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**(1997) 09 GAU CK 0028**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 390 of 1997**

Arunachal Samaj Kalyan Samity

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision :** 10-09-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226, 226

**Citation :** (1997) 2 GLJ 437

**Hon'ble Judges :** P.C.Phukan, J and V.Dutta Gyani, J

**Bench :** Division Bench

**Advocate :** B.K.Das, H.N.Sharma, P.K.Roy, Advocates appearing for Parties

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## Judgement

1. This writ appeal arises of judgment and order dated 15.5.97 passed by a learned Single Judge of this Court in Civil Rule No.2691 of 1992, thereby dismissing the writ petition.

2. The writ petitioner appellant is a registered society, the society filed a writ petition praying for issuance of a writ of Mandamus and quashing the acquisition of land acquired by the respondent State vide order dated 24.3.76 filed as Annexure 1 to the petition. It is reproduced herein not only as ready reference, but also for the purpose that it gives the description of the land as well as disclosed the reasons for acquisition:

"No.RRT. 186/76/14 Whereas the land specified in the schedule below is in excess of the limit fixed under section 4 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act I of 1967 as amended)

And whereas the excess land is required in public purpose. Now, therefore, in exercise of the powers conferred by section 8 of the act, the r Governor of Assam is pleased to acquire the said excess land and the acquisition.

Schedule

Sl.No. Owner Tenant Mouza Village Patta No. Dag No.

1. Shri Hitendra Mohan Das Chatla Srikona grant 133 79

5 other S/o Ramani Das. 99 years

The learned Single Judge while dismissing the petition has observed that it would to have been thrown out on the short ground of delay and laches. The acquisition was made in the year 1976 and the petition was filed in the year 1992, almost after 16 years. But instead of doing so, the learned Single Judge having considered the merit of the case and dismissed the same on merit as well, Indisputably the land in question originally belonged to a tea estate covered under Srikona Grant at Pargana Chatla Haor in the district Cachar. The writ petitioner's claim was that the society which comprises 250 members had purchased 3415 bighas of land vide 3 registered sale deeds dated 14.6.69, 23.6.69 and 3.7.69. The learned Single Judge has found it as a fact that these sales were not accepted by the State Govt as genuine and bonafide sales in the proceedings initiated under provisions of Assam Fixation of Ceiling on Land Holdings Act, 1956.

3. Heard learned senior counsel, Mr. BK Das assisted by Mr. PK Roy for the appellants and Mr. HN Sarma, learned Govt Advocate for the respondents State.

4. It was contended on behalf of the appellants that the sale in favour of the society being prior in point of time was a valid one, the Amendment Act of 1970 came into force from 1.4.1970, therefore, the purchase by the society shall be deemed to be valid. Learned counsel also invited our attention to the provisions of law particularly explaining the expression "purpose ancillary thereto". The finding, recorded by the learned Single Judge is to the effect that lands acquired were not utilised by the tea estate for special cultivation or for purpose ancillary thereto, thus it was not exempted from the operation of the Act. The exemption applies only to those areas which were under actual cultivation of tea or used by the gardens for purpose ancillary thereto. Lands lying vacant, were liable to be acquired and could not be exempted. The interpretation sought to be put by the learned counsel on subsection (6) of section 4 of the Act, apart from being a self-serving interpretation cannot operate in vacuum of facts, such contentious issue as raised, in the petition cannot be decided without recording evidence as rightly pointed out by the learned Govt Advocate Mr. Sarma that such disputes involving question of title and possession and also utilisation of land in a particular manner, are subject matter of regular civil suits, extraordinary jurisdiction of this Court under Article 226 of the Constitution is not the proper course. (See *State of Rajasthan vs. Bhawani Singh*, AIR 1992 SC 1018; *Smti Parvatibai Subhanrao Nalawade vs. Anwarali Hussanali Makani*, AIR 1992 SC 1780; *Mohan Pandey vs. Usha Rani Rajgaria*, (1992) 4 SCC 61).

5. Really speaking it is a settled proposition that invoking of writ jurisdiction depends on undisputed facts and needs no authority in support.

6. Referring to the letter dated 7.3.92 filed as Annexure B to this appeal, learned counsel appearing for the appellant strenuously urged that at least 2 Bighas of

land to each of the member of the society should be allotted, the Govt having committed itself to do so. The relevant portion of the said letter is extracted herein below:

"It is further stated that the petitioner samity contended that they purchased the Srikona Tea Estate with an intention to settle its members on this land. The Collector declared 2329 bighas of land as a ceiling surplus in LC Case No.20/7/78. On being aggrieved the samity filed appeal before the Govt wherein Govt instructed you to allot @ 2 bighas of land to each of the members of the said samity vide No.RRT/48/79/25 dt 9.3.77. But it has come to the notice that even after lapse of 13 years, the members of the petitioner samity have not been given settlement of the said land. You are requested kindly to examine the matter and send a reply without further delay".

7. It was argued by the learned Govt Advocate this is inter departmental correspondence and does not create any vested right in favour of the writ petitioners/appellants. We have examined the submission made by the senior counsel from the angle of promissory estoppel. Does it bind the respondents State ? And whether this promise has ultimately culminated in favour of the appellant society and against the State. In order to constitute promissory estoppel, firstly it must be shown on the theoretical that the doctrine of promissory estoppel is attracted to the present case, whether the representation made was within the scope of authority actual or apparent of the officer writing the letter dated 7.3.92. It needs to be noted that it was addressed to the Deputy Commissioner, Cachar, it is not even endorsed to the appellant society and the last line of the letter is important. "You are requested kindly to examine the matter and send a reply without further delay". It cannot be said that it culminated to a promise in favour of the appellant society. Had there been a firm commitment on the part of the respondent State, the matter would have been different. Secondly it is significant to note that there is not even a whisper of promissory estoppel in the petition, whereas law requires for a specific pleading on the point. Going through the petition as filed by the appellant society that a grievance has been made that the appellant's representation was not disposed of till filing of the petition (see paragraph 11 of the petition). It is for this reason that any further proving and examination of question of promissory estoppel is deliberately avoided lest it prejudices the appellants. If so advised, the appellants can still pursue its representation and it is expected of the respondents State to dispose of the same in accordance with law.

8. But so far as this appeal is concerned, no ground for interference with the impugned judgment order is made out. It is accordingly dismissed with no order as to costs.