

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.04/2023

Sri Apratim Mohan Debbarma, S/O. Lt. Chittaranjan Debbarma, Resident of-
Krishnanagar, 14 No. Radha Mohan Thakur Sarani, P.S.-West Agartala,
District-West Tripura.

.....Petitioner(s).

V E R S U S

1. Executive Engineer, Public Works Department, Agartala, Division No.V,
Agartala, West Tripura.

2. Land Acquisition Collector, Agartala, West Tripura.

3. Smt. Surjyatapa Debbarma, W/O. Sandipan Saha, Natunpalli, Near Satra
Sagha Club, P.O.-Agartala, P.S.-West Agartala, Agartala, West Tripura-
799001.

.....Respondent(s).

For Petitioner(s) : Mr. S.M. Chakraborty, Sr. Advocate,
(Amicus Curiae),
Mr. P.K. Biswas, Sr. Advocate,
Mr. Sankar Bhattacharjee, Advocate,
Mr. Pujan Biswas, Advocate,
Mr. Rishiraj Nath, Advocate,
Ms. P. Chakraborty, Advocate.

For Respondent(s) : Mr. M. Debnath, Advocate,
Mr. Soumyadeep Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **13th October, 2023.**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

Heard Mr. P.K. Biswas, learned senior counsel assisted by Mr.
Sankar Bhattacharjee, learned counsel appearing for the petitioner and Mr.
Soumyadeep Saha, learned counsel appearing for the respondents No.1 & 2 and
Mr. M. Debnath, learned counsel appearing for the respondent No.3. Also
heard learned senior counsel Mr. S.M. Chakraborty, as amicus curiae assisted
by Ms. P. Chakraborty, learned counsel for the petitioner.

2. The instant petition has been preferred under Article 227 of the Constitution of India against the order dated 03.02.2023 passed by the learned Land Acquisition Judge, Court No.4, West Tripura, Agartala in Misc.(L.A.) No.87 of 2012 whereby the learned L.A. Court has held as under:

"03.02.2023:

Ld. Counsel for the petitioner Surjya Tapa Debbarma is present.

No step is filed on behalf of the another petitioner Apratim Mohan Debbarma.

This Court already heard both sides on the matter of disbursement of the awarded amount to the parties. In spite of that on being requested opportunities were given to the Ld. Counsel of the petitioner Apratim Mohan Debbarma to place some further submissions on such matter. But unfortunately no step s filed on behalf said party today.

Thus, this Court is going to pass order on merit on the matter of disbursement.

It is an admitted fact that the petitioners namely, Apratim Mohan Debbarma and Surjya Tapa Debbarma are the legal heirs of deceased Chitta Rn. Debbarma. The total decretal amount of Rs.1,17,73,880/- which was awarded in favour of Thakur Lalit Mohan Debbarma (now deceased) was divided into two equal shares payable to his legal heirs namely, Biswaranjan Debbarma and Chitta Rn. Debbarma @ Rs.58,86,940/- each. After the death of Biswaranjan Debbarma and Chitta Rn. Debbarma right of the legal heirs of said persons accrued on the decretal amount out of which the share of Chitta Rn. Debbarma is to be disbursed upon his legal heirs.

Contention of the Ld. Counsel of petitioner Apratim Mohan Debbarma was that deceased Chitta Rn. Debbarma during his life time on execution of a Will bequeathed all his properties to his son Apratim Mohan Debbarma and so daughter deceased Chitta Rn. Debbarma namely, Surjya Tapa Debbarma is not entitled to get any part of the awarded amount. It was also contended that being Tribal of the State of Tripura, both the petitioners are guided by their customary law and so as per Section 2(2) of Hindu Succession Act, Hindu Law is not applicable upon the petitioners. Thus, Ld. Counsel of the petitioner Apratim Mohan Debbarma prayed to disburse whole share of deceased Chitta Rn. Debbarma in favour of his son namely, Apratim Mohan Debbarma.

On the other hand, Ld. Counsel of the petitioner Surjya Tapa Debbarma submitted that the petitioners are very much Hindu and there is no specific customary law by which they are being guided and so being one of the legal heirs said petitioner is entitled to get equal share out of the share of his her father. Ld. Counsel also submitted that the unregistered Will which has been produced before this Court is no way connected with the acquired land and so said Will is irrelevant to the subject matter of this case.

Considered the contentions of both the sides.

This Court already by order dated 26.04.2022 decided that the mentioned Will did not attract the landed property acquired by the L.A.

Collector which is the subject matter of this case. It was also mentioned in that order dated this Court did not find that the acquired land was bequeathed by deceased Chitta Rn. Debbarma in favour of this son Apratim Mohan Debbarma. Thus, this Court finds nothing new to reexamine its own decision made in order dated 26.04.2022 in connection with acceptability of the unregistered Will submitted on behalf of petitioner Apratim Mohan Debbarma.

Regarding second contention that being a tribal woman guided by customary law, Hindu Law is not applicable to her and so she is not entitled to get any share of her father's property, this Court placed its observation in the order dated 26.04.2022 stating, "as per Section 2(2) of Hindu Succession Act, Hindu Law does not apply to any member of Scheduled Tribe within the meaning of Clause (25) of Article 366 of Constitution of India unless the Central Govt. by notification otherwise directs and so in the present case Hindu Succession Act, 1956 may not apply, but the petitioner must satisfy this Court by producing sufficient and cogent evidence that as per their customary law women are not entitled to get any share of the property of their father."

But till date not a single piece of material could be placed on behalf of the petitioner Apratim Mohan Debbarma in this respect.

In Tripura the tribals are very much under the umbrella of Hindu Law if not voluntarily adopted or following any other religion. There is no material on record from which it can be said that the petitioners are guided by any customary law and even if they are guided by any such law, the law of succession is different from the Hindu Succession Act.

The cousin brother of the present petitioners who deposed before this Court during trial as PW1 also revealed himself as Hindu. The affidavit dated 18.12.2021 filed along with the review petition in connection Civil Misc. Review 09 of 2021 arose from this case, submitted by the petitioner Apratim Mohan Debbarma also reflects him as a Hindu by religion. Thus, these are sufficient evidence to reach to the conclusion that the extended family of Apratim Mohan Debbarma as well as he himself are followers of Hinduism and guided by Hindu Law.

Having such circumstance in this case, this Court has no hesitation to held that the law enumerated in Hindu Succession Act regarding division of shares amongst the legal heirs is applicable in this case also.

Accordingly, being the Class I legal heirs, both the petitioners namely, Apratim Mohan Debbarma and Surjya Tapa Debbarma are entitled to get equal shares of their father's share from the awarded amount of Rs.58,86,940/-.

Office shall take necessary step for disbursement of said amount upon both the petitioners.

Furnish copies of this order to the Ld. Counsel of both sides."

3. The relevant necessary background facts further need to be referred to hereinafter to decide the issue at hand. The instant matter relates to an acquisition proceeding initiated vide notification dated 19.02.2009 under Section 4 of the Land Acquisition Act, 1894 in respect of Mouja-Badharghat,

Sheet No.5(2)P under Bishalgarh Sub-Division for the purposes of construction of approach road leading to Agartala Railway Station from NH-44 (Siddhi Ashram). An amount of Rs.12,29,811/- was granted as compensation including solatium and statutory interest for land measuring 0.106 acre of dokan(tilla) class under khatian No.34519, 34522, 34525, 34526, 34528, 34529, 34515/jer 1209, plot no.288686/p, 228688/p, 28703/p, 28704/p, 28706/p, 28707/p, 28722/p, 28723/p, 28725/p, 28725/p, 28726/p, 287227/p, 28737/p, 28739/p, 28742/p, 28743/p, 28744/p, 287745/p, 28667/p, at the rate of Rs.80,00,000/- per acre, i.e., Rs.32,00,000/- per kani. At the instance of the claimants, namely, (i) Shri Chitta Ranjan Debbarma, (ii) Smti. Chitra Debbarma, (iii) Shri Purnakrit Debbarma, (iv) Shri Sabyasachi Debbarma, (v) Shri Ranadhir Debbarma, the matter was referred by the Land Acquisition Collector, West Tripura (L.A. Collector, for short) under Section 18 of the L.A. Act, 1894. The reference was answered vide judgment dated 26.02.2018 passed in case No. Misc.(L.A.) 87 of 2012 in the following manner:

"8. In the result, claimants are allowed compensation for the acquired land @ Rs.1,60,00,000/- (Rupees one crore sixty lacs) per kani.

The compensation thus allowed shall be added with 30% solatium under Section 23(2) of the Act and 12% additional compensation U/S 23(1)(A) of the Act from the date of notification under Section 4 of the Act till the date of possession or award whichever is earlier. The interest on the amount of compensation, additional compensation and solatium shall be at the rate of 9% per annum from the date of possession till one year and at the rate of 15% per annum from the date of expiry of one year till the date of payment of the enhanced amount.

9. In the circumstances of the case, there is no order as to costs. Prepare award accordingly. The case is thus disposed of on contest."

4. The enhanced amount of compensation was deposited before the L.A. Court thereafter by the L.A. Collector. The L.A. Court, thereafter, without

any reference under Section 30 of the Act of 1894 choose to decide the apportionment of the compensation amongst the parties. Be it noted that the original claimant Sri Chitta Ranjan Debbarma, father of the present parties, died on 29.09.2020, i.e. after passing of the judgment/award by the referral Court in Misc. (L.A.) No.87 of 2012 dated 26.02.2018. Petitioner is the son whereas respondent No.3 is the daughter of the deceased/claimant Chitta Ranjan Debbarma.

5. The learned L.A. Court after becoming *functus officio* on reference under Section 18 of the Act of 1894, however, proceeded to decide that petitioner and respondent No.3 herein being Class-I heirs under the Hindu Succession Act, 1956 were entitled to get equal shares of their father's share from the awarded amount of Rs.58,86,940/-.

6. Respondent No.3 contested the claim of the petitioner herein primarily specified on two counts; (i) that the deceased claimant had executed a Will in favour of the petitioner/son which did not require any probate in the State of Tripura; and (ii) the respondent No.3 also contested the plea raised by the petitioner that parties being governed by Tribal Law, in view of the provisions under Section 2(2) of the Hindu Succession Act, 1956 the principles of succession as Class-I heirs of the deceased/claimant did not apply to the case of the parties. However, as quoted above by the impugned order, the learned L.A. Court held both the petitioner and the respondent No.3 as entitled to equal shares in the father's/claimant's share from the awarded amount of Rs.58,86,940/- as both of them were Class-I legal heirs of the deceased holding on facts that they are governed by the Hindu Succession Act.

7. The moot question which arises for determination at the outset in this petition is whether in the absence of a reference by the LA Collector under Section 30 of the Act of 1894 the impugned order dated 03.02.2023 passed by the learned L.A. Court is without jurisdiction or not? The other issues whether a Will executed by the deceased/claimant in favour of the petitioner is required to be probated or not and whether the parties are governed by Hindu Succession Act, 1956 for the purposes of apportionment of their shares as Class-I heirs under Schedule-1 thereof are required to be answered only if answer to the question of jurisdiction posed above is in the affirmative.

8. Rival parties have addressed their arguments. Learned amicus curiae Mr. S.M. Chakraborty, senior counsel assisted by Ms. P. Chakraborty, learned counsel has assisted this court. Mr. M. Debnath, learned counsel, represents the respondent No.3. He has made a request for adjournment on the ground of the other counsel on record Ms. R. Guha. However, since the case is at the stage of hearing and pleadings are complete, written notes have also been submitted by the petitioner and the learned amicus curiae and that the respondent No.3 is already represented by learned counsel Mr. M. Debnath, the case is being heard and decided today. Learned senior counsel Mr. S.M. Chakraborty as amicus curiae, has also submitted a written note.

9. On the first issue as to whether the learned L.A. Judge could have assumed jurisdiction to pass the impugned order dated 03.02.2023, it is submitted by learned Amicus Curiae that after disposal of the Misc. (L.A.) No.87 of 2022 vide judgment/ award dated 26.02.2018 allowing compensation for the acquired land @ Rs.1,60,00,000/- per kani with other statutory benefits, the learned L.A. Court had become *functus officio*. There was no reference

made under Section 30 of the L.A. Act by the L.A. Collector for deciding the dispute, if any, as to the apportionment of the amount of compensation between any of the parties. Reference under Section 30 of the Act by the Collector is a *sine qua non* for the L.A. Court to assume jurisdiction and decide the dispute about apportionment of the shares of the claimants and other parties/objectors. Since the learned L.A. Court had no scope to entertain any application for apportionment of compensation and that too, after disposal of the reference under Section 18 of the L.A. Act, the impugned order is without jurisdiction. Learned amicus curiae Mr. S.M. Chakraborty has relied upon the decision of the Apex Court in the case of ***Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. vrs. Allahabad Vikas Pradhikaran and another*** reported in (2003) 5 SCC 561 (paragraphs-4, 8 & 11). In that case the reference was under Section 30 of the Act of 1894 for apportionment and there was no reference under Section 18 of the said Act. The Apex Court, therefore, noted that the LA Court could not assume jurisdiction in the absence of a reference under Section 18. Learned amicus curiae has also addressed the other issue relating to the application of Hindu Succession Act, 1956 to the case of the parties by referring to sub-section (2) of Section 2 of the Hindu Succession Act, 1956 and also a decision rendered by the Apex Court in the case of ***Kamla Neti (Dead) through Legal Representatives vrs. Special Land Acquisition Officer and others*** reported in (2023) 3 SCC 528.

10. Having considered the grounds urged and submission of the learned counsel for the parties and the learned amicus curiae, this Court is of the firm view that the impugned order dated 03.02.2023 passed by learned L.A. Judge, Court No.4, West Tripura, Agartala in case No.Misc. (L.A.) 87 of 2012

is without jurisdiction. The learned L.A. Court after passing of the judgment/award dated 26.02.2018 on reference under Section 18 of the Act of 1894 had become *functus officio*. There was no reference by the Collector under Section 30 of the Act of 1894 for the L.A. Court to assume jurisdiction and decide the issue of apportionment of the compensation between the petitioner and the respondent No.3. As such, the impugned order being wholly without jurisdiction is set aside. Since this Court has held that the learned L.A. Court had, in the absence of a reference under Section 30 of the Act of 1894, no jurisdiction to decide the issue of apportionment of the compensation amongst the parties, other issues relating to the entitlement of the parties for apportionment of compensation need not be gone into. Parties may work out their remedies in accordance with law.

11. Before parting, this Court records its appreciation for the valuable assistance rendered by the learned senior counsel Mr. S.M. Chakraborty as *amicus curiae* assisted by Ms. P. Chakraborty, learned counsel.

12. The instant petition is accordingly allowed.

Pending application(s), if any, also stands disposed of.

Lower Court records be sent back to the Court concerned forthwith.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.10.16
16:45:31 +05'30'