
(1971) 06 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 309 of 1968

Associated Industries Ltd.

APPELLANT

Vs

Sub-Divisional Officer (Sadar) and Others

RESPONDENT

Date of Decision : 16-06-1971

Acts Referred:

Assam Fixation of Ceiling on Land Holdings Rules, 1957 — Rule 6, 6(2)
Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 4, 5, 6, 7(1), 7(2)
Companies Act, 1962 — Section 2

Citation : AIR 1972 Guw 4

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J

Bench : Division Bench

Advocate : K. Lahiri and M. Sarma, for the Appellant; A.M. Mazumdar, Jr. Govt. Advocate, J.P. Bhattacharji and D.K. Hazarika, for the Respondent

Judgement

P.K. Goswami, C.J.—The Petitioner's case is that it is a company incorporated under the Indian Companies Act, having its place of business in Assam, its authorised capital is Rs. 1,00,00,000/- and the paid-up capital stands at present at Rs. 59,74,000/-. The Government of Assam has Rs. 15,00,000 Preferential Shares and Rs. 8,19,500/- Equity Shares in the Company and the Secretary to the Government of Assam for the Department of Industries is a permanent Director of the Board of Directors of the Company. All the share-holders and the Directors of the Company, except two who are of British and Greek nationality, are Indian citizens. The Company was formed for production of various things, mainly Oxygen. Petro-Chemicals, Sulphuric Acid, Liquid Sulphur Dioxide, Fertilizers and Alum. Out of these, the Company has already started two sections and has decided to start others one after another. Its main section is Chemical Unit which produces fertilizers, essential for improvement of agriculture.

The Company impleaded the Sub-Divisional Officer, Gauhati, Secretary to the Government of Assam, Revenue Department and the State of Assam as Respondents 1, 2 and 3 respectively and added the Industrial Finance Corporation of India, New Delhi as the Respondent No. 4, by an order of the

Court dated 3rd August 1970 on its application as the entire land of the company including the subject-matter of the present Civil Rule was mortgaged to the Corporation in December 1961.

By a registered sale deed executed on 21st November, 1959 the Petitioner purchased from the recorded pattadar, Radhikananda Chowdhury, the three grants, namely Chandrapore Satpukuri Fee Simple Grant 24/3 with an area of 2285 B. 2 K. 15L. Chandrapore Tanteemara Grant Fee Simple grant No. 15/8 with an area of 311 B.O.K. 13L. and Ahorigog Fee Simple Grant 16/12 with area of 863B. 3K. 131/2L, totalling 3460B. 2K. 11/2L. The consideration for the sale deed was Rs. 1,25,000/-. Although it is claimed that the Company's name was mutated in the grants on 6th October 1961, records appear not to have been corrected even till 1963. It also appears that the Company as well as the recorded pattadar wrote to the Government in the Revenue Department for permission for the transfer of the land, as the Assam Fixation of Ceiling on Land Holdings Act, 1956. hereinafter called "the Ceiling Act" had already been brought into force on 15th February 1958. The Petitioner produced an order of the Government communicated by the Revenue Secretary on 20th November, 1959 (Annexure 10 to the petition), which is relied upon by the Petitioner as exempting the three grants from operation of the Ceiling Act. This order of the Government appears to have been cancelled by an order of 22nd October, 1965, which, however, is not produced before us.

2. A Land Ceiling Case, being Case No. 205/63 was started by the Collector on 25th May 1963 and it is stated therein inter-alia:

D.S. (meaning Draft Statement) was prepared and signed -- serve copies as per Rule."

It appears, originally Radhikananda Choudury was served with the draft statement in his Calcutta address and on 14th August 1963 he returned the draft statement with an application stating that he had already sold his land to the Petitioner-company and some other persons in 1959 and that he had no interest in the land. Then, it appears from the order sheet that the office made enquiries about the transfers and the Collector passed the following order on 2nd January, 1964:

Seen A.S.O's report. Issue a, notice on Associated Industries and the other recorded pattadars that the lands are going to be acquired under the Ceiling Act. Fixing 30-1-64.

It appears that notices were not issued and the same were issued on 25th April 1964 to the Petitioner and others by registered post with acknowledgment due. A notice dated 30th January 1964 was issued to the Manager of the Petitioner company at Shillong to appear before the Collector on 22nd February 1964 in regard to the Ceiling Case No. 205/63 of Sri R. Choudhury. This notice was repeated on 28th April 1964 adding a further direction in the following terms:

You are hereby directed to appear before the Collector. Gauhati on 25-5-64 at 10 A.M. in regards (sic) to the Ceiling Case No. 205/63 of Radhikananda Choudhury of Panbazar, Gauhati with all connected records regarding purchase of the land in question.

(Annexure 1.).

3. In answer to this notice, the Petitioner submitted an application on 4th July 1964 particularly referring to the Government letter of 20th November 1959 (not 28th November 1959), a copy of which was enclosed with the application. On receipt of this representation, the following order was passed by the Collector in the order-sheet of the case:

Seen objection petition filed by M.C. Burman for Associated Industries on 4th July 1964.

Request Government to send us a copy of the Government letter, a copy of which has been filed by the objector. In the meantime, request A.S.O. to enquire and report as to how the area has at present been utilised and what area has been actually used for industrial purpose. Fix 3-8-64.

Although it appears enquiry could not be held for quite a length of time and a report from the Assistant Settlement Officer, Gauhati has received on 7th May 1965, the Collector heard the learned advocate for the Petitioner on 28th July 1965 and passed his order on 23rd August 1965 in the following terms:

The report submitted by A.S.O. do not (sic) clearly show

- 1) the area and days in which industries have been established including industrial buildings and other buildings in connection with the industries including roads, public places like bazars, playgrounds staff quarters etc.
- 2) The days Nos. in areas under possession of tenants with khatian and without khatian with or without permission of land owners.
- 3) The land on which the company has started construction but not completed.

Call for a report on these points from, the A.S.O. urgently. Fix 9-9-65.

Nothing substantial has happened between 23rd August 1965 and 18th May, 1966 on which date it appears from the order-sheet that the Petitioner's counsel submitted that according to Section 2 Clause (c)(iv) introduced by the Amendment Act of 1962, the provisions of the Ceiling Act do not apply to the Petitioner's land. The Collector, therefore, called for a report from the A.S.O. on the points raised by the Petitioner. The next order of importance is dated 31st October 1966 which may be quoted:

Party present. Heard argument. In order to appreciate the future and also ancillary requirements of the factory it is necessary to know the actual present position regarding utilisation of lands and persons employed as well as scheme of future expansion. The applicant is therefore directed to submit any information in

this regard by 30-11-1966. Party informed in office.

It appears on 30th December 1966 some documents were filed and arguments were heard. An enquiry was also made in the meantime regarding acquisition of some portion of the grant land for the purpose of the Assam State Electricity Board, and the same was admittedly exempted from the operation of the Act. (Paragraph 11 of the counter-affidavit). It is also necessary to refer to an intermediate order dated 30th June 1966 in the order sheet which has taken note of a petition submitted by the Petitioner on 10th. June 1966, where amongst other objections, the following were mentioned in paragraphs 2 and 3 of the petition:

That perhaps under mistaken notion that Radhikananda Choudhury still owns the land this Ceiling case was started. Shri Radhikananda Choudhury owns more than this land and it is possible that the Ceiling Act is applicable to his case. The Ceiling case was not started against the Petitioner. The Petitioner's name has been recorded afterwards and how it was recorded it is not known to the Petitioner. They were never asked to submit returns and no return need be submitted by the Petitioner as Land Ceiling Act is not applicable to them.

That the Petitioner wants the land for the purpose of extension of the industries and other ancillary purposes as envisaged in the amending Act namely Act No. 20 of 1962 which excludes "Land held by Mill, Factory or Workshop as may be required for the purpose of extension of the Mill, factory, workshop or for ancillary purposes of the Mill, factory or workshop such as school, dispensary or roads.

At paragraph 4 of this petition, the Petitioner gave a detailed list of his requirements claiming 588 acres for various purposes mentioned therein. It was also mentioned that:

So far Chandrapur (Tatimara) Grant is concerned that has been reserved for future colony, schools and hospitals. Ahorigog 285 acres are necessary for further expansion of the factory.

X X X

The aforesaid order dated 30th June 1966, on perusal of the petition dated 10th June 1966, notes as follows:

As regards the principle of determining the excess land a reference has already been made in Ceiling Case No. 79 of 1960 (Assam Hard Board Ltd.). We may wait reply to that reference as the principle" will be the same.

Finally, the impugned order dated 3rd July 1967 was passed by the Collector. The Petitioner appealed to the Government u/s 7(3) of the Ceiling Act without success.

4. We have ourselves gone through the original records in the Land Ceiling Case to find out the above position in order to ascertain how the matter was dealt with

by the Collector under the provisions of the Ceiling Act.

5. The Deputy Secretary, Revenue, submitted the counter-affidavit on behalf of the first three Respondents. He states that "the land in question is ideal for the purpose of Horticulture and hence comes within the purview of the Assam Fixation of Ceiling on Land Holdings Act, 1956" (Para 4). It is further stated that the "company, not being a recorded pattadar in respect of the land in question, no draft statement was required to be served on them" (Para. 6). It has also been shown that the Sub Divisional Officer was duly empowered to deal with the matter and this point is, not questioned before us by the Petitioner. Paragraphs 33 and 34 of the petition challenging the constitutional validity of Sections 5, 6, 7(1) and 7(2) of the Ceiling Act are denied in this counter-affidavit.

6. Since the above Sections were sought to be declared as ultra vires and void by the Petitioner, the Court issued notice to the Advocate-General, Assam, at the time of the issuing of the Rule on 9th September 1968, after hearing Dr. J.C. Medhi for the Petitioner under Order XXVII-A Rule 1 of the Code of Civil Procedure, and although notice was received by him on 9th October, 1968, neither the Advocate General nor any one on his behalf is appearing before us. Besides the learned Counsel for the Petitioner, we have however heard the learned Junior Government Advocate on behalf of the Respondents 1 to 3 and Mr. J.P. Bhattacharjee on behalf of the Respondent No. 4.

7. During the hearing, no arguments were addressed regarding the constitutional invalidity of any of the Sections of the Act. We are, therefore, not required to consider the same.

8. It is strenuously contended that no draft statement was served on the Petitioner as required u/s 7(2) of the Act. Section 7(2) may be read:

The draft statement shall be published in the office of the Deputy Commissioner, the Sub-Divisional Officer, the Circle Sub-Deputy Collector and the Mouzadar, and a copy thereof shall be served on the person or persons concerned in the manner prescribed. Any objection received within 30 days of the service shall be duly considered by the Collector and after giving, the objector an opportunity for hearing order shall be passed on these objections.

Rule 6 of the Assam Fixation of Ceiling on Land Holdings Rules, 1957 shows the manner of service of the draft statement under Sub-section (2) of Section 7 and the rule so far as material for our purpose may be quoted:

(1) The draft statement prepared by the Collector under Sub-section (1) of Section 7 shall, as far as practicable, be in Form A.

(2) The Collector shall serve the draft statement on the person holding the excess land by tendering and delivering a copy thereof to him or to his duly authorised agent, x x x.

It is found as admitted in paragraph 5 of the counter-affidavit of the Deputy

Secretary that the land Ceiling Case was started in the name of the original grant-holder Radhikananda Choudhury. We have also found that the said landholder on being served with a draft statement, returned, the same disclaiming any connection with the land in these three grants sold to the Petitioner on 21st November, 1959. This was accepted by the Collector by his order of 2nd January 1964 set out above and notice was given to the Petitioner, and it appears the Petitioner's company was added in the Land Ceiling Case and the proceeding thereafter was directed against it. Even so, we find the Collector did not serve a copy of the draft statement on the Petitioner although one which had been sent to the recorded pattadar had been returned to him.

This is therefore a case where the Collector has accepted the Petitioner as the owner of the three grants after the purchase and it cannot be now argued that the Petitioner is not a person concerned in the proceeding, as has been sought to be made. The Petitioner also produced a photostat copy of the order of the Settlement Officer dated 6th October 1961 allowing mutation in respect of the land in favour of the Petitioner (Para. 1 of his petition dated 10th June 1966 before the Collector). The Petitioner, therefore, is definitely concerned in the land as well as in the proceedings before the Collector and the Collector has violated the provisions of Section 7(2) of the Act read with Rule 6(2) of the Rules in not serving on the Petitioner a copy of the draft statement. It is true that it was possible for the Petitioner to know what was happening in the proceeding and indeed presented its version of the case before the Collector. But we find that the Petitioner was originally notified by the Collector to appear before him as if only "regarding purchase of the land in question." Be that as it may, service of a copy of the draft statement on the Petitioner was mandatory legal requirement u/s 7(2) of the Ceiling Act.

9. The scheme of ceiling under the Act and acquisition of land as appearing in Chapter II, which opens with Section 4, may briefly be noticed, While Section 4 fixes the limit of the ceiling. Section 5 requires any person who holds land as owner or tenant in excess of the limit fixed u/s 4, within the prescribed period, to submit a return to the Collector. By Section 6 if such a person fails to submit the return, the Collector may himself obtain the necessary information required to be shown in the return through the prescribed agency. By Section 7(1), on the basis of the return which has to be verified through an appropriate agency or when no such return is given, on the information obtained by the Collector u/s 6, he has to prepare a draft statement in form A. By Section 7(2), service of the notice is essential as the person concerned is given a right to lodge objection within 30 days of the service of the notice before the Collector and a hearing has to take place on the objections. Any order by the Collector is appealable u/s 7(3) to the State Government within 30 days of that order.

By Section 7(4), the State Government may of its own motion call for any record relating to the draft statement and after giving the persons concerned an opportunity for hearing may pass such orders as it deems fit. There is also a

period of limitation under this subsection. By Section 7(5) any order of the State Government under Sub-section (3) or (4) of the Collector under sub-Section (2), when no appeal is preferred under Sub-section (3) or a revision is made under Sub-section (4), shall be final. It is only after all this process is gone through that u/s 7(6) the draft statement "shall then be made final" and has to be republished and thereupon "no person shall then be entitled to question it in any court of law." By Section 8 the State Government shall then acquire such excess lands by publishing an appropriate notification to the effect and such publication shall be conclusive evidence of notice of acquisition to the person or persons holding such lands. By Section 9 on publication of this notification all rights, title and interest of such person or persons in such excess land shall stand transferred to the State Government with effect from the date of the publication of the notification free from encumbrances created by it or them,

10. From the above scheme which is disclosed in the summary of the provisions already set out, it is clear that the procedure for preparation of the draft statement and its service on the person or persons concerned is not an idle formality and must be carried out strictly in accordance with the provisions of the Act and the Rules. We are not required in this case to consider whether such service can be waived by a person concerned, as that plea has not been taken by the State as according to it, no statement was required to be served on the Petitioner under law.

11. We are clearly of opinion that the Petitioner in this case is a person concerned within the meaning of Section 7(2) of the Act and non-service of the draft statement under that sub-section is fatal to the proceeding. Besides, we found that the Petitioner had raised several legal objections before the Collector which he pressed later before the appellate authority. From a perusal of the impugned orders, we are not satisfied that these objections have been properly considered in accordance with the law. There appears to be (no?) application of the mind of the Collector as well as of the appellate authority to give an appropriate decision in the merits of the legal objections.

12. We are, therefore, constrained to quash the impugned orders, namely the order of the Collector dated 3rd July 1967 and also the appellate order dated 2nd July 1968. It will be open to the Collector to serve a copy of the draft statement on the Petitioner and dispose of the matter after considering any objections which may be made before him in accordance with law.

13. In the result, the application is allowed. The impugned orders are quashed. We will, however, make no order as to costs. We have refrained from expressing any opinion on the merits of the legal objections.

M.C. Pathak, J.

14. I agree Petition allowed.