

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 197 of 2023

Shri Gautam Ghosh @ Radhu

---Petitioner(s)

Versus

The State of Tripura And 3 Ors

---Respondent(s)

For Petitioner(s)	: Mr. S. Lodh, Advocate.
For Respondent(s)	: Mr. D. Bhattacharjee, GA. Mr. S. Saha, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

28.07.2023

Heard Mr. S. Lodh, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned Government Advocate for the respondents.

This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking the following reliefs:

- (i) Issue Rule calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued for calling for the records, lying with the respondents, for rendering substantial and conscionable justice to the petitioner, and to show cause as to why a Writ of Certiorari and/or in the nature thereof, for quashing/setting-aside the impugned order dated 27.07.2022 passed by the respondent No.2 in case No.12/REV/P.Secretary/2021.*
 - (ii) Issue Rule calling upon the respondent to show cause as to why a Writ of Mandamus and/or in the nature thereof, for mandating/directing the respondents to revoke/rescind the impugned order dated 27.07.2022 passed by the respondent No.2 in case No.12/REV/P.Secretary/2021 and thereafter direct the respondents not to create any disturbance to the peaceful possession of the petitioner over the land, which was bequeathed to him by Late Anjali Debbarma;*
 - (iii) Pass an interim order staying the operation/execution of the impugned order dated 27.07.2022 passed by the respondent No.2 in case No.12/REV/P.Secretary/2021 till disposal of the writ petition.*
 - (iv) After hearing the parties, be pleased to make the rules absolute in terms of Prayer (i) (ii) and (iii) above;*
- And/Or*
- (v) Costs of and incidental to this proceeding*
 - (vi) Any other relief(s) as to this Hon'ble High Court may deem fit and proper.*

It is the case of the petitioner that one Anjali Debbarma by executing a Will on 02.06.2016 bequeathed her property to the petitioner.

On the demise of said Anjali Debbarma, the petitioner became owner of the property and thereafter he took possession of the land by staying on the land and also by inducting tenants. After six months of the taking over the possession, some persons who have political enmity with the petitioner made a representation before the respondent No.3 and in furtherance thereof, the respondent No.3 initiated a proceeding under Section 145 CrPC and passed an order on 29.07.2017 under Section 145 and 146 of the CrPC. Challenging the order dated 29.07.2017 the petitioner filed a Criminal Revision Petition before this Hon'ble High Court and the same was registered and marked as Criminal Revision Petition no. 49 of 2017. The Hon'ble High Court vide judgment and order dated 29.06.2018 set aside the order dated 29.07.2017 and directed the respondent No.2 to inquire whether the property is an unclaimed property or not and also directed that if any testament or instrument of transfer appears to him grossly illegal and irregular. The petitioner within a period of six months from the date of judgment approach the court of competent jurisdiction seeking appropriate relief in that respect, but the respondent No.2 by the impugned order dated 27.07.2022 held that Anjali Debbarma (Schedule Tribe) cannot bequeath the property to the petitioner (non tribal) by executing an unregistered Will and further held that the property should be devolved on the government as an unclaimed property in terms of Section 29 of the Hindu Succession Act. Aggrieved by the impugned order dated 27.07.2022, the petitioner has approached this court.

It is contended by Mr. S. Lodh, learned counsel for the petitioner that in the impugned order, the respondent No.2 held that as Anjali Debbarma has no living successor, as per Section 29 of the Hindu Succession Act, the property should be devolved on the government. The said proposition is contrary to law. Section 2 of the Hindu Succession Act,

1956 mandates that for application of Hindu Succession Act, Central Government has not issued any notification, and hence, no provision of Hindu Succession Act is applicable to a Scheduled Tribe person in Tripura. Hence, Section 29 of the Hindu Succession Act cannot be applied. Thus the observation of the respondent NO.2 in the impugned order is bad and contrary to law.

On the contrary, Mr. D. Bhattacharjee, learned GA appearing for the respondents submits before this court that Anjali Debbarma being a member of Scheduled Tribe cannot execute any will in favour of a non-tribal person as the same is specifically barred by Section 187 of the TLR & LR Act, 1960. As the claim of the petitioner is based on the will dated 02.06.2016 which is an invalid one and there is no other claim from anybody with regard to the property, the same should vest to the Govt. in terms of Section 29 of Hindu Succession Act, 1956 (failures of heirs-Escheat Rule). He further contended that the impugned order dated 27.07.2022 does not need interference by this court and further prays to dismiss the case of the petitioner.

In view of the above submission made by the learned counsel for the parties and on perusing the record so placed, it appears to this court that in the light of the order dated 29.06.2018 passed by the court in Criminal Revision Petition [being **Crl.Rev.P 48 of 2017**], the respondents have caused an inquiry and further passed the order dated 27.07.2022 which is impugned herein. The main issue which fell for consideration before the respondents is that the petitioner has not proved his *locus standi* under the capacity of legal heir.

Admittedly, the petitioner claims the property by virtue of the unregistered will which is not in dispute. Since there is a claim by the petitioner relating to the said property, the stand of the respondents referring to Section 29 of the Hindu Successions Act and Section 108 of

the Indian Evidence Act to say that the original owner went missing for the past seven years, the unclaimed property vest with the state government. This cannot be appreciated in the present facts and circumstances of the case, since the petitioner is the claimant and his claim is in the verge of the unregistered will executed by Smt. Anjali Debbarma who happens to be the sister of Mr. Narayan Debbarma who died unmarried. There is no ambiguity that Mr. Narayan Debbarma has executed an unregistered gift deed dated 24.04.2010 in favour of his sister (Anjali Debbarma).

Therefore, this court finds that the impugned order dated 27.02.2022 passed under the pretext of unclaimed property is improper and is set aside as there is a claim made by the petitioner.

In so far as the claim of the petitioner for title over the said property is concerned, this court is not deciding the same. If advised the petitioner may approach competent court of Law seeking redressal.

With the above observation, the writ petition stands disposed of.

As a sequel, all miscellaneous applications pending, if any, stands closed.

JUDGE

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