

STATE OF ASSAM AND ORS.

v.

RAMESHWAR AGARWALA AND ORS.

January 6, 1971

[J. C. SHAH, C.J. AND K. S. HEGDE, J.]

A

Assam Land Revenue Regulations—Rule 40 framed thereunder—Determination by Government of premium payable upon settlement of land for “special cultivation”—If rate of premium must be fixed for locality or can be fixed for tea garden—If premium can be fixed according to commercial value.

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The first respondent applied to the Deputy Commissioner, Lakhimpur for settlement of a Tea Garden for “special cultivation of tea”. In March, 1964 the Government of Assam permitted the settlement on payment of Rs. 3.86 lakhs as premium. Upon the respondent failing to make payment of the amount, the State Government directed the auction of the tea garden. The first respondent thereafter moved a petition in the High Court for a declaration *inter alia* that the State Government had acted illegally in fixing the amount of premium. The High Court allowed the petition holding that the order fixing the premium was not in conformity with rule 40 framed under the Assam Land Revenue Regulations which required the State Government to fix the rate of premium for a particular locality; it did not empower the Government to fix the premium payable by an intending holder in a particular case. On appeal to this Court,

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HELD: The High Court was in error in setting aside the order passed by the Government of Assam and in declaring that the offer to settle the tea garden on payment of the amount specified Rs. 3,86,000 was not in conformity with rule 40.

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There was no warrant for the assumption made by the High Court that in settling the premium to be fixed in respect of its own property, the Government is bound to fix the premium generally in respect of a region. The Government is by the Act or the Rules not disqualified from fixing the premium to be paid in respect of an individual tea garden. In the absence of any indication to the contrary a tea garden may appropriately be regarded as a locality within the meaning of Rule 40. The rate of premium may be fixed by the State Government according to its commercial value.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 658 of 1967.

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Appeal from the judgment and order dated June 27, 1966 of the Assam and Nagaland High Court in Civil Rule No. 296 of 1964.

Naunit Lal, for the appellants.

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Sarjoo Prasad and *S. N. Prasad*, for the respondent.

A The Judgment of the Court was delivered by

Shah, C. J. On October 24, 1957 Rameshwar Agarwala— hereinafter called 'the respondent' applied to the Deputy Commissioner, Lakhimpur, for settlement of a tea garden for "special cultivation of tea". By order dated March 11, 1964 the Government of Assam permitted settlement of the tea garden for special tea cultivation on payment of Rs. 3,86,008/- as premium. The respondent failed to pay the amount demanded. The State of Assam then put up the tea garden for auction. The respondent moved a petition in the High Court of Assam for an order declaring that in fixing the amount of the premium at Rs. 3,86,008/- the State acted illegally, and that the order was void and unenforceable at law because in fixing the amount of the premium the State acted without jurisdiction and the order directing auction of the tea garden for not depositing the amount demanded was also illegal. The High Court upheld the contention and ordered the State of Assam not to give effect to the order dated March 31, 1964 calling upon the respondent to pay the amount due within two months of the order and the order dated November 26, 1964 directing that the tea garden be put up for auction. With certificate granted by the High Court, the State of Assam has appealed to this Court.

The tea garden belonged to the State of Assam. The Government of Assam in the absence of any binding statutory provision, could settle the tea garden on such commercial terms it could reasonably obtain. The respondent applied to the Deputy Commissioner for settlement of the tea garden and requesting the State Government for early fixation of the amount of premium. When the premium was fixed by the Government the respondent protested, contending that the action of the State was illegal. Before the High Court it was contended by the Respondent that the power of the State Government to fix the premium for which it could lease the tea garden was restricted by Rule 40 framed under the Assam Land Revenue Regulations. The Rule reads :

G "In addition to the land-revenue payable under rule 17 and value of the timber assessed under rule 37, an applicant to whom a lease for special cultivation is granted shall be liable to pay premium. The rate of premium shall be fixed by the State Government from time to time for each locality. * * * * "

H The reasons which persuaded the High to uphold the plea raised by the respondent may be set out in their own words :

"The only power which the Government has got, is to fix the rate of premium under Rule 40 of the Rules

under the Land Revenue Regulation and the question for us to consider is whether the order of the Government fixing the premium for settlement of this land for special cultivation is an order in conformity with Rule 40.

In our opinion, what Rule 40 provides is to confer upon the Government power to fix the rate of premium in every case which shall be payable for the settlement and it is only the Deputy Commissioner that is authorised to settle the land. The whole purpose of Rule 40 is to confer power on the Government to fix the rate of premium which will be valid for a particular locality and that the Deputy Commissioner has to make the settlement. He is given the power to realise the premium fixed by the Government from time to time and to see that no document of lease is issued before the premium has been paid by the intending holder. But Rule 40 does empower, in our opinion, the State Government to fix the amount of premium in the case of a particular settlement in a particular locality.

... The power under Rule 40 is a general power for fixing the rate of premium for a particular locality and the Legislature when framing the rules never intended that the Government should be empowered to fixing the total amount of premium payable by the intending holder. In our opinion, therefore, the order passed by the Government directing the authorities to offer the land for settlement in case the petitioners pay Rs. 3,86,000/- is not in conformity with Rule 40 and this order cannot be given effect to."

The expression "locality" is not defined in the Act or in the Rules. We see no warrant for the assumption made by the High Court that in settling the premium to be fixed in respect of its own property, the Government is bound to fix the premium generally in respect of a region. The Government is by the Act or the Rules not disqualified from fixing the premium to be paid in respect of an individual tea garden. In the absence of any indication to the contrary a tea garden may in our judgment be appropriately regarded as a locality within the meaning of Rule 40. The power to settle a tea garden on payment of land revenue, value of the timber and premium is to be exercised according to the Rules. The rate of premium may be fixed by the State Government according to its commercial value. In the absence of any restriction imposed upon the State Government requiring that a general rate shall be fixed covering a specified area larger

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A than a tea garden there is nothing which prohibits the State Government from fixing the rate of premium having regard to the commercial value of the tea garden. In the present case the Sub-Divisional Officer reported that the price of the land of the Dirpai tea garden be valued at Rs. 500/- per *bigha* and on that basis the State Government computed the premium to be paid in respect of the entire Jokai Tea Garden.

B Fixation of a rate of Rs. 500/- per *bigha* in respect of the entire area of the tea garden may be regarded as a premium fixed for the locality of the tea garden. The matter rested entirely in contract between the Respondent and the State Government. There was an offer by the respondent for settlement of the tea garden. He agreed to pay the land revenue payable under r. 17. He also agreed to pay the value of the timber assessed under r. 37. For settlement of the tea garden for special cultivation the respondent was also liable to pay premium. The quantum of liability to pay land revenue was governed by r. 17 and value of the timber was governed by r. 37. The liability to pay premium had to be fixed by the State Government. In the absence of any restriction placed by the Rules upon the power of the State Government, we do not think that the High Court had any jurisdiction to compel the State to enter into a contract to settle the tea garden upon the respondent on payment of premium after determining a general rate for a region larger than the tea garden.

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E The High Court was in error in setting aside the order passed by the Government of Assam and in declaring that the offer to settle the land of the Dirpai Tea Garden on payment of Rs. 3,86,008/- was not in conformity with r. 40. The High Court also erred in directing that auction of the land for non-payment of the premium shall be set aside.

F The appeal is allowed and the petition filed by the respondent will be dismissed. The respondent will pay the costs in this Court and in the High Court.

R.K.P.S.

Appeal allowed.