

(2017) 01 GAU CK 0011
In the Gauhati High Court
Case No : Writ Appeal No. 333 of 2014

The Green View Tea & Industries, Assam	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

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

Citation : (2017) AIR(Gauhati) 41

Hon'ble Judges : Mr. Ajit Singh, C.J. and Mr. Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. G.N. Sahewalla, learned senior counsel, assisted by Ms. G. Swamy, learned counsel, for the Appellant; Mr. B.N. Sarma, learned Senior Government Advocate, Assam Mr. N. Deka, learned counsel, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Ajit Singh, C.J. - This intra court appeal is directed against the order dated 26.8.2014 passed by the learned Single Judge of this High Court, whereby he has dismissed appellant's WP(C) No.3078/2010.

2. The facts in short are these. Appellant is the owner of Tea Estate in the name and style of "Rajabari Tea Estate" situated in Golaghat District. By a Sale Deed dated 7.9.1987, it had purchased the Tea Estate comprising total land of 1502 Bighas 1 katha 14 lechas. Under Section 4 of the Assam Fixation of Ceiling on Land Holding Act, 1956 (in short "Act"), no person is entitled to hold land beyond 50 bighas, but lands used for cultivation of tea and purposes ancillary thereto, as detailed in Section 4(2) are exempted. In September, 1992, the Collector prepared a draft statement under Section 7(2) of the Act earmarking 730 bighas 2 kathas 14 lechas of appellant's land in the aforesaid Tea Estate as excess. The Collector also served a copy of the draft statement on the appellant and invited objection. In the objection dated 16.10.1992, the appellant merely stated that draft statement prepared was contrary to the provisions of the Act. The appellant

nowhere stated that portion of land declared excess was being used either for seed bari or for rotational crops, which are exempted under Clause (viii) and (ix) of the Explanation to Section 4(2) of the Act. Finding no merit in the objection, the Collector passed a final order dated 5.2.1993 declaring 730 bighas 2 kathas 12 lechas of land as excess under the Act. In the result, final statement dated 22.2.1993 for taking over the excess land was prepared and published. The final statement was also served on the appellant in the month of June, 1993.

3. It is relevant to mention here that after taking over the possession of 730 bighas 2 kathas 12 lechas of appellant's land under the Act, 168 bighas 2 kathas 9 lechas have been settled with M/s. Numaligarh Refinery Limited on 1.4.1993. And this was done for the establishment of Refinery as an outcome of Assam Accord dated 15.10.1985 wherein it was specifically mentioned that an Oil Refinery would be set up in the State of Assam. The remaining excess land has been settled in favour of landless persons.

4. The remedy provided to the aggrieved person against the final order of statement is of filing application under Section 7(6) of the Act before the State Government within one year with no provision for condonation of delay. But the appellant filed an application against the final order of statement dated 5.2.1993 much after one year on 12.7.1994. In the application also, the appellant did not mention that the land declared excess was either used for seed bari or rotational crops. Even the settlement of excess land with Numaligarh Refinery was neither challenged nor any market price for the land settled was claimed. Since the application was filed much after the prescribed period of limitation, the State Government vide order dated 8.9.1994 rejected the same. Consequent to the rejection of application, the Collector directed the Circle Officer to take possession of the excess land. The possession of the excess land was thus taken over from the appellant on payment of amount equal to the annual revenue and local rate payable for such land as provided under Section 11-A(6) of the Act.

5. Though there is no provision for review in the Act against the final order of statement, the appellant after 14 long years made a representation in 2008 for restoration of possession of 82 bighas 4 kathas 5 lechas of excess land on the ground that it was being used for seed bari and rotational crops or price of land be paid as per prevailing market rate. Also after 14 years the appellant for the first time claimed the market price of land settled with Numaligarh Refinery. The representation was naturally rejected by the State Government vide order dated 16.12.2009. Aggrieved, the appellant filed WP(C) No.3078/2010 wherein apart from claiming restoration of possession of 82 bighas 4 kathas 5 lechas of land, appellant also prayed for compensation in respect for 168 bighas 2 kathas 9 lechas of land allotted to Numaligarh Refinery Limited at market rate. The learned Single Judge disagreed with the appellant that any portion of land declared excess was ever used either for seed bari or rotational crops and dismissed the writ petition. The learned Single Judge has also taken note of the fact that such claim of appellant for restoration of possession was not only

belated but also an afterthought. It is in this background, the appellant has filed the present appeal.

6. It is argued on behalf of the appellant that the learned Single Judge ought to have restored the possession of 82 bighas 4 kathas 5 lechas of land as the same was being used for seed bari or rotational crops. It has also been argued that since 168 bighas 2 kathas and 9 lechas have been settled in favour of Numaligarh Refinery Limited on premium, the appellant is entitled for compensation as provided under the provisions of the Land Acquisition Land. In support of his submission, the appellant has placed reliance on a decision of this Court in *Jokai India Limited v. State of Assam*, 1990 (2) GLJ 342. The respective counsel for the respondents, on the other hand, have defended the order passed by the learned Single Judge.

7. As seen above, the Collector prepared a draft statement under Section 7(2) of the Act in the month of September, 1992 earmarking 730 Bighas 2 Kathas 14 lechas of appellant's land as excess. And in the objection dated 16.10.1992, the appellant nowhere stated that any portion of the land declared excess was being used either for seed bari or for rotational crops. Not only this, after passing of the final order of statement dated 5.2.1993 also the appellant in its application before the Government did not say that the excess land was being used either for seed bari or for rotational crops. Therefore, it can safely be inferred that no portion of excess land was in fact either used for seed bari or for rotational crops. For these reasons, we find ourselves in complete agreement with the finding of the learned Single Judge that claim of appellant for restoration of possession of 82 bighas 4 kathas 5 lechas of land after 14 long years was not only belated, but also an afterthought and it cannot be accepted.

8. As regards appellant's claim for compensation in respect of 168 bighas 2 kathas 9 lechas of land which have been settled in favour of M/s. Numaligarh Refinery Limited on premium, we are of the view that even this is unacceptable. This we say so because appellant has made its claim for the first time after more than 14 years of passing of the final order of statement. And the maxim *vigilantibus non dormientibus jura subveniunt* i.e. equity comes to the aid of the vigilant and not the slumbering squarely applies in the present case. It is well settled that the laws give help to those who are watchful and not to those who go to sleep. Even otherwise, the aforesaid land has not been settled in favour of any private person. Instead it has been settled for the establishment of Numaligarh Refinery which itself is a public purpose for the benefit of the people of Assam. Also the Government of India and the State of Assam are share holders of the Refinery. And the Refinery has been established in compliance of the historic Assam Accord dated 15.10.1985 wherein it was declared that an Oil Refinery would be set up in the State of Assam. In *Jokai India Limited* (supra), the excess land of Tea Estate was settled for the establishment of another private Tea Estate and on this ground the Division Bench held that such a settlement was illegal and the land owners were entitled for compensation under the

provision of the Land Acquisition Act. In that case, the settlement in favour of private Tea Estate was also promptly challenged whereas in the case at hand, for 14 long years no question was raised by the appellant regarding the settlement. The case of Jokai India Limited is therefore distinguishable and of no help to the appellant.

9. The appeal has no merit and is accordingly dismissed. However, there will be no order as to cost.