

1961

August 9.

PARESH CHANDRA CHATTERJEE

v.

THE STATE OF ASSAM AND ANOTHER

(P. B. GAJENDRAGADKAR, K. SUBBA RAO,
M. HIDAYATULLAH, J. C. SHAH and
RAGHUBAR DAYAL JJ.)

Requisition of Land—Tea Estate land requisitioned—State Legislation—Constitutionality of—If makes provisions for payment of compensation—Assam Land (Requisition and Acquisition) Act, 1948 (Assam 25 of 1948) ss. 3,6,7,8—Tea Act, 1953(29 of 1953) ss. 2,10,15—Constitution of India, Arts. 31 (2), 372, Sch. VII, List I, Entry 52—Land Acquisition Act, 1894 (1 of 1894), ss. 23, 24, 25.

Certain lands out of the petitioner's tea estate were requisitioned by the State under the Assam Land (Requisition and Acquisition) Act, 1948. The petitioner challenged the constitutionality of the Act on the grounds that it was *ultra vires* the State Legislature in so far as it provided for the requisition and acquisition of tea estates as tea industry was a matter for exclusive legislation by Parliament and that it offended Art.31(2) of the Constitution as it neither provided for payment of compensation for property requisitioned nor specified the principles and the manner in which compensation was to be determined.

Held, that the Act was not *ultra vires* the Assam Legislature and was valid. The Act was valid when it was made in 1948 and, would by reason of Art. 372 of the Constitution, continue in force after the commencement of the Constitution until altered, repealed or amended by a competent legislature. The Act in essence provided only for requisition or acquisition of lands in the public interest; it had nothing to do with the tea industry. The Tea Act, 1953, made by Parliament, which was mainly concerned with the development of the tea industry and had nothing to do with the requisition and acquisition of land, did not in any way alter, repeal or amend the Assam Act. Further, the Assam Act did not offend Art. 31 (2) of the Constitution. There were provisions in the Act for the payment of agreed compensation and in case of disagreement for a reference to the court, in which reference the provisions of the Land Acquisition Act, 1894, would *mutatis mutandis* apply. Though the Land Acquisition Act, 1894, did not provide for requisition of land its provisions relating to payment of compensation for acquisition of land could be applied to requisition of land after due alterations.

ORIGINAL JURISDICTION : Petitions Nos. 236 and 237 of 1960. Petitions Under Art. 32 of the Constitution of India for enforcement of fundamental rights.

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K. B. Bagchi and *R. C. Dutta*, for petitioner.

A. V. Viswanatha Sastri and *Naunit Lal*, for respondents.

1961. August 9. The Judgment of the Court was delivered by

SUBBA RAO, J.—The Petitioner owns a tea estate called the Urrunabund Tea Estate in village Udarbund in the District of Cachar in the State of Assam. The extent of the Tea Estate is about 2682 acres. Out of the said area, 553.73 acres are under tea cultivation and the rest, according to the Petitioner, is utilised for the purpose of tea industry and for purposes connected with the said industry. The respondents do not admit this fact and state in the counter-affidavit that the remaining area is lying fellow and unutilised. On December 4, 1959, the Deputy Commissioner of Cachar at Silchar, respondent No. 2 issued a notification requisitioning an area of 183 bighas of land of the said Tea Estates, and by another notification dated December, 5, 1959, he requisitioned another extent of 149 bighas 19 cottahs and 11 chattacks of land of the said Tea Estate. The petitioner filed two petitions in this Court under Art. 32 of the Constitution praying for the issue of writs of *mandamus* directing the respondents to forbear from giving effect to the said orders.

Subba Rao J.

Learned counsel appearing for the petitioner raised before us two contentions, namely, (i) tea industry is a matter for exclusive legislation by the Parliament under Entry 52, List I of the Seventh Schedule to the Constitution, and therefore, the Assam Land (Requisition and Acquisition) Act of 1948, (hereinafter called the Act), in so

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far as it provides for the requisition and acquisition of a tea estate or lands appertaining to it, is *ultra vires* the State Legislature; and (ii) the said Act is also constitutionally void as it offends Art. 31(2) of the constitution, inasmuch as it does not either provide for payment of compensation for the property requisitioned or specify the principles on which and the manner in which compensation is to be determined.

To appreciate the first contention, it is necessary to state some facts. The Assam Land (Requisition and Acquisition) Act, 1948, was passed by the Assam Legislature and it received the assent of the Governor on November 14, 1948. It is a pre-Constitution Act, presumably made under Entry 9, List II of the Seventh Schedule to the Government of India Act, 1935, which related to "compulsory acquisition of land". Entry 34, List I of the Seventh Schedule to the said Act was "development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest". It is not stated that there was any Federal law declaring that the development of tea industry was expedient in the public interest. Therefore, at the time when the Act was passed by the Assam Legislature, even on the assumption that the entry relating to development of industries would cover legislation to prevent acquisition and requisition of land forming part of a tea estate, there was no Federal law declaring that development of tea industry was expedient in the public interest, with the result the Act was constitutionally valid at the time it was made. If so, the said law, by reason of Art. 372 of the Constitution, would continue to be in force after the commencement of the Constitution until altered, repealed or amended by a competent Legislature or other competent authority. The Tea Act of 1953 was a Central Act which received the assent of the President on May 28, 1953. It was passed by

the Parliament in exercise of the power to make laws with respect to matters enumerated in Entry 52, List I of the Seventh Schedule to the Constitution. Entry 52 reads, "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Section 2 of the Tea Act in specific terms declares that it was expedient in the public interest that the Union should take under its control the tea industry. The question, therefore, is not whether at the time the Act was passed by the Legislature of the Province it had constitutional competence to make it—there cannot be any doubt about its competence at the time it was passed—but whether by reason of the passing of the Tea Act, the Act was either altered, repealed or amended within the meaning of Art. 372 of the Constitution. This leads us to the consideration of the scope of the both the Acts.

First taking the Act, the preamble shows that it was passed to provide for the requisition and speedy acquisition of premises and land for certain purposes. Section 3 confers on the Provincial Government a power to requisition any land for the purpose of maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation or drainage. Section 4 enables the Government to require the land so requisitioned. Section 6 provides for the release of the land from requisition. Sections 7 and 8 prescribe the mode of awarding compensation for requisition or acquisition of land, as the case may be. The Act in essence provides only for requisition or acquisition of lands in public interest. It has nothing to do with tea industry, and as for that matter any industry.

The Tea Act was enacted for a different purpose altogether. The long title given in the Act shows that it was enacted "to provide for the control by the Union of the tea industry, including

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the control, in pursuance of the International Agreement now in force, of the cultivation of tea in, and of the export of tea from, India and for that purpose to establish a Tea Board and levy a customs duty on tea exported from India". Chapter II provides for the establishment and constitution of the Tea Board and s. 10 therein describes its duties and functions; its functions are mainly intended to promote the development of the tea industry, to regulate the production and extent of cultivation of tea, to improve its quality and to regulate the internal and external trade in tea. Chapter III prescribes the method of control over the extension of tea cultivation and Ch. IV, the control over the export of tea and tea seeds. Chapter V deals with finance, accounts and audit. Chapter VI regulates the power of the Central Government to control price and distribution of tea or tea waste. Chapter VII provides for miscellaneous matters such as licensing of brokers, tea manufacturers etc., power of inspection and penalties for the commission of certain offences created by the Act. It is, therefore, manifest that the Tea Act mainly concerned with the development of the tea industry, and it has nothing to do with the requisition or acquisition of lands, though the said lands may form part of a tea estate or used for purposes incidental to the tea industry. Indeed, s.15(1)(b) of the Tea Act provides for the contingency of a part of a land on which tea is planted being compulsorily acquired under the provisions of the Land Acquisition Act, 1894 (Act I of 1894) or by any other law for the time being in force and no longer carries tea. In such an event, the said section authorises the owner of the tea estate in which such land is situate to apply to the Board for permission to plant tea on land not planted with tea. The Tea Act, therefore, not only does not expressly prohibit the acquisition of any land, but also in express terms provided for the replacement of the area acquired by other land for the purpose of tea plantation. Though the

Tea Act does not in terms visualize the contingency of requisition as distinguished from acquisition, we cannot come to a different conclusion in respect of it, for the word "acquisition" must have been used in a comprehensive sense so as to include requisition also. That apart, the provisions of the Act do not expressly or by necessary implication prohibit requisition of a land used directly or incidentally for the purpose of plantation of tea. The rules made under the Act only provide for the control of tea industry and they have no bearing on the question of requisition or acquisition of land. A comparative study of both the Acts makes it clear that the two Acts deal with different matters and were passed for different purposes. The Tea Act in no sense of the term can be described as one altering, repealing or amending the Act passed by the Assam Legislature. This contention is, therefore, rejected.

There are no merits in the second contention either. Article 31(2) of the Constitution reads :

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate."

Under this Article, the law made for acquiring or requisitioning a property is conditioned by two circumstances, namely, (i) the existence of a public purpose, and (ii) the payment of compensation. If the law provides for compensation and either fixes the amount of compensation or specifies the principles on which, and the manner in which,

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the compensation is to be determined, the adequacy of the compensation is not justiciable. The question is whether the Act satisfies the said conditions. The relevant provisions of the Act dealing with compensation in the case of requisition of land are as under.

Section 6. (i) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, it will revert to the owner and the Collector will deliver the possession of the land to such owner or interested person who was recognised under section 7(3).

Section 7. (3) Where any land is requisitioned under section 3, there shall be paid to every person interested such compensation as may be agreed upon in writing between such person and the Collector, in respect of:—

- (a) the requisition of such lands ; and
- (b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

Section 8. (1) The Collector shall in every case—

x x x x x x

(b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector and the person to whom possession of any land is delivered under section 6,

refer the matter to the decision of the Court.

(2) The provisions of the Land Acquisition Act, 1894, shall *mutatis mutandis* apply

in respect of any reference made to the Court under sub-section (1).

These provisions provide for the payment of agreed compensation, and, in the case of disagreement between the Collector and the person to whom possession of any land is delivered under s.6, for a reference to the Court. In respect of any such reference to the Court, the provisions of the land Acquisition Act, 1894, shall *mutatis mutandis* apply. The argument is that in the matter of requisition, the Land Acquisition Act, 1894, does not prescribe any principles for awarding compensation and, therefore, in respect of requisition, either sub-s. (2) of s.8 is not applicable or becomes otiose, with the result that the Act does not lay down any principles on which and manner in which the compensation is to be determined. This argument ignores the expression "*mutatis mutandis*" in sub-s.(2) of s.8. The said expression means "with due alteration of details". The Land Acquisition Act applies only to acquisition of land as distinguished from requisition of land. Acquisition deprives the owner permanently of his land; and requisition deprives him only of his right to present possession. When the necessity for which the land was requisitioned ceased, it may be made to revert to him. Sub-s.(2) of s. 8 of the Act makes the provisions of the Land Acquisition Act, 1894, with due alterations of details or appropriate changes, apply in respect of any reference made to the Court. Part III of the Land Acquisition Act provides for a reference to the Court and the procedure thereof. With appropriate modifications the provisions of that Chapter apply to a reference in respect of compensation for requisition. Sections 23, 24 and 25 lay down the principles for ascertaining the amount of compensation payable to a person whose land has been acquired. We do not see any difficulty in applying those principles for paying compensation in the

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matter of requisition of land. While in the case of land acquired, the market value of the land is ascertained, in the case of requisition of land, the compensation to the owner for depriving him of his possession for a stated period will be ascertained. It may be that appropriate changes in the phraseology used in the said provisions may have to be made to apply the principles underlying those provisions. To illustrate: s.23 of the Land Acquisition Act says :

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, 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;

fourthly, the damage if any sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses if any incidental to such change; and

sixthly, the damage if any *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Controller's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen *per centum* on such market value, in consideration of the compulsory nature of the acquisition.

If instead of the word "acquisition" the word "requisition" is read, and instead of the words "the market value of the land" the words "the market value of the interest in the land" of which the owner has been deprived are read, the two subsections of the section can, without any difficulty, be applied to the determination of compensation for requisition of a land. So too, the other section can be applied. If the argument of learned counsel for the petitioner be accepted, we would be attributing to the Legislature an incongruity, namely, that while it provides principles of compensation in the matter of acquisition, it omits to do so in the matter of requisition, though in both the cases a reference to the Court is provided. For the aforesaid reasons, we reject this contention.

No other point is raised. In the result, the petitions fail and are dismissed with costs.

Petitions dismissed.

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