
(1973) 01 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 153 of 1970

M/s Barduar Tea and Timber Co.

APPELLANT

Vs

The Sub-Divisional Officer, Gauhati and others

RESPONDENT

Date of Decision : 31-01-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Guw 131

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

Bench : Division Bench

Advocate : P. Choudhuri, A. B. Barthakur and N. N. Saikia, for the Appellant; T. N. Singh, for the Respondent

Final Decision : Allowed

Judgement

P. K. Goswami, C. J.

1. This application under Article 226 of the Constitution of India is directed against an order of the State Government passed under Sec.7 (3) of the Assam Fixation of Ceiling on Land Holdings Act. 1956, briefly the Act.

2. The petitioner is a company incorporated under the Indian Companies Act having its place of business at Barduar in Kamrup District. The company was formed for manufacturing tea and for extracting forest Products, by which, we understand, timber is meant. The company owns about 15000 Bighas of land. A land ceiling case being No. 172/61, was started against the company under the provisions of the Act.

3. We find from Annexure-3 to the counter-affidavit that the petitioner did not submit any return under the Ceiling Act and therefore, a draft statement was prepared u/s 6 of the Act. We are concerned with the Fee Simple Grant of the Tea Estate which contains an area of 12,621 and odd Bighas, out of which the area considered as excess is 9991 Bighas 3 Kathas 10 Lechas. This land is described in the return as having Sal trees, agricultural land and deep forest. It

is not, however shown in the return what area is covered by Sal trees and deep forests and what particular area is covered by agricultural land. We are quoting these figures from the draft statement in the record. It appears that when the same was served on the petitioner, the petitioner lodged objection under Sec. 7 (2) of the Act before the Collector who passed his order on 15-9-67 rejecting the objection petition. Being aggrieved by the decision of the Collector, the petitioner appealed to the State Government on 30-1-68. Meanwhile, it is pointed out by Mr. Singh appearing on behalf of the Respondents, that the final statement was prepared and signed on 4-10-67 and there was an order to serve copies of the same. It is not known whether the copies were served on the petitioner or not. At any rate the order sheet dated 8-1-68 shows that the final statement was duly published. Be that as it may as stated earlier there was an appeal before the State Government which was entertained and was disposed of by the impugned order on 6-9-69. Mr. Choudhuri has now practically given a go-by to the pleas raised in the original application. He draws our attention to a supplementary petition filed on 28-9-70 and the Court ordered it to be kept with the record after serving copies of the same on the Respondents. It is only after the service of these copies that the learned Senior Government Advocate appeared some time in December 1971 and submitted the counter-affidavit on behalf of the Respondents on 21-8-71. The counter-affidavit of course does not take count of the supplementary petition as there is no reference to any averments made therein by the petitioner. Since, however, the supplementary petition has been served on the Respondents, we will assume that what is stated therein is not controverted. It is sufficient to state that the State Government does not deny that there are Sal plantation and deep forest on 9991 Bighas and odd land. Taking advantage of this factual position, which is the admitted position of the parties. Mr. Choudhuri presses into service a point which may be said to have been taken in the supplementary petition namely that this area of land where Sal plantation stands which is really the bounty of nature without use of human skill or labour is excluded from the provisions of this Act u/s 3 (f) of the Act. That section reads as follows:

"3. Definition.- In this Act. Unless the context otherwise requires:

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

Since the admitted position is that a large area of the land is covered by Sal Plantation the point is writ large on the records and any authority taking action under the provisions of the Act, is bound to consider whether the subject-matter of acquisition is land within the meaning of Section 3 (f) of the Act. The foundation for jurisdiction to acquire land under the Ceiling Act is that the land is covered by the definition in Section 3 (f) of the Act. Therefore, a question of jurisdiction does arise. It will be therefore, necessary for the appellate authority

to consider whether this land which after being acquired will have to be disposed of in accordance with the provisions of Sections 16 and 17 of the Act for settlement for cultivation, will be suited for cultivation. The object under the Act is no doubt to acquire excess land but with the sole object of settling the same with persons for cultivation after it is available u/s 15 for disposal by the Government. Since that object will not be achieved in case the land is covered by deep forests and Sal plantation etc., Section 3 (f) introduces a restrictive definition of "land". We are clearly of opinion that the appeal has not been disposed of by the State Government in accordance with law by applying its mind to all the relevant provisions of the Act. We are therefore, constrained to quash the order of the State Government dated 6-9-1969 and remit the appeal to it for disposal in accordance with law in the light of the observations made hereinabove. We will not be understood as pronouncing any opinion on the merits of the claim made by the petitioner.

4. The application is accordingly allowed and the appeal is remanded as indicated above. We will, however, leave the parties to bear their own costs.

M. C. Pathak, J.

5. I agree.