

(1971) 05 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 386 of 1968

Jalaluddin Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-05-1971

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 2, 3, 7, 7(1), 7(3)
Constitution of India, 1950 — Article 226

Citation : AIR 1972 Guw 14

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

Bench : Division Bench

Advocate : M.S. Rahman, for the Appellant; K. Sarma, for the Respondent

Judgement

P.K. Goswami, C.J.—This application under Article 226 of the Constitution of India is directed against a notification publishing a draft statement u/s 7(1) of the Assam Fixation of Ceiling on Land Holdings Act, 1956, hereinafter referred to as "the Act".

2. The draft statement is dated 28-09-65 and was issued by the Sub-divisional Officer. Hailakandi. The land is held by Petitioner who is the proprietor of Kachila Tea Estate in Cachar District. The land of this grant measures 1629 Bighas 14 Kathas 13 Chataks, which the Petitioner "holds for special cultivation of tea/and/or purposes ancillary thereto" (Para 2 of the petition). The Petitioner preferred an objection to the draft statement u/s 7 of the Act on 07-02-66 to the Sub-divisional Officer who rejected his objection by order dated 12-06-67. The Petitioner thereafter preferred an appeal to the State Government u/s 7(3) of the Act but without success, and hence this application challenging the draft statement and the successive adverse orders passed in the proceedings under the Act. The Petitioner has given a break-up of the entire area under this grant at para 4 of his petition. We may quote the same:

These lands are classified under the following heads:

3. Mr. Rahman, the learned Counsel for the Petitioner submits that the Petitioner holds the entire area for special cultivation or for purposes ancillary thereto. He submits that u/s 2(c) of the Act this type of land is exempted and, therefore, it could not be the subject matter of acquisition under the Act. The authorities below did not accept the contention and, it appears the Petitioner also did not give any evidence before the authorities with regard to his objections on that score. We are, therefore, not inclined to interfere with a conclusion arrived at by the authorities below that these lands which are going to be acquired were, on the evidence as produced then before the authorities not for purposes ancillary to special cultivation. Faced with this position, the learned Counsel submits that the lands of the type as the Petitioner has shown in his break-up at paragraph 4 quoted above cannot be a subject-matter of acquisition under the Act. We may, therefore, examine the definition of "land" given in Section 3(f) of the Act. That clause reads as follows:

3(f) -- "land" means land which is or may be utilised for agricultural purposes or purposes subservient thereto, and includes the sites of buildings appurtenant" to such land.

The Petitioner has clearly shown in his affidavit that at least 899 Bighas 15 Kathas 5 Chataks of land (Fishery 289B. 3K. 3 Ch. + stone quarry 610 B. 12K. 2Ch.) was covered by fishery and stone quarry. There is no denial to the statements made in paragraph 4 of the petition. We will, therefore, assume that an area of 899B. 15K. 5Ch. is covered by fishery and stone quarry, as alleged by the Petitioner. That being the position, where there is a fishery or a stone quarry would not come within the definition of land u/s 3(f) . This area of land clearly cannot be acquired under the provisions of this Act. The view we have taken receives support from the objects and purposes and the entire scheme of the Act. One of the objects is to acquire excess land either from landlord or from the tenant in excess of the ceiling fixed by the Act with a view to distribute the same equitably amongst people who deserve and are entitled to settlement under the provisions of the Act.

It is, therefore, understandable that only agricultural land is aimed at. Stone quarries and fisheries cannot, therefore, be intended to be handed over to the landless people for the purpose of cultivation. It is because of that reason that land has been defined as had been done u/s 3(f) of the Act. If, therefore, out of 1629 B. 14K. 13 Ch. an area of 899B. 15K. 5 Ch. cannot be touched under the provisions of the Act there remains only an area of 729 B 19K. 8Ch. The Petitioner states that an area of 243 B. 6K. 8Ch. is under tea, that is to say under special cultivation. We have also perused the original draft statement and the area given in the petition is corroborated by what is mentioned in the draft statement.

The Government concedes, and it is not for us to decide, that double that area will be allowed by the Government to a grantee for special cultivation. The Petitioner on that footing is entitled to hold 243B. 6K. 8Ch. +486B. 13K. 0Ch.,

totalling an area of 729 B 19K. 8Ch., which even according to the Government's concession the Petitioner is entitled to hold. There is, therefore, no jurisdiction of the State Government under the provisions of this Act to set in process the provisions of this Act with regard to the land covered by fishery and stone quarry as shown by the Petitioner. The draft notification, therefore, stands quashed.

4. The application is accordingly allowed. We will, however, make no order as to costs.

M.C. Pathak, J.

5. I agree.