

(1972) 05 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 4 of 1969

Hiranya Kumar Barthakur and others

APPELLANT

Vs

P. C. Sajkia and others

RESPONDENT

Date of Decision : 09-05-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Guw 87

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

Bench : Division Bench

Advocate : A. R. Barthakur and P. Prosad, for the Appellant; D. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

P. K. Goswami, C. J.

1. This application under Article 226 of the Constitution of India is directed against, a notification dated 21-3-1968 of the State Government made u/s 3 (1) of the Assam State Acquisition of lands belonging to Religious or Charitable institution of Public Nature Act. 1959 (Assam Act IX of 1961). hereinafter referred to as "the Act".

2. This Act was brought into force with effect from 18-1-1963 by a notification of the State Government of 15-1-1963 published in the Assam Gazette on 16-1-1963. Under this Act, the State Government has got powers to frame rules and the rules were published in the Assam Gazette dated 9-1-1963. u/s 18 of the Act the Head of a religious or charitable Institution shall within three months from the date of commencement of this Act, submit to the Deputy Commissioner a return giving the particulars of all his lands mentioning specifically the land (a) selected for retention under S. 5 (b) are under occupation of tenants and (c) not under occupation of any tenant. Other particulars also may be supplied. If, however, a return, is not submitted as provided for u/s 13, the Deputy

Commissioner u/s 19 of the Act may obtain the information required to be shown in the return together with any further information as it may be necessary through, an agency as he may fix or as the Government may prescribe and select the area which a religious or charitable institution is entitled to retain under provisions of this Act as also the plot or plots in excess. u/s 20, on the basis of the information given in the returns voluntarily submitted by the Head of the Institution or on the information obtained through the agency provided for u/s 19, the Deputy Commissioner has to prepare a draft statement showing various particulars. This draft statement u/s 20 (2) shall be published in the office of the Deputy Commissioner, the Sub-divisional Officer, the Circle Sub-Deputy Collector and the Mauzadar and a copy thereof shall be served on the Head of the religious or charitable institution, as the case may be in the manner prescribed. It is provided u/s 20 (2) that any objection received within 30 days of the service shall be duly considered by the Deputy Commissioner and after giving the objector an opportunity for hearing, order shall be passed on this objection. u/s 20 (3), there is provision for appeal against the order of the Deputy Commissioner if anyone is aggrieved by the decision under S. 20 (2), within thirty days of the order. u/s 20 (4) the State Government may, of its own motion, call for any record relating to the draft statement at any time within 60 days of the order of the Deputy Commissioner under sub-section (2) and after giving the Head of the religious or charitable institution concerned an opportunity of being heard pass such orders as deemed fit. u/s 20 (5) any order of the State Government under sub-section (3) or (4) or of the Deputy Commissioner under sub-section (2) in absence of an appeal or revision shall be final. Sub-section (6) of Section 20 provides that the draft statement shall then be finally prepared in terms of the final order of the Deputy Commissioner or the State Government, as the case may be, and republish in the offices mentioned in sub-section (2), and no person shall then be entitled to question it in any Court of Law. Under sub-section (7) of Section 20 an authenticated copy of the final statement shall then be submitted to the State Government immediately on the publication thereof. It is apparent that after receipt of the final statement u/s 20 (7) of the Act, the Government proceeds u/s 3 to issue notification of acquisition. Although, therefore. Section 3 precedes these sections mentioned above, action under Sec. 3 will be subsequent to compliance with the provisions of Section 18 onwards. It is not claimed by the petitioners in this case that the procedure laid down for draft statement or final statement has not been complied with by the authorities. Their entire grievance is against the order of the State Government made u/s 3 (I) of the Act Mr. P. Prosad, who appears in support of the petition, submits that the notification of the State is without jurisdiction as the land which is acquired under the said notification does not belong to the Siva Dole which, of course, is admittedly a religious institution. According to him these lands belong to the petitioners and other private individuals holding land under Periodic Patta and therefore cannot be the subject-matter of acquisition under the provisions of this Act. This objection cannot be enquired into in an application under Article 226 of the Constitution as a complete machinery is provided under the Act to raise

objections, when these lands were sought to be included earlier by the Deputy Commissioner in the draft statement prepared under the law. The petitioners have not availed of the opportunity provided under the Act to lodge their objections at the appropriate time against the draft statement. Even if they were aggrieved by the order of the Sub-divisional Officer, they could have preferred an appeal to the State Government which they have not done. It appears, they woke up only on acquisition of the land by the State Government under the impugned notification. The impugned notification, therefore, cannot be questioned under the circumstances stated above and it is not permissible under Art 226 of the Constitution to interfere with the action of the Government when no violation of the provisions of the Act or the Rules has been pointed out to us. No other ground or objection has been raised by Mr. P. Prosad for the petitioners.

3. In the result, the application fails and is accordingly dismissed. We will, however, make no order as to costs.