

(1987) 10 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No"s. 350/73, 144 and 338/74

Adhikar Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-10-1987

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 4(2)
Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 — Section 2, 3, 3(1), 4, 4(1)
Constitution of India, 1950 — Article 14, 226

Citation : (1988) 1 GLR 368

Hon'ble Judges : J. Sangma, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and S.N. Sarma, for the Appellant; D.P. Chaliha and K. Deka, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, J.—These applications under Article 226 of the Constitution by Adhikar Goswami of Auniati Satra are directed against the orders of acquisition passed under the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956, hereinafter the Ceiling Act, pertaining to some tea garden land of the Satra. The challenge to the acquisition is on the common ground that the Ceiling Act has no application to the aforesaid type of land belonging to the Satra. This contention has been advanced because of the existence of the Assam State Acquisition of Lands belonging to Religious or Charitable Institution of Public Nature Act, 1959, hereinafter the Religious and Charitable Act, which has exempted tea garden land from the purview of this Act. The contention of the State is that despite the Religious and Charitable Act being on the statute book, the Ceiling Act applies to the tea gardens belonging to the religious or charitable institution.

2. The facts of the case are not in dispute. The Auniati Satra is an ancient religious institution established by the Ahom Kings of Assam. This Satra has a

large number of disciples living within and outside the Satra. The Ahom kings and their successors granted lands of various sizes at various places of Assam in favour of the Satra. In these three cases we are concerned with the question as to whether the following land covered by Lakheraj Pattas No. 1 and 2 could have been acquired under the provisions of the Ceiling Act:

1) 3112 B 1K 9L of land in Kachukhat Amguri Kbari-katia mouza leased out to Govindapur Tea Company.

2) 3050 B 3K OL of Fechual Holongapur mouza leased out to Baideha Tea Estate.

3) 1000 B Rangdai Khatgaon Amguri Kharikatia leased out to Rangdai Tea Estate.

3. A proceeding was initiated against the Satra for acquisition of land under the Religious and Charitable Act, The aforesaid three plots of land were initially allowed to be retained by the Sutra by the Additional Deputy Commissioner, Sibsagar by his order dated 20.1.70 as at Annexure-A to the petition, as the Ceiling Act as first enacted had excluded from its purview "lands belonging to any religious or charitable institution of public nature" by its Section 2(b). This section came to be deleted from the Ceiling Act by Assam Act XXIV of 1972. This Act had received the assent of the Governor on 10th October, 1972. After the amendment to the Ceiling Act, proceedings were initiated against the Satra by the Additional Deputy Commissioner to acquire the aforesaid three plots of land. On objection being raised on the ground that the Ceiling Act as amended did not apply to the lands belonging to the Satra, the learned Additional Deputy Commissioner rejected the objection by his order dated 3.12.73 in Civil Rule 550/73. In Civil Rule 144/45 objection to draft statement was rejected by the Collector on 22.2.74 on the ground that no objection had been filed by the Tea Estate in question against whom the proceeding had been initiated as possessor. The objection filed by the Amoktar of the Satradhikar was rejected by saying that the rounds urged by him were not applicable. In the third case Civil Rule 338/74) it seems that no objection was filed by the Manager of the Tea Estate. The draft statement was therefore approved on 28.3.74.

4. Before entering into the merits of the arguments advanced before us it would be in fitness of things to point out that though Assam Act XXIV of 1972, which had deleted the exemption pertaining to the land belonging to a religious or charitable institution of public nature from the Ceiling Act, had not received the assent of the President, the amendment of this Act by Assam Act IX of 1975 producing the same result had received such assent. The argument, therefore, that the provisions of the Assam Act XXIV of 1972 deleting the exemption in favour of religious or charitable institution could not have, prevailed over the Religious and Charitable Act which had received the assent of the President, is not available to the Petitioners.

5. The principal question urged by the learned Counsel of the Petitioner is relating to non-applicability of the Ceiling Act in so far as acquisition of the land in question is concerned. The contention of S/Shri Bhattacharjee and Baruah who

have appeared for the Petitioners is that the Ceiling Act which is a general enactment relating to the acquisition of land above the ceiling fixed by this Act cannot prevail over the Religious and Charitable Act which is a special enactment relating to acquisition of land belonging to religious or charitable institution of public nature. It has also been urged on behalf of the Petitioner that once the land vests in the State by force of Section 3 of the Religious and Charitable Act, nothing would be left for acquisition under the provisions of the Ceiling Act. The spring board of this submission is the following provision in Section 5 of the Religious and Charitable Act:

Section-5 Power to retain possession of land after acquisition-Notwithstanding anything contained in Sub-section (1) of Section 3 and Sub-section (1) of Section 4, a religious or charitable institution (including its individual branches, if any) shall with effect from the date of vesting, be entitled to retain possession of-

(i) * * *

(ii) tea gardens land:

Provided such lands shall be liable for assessment to full revenue rate under any existing law.

6. Shri Bhattacharjee has urged that the State having enacted the Religious and Charitable Act to deal with the subject of acquisition of land belonging to religious or charitable institution, it cannot be visualised that the general Act, namely, the Ceiling Act, dealing with the limit of the amount of land that may be held by a person, would have application in so far as the religious or charitable institution is concerned specially when the scheme of the special Act is borne in mind. Our attention has been invited by the learned Counsel to the general scheme of the Religious and Charitable Act. Section 3 of this Act contemplates issue of notification by the State Government from time to time declaring that all rights in land belonging to religious or charitable institution of public nature shall vest in the State free from all encumbrances with effect from the first day of agricultural year next following the date of publication of notification. As per Section 4 of this Act notwithstanding anything contrary in any law for the time being in force or custom or any agreement or contract express or implied, all right, title and interest in the lands of the institution with the subsoil (including the rights in mines, minerals, fisheries, tanks, wells, forests, grazing reserves, hats, bazars, roads and ferries) shall cease on the publication of the notification u/s 3 and such lands including such rights shall vest absolutely in the State free from all encumbrances with effect from the date specified in the notification. Section 5 as already noted deals with the power to retain possession of land after acquisition. Section 6 gives the power to the Deputy Commissioner to take possession of the land after the same is vested in the State. The proviso to this section has stated that power conferred by this section shall not authorise the Deputy Commissioner to take possession of lands and buildings mentioned in Section 5. Section 7 mandates to pay compensation to the institution whose

lands have been acquired. Section 8 deals with the principles of determination of compensation. A perusal of this section shows that gross income of the land of the institution is first to be computed by taking the gross annual income from rent, forests, fisheries, hats, bazars, ferries, roads, grazing reserves, mines and minerals for the agriculture year preceding the date of notification u/s 3. From the average gross income deductions are made on account of land revenue, cess, royalty, municipal tax, chaukidari tax, agricultural income tax or any tax levied by the State and Central Government, or rent to superior landlord in respect of the land acquired. As per Sub-section (3) of this section some deduction is to be made as the cost of management. The balance amount is stated as the net income. The net income thus arrived has to be paid annually as perpetual annuity as compensation to the head of the institution for the lands acquired.

7. The above shows that on notification of acquisition of Sands belonging to religious or charitable institution the land covered by the notification vests in the state and the concerned institution is thereafter paid a sum of money annually as perpetual annuity by way of compensation determined in accordance with the principles mentioned in Section 8 of this Act. There is thus no doubt that there is no scope of further Acquisition of the land by the State under the provisions of the Ceiling Act which has already vested in it by force of the Religious and Charitable Act. We have, no hesitation in holding that the provisions of the Religious and Charitable Act would prevail over those of Ceiling Act in so far as the land which is covered by Religious and Charitable Act is concerned. This is on the principle "*generalia specialibus non derogant*". On this aspect, Shri Bhattacharjee has referred us to a number of decisions of the Supreme Court holding that a special enactment prevails over a general enactment. The decisions referred are *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, (Paras 9 and 10) : *Union of India (UOI) and Another Vs. India Fisheries (P) Ltd.*, (Para 8); *Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others*, (paras 6 to 8); *U.P. State Electricity Board v. Harishankar* (1978) 4 SCC 16 (para 18) and *Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others*, (para 29). A recent decision of the Supreme Court in *Commissioner, Sales Tax, U.P. Vs. Agra Belting Works, Agra*, has also come to our notice in this connection.

8. From what has been stated above, we have no doubt that the Ceiling Act cannot operate over the area covered by the Religious and Charitable Act. This however, is not the end of the controversy. The pertinent point is what would happen to the tea gardens land which have been kept away from the purview of the Religious and Charitable Act. it is here that the amendment to the Ceiling Act effectively brought into force by Assam Act IX of 1975 assumes importance. To reiterate, though the Ceiling Act had initially exempted "land belonging to any religious or charitable institution of the public nature" from its field of operation, this exemption came to be withdrawn effectively by Assam Act IX of 1975. A reference to the statement of objects and reasons relating to Assam Act IX of 1975 shows that this Act was enacted, *inter alia*, to reduce further the ceiling

limit of land holdings and to withdraw certain exemptions hitherto allowed". Objects and Reasons, of Assam Act XXIV of 1972 were also the same. Now, the legislature being fully aware of the enactment of the Religious and Charitable Act which has exempted "tea garden land" from its purview considered it necessary to withdraw the exemption given to the land belonging to any religious or charitable institution of public nature by the ceiling Act. This exemption came to be withdrawn first by the Assam Act XXIV of 1972, followed by Assam Act IX of 1975. The Religious and Charitable Act is, however, of the year 1959. Had the position been that the ceiling Act would not have exempted lands belonging to religious or Charitable institutions from its purview, and the religious and charitable Act would have been enacted afterwards, as it is, we would have held that the tea gardens land of religious or charitable institution are exempt from the purview of acquisition. We would have also exempted these lands from the purview of acquisitions even if the Religious and Charitable Act would have been enacted before the passing of the ceiling Act. These we would have done applying the principle "*generalia specialibus non derogant*". But here the position is that after the passing of the Religious and Charitable Act, the exemption carved out by the Ceiling Act in favour of the land belonging to religious or charitable institution has been specially withdrawn. We have to assume that the Legislature knew about the existence of the Religious and Charitable Act and its provisions exempting tea gardens lands from its operation. When, despite this knowledge, the legislature omitted the exemption given by the Ceiling Act to the land of religious or charitable institution, we have to ascribe some meaning to it and we have to effectuate the intention behind the amendment, We can not thwart the intention of the legislature. We do not find anything in the aforesaid scheme of the Religious and Charitable Act to show any intention, contrary, to the one expressed in above noted amendment of the Ceiling Act. We cannot ignore the amendment. We cannot treat it as non est. We cannot also examine the wisdom of the Legislature in amending Ceiling Act as aforesaid. So viewed, we have to hold that because of the aforesaid amendment in the Ceiling Act the tea gardens land belonging to religious or charitable institution cannot claim exemption from the purview of the Ceiling Act. We have also noted that the definition of "person" in the Ceiling Act as substituted by Assam Act IX of 1975 includes an individual, a family, a joint family, trustee, a company, or body corporate, a partnership firm, a society or an association of individuals whether incorporated or not. It would be difficult to say that the ceiling on the tea garden lands as contemplated by the Ceiling Act would apply to all other persons except the religious or charitable institution. This may give rise to attack on the anvil of Article 14.

9. In taking the above view, we have not been oblivious about the need of sufficient revenue to be earned by the religious institution like the Auniati Satra to sustain itself. As the Ceiling Act excludes from its purview the land which has been used for special cultivation of tea and for purposes ancillary thereto, we think that the revenue earned by the satra by giving lands in question on lease

would not be affected in a material way inasmuch as the land under the possession of the lessee insofar as its need for special cultivation and for purposes ancillary thereto would not be affected in any way by the operation of Ceiling Act.

10. Shri Bhattacharjee has also urged that from the orders passed by the learned Additional Deputy Commissioner, Sibsagar on 20.1.70 it would appear that the entire area of the tea garden was found under the tea cultivation, As to this we have only to state that the state shall be able to acquire such lands alone of the tea gardens which are not under special cultivation of tea or is not used for the purposes ancillary thereto as explained in Section 4(2) of the Ceiling Act. Shri Chaliha has contended in this connection that only the surplus land of the tea estate is sought to be acquired and referred us in this connection to the draft statements on record. We have not felt inclined to examine the statements ourselves to find out whether the land which is sought to be acquired under the Ceiling Act is in accordance with the provisions of this Act or not. We would remain content by saying only that land can be acquired under the Ceiling Act which is not under special cultivation of tea and is not to be used for the purposes ancillary thereto.

11. Before concluding, we may say that we have not arrived at the aforesaid conclusion because of the fact that the Satra has not opened tea garden itself but had leased out the land to the tea companies in question who had used the land for tea cultivation which reason had weighed with the learned Additional Deputy Commissioner in holding that the land in question could not claim exemption from the Ceiling Act. Shri Bhattacharjee is right in this connection in pointing out that it cannot be expected of any religious or charitable institution that it would itself undertake business of tea cultivation. We have, however, come to the conclusion for the reason that any exclusion of the tea garden land owned by any religious or charitable institution would have perhaps amounted to discrimination. In any case, the intention of the Legislature being clear in this regard for reasons already stated we could not have held that the Ceiling Act does not apply qua the lands with which we are concerned.

12. In the result, the petitions are dismissed, we would, however, say that fresh opportunity shall be given to the Petitioner to satisfy the authorities about error in the draft statements, if any. For this purpose, objection filed or to be filed, if any, either by or on behalf of the Petitioners or the lessees of the land, would be duly considered and disposed of in accordance with law. For this purpose 2 months time would allowed to the Petitioner after receipt of the records by the learned Collector. The Petitioner shall be notified about it by the concerned authority.

13. The delay in the delivery of judgment has occurred due to closure of the Court for Long Vacation soon after the hearing was over. The Court has reopened today after the foreasid vacation.