
(2014) 08 GAU CK 0040
In the Gauhati High Court
Case No : WP(C) No. 3078/2010

Green View Tea and Industries	Vs	APPELLANT
The State of Assam		RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2014) 3 GLD 135 : (2015) 1 GLT 695

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M.K. Choudhury, Sr. Advocate, T.N. Srinivasan, N. Baruah, Advocate for the Appellant; S. Sarma, G.A. Assam, N. Deka, M. Chetia and D. Deka, Advocate for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. M.K. Choudhury, the learned Senior Counsel for the petitioner. The State respondents are represented by the Government Advocate Ms. S. Sarma. The impleaded respondent No. 5 is represented by Mr. N. Deka, the learned Counsel.

FACTUAL BACKDROP

2. The petitioner is the owner of a Tea Estate (T.E.) in the name and style of the Rajabari T.E. in Golaghat District. The T.E. was purchased by the petitioner from the erstwhile owner, through the registered Sale Deed dated 7.9.1987 (Annexure-I) and the details of the T.E. land is indicated in the 1st Schedule to the Sale Deed. The 2nd Schedule specifies the other assets like bungalows, staff quarters, hospital building, factory building, office building, labour quarters etc.

3. Since the T.E. was in possession of excess land beyond the prescribed ceiling limit, the Deputy Commissioner, Golaghat in the T.L.C. Case No. 38 of 1971-1972 in September 1992 (Annexure-B), passed order under the Assam Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as the Ceiling Act) and 730 Bighas 2 Kathas 12 Lechas of the T.E. land was declared as ceiling surplus land and objection was invited from the land owner to the draft

statement prepared by the Collector, u/s 7 of the Ceiling Act.

4. In their written objection dated 16.10.1992 (Annexure-C), the petitioner contended that they recently purchased the T.E. and therefore they are unable to verify each and every figures indicated by the Collector in his draft statement. Nevertheless, the petitioner objected to the draft statement prepared by the Collector as being contrary to the provisions of the Ceiling Act.

5. A final order was then passed on 5.2.1993 (Annexure-D) by the Collector whereby out of the total 2394 B 1K 11 L land of the T.E., 730 B 2K 12L was declared to be excess under the Ceiling Act and accordingly final statement was prepared by the Collector by rejecting the objection of the petitioner. The record shows that the final statement for taking over the ceiling surplus land was dated 22.2.1993 (Annexure-E) and this was received by the petitioner in June, 1993.

6. Opposing the proposed takeover of the excess land, the petitioner made a representation under Sub-Section (6) of Section 7 of the Ceiling Act and requested for quashing the Collector's order dated 5.2.1993. This Revision application was belatedly filed only on 12.7.1994 i.e. after expiry of one year from the date of service of the final statement and therefore on this ground, the Revenue Secretary rejected the petitioner's application, wherein they challenged the Collector's order dated 5.2.1993. Consequent to the rejection order passed by the Government on 8.9.1994 (Annexure-G) the Circle Officer was directed by the Collector to take possession of the ceiling surplus land measuring 730 B 2K 12L from the Manager of the T.E. and consequential direction was issued for correction of the revenue records.

7. Aggrieved by the Government decision, the petitioner through their undated representation (Annexure-I) projected that declaration and taking over of the ceiling surplus land was not in accordance with the Ceiling Act. More specifically, the petitioner contended that the land used for Seed Bari [under Sub-Section (viii)] and land utilised for rotational plantation to manage the planted area [under Sub-Clause (ix)] of Section 4(2) of the Ceiling Act were erroneously included with the declared excess land. Accordingly the petitioner requested for restoration of possession of 82B 4K 5L land or alternately to pay the price of this land for the undeserved deprivation. In the Review petition itself, the petitioner prayed for delay condonation and sought redressal against the decision of the Collector in the Land Ceiling Case No. TCL. 38/1971-72.

8. During the hearing of the Review Petition the petitioner submitted that the seed Bari and rotational plantation land of the T.E. should have been kept out of the purview of excess land. Moreover 10B of retainable land is mistakenly omitted in the final statement. However the claim for restoration of the seed Bari and rotational plantation area was rejected on the ground that such claim was never made earlier by the petitioner at the stage of preparation of the draft statement by the Collector or when written objection was given on 16.10.1992 (Annexure-P). However the arithmetical mistake in the final statement for 10B

land was rectified.

LANDOWNERS ARGUMENTS

9.1. Assailing the legality of the order dated 16.12.2009 (Annexure-P), whereby the petitioner's plea for restoration of land was rejected by the Government, Mr. M.K. Choudhury, the learned Senior Counsel contends that the Collector was obliged to permit retention of land used for ancillary purposes in the T.E. and he refers to the explanation to the proviso of Section 4(2) of the Ceiling Act to argue that the land used for Seed Bari and land used for rotational plantation to the extent of 71/2% of the planted area should not have been included in the ceiling surplus land taken over from the petitioner.

9.2. The Senior Counsel argues that when the draft and the final statement didn't take into account, the retainable land used for ancillary purpose, the final determination of the ceiling surplus land is contrary to the Ceiling Act and since there can be no estoppel against the law, the rejection of the petitioner's review application should not have been ordered for their failure to object to the draft statement in the year 1992.

9.3. The petitioner refers to Section 2 of the Ceiling Act to project that land used for tea cultivation and purpose ancillary thereto are to be excepted and since permitted land were also taken over as ceiling surplus land, the same be either returned or the land owner be compensated.

RESPONDENTS CASE

10.1. For the State authorities, Ms. S. Sarma, the learned Government Advocate submits that the petitioner is not entitled to retain possession of excess land beyond the ceiling limit and in the instant case, the excess land was taken over through due process. Moreover the Government rejected the revision petition as far back as on 8.9.1994 (Annexure-G) and therefore this belated challenge should not be entertained.

10.2. She further submits that the petitioner never raised any plea for retention of the Seed Bari and rotational plantation area in their objection filed on 16.10.1992 and therefore their undated representation submitted in 2008 can't be the basis for entertaining a claim for restoration of possession of the ceiling surplus land.

11.1. Mr. N. Deka, the learned Counsel for the respondent No. 5, refers to the provisions of the Ceiling Act to project that after the Collector prepares the draft statement indicating the area to be retained and also the excess land, objection can be filed by the affected party within 30 days under Sub-Section (2) of Section 7. After due consideration of the objection and after affording a hearing to the objector, the Collector can then finalize the draft statement and notify the same under Sub-Section (3) of Section 7. When the final statement is prepared and published, the aggrieved party can apply for re-consideration within one year and Sub-Section (6) provides for hearing to the objector. But in the present case,

both in their objection given on 16.10.1992 and also in their revision application, the petitioner failed to indicate the precise area or the Dag number of the land utilized for the seed bari and rotational plantation. Therefore the Counsel submits that the Collector couldn't have permitted retention any land on account of seed bari or rotational plantation as the same was not claimed at the first opportunity by the petitioner.

11.2. Referring to the rejection of the petitioner's revision application as far back as on 8.9.1994 (Annexure-G), the respondents contend that the petitioner if aggrieved, should have challenged the same within reasonable period and having slept over the matter, their belated application filed 7 years after the rejection of the revision petition can't now be entertained by the Court.

11.3. On the impugned order dated 16.12.2009 (Annexure-P), Mr. Deka relies upon Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, to argue that since there is no statutory provision, review power could not have been invoked and therefore he argues that the Government was not obliged to entertain any review petition filed by the petitioners.

11.4. Supporting the allotment of land to the Numaligarh Refinery Ltd. (N.R.L.), Mr. Deka submits that this Public Sector Refinery was sanctioned under the Assam Accord and since the petitioner has not specified that the ceiling land in Ouguri Chaparigaon allotted to NRL was utilized by them for seed bari/rotational plantation, the return of those lands for which the N.R.L. paid valuable consideration to the Government can't be ordered by the Court.

12. Before proceeding any further, it may be recorded that T.E. land measuring 681B 1K was also acquired under the Land Acquisition Act, 1894 and this acquired land together with 168B 2K 9L of ceiling surplus land was allotted to the N.R.L. where the public sector refinery was installed. In the resultant litigation pertaining to the acquisition proceeding, the final word was uttered by the Supreme Court in Numaligarh Refinery Ltd. Vs. Green View Tea and Industries and Another, . In this case, the Supreme Court enhanced the rate of compensation to Rs. 35,000/- from Rs. 10,876/- per Bigha. Similar alternation of rate for tea bushes was also ordered and the Collector was directed to re-determine the compensation payable to the claimant. Therefore in the present case the Court is concerned only with the excess land acquired under the Ceiling Act.

THE LAND CEILING ACT

13. The object of the Ceiling Act is to limit the amount of land that may be held by a person in Assam and the excess land beyond the ceiling limit is placed at the disposal of the Government to be settled with deserving persons. But lands held and utilized for special cultivation of tea and purposes ancillary thereto, inter alia, are exempted from application of the Ceiling Act u/s 2. But when such land ceases to be utilized for the exempted purposes, the Ceiling Act reapplies for such lands. While specifying the ceiling limit u/s 4, the explanation to proviso

to Sub-Section (2) specifies eleven land uses which are considered ancillary to special cultivation. The T.E. land for factory building, staff building, hospitals, seed bari and land needed for rotational plantation to maintain the planted areas are recognized ancillary purpose. Thus Ceiling Act itself permits retention of additional land beyond special cultivation or those lands which are utilized for purposes ancillary to tea cultivation.

14. The land owner is obliged u/s 5 to furnish return to the Collector giving particulars of all lands for application of the Ceiling Act. The Collector is empowered u/s 6 to collect information through his independent sources when the land owner fails to furnish return. On the basis of return submitted or through information collected u/s 6, the Collector u/s 7 is empowered to prepare draft statement indicating the ceiling surplus land and also the retainable land. The prepared draft statement should be served on the land owner and their objection if any, should be considered by the Collector after affording hearing to the objector. Under Sub-Section (2), the Collector is required to consider the objection and thereafter he can finalize the draft statement under Sub-Section (3) of Section 7. With signing of the final statement by the Collector, all rights over the excess land stand transferred and vested in the State Government free from all encumbrances. One further opportunity under Sub-Section (6) of Section 7 is provided to the affected land owner to apply for re-consideration of the Collector's decision and if such application is filed within one year from the date of publication of the final statement, the Government may decide the application after due opportunity to the applicant. u/s 11, the Collector is entitled to take possession of the land transferred to the State Government under Sub-Section (4) of Section 7.

15. Chapter III of the Ceiling Act provides for disposal of excess land and the State Government can settle such land u/s 17 to deserving persons including displaced persons affected by flood, erosion earthquake etc. The provisions of the Ceiling Act indicates that the Government can take over ceiling surplus land from land owner but opportunities are required to be provided to the affected person before actions are taken on the excess land.

CONCLUSIONS

16. From the above narration in the preceding paragraphs, it is clear that Section 7 of the Ceiling Act provides for complete machinery for redressal to land owner affected by acquisition made under the Ceiling Act. But what is glaring in this case is that neither in their objection dated 16.10.1992 (Annexure-C) to the draft statement nor in their revision application dated 12.7.1994 (Annexure-F), the land owners sought restoration of seed bari and rotational plantation areas. But only after possession of the land was taken over in 1994, in their undated review petition, for the first time the owners applied for exclusion of the seed bari and rotational plantation area from the excess land determined under the Ceiling Act. But even in this application, the land owner conspicuously failed to indicate the precise area or the Dag Nos. where the seed bari is located or specify the area

earmarked for rotational plantation. The reason for this omission can perhaps be traced to the fact that the petitioner purchased the T.E. only on 7.8.1987 and therefore they were either unaware of any such activity in the T.E. or had never utilized any land in the T.E. as seed bari or rotational plantation. The non-utilization of any land as seed bari or rotational plantation is a distinct possibility since there was no mention of any such earmarked area in the lengthy schedules to the Sale Deed dated 7.8.1987 (Annexure-A) through which, the petitioner claims title.

17. The petitioner availed the first opportunity provided under the Ceiling Act by filing their objection on 16.10.1992 (Annexure-C). Then they filed the revision application u/s 7(c) on 12.7.1994 (Annexure-F). The objection and the revision petition was duly considered but claim made by the land owner for retention of seed bari and rotational plantation area was found untenable. Thereafter the land owners through their undated review application (Annexure-I) applied for re-consideration but the said application was rejected by the Government on 16.12.2009 (Annexure-P). Although the Ceiling Act doesn't provide for any review and it is well settled that review is not maintainable unless it is expressly permitted by law, under the ratio of *Kalabharati Advertising* (supra), the Government was not obliged to consider the review application. Nevertheless the land owner's application was entertained but was rejected through the order dated 16.12.2009 (Annexure-P). I have assessed the merit of the review decision and find the Government order to be reasonable whereby the claim for retention of seed bari and rotational plantation area from the ceiling proceeding was disallowed.

18. Under proviso to Section 1(2)(c) when the land owner cease to utilize land for special cultivation of Tea and purposes ancillary thereto, protection of such land ceases and is not covered u/s 2 of the Ceiling Act. There are tea estates which do not have their own seed bari or practice rotational plantation. In any case, it is the responsibility of the land owner to claim and establish with relevant material that, exclusion of ancillary purpose land should be from the excess land. But it is apparent in the present case that although the proceeding under the Ceiling Act was initiated in 1970s and the new owner purchased the T.E. on 7.8.1987, none from the side of the land owners ever applied for exclusion of any ancillary land area from the ceiling proceeding until the undated review petition was filed in 1994 and that too without mentioning the specific area/Dag Nos. where the seed bari and rotational plantation area are purportedly located.

19. Therefore I am of the opinion that the belated review application was an afterthought and an opportunistic approach of the petitioner and their claim doesn't appear to have any documentary support to conclude that they had utilized any specific area of the T.E. land for ancillary activities like seed bari or for rotational plantation.

20. The claim for exclusion of the rotational plantation area is without reference to any Dag Nos. but the petitioner is claiming the maximum permissible (i.e.

71/2% of the planted area) for retention under Clause (ix) of the Explanation. Similarly the Dag Nos. or the specific area for Seed Bari is also not specified in the petitioner's review application. When ancillary activity areas are to be excluded from the coverage of the Ceiling Act, the land owner must demonstrate with cogent evidence that they actually utilized a specific area for Seed Bari or for rotational plantation and only then, such lands can be excluded as lands utilized for ancillary purpose. But when land owner do not identify the land allegedly utilized for ancillary purposes, reasonable presumption can be drawn that T.E. had not or ceased to utilize land for any of the permitted ancillary activities. Therefore there can be no justification to allow retention of any additional land on this count.

21. Considering the above, I find no merit in this case and accordingly the case is dismissed without any order on cost.