

(1981) 11 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.O. No. 71 of 1980

Gillapukri Tea and Seed Co. Ltd. and Others	APPELLANT
Vs	
Additional Director of Land Requisition and Acquisition and Reforms, Assam and Others	RESPONDENT

Date of Decision : 09-11-1981

Acts Referred:

Citation : AIR 1982 Cal 220 : 86 CWN 210

Hon'ble Judges : Banerjee, J;B.N. Maitra, J

Bench : Division Bench

Advocate : S.C. Bose, R.N. Bajoria and D.K. Dhar, for the Appellant; S.N. Tagore, for the Respondent

Final Decision : Allowed

Judgement

Banerjee, J.—This appeal at the instance of the company arises out of an order passed by the Hon"ble single Judge discharging the Rule taken out by the petitioners. The Hon"ble single Judge held inter alia that because of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (as amended by Act XVIII of 1976) the right of appeal having been taken away, the application cannot succeed. The Assam Fixation of Ceiling on Land Holdings Act, 1956 came into force on 16th of Jan., 1957. It appears that on 24th of March, 1971 the tea garden of the company came within the A. F. of C. on L. H, Act. After the said date the petitioners filed return under Rule 5 (1) of the Rules framed, under the Act, It appears that the petitioners filed return as contained in Rule 1 on 7th of April, 1972. On 21st of Sept., 1972 a draft statement was published and the petitioners filed an objection much beyond the prescribed time u/s 7(2) of the Act on 25th Jan., 1973. Be that as it may, the respondents gave the petitioners, appellants herein, hearing u/s 7 (2) of the said Act and on 5th July, 1973 the petitioners were communicated the final statement and the said communication was made to the Manager of the garden as also to the company having its registered office at Calcutta. The allegations, as contained in the petition, in

material particulars have" not been denied in the affidavit filed by the respondents, inasmuch as, it is admitted dates as hereinbefore given and that after the belated objection was made, hearing was given to the petitioners-appellants u/s 7 (2) and final order was passed u/s 7 (3) of the Act. It is further admitted that no communication was made in 1973 regarding the order passed u/s 7 (2) of the Act, Before the amendment in 1976, u/s 7 (3) of the Act of 1956 any person aggrieved by an order of the Collector under the foregoing sub-section, may, within 30 days of the order prefer an appeal to the State Government. Mr. Bose on behalf of the petitioners-appellants contended that as the final order was not communicated to the petitioners, the petitioners' right of appeal, as contained in Section 7 (3) of the Act, could not be availed of. What was communicated to the petitioner by the order dated 5th July, 1973 was one which is final statement and not the final order. On reading the Act (un-amended) in particular Section 7, it is clear that there is distinction between the order u/s 7 and the statement which is also contained in the said Act. It appears from the analysis of Section 7 of the Act that after the draft statement is made and objection is filed and thereafter this objection is to be heard by the competent authority, final order is to be passed,, by the competent authority and this final order must be communicated to the petitioners or objector and thereafter the objector has right of appeal. After the appeal is disposed of the draft statement u/s 7 (6) of the Act will become final and order will be made regarding the filing of statement and that will have to be published in the office mentioned in Sub-section (2) of the Act. Therefore, this final order and final statement must be given two different meanings in view of the fact that two different words have been used in two different contexts. In that view of the matter, it appears admittedly that no final order was served on the petitioner-appellants at all. This is also clear as Mr. Tagore has stated that it is not possible for them to say that the final order passed u/s 7 (2) of the Act was served on the petitioners. Mr. Tagore, however, contended in consideration to Mr. Bose's argument that unless final order is served the right of appeal becomes nugatory. Mr. Tagore further contended that in the four corners of the statute no question of service of notice of the final order on the petitioner is contemplated nor is there such a contingency from the rules framed under the Act. It appears to us, however, that if the petitioner has right to appeal, as rightly said by Mr. Bose, which the petitioner had when order was passed and unless the said order is served, no appeal can be preferred. Mr. Tagore contended that it was the duty of the petitioners to know the date of the final order. It must be stated that Section 7 (2) of the Act provides for hearing by administrative authority, and not a judicial tribunal; but the administrative authority acting quasi-judicially must serve the order which may be passed u/s 7 (2) of the Act against which an appeal lay. It is futile to argue that such an order need not be served, otherwise it is given to the officer concerned who passed the order in file of the Government without serving the same to the petitioners as in the present case and thereby taking away the valuable right of appeal to the State Government. In view of the fact that the final order has not been served on the petitioners the

application must succeed to that extent.

2. This appeal is therefore allowed and the judgment and order passed by the Hon"ble single Judge are set aside. The final statement published without service of order which was made final order u/s 7 (2) of the Act on the petitioners therefore cannot stand. The respondents will be at liberty to serve the final order on Mr. Bose's client as soon as practicable and dispose of the matter in accordance with law. We make it clear that we have not gone into the question of retrospective operation of the amendment of the A, P. of C. on L. H. Act, 1976 in this case or the effect of the said Act on the right of appeal. We also make it clear that Mr. Bose wanted to raise the question of ultra vires of violation of Article 14 of the 1976 Act. But as we have not allowed him to urge this point at this stage and decided this case as the Act stood in 1973, the above question is left open.

3. The respondents are directed to communicate the final order passed in 1973 as soon as practicable.

4. There will be no order as to cost in this appeal.

5. Preparation of formal decree in this appeal is dispensed with.

B.N. Maitra, J.

6. I agree.