CASE NO.:
Appeal (civil) 1401 of 2007

PETITIONER:
Numaligarh Refinery Ltd

RESPONDENT:
Green View Tea & Industries & Anr

DATE OF JUDGMENT: 15/03/2007

BENCH:
B.P. SINGH & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

(Arising out of SLP) No.15810 of 2005)
WITH
CIVIL APPEAL NO 1402 2007
(Arising out of SLP) No.7182 of 2005)
M/s Green View Tea & Industries \005.Appellant
Versus
Collector, Golaghat & Anr. \005Respondents

B.P. SINGH, J.

These special leave petitions have been preferred against the judgment and order of the High Court of Assam at Gauhati dated December 21, 2004 in Review Application No.54 of 1998. Special Leave Petition No.7182 of 2005 has been preferred by M/s. Green View Tea and Industries Ltd. whose lands measuring about 681 bighas, 1 katha with tea bushes, drainage system, garden roads, shade trees and other valuable trees were notified for acquisition under Section 4 of the Land Acquisition Act by Notification published in Assam Gazette on November 11, 1992. The petitioner in the aforesaid special leave petition has challenged the compensation awarded by the High Court for the lands in question.

Special Leave Petition No.15810 of 2005 has been preferred by M/s. Numaligarh Refinery Ltd. for whose benefit the acquisition has been made, and is directed against the award of compensation for the tea bushes at the rate of Rs.75/- each.

Special Leave granted in both these petitions.

This litigation has a long chequered career. The Notification issued under Section 4 of the Land Acquisition Act was followed by a declaration made under Section 6 of the Act. Possession of the lands in question had been taken invoking the urgency provisions. The Collector by his award of July 4, 1994 awarded compensation for the lands @ Rs.7,000/- per bigha and compensation for the tea bushes @ Rs.15 per tea bush. Dissatisfied with the award of the Collector M/s. Green View Tea and Industries Ltd. (hereinafter referred to as the "appellant") sought a reference under Section 18 of the Act which was made to the District Judge, Golaghat and was registered as L.A. Case No.1 of 1996. By his judgment and order dated November 18, 1996 the learned District Judge awarded compensation @ Rs.22,000/- per bigha for the lands and @ Rs.75/- each for tea bush.

The appellants preferred First Appeal No.27 of 1997 against the award of the learned District Judge contending that the compensation

granted for the lands was inadequate. The Numaligarh Refinery Ltd. (hereinafter referred to as the "respondent") as well as the Collector filed appeals before the High Court being First Appeal No.32 of 1997 and First Appeal No.33 of 1997 respectively. By judgment and order dated June 24, 1998, the High Court dismissed First Appeal No.27 of 1997 preferred by the appellant while allowing the appeals preferred by the respondent and the Collector. The High Court restored the award of the Collector granting compensation @ Rs.7,000/- per bigha and Rs.15 per tea bush.

The appellant filed a Review Application No.54 of 1998 praying for the review of the judgment and order of June 24, 1998 dismissing its appeal. The petitioners also filed Special Leave Petitions before this Court against the judgment and order of the High Court aforesaid, but on March 8, 1999 withdrew the Special Leave Petitions in view of the pendency of the review petition before the High Court. Ultimately, the High Court by its order dated August 25, 1999 dismissed the review petition.

The appellant then filed Special Leave Petition Nos.18180-18182 of 1999 against the judgment and order of the High Court dated June 24, 1998 dismissing the First Appeal preferred by the appellant. On November 22, 1999 the appellant also filed a special leave petition before this Court being Special Leave Petition No.5417 of 2000 impugning the order of the High Court dated August 25, 1999 dismissing the review petition.

This Court by its order of December 1, 1999 dismissed the special leave petitions preferred by the appellant. Aggrieved thereby the appellant filed Review Petition Nos.306-308 of 2000 in which this Court issued notice on March 8, 2000. The special leave petitions preferred against the order of the High Court dismissing the review petition and the review petitions filed by the appellant against the order of dismissal of its special leave petitions were heard together. By its judgment dated November 9, 2001 this Court dismissed the Review Petition Nos.306-308 of 2000 but granted leave in Special Leave Petition No.5417 of 2000 against the order of the High Court rejecting the review petition of the appellant. This gave rise to Civil Appeal No.7692 of 2001.

The appeal of the appellant, namely, Civil Appeal No.7692 of 2001 was allowed by this Court setting aside the order of the High Court and the matter was remitted to the High Court to be heard and disposed of in accordance with law. The judgment of this Court in the aforesaid appeal is reported in 2004, Vol.4 SCC 122. It would be necessary at the appropriate stage to notice the observations made by this Court in its aforesaid judgment.

To complete the narrative, in the light of judgment and order of this Court the High Court considered the review application filed before it by the appellant and by its judgment and order of November 21, 2004 partly allowed the review application in as much as it increased the compensation awarded for the lands from Rs.7,000/- per bigha to Rs.10876/- per bigha and awarded the compensation of Rs.75 for each tea bush. This order of the High Court partly allowing the review application is challenged before us in these two appeals.

Before adverting to the facts of the case and the evidence produced by the parties in support of their respective claims, it may be useful to broadly indicate even at this stage the thrust of the argument of counsel for the appellant that the State having itself granted compensation @ Rs.55,000/- per bigha, which was also at one stage offered to the appellant \026 company, and in the light of several awards made, there was no justification for granting to the appellant \026 company compensation for the lands at a rate less than Rs.55,000/-

per bigha. Reliance was also placed on the observations of this Court to the effect that these were relevant matters to be considered while awarding compensation in the instant case.

The appellant has relied upon the offer made by the State as contained in its approval dated September 10, 1992. It has further relied on the approval of rates for tea lands in the districts of Tinsukia and Dibrugarh, apart from estimates prepared for some other lands which were sought to be acquired for Oil and Natural Gas Commission. The appellant has also relied on awards made in respect of tea lands in the district of Sibsagar Exhibits \026 8 and 9. The appellant has relied on the sale deeds Exhibits 3,4 and 5 and submitted that the compensation awarded by the High Court is wholly unjustified and grossly inadequate.

There is no dispute that in the Jamabandi the lands have been classified as tea class. The lands fall within the district of Golaghat which earlier formed part of the district of Sibasagar.

It was strenuously urged before us that the offer made by the State itself was a very important piece of evidence to be considered, and this aspect of the matter was emphasized by this Court while remanding the matter to the High Court on an earlier occasion. Our notice has been drawn to the letter of the Deputy Commissioner, Golaghat addressed to the Commissioner and Secretary to the Government of Assam, Department of Revenue dated August 20, 1992. In the said letter the Deputy Commissioner has referred to lands measuring 751.30 acres which was proposed to be acquired for the respondent to set up its refinery. The Deputy Commissioner proposed for approval of a uniform bigha rate @ Rs.55,000/- per bigha irrespective of class for both Government and patta lands. Reference is made to the lands acquired for ONGC in the District of Sibsagar for which uniform bigha rate of Rs.55,000/- was fixed and which had been duly approved by the Government.

The Additional Secretary, Department of Revenue wrote to the Deputy Commissioner, Golaghat by his letter dated September 10, 1992 that the Government had approved the proposal for fixation of uniform rate of Rs.55,000/- per bigha for both Government and patta lands proposed to be transferred/acquired for the respondent. It would thus appear that the proposal made by the Deputy Commissioner, Golaghat was accepted by the Government and it is further reinforced by Annexure P-6 which is the "Minutes of the Meeting" held in the Chief Minister’s Chamber on 25.2.93. The said Meeting was attended by the Minister of Revenue, Member - State Planning Board, the Chief Secretary of the State, the Commissioner and Secretary \026 Industries etc. on behalf of the Government and the Chairman and Managing Directors of IBP and other officers on behalf of the respondent. The issue relating to fixation of compensation for the land to be acquired for the refinery of the respondent was discussed and the following decision was taken:-

"1. For Patta land compensation for per bighas should not exceed Rs.55,000/- per bigha all inclusive.

For this purpose additional Secretary, Revenue and Joint Secretary, Industries have been authorized to make a filed visit and discuss the matter with the Deputy Commissioner, Golaghat so that there is no problem in taking over this land and handing it over to IBP for construction of the Refinery.

If this team arrives at a final decision to pay Rs.55,000/- per bigha then the Deputy Commissioner will complete formal proceeding and compensation

will be paid through the deputy commissioner.

In case the negotiations cannot be arrived as Rs.55,000/- per bigha all inclusive then the land acquisition proceeding would continue".

However, for the Government land premium @ Rs.35,000/- per bigha was fixed.

It appears that the offer made by the State Government was not acceptable to the appellant and, therefore, the matter had to be re-considered by the Government since it was not possible to acquire the land on the basis of agreed compensation. Thus, the Revenue Secretary by his letter of April 2, 1993 wrote to the Deputy Commissioner and Collector, Golaghat informing him that since land acquisition proceedings under the provisions of the Land Acquisition Act have been taken up by the Collector, Golaghat for acquisition of the lands in question, the valuation of the land should be fixed at market value of the land on the date of publication of Notification under Section 4 (1) of the Act and other relevant factors as per prescribed provisions of the Act. It was clarified that since the valuation of the land at Rs.55,000/- per bigha was not determined as per the provisions of the Land Acquisition Act, the decision of the Government as contained in its letter dated September 10, 1992 forwarded by message dated September 21, 1992 was cancelled. Apparently, since Notification under Section 4 of the Act was issued on November 11, 1992 and the matter had to be considered in the light of the provisions of the Act, the Government cancelled its earlier offer in view of the proceedings taken under the Act to determine the market value.

The second set of documents on which reliance was placed by the appellant are the orders of the Deputy Commissioner, Dibrugarh issued in June, 1992 wherein it was stated that the valuation (categorywise) have been fixed for the lands which were acquired/ taken over by Oil India Ltd. in the year prior to 1990 and which remained pending for payment. The order stated that the fixation of value of lands had been arrived at after considering the market price of land prior to 1990 alongwith interest payable on them. Hence it was ordered that the rates fixed in the aforesaid order shall be applicable to pending cases of the period prior to the year 1990. The land value of "Rural Area viz Paddy Field and Tea Cultivation Area" was fixed at Rs.60,000/- per bigha and the rate fixed for "Land unfit for cultivation viz rocky areas, sandy areas, Jaldube areas etc." was fixed at Rs.40,000/- per bigha. A similar order was passed by the Deputy Commissioner, Tinsukia district on August 4, 1992 which also related to lands acquired/ taken over by Oil India Ltd. during the period prior to June 26, 1990. The same rates were fixed for tea cultivation area and land unfit for cultivation.

These two orders do establish that the rate for tea lands was determined in respect of lands acquired prior to year 1990, at the rate of Rs.60,000/- per bigha. This, however, included the element of interest payable to the claimants as also inclusive of all concessions. Therefore, from the decision of the Government communicated by letter dated September 10, 1992 in respect of the lands in question as also the two orders issued by the Deputy Commissioners of Tinsukia and Dibrugarh it is clear that the price was "all inclusive" meaning thereby that nothing beyond the amount mentioned therein would be payable to the land owners. This was apparently so because the price was being fixed by agreement and not after following the procedure prescribed under the Land Acquisition Act. The State therefore did not incur the statutory liability to pay solatium, interest etc. apart from the price determined in accordance with the rates mentioned therein.

The next set of documents on which reliance was placed by the appellant are the two estimates of the probable cost of acquisition of land under the Land Acquisition Act. Exhibit - 6 related to the district of Sibsagar and is dated April 23, 1992 and Exhibit - 7 which also relates to district Sibasagar is dated May 25, 1992. In both cases probable rate was shown to be Rs.55,000/- per bigha.

The appellant also relied on two awards made by the Collector under the Act relating to lands acquired in the district of Sibasagar. These awards are dated August 12, 1995 and December 13, 1995 and relate to acquisitions made under Notifications issued under Section 4 of the Land Acquisition Act on May 23, 1994 and May 24, 1994. Having regard to the amount awarded the rate would work out to approximately Rs.55,000/- per bigha. Counsel for the appellant emphasized that the new district of Golaghat where the lands in question are situated formed part of the district of Sibsagar before the new district of Golaghat was carved out. The appellant also relied on three sale deeds Exhibits 3, 4 and 5 to prove that the rate at which lands were sold between February 12, 1985 and May 12, 1992 varied from Rs.40,000/- to Rs.50,000/- per bigha.

Relying on all these documents the appellant contended that the compensation awarded by the High Court @ Rs.10,876/- per bigha was grossly inadequate. The Collector ought to have awarded compensation at least @ Rs.55,000/- per bigha if not more. There was no reason why the documentary evidence on record should not be relied upon particularly when they related to offer made by the State Government. Those documents disclosed that the rate was about Rs.55,000/- per bigha as evidenced by awards made by the Collector and estimates prepared by the Department of the State Government. It was further submitted that of the three sale deeds produced before the Court the highest rate should have been accepted which was Rs.50,000/- evidenced by sale deed dated February 12, 1985. It was submitted that even if some deduction was allowed on account of plot being small, the increase in value of land over 7 years had also to be taken note of.

Learned counsel appearing on behalf of the respondent submitted that the earlier offer made by the State Government for the lands in question @ Rs.55,000/- was cancelled since the appellant did not accept the same and it became necessary to resort to the process of acquisition under the Land Acquisition Act. Learned counsel sought to justify the rate of Rs.10,876/- per bigha. He has referred to Exhibit - 3 which is the calculation on the basis of which the rate of Rs.10,876/- per bigha was worked out. The chart discloses that the sale deeds in respect of 5 plots of land were taken into consideration. These sale deeds related to the period 1988 to 1992 and the average price worked out to Rs.10,876/-. It was not disputed before us that one of the plots sold was homestead land while the others have been described as "faringati" lands which we are told are lands which are not suitable for cultivation. Be that as it may, what is obvious is the fact that the lands referred to therein are not of the same category as lands with which we are concerned in these appeals namely, tea class lands. Moreover, the government itself did not agree with this valuation as is evident from the letter of the Revenue Department dated July 22, 1993 in which it was pointed out that the inclusion of homestead land (Bari Class) enhanced the average price of the lands which was not acceptable to the Government. Necessary instructions were issued to keep this in mind while preparing the estimates.

The High Court in substance has restored the value of lands as worked out in the aforesaid chart prepared in the office of the Deputy Commissioner and Collector, Golaghat.

It was contended that the three sale deeds on which the

appellant relied related to small plots by the side of the road and, therefore, the plots were not comparable with the lands subject matter of the acquisition. In fact the best evidence was the purchase of the lands in question by the appellant itself in the year 1987. It was sought to be urged before us that by registered sale deed of September 7, 1987 the appellant had purchased the partnership firm together with other lands movable and immovable properties including all rights and interests from the partnership firm which earlier managed the Tea Estate. Under the said deed only a sum of Rs. 2,45,424/- was paid for purchase of the entire Estate by the partnership firm. This document was never produced before the Reference Court and, therefore, the appellant strongly objected to this document being looked at by the Court. Apart from the fact that this document was never produced before the Reference Court, there is another objection to the taking into account the price paid by the appellant for the purchase of the partnership firm which earlier managed the tea company. Since, the entire partnership firm was taken over with its assets and liabilities, the price paid did not represent merely the price of the lands but also the other assets as diminished by the liabilities. Learned counsel for the respondent submitted that the value of the lands could be worked out by taking into account the total assets as well as total liabilities of the firm. We are afraid such a procedure cannot be permitted for land acquisition cases. If the price paid did not represent the price of the lands purchased, it cannot be taken as evidence of the value of the land.

Referring to the rates fixed for acquisition/taking over of lands in the districts of Dibrugarh and Tinsukia it was submitted that there was no evidence with regard to the location of these lands and also with regard to other parameters that were relevant. Dibrugarh and Tinsukia were more developed than the district of Golaghat. It was, therefore, submitted that the orders relied upon were not of any help to the appellant. Lastly, it was submitted that the awards made by the Collector under the Land Acquisition Act relied upon by the appellant related to the district of Sibasagar and not the district of Golaghat.

Learned counsel for the respondent has also cited several decisions of this Court before us but we do not consider it necessary to refer to them since they all reiterate the principles fairly well established over the years laying down norms for assessing the market value of the lands acquired.

Before considering the submissions urged before us it is useful to notice the observations of this Court while remanding the matter to the High Court for re-consideration of the Review Petition. This Court observed:-

"This first thing that strikes us is that when the proposal of acquisition of land was mooted, the Deputy Commissioner himself was of the view that the compensation payable should be at the rate of Rs.55,000/- per bigha. The State Government considered this and then agreed to the same. Ultimately, this compensation would have to be paid by the beneficiary of the land acquisition namely the oil refinery.

Secondly, the appellant had placed on record the awards made in the case of other similarly situated tea estates nearby showing that in each of these cases, the Government had directed compensation at the rate of Rs.55,000/- per bigha.

Thirdly, an order of the State Government issued by the Collector and Deputy Commissioner,

Tinsukia dated 4th August 1992 and an order of the District Collector and Deputy Commissioner Dibrugarh were placed on record, which indicate land value of different categories. They are as under:-

| | | |
|---|---|---|
| 1. | Highly developed commercial places within notified area | Rs.2,00,000/- per bigha |
| 2. | Urban area (the recognized towns within notified area) | Rs.1,20,000/- per bigha |
| 3. | Semi-urban area (the area beyond the notified area but within two miles radius of the town either revenue or municipal town) | Rs.1,20,000/-per bigha |
| 4. | Rural area viz. paddy field and tea cultivation area | Rs.60,000/- per bigha |
| 5. | Land unfit for cultivation viz. rocky areas, sandy areas, jaldube areas etc. | Rs.40,000/- per bigha |

Thus, it would be seen that, even according to the State Government, if the land was unfit for cultivation and comprised only rocky areas, sandy areas or jaldube areas, the amount of compensation payable was at the rate of Rs.40,000/- per bigha. As against this the Collector was directed to fix the compensation at the rate of Rs.7,000/- per bigha and the District judge enhanced it to Rs.22,000/- per bigha. Surely, the tea estate land was much more valuable than "land unfit for cultivation". It is nobody's case that the tea estate's land was uncultivated or that there was no tea bushes growing thereupon.

Fourthly, the oral evidence on record showed that, at all stages, the Government was prepared to pay Rs.55,000/- per bigha and it was only the appellant who had taken a rigid stand demanding a higher price.

Fifthly, Exhibits 6, 7 & 8 placed on record prima facie seem to be similar cases of acquisition of land in Sibsagar District, wherein for arable land the estimate of compensation payable made, by the Government itself was Rs.55,000/- per bigha. Exhibit 8 was the case of acquisition of tea class land, which also showed the compensation payable at the same rate as the Government had initially agreed to pay.

Sixthly, even if the High Court disagreed with the valuation of tea bushes made by the District Judge, being the Court of first Appeal, it would have had to itself fix the compensation for the tea bushes. This, the High Court failed to do. All this on record appears to have escaped the notice of the High Court".

Having considered all aspects of the matter we have reached the conclusion that the compensation awarded by the High Court is inadequate and requires modification. In the first instance, the government itself suggested that the appellant may be compensated by working out the compensation @ Rs.55,000/- per bigha. The proposal

made by the Deputy Commissioner in respect of the lands in question was acceptable to the government. Unfortunately, the appellant did not agree to accept the offer made by the State Government and, therefore, it became necessary to resort to acquisition proceedings under the Land Acquisition Act. This appears to us to be a very important piece of evidence, and the mere fact that the Government later cancelled its decision because the appellant did not agree to the rates suggested, will not make much of a difference. The documents do establish that the government itself was willing to pay compensation for the lands @ Rs.55,000/- per bigha, but the appellant thought that the rate offered was inadequate.

The decision of the government to offer compensation @ Rs.55,000/- per bigha is not an isolated instance because in other districts as well a similar rate was offered. At least two such orders were produced before us which related to the districts of Dibrugarh and Tinsukia. An all inclusive price of Rs.60,000/- per bigha was offered for tea class lands. The amount offered included the element of interest as well, and related to an earlier period namely the period before the year 1990 since the acquisitions/ take over in those cases related to the period prior to 1990. This certainly gives a clear picture as to the value of tea class lands in different districts of the State. The submission urged before us that the proximity of the lands in question was an important consideration cannot be over-looked. It is true that if there was evidence to prove that tea class lands were sold in the vicinity of the lands in question at a particular rate, the Court could not have ignored such sale transaction and the price paid. However, in the instant case, we are concerned with a tea garden. It was not disputed before us that such tea gardens are to be found in many districts of the State of Assam. Having regard to the fact that in the districts of Dibrugarh and Tinsukia compensation at the same rate was awarded, it appears that the value of tea class lands did not vary much on account of their location in different districts. The two instances relied upon by the appellant provides evidence to the effect that tea class lands in different districts, in the absence of special features, had the same value. These rates were fixed in the year 1992, only a few months before Notification under Section 4 of the Land Acquisition Act was issued in respect of the lands in question. The High Court rejected these valuations observing:-

"The price offered for lands in other districts may be a good piece of evidence, but the districts referred to i.e. namely \026 Sibasagar 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".

We do not approve the approach of the High Court.

The two estimates prepared by the Collector of Sibasagar dated April 23, 1992 and May 25, 1992 also give some indication as to the value of tea class lands and it is not a mere co-incidence that in those estimates as well the cost of acquisition worked out was @ of Rs.55,000/- per bigha. Similar is the case with the two awards made in respect of tea class lands acquired in the district of Sibasagar where also the rates worked out to about Rs.55,000/- per bigha. Notification in respect of both these acquisitions was issued in May 1994, while Notification under Section 4 of the Act was issued on November 11, 1992 in the instant case. However, viewed from a realistic angle, it would appear that the compensation awarded under the two awards

would work out to much more that the "all inclusive offer" of Rs.55,000/- per bigha, because the claimants in those cases will also be entitled to solatium and interest etc. which itself would considerably increase the total compensation payable to the claimants.

So far as the sale deeds are concerned. They no doubt relate to small plots but the best price offered was one under sale deed dated February 12, 1985 which was @ Rs.50,000/- per bigha. Even if we reduce the value by about 30% on account of smallness of the plots but enhanced the price @ 10% per year since the sale deed related to a period approximately 7 years earlier, it would again work out to a figure not less than Rs.55,000/- per bigha.

The High Court has determined the rate of compensation basing itself on a proposal made by the Deputy Commissioner which was not even accepted by the Government. Moreover, the sale instances taken into account did not relate to tea class lands but related to "firangati" lands which fall under a lower category.

The question then is as to what should be the rate at which compensation should be awarded for the lands in question. In doing so, we must bear in mind the fact that the offer made by the Government was an all inclusive offer of Rs.55,000/- per bigha. If the appellant had accepted the offer, it would not have been necessary for the State to initiate a proceeding for acquisition under the Land Acquisition Act and, thereafter, to contest the protracted litigation. The State would not have been liable to pay solatium, interest etc. The grant of compensation @ Rs.55,000/- per bigha under the Land Acquisition Act is, therefore, not justified. It has been often said that fixation of compensation under the Land Acquisition Act involves an element of rational guess work. We are of the view that having regard to the evidence on record compensation worked out @ Rs.35,000/- per bigha for the lands would be fair and adequate because the appellant would also be entitled to statutory benefits such as solatium and interest thereon. We accordingly hold that the appellant is entitled to compensation for the lands @ Rs.35,000/- per bigha apart from all statutory benefits to which it may be entitled by way of solatium, interest etc.

The next question is as to what compensation should be awarded for the tea bushes standing on the acquired lands. The Collector had offered compensation @ Rs.15/- per tea bush which had been enhanced to Rs.75/- per tea bush by the Reference Court. In the earlier round of litigation the High Court reduced it to Rs.15/- per tea bush but after remand the High Court has approved the rate of Rs.75/- per tea bush.

According to the respondent and the Collector compensation for tea bushes should be fixed on the basis of Krishnamurthy formula which was formulated in the year 1972 by Shri Krishnamurthy, the then Secretary, Department of Revenue. On the other hand, counsel for the appellant submitted that the aforesaid Krishnamurthy formula was considered in an award given by a former Chief Justice of the Assam High Court which award was approved by the High Court. The learned Arbitrator noticed the Krishnamurthy formula but in the circumstances found that the compensation needed to be enhanced considerably.

As noticed by the High Court, the Krishnamurthy formula laid down two governing factors for determining compensation for tea bushes namely; (1) cost of fresh plantation not exceeding Rs.45,000/- per hector (2) annual net profit from tea bushes per hector Rs.10,000/- . The same formula was commended for our acceptance. On the other hand, the High Court by its impugned judgment and order has fixed the rate of Rs.75/- per tea bush on the basis of the award of

Justice S.K. Dutta which was approved by a Division Bench of the Assam High Court.

Counsel for the respondents submitted that even if the formula adopted by the Arbitrator is accepted and the compensation calculated thereon, the compensation will not be Rs.75/- per tea bush but only Rs.37.50 per tea bush.

There is substance in the submission of learned counsel for the respondent and the Collector. The dispute referred to the learned Arbitrator in the case of Lakwah Tea Company Ltd. related to damage done to the tea garden of Lakwah Tea Company Ltd. on account of crude oil and sludge entering the garden damaging the tea bushes as well as the nursery. The damage was mainly on account of crude oil getting mixed up with flood water. It was in a dispute of such nature that an award was made by the Arbitrator. The learned Arbitrator noticed the Krishnamurthy formula and observed :-

"The instant case is different from cases in which the land with tea bushes is acquired. This is not a case of requisition. In this case the tea bushes will have to be replanted on the land which was affected by oil and from which the damaged bushes are uprooted".

The learned Arbitrator observed that in cases where land with bushes is acquired compensation for land is paid so that the person concerned can buy a similar land, and compensation for tea bushes is paid as cost of fresh plantation and for loss of crops. In that case the Arbitrator found that the tea bushes had to be uprooted and the land had to be prepared for cultivation by adopting the procedure for treatment of the land so as to rehabilitate the land. According to the evidence available in that case the rehabilitation of land could take about two years and if crude oil was deposited it would take longer time on account of the treatment process to be applied. In these circumstances, the learned Arbitrator concluded:-

"Hence replantation cost will be very high and the loss of crops will be much higher than in a case in which land with tea bushes is acquired. Thus the value of a tea bush in the instant case will be about double of the value of a tea bush in a case where the land is taken, I therefore fix Rs.75/- as the value of a tea bush in the instant case will be about double of the value of a tea bush in a case where the land is taken, I therefore fix Rs.75/- as the value of a tea bush in the instant case with observation that it is on the lowers".

It would thus be seen that the award of the Arbitrator fixing the rate of Rs.75/- per tea bush took into account the cost of re-habilitation of the land which was adversely affected by seepage of crude oil and which therefore required treatment. The learned Arbitrator himself assessed, in view of the degradation which the land had suffered and the treatment required that the rate per bush would come to Rs.75/- each which was double the value of a tea bush in a case where the land was acquired. Thus 50 per cent of the compensation awarded represented the cost of treating the land which had been adversely affected by seepage of crude oil and suffered degradation.

We are therefore satisfied that even if the formula adopted by the Arbitrator is accepted, compensation must be awarded for the tea bushes only @ Rs.37.50 per tea bush, which is 50 per cent of the compensation awarded by the Arbitrator, since the instant case is a

case of acquisition and does not involve incurring of any expenditure on treatment of the lands in question. We, therefore, accept the submission urged on behalf of the respondent and the Collector that the compensation for tea bushes @ Rs.75/- each is excessive and ought to be reduced to Rs.37.50 for each tea bush. We order accordingly.

In the result Appeal arising out of the Special Leave Petition ) No.7182 of 2005 is partly allowed and the compensation for the land acquired is determined at the rate of Rs.35,000/- per bigha instead of Rs.10,876/- per bigha as awarded by the High Court. Appeal arising out of the Special Leave Petition ) No.15810 of 2005 is also partly allowed in as much as the compensation for tea bushes is reduced from Rs.75/- to Rs.37.50 per tea bush. The Collector is directed to re-calculate the compensation payable to the claimant and pay the same together with such statutory benefits to which it may be entitled under the Act. The parties shall bear their own costs.