
(1990) 01 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 746 of 1985

McLeod Russel (India) Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-01-1990

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 7(6)

Citation : (1990) 2 GLR 208

Hon'ble Judges : J.M. Srivastava, J; B.P. Saraf, J

Bench : Division Bench

Advocate : N.M. Lahiri and S. Dutta, for the Appellant; B.P. Kataki, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner company owns and holds Tezpur and Gogra Tea Estates in the district of Sonitpur, Assam. Action under the Assam Fixation of Ceiling on Land Holding Act, 1956, hereinafter referred to as "the Act", was commenced in Land Ceiling Case No. 7 of 1971 by the Collector. After the objections filed by the Petitioner were heard 395 52 hectares of land was declared surplus of which possession was taken by the Collector on 14th May, 1976 (Annexure-I) The Collector published the final statement on 24.6.76. The Collector, Sonitpur, Respondent No. 3 herein, on 16.4.84 served on the Petitioner draft statement in Land Ceiling Case No. 1/84 wherein the possession and utilization of lands of Tezpur and Gogra Tea Estate were shown exactly the same in columns 12 to 24 and 26 as were shown in Land Ceiling Case No. 7/71. Only in respect of column 25 the area of land in place of 103.22 hectares was shown as 113 hectares. The Petitioner filed objection mainly on the ground that the land ceiling case in respect of the Petitioner had been finally disposed of earlier and that the matter could not be reopened. The Collector, however, prepared the final statement and determined some more land as surplus. The Petitioner filed a representation before the Government and then came to this Court in Civil Rule No. 535/84

wherein by order dated 31.8.84 the Government was directed to dispose of the representation of the Petitioner. The representation thereafter was dismissed by the Government by order dated 4.7.85.

2. Being aggrieved the Petitioner has come to this Court and Shri N.M. Lahiri, the learned Counsel appearing on its behalf has submitted that the action Initiated in land Ceiling Case No. 1 of 1984 was without jurisdiction and has urged that the proceedings in Land Ceiling Case 1/84 therefore be quashed. Shri B.P. Kataki. The learned Govt. Advocate, pas submitted that the impugned action was taken by the Collector in pursuance of a Government letter dated 7.4.83 for acquiring land not utilized for tea cultivation or for any other ancillary purpose. He also referred to Rule 5A of the Rules framed under the Act.

3. We have considered the submissions on behalf of the parties. The Collector had taken action under the Act in land Ceiling Case No. 7/71 in which final statement had been published. We have not found any provision in the Act which empowers the Collector to reopen the matter to initiate any fresh action for determination of surplus land under the Act. Sub-section (6) of Section 7 of the Act, as is originally stood before the amendment by the Assam Act XV of 1984, which came into force with effect from 18.4.84, conferred powers only on the State Government to call for any record relating to any final statement at any time and to pass such orders as it deemed fit. Even after the amendment in 1984 the said power remained with the State Government and the Collector nowhere was given any power to reopen the matter. Even the newly added Sub-section (6)(a), which conferred the power of review was with the State Government. We have also not found any provision in the Act which provides for delegation of power by the State Government to the Collector. We, therefore, think that the Collector had no power under the Act to initiate fresh action as the Collector purported to do by the Memo dated 16.4.84.

4. We also cannot accept the submission on behalf of the Respondent that because the State Government had given direction in its letter dated 7.4.83 the action taken by the Collector had the authority of law or was justified. In our opinion the Collector was to take action in accordance with the provisions of the law and since the Government had no power under any of the provisions of the Act to delegate its powers the Collector could not reopen the matter on the strength of the letter of the Government dated 7.4.83.

We, therefore, hold that the action initiated by the Collector in Land Ceiling Case No. 1/84 is without jurisdiction and liable to be quashed. In that view of the matter it is not necessary to examine the submissions on behalf of the Respondents regarding Rule 5A. We also do not consider it necessary to go into the other submissions made by Shri Labiri.

5. For the aforesaid reasons the proceedings and orders in Land Ceiling Case No. 1/84 impugned in the petition are quashed. The petition is allowed. No order as to costs.