

(2004) 10 GAU CK 0001

In the Gauhati High Court

Case No : Writ Appeal No. 336 of 2004 and W.P. (C) No. 4176 of 2004

State of Assam and Another

APPELLANT

Vs

Pragati Growth and Development Ltd. and Another

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLT 250

Hon'ble Judges : D. Biswas, Acting C.J.;Ranjan Gogoi, J

Bench : Division Bench

Advocate : A.C. Buragohain,A.A.G, for the Appellant; N. Dutta, K.N. Choudhury, R. Deka and J. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The pride and honour of hosting the 33rd National Games has been bestowed on the State of Assam. The mega-sporting event is to commence from 12th November 2005 and over 10,000 athletes and sports officials are expected to take part in the said event. In tune with major international and National sports events, construction of a Games Village to house the athletes and the officials who would be participating in the event has been contemplated. The controversy in the present writ proceedings relate to the entitlement of the Respondent-writ Petitioner to have the ownership, possession and control of about 70 Bighas of Government Land for the purpose of construction of the Games village at a price claimed by it. The learned Single Judge having found a legally enforceable right in the Respondent-writ Petitioner to have the aforesaid land at a price of Rs. 1.30 lakh per Katha, the Appellant-State, aggrieved, has filed the present appeal.

2. Before adverting to the facts of the case and embarking upon the necessary discussion for determination of the respective rights as claimed, we consider it proper to put on record our considered views with regard to the policy decision of the State as regards the manner in which implementation of the project has been

visualized. Investment of private capital in building up State infrastructure is not unknown. It is an innovation of recent years. Private investment in care sectors like construction of Highways, Airports etc. without requiring deployment of State funds is a fait accompli. However, what is strikingly noticeable in all such ventures is the eventual control of the State over the infrastructure developed by deployment of private capital and giving of limited rights to the private entrepreneur in the matter of collection of tolls/fees so as to enable the concerned entrepreneur to recover the funds expended while maintaining a reasonable profit. Surrender of the infrastructure by the State though built on private capital is not in tune with the economic goals visualized under our constitution.

It is, perhaps, in keeping with the success of such industrial and developmental experiments in the country that the State of Assam had taken a policy decision that construction of the Games Village will be entirely on the basis of deployment of funds by the private entrepreneur, who is to be evenly selected; the state will have no financial involvement in the project and land on ownership basis will be transferred to the "contractor" on which land the Games village is to be constructed, which, after construction and use for the limited purposes of the National Games, would become the private property of the "contractor" to be disposed of according to his business projections. It is the aforesaid latter aspect of the policy which does not visualize any role of the State in the huge infrastructure which is contemplated to come up and the transfer of a scarce commodity like land, even though it may be at the market rate, is what we find difficult to appreciate. Alternative means and devices, without any financial involvement on the part of the State, while maintaining the effective control of the State over the huge housing complex that is bound to come up, in our considered view, was not impossible of conception. It is an exercise that could have been legitimately attempted. Instead a course of action involving surrender of scarce land in an ever-growing City like Guwahati for raising a housing complex over which the State will not have any control whatsoever has been decided upon. However, as the aforesaid policy decision is not subject matter of the lis before us, we do not wish to say anything more on the subject and proceed to consider the rival cases on merits.

3. The pleadings made by the respective parties before the learned Single Judge are long elaborate and the same have been exhaustively enumerated by the learned Judge in his order which has been appealed against. We, therefore, do not consider it necessary to re-narrate the said facts and shall confine ourselves only to the bare essentials necessary for the purposes of deciding the present appeal.

The allotment of the 33rd National Games to the State of Assam was made sometime in the year 2002-2003. A nodal and Implementing agency to be called the National Games Secretariat (in short NGS) was incorporated as a Society under the Societies Registration Act, 1860. The aforesaid Incorporation of the

Society was made in the month of July, 2003. After an abortive attempt to select a suitable "person" for construction of the Games Village on the basis of competitive offers, the Respondent-writ Petitioner, armed with a recommendation from the President of the Indian Chambers of Commerce, Kolkata, evinced its interest to construct the Games Village. On 10th and 11th March, 2004, the representatives of the Respondent-company along with its associates or collaborators, who are two Singapore based companies, flew down to Guwahati and held discussions with the officials of the NGS as well as the functionaries of the State with regard to the construction of the Games Village. They were shown a proposed site, which was immediately confirmed by the Respondent-writ Petitioner to be suitable for the proposed construction. The aforesaid confirmation is evident from a letter dated 13.3.2004 signed by the Managing Director of the Respondent- writ Petitioner which also contains an offer for construction of the Games Village by a consortium consisting of the Respondent-writ Petitioner and its two collaborators from Singapore on the broad terms as indicated in the said communication dated 13.3.2004. Acting with great promptitude, the Secretary General of the NGS who also happens to be the Commissioner and Secretary to the Government of Assam, Department of Sports and Youth Welfare, by his letter dated 19.9.2004 confirmed the intent of the NGS to engage the consortium to plan, finance, develop construct and sell the proposed infrastructure, i.e., National Games Village. In the communication dated 19.3.2004, it was clearly mentioned that necessary steps are being taken for transfer of the land to the NGS for handing over the same to the special purpose vehicle, i.e., a company to be incorporated for development of the Games Village. The subsequent facts which need to be taken note of by us are that a decision was taken at the level of the Chief Minister of the State to require the Water Resources Department of the State to whom the land was allotted to handover the same to the NGS and that on 8.4.2004, the Respondent-company entered into an agreement with its consortium partners wherein separate roles were assigned for the Respondent Company and its two partners with regard to the implementation and execution of the project. A company under the name of Assam Pragati Infrastructure Limited which was to act as the special purpose vehicle contemplated in the offer in the Respondent-writ Petitioner was also incorporated (it was subsequently dissolved). The draft agreement to be executed between the Respondent writ-Petitioner and the special purpose vehicle on the one hand and the National Games Secretariat and the water Resources Development Department was also finalized wherein the value of the land was stated to be Rs. 71,000/- per Katha. It may be noticed at this stage that according to the Respondent writ Petitioner, during the negotiations that had preceded the aforesaid developments, they had received commitments from the authorities that the value of the land would be Rs. 71,000/- per katha. It is at this stage, as revealed by the records in original placed before this Court on behalf of the State that the Chief Secretary of the State of Assam intervened and put up a note to the Chief Minister stating that the developments between the parties with regard to the transfer of the land and the price thereof was in

gross violation of the established procedure inasmuch as, according to the Chief Secretary, it is the Revenue Department of the State, who would be competent to transfer the land which had earlier been allotted to the Water Resources Department. According to the Chief Secretary, the Revenue Department was not taken into confidence at any stage and the land was being proposed to be transferred without the approval and concurrence of the Revenue Department as would be mandatorily required. The said note dated 20.4.2004 was answered by the Chief Minister of the State with an order that all procedures as enjoined by law should be followed. Thereafter, what appears from the pleadings of the parties and the records produced in original is that by Government Notification dated 6.5.2004 a Core Committee consisting of high officials of the State was constituted to go into the question, inter alia, of the value of the land. The Core Committee, after due deliberation, recommended that the value of the land should not be less than Rs. 1.30 lakh per katha and it also recommended that security money of Rs. 5 crore, being the approximate amount of the value of the land, be also taken from the Respondent-writ Petitioner. The Core Committee's recommendations were signed by its Members on 15.5.2004 where after on 17.5.2004 a letter was issued by the Secretary General of the NGS to the Respondent writ Petitioner mentioning therein that the Core Committee has recommended that the price of the land should not be below Rs. 1.30 lakh per katha. None of the other recommendations of the Core Committee which were forwarded to the Respondent writ Petitioner by the aforementioned letter dated 17.5.2004 would be relevant for our purposes in view of the fact that the controversy between the parties in the present proceeding has come to be confined only to the question of the value of the land. By the aforesaid letter dated 17.5.2004, the Secretary General of the NGS while forwarding the recommendations of the Core Committee had asked the Respondent-company to intimate its views for onward transmission to the Government. On the same day, i.e. on 17.5.2004, the Respondent-company responded to the letter dated 17.5.2004 of the Secretary General as noted above and indicated its acceptance of the price of the land at Rs. 1.30 lakh per katha. While the matter was pending at that, it appears that a team consisting of the Chief Secretary and other high officials of the state of all the concerned Departments carried out a site inspection on 31.5.2004 and thereafter held a discussion on the same day in the Office of the Chief Secretary wherein a decision was recorded to the effect that the value of the land proposed to be transferred should be Rs. 5,00,000/- per katha. The matter being placed before the Chief Minister, who ordered that the same be placed before the Cabinet, the necessary Cabinet Memorandum was prepared and on 9.6.2004, the Cabinet approved the decision that the value of the land should be Rs. 5,00,000/- per katha. Thereafter the said decision was communicated to the Respondent writ Petitioner by the Secretary General of the NGS by his letter-dated 10.6.2004 which has been impugned in the writ petition. The learned Single Judge hearing the matter, came to the conclusion that the letter dated 17.5.2004 issued by the secretary General of the NGS contains a promise that the land would be available for transfer to the Respondent-company

at a price of Rs. 1.30 per katha. The learned Single Judge further took the view that acting on the promise, the Respondent-writ Petitioner had materially altered its position and as no superior public interest had been established by the official Respondents permitting them to resile from the promise made, the Respondent writ Petitioner was entitled, on the doctrine of promissory estoppel, to have the land transferred to it at the price of Rs. 1.30 lakh per katha. Acting on the gesture shown by the Respondent-writ Petitioner to further enhance the price by 10% of the aforesaid, value, the learned Single Judge though it proper to direct the state to transfer the land to the Respondent writ Petitioner at a price of Rs. 1.50 lakh per katha. At the same time, the learned Single Judge, on consideration of the facts and circumstances which were taken into account by the Chief Secretary and the Committee headed by him to determine the value of the land at Rs. 500,000/- per katha, took the view that the aforesaid determination at Rs. 5,00,000/- per katha was without any reasonable and logical basis and amounted to an arbitrary action on the part of the State authorities. The aforesaid determination was, therefore, interfered with. Aggrieved by the aforesaid decision rendered by the learned Single Judge by means of the judgment and order passed, the present appeal has been filed.

4. We have heard Shri AC Buragohain, Additional Advocate General, Assam on behalf of the Appellant-State and Shri N. Dutta, learned Senior Counsel appearing on behalf of the Respondent-writ Petitioner.

5. The oral arguments advanced by the learned Additional Advocate General, who has also filed before us a set of written arguments, would go to show that the Appellant State contends the directions passed by the learned Single judge to be legally impermissible on the ground that at no point of time any promise was made to the Respondent-writ Petitioner to sell the land at the price of Rs. 1.30 lakh per katha. The letter dated 17.5.2004 which has been found by the learned Single Judge to contain such a promise was merely a communication issued to the Respondent writ Petitioner informing it of the recommendation of the Core Committee and asking for its views in the matter so that the aforesaid recommendation of the Core Committee along with the views of the Respondent writ Petitioner could be placed before the State Government. There is no promise in the said letter, the learned Additional Advocate General contends. Additionally, it has been argued that the said letter was issued by the Secretary General of the NGS, which being a society registered under the Societies Registration Act, 1860 is a separate entitle in law. The fact that the Secretary General of the NGS is holding the post of Commissioner and Secretary to the Government of Assam, Sports and Youth Welfare Department, would not make the said communication dated 17.5.2004, a communication issued on behalf of the State Government. The learned Additional Advocate General has further argued that even if the letter dated 17.5.2004 is construed by this Court to be a promise, such a promise cannot be legally enforced against the State Government as the same was not made by or on behalf of the State Government in accordance with the Rules of executive business. Arguing further, the learned Additional Advocate

General has contended that the pleadings of the writ Petitioner-Respondent do not establish that acting on any such promise, the Respondent writ Petitioner, had materially altered its position so as to warrant invocation of the doctrine of promissory estoppel in its favour. Lastly, it has been argued by the learned Additional Advocate General that the price of the land at Rs. 5 lakh having been fixed by the Chief Secretary and the Committee headed by him and the same having received Cabinet approval even if this Court is to hold that a promise was made and that the Respondent writ Petitioner acting on it had materially altered its position, the State must be held not to be bound by the promise made on account of superior public interest. In this regard, the learned Additional Advocate General submitted that the circumstances taken into account in fixing the price at Rs. 5 lakh are relevant and material circumstances, which would justify the aforesaid fixation on the principle of "market value".

6. Controverting the submissions advanced on behalf of the Appellant, Shri N. Dutta, learned senior Counsel for the writ Petitioner-Respondent has argued that in the facts of the present case the promise made to the Respondent Writ Petitioner must be culled out by the Court from the actions and conduct of the Government beginning the month of January, 2004 when the Respondent-writ Petitioner made its offer to construct the Games Village. Shri Dutta has taken us through the several letters and correspondences exchanged between the parties as available on record to show that there was a promise to allow the Respondent writ Petitioner to construct the Games village on Government land, the price of which was initially fixed at Rs. 71,000/- per katha and thereafter at Rs. 1,30,000/- per katha. Shri Dutta has further argued that though the Respondent writ Petitioner would not insist on its rights to have the land at the rate of Rs. 71,000/- per katha in view of the fact that it had accepted the price of Rs. 1.30 lakh per katha, the said offer of Rs. 1.30 lakh per katha constitutes a clear and unequivocal promise on the part of the Government though the same was made by the N.G.S. Referring to the Government order constituting the NGS, Shri Dutta has contended that the NGS is an interface of the Government and what has been held out to the public is that any transaction with the Government in the matter of construction of the Games Village and holding of the National Games must be through the National Games Secretariat. The promise though admitted to be made by the NGS is contended by Sri Dutta to be on behalf of the State Government and the NGS being an interface of the State Government, such promise, it is contended, will bind the State Government, Shri Dutta by relying on the averments made in the writ petition and particularly in paragraph 4 (XXV) of the Reply Affidavit filed by the writ Petitioner) has contended that the writ Petitioner had materially altered its position by acting on the promise made. It has been further argued by Shri Dutta that irrespective of the riglits of the Respondent writ Petitioner as may flow to it on application of the doctrine of promissory estoppel, the Respondent writ Petitioner is entitled to purchase the land from the Government at a reasonable price in view of the clear statement to the above effect made in the counter affidavit of the Respondent. The

detennination of the value of the land at the rate of Rs. 5 lakh per katha is contended to be wholly opposed to the principles of reasonableness and it is argued that the same is a highly arbitrary action warranting interference by this Court. How the subsequent offers made by Maghmallar and Hudco, who were earlier found ineligible for grant of the contract could have been taken note of in fixing the price at Rs. 5 lakh, is argued to be incomprehensible. That apart, learned Counsel has contended that the learned single Judge had taken care to ascertain the value of neighbouring lands sold in recent past in determining the correctness of the Core Committee's recommendation to fix the price at Rs. 1.30 lakh per katha. The aforesaid determination having been preceded by an elaborate exercise made by the learned Single Judge, would not call for any interference. The price of Rs. 5 lakh having been found to be without any basis, the learned Single Judge has rightly held that no superior public interest is disclosed in the facts of the present case which would justify the State to depart from the promise made. Lastly, it has been argued by Shri Dutta that a Writ Appeal being an intra-Court appeal, no interference ought to be made by the Appellate Court merely because the Appellate Court is inclined to take another view of the matter. Relying on two judgments of this Court in the cases of State of Tripura and Ors. v. Ramendra Nath Dey, reported in 2000 (3) GLT 214 : (2001) 1 GLR 54 and Tractor and Farm Equipment Ltd. Vs. Secretary to the Govt. of Assam, Dept. of Agriculture and Others, Shri Dutta has argued that the view taken by the learned Single Judge in the present case is a perfectly reasonable and justified view and even if the facts of the case admit the possibility of another view being taken, the view taken by the leamed Single Judge should not be disturbed. To complete the catalogue of arguments advanced on behalf of the Respondent writ Petitioner, the arguments of Shri Dutta as to how public interest is likely to be benefited by the holding of the National Games as there is bound to increase flow of capital and development of infrastructure in the event the Games are held in the State, has also been noticed by this Court.

7. We have given our anxious consideration to the submissions advanced on behalf of both the parties. We have already noticed that the controversy in the present case is confned to one solitary issue, i.e., the price of the land. The views expressed by the learned Single Judge, which has been challenged before us in the appeal and the basis on which the impugned directions have been issued have already been taken note of by us in the proceeding part of this order. At the outset, we would like to make it clear that the entitlement of the writ Petitioner to reliefs claimed in the writ petition, which have been granted by the learned Single Judge, would depend on the applicability of the principle of promissory estoppel. It is on the basis of the aforesaid principle alone that a legal right capable of enforcement by the Court can be recognized in the writ Petitioner. In other words, if this Court holds that the aforesaid principle of promissory estoppel would not apply to the facts of the present case, neither the entitlement of the writ Petitioner to have the land transferred to it at the price of Rs. 1.30 lakh per katha as also the right of the writ Petitioner to challenge the

determination of the value of Rs. 5 lakh as subsequently made would be open to serious doubts.

8. The doctrine/principle of promissory estoppel as furnishing a case of action to an aggrieved party is a result of evolution of a long process of judicial decisions. A glant leap from the stage at which the principle was polsed when the Supreme Court had rendered its decision in the case of Union of India and Ors. v. M/s. Anglo Afthan Agencies etc. reported in AIR 1968 SC 718 was made in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, The views of the Apex Court in Motilal Padampat Sugar Mill's case (supra) have been carried forward in the several subsequent decision of the Apex Court, reference of which can be made to the cases of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Shrijee Sales Corporation and Another Vs. Union of India (UOI), Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, and State of Punjab Vs. Nestle India Ltd. and Another, The principles governing the doctrine as deducible from the several decisions of the Apex Court noted above, in so far as would be relevant to the present case, can be attempted to be capitulated as hereunder:

- (a) There must be clear, unambiguous and unequivocal promise by the State or any other public authority;
- (b) The promisee relying on the promise made, must act thereby materially altering his/its position;
- (c) The authority making the promise must be legally competent to do so;
- (d) If subsequent facts or happenings disclose superior public interest in favour of allowing the State to resile from its earlier promise, such superior public interest must be allowed to prevail.

9. While it is true that a promise intended to create legal relations may be made by words or by conduct, the precise facts on which such a promise is contended to have been made would be of paramount importance for the Court to determine the applicability of the doctrine of promissory estoppel. In the present case, the pleadings of the Respondent in the writ petition filed, in this regard, are somewhat scanty and the grievance initially expressed largely appears to be one relating to an arbitrary fixation of price by the State at the rate of Rs. 5 lakhs per katha. The scanty pleadings as regards the promise and the estoppel flowing therefrom as contained in the writ petition has been sought to be supplemented in the rejoinder affidavit filed by the Respondent in the proceedings before the learned Single Judge. While the aforesaid course of action is certainly permissible in law, what must be noticed in this regard is the specific pleading of the Respondent in the rejoinder affidavit to the effect that the promise on which it claims and estoppel against the state from enhancing the price beyond Rs. 1.30 lakhs per katha, is contained in the letter dated 17.5.2004.

We have perused the aofresaid letter dated 17.5.2004. What we find is that the

letter dated 17.5.2004 is a communication issued by the Secretary General of the NGS to the Respondent conveying the recommendations of the Core Committee constituted by the State Government on all matters referred to it including the valuation of the land. By the letter dated 17.5.2004, it was clearly mentioned that the Respondent may indicate its response to the contents thereof so as to enable the recommendations of the Core Committee and the response of the Respondent to be placed before the Government. The letter dated 17.5.2004 was issued immediately after the recommendations of the Core Committee were made on 15.5.2004. The said recommendations did not have the approval of the Government, at the state when the letter dated 17.5.2004 was issued. Viewed from the aforesaid perspective, the letter dated 17.5.2004 must be construed by us to be a mere communication to the Respondent conveying the recommendations of the Core Committee and asking for its response in the matter. As the Core Committee's recommendations were yet to be accepted at the stage when the letter dated 17.5.2004 was added and a final decision with regard to the price of the land was yet to be taken by the Government, according to us, it will be difficult to read any promise, on behalf of the State Government, in the said letter as contended by the writ Petitioner. There is no dispute between the parties that the land proposed to be transferred is Government land. If that be so, a decision must be taken by the Government to transfer the land at a particular price. No such decision of the Government having been revealed by the records produced and rather the stand of the Government being that no such decision, at any point of time was taken and in fact the only decision was to approve the price of the land at Rs. 5 lakh per katha, we fail to see how the letter dated 17.5.2004 can be construed to be a promise and that too on behalf of the State Government to transfer the land at the rate of Rs. 1.30 lakh per katha. The unequivocal, unambiguous and clear promise that is the first step required for invoking the doctrine of promissory estoppel and in fact the very foundation on which the doctrine operates in law is conspicuously absent.

The letter dated 17.5.2004 has been issued by the NGS, which is a society registered under the Societies Registration Act, 1860. As a society registered under the provisions of the aforesaid Act, the NGS has a distinct legal entity and merely because of the object behind its constitution is to evolve an interface of the Government, the Court cannot lose sight of the fact that such an interface would not be competent in law to make a promise on behalf of the Government unless a decision with regard to the price of the land had been taken by the Government. The letter dated 17.5.2004 issued by the NGS, even if it is construed to be a promise, in the absence of any decision on the part of the State to transfer the land at a price of Rs. 1.30 lakhs per katha, must be understood to be without authority and therefore incapable of effecting any legal relationship. Not only the letter dated 17.5.2004 cannot be construed to have spelt out any specific promise as contended on behalf of the Respondent which could legitimately bind the state, we have also perused the entire correspondences relied upon by the learned Counsel for the Respondent to show

that such a promise also flows from the conduct of the parties. We are unable to read any such promise, as contended, from the conduct of the State Government in the matter. We, therefore, have no option but to record our disagreement with the directions issued by the learned Single Judge requiring the State to sell the land to the Respondent at the price of Rs. 1.50 lakh per katha. The above view that we have taken would be sufficient for us not to enter into the other two questions raised, i.e., that the Respondent had materially altered its position acting on the basis of the promise made as well as the question whether in public interest the State should be allowed to resile from the promise allegedly made.

10. The argument advanced on behalf of the Respondent that even sans the doctrine of promissory estoppel the Respondent is entitled to have the land transferred to it at a reasonable price does not appear to be sustainable. If the Respondent has no legally enforceable right to have the land transferred to it at any particular price, what should be the reasonable price thereof is a highly subjective decision of the owner of the land, the correctness of which cannot be measured by adopting any accurate judicial principle. The principles under the land Acquisition Act would more appropriately apply to determination of compensation that the State would be required to pay for compulsory acquisitions of private property. The principles governing the determination of "market value" under the aforesaid Act would, therefore, at best furnish a rough and ready as distinguished from an accurate measure for determination of the value of the land for transfer of the same to a private entrepreneur. Not only that, in the absence of any legal right to purchase the land at any particular price, the dispute between the parties assumes the complexion of a private dispute between the buyer and the purchaser of land with regard to the value thereof which would not be entertainable in a proceeding under Article 226 of the Constitution.

11. Coming to the argument advanced on behalf of the Respondent this Court is in full agreement with the contention advanced that in an intra Court appeal if two views are possible, the view expressed by the Learned Single Judge should be allowed to prevail and ought not to be supplanted by the view of the Appellate Bench. But in the present case we are unable to agree with the learned Single Judge on the basic fact i.e. that the Petitioner is entitled to invoke the doctrine of promissory estoppel. The law laid down by this Court in *Tractor and Farm Equipment Ltd. Vs. Secretary to the Govt. of Assam, Dept. of Agriculture and Others*, therefore, is of no application to the facts of the present case. We, therefore, find no hesitation in repelling the contention advanced on behalf of the Respondent that the decision of the Learned Single Judge should be left undisturbed.

12. Arguments have been advanced by Shri Dutta, learned Counsel for the Respondent to the effect that in the facts of the present case the appellate power should be exercised to preserve the order passed by the learned Single Judge, keeping in mind the positive and beneficial effect on public interest that the

holding of the National Games is likely to have. The arguments raised opens certain areas which the Courts must refrain from entering. How and in what manner the National Games should be held are essentially matters of State policy where any dictation or even guidance from the Court must be consciously avoided. The role assigned to the Courts under our Constitutional Scheme do not permit any such forays as have been vehemently contended by Shri Dutta.

13. In view of the foregoing discussion, we take the view that the appeal filed by the State ought to be allowed. We, accordingly, allow the appeal and set aside the judgment and order dated 29.7.2004 passed by the Learned Single Judge.

14. Before parting with the record, there is one aspect of the case, which must be addressed by us. By order dated 4.10.2004 we had directed the Commissioner and Secretary to the Government of Assam, Revenue Department, to re-determine the market value of the land and submit a report to this Court on or before 11.10.2004 indicating the precise principles on which such re-determination is being made by the Learned Commissioner. The Commissioner and Secretary to the Government of Assam, Revenue department, pursuant to our aforesaid order has submitted the necessary report to this Court on 11.10.2004. We have duly perused the same. The report called for by our order dated 4.10.2004 was with the view to enable us to expedite the disposal of the appeal by relying on the same in the event any such necessity arises. In view of the conclusions reached by us as indicated in the present order we do not feel any necessity to rely on the report submitted by the Learned Commissioner. Consequently, without expressing any opinion on the correctness of the report submitted by the Learned. Commissioner, we deem it appropriate to direct the Registry to return the said report to the concerned authority.