 30 on the be sis that the age of the tea bushes would be 35 to 40 years. The report of the Tocklai Experimental Station of Tea Research would indicate that the life of the trees would be more than 25 to 30 years. The yield would be more than 25 to 30 years and thereafter gradually decrease. The Court below were not right in determining 20 years as the age of the bushes and on that basis fix the yield per month at Rs.270/-. In fact even on the basis of those calculations, the claimants are entitled to more that Rs.367/- per month. It is now an admitted position that except one witness, Bharthakur who has stated about the age of the trees, there is no evidence in proof of the above statistics given by the Research Station. Therefore, though the Land Acquisition Officer had relied upon that statement in determining the compensation, in trial, before the Court that did not ipso facto form part of the record unless the person connected with the Research Station was examined as witness in that behalf. Admittedly, no witness has been examined. In fact, if State had filed an appeal perhaps the things would have been different. The High Court and the reference Court had adopted wrong principle of law with a view to give the benefit to the appellant rather than dismissing its application for enhancement of the compensation. The District Judge as well as the High Court preceded on the basis of the said report and fixed the age of the bush at 20 years for the maximum yield. Therefore, we do not find any legal base to interfere with that.

Further, Dr. Singhvi says that it being an arithmetical mistake, liberty may be given to the claimants to approach the reference Court for amendment of the decree. It may do so, if it is open to it. The District Judge as well as the High Court have held that for the remaining 15 years the tea bushes would give their yield though every year, it would gradually decrease. They have taken 200 gms. per bush as the average yield as stated in paragraph 30 of the award which reads as under:

> "In other words, the tea bushes are not likely to produce 400 gms. of made tea for the remaining 15 years. The production will go down gradually till the economic viability will become zero at the end of 15 years. In order to assess the quantum of viability, we are to take the mean of 200 gms. per year in average per bush for the 15 years. The yield per bush as on today cannot be expected during next 15 years. In spite of increasing variable costs such as costs of manure etc. the return will gradually go down till its economical viability becomes zero after 15 years."

The finding thus recorded is a pure question of fact considering the economic viability, the nature of the yield and the longevity of the trees. Therefore, the reference

Court rightly had put it as 200 gms. per year for average bush for 15 years and this calculation was made in paragraph 81 and the actual amount receivable, namely, (15 years X 200 gms.) (21.81 - 14.00) - 3 X 7.81 per bush - and Rs.23.43 per bush was fixed. Under these circumstances, it was held that they are entitled to compensation at that rate per bush and the Collector, after deducting the amount already paid was directed to make the balance payment. It being an arena of appreciation of evidence on the factual matrix, we are not inclined to interfere with that finding.

It is next contended that the reference Court having noticed that in three months an area of 90 Cottas 11 Chittaks was sold on May 21, 1979 @ Rs.2,539,68 per bigha and 18 Cottas 13 Chittaks of land was sold on March 7, 1980 @ Rs.1,268,83 per bigha and a further area of 1 bigha 4 Cottas and 4 chittaks was sold @ Rs. 4,948.45 per bigha on January 3, 1981, which would show that there was a gradual rise in the prices, fixing the escalation charges at Rs.270/- per months was wrong; instead, escalation must be @ Rs.367/-. Thus the principle adopted by the Court is not correct in law. In fact, the above finding is incorrect in law for the reason that the persons connected with those sale deeds were not examined to show the nature of the land under acquisition and of the lands under the sale deeds. The circumstances under which the purchase came to be made, the relative distance of the land and the respective prevailing prices in respect of those areas are the factors to be taken into account. In this case, such an attempt was not made. It was required to be proved that there was really an increase in the value of the land. As a matter of fact, it has to be established that there is gradual increase, every month, in the value of the land of that area and, therefore, when the compulsory acquisition was made, the appellant was entitled to higher compensation. Though the State has not approached this Court, we can hold that there is no illegality committed by the Courts below in granting the escalation at Rs.270/- per bush.

It is then contended that the reference Court awarded a sum of Rs.4,71,312/- as severance charges. The High Court has found that due to the severance, the appellant had to put not only the fencing but also the drainage to protect the tea garden and the expenses incurred therefor came to the tune to Rs.2,36,010/-. Instead of adding severance charges awarded by the reference Court, the High Court has reduced the compensation. Therefore, it committed an error of law. We find no force in the contention.

Clause thirdly, of Section 23(1) envisages that the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land is required to determined as compensation under sub-section (1) of Section 23. It is seen that by reason of the acquisition of the land of the appellant to lay of Railway tracks, the contiguity of the tea estate was severed and 2/3rd of the estate had remained on one side and 1/3 on the other. The question is: what would be the compensation for that severance? The question is confined to the extent of expenditure. The compensation has to be awarded for such severance. It is stated by the claimants that they were required to put up fencing for protecting the tea estate and also the drainage channel. It is sen that the High Court has proceeded on that premise and it is not a case of the parties that on account of the acquisition of the land, the tea estate is exposed to the public and the public have access into the tea estate only the railway tracks would

pass through the estate and, therefore, setting up of the fencing or of the drainage to protect the tea estate may not be necessary. We need not go into that question since the State has not come in appeal. Suffice it to state that the High Court having found that the appellant was required to set up a fencing and the drainage channel, and amount of Rs.2,36,000/- as estimated, would be sufficient to meet the expenditure. It being an estimate made by the appellant, we do not find any error of law warranting interference.

It is then contended that by operation of the proviso to section 28 of the Act, the claimants would be entitled to interest for one year from the date of taking possession @ 9% per annum and for the balance period @ 15% per annum on the enhanced compensation. We find force in the contention.

It is sought to be contended for respondents that the reference Court and the High Court have proceeded on the principle that the Court has discretion to award interest @ 15% or less and on facts, the Court found that 9% would be reasonable rate of interest. We find that the approach adopted by the reference Court and High Court is not correct since the statute has given measure of amassment of interest for the first year @ 9% from the date of taking possession and on expiry thereof @ 15% till date of deposit into Court on the enhanced compensation. It is a legislative principle that the claimant would be entitled to the rate of interest for the said period.

Under these circumstances, though the word 'may' has been used in proviso to Section 28 of the Act, it has to construed as 'shall' and, therefore, the claimants would be entitled to interest at the rate of 9% on enhanced compensation for one year and thereafter @ 15% till date of deposit in the Court.

The appeals are accordingly allowed only to this extent. But, in the circumstances, without costs.