

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.401 OF 2004

M/S. Peerless Tea and Industry Ltd.,
240/B, A.J.C.Bose Road, Kolkata-20,
Represented by its Attorney, Sri Sujit Datta Choudhury,
Manager, Fatikcherra Tea Estate, P.O. Fatikcherra,
P.S. Sidhai, District- West Tripura
..... Petitioner

– Vs –

1.

The State of Tripura, Agartala,
(represented by the Chief Secretary to the
Government of Tripura, Agartala)
2.

The Secretary to the Government of Tripura,
Department of Industries and Commerce, Agartala
3.

The Managing Director,
Tripura Tea Development Corporation Ltd.,
having its registered office at
Ramnagar, Agartala, West Tripura.
.....Respondents

B E F O R E
THE HON’BLE MR. JUSTICE S. TALAPATRA

For the petitioner

:

Mr. N. Adhikari, Senior Advocate
Mr. S.B. Debnath, Advocate

For the respondents

:

Mr. A. Ghosh, Advocate

Date of hearing

:

08.04.2015

Date of judgment & order

:

08.05.2015

Whether fit for reporting

:

Yes	No
√	

JUDGMENT & ORDER

By means of this writ petition, the communication under No.F.II-1(18)/TEA/DI/2001/394-400 dated 01/06.01.2004, Annexure-C to the writ petition and Notification No.F.II-1(18)/Tea/DI/2001/17875-78 dated 23.12.2003, Annexure-D to the writ petition, whereby the Government has taken a decision that compensation will be computed on the basis of the net profit made by the Tea Company.

2. There is no dispute that the management of Fatikcherra Tea Estate of the petitioner was taken over by the Govt. of Tripura on 10.11.1986 and its management was handed over to the Tripura Tea Development Corporation Limited, the 'T.T.D.C' in short, in pursuance to the provision of Tripura Tea Company (Taking over of Management of Certain Tea Units) Act, 1986. Section 3 of the said Act 1986 provides as under :

Taking over of the management of the undertaking of the Tea Companies in relation to the Tea Units-

(1) On and from the appointed day the management of the under taking of the Tea Companies in relation to the Tea units only shall vest in the State Government for a period of five years:

Provided that the State Government may, from time to time, by notification in the official gazette extend the period, as may be specified in the notification, so, however, that the total period of such extension shall not exceed two years(after the expiry of five years as aforesaid) and wherein such notification is issued, a

copy thereof shall be laid as soon as may be, before the Legislative Assembly of Tripura.

(2) The undertaking of the Tea Companies in relation to the Tea Units shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, workshops, projects, stores, spares, instrument, machinery, equipments, automobiles and other vehicles, cash balance, reserve fund, investment and book debts and all other rights and interests arising out of such property as were, immediately before the appointed day, in the ownership, possession, power, or control of the concerned Company, and all books of accounts, registers and other documents of whatever nature relating thereto.

(3) If any building, workshop, store, machinery or other things of the Tea Unit, as specified in subsection(2), are situated on any land of the Tea Units which have been sold in auction for default in payment of land revenue, the right of user in such lands of all persons or body of persons accruing from such sale shall, unless otherwise decided by the State Government, remain suspended till the management in relation to the Tea Units remain vested with the State Government:

Provided that the State Government or the custodian shall pay to such person or body of persons and annual compensation of such amount as may be specified by the State Government for suspending the rights of user.

(4) Any contract, whether expressed or implied, or other arrangement, in so far as it relates to the management of the business and affairs of either of the Tea Companies in relation to the tea units only, and in force immediately before the appointed day, shall be deemed to have terminated on the appointed day.

(5) All persons in-charge of the management, including the persons holding office as Director, Manager or any other managerial personnel of either of the Tea Companies, in relation to the tea units, immediately before the appointed day shall be deemed to have vacated their respective offices in relation to such units only on the appointed day.

- (6) Notwithstanding anything contained in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provision contained in sub-section (4) or who ceases to hold any office by reason of the provision contained in sub-section (5), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.**
- (7) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law (other than this Act) for the time being in force, every Receiver or other person in whose possession or custody or under whose control any of the tea units or any part thereof may be immediately before the appointed day, shall, on the commencement of this Act deliver possession of the said tea units or such part thereof, as the case may be, to the custodian, where no custodian has been appointed, to such other person as the State Government may direct.**
- (8) For the removal of doubt, it is hereby declared that any liability incurred by either of the tea companies in relation to its tea units before the appointed day shall be enforceable against the concerned tea company and not against the State Government or the custodian.**

[Emphasis supplied]

3. The undertaking of the Tea Companies, in relation to the Tea Units, shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, workshops, projects, stores, spares, instrument, machinery, equipments, automobiles and other vehicles, cash balance, reserve fund, investment and book debts and all other rights and interests arising out of such property as were, immediately before the appointed day, in the ownership, possession,

power, or control of the concerned Company, and all books of accounts, registers and other documents of whatsoever nature relating thereto.

4. After taking over the management, the Tea units shall remain vested with the State Govt., but for that, the State Government or the custodian shall pay to such person or body of persons an annual compensation of such amount as may be specified by the State Government for suspending the rights of user.

5. The petitioner's grievance emanates from the impugned notifications. It would be apparent from the communication under No. TTDC/LA/1(2)/89/2678-79 dated 14.02.2001, Annexure A to the writ petition, that by the judgment and order dated 28.01.2000, the Gauhati High Court has directed the State Govt. to specify the rate payable every year to the petitioner under Section 5 of the said Act and to pay the amount so determined on the basis of such specified rate for the period from 13.11.1986 till such day when the management of Fatikcherra Tea Estate was with the State Govt. or its custodian, within six months from the date of the receipt of the certified copy of the order from the petitioner herein. On 26.08.2000, the certified copy was received by the Government and the Government was supposed to comply with the order by 25.02.2001. Accordingly, a committee was formed, which according to the respondents is based on "a broad-based representation, including an officer from Tea Board". The committee made recommendation that

"no amount" is payable by the State Government to the petitioner. On the contrary, the petitioner is required to pay an amount of ₹1,41,59,998 to the State Government in view of the substantial investment and expenditure incurred by the State Government in the Tea Estate. Thereafter, a demand was raised for payment of ₹1,41,59,998.

Section 5 of the said Act provides that :

Each of the Tea Company shall be given by the State Government and amount, in cash and at the rate to be specified by the State Government for vesting in it, under Section 3, of the management of the undertakings of each such company in relation to such tea units and the amount so specified shall be paid every year during which the management of the tea units remains vested in the State Government under this Act.

6. By the communication dated 01/06.01.2004, Annexure C to the writ petition, the petitioner was apprised alongside the other Tea Companies or bodies, vide the Notification dated 24/31.12.2003 that the State Government has laid down the basis for calculating the amount to be paid by the State Government to tea companies every year as per provision of Section 5 of the Act. It may be seen from the said notification that, one of the parameters required for calculation is as follows :

"The annual average of the Net Profits made by the Tea Company, in respect of the concerned tea unit, (the management of which has been taken over by the Govt. of Tripura), during 3 completed accounting years, prior to the date of take over, as reflected in the audited annual accounts of the Company, duly

adopted in the AGM of the Company and filed with the Registrar of Companies."

7. It has been communicated further that on such basis necessary calculations are only to be made to determine the amount to be paid to the Tea Companies. For that purpose the petitioner was asked to submit audited annual accounts of three accounted years prior to the date of taking over i.e. 10.11.1986. By the notification dated 5/24.12.2003, Annexure D to the writ petition, it has been provided as under :

**"No.F.II-1(18)/Tea/DI/2001/17875-78
Government of Tripura
Department of Industries & Commerce
Agartala-799001**

5/24 December2003

NOTIFICATION

The Government of Tripura had taken over management of certain tea units as per provisions of the Section 3 of the Tripura Tea Companies (Taking over of Management of Certain Tea Units) Act, 1986, with effect from 10 November 1986. Section 5 of this Act provides that " Each of the Tea Company shall be given by the State Government an amount, in cash and at the rate to be specified by the State Government, for vesting in it, under section 3, of the management of the undertakings of each such Company in relation to such tea units and the amount so specified shall be paid every year during which the management of tea unit remains vested in the State Government under this Act."

2. Accordingly, the State Govt., after taking into consideration all relevant aspects, including the profitability of the tea units, hereby specifies the rate at which the payment is to be made to the Tea Companies, as follows:

"The amount to be paid by the State Govt. to each of the Tea Companies, in respect of a particular year, shall be equal to:

- i) **The annual average of the Net Profits made by the Tea Company, in respect of the concerned tea unit (the management of which has been taken over by the Govt. of Tripura), during 3 completed accounting years, prior to the date of take over, as reflected in the audited annual accounts of the Company, duly adopted in the AGM of the Company and filed with the Registrar of Companies.**

Or

- ii) **Net profits made by the State Govt. or its custodian, from the management of the particular tea unit.**

whichever is higher.

Provided that if the figures arrive at in (i) & (ii) above happen to be negative or loss figures in respect of a particular year, a nominal compensation of Rupee 1(one) will be payable for that year, by the State Govt., to the Tea Company.

Provided further that where the period involved is less than a year, the calculations will be made on proportionate basis."

- 4. This notification will have retrospective effect from the date of taking over of the tea units by the State Govt. i.e. 10.11.1986.**

(L.K. Gupta)

Commissioner (I & C)"

8. It has to be observed that the said notification was unilaterally given retrospective operation with effect from 10.11.1986. The petitioner has challenged the validity of the said notification inasmuch as this notification is in conflict with the provisions of Sections 3 and 5 of the said Act and at no point of time the petitioner agreed to such stipulation as made in the notification dated 5/24.12.2003.

9. By filing the counter affidavit, the respondents have admitted that Section 5 of the Act provides that each of the Tea Company whose management has been taken over was supposed to be given an amount, in cash at the rate specified by the State Government for vesting of the management under Section 3 of the said Act.

10. By filing a supplementary affidavit, the respondent Nos.1 and 2, have stated that despite such communication, no representative of the petitioner appeared before the committee and thus in absence of such records, the Committee decided that it shall prepare the report holding that no amount has to be paid to the petitioner. On the contrary, the petitioner is required to pay an amount of ₹1,41,59,998. The report of the Committee was accepted by the State Government. The State has already filed a suit for realisation of ₹1,41,59,998, being M.S.No.27/2006 in the Court of the Civil Judge, Senior Division, Court No.1, West Tripura, Agartala. By the order dated 19.09.2009, the suit was decreed. Copy of the said judgment dated 19.09.2009 delivered in M.S. No.27/2006 has enclosed by the respondents.

11. Though the petitioner has filed rejoinder thereafter, they are completely silent on such order dated 19.09.2009, Annexure-A to the counter-affidavit filed on 07.05.2014. But it transpires that the said suit was filed during pendency of this writ petition. The petitioner did not file their written statement, even though adequate time was

given by the court. Thus, the suit proceeded ex parte against them and finally the suit was decreed ex parte on 19.09.2009.

12. In this writ petition, on 17.07.2014 an order was passed for releasing the amount on determination of the entitlement of the petitioner and to allow the petitioner to receive the amount without any prejudice to the contention as raised in this petition. In response to that order, as it appears, the following communication was made to the Manager of the petitioner under No.F.II.1(8)/Tea/D1/2014/11854-56 dated 12.08.2014 to the effect that in pursuance of the judgment and order dated 11.06.2014 delivered in W.P.(C)No.401 of 2004, a committee was constituted vide Memo No.II/8/Tea/DI/2014/9674-80, dated 04.07.14 to delineate the entitlements in terms of Section 3 and 5 Tripura Tea Companies(Taking over of Management of Certain Tea Units) Act,1986.

"The Committee has specified the amount to be paid to your company. Meanwhile, in pursuant to the judgment and order dated 17.07.2014 in W.P.(C)No.401 of 2004, the Hon'ble court has also ordered to release the amount within the specified period in favour of your company.

In view of the above, I would request you to collect the amount from the office of the undersigned within specific period i.e. 16.08.14."

13. It appears that in terms of the judgment and order dated 11.06.2014 passed in this writ petition, the Committee which was

constituted, has observed in their report, Annexure P/2 to the affidavit filed by the respondent No.1 and 2 on 21.08.2014, as under:

"As per the assessment made, no surplus was generated from Fatikcherra Tea Estate after making the deduction of the expenditure from the revenue receipt as evident from the evident report of the committee constituted vide Memo No.TTDC/LA/1(2)/89/5090-93 dated 5th /24th Dec 2003 would be applicable in case of Fatikcherra Tea Estate of M/s. Peerless Tea & Industry Ltd,, 240/B, AJC Bose Road, Kolkata-20.

The committee is of opinion that in terms of Section-3 & Section-5 of The Tripura Tea Companies (Taking Over of Management of Certain Tea Units) Act 1986, the petitioner is entitled to get an amount of Rupee.1.00 per year from November 1986 to September 1992 i.e. for 6(six) years. The amount in total is Rupees 6.00(six)."

Thus, the entitlements for the period when the management was vested with the State Govt. i.e. from November, 1986 to September 1992, i.e. for six years, a sum of ₹6.00 was determined as compensation in aggregate and in terms of that method the petitioner is entitled ₹1.00 per year, is not in tune with the provisions for compensation against the compulsory vesting.

14. With the said report, the calculation had also been supplied. The said report has been rejected by the petitioner by filing their affidavit on 16.09.2014. To facilitate a settlement, this court took certain steps and on 18.11.2014 on a consensus it has been observed and directed as under:-

"Having regard to unanimity as regards nomination of the agency for ascertaining the compensation and the amount that would be

entitled to the petitioner under Sections 3 and 5 of the Tripura Tea Companies (Taking Over of Management of Certain Tea Units) Act, 1986, 'S. Dey & Associates', having their address at 87, Rahan Complex, 2nd floor, near Sony Service Center, Rajgarh Road, Guwahati-781003, is engaged for ascertaining the compensation and the amount that would be entitled to the petitioner. However, 'S. Dey & Associates' shall furnish their report within 12.02.2015.

Both the petitioner and the respondents may file their respective claims and documents in support of such claim to 'S. Dey & Associates'. 'S. Dey & Associates' shall raise the reasonable Bill in respect of fee for the said job. The court will thereafter pass necessary order for reimbursement."

15. However, it would be reflected from the order dated 13.01.2015 that the chartered valuer, 'S. Dey & Associates', had expressed their inability to continue with the assignments. On 13.02.2015, the petitioner suggested the name of the Chartered valuer, namely SBA Associates. By the order dated 18.02.2015, the schedule of the fees is asked to be submitted before the court to take the final call. By the order dated 24.02.2015 and 07.04.2015 respectively, it has been observed that state was not taking interest in the matter. However, a last chance was given.

16. Accordingly, this matter has been taken up on 08.04.2015. But, Mr. Ghosh, learned counsel appearing for the respondents has stated that he has no instruction but he has produced the records as called for. Now, two questions arise for determination :

- (i) Whether by the communication under No.F.II-1(18)/TEA/DI/2001/394-400, dated 01/06.01/2004 and the notification under No.F.II-1(18)/Tea/DI/2001/17875-78, dated 5/24.12.2003, Annexure C & D respectively to the writ petition, the provisions of Section 3 and Section 5 of the Tripura Tea Company (Taking over of Management of Certain Tea Units) Act, 1986 can lawfully be truncated; and
- (ii) Whether on the face of the ex parte decree, the petitioner is entitled to get any amount for vesting of their Tea Estate in terms of the Section 3 and 5 of the said Act.

17. On reading Sections 3 and 5 of the, Tripura Tea Company (Taking over of Management of Certain Tea Units) Act, 1986, this court is of the view that the proviso below the Section 3(3) has unambiguously stipulated that the State Government or the custodian, the TTDC in this case, shall pay to such person or body of persons an "annual compensation" of such amount as may be specified by the State Government for suspending the rights of the user. Such amount is "annual compensation" for suspension of the rights of the user. Such compensation cannot be related to the profit and loss account during the period of vesting. Section 5, having referred to the provisions of Section 3, has again provided that each

of the Tea Company shall be given by the State Government an amount, in cash and at the rate to be specified by the State Government for vesting in it, under Section 3 of the management of the undertakings of each such Company in relation to such tea unit and the amount so specified shall be paid every year during which the management of tea unit remains vested in the State Government under this Act. There is no ambiguity that the compensation as stipulated in the proviso to Section 3(3) of the said Act has to be paid in cash every year during which the management of the tea unit is vested in the State Govt. under that Act. It is admitted that, the State Government has not paid any amount whatsoever.

18. Thus, the communication dated 01/06.01.2004, Annexure C to the writ petition, based on the Notification No.F.II-1(18)/Tea/DI/2001/17875-78 dated 5/24.12.2003, Annexure D to the writ petition, is wholly in conflict with the provisions of the said Act, particularly to the provision of Sections 3 and 5 of the said Act. No statutory provision can be made ineffective in any manner by any administrative notification or communication. Hence, the impugned communication and notification has been arbitrarily issued in colourable exercise of power and without authority. Hence, the communication dated 01/06.01.2004 under No.F.II-1(18)/TEA/DI/2001/394-400 and the notification dated 5/24.12.2003 under No.F.II-1(18)/Tea/DI/2001/17875-78, are hereby set aside. It is declared that in view of the proviso to Section 3(3) read with

Section 5 of the said Act, the petitioner-company is entitled to the compensation annually for the said period when the management of the Fatikcherra Tea Estate remained with the Government or under the control of the custodian as engaged by the Government.

19. It is admitted fact that no such compensation was ever assessed. And finally the way after the judgment and order dated 28.01.2000, an endeavour was made on the basis of the said notification dated 5/24.12.2003, Annexure-D to the writ petition, it saddled a reverse liability on the petitioner unilaterally and in complete derogation to the provisions of Sections 3 and 5 of the said Act. In the judgment and order dated 28.01.2000, delivered in Civil Rule 142 of 1986, it has been directed as under :

"We direct that within six months from the date of receipt of a certified copy of this order from the petitioners, the State Government will specify the rate payable every year to the petitioner No.1-M/s. Peerless Tea & Industry Ltd. under Section 5 of the impugned Act and pay the amount determined on the basis of such rate specified by the State Government to the afore said petitioner No.1-Company for the period from 13.11.1986 till the management of the Fatikcherra Tea Estate was with the State Government or its custodian under Section 3(1) of the impugned Ordinance and the impugned Act or the proviso thereto. We further direct that in case the amount is not paid within the said six months, the petitioner No.1 will be entitled to interest @ 18% per annum on the amount after the said six months. Liberty is given to the parties to apply to this court in case of any difficulty with regard to the determination of the said amount."

20. Later on, by the order dated 22.04.2002, delivered in C.M. Application No.45/01, in Civil Rule 142 of 1986, the Gauhati High Court, has observed and declared as under :

"This application has been filed seeking clarification of the Judgment and Order dated 20.01.2000. The Judgment is based on earlier Judgment and Order passed by this Court on 09.04.1999 in C.R. No.67/94. In both the Judgments the Court decided that the State Government shall pay the amount to the owner of the tea garden as per Section 5 of the Tripura Tea Companies (Taking Over of Management of Certain Tea Units) Act, 1987. The section is very clear. The amount is to be paid to the owners and so it is on the Government to decide what amount will be paid to the owners for taking to handing over of tea gardens from the owners for certain period."

21. But nothing has happened. By this writ petition, the petitioner has virtually challenged the mode of computing the compensation that has to be paid to them. This court has already struck down the Notification, which declared the basis of calculating the compensation. In this regard this court would further lay down that the compensation has to be computed irrespective of the profit and loss account of the Tea Estate. The compensation has to be computed for the assets of Fatikcherra Tea Estate which remained suspended from use for taking over of the said unit w.e.f. 10.11.1986. For determination of the compensation, the value of the assets in use by the State Government has to be determined by the Assessor. When the value of such estate has been determined at ₹1.00, it really exposes the pre-mediation over the matter. The

Government is under obligation to decide the compensation justly as in the manner as provided by the statute. The State has deprived the petitioner from their properties for a considerable period. In **Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.**, reported in **(2013) 1 SCC 353**, the apex court has decided that :

"9. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram : (2007) 10 SCC 448, Amarjit Singh v. State of Punjab : (2010) 10 SCC 43; State of M.P. v. Narmada Bachao Andolan : (2011) 7 SCC 639, State of Haryana v. Mukesh Kumar Ⓢ2011) 10 SCC 404 and Delhi Airtech Services (P) Ltd. v. State of U.P. : (2011) 9 SCC 354)

10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that

delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a "subject" of medieval India, but not as a "citizen" under our constitution.

12. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

22. Having regard to the law as enunciated in **Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.**, the state cannot arrogate itself to the status that is one beyond provided by the Constitution. By way of suspension, the petitioner had been put to disability to use their property and hence they are entitled to compensation as provided by the statute, denial of such would amount to denying their legal right to have compensation. The state in exercise of its eminent domain has deprived the petitioner so far. This court is inclined to interfere with such action of the state. The other question that has flowed for consideration of this court is that in view of the ex parte decree that has been passed, whether any direction can be passed in this case.

23. Having regard to the decision of the Govt. of Tripura as reflected in the communication dated 12.08.2014 (Annexure P/2), it appears that, now the Government has determined the compensation at ₹6.00, meaning the previous amount as determined by the Committee, is no more insisted on. However, since the said ex parte decree appears to be in existence, this court would not pass any further observation as regards its executability on face of the said development.

24. Having regard to the discussion as made above, this court, however, is not inclined to take over the responsibility of computing the compensation in exercise of its discretionary jurisdiction, rather it would pass some directions for purpose of

computing the just compensation to be awarded to the petitioner in terms of Section 3 and Section 5 of the said Act. It is directed that within 2(two) months from the day when the petitioner shall furnish a copy of this order, the State Govt. either shall appoint a reputed chartered valuer else they would appoint SBA Associates, having their office at 27, Mirza Ghalib Street, 5th Floor, Kolkata-700016, for purpose of making assessment for determining the annual compensation. In the event of the engagement of the SBA Associates, they will be entitled to get ₹50,000 (rupees fifty thousand) excluding the actual cost of travel and lodging. If the Government fails to engage a chartered valuer within 2(two) months as stipulated, within a fortnight thereafter, they shall issue the letter of appointment or engagement of SBA Associates with the terms and reference, for computing the compensation, in full compliance with the provision of Sections 3 and 5 of the said Act with further direction that such survey shall be completed within 2(two) months from the date of issue. The chartered valuer shall, following the scientific method, determine the annual compensation. Both the petitioner, the State Govt. and the custodian of the State Govt., the TTDC shall extend all sorts of cooperation to the chartered valuer who are under obligation to complete the survey or assessment within two months from the date of their engagement. The petitioner, State Government and the Custodian shall produce all necessary documents for the survey, whenever they are so asked without delay.

25. It is again made clear that, the profit and loss account during the period of suspension of the management will have no impact on determining the compensation as stated. On the basis of the assessment that would be made, the State Government shall pay the compensation within 3(three) months thereafter. If such payment is not paid within three months as stipulated, they shall have to pay interest @ 18% in terms of the order dated 28.01.2000 delivered in Civil Rule No.142 of 1986 by the Gauhati High Court.

26. With this observation and direction this writ petition stands allowed. However, there shall be no order as to costs.

JUDGE

Moumita