

Surendra Singh and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Mar-08-1999

Judge : D. Biswas, J.

Acts : Assam Fixation of Ceiling on Land Holdings Act, 1957 - Sections 2(2), 3, 4(2) and 7(4); [Constitution of India](#) - Article 226;

Appeal No. : Civil Rule No. 2062 of 1992

Appellant : Surendra Singh and ors.

Respondent : State of Assam and ors.

Advocate for Def. : B. Banerjee, Govt. Adv. and B.P. Katakya, Adv.

Advocate for Pet/Ap. : N.M. Lahiri, G.N. Sahewalla, A.K. Goswami, P. Bora and B. Goyal, Advs.

Disposition : Petition allowed

Judgement :

D. Biswas, J. 1. The petitioners have approached this Court for issuing necessary directions to the respondents in exercise of its powers under Article 226 of the Constitution calling them not to give effect to the letter dated 12-3-1981 including the alleged exchange of land and for further directions to issue pattas in favour of the writ petitioners in respect of 2 Kathas 8 1/2 Lechas of land pertaining to Dag

No. 43 of Demow F.S. Grant 76/32 which, according to them are in their possession from the time of their predecessors-in-interest.

2. The land in dispute is a road side land situated by the side of National Highway. The said land along with other lands covered by Dag No. 43 of the aforesaid grant belonged to Moran Tea Company. The aforesaid Dag No. 43 along with other lands were declared ceiling surplus under the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (for short, 'the Act of 1956'). Final statement in accordance with the provisions of law was prepared and assessed on the basis of the declaration made by the Moran Tea Company Limited. The petitioners/their predecessor-in-interest applied for settlement of the said plot of land measuring 2 Kathas 8 1/2 Lechas as it was under their continuous possession since 1962. The Deputy Commissioner, Sibsagar called for a report from the Additional Deputy Commissioner. The Additional Deputy Commissioner after obtaining reports and information from the Senior Assistant Settlement Officer and Assistant Settlement Officer, Sibsagar submitted a report to the Deputy Commissioner on 14-7-1976 recommending settlement of the land with the petitioners in view of their continuous possession. Market value of the land was assessed at Rs. 10,555.50 per Bigha and 65% thereof was fixed of premium for settlement. The Deputy Commissioner in turn recommended the case of the petitioners to the Government of Assam vide letter dated 17-9-1976. On receipt of the same the State Government vide Annexure II dated 5-10-1977 settled the land measuring 2 Kathas 8 and 1/2 Lechas of Dag No. 43 with the petitioners on payment of premium as aforesaid. Accordingly premium was deposited in the year 1978 by way of Treasury Challan. While waiting for the pattas to be issued, the petitioners came to know that the respondents Nos. 4 to 9 raised objection before the Government which delayed the issuance of pattas. The petitioners moved the Government of Assam and other authorities for issuance of pattas which yielded no result. On 1-9-1979 the petitioners obtained a copy of the Jamabandi wherefrom they could come to know that 3 Kathas and 2 1/2 Lechas of Land out of Dag No. 43 was excluded from the statement of ceiling surplus in view of purported exchange of this land with another plot of land. On further query, the petitioners came to know that the Additional Director of Land Requisition etc., the respondent No. 2, vide letter dated 12-3-1981 informed the State Government that

the dispute relating to 3 kathas and 2 1/2 lechas of land raised by the respondent No. 4 and others was settled with the Manager of Athabari Tea Estate (belonging to Moran Tea Company) and a plot of land free from encumbrances was exchanged in lieu of the disputed land. According to the writ petitioners, such a deal is not permissible after publication of statement under provision of Sub-section (4) of Section 7 of the Act of 1956. They also assailed the propriety of the order on the ground that the decision to exchange any land including the land possessed by the writ petitioners since 1962 have been taken without any notice to them to defend their case.

3. The private respondents in their affidavit-in-opposition repudiating the claim of the writ petitioners as above submitted that their predecessor-in-interest took lease of a plot of land measuring 9000 square feets in Dag No. 35 (new 43) in P.S. Grant 76/32 from Moran Tea Company by a registered deed of lease executed on 4-6-1959 and constructed houses thereon. Late Mathura Singh, father of the petitioner No. 1, possessed the rooms constructed by their predecessor-in-interest as monthly tenant. Late Mathura Singh, during his life-time, vacated the rooms under his occupation with delivery of possession to the defendants. The petitioners too delivered vacant possession of the room under his occupation to the private respondents. Therefore, their claim that they are in possession is not correct. Besides these, the private respondents also submitted that the provisions of the Act of 1956 is not applicable in respect of the disputed land which is admittedly non agricultural. Their further case is that the review of the decision to settle the land which the writ petitioners was as per provision of Section 7(6) of the Ceiling Act of 1956, as amended, and therefore, the exchange of the land made by the respondent No. 10 being lawful cannot be assailed in this writ petition filed after a lapse of 11 (eleven) years. Maintainability of the writ petition has also been questioned on the ground that the possession which, they assert, cannot be a subject matter of dispute under Article 226 of the [Constitution of India](#).

4. The pleadings reproduced precisely shows that the writ petitioners claim their right over the land on the basis of possession. They do not claim any proprietary or tenancy right over the disputed land. It is also undisputed that the State Government after necessary enquiries decided to settle the land with the writ

petitioners.

5. Annexure I is the copy of the letter dated 14th July, 1976 written by the Additional Deputy Commissioner, Sibsagar to the Deputy Commissioner, reporting him that the 'applicants have been occupying the land by running different kinds of business since 1962'. This letter also shows that both the Senior Assistant Settlement and Assistant Settlement Officers, Sibsagar recommended that the land be settled with the applicants, that is, the petitioners of the writ petition on realisation of the market value of the land from the occupants. Annexure-II shows that the Government of Assam ordered settlement of the land with the writ petitioners. This order dated 5th Oct. 1977 was addressed to the Deputy Commissioner, Sibsagar in response to his letter dated 17-6-1976. These documents support the claim of the writ petitioners about possession and settlement of the land. The private respondents disputed the above settlement order by the State Government on the basis of the Deed of Lease executed in favour of their father on 4-6-1959.

6. The lead question in this case as emerged from the pleadings, is whether the provisions of Act of 1956 are applicable in respect of the disputed land. This is necessary as the land in question is admittedly not agricultural land. It has been argued by the learned counsel for the private respondents that the definition of land incorporated in Section 3(f) of the Act of 1956 speaks of land which is or may be utilised for agricultural purposes or purposes subservient thereto and includes the sites of buildings appurtenant to such land and also includes land which is or may be utilised for quarrying stones. Shri B.P. Katakya, learned counsel for the private respondents submitted that object and scope of the Act of 1956 is to resume surplus land and distribute the same to the landless cultivators for the purpose of cultivation. The disputed land which is not under cultivation and is being used for business purpose cannot be brought within the purview of the said Act,

7. We may, therefore, examine the definition of the land embodied in Section 3 (f) of the Act of 1956 which reads as follows :--

'3. (f) 'Land' means land which is or may be utilised for agricultural purposes or purposes subservient thereto and includes the sites of buildings appurtenant to such land and also includes land which is or may be utilised for quarrying stones.'

8. The above definition shows that the Act of 1956 aims at agricultural land which is or may be utilised for agricultural purpose or purposes subservient thereto. Section 4 deals with the substantive provisions of ceiling on existing holding. Sub-section (2) of Section 4 deals with the land held for special cultivation of tea. For better appreciation of the dispute at hand, it is necessary to reproduce hereinbelow the provisions incorporated in Sub-section (2) of Section 4 :--

'4. (2) Notwithstanding anything to the contrary in any law, custom or agreement, no person shall be entitled to hold, as owner, tenant, or mortgagee in possession, lands, for special cultivation of tea in excess of such land as has been used for special cultivation of tea and purposes ancillary thereto on the day on which the Assam Fixation of Ceiling on Land Holdings (Amendment) Act, 1970 (Assam Act VIII of 1971) came

into force;

Provided that the State Government may allow more lands to be held for ancillary purposes and for increase in area under special cultivation of tea in accordance with the rules as may be prescribed.

Explanation:-- Purposes ancillary to special cultivation shall mean the following :--

(i) to (ix)

(x) lands lying within the boundaries of the actual planted area excluding tenanted khet lands, (xi)

9. The definition of the land as well as the provisions of Sub-section (2) of Section 4 read, together leads to the conclusion that lands as has been used for special cultivation of tea and purposes ancillary thereto are exempted from the purview of the Act of 1956, Clause (X) of the explanation to the above sections shows that a parcel of land under cultivation of a tenant is not permitted to be treated as a land

held for special cultivation of tea and purposes ancillary thereto. According to Shri Lahiri, the land held and utilised for special cultivation of tea and purposes ancillary thereto having been exempted specifically under the provision of Section 2, any other land which is neither used for special cultivation of tea nor purposes ancillary thereto cannot be retained by a tea garden authority. Shri Lahiri further expounded that although the Act of 1956 aims at agricultural land, any parcel of non-agricultural land which is not utilised for special cultivation of tea and purposes ancillary thereto cannot be kept out of the purview of the Act of 1956. The disputed land measuring 2 kathas 8 1/2 lechas being in use for commercial purpose since 1962 cannot be treated as an exception to the provisions of the Act of 1956.

10. A close scrutiny of the provisions of the Act of 1956 makes it abundantly clear that the Act aims at resumption of agricultural land for the purpose of redistribution amongst cultivators. Therefore, the question arises whether a parcel of land situated in a tea garden not used for special cultivation of tea and purposes ancillary thereto could be included within the definition of land given in Section 3(f). Here, we may refer to a Division Bench decision of this High Court in Prafulla Ch. Goswami v. Natun Ashomia (P) Ltd., 1991 (1) GLJ 72 wherein while dealing with the provisions of the Assam State Acquisition of Land Belonging to Religious and Charitable Institutions of Public Nature Act, 1959, it has been held as follows :--

'The 'raiyat' has not been defined in the Act. But 'tenant' has been defined under Section 2 (j) of the Act to mean 'a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person and includes a person who cultivates the land for another person on condition of delivering a share of the produce'. Section 2(j) makes it clear that tenant includes agricultural tenant. Although the word 'raiyat' is normally referable to the agricultural land or cultivating tenant, a raiyat is tenant, and it would be a tenant under Section 2(j) by applying the rule of 'noscitur a sociis'. Under the maxim of 'noscitur a sociis', meaning of words may be indicated or controlled by those with which they are associated. Associated words take their meaning from one another under the doctrine of 'noscitur a sociis', a philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of

words associated with it and such doctrine is broader than the maxim 'ejusdem generis'. (See Words and Phrases, Vol. 28-A). The above rule has been approved by the Supreme Court in *Dr. Devendra M. Surti v. State of Gujarat*, AIR 1969 SC 63 : (1969 Cri LJ 285). As already stated, the right of a raiyat, or of a non agricultural tenant, as the case may be, is protected under the Act. In Section 2(c) the expression 'raiyat or agricultural or non agricultural tenant' have been used. Associated words 'agricultural tenant' and 'non-agricultural tenant' shows that raiyat is tenant or tenant includes raiyat, and, therefore, raiyat is tenant within the meaning of Section 2 and if a raiyat in occupation refuse to take settlement his right would be forfeited under Section 16(3). For the reasons stated, we conclude that the word 'land' occurring in the Act is wide enough to include all lands, whether agricultural or not.'

11. In that case it was held that the word 'land' occurring in the Act of 1959 is wide enough to include all lands whether agricultural or not. This interpretation was given in view of the provisions of Section 4 which specifically includes all rights, title and interest in the land of a religious or charitable institution with the subsoil including the rights in mines, minerals, fisheries, tanks, forests, etc, The provisions under Section 16 of the Act of 1969 provides for settlement of the land with the cultivators who has been rendered homeless, co-operative farming society formed by landless cultivators, and agricultural farming corporation. The object as is discernible from Section 16 to settle land with homeless or landless cultivators and co-operative farming society and agricultural corporation. In spite of that, this Court in *Prafull Ch. Goswami* (supra) held that the word 'land' is to include all lands, whether agricultural or not. The object and scheme of the Act of 1956 with which we are now concerned is also to settle cultivable land to the cultivators in possession or redistribution of the same to the landless cultivators and others, as the case may be. The very purpose of the Act is to abolish intermediary system and to establish a direct relationship between the Government and the tenant or the person in possession. In India, after the enforcement of the Constitution, a number of Acts has been enacted by different States as a part of agrarian reforms in the country. In Assam also, a number of Acts were enacted including the Act of 1956. Initially the Tea Estates in Assam were kept out of the purview of the Act of 1956. However, in 1971 by amendment Act No. VII of 1971 the gardens in Assam

were also brought within the ambit of the Act of 1956 with a view to resume surplus land for distribution to the cultivators. The language of Section 2 of this Act shows that the provisions of Act shall not apply to the land held and utilised for special cultivation of tea and purposes ancillary thereto. This means the provisions of the Act would otherwise apply to land which are held in excess but not utilised for special cultivation of tea.

12. My attention has also been drawn to the decisions in *Jalaluddin Ahmed v. State of Assam*, AIR 1972 Assam and Nagaland 14, *Barduar Tea and Timber Co. v. Sub-Divisional Officer*, AIR 1973 Gauhati 131, *Hindustan Tea Company v. State of Assam*, 1993 (2) GLR 135 and *Sonapur Tea Company (P) Ltd. v. Collector and Director of Land Requisition etc.* 1989 (1) GLJ 97. The ratio laid down in *Jalaluddin Ahmed (supra)* cannot be applied since the land in dispute in the instant case is neither quarry nor fishery. In *M/s Barduar Timber Co. (supra)*, a Division Bench of this Court observed that the object of the Act is no doubt to acquire excess land but also to make settlement of the same with persons for cultivation after it is available under Section 15 for disposal by the Government and that object will not be achieved as the land of that case was covered by Jeep forest. In *Sonapur Tea Company (supra)* although a Division Bench of this High Court held that the definition of land cannot take within its folds building or permanent structure raised on the land, but it allowed deep forests to be included within the definition thereof as such forests can well be utilised for agricultural purpose. In *M/s. Hindustan Tea Company*, the Learned single Judge of this Court following the decision in *Barduar Tea and Timber Company (supra)* held that the subject matter of acquisition must be land as defined in Section 3(f) of the Act. The above decisions have been rendered by this Court on different context and at different point of time. The question which this Court is required to adjudicate upon is whether the land in occupation of non agricultural tenant or in possession of a person for residential and commercial purpose would be kept out of the purview of the Act of 1956. In this case, the situation is attenable from the situation dealt with in the aforesaid cases. Here the land is in possession of the, writ petitioners since 1962 and this fact has been verified by the Revenue Officers of the State Government. On this verification, the Government decided to settle the land with the writ petitioners. The lease deed on the basis of which the private respondents are claiming the

land also expired in 1984. Under the circumstances, the definition of land as in Section 3(f) of the Act of 1956 has to be interpreted to advance the cause of justice in the given case. In the opinion of this Court it would not be in clash with the object of the scheme if the lands situated in a tea garden but not in use for special cultivation of tea and purposes ancillary thereto is allowed to be acquired and settled with the possessors thereof. From this point of view, I am inclined to hold that this plot of land situated in the tea garden but not in use for special cultivation of tea may also be treated as land as defined in Section 3(f) of the Act of 1956. This approach would also be in tune with the provisions of Sub-section (2)(a) of Section 2 and Sub-section (2) of Section 4 of the Act wherein a tea garden has been allowed only to hold lands in use for special cultivation of tea and purposes ancillary thereto and not otherwise.

13. This plot of land having being declared as ceiling surplus and followed by publication of statement under provision of Sub-section (4) of Section 7, and mere being no challenge to the ceiling proceeding by the tea garden authorities, (Respondent No. 10), its status as a ceiling surplus as on today cannot be allowed to suffer a change. The State Government also after necessary verification and obtaining reports from the Settlement Officer passed orders vide letter dated 5-10-1977 settling the land with the writ petitioners. Writ petitioner have also made payment of 75% of the market value as premium thereof. The petitioners were awaiting issue of pattas in their favour which was a mere formality. In the mean time, the Collector on receipt of an objection from the private respondents exchanged the disputed land with another plot of land given by the tea garden authorities. Such a settlement in exchange of another plot of land from the Management of the Tea Garden is not permissible under the provisions of the Act. Therefore, this decision to exempt the land from ceiling surplus in exchange of another plot of land is illegal and ultra vires of the provisions of the Act. That apart, the provision of Section 7(6)(a) empowering the State Government to review any order passed under the Act inserted by the amendment Act of 1976 requires a notice to the writ petitioners before any order already passed is sought to be reviewed. In the instant case, it is admitted that the writ petitioners have not been served with any notice. From this point of view also, the decision, to exchange the disputed land by exempting it from the purview of ceiling surplus cannot be held as

valid. It has to be struck down for violation of mandatory provision of Section 7(6)(a) of the Act.

14. Shri Lahiri, Learned Senior Counsel for the petitioners submitted that the powers to review was incorporated by the Amendment Act No. VIII of 1976 and therefore, the Government in exercise of this power could not have reviewed any order passed before the Amendment Act of 1976 came into force. But a Division Bench of this High Court in Civil Rule No. 382 of 1986 (on the death of sole petitioner Binoy Majumdar, his Heirs and Legal Representatives v. State of Assam reported in 1992 (2) GLJ 1) held that by virtue of the provision of Section 7(6)(a) orders passed prior to coming into force of the Amendment Act can be reviewed by the Government. This decision of the Division Bench rules out the objection raised by Shri Lahiri. Therefore, it can be held that the State authorities have the powers to review the order passed under Section 7(4) of the Act of 1956.

15. According to Shri Lahiri, Learned Senior Counsel, once the land is declared as ceiling surplus, all rights, title and interest of person or persons whose lands are shown as excess stood transferred to and vested in the State Government free from all encumbrances and no order having being passed under Sub-section (6)(a) of Section 7, the order passed under Sub-section (4) of Section 7 became final and cannot be reviewed at a later stage at the instance of the private respondents . According to him, the decision rendered by the Apex Court in Ujagar Singh v. State of Punjab (1996) 5 SCC 496 sets at rest the controversy of this case. In Ujagar Singh (supra) the Supreme Court was dealing with a dispute under the PEPSU Tenancy and Agricultural Lands Act, 1955. The controversy related to 18.82 standard acres of land belonging to one Inder Singh which was declared as ceiling surplus by proceeding dated 28-5-1960. The said declaration was not challenged by filing any appeal and the possession of the land was also taken over by the State officials. After such taking over, it was found that Inder Singh was having less extent of land within the prescribed standard acres under the Act, Consequently, he filed an application before the authorities for redetermination of surplus land and restitution. The said application was rejected by the revisional authorities. Therefore, he preferred a writ petition before the Punjab High Court which was allowed by the Learned single Judge and also confirmed by the

Division Bench of that High Court holding that the surplus land was acquired to be redetermined and restituted. Dealing with this problem, the Supreme Court held as below :--

'4. The question is whether the view taken by the High Court is correct in law When the standard acres which Inder Singh was entitled to retain were determined and surplus land of an extent of 18.82 standards acres was determined by order dated 28-5-1960, and that order having been allowed to become final, would it be open to Inder Singh or any person claiming title through him to seek determination? When they had not challenged the order and subsequently in the consolidation proceedings he was found to hold less extent than the prescribed standard holding, are they entitled to redetermination We are of the considered view that it is impermissible. It would be open to Inder Singh or any person claiming title under him to have challenged the correctness of determining surplus land by filing appeal before the appropriate forum. Admittedly, no steps had been taken. On the other hand, the order was allowed to become final and possession of the surplus land of 18.82 standard acres was taken over as admitted by Inder Singh by the proceedings dated 12-7-1961. The land was simultaneously redistributed to the landless persons as per the scheme of the Government who are the appellants before the Court. Having allowed the order dated 29-5-1960 and the proceedings of delivery dated 12-7-1961 to become final, it would not be open to either Inder Singh or anybody on his behalf of claim redetermination the view of the High Court is clearly illegal.'

16. It would appear from the aforesaid judgment that the land once declared as ceiling surplus and after the said declaration became final, it would not be open either for Inder Singh or anybody on his behalf to claim redemption. The decision rendered by the Punjab High Court was, therefore, set aside. The ratio laid down in this case is squarely applicable in the instant case also. The land of the instant case was declared ceiling surplus along with other lands. The Tea Garden authorities, respondent No. 10, did not challenge the declaration. The said declaration became final and the land was settled with the petitioners. Thereafter, on a petition filed by the private respondents, the Collector entered into a negotiation with the respondent No. 10 and decided to release the disputed land

from purview of the statement under Section 7(4) in exchange of another plot of land. The entire exercise appears to be ultra vires of the provisions of the Act. Relying on the ratio laid down in *Ujagar Singh* (supra), it can be concluded that the disputed land having being declared as ceiling surplus and settled with the writ petitioners, it could not have been released by the Collector. The land vested on the Government free from all encumbrances and the order under Section 7(4) became final. There was also no challenge to the ceiling proceeding. Therefore, redetermination of the statement issued under Section 7(4) and recall of the settlement order passed by the State Government vide order dated 5-10-1977 (Annexure II) is impermissible. The factual matrix of this case when tested with the ratio of *Ujagar Singh* makes it inequitable to reverse a process which is otherwise complete. Therefore, the letter dated 12th March, 1981 written by the Additional Director of Land Regulation etc. informing the Government of the above negotiation and settlement with the respondent No. 10 cannot be allowed to stand.

17. Shri Katakya, Learned Counsel for the private respondents referring to a decision in *State of Rajasthan v. Bhawani Singh*, 1993 Supp (1) SCC 306 ; (AIR 1992 SC 1018) submitted that the disputed question relating to the title/ tenancy cannot be decided in a petition under Article 226 and, as such, the writ petition is not maintainable. In the instant case, the State Government in exercise of powers vested in it by the Act of 1956 verified the claim of the writ petitioner and, after being satisfied that they are in possession of the land constructing houses for business purposes since 1962, decided to settle the same with them. This decision is not under review in this writ petition. What is under review is whether a statement under Section 7(4) of the Act of 1956 which has become final could be set at naught by the Collector. Hence, I do not find any substance in the objection raised on this count.

18. Shri Katakya, Learned Counsel for the private respondents referring to the decisions in *Haren Hazarika v. State of Assam* (1991), 2 GLR 384 and *Gadde Venkateswara Rao v. Government of Andhra Pradesh* , AIR 1966 SC 828 submitted that this Court shall not exercise its discretionary powers under Article 226 when it would have the effect of reviving an illegal order passed by the Collector declaring the disputed land as ceiling surplus and settled by the

Government with the writ petitioners. But as this Court has already held herein before that the lands in a tea garden which are not in use for special cultivation of tea and purposes ancillary thereto are also amenable to the provisions of the Act of 1956, the question of refusal of discretionary powers does not arise. The illegal order passed and communicated in 1981 in derogation of the earlier order cannot be allowed to stand for reasons already quoted hereinbefore.

19. The maintainability of the writ petition has also been assailed on the ground that it has been long delayed and therefore the ratio laid down in *Ex-Capt. Harish Uppal v. Union of India*, 1994 Supp (2) SCC 195, if applied, would render it liable for outright rejection. Learned Senior Counsel for the writ petitioners Shri Lahiri argued that the Government vide Annexure II ordered settlement of the land on 5-10-1977 and the writ petitioners paid the premium in the year 1978. They were waiting for the pattas to be issued. Behind their back, the private respondents submitted an objection and a decision thereon was taken without notice to the writ petitioners. The writ petitioners came to know of the ex parte decision against them only on 1-9-1992 when a copy of the Zamabandi was obtained. According to Shri Lahiri, when the Government had vide order dated 5-10-1977 settled the land with the writ petitioners and the writ petitioners have deposited the premium (in 1978), non issuance of the pattas in their favour cannot take away the right vested in them. The surreptitious ex parte decision came to their notice on 1-9-1992 and the writ petition was filed on 1992. Therefore, it can not be held that the delay is unpardonable. The above submission of Shri Lahiri cannot be lightly brushed aside. In this case, neither the respondent No. 10 (garden authorities) nor the private respondents made any attempt to retrieve the land from the possession of the writ petitioners after the settlement order was passed by the Government. The writ petitioners being in undisturbed possession and having paid the premium were awaiting the issuance of pattas which was rather a mere formality. Situated thus, I am not inclined to hold that the petitioners lost their right to approach this Court to assail the order communicated vide letter dated 12-3-1981 on account of delay.

20. Before parting with the records, it is felt imperative to point out here that the provisions of Sub-section (2)(a) of Section 2 and Sub-section (2) of Section 4 of

the Act makes it abundantly clear that a Tea Estate is entitled to retain land only for the purpose of special cultivation of tea and purposes ancillary thereto. Any land beyond the above category shall naturally attracted the provisions of this Act of 1956 although the definition of 'land' as in Section 3(f) does not cover such land. That is why this Court is of the firm opinion that this confusion needs to be removed.

21. In the result, the writ petition is allowed. The respondents Nos. 1, 2 and 3 are directed not to give effect to the order communicated vide letter dated 12-3-1981 (Annexure IV) and to issue pattas in favour of the writ petitioners.

22. Considering the circumstances, no order regarding costs is passed.

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