CHAPTER VI

COMPENSATION
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I. Introduction

In this chapter a brief discussion and examination will be made on the aspects relating to compensation as embodied in those legislations through which Government have acquired land for redistribution purposes.

Behind all the measures of land reforms undertaken by the Government of Assam after the attainment of independence lies the objective of acquiring lands from the big landlords and distributing the acquired lands among the bonafide landless cultivators for cultivation purposes as well as to those cultivators who were rendered homeless due to flood, earthquake, erosion, diluvial actions and other natural calamities. With a view to fulfill the abovementioned objective land from different sources like the tea garden, lands declared as excess under the ceiling legislation, those illegally held by religious or charitable institutions and Zamindars, and above all, lands donated by people voluntarily to the Government under the Bhoodan and Gramdan schemes were acquired by the State Government. Lands donated under Bhoodan and Gramdan did not entail compensation. But in case of other
lands, it was the duty of the Government to pay reasonable
and adequate compensation to the landowners. It may be men-
tioned here that acquisition of lands from persons without
payment of adequate compensation is unconstitutional. The
payment of compensation involves loss of revenue to the State
as it is not always possible to correspondingly recover the
money from the new allottees. Das\textsuperscript{2} pointed out that Assam's
compensation seems to be lowest. While in Assam it is 25
times to 50 times the land revenue, it is 95 times in
Himachal Pradesh, 100 times in Andhra Pradesh, 196 times in
Maharashtra and 200 times in Gujarat.

FAO\textsuperscript{3} stated that in India, compensation to Zamindars
had been given partly in cash and partly in bonds, the propor-
tions varying from State to State. In Madras State, as much
as half of the final settlement was paid in cash. In West
Bengal, the Zamindar received the whole indemnity in case if
his net income from the land was less than 250 rupees, but
higher incomes were compensated with progressively smaller
proportions of cash; the twenty year bonds for the remainder
are not negotiable. In Maharashtra State two classes of bonds
are given, one type redeemable over twenty years in equal
annual instalments and the other redeemable at par after

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1. Article 31(2) of the Constitution of India.
2. Das, J.K., A Study of Land Systems of North Eastern Region,
   (Cyclostyled), Vol.I, Assam, Law Research Institute,
   Eastern Region, Gauhati High Court, p.201.
3. United Nations, Food and Agriculture Organisation and
   International Labour Organisation, Progress in Land Reform,
twenty years.

II. Compensation for Acquiring Land for Rehabilitation

Initially, Assam Land (Requisition and Acquisition) Act of 1948 provided for requisition and acquisition of buildings in urban areas for official purposes. But in 1949 the Act was amended to provide for the requisition and acquisition of lands for rehabilitation of persons rendered homeless due to natural calamities like flood, earthquake, erosion etc. Under this Act, lands acquired were mostly from tea gardens on which tea cultivation was not being practised. These were mostly low-lying lands as well as waste lands within the tea estates. For such requisition and acquisition the State Government provided for the payment of a nominal compensation to the owners as the rate of land revenue paid by those owners were already very low and as most of these lands were waste lands.

The life of the Act was 5 years in the first instance. In 1953 it was extended for 5 years more and again in 1958 for another term of 5 years. Subsequently, these lands came under the purview of the Ceiling Act.

Till 1968 about 1,75,815 bighas (23,534.53 hectares) of tea land were requisitioned of which 1,41,554 bighas (18,949.66 hectares) were allotted to landless cultivators, the remaining 34,261 bighas (4,586.50 hectares) included roads,
land kept reserved for public purposes and lands not fit for cultivation. The Government paid compensation for 1,51,397 bighas (20,334.27 hectares) of land. The estimated amount of compensation was about Rs. 15 lakhs. The Government's intention was to recover the amount of compensation from the allottees on an annual basis besides shifting on to them the cost of acquisition of the land. On completion of these formalities and conditions only the "Pattas" were to be given to them. The Land Reforms Board advised the Government to enforce a collection drive for realisation of the compensation payable from the new allottees. But the revenue officials could not realise even a fraction of these costs as the economic conditions of the new allottees were so bad that they were even unable to pay the usual rate of rent. The Government was therefore left with no alternative but to acquire these lands at Government's cost for the time being and gradually and conveniently realise the money from the allottees as premia on easy instalments. Hence, in the beginning allotment of land was made to the landless persons and settlement was to be made only after they had paid the compensation costs in full. The latest position in this regard, as gathered by us from the Settlement Office, is that till now settlements on Government lands have not been made as the compensation money could not be recovered from the allottees.

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4. Tenancy Branch, Revenue Department, Government of Assam.
III. Compensation to Zamindars

The Assam State Acquisition of Zamindaris Act of 1951 provided for payment of compensation to the Zamindars for the acquisition of Zamindari lands. The compensation was to be determined on the basis of net income received by the Zamindars which was to be arrived at by deducting from the gross annual (agricultural year) income the sum payable as land revenue or cesses to the Government by the proprietor or tenure-holder. It was also proposed to include under deduction the amount of rent payable by the tenure holder to his immediate superior landlord, the Choukidari tax or municipal tax in respect of any building, agricultural income tax payable by the proprietor or the tenure holder.

By 1970, the rights of all proprietors in respect of 3,628 estates and those of 4,533 tenures covering an area of 16.74 lakh acres (2.24 lakh hectares) have been acquired in the permanently settled areas of Goalpara, Garo Hills and the Karimganj sub-division of Cachar district. Consequently large number of tenants were brought directly under Government and all the rights over private forests, fisheries, bazars and ferries have vested in Government.\(^5\) For acquisition of these rights and privileges the Government had to pay a sum of Rs. 2,70,18,800/- as compensation in cash besides issuing

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5. Ibid. Upto-date data are not available. However Das in his report mentioned that till 1981 a sum of Rs.2,44,88,724.87 was paid as compensation. (Refer J.N. Das, op.cit., p.166).
bonds worth of Rs. 21,81,200/- till 1970. 6 In addition, the Government has also been paying perpetual annuity to a large number of temples and religious institutions which used to be managed from the grants of the erstwhile Zamindary estates.

It was gathered from official sources that the State Government did not face much financial difficulties in the payment of compensation mentioned above. This was because the persons who got settlement on such acquired lands were already in occupation of such lands. They were not landless persons. Thus, in effect, this measure amounted to bringing them under direct relationship with the Government. Hence both allotment and settlement were formally made with them. The Government was thus, in a position to recover the amount of compensation payable to the proprietor or tenure-holder for the acquisition of their rights and interests as purchase money of the land from the persons getting allotment as well as settlement.

IV. Compensation for Surplus Land

The Assam Fixation of Ceiling on Land Holdings Act of 1956 provided for imposition of ceiling on the amount of land that a person could hold. The limits were 150 bighas in 1956, 75 bighas in 1970 and 50 bighas in 1975. Likewise, the limit for orchard land was 30 bighas in 1957 which was reduced to 15 bighas in 1972 and further reduced to 4 bighas in 1975.

6. Ibid.
The unit of application of ceiling was 'person' and the definition of person covered company and family. In respect of tea estates, lands which were not under plantation and ancillary purposes, as discussed in Chapter IV, were declared as surplus. The lands or holdings in excess of the ceiling were acquired and distributed in such a manner that tenanted lands were settled with occupancy tenants and vacant lands were allotted to landless persons. The small areas acquired under this Act were settled for homestead purpose.

For acquisition of such lands the State Government had to pay compensation periodically to the different individuals and tea planters. A total sum of Rs. 1,21,84,816 was paid as compensation upto December 31, 1981. The Act provided different amounts of compensations for owner cultivators and tenant cultivators. As between the latter again different compensations were provided for tenant cultivators with occupancy rights and those without such rights. Likewise, the amount of compensation were different for fallow lands and cultivated lands. The amount payable as compensation to different persons as well as different lands has been fully discussed in Chapter IV.

The principle of laying down varying amount of compensation to different individuals and different categories of lands is justified from the economic point of view. The owner cultivator cultivating himself with the aid of his family members and with his own cattle at his own risk should justifiably

get a larger amount than the absentee owners. On the other land, the absentee owners are solely dependent on tenants and agricultural labourers for the cultivation of their land and they do not bear any risk or supply seeds and plough-cattle. Still they enjoy the fruits of the land with almost no effort. Such owners are a kind of rentier capitalist. For them, strictly speaking agriculture cannot be said as the only source of livelihood whereas for the owner-cultivators it is actually so. Hence, payment of different amounts of compensation to these two classes of cultivators is justifiable. Likewise, payment of relatively more compensation to the occupancy tenants than that to the non-occupancy tenants is also justifiable. The occupancy tenants are not only in occupation of the land but are also cultivating the same for a continuous period of twelve or more years. They are therefore the real tillers of the soil. Cultivation is done at their own cost and risks. The owners of such lands hardly take any interest. Besides cultivating the land, they pay the usual rate of rent regularly. In the case of such occupancy tenants therefore the amount of compensation must be larger than the amount to be paid to the non-occupancy tenants. Non-occupancy tenants are like tenants-at-will and may be regarded as agricultural labourers engaged for short and temporary periods, especially during the ploughing and harvesting seasons.

In spite of the clear provision for payment of compensation for acquisition of all kinds of land by the Government in different land legislations the State Government
decided to pay compensation in case of cultivated lands only. Fallow lands were excluded from the payment of compensation, partly to avoid heavy financial implications and partly to avoid payments to the unauthorised occupants. These lands were mostly under unauthorised occupancy. This can hardly be justified from the economic point of view. Some cultivable lands were lying fallow for some unavoidable reasons. By treating lands under unauthorised occupiers as fallow the Government was following queer definition of fallow land. The financial burden was heavy because at the initial stages while disposing the ceiling surplus land the Government failed to recover the amount of compensation from the persons to whom the excess land was allotted. The original intention of the Government was to recover the costs of compensation from the allottees of the ceiling surplus land. Ojha contended that the question of compensation for the surplus land acquired by the State has been in accordance with the provisions made in the Constitution of India and hence there is little choice left to go into the merits and demerits of this question. The Planning Commission has recommended that the compensation payable to the landowners may be determined 'either as a specified amount related to different classes of land or in terms of a multiple of land revenue or in such other manner as may be considered feasible.' The price of land is recoverable from the person to whom it is allotted in such instalments that the

annual burden falling on him does not exceed one-fourth or one-fifth of the gross produce. In essence, the principle of compensation is so envisaged that the aggregate amount of compensation and interest would not burden the State exchequer.

Till 30th September 1982 the State Government acquired 5,68,873 acres of land and distributed 3,22,015 acres of land to individuals belonging to 2,75,617 families. Besides, 2,00,060 bighas were disposed of or kept reserved for public purposes. Upto 1974 a sum of Rs. 45 lakhs was paid as compensation to different owners for acquisition of land. This was mostly paid to individuals but in case of tea garden lands where the amount of compensation worked out to a very big, the Government was unable to pay the same. Another reason for tardy payment of compensation was the failure on the part of the Government to receive full information regarding the acquisition of land from different tea gardens. Particulars like whether the land was fallow, waste or cultivated, the rate of land revenue payable for such lands, etc. were not available to the Government.

V. Compensation for Land Acquired from Religious and Charitable Institutions

The Assam State Acquisition of lands Belonging to Religious and Charitable Institutions of Public Nature Act of

9. Tenancy Branch, Revenue Department, Government of Assam.
10. Ibid.
1959 was brought into force on 18th March 1963 with the principal aim of doing away with the intermediary interests held by the Satras, Maths, Dargahs, Gurudwars, Churches and similar other institutions or endowments for public purposes for charitable or religious nature. It may be mentioned that during Ahom rule, these institutions were allotted large areas for religious and charitable purposes. The land thus settled from time to time grew larger and the owner of these lands had diverted their attention from the activities for which they were established and rented out such lands to tenants mostly for agricultural purposes. In course of time leasing out land for cultivation became the main source of livelihood for the Satradhikaris and the owners or priests of other institutions. In regard to the payment of compensation for such lands, the Government took a liberal attitude by guaranteeing them perpetual annuity, the amount to be paid as annuity being equal to the net income from such lands. The net income was arrived at by deducting from the gross income the amount payable as annual land revenue, cess, royalty, municipal tax, agricultural income tax and the costs of management. The decision to pay compensation as perpetual annuity was taken with a view to enabling the owners or managers of these institutions to concentrate on their works. Generally the "Doloi" or the manager of such Religious Institutions realised from the tenants crop rent in addition to personal services to be rendered by the tenants.

Till 1975 about 3,38,977 bighas of land belonging to 157 institutions were acquired. The annuities in respect of
72 institutions were finalised as detailed below: \(^{11}\)

1. Number of Institutions          ...   200 (approximately)
2. Estimated area of acquisition    ...   3,71,197 bighas.
3. Area acquired (up to 1975)       ...   3,38,977 "
4. Estimated annuity payable        ...   Rs. 7.50 lakhs
5. Number of Institutions for which annuities were finalised ..  72
6. Amount paid (up to 3.12.74)      ...   Rs. 2,34,563

From the above discussion it is clear that though the work of acquisition was satisfactory, that of payment of compensation was very slow. The slow progress in the payment of annuities resulted in great hardships to the managers of such institutions from whom land was acquired, particularly to the big Satradhikaris from whom most of the land were acquired. Before acquisition, the income from the land was the main source of livelihood for them. After acquisition, annuity was deemed to be their main source of income. During discussions with concerned officials of the Dibrugarh District it was gathered that due to 'certain administrative difficulties' full compensation could not be paid. Further, the Government itself was confused regarding the determination of the compensation. Initially the Government decided to fix the annuity equal to the money value of one-fifth of the produce payable by the Adhiars to their owners under the provisions of the Assam Adhior Protection and Regulation (Amendment) Act of 1955. Later on,

\(^{11}\) Tenancy Branch, Revenue (Reforms) Department, Government of Assam.
this idea was abandoned and the Government decided to fix the compensation at 50 per cent of the land revenue payable by the tenants as provided in the Assam (Temporarily Settled District) Tenancy Act of 1935. The compensation was fixed accordingly.

Again, later on the State Government directed the Revenue Officials to collect evidences whether the managers of the religious institutions were getting the crop rent along with personal services from the tenants or whether the lands were kept fallow. If the lands were kept fallow or were found to be fallow at time of acquisition then compensation was not to be paid according to the directives of the State Government. When the Revenue Officials approached the Satradhikaris they found that there was no evidences of their having received any crop rent. This lack of informations itself precluded the determinations and finalisation of the annuities and its overdual payment. As of today, the result is that the rate of interest alongwith the principal sum is increasing as a function of time.

VI. Compensation for Acquisition of Intermediary and Ownership Rights.

The Assam (Temporarily Settled Areas) Tenancy Act of 1971 provided for acquisition of intermediary and ownership rights by the tenants. The intermediary rights could be acquired by an under-tenant holding and cultivating land of an occupancy tenant. The under-tenant could also acquire the ownership rights
of the landowner. Similarly, the occupancy tenant could acquire the ownership right of the landowner. For all such acquisitions compensation was to be paid to the landowner for acquiring his ownership right and to the occupancy tenant for acquiring his intermediary right. This compensation was to be recovered from the occupancy tenant as well as the under-tenant. For acquiring both the ownership and the intermediary rights, the amount of compensation was fixed at 50 times the full rate of annual land revenue payable for such land. If the occupancy tenant cultivated the land himself his owner would get the entire amount. But where an under-tenant was cultivating the land of an occupancy tenant, this total compensation would be apportioned as follows: 75 per cent towards the acquisition of ownership rights and 25 per cent towards the acquisition of intermediary rights.

For the payment of compensation for the acquisition of ownership and intermediary rights by the tenants themselves, the preparation of tenants' Record-of-Rights was an essential precondition. This work was started in 1972 and was supposed to be completed by 1979. But due to political changes and the consequent instability in March 1978, the State Government under the changed set-up, did not devote any interest to these matters. As a consequence the whole work is held up and is virtually shelved. Thus, the work of preparation of tenants' Record-of-Rights is still not completed. Till the end of July 1977 about 3,02,471 tenants were recorded.\textsuperscript{12} No data are available on the

\textsuperscript{12} Ibid; A Note on Land Reforms, Annexure VI.
acquisition of ownership rights as well as intermediary rights by the occupancy tenants and under-tenants. Nor is any information on the payment of compensation. It is thus evident that while the work of acquisition was satisfactory in this sphere too, the work relating to the payment of compensation has been very slow. Here too, the rate of interest (2½ per cent) is increasing with the passage of time adding to the burdens of the State Government.

VII. Assessment of Various Means of Compensation.

(i) Compensation for Acquiring Land for Rehabilitation: The State Government proposed to pay a nominal rate of compensation for acquiring the lands of the tea gardens lying as waste. This was because the rate of land revenue paid by the owners of these lands were very low and most of these lands were waste lands.

(ii) Compensation to the ex-Zamindars: The compensation due to the ex-Zamindars was determined on the basis of net income received by the Zamindars before acquisition. The net income was arrived by deducting from the gross annual income the land revenue or cesses paid to the Government by the proprietor or tenure-holder, the rent payable by the tenure-holder to his immediate superior landlord, the choukidari tax or municipal tax in respect of any building and agricultural income tax payable by the proprietor or the tenure-holder.
(iii) **Compensation for Ceiling Surplus Land**: For acquisition of land as ceiling surplus, the Act of 1956 provided different amounts of compensation for owner cultivators and tenant cultivators and for fallow lands and cultivated lands. Among tenants also, differentiation had been made between occupancy tenants and non-occupancy tenants.

(iv) **Compensation for Lands Acquired from Religious or Charitable Institutions**: Regarding payment of compensation for the lands acquired from religious or charitable institutions Government took a liberal attitude by giving perpetual annuity to the incharge of such institutions. The annuity was equal to the net income of such lands. The net income was arrived by deducting from the gross income of the annual land revenue, cess, royalty, municipal tax, agricultural tax and the costs of management.

(v) **Compensation for Acquisition of Intermediary and Ownership Rights**: The ownership as well as intermediary rights could be acquired by the tenants and the under-tenants under the provisions of the Tenancy Act of 1971. For such acquisitions, the compensation payable to the owners and the tenants was fixed at 50 times the annual land revenue payable for such lands.