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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5616/2020

ARUN SARMA AND 11 ORS.

S/O- LT. BHAGAWAN CHANDRA SARMA, R/O- KAMAKHYA, DIST.-
KAMRUP (M), GHY, ASSAM, REP. BY THEIR CONSTITUTED ATTORNEY
SHRI JAGADISH SHARMA, S/O- LT. SHYAMA CHANRAN SHARMA, R/O-
KUMARPARA, GHY, IN THE DIST.- OF KAMRUP (M), ASSAM

2: RAMESWAR SARMA

S/O- LT. BHAGAWAN CHANDRA SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA

R/O- KUMARPARA

GHY

IN THE DIST.- OF KAMRUP (M)

ASSAM

3: NAGEN SARMA

S/O- LT. BHAGAWAN CHANDRA SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA

R/O- KUMARPARA

GHY

IN THE DIST.- OF KAMRUP (M)

ASSAM

4: BINA DEVI

W/O- LT. HAREKRISHNA SARMA

R/O- KAMAKHYA
DIST.- KAMRUP (M)
GHY
ASSAM
REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA
S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)
ASSAM

5: DHIRAJ SARMA
S/O- LT. HAREKRISHNA SARMA
R/O- KAMAKHYA
DIST.- KAMRUP (M)
GHY
ASSAM
REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA
S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)
ASSAM

6: GOPAL SARMA
S/O- LT. GOLAK SARMA
R/O- KAMAKHYA
DIST.- KAMRUP (M)
GHY
ASSAM
REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA
S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)
ASSAM

7: PRADIP SARMA
S/O- LT. GOLAK SARMA
R/O- KAMAKHYA
DIST.- KAMRUP (M)
GHY
ASSAM
REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA
S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)

ASSAM

8: MADHAB SARMA

S/O- LT. GOLAK SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA

R/O- KUMARPARA

GHY

IN THE DIST.- OF KAMRUP (M)

ASSAM

9: DIPAK SARMA

S/O- LT. CHANDRA KANTA SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA

R/O- KUMARPARA

GHY

IN THE DIST.- OF KAMRUP (M)

ASSAM

10: JYOTI KANTA SARMA

S/O- LT. CHANDRA KANTA SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA

R/O- KUMARPARA

GHY

IN THE DIST.- OF KAMRUP (M)

ASSAM

11: SUSHIL KANTA SARMA

S/O- LT. CHANDRA KANTA SARMA

R/O- KAMAKHYA

DIST.- KAMRUP (M)

GHY

ASSAM

REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA

S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)
ASSAM

12: NIROD KANTA SARMA
S/O- LT. SURJYA KANTA SARMA
R/O- KAMAKHYA
DIST.- KAMRUP (M)
GHY
ASSAM
REP. BY THEIR CONSTITUTED ATTORNEY SHRI JAGADISH SHARMA
S/O- LT. SHYAMA CHANRAN SHARMA
R/O- KUMARPARA
GHY
IN THE DIST.- OF KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECY., GOVT. OF ASSAM, DISPUR, GHY, IN THE DIST.-
OF KAMRUP (M), ASSAM, PIN- 781006

2:THE COMM. AND SECY.
REVENUE AND DM DEPTT.
GOVT. OF ASSAM
DISPUR
GHY
IN THE DIST. OF KAMRUP(M)
ASSAM
PIN- 781006

3:THE DY. SECRETARY/ADDL. SECRETARY
GOVT. OF ASSAM
DISPUR
GHY
IN THE DIST. OF KAMRUP (M)
ASSAM
PIN- 781006

4:THE DY. COMMISSIONER
KAMRUP
IN THE DIST. OF KAMRUP
ASSAM

5:THE CIRCLE OFFICER

NORTH GUWAHATI CIRCLE
IN THE DIST. OF KAMRUP
ASSA

For the Petitioner(s) : Mr. B. D. Deka, Advocate

For the Respondent(s) : Ms. U. Das, Addl. Sr. GA
: Mr. R. Borpujari, SC, Revenue

Date of Hearing : **14.11.2024**
Date of Judgment : **14.11.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. D. Deka, the learned counsel appearing on behalf of the Petitioners and Ms. U. Das, the learned Additional Senior Government Advocate appearing on behalf of the Respondent Nos. 1, 4 and 5. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue Department, Government of Assam.

2. The Petitioners herein have approached this Court seeking a writ in the nature of certiorari for setting aside the final statement passed in Ceiling Case No.372/1976, the order dated 20.06.2013 passed by the Commissioner and Secretary, Revenue and Disaster Management Department; the order dated 19.01.2015 passed by the Additional Chief Secretary, Government of Assam rejecting the application for the review as well as the order dated 31.12.2019 passed by the Deputy Secretary/Additional Secretary i.e. the Respondent No.3 rejecting the applications filed by the Petitioners on 26.04.2019 and 26.06.2019. Further to that, the Petitioners have also sought

for a direction upon the Respondent Authorities to forthwith release the land measuring 158 Bighas 4 Kathas 8 Lechas covered by N.K. Patta No.9 of village Niz Sindurighopa under Mouza Sila Sindurighopa in the District of Kamrup, Assam.

3. For the purpose of adjudication of the instant petition, this Court finds it relevant to take note of the brief facts leading to the filing of the instant petition.

4. The Petitioners herein are the legal representatives of the original Pattadars namely Late Bhagwan Sarma, Late Harekrishna Sarma, Late Golak Sarma, Late Suryakanta Sarma and Late Chandrakanta Sarma. Their predecessor-in-interest held various plots of land including lands in N.K. Patta No.2 comprising of an area of 7 Bighas 2 Kathas 8 Lechas of Village Dhopatari and N.K. Patta No.3 comprising of 394 Bighas 0 Katha 2 Lechas under village Bon Moza. In addition to that, the Petitioners claimed that the Petitioners' predecessors were also the owners of another plot of land covered by N.K. Patta No.9 of village Niz Sindurighopa under Mouza Sindurighopa admeasuring 158 Bighas 4 Kathas 18 Lechas. On 08.09.2009, when the Petitioners obtained the certified copy of the Jamabandi of N.K. Patta No.9, they were shocked to learn that the names of their predecessor-in-interest were struck off in respect to a purported Ceiling Case No.372/1976 initiated under the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (for short 'the Act of 1956'). Under such circumstances, the Petitioners submitted a RTI application seeking information pertaining to the Ceiling proceedings.

5. On 20.07.2010, the Petitioners were furnished with a reply along with

certain documents. From the documents, the Petitioners discovered the two ceiling cases bearing Ceiling Case No.384/1974 and Ceiling Case No.372/1976 had been initiated against the original pattadars in respect of the land covered by three pattas being N.K. Patta No.2, 3 and 9. It was also learned from those documents that the Additional Deputy Commissioner vide its order dated 31.07.1974 passed in Ceiling Case No.384/1974 had directed publication of the draft statement purportedly under Section 7(2) of the Act of 1956. However, as to whether the said draft statement was at all published or not, the Petitioners could not gather from the information so furnished. The Petitioners also came to learn that in spite of such directions in the order dated 31.07.1974, the proceedings in Ceiling Case No.384/1974 were not carried forward and instead, a fresh proceedings in the form of Ceiling Case No.372/1976 was commenced wherein the Collector passed an order on 21.02.1976 observing that although the draft statement was published in the year 1970, no notices were served on the Pattadars and thus the Collector fixed the matter for filing of objections on 02.03.1976.

6. It was seen that on 02.03.1976, one of the Pattadars i.e. Late Harekrishna Sarma had filed an objection by stating therein that there were six shareholders over the land in question and as such, as per the Act of 1956, they were entitled for retaining 300 Bighas of land out of the total lands. It was also seen that late Harekrishna Sarma also expressed preference to retain the entire land in N.K. Patta No.9 and 120 Bighas from the other two Pattas being N.K. Patta Nos. 2 and 3 of Village and Dhopatari and Bon Moza respectively.

7. Subsequent thereto, on 19.06.1976, an order was passed by the

Collector to the effect that out of the total land of 560 bighas, a total of 310 Bighas was liable to be acquired under the Act of 1956 and the remaining 250 Bighas be allowed to be retained by the predecessor of the petitioners. However in the said order, there was no specification in which dags or pattas such land was to be retained.

8. From the documents so furnished as well as from the enquiries made, no materials could be found as to whether the final statement was prepared in terms with the order dated 19.06.1976 and was published in terms with Section 7(5) of the Act of 1976.

9. The Petitioners further had stated in the writ petition that along with the documents so furnished, there was also a document furnished pertaining to the certificate of receipt for possession depicting delivery of possession of the ceiling surplus land in N.K. Patta Nos. 2 and 3 wherein it reflected that the original pattadars on 12.05.1981 had put their signatures. However, most surprisingly, in the said document, the signatures of Late Bhagwan Sarma was appeared though the said person had expired in the year 1978 itself.

10. The Petitioners on coming to learn about these gross anomalies and also further that without the publication of the final statement, no right would vest upon the state, filed an application in terms with Section 7(6) of the Act of 1956 to the Minister of Revenue, Government of Assam on 16.10.2009. The said application remained pending and no action was taken by the authorities under the Act of 1956. Under such circumstances, the Petitioners filed a writ petition being WP(C) No.245/2012 before this Court. Vide an order dated 20.01.2012, the Coordinate Bench of this Court passed

an order thereby directing the Principal Secretary, Revenue Department to dispose of the application filed by the Petitioners under Section 7(6) of the Act of 1956 in accordance with law and within a period of 3 (three) months.

11. The records further reveal that on 20.06.2013, the Commissioner and Secretary, Revenue and Disaster Management Department rejected the application filed under Section 7(6) of the Act of 1956 by holding inter alia that the time limit for preferring the application under Section 7(6) of the Act of 1956 had already expired. This resulted in the Petitioners filing a Review Application before the Commissioner and Secretary, Revenue and Disaster Management Department.

12. It is also seen from the records that the Commissioner and Secretary, Revenue Department on 29.09.2014 passed an order in the review application. The findings arrived at in the said order are relevant and as such the same are quoted herein under:

“In my opinion, it is justified and in fitness of things to hold that the orders of the Collector dated 19.06.76 in the ordersheet of the LA Case No.372/76 and also the final statement under section 7(3) of the Act are irregular, faulty and deficient due to nonfulfilment of provision of the Act. Accordingly, the Collector, Kamrup may be directed to give hearing to the petitioners, to consider the objection petition dated 02.03.76, filed by the pattadar (Late) Harekrishna Sarma, and review their orders dated 19.06.76 in LA Case 372/76, based on the hearing of the petitioners, the objection petition dtd. 02.03.76, and the Appeal petition dtd. 26.10.2009, enumerating instances of irregularities and illegalities.”

13. A perusal of the order would show that the highest authority of the Revenue and Disaster Management Department of the Government of Assam categorically held –

(i) The objections filed by the original Pattadars on 02.03.1976 were not taken into consideration while finalizing the statement under Section 7(3) of the Act of 1956.

(ii) There was no record in the concerned L.A. proceedings to prove that a copy of the final statement was published or that the same was served on the Pattadars as stipulated in the Act of 1976.

(iii) The authenticity of the document of handing over of possession appeared to be doubtful since one of the pattadars whose signature appears in the certificate dated 12.05.1981 had already expired on 12.08.1978.

(iv) No schedule of land to be acquired or the land allowed to be retained was mentioned in the order sheet.

14. Irrespective of the said findings as well as the observations so made by the Commissioner and Secretary, Department of Revenue and Disaster Management of the Government of Assam, the Additional Chief Secretary submitted before the Minister of the Revenue for approval with a note to the effect that though there were irregularities but a case for review was not made out and as such it was suggested that the review application be rejected. The said proposal was accepted by the Minister of Revenue Department. Under such circumstances, the instant writ petition has been filed.

15. Pursuant to the filing of the instant writ petition, notices were issued. The Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department filed an affidavit-in-opposition on behalf of the Respondent No.1 stating that as per the report of the Circle Officer, North

Guwahati Revenue Circle in Ceiling Case No.375/1976 under Section 7(3) of the Act of 1956 order of the Collector on 12.06.1976, the entire land of N.K. Patta No.9 measuring 158 Bighas 4 Kathas 18 Lechas was acquired as per Ceiling Law and the land was converted to Sarkari land. Other than the said statement, there is no other statement made in the said affidavit save and except denying to various averments made in the writ petition.

16. It is further seen that pursuant to orders passed by this Court on 24.05.2023 and 14.06.2023, an additional affidavit was filed on behalf of the Respondent No.1 bringing on record the Circle Officer's report dated 16.11.2009. The record also shows that there is another affidavit-in-opposition filed by the Respondent No.4 pursuant to an order passed by this Court on 05.10.2023 wherein it was mentioned that the District Commissioner, Amingaon had been trying his best to trace out the original case records with utmost effort but till date the same could not be traced. The Respondent No.4 had filed recently another affidavit on 18.06.2024. Nothing much substantial have been mentioned save and except that in the Chitha, there is a mention pertaining to N.K. Patta No.9 that an area admeasuring 158 Bighas 4 Kathas 18 Lechas was acquired under the Ceiling Act on the basis of an order passed by the Collector on 22.06.1976 under Section 7(3) of the Act of 1956. However the said order was neither placed on record nor the records of the said proceedings being Ceiling Case No.375/1976 have been placed before this Court. In addition to that, it has also been mentioned in the said affidavit that the records of Ceiling Case No.372/1976 could not be traced out. It is further seen that replies have also been filed by the Petitioners to various affidavits reiterating their contentions made in the writ petition.

17. Mr. B. D. Deka, the learned counsel appearing on behalf of the Petitioners submitted that the fact that the predecessor of the Petitioners had rights over N.K. Patta Nos.2, 3 and 9 cannot be denied by the Respondents taking into account their own stand that they have resorted to certain proceedings under the Act of 1956. He however submitted that it is only on the basis of a final statement signed, the vesting of rights would take place in terms of Section 7(4) of the Act of 1956. The Respondents being the custodian of the records cannot take a plea that they don't have the records and as such the rights of the Petitioners in respect to the lands in question cannot vest upon the State. Referring to Article 300A of the Constitution, the learned counsel submitted that the constitutional mandate to deprive a person of a property has to be in accordance with law. As there is no final statement, the rights of the predecessor-in-interest of the Petitioners over the lands in N.K. Patta Nos. 2, 3 and 9 could not have been appropriated by the State and that too in the manner sought to have been done.

18. The learned counsel for the Petitioners further referring to the order passed by the Commissioner and Secretary, Revenue and Disaster Management Department, Government of Assam submitted that the orders speaks for itself that in the proceedings in land Ceiling Case No.372/1976 wherein an order was passed on 19.06.1976 though it was mentioned therein that out of the 560 Bighas, 310 bighas would be acquired under the Act of 1956 thereby permitting the predecessor-in-interest of the Petitioners to retain 250 Bighas but it is the mandate of law from where the land is be acquired and in which dags, the lands have to be retained have to be incorporated in the draft statement as well as also in the final statement.

The same having not been done, the Government could not have acquired any rights over the lands belonging to the predecessor-in-interest of the Petitioners inasmuch as Section 7(4) of the Act of 1956 cannot be made applicable.

19. Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue Department submitted that the Petitioners herein are claiming on the basis of a Ceiling Case No.372/1976 and Ceiling Case No.384/1974. However, the land which is the subject matter of the writ petition in N.K. Patta No.9 was taken in connection with Ceiling Case No.375/1976. He submitted that though in the orders so placed by the learned counsel appearing on behalf of the Petitioners more particularly in Ceiling Case No.372/1976 and Ceiling Case No.384/1974, there is no mention as to how much land was allowed to be retained and how much land was to be acquired but in the order so passed in Ceiling Case No.375/1976, it was specifically mentioned that the land admeasuring 158 Bighas 4 Kathas 18 Lechas in N.K. Patta No.9 was acquired meaning thereby the entire land of NK Patta No.9 was acquired. He therefore submitted that as the instant writ proceedings pertains to N.K. Patta No.9 and there is a direction being sought for in respect thereof, such directions cannot be issued in view of the categorical orders being passed in Ceiling Case No.375/1976.

20. This Court has duly heard the learned counsels appearing on behalf of the parties and have also perused the materials on record. From the materials on records as well as upon hearing the learned counsels, three points for determination arises for consideration.

(i) Whether the State Government was justified in dismissing the review

application?

(ii) Whether there was any vesting of rights in respect to the lands of the Petitioners comprised in N.K. Patta Nos. 2, 3 and 9 upon the State Government in terms of it Section 7(4) of the Act of 1956?

(iii) What direction or directions are required to be passed in the facts and circumstances of the instant case?

21. For deciding the point for determination No.(i), it is relevant to take note of that the Act of 1956 was enacted to impose limits on the amount of land that may be held by a person. Section 2 of the Act of 1956 stipulates the exceptions meaning thereby that lands which would not fall within the ambit of the said Act of 1956. Section 4 of the Act of 1956 deals with the ceiling pertaining to the existing holding and a perusal thereof reveals that the ceiling is 50 Bighas in aggregate and this limit of 50 Bighas shall be applicable to the aggregate of the land held individually by the members of the family or jointly or by some or all of the members of such family. Section 5 of the Act of 1956 deals with the requirement of submission of return by the person holding land in excess of the ceiling. The submission of the returns are to be filed in the manner stipulated in Form-A of the Assam Fixation of Ceiling on Land Holding Rules, 1957 (for short 'the Rules of 1957').

22. A further perusal of the provisions of the Act of 1956 would show that upon such return being filed as required under Section 5 of the Act of 1956, the Collector may obtain the information required to be shown in the return through such agency as may be prescribed and select the plot or plots of

land which such person is entitled to retain under the provisions of the Act of 1956 and also the plot or plots which were in excess. This aspect of the matter assumes importance taking into account that there is a statutory obligation cast upon the Collector to identify the plots which are required to be retained as well as identify the plots which were in excess. Apart from that, it is also important to note that the draft statement to be prepared under Section 7(1) of the Act of 1956 is to be made on the basis of the return as well as the identification of the lands which are to be retained as well as the lands which were in excess.

23. Section 7 of the Act of 1956 further gives an opportunity to the person to make objections when a draft statement is published. From the materials on record, it reveals that a draft statement was published and Late Harekrishna Sarma had submitted an objection and on the basis thereof, the order was passed on 19.06.1976. This order of 19.06.1976 in Ceiling Case No.372/1976 can be said to be the order to be passed in terms with Section 7(3) of the Act of 1956. However, it is of pivotal importance that in order to vest the land which were in excess upon the State, there is a requirement of making the final statement inasmuch as without the final statement and in spite of the order passed under Section 7(3) of the Act of 1956, there can be no vesting. This aspect is pertinent taking into account that in the final statement, the details of the lands which were to be retained and which lands being in excess to stand vested upon the State are to be recorded. The right to challenge to a person aggrieved is provided in Section 7(6) of the Act of 1956. The said Section being relevant for the purpose of the instant point for determination is reproduced herein under.

“7.(6) Without prejudice to any action under any other provision of this Act, the State Government may, on its own motion or on application, if filed within a period of 1 (one) year from the date of publication of the final statement under sub-section (4) or from the date on which the Assam Fixation of Ceiling on Land Holdings (Amendment) Act, 1993 shall come into force, whichever is later, call for any record relating to any final statement and may pass such order or orders as it deems fit after giving the person or persons concerned an opportunity of being heard.”

24. A reading of the above quoted Sub-Section would show that a power has been conferred upon the State Government to sue moto take up a matter pursuant to the final order and the final statement being passed or an application can be filed by a person aggrieved within one year from the date of publication of the final statement under Sub-Section (4) or from the date on which the Assam Fixation of Ceiling on Land Holdings (Amendment) Act, 1993 come into force, whichever is later.

25. From a further perusal of the said Sub-Section, it transpires that the power which can be exercised by the State Government is akin to revisional power. Be that as it may, the right to file an application under Section 7(6) would accrue upon the issuance of the final statement inasmuch as it is on account of the issuance of the final statement, the excess area of the land would vest upon the State.

26. However from the materials on record as well as the submissions made by the learned counsels appearing on behalf of the parties, more particularly the learned counsels appearing on behalf of the Respondents, nothing could be shown as to when the final statement was published pertaining to Ceiling Case No.384/1974, Ceiling Case No.372/1976 as well as

Ceiling Case No.375/1976. Under such circumstances, when the very final statement was not issued and on the other hand the lands belonging to the Petitioners have been shown to be Government lands, it is the opinion of this Court that the initial order passed on 20.06.2013 by which the application which was filed under Section 7(6) of the Act of 1956 was rejected as well as the order dated 19.05.2015 whereby the review petition was dismissed on the ground of being delayed and barred could not have been passed inasmuch as without a final statement, the limitation for filing an application under section 7(6) of the Act of 1956 does not commence. This therefore answers the first point for determination.

27. In addition to that this Court also finds it relevant to take note of that the rights in respect to the lands in question belonging to the Petitioners are constitutional rights under Article 300A of the Constitution and as held by the Supreme Court in the case of ***Vidya Devi Vs. State of Himachal Pradesh and Others*** reported in (2020) 2 SCC 569, the said right is akin to human right. Similar observations can also be seen in a recent judgment of the Supreme Court in the case of ***Kolkata Municipal Corporation and Another Vs. Bimal Kumar Shah and Others*** reported in (2024) SCC OnLine 968. Under such circumstances, the question of extinguishment of the right which have not been acquired in accordance with law does not arise for which the authorities concerned ought not to have dismissed the application filed under Section 7(6) of the Act of 1956 on the ground of delay.

28. Now let this Court take up the second point for determination as to whether there has been any vesting of the rights in respect to the lands comprised in N.K. Patta Nos. 2, 3 and 9 upon the State Government in terms

with Section 7(4) of the Act of 1956.

29. The parties before this Court including the Revenue Department of the Government of Assam has placed before this Court an order dated 19.06.1976 passed by the Collector which can be said to be an order passed under section 7(3) of the Act of 1956. The said order does not show that the said order was passed in respect to Ceiling Case No.372/1976. The said order though mentions that out of the 560 Bighas, 310 Bighas was identified as excess land and 250 Bighas of land were allowed to be retained but there is no mention whatsoever in which area the lands have been allowed to be retained and in which areas, the land being in excess have been acquired.

30. This Court further takes note of that the Revenue Department had failed to produce any document pertaining to Ceiling Case No.375/1976 although emphasis have been laid in one of the additional affidavits filed by the Respondent No.4 that the area of 158 Bighas 4 Kathas 18 lechas pertaining to N.K. Patta No.9 was identified as the land in excess. However, without there being any final statement, can it be said that there would be vesting of rights upon the State. For that purpose, this Court finds it relevant to reproduce section 7(4) of the Act of 1956 which is herein under:

“7.(4) Notwithstanding anything contained in the next sub-section, with effect from the date on which the final statement is signed by the Collector under the preceding sub-section, all rights, title and interest of the person or persons whose lands are shown as excess in such statement shall stand transferred to and vest in the State Government free from all encumbrances created by such person or persons and no person shall then be entitled to question it in any Court.”

31. A perusal of the said Sub-Section stipulates that irrespective of

whether publication is made under Section 7(5) of the Act of 1956 of the final statement, it is only upon making of the final statement which is duly signed by the Collector, all rights, title and interest of the person or persons in respect to the excess land vests upon the State. However, as there is no final statement, it is the opinion of this Court that there can be no vesting of any right upon the State in spite of the order being passed on 19.06.1976 holding that 310 Bighas out of 560 Bighas were found to be in excess. Under such circumstances, the second point for determination stands answered.

32. In the backdrop of the above discussions, let this Court now take up the third point for determination as to what order or orders are required to be passed. Taking into account that the application under Section 7(6) of the Act of 1956 was dismissed in a manner contrary to the provisions of the Act of 1956 and further there being no vesting of the rights in respect to the lands in view of there being no final statement, in terms of Section 7(4) of the Act of 1956, this Court is of the opinion that the Petitioners herein would continue to remain the owners of the lands in N.K. Patta No.2 of an area comprising of 7 Bighas 2 Kathas 8 Lechas of Village Dhopatari; N.K. Patta No.3 of an area comprising of 394 Bighas 0 Katha 2 Lechas under village Bon Moza as well as N.K. Patta No.9 of an area comprising of 158 Bighas 4 Kathas 18 Lechas of village Niz Sindurighopa under Mouza Sindurighopa till appropriate actions are not taken in accordance with the Act of 1956.

33. It is also relevant to take note of the submission of Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue Department that certain rights have been vested upon certain persons on the basis of the said ceiling proceedings. Taking into account that there was

no vesting of the rights upon the State by virtue of Section 7(4) of the Act of 1956, the State could not have allotted, settled or alienated any portion thereof to any other person. In that view of the matter, such transfers in the opinion of the Court would be nothing but a nullity in the eyes of law.

34. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned order dated 20.06.2013 as well as the order of rejection of the review dated 19.01.2015 are set aside and quashed.

(ii) The Petitioners herein would continue to remain the owners of the lands in N.K. Patta No.2 of an area comprising of 7 Bighas 2 Kathas 8 Lechas of Village Dhopatari; N.K. Patta No.3 of an area comprising of 394 Bighas 0 Katha 2 Lechas under village Bon Moza as well as N.K. Patta No.9 of an area comprising of 158 Bighas 4 Kathas 18 Lechas of village Niz Sindurighopa under Mouza Sindurighopa till such time actions are not taken in terms with the Act of 1956.

(iii) No rights stood transferred on the basis of the Ceiling Case No.384/1974, Ceiling Case No.375/1976 and Ceiling Case No.372/1976 in respect to the lands of the Petitioners upon the State by virtue of Section 7(4) of the Act of 1956. Any rights on the basis of the above proceedings created upon any other persons by the State would be a nullity in the eyes of law.

(iv) Taking into account the statutory mandate of the Act of 1956, the observations so made herein as well as the findings, shall not preclude the State from taking action in terms with the Act of 1956 and the rules framed

therein under.

(v) The Revenue Authorities are directed to correct the revenue records within 30 days from the date of a certified copy of the instant judgment is served upon the Respondent No.2.

JUDGE

Comparing Assistant