



GAHC010002192003

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

Case No. : WP(C)/6498/2003

ON THE DEATH OF SRI KAMAL SARMA HIS LEGAL HEIR, SRI RIJU PRASAD SARMA AND 2 ORS
S/O LATE RABATI PRASAD SARMA, A R/O KAMAKHYA HILL, GUWAHATI 781010, KAMRUP (M), ASSAM.

2: SRI KABINDRA PRASAD SARMA
S/O. LATE SANKAR PRASAD SARMA
R/O. KAMAKHYA DHAM
KAMRUP (METRO)
GUWAHATI-781010
ASSAM.

3: THE DEITY OF GODDESS SRI SRI KAMAKHYA
REPRESENTED BY THE BOARD OF TRUSTEES
KAMAKHYA DEBUTTER
KAMAKHYA HILL
GUWAHAT

VERSUS

THE STATE OF ASSAM and ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM, DEPTT. OF REVENUE, DISPUR, GUWAHATI 781006

2: THE DEPUTY COMMISSIONER
KAMRUP
GUWAHATI

3: THE SETTLEMENT OFFICER
KAMRUP.

4: THE ADDITIONAL DEPUTY COMMISSIONER
REVENUE



KAMRUP
GUWAHATI.

5:SHRI RADHIKA KALITA
SON OF LATE AMBIRAM KALITA

6:SHRI JITEN DAS
SON OF LATE GOBINDA DAS

7:SRI BASU DEV GAYAN
SON OF LATE DABIN GAYAN

8:SHRI SUNESWAR DAS
SON OF BHOLARAM DAS

9:SHRI SAMIR SARMA
SON OF SHRI AMRIT SHARMA

10:SHRI JAGADISH SARMA
SON OF SHRI KHARGESWAR SARMA

11:SHRI MUHIT SARMA
SON OF SHRI PARAMANANDA SARMA

12:SRI SAILESWAR SARMA
SON OF LATE SAKRESWAR SARMA

13:SRI RATUL PRASAD SARMA
SON OF LATE HIRANYA PRASAD SARMA

14:SRI NALIN PRASAD SARMA
SON OF SRI KAMALA PRASAD SARMA

15:SHRI KAJAL SARMA
SON OF SHRI SANKAR SARMA

16:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI

17:THE STATE OF ASSAM
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
GUWAHATI DEVELOPMENT AUTHORITY

18:SRI LALIT MOHAN DAS
VILLAGE KAMAKHYA GAON
MAUJA JALUKBARI



POST OFFICE GUWAHATI-12
DISTRICT KAMRUP

Respondent No 18 impleaded vide order dated 16/09/2013 passed in Misc Case No 614/2009 and Misc Case No1484/2010

19:SHRI JOGESWAR SAIKIA
S/O SHRI MALBHOG SAIKIA
ADDRESS KALIPUR
GUWAHATI
P.S. BHARALUMUKH UNDER MAUZA JALUKBARI DISTRICT KAMRUP
ASSAM Respondent No 19 impleaded vide order dated 16/09/2013 passed in Misc Case No 1952/2010

20:. SRI MAHANTA SWAMI RASH BEHARI DAS KATHIA BABA
SON OF SHRI MAHANTA SWAMI DHANANJOY DAS KATHIA BABA
GURUKUL ROAD
POST OFFICE VRINDAVAN
DISTRICT MATHURA
UTTAR PRADESH
REPRESENTED BY HIS CONSTITUTED ATTORNEY SRI NISHITENDU DHAR
ADVOCATE SON OF LATE NAGENDRA KUMAR CHOUDHURY
A.K.AZAD ROAD
REHABARI
P.PO.GUWAHATI-08
DISTRICT KAMRUP
ASSAM Respondent No 20 impleaded vide order dated 16/09/2013 passed in Misc Case No 2107/2010 and Misc Case No 2108/2010

21:SHRI NANDI NATH SARMA
VICE CHAIRMAN KAMAKHYA DEBUTTAR BOARD
KAMAKHYA HILL
GUWAHATI Respondent No 19 impleaded vide order dated 16/09/2013 passed in Misc Case No 2492/2010

22:SHRI PURNA CHANDRA SARMA
S/O SHRI PRABHAT CH.SARMA RESIDENT OF KAMAKHYA HILL TOP
P.S. JALUKBARI
GUWAHATI

23:SRI SUBHAS SARMA
S/O SHRI PRABHAT CH.SARMA RESIDENT OF KAMAKHYA HILL TOP
P.S. JALUKBARI
GUWAHATI

24:SRI MRINAL SARMA
S/O SHRI ARUN CH.SARMA RESIDENT OF KAMAKHYA HILL TOP
P.S. JALUKBARI
GUWAHATI



25:SRI KALYAN SARMA
S/O SHRI ARUN CH.SARMA RESIDENT OF KAMAKHYA HILL TOP
P.S. JALUKBARI
GUWAHATI Respondent No 22 to 25 impleaded vide order dated 16/09/2013 passed in Misc Case No 1586/2011 and Misc Case No 1587/2011

26:SRI PALIT KR BORA
S/O LATE PADMANATH BORA R/O DAHABARACHUK
JORHAT-01
PRESENTLY RESIDING AT ARUNADAY APARTMENT BLOCK NO.1
FLAT NO 302 Respondent No 26 impleaded vide order dated 16/09/2013 passed in Misc Case No 722/2012 and Misc Case No 723/2012

27:ASHEERBAD CONSTRUCTION COMPANY PVT LTD

INCORPORATION NO 03-04583
REPRESENTED BY ITS DIRECTOR SMTI RATNA SARMAH

28:SRI RABINDRA NATH SARMAH
S/O LATE PITAMBAR SARMAH R/O MALIGAON CHARIALI
P/S JALUKBARI GUWAHATI-11 Respondent No 27 and 28 impleaded vide order dated 16/09/2013 passed in Misc Case No 1070/2013 and Misc Case No 1071/2013

29:SRI NILAMBAR SARMAH
RESIDENTS OF A.T. ROAD
VILLAGE AND P.O.-KAMAKHYA
P.S. JALUKBARI
GUWAHATI KAMRUP METRO

30:SRI BHABA KT. SARMAH
RESIDENTS OF A.T. ROAD
VILLAGE AND P.O.-KAMAKHYA
P.S. JALUKBARI
GUWAHATI KAMRUP METRO

31:SRI KAMALA KT. SARMAH
RESIDENTS OF A.T. ROAD
VILLAGE AND P.O.-KAMAKHYA
P.S. JALUKBARI
GUWAHATI KAMRUP METRO

32:SRI LAKSHI KT. SARMAH
RESIDENTS OF A.T. ROAD
VILLAGE AND P.O.-KAMAKHYA
P.S. JALUKBARI
GUWAHATI KAMRUP METRO Respondent No 29 to 32 are impleaded vide order dated 16/09/2013 passed in Misc Case No 1224/2013 and Misc Case No 1225/2013



33:WEST GUWAHATI COLLEGE OF EDUCATION
PANDUNATH GUWAHATI
KAMRUP
ASSAM REPRESENTED BY PRINCIPAL AND SECRETARY SMT GITANJALI
CHOUDHURY

34:SMT GITANJALI CHOUDHURY
WIFE OF SRI BRAJENDRA CHOUDHURY
RESIDENT OF KAHILIPARA
SURABHI PATH
JANAKPUR

GUWAHATI 5 Respondent No 33 and 34 are impleaded vide order dated 16/09/2013
passed in Misc Case No 1242/2013 and Misc Case No 1243/2013

35:THE DEPUTY REGISTRAR
KAMRUP METRO PANBAZAR
GUWAHATI-781001

36:THE SENIOR SUB REGISTRAR
KAMRUP METRO PANBAZAR
GUWAHATI-781001

37:THE SUB REGISTRAR
KAMRUP METRO PANBAZAR
GUWAHATI-781001

38:THE JOINT SUB REGISTRAR
KAMRUP METRO PANBAZAR
GUWAHATI-781001 Respondent No 35 to 38 are impleaded vide order dated
16/09/2013 passed in Misc Case No 1836/2013

39:THE DEPUTY COMMISSIONER
KAMRUP METRO
GUWAHATI-781001

40:THE ADDITIONAL DEPUTY COMMISSIONER REVENUE
KAMRUP METRO
GUWAHATI-781001 Respondent No 39 and 40 are impleaded vide order dated
16/09/2013 passed in Misc Case No 1838/2013

41:DR. SUBHASH KHANNA
S/O SRI KRISHANLAL KHANNA MANAGING DIRECTOR OF SWAGAT
HOSPITAL P LTD. BHARALUMUKH
GUWAHATI-09 Respondent No 41 is impleaded vide order dated 16/09/2013 passed
in Misc Case No 2016/2013 and Misc Case No 2017/2013

42:SHRI BRAJEN KALITA



S/O LATE NAREN KALITA R/O KALIPUR
GUWAHATI
DIST KAMRUP ASSAM Respondent No 42 is impleaded vide order dated
16/09/2013 passed in Misc Case No 2018/2013 and Misc Case No 2020/2013

43:SUBHAM PLANNERS LTD.
FORMERLY SUBHAM PLANNERS PVT. LTD
REGISTERED OFFICE
AT SUBHAM VELOCITY
5TH FLOOR
HARI RAM BORA PATH
G.S. ROAD
OPP- WALFORD
GUWAHATI-5
REPRESENTED BY ITS DIRECTOR
SRI ROHIT LOHIA
R/O SRIKUNI HOUSE
HOUSE NO- 11
MAHADEVPUR
REHABARI
GUWAHATI-8
DIST- KAMRUP (M)
ASSAM.

44:SRI SUPARAS MAL BAID

S/O LATE KANKHYA LAL BAID
R/O MALIGAON
GUWAHATI
DIST- KAMRUP (M)
ASSAM.

45:SRI ARABINDA SENGUPTA
S/O DILIP KUMAR SENGUPTA.

46:SMTI. AJANTA SENGUPTA
W/O SRI ARABINDA SENGUPTA.

47:SMT. KRISHNA BISWAS
S/O LATE PARTHA PRATIM BISWAS

48:SRI PARTHA PRATIM BISWAS

S/O LATE AJIT KUMAR BISWAS.

49:SMT. SUNITA JHABAK
W/O SRI RAJ KUMAR JHABAK



50:SMT. SONU SETHIA
W/O SRI DHANPAT R. SETHIA

51:SRI DHANPAT R. SETHIA

S/O SRI SUMER MAL SETHIA

52:SRI KRISHNA SHARMA
S/O SRI SANWARMAL SHARMA.

53:SMT. KALPANA NEOG
W/O SRI KABYAJYOTI NEOG

54:KABYAJYOTI NEOG
S/O LATE JYOTISH CHANDRA NEOG

55:SRI VIMAL CHAND KHAJANCHI
S/O LATE VALCHAN KHANCHI

56:SMTI. CHANDRAKALA KHAJANCHI
W/O SRI VIMAL CHAND KHAJANCHI

57:SMT. PARWATI DEVI HARLALKA
W/O LATE NAND KISHORE HARLALKA

58:SRI JITENDRA KUMAR YADAV
S/O SRI PRABHUNATH YADAV

59:SRI AMIT KUMAR YADAV
S/O SRI PRABHU NATH YADAV

60:SRI SANDIP KEDIA
S/O SRI MAHABIR PRASAD KEDIA

61:SRI SANJIB KUMAR MITRA
S/O LATE BYOMKESH MITRA

62:SRI SEKHAR PODDER
S/O LATE SRISH CHANDRA PODDER

63:SMT. SNEHA HARLALKA

D/O LATE DILIP AGARWAL

64:SMT. SWAPNA DUTTA
W/O LATE PANKAJ DUTTA
RESPONDENT NO 45 TO 64 ARE RESIDENTS OF DWARKA ENCLAVE
MALIGAON



GUWAHATI-781012
KAMRUP (M)
ASSAM.

65:SRI SEKHAR PODDER
S/O LATE SRISH CHANDRA PODDER

66:SMT. SNEHA HARLALKA
D/O LATE DILIP AGARWAL.

67:SMT. SWAPNA DUTTA
W/O LATE PANKAJ DUTT

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners	:Mr. M. K. Choudhury, Sr. Advocate. Mr. P. Bhardwaj, Advocate. Mr. N. N. Jha, Advocate. Mr. J. Deka, Advocate.
For the Respondents	:Mr. D. Mazumdar, Additional Advocate General, Assam. Mr. P.S.Deka, Sr. Advocate as Amicus Curiae.
Date of Hearing	: 21.04.2022, 19.05.2022, 09.06.2022, 08.08.2022, 17.08.2022, 26.09.2022
Date of Judgment & Order	: 27.10.2022.



JUDGMENT & ORDER(CAV)

1. The present writ petition is preferred by the Chairman, Kamakhya Debutter Board, Kamakhya Hill, Guwahati and by the Deity of Goddess, Sri Sri Kamakhya, represented by the Board of Trustees, Kamakhya Debutter Kamakhya Hill, Guwahati for a declaration that the resettlement operation carried out in Kamakhya Hills and Nilachal Hills on the basis of “Original Jamabandi” (a jamabandi of Kamakhya village of the Nilachal Hill alleged to be prepared in the year 1973) and “Duplicate Register” is null and void for the reason of non demarcation of the retainable areas of land by the deity of Sri Sri Maa Kamakhya under the Assam State Acquisition of Lands Belonging to Religious and Charitable Institutions of Public Nature Act, 1959 (hereinafter referred to as Act, 1959).
2. The matter was extensively argued by Mr. J. Deka, learned counsel on behalf of the petitioner No. 1 on more than three dates and was at stage of concluding his argument. However, on 17.08.2022, it was submitted that Mr. N. N. Jha, learned counsel was engaged by the petitioner No. 1 to argue the matter in place of Mr. J. Deka, learned counsel and in that view, this Court requested Mr. J. Deka, learned counsel to assist the court by concluding his argument and also heard Mr. N. N. Jha, learned counsel on behalf of the petitioner No. 1 on 30.08.2022. This Court also heard Mr. M. K. Choudhury, learned Senior Counsel assisted by Mr. P. Bhardwaj,



learned counsel for the petitioner No. 2, the Deity and Mr. D. Mazumdar, learned Additional Advocate General for the State of Assam. Also heard Mr. P. S. Deka, learned Senior Counsel as Amicus Curie.

3. Though no specific prayer assailing the acquisition of the land belonging to the deity under the Act, 1959 is made in the present writ petition, however, the challenge to the resettlement operation, preparation of Jamabandi and records of rights are being made on the ground that while acquiring the land of the deity, the procedure required to be followed under the Act, 1959 and Rules made thereunder were not followed. In fact, Mr. J. Deka, learned counsel extensively argued on the alleged procedural violation, while acquiring the land by the State under the Act, 1959. In the aforesaid backdrop of pleading and argument, this Court proposes to first highlight on the procedure of acquisition of the land under the Act, 1959 and then shall proceed to the facts of the Case.

4. **Scheme of the Act, 1959:**

(I) The statement and object and the reason of the Act, 1959 reflects that the same is enacted to acquire lands belonging to Religious and Charitable Institutions of Public Nature in order to give a better status to the actual occupants and to settle the un-occupied lands with landless people by permitting such Institutions to retain some lands.



- (II) Section 3(1) of the Act, 1959 empowers the State Government to declare by Notification in the official Gazette that all rights in land belonging to a Religious or Charitable Institution of Public Nature shall vest in the State free from all encumbrances with effect from the first day of the agricultural year next following the date of publication of such notification. A copy of such notification is mandated to be served on the Head of the Religious or Charitable Institution in the manner it is prescribed.
- (III) Section 3(3) of the Act, 1959 takes a presumption that when a notification is published in the official Gazette and the copy is served upon the Head of the Institutions, the same should be a conclusive evidence of publication and of notice to all persons affected by such notification.
- (IV) Section 5 of the Act, 1959 provides that the Institution shall be entitled to retain possession of certain lands namely, lands which were occupied by the Institution by constructing buildings and raising orchards and flower gardens together with the compounds appurtenant thereto and all lands reserved for the resident devotees for residential purpose. Last date of such possession is determined to be last day of Chaitra, 1365 B.S. (1958).
- (V) Section 6 of the Act, 1959 empowers the Deputy



Commissioner to take possession at any time after the land of the Institution had vested in the State.

- (VI) Section 7 of the Act, 1959 provides for payment of compensation to the Institution, whose lands have been acquired.
- (VII) Section 18 of the Act, 1959 casts a duty upon the Head of Institutions to submit a return to the Deputy Commissioner giving particulars of all the lands, mentioning specifically, the land selected for retention and the area under occupation of tenants and area not under occupation of any tenant. Such return is mandated to be given within three months from the commencement of the Act, 1959 which commenced from 1st January, 1963.
- (VIII) Section 19 of the Act, 1959 also empowers the Deputy Commissioner to obtain on its own, the information required to be shown in the aforesaid return or any further information.
- (IX) Section 20 of the Act, 1959 provides that a draft statement, showing among other particulars, the total area of land held by a religious or charitable institution, the specific plots selected for retention with such institution and also the land outside the permissible area of retention is to be prepared by the Deputy Commissioner.



While preparing such statement, the Deputy Commissioner may rely either on the information given in the return under Section 18 by the Institution after due verification through such agency, which may be decided by the Government or on the basis of the information obtained by the Deputy Commissioner under Section 19 of the Act, 1959.

Such draft statement is required to be published in the office of the Deputy Commissioner, in the Sub Divisional Officer, in the office of the Circle Sub Deputy Collector and also in the office of the Mauzadar. A copy of such statement is required to be served on the Head of the Institutions.

If any objection to such statement is received within 30 days of the service, the same is required to be duly considered by the Deputy Commissioner and the Deputy Commissioner is empowered to pass order on the objection, if any by giving the objector opportunity of hearing.

- (X) Section 20(3) of the Act, 1959 provides for an appeal to the State Government from the order of the Deputy Commissioner as aforesaid and period of limitation is prescribed as 30 days from the date of order of the Deputy Commissioner, excluding the period required for obtaining copies thereof.
- (XI) Section 20(4) of the Act, 1959 empowers the State Government to call the record relating to the draft statement



on its own motion at any time but within 60 days from the order of the Deputy Commissioner and can pass an order, after giving the Head of the Institution concerned an opportunity of hearing. If no appeal is preferred within the prescribed period under Section 20(3) of the Act, 1959, or against order under Section 20(4) of the Act, 1959, the draft statement then shall be finally prepared and no person is made entitled to question in any Court such finality.

(XII) Section 30 of the Act, 1959 empowers the State Government to make rules for carrying out the purpose of the Act, 1959 particularly, the manner of serving notice or draft statement, manner of exercise of power by the Deputy Commissioner, procedure and fees regarding appeal, revision etc and accordingly, the State had made a set of rules namely Assam State Acquisition of Land belonging to Religious or Charitable Institutions of Public Nature Rules, 1962 (hereinafter referred to as Rules, 1962).

5. Case of the petitioners:

The petitioners pleaded the following facts:-

- I. The entire endowment of the deity comprises of not less than 31000 bighas of landed properties under status of Lakhiraj (revenue free estates). The said lands besides Nilachal Hills (constituting the three hills of Bhubneswari,



Kamakhya and Borah, and the Durga Sarabor) also comprised of vast tracts of agricultural and fishery lands spread out over the districts of Kamrup, Darrang, Nalbari, Barpeta, Mongaldoi etc.

- II. The said land constituted of the three hills of Bhubneswari, Kamakhya and Borah and the Durga Sarabor (comprising of the entire Nilachal Hills and Durga Sarabor Hills) are contemplated to be retained under Section 5 of the Act, 1959.
- III. The notification under Section 3 of the Act, 1959 was never served on the persons responsible for the management of the property as required under Section 3(2) of the Act, 1959.
- IV. The State respondents have never bothered to abide by the mandate of the Act, 1959 and State has been granting settlements to many persons without making any demarcation as mandated under Section 6 of the Act, 1959.
- V. The State in violation of Section 15 of the Act, 1959 which provides for settlement in favor of person in occupation has been granting periodic lease to persons, who are mere encroachers and who are mere lessees under the raiyats of the land belonging to the deity. Thus the whole objects of the Act, 1959 has been violated by the State Authorities.



- VI. The respondent State without making any demarcation under Section 6 of the Act, 1959 had went on to prepare a jamabandi of Kamakhya village of the Nilachal Hill in 1973 (termed as original jamabandi) without following the law i.e. without demarcating the retainable area as provided under Section 5 of the Act, 1959.
- VII. Another illegality committed by the State is that the original jamabandi is nowhere to be found under the custody of the respondent No. 2 and a duplicate Register has been published which is under challenged in the present writ petition. Such jamabandi is illegal as it does not bear the seal and signature of the Assistant Settlement Officer.
- VIII. The creation of original jamabandi and duplicate Register without demarcating the retainable areas of the land under Section 5 of the Act, 1959 is illegal. Such preparation is in violation of Section 40 of the Assam Land and Revenue Regulation, 1886.
- IX. The duplicate Register is purportedly prepared as late as, in the year 1987. The original jamabandi was prepared way back in the year 1973.
- X. That name of innumerable persons who are not raiyats under the deity have been entered in the duplicate Register in violation of Section 15 of the Act, 1959.

6. Argument of Mr. J. Deka, learned counsel.

- I. The specific pleading of the petitioners that nothing has been done by the State Government in terms of the requirement of the Act, having not being denied by the State in their affidavit-in-opposition, such statement deems to be admitted. In support of such submission, Mr. Deka, relies on a judgment of the Hon'ble Apex Court in the case of *Spl. Land Acquisition Officer -Vs- Karigowda & Ors* reported in *AIR 1997 SC 3838*.
- II. The State, though have asserted that notification under Section 3(2) of the Act, 1959 was served upon the Dolois of the Kamakhya Temple, however, the State has failed to bring on record any documentary evidence in support of such contention. The Rule 4 of the Rules, 1962 has been violated in preparing the draft statement and Rule 6(2)(4) of the Rules, 1962 has also been violated in not preparing the draft statement in Form B and not serving such draft statement as per Form-A.
- III. The Deputy Commissioner in his affidavit did not disclose anything regarding preparation and service of Form-B as prescribed in Rule 6 and no documentary evidence is placed on record non relevant record pertaining to the purported acquisition was produced before this Court and therefore, this



Court directed the State respondent to produce the record/original record before this Court however, the State has failed to produce the record of the acquisition and therefore an adverse presumption should be drawn against the State.

- IV. The affidavit filed by the State is supplemented by fresh reason and such action is not permissible under the law. In support of his contention, Mr. Deka, learned counsel relied on a judgment of the Hon'ble Apex Court in the case of *Mohinder Singh Gill and Another -Vs- The Chief Election Commissioner, New Delhi and Others* reported in *1978 1 SCC 405*.
- V. When an Act, 1959 confers a power to acquire land and has laid down the method in which such power has to be exercised, it necessarily prohibits that doing of the act in any other manner than that has been prescribed, submits Mr. Deka, learned counsel.
- VI. The statutory interdict of use and enjoyment of property must be strictly construed. In support of such contention Mr. Deka, relies on judgments of the Hon'ble Apex Court in the case of *Dipak Babaria and Another -Vs- State of Gujarat and Others* reported in *2014 3 SCC 502*, and *Bhavnagar University -Vs- Patitana Sugar Mill (P) Ltd and others* reported in *2003 2 SCC 111*.
- VII. Non challenge of alleged notification cannot be fatal



inasmuch as the same had never been served upon the Head of the Institutions as provided under the Act, 1959 and in the manner prescribed under the Rules and therefore no right, title and interest of the land of the deity vested in the State as contemplated under Section 4 of the Act, 1959.

VIII. Relying on the judgment of the Hon'ble Apex Court in the case of *Bangalore Development Authority -Vs- Vijaya Leasing Limited and Others* reported in *2013 14 SCC 737*, Mr. Deka, learned counsel submits that the judicial daring is not daunted when glaring injustice demand even affirmative action inasmuch as the materials on record clearly shows that the alleged acquisition was illegal for non compliance of provision of the Act, 1959 and Rules, 1962 and therefore, the notifications are void-ab-initio and the same cannot be validated.

7. Stand of the State respondents:-

The State respondent has filed their affidavit and has taken the following stands:

I. In Kamakhya village, there were two Lakhiraj Pattas, namely Lakhiraj Patta No. 1 and Lakhiraj Patta No. 2. Lakhiraj Patta No. 1 contained 47B-4L-19 $\frac{1}{4}$ Lessas out of which only 1 Bigha of land against dag No. 89 was retained in the name of Pandunath Dewalaya and remaining area measuring 46B-1K-



19 $\frac{1}{4}$ Lessas were acquired under the Act, 1959 by Government Gazette Notification No. RRT/19/67/51 dated 04.04.1967. Lakhiraj Patta No. 2 contained 2532B-2K-15 lesas out of which 2512B-2K-15 lesas were acquired under the Act, 1959 by Government Gazette Notification No. RRT/17/67/19 dated 01.03.1967 allowing an area of land measuring 20B-0K-0Lessa to be retained in the name of Kamakhya Dewalaya.

- II. The total area against the Dag that had been retained in the name of Kamakhya Dewalaya are found to be 18 bighas approximately.
- III. The area covered by all the retainable dags including that of the acquired dags are found to be distinctly bounded in the map of the concerned village having their independent identities as individual dags which were made during re-settlement operation of 1957-64 i.e. prior to the acquisition of land in question. Thus the retainable portion vis-à-vis the acquired portion is automatically demarcated in terms of land records.
- IV. Notice was duly served and the Dolois of the deity submitted a claim for compensation in Form-C and such submission of Form-C clearly depicts that notices were duly served upon the institution.
- V. There is no provision in the Act that the settlement of the



acquired land cannot be affected until and unless the area of Temple is demarcated.

VI. No duplicate set of jamabandis of Kamakhya village was ever prepared in the year 1973. The record of rights of Kamakhya village pertains to the year 1957-64. Two copies of jamabandis were prepared. One meant to be used as Sadar Jamabandi copy and other was used as working copy in the concerned revenue circle. Both the original copies are still available with the Deputy Commissioner, Kamrup Metro and Circle Officer, Guwahati. All the changes in the land record that had taken place subsequent to the closure of a particular re-settlement operation get incorporated/recorded in both the copies of Sadar jamabandi and working jamabandi.

VII. The demarcation of land covered by dag retained in the name of the deity could be demarcated even now if the petitioners are agreeable.

8. Argument advanced by Mr. D. Mazumdar, learned Additional Advocate General for the State respondents:-

Supporting the pleadings made as discussed herein above, Mr. Mazumdar, learned Additional Advocate General additionally makes the following argument:-

I. The present writ petition on the face of it, is hit by delay



and lasses and on the same ground alone, this writ petition is liable to be dismissed. The lands in question were acquired and vested on 22.04.1967 and 01.03.1967. The application in Form-C for payment of compensation was duly filed, petitioners have not whispered anything regarding any objection under Section 20(3) of the Act, 1959 or preferring any appeal under Section 20(4) of the Act, 1959 within the period of limitation. Admittedly the objections were raised regarding the settlement of certain land only in the year 1994 i.e. after 30 years of acquisition of the land and admittedly they continued to raise such grievances before the Circle Officer and the Deputy Commissioner, who were having no jurisdiction to go behind the acquisition and pass any order in view of the finality of the acquisition process and the petitioner preferred the writ petition in the year 2003, after the 10 years from the date of raising their grievances before the Deputy Commissioner and 40 years from the date of vesting of the land upon the State by virtue of the Act,1959. Therefore, this writ petition is liable to be dismissed on this ground alone.

- II. The arguments touching the validity of the land acquisition process may not be entertained by this Court in absence of any challenge to such procedure.



III. No Rayats under deity or any landless people have ever raised any issues regarding violation of Sections 15 and 16 of the Act, 1959 and the present petitioners are having no locus to raise such violation.

IV. In the meantime, many settlement operation has been completed, thousands of people are settled in the lands claimed by the petitioners and land are transferred to different persons and those persons/settlement holders not being brought before this Court, this Court may not like to interfere with such settlement. Accordingly, this writ petition is liable to be dismissed.

9. Counter argument of Mr. J. Deka, learned counsel:

Countering such argument Mr. Deka, learned Counsel for the petitioners submits the following:

I. As the acquisition itself is not valid, the delay and acquiescence has no consequence. Since the acquisition was in colourable exercise of power, therefore, the delay cannot be a ground to dismiss the writ petition. In support of his contention, he relies on the judgment of the Hon'ble Apex Court in the case of *Vyalikaval Housebuilding Coop. Society by its Secretary -Vs- V. Chandrappa and Others* reported in 2007 9 SCC 304.

II. The Act requires the notification to be issued in a particular manner and in the present case, the notification fails to meet such requirement and the petitioners have explained the delay and therefore only on this ground, the writ petition should not be dismissed. In support of his contention he relies on the judgment of the Hon'ble Apex Court in the case of *Comptent Authority -Vs- Barangore Jute Factory and Others* reported in *2005 13 SCC 477* and in the case of *J&K Housing Board and Another -Vs- Kunwar Sanjay Krishan Kaul and Others* reported in *2011 10 SCC 714*.

10. Submission of Mr. M. K. Choudhury, learned Senior Counsel:-

Mr. M. K. Choudhury, learned Senior Counsel representing the petitioner No. 2, while arguing on the similar line, adds the further following arguments.

I. It is a bounded duty of the State to protect at least the retainable land belonging to the deity inasmuch as it is one of the most followed Shaktipeeth in India. Encroachments are being made even within the retainable area and the Government is becoming a mutes spectator of such encroachment of the land of the deity.

II. Alternatively, the State is bound to demarcate the retainable area inasmuch as they themselves has taken a stand



that the demarcation of land covered by the dags retained in the name of Kamakhya Dewalays could be demarcated even now. Therefore, a direction should be issued to the State authorities to do the needful.

III. The Assam Land and Revenue Regulation, 1886 was amended in the year 2019 by incorporating Chapter-XI, wherein provision for protection of land belonging to the Religious Institutions were incorporated and therefore, the State is bound to protect the land of the deity in exercise of its power under Chapter XI of the Assam Land and Revenue Regulation, 1886, (as amended).

11. **Reasons and Determinations:-**

This Court has given anxious consideration to the submissions made by the learned counsel for the parties and following are its reasons and determination:-

I. The whole crux of the argument made on behalf of the petitioners is that the acquisition of land is void-ab-initio for the reason that the mandate of Sections 5, 6, 19 and 20 of the Act, 1959 were not followed inasmuch as the procedure laid down under Rules, 1962 were also not followed. The fact remains that no prayer whatsoever has been made for setting aside and quashing the land acquisition proceeding inasmuch as no specific averment has been made in the present writ



petition that Section 3(2) of the Act, 1959 was not followed, that Head by the Institutions had not submitted any return as required under Section 8 of the Act, 1959 due to its lack of knowledge or that the Deputy Commissioner had not obtained any information under Section 19 of the Act, 1959 or that no draft statement was prepared in the case. It is also not pleaded and explained why the Institutions had not opted for the remedy under Section 20(3) of the Act, 1959. Therefore, in the aforesaid context, this Court at this belated stage i.e. after 55 years of acquisition of the land is not inclined to entertain such plea inasmuch as a statutory remedy under Section 20(3) of the Act, 1959 was provided to any aggrieved persons against grievances in preparation and submission of draft statement, which includes the statement of retainable and non retainable land and such draft has long been prepared under Section 20(7) of the Act, 1959 nor any dispute has been raised that the draft statement has not been finalized. Furthermore, it is not a case of the petitioners that such final settlement was not published as mandated under Section 20(7) of the Act, 1959.

- II. Though it is pleaded that entire Nilachall Hill and Durga Sarobar Hill are contemplated to be retainable area, this Court is not in a position to determine the retainable area in the present lis. The reason is that the retainable area is to be determined on the basis of possession as on last day of chaitra



1958. Such retainable possession is also qualified under Section 5 of the Act, 1959. And such exercise of determination is required to be done through a procedure laid down under Sections 18, 19 and 20 of the Act, 1959. Wrong determination is also appealable under the scheme of the Act, 1959 within prescribe period of limitation. Therefore, such exercise cannot be allowed to carry out afresh after vesting of the land upon the government, nor it is permissible under the Act'1959.

III. The State has taken a specific stand that land was duly demarcated and same can further be indentified at this stage itself if the petitioners so desires. The disputed questions has arisen that the petitioners are claiming that retainable land has not been demarcated and it has not identifiable. On the other hand, a specific stand has been taken by the Deputy Commissioner that retainable land has duly been demarcated and also quantified the said land and took a stand that the same can be identified as on date and that the institution has claimed compensation in Form C of the Rules, 1962. Such disputed question of fact cannot be determined without leading positive evidence and this Court is not capable of determination of such disputed facts in exercise of writ jurisdiction.

IV. Section 15 of the Act, 1959 provides that where the land



acquired under the Act, 1959 is in occupation of Rayat on the date of notification under Section 3 of the Act, 1959, it should be settled with him. In the present case no Rayat is before this Court assailing that the State has settled the land in derogation of Section 15 of the Act, 1959, nor the petitioners could pinpoint any Rayat in occupation under the Institutions that have not been settled with land acquired. There is also no allegation by the Institution that any Riyat settled with acquired land has been allowed to transfer their holding to any other persons belonging to other religion than that of the religion of the Institution. Therefore, in the aforesaid backdrop, this Court is not inclined to entertain the allegation of violation of Section 15 of the Act, 1959 at the behest of the petitioners.

- V. Section 16 of the Act, 1959 mandates that when land acquired under the Act, 1959 is not under the occupation of Rayat on the date of notification under Section 3 of the Act, 1959, the State is empowered to settlement with certain preferred categories of persons such as cultivator, who has been rendered homeless due to ejection by landlord or due to flood erosion, earthquake etc, within two years next before the coming into operation of the Act, cooperative farming society formed by landless actual persons, landless cultivators etc. Though petitioners have alleged violation of Section 16 of the



Act, 1959 and had given certain examples but in the considered opinion of this Court language of section 16 of the Act'1959 clarifies that those persons are in preferred category for settlement and there is no absolute bar for the Government to settle acquired land with deserving individuals/entities. Furthermore, in absence of those persons, who are alleged to have been settled with acquired land being made parties and in the present form. This Court is also not inclined to entertain such plea for the reasons that no preferred persons as discussed hereinabove have approached this Court alleging violation of their rights under the Act'1959.

- VI. The present petitioners are vested with no right under Section 15 of the Act, 1959 or under Section 16 of the Act, 1959. Sections 15 and 16 of the Act, 1959 are guiding principle for settlement of acquired land. That being so, the petitioners cannot be treated as an aggrieved person to raise such issues nor can it be said that any right of them have been violated at the behest of the State to issue a prerogative writ.
- VII. The petitioners, of course, had a right to retain possession of the land as mandated under Section 5(i) and (ii) of the Act, 1959 and had a right to file objection under Section 20(2) of the Act, 1959 and to prefer an appeal under Section 20(3) of the Act, 1959, but admittedly violation of such right had not



been alleged/raised within the period mandated under the Act, 1959 before the statutory competent authority and therefore, the same could not be determined within the scope and ambit of the Act, 1959 and therefore, the same cannot be agitated and be entertained in exercise of a writ jurisdiction of this Court beyond the statutory provision that too after more than 50 years from extinguishment of such statutory right.

VIII. Section 40 of the Assam Land and Revenue Regulation, 1886 provides for framing of records of right for estates. Such record of rights is the jamabandi based on the Chitha and the field map. It is to be done in a prescribed manner. The procedure prescribed is that entries in the record of right are to be founded on the basis of the actual possession. At the time of settlement of operation, the jamabandi is prepared which records the name of the settlement holders on the basis of possession. The allegation of the petitioners that the no jamabandi was prepared and a “duplicate copy” was only there without any signature has been refuted by the State and the State contended that the jamabandi of the Kamakhya village was not prepared in the year 1973 rather records of right of Kamakhya village was prepared in the year 1957-1964 and two copies of jamabandi were prepared, one for the use of Sadar jamabandi and other was used as working copy in the concerned Revenue Circle. In absence of any material to show



that this statements are incorrect, this Court cannot hold that jamabandi was prepared in the year 1973 as alleged by the petitioners. Further the challenge to such creation of records of right is on the ground that the jamabandi had been prepared without demarcation of the retainable land. Such determination cannot be entertained by this Court at this stage as discussed hereinabove. Therefore, the contention of the learned counsel for the petitioners that the “Original Jamabandi” and “duplicate Register” are liable to be declared as null and void is negated.

IX. The maker of Constitution while incorporating Article 226 of the Constitution of India have empowered, the High Court to issue writs in the nature of mandamus, certiorari etc. or to issue any direction or to pass any such other order or orders. However, it has not been provided any timeframe within which such an application for such writ or direction ought to be filed. By now it is well settled that the Limitation Act, 1963 is not applicable to a petition under Article 226 of the Constitution of India. Law is further well settled that Writ Courts may refuse to grant relief in cases, where writ petitions are filed after long, unreasonable and inordinate delay. The Hon’ble Apex Court in the case of *Veerayeeammal vs. Seenimmal* reported in *2002 1 SCC 134* explained the word reasonable time. The paragraph 13 of the said judgment can be quoted gainfully, which is as follows:

“13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to ideosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space that 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."



- X. The delay in the present case as discussed herein above, in the considered opinion of this court, cannot be treated as reasonable period in the aforesaid terms more particularly, when an indirect challenge has been made to the Act, 1959. Accordingly, this writ petition is also liable to be dismissed on this count.
- XI. While holding as aforesaid, this Court cannot be oblivious of the fact and the submissions and alternative arguments advanced by Mr. M. K. Choudhury, learned Senior Counsel that it is a bounded duty of the State to protect the land of the deity as has been retained. Mr. Mazumdar, Learned Additional Advocate General has also endorsed the argument advanced by Mr. M. K. Choudhury, learned Senior Counsel regarding the application of Chapter-XI of the Assam Land and Revenue Regulation, 1886. In view of the aforesaid and considering the statement of the Deputy Commissioner that it can still identify the retainable area, this Court is inclined to direct the Deputy Commissioner, Kamrup (Metro) to verify the retainable area (already determined) belonging to the deity of Sri Sri Maa Kamakhya under the Act, 1959 and that if it is found that retainable areas earmarked are under encroachment, the Deputy Commissioner shall evict those encroachers from the retainable area by following the provision of Assam Land and Revenue Regulation, 1886 and handover the such land to the

petitioner No. 2.

XII. There shall not be any bar by virtue of the judgment in grant of mutation and settlement etc., if otherwise permissible under law relating to the land beyond the retainable area.

XIII. As this Court has held that it has not entertained the issue and question of legality of the acquisition process, the judgment relied on by Mr. J. Deka, learned counsel as discussed hereinabove, shall have no relevance for determination of the present lis inasmuch as the ratio laid down in those judgements, more particularly relating to the exercise of statutory power by authority is not a question in the present lis. The judgment relied on by Mr. Deka, learned counsel for the purpose of explaining of the delay in approaching this writ Court is also having no relevance inasmuch as all the aforesaid judgments, the challenge was the acquisition itself and in the present case, acquisition is not under challenged.

12. **Directions:**

For the reasons and determinations made hereinabove, this present writ petition is disposed of with the following directions:

I. The prayer for declaration that the resettlement operation carried out in Kamakhya Hills and Nilachal Hills on the basis of “Original Jamabandi” (a jamabandi of



Kamakhya village of the Nilachal Hill alleged to be prepared in the year 1973) and “Duplicate Register” is null and void, is rejected.

II. The Deputy Commissioner, Kamrup (Metro) to verify the already determined retainable area belonging to the deity of Sri Sri Maa Kamakhya under the Act, 1959 and that if it is found that retainable areas earmarked are under encroachment, the Deputy Commissioner shall evict those encroachers from the retainable area by following due process of law and handover the such land to the petitioner No. 2.

III. There shall not be any bar by virtue of this judgment in grant of mutation and settlement etc., if otherwise permissible under law relating to the land beyond the retainable area.

IV. The aforesaid exercise shall be completed within a period of six months from today.

13. The Registry of this Court is directed to furnish a copy of this judgement to Mr. D. Mazumdar, learned Additional Advocate General, State of Assam for further necessary action.

JUDGE

Comparing Assistant