

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.271 OF 2021**

1. Sri Manik Lal Modak Bhowmik,
S/o- Late Amulya Chandra Modak Bhowmik,
R/o- Ramnagar, Road No.8,
P.S.- West Agartala,
District- West Tripura.

2. Sri Subal Bhowmik,
S/o Late Bidhu Bhushan Bhowmik,
R/o- Madhya Banamalipur,
P.S.- East Agartala,
District- West Tripura.

3. Sri Madhushudan Saha,
S/o- Late Rajballav Saha,
R/o- Sankar Chowmuhani,
P.S.- West Agartala,
District- West Tripura.

..... **Petitioner(s).**

Vs.

1. The State of Tripura,
Represented by Secretary,
Revenue Department, Govt. of Tripura,
New Capital Complex,
P.S.- New Capital Complex,
Pin-799006.

2. District Magistrate and Collector,
West Tripura District,
Old Secretariat Building,
Agartala, West Tripura,
Pin-799001.

3. Competent Authority (SDM),
Govt. of Tripura,
Sadar Sub-Division,
OLD DM. Office,
P.S.- Agartala,
District- West Tripura,
Pin-799001.

**4. Competent Authority
(National Highway),**
O/o- Additional DM & Collector,
Govt. of Tripura, West Tripura,
Agartala, Pin-799001.

5. Joint Secretary,
Govt. of Tripura, Revenue Department, LR Cell,
New Secretariat Building,
Agartala, Tripura-799010.

..... **Respondent(s).**

For the Petitioner(s) : Mr. Kohinoor. N. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. D. Sharma, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 01.03.2023

Whether fit for reporting : YES/NO.

**HON'BLE THE CHIEF JUSTICE(ACTING)
JUDGMENT AND ORDER(ORAL)**

The brief fact of this instant petition is that the petitioners had preferred a writ petition before this Court seeking to receive compensation amounting to Rs.76,56,090/- (Rupees Seventy-Six Lakhs Fifty Six Thousand Ninety) only arising out of the acquisition of plot of land belonging to them by National Highway Authority for improvement of National Highway No.8. The said petition was registered as WP(C)555 of 2016. The disbursement of payment was stalled by letter No. 2023-24/DM/W/LA/LTR/12/14 dated 24.05.2016. During the pendency of said writ petition, another case L.A. App No.28 of

2015 was preferred by the State of Tripura and the same was tagged with it. Thereafter, on 05.12.2018, the said petition was disposed of with a direction to initiate a ceiling proceeding to determine the ceiling excess under Section 164 & 164(A) after obtaining the return under Section 165 of the TLR & LR Act. It was further directed that there shall be an appointment of competent authority to execute the said ceiling proceedings and at the end of the ceiling proceeding, excess land if any is to be mutated in their name. Accordingly, Sub-Divisional Magistrate Sadar was selected as the competent authority by a notification dated 24.06.2019. In the said notification, SDM Sadar was authorized for initiating the ceiling procedures. Being appointed, the competent authority served a notice in the name of the petitioners as of last 19.07.2019 with a request for furnishing return/statement under Section 165 of the TLR & LR Act. In compliance with the said notice, the petitioners have respectively furnished their return. It is also mentioned that a ceiling proceeding vide Case No.1 of 2019 was opened. During furtherance of the ceiling proceedings, an attempt has also been made for furnishing the return upon the original land owner namely, Jyotilal Bhattacharjee. No attempt was made to collect the ROR from the concerned Tehsil as a result, the competent authority arrived at a conclusion that is

subsequently officiated by the superior Government Authority. According to the petitioners, in the said proceedings, the way the determination of ceiling excess was ascertained otherwise, is a product of gross oversight of the provision enumerated in Section 2(U) of TLR & LR Act. There is no explanation in the draft statement, otherwise, a gazette notification published in extra ordinary issue as on 13.11.2020. On what information/evidence, Joyotilal Bhattacharjee was treated/classed as a sole-surviving member? Mutated record recorded in the name of the original jotedar, Jyotilal Bhattacharjee, his wife, and mother were also reflected in khatian No.863 of Mouja-Bikramnagar under Ishan Chandra Nagar Tehsil but no such attempts was ever made by the competent authority for comparison. The competent authority has adopted a dilatory tactic to shorten the procedure with the intention to deprive the interest of the petitioners and to avoid compliance with the order of this Court. Published gazette notification is liable to be withdrawn/cancel as the formation is defective/illegal.

2. Hence, the petitioner has filed this instant petition praying for the following reliefs:-

- i. Admit the writ-petition.*
- ii. Call for the relevant records lying with the custody of respondents.*

iii. Issue show cause notice upon the respondents why relief sought for shall not be confirmed in favour of petitioners.

iv. Pass necessary direction upon the respondents to declare the extra-ordinary (gazette) issue dated 13.11.2020 of Case No.1-Ceiling/2019 as null/self inflected and also inoperative.

v. Pass necessary direction in the nature of writ of certiorari upon the respondents to declare the draft statement dated 10.11.2020 as purported/motivated in connection with the Case No.1-ceiling/2019.

vi. Pass necessary direction in the nature of mandamus staying the operation of draft publication till disposal of this instant writ petition.

vii. Pass necessary direction upon the respondents for initiating the fresh ceiling procedure in respect of original jotedar namely, Jyotilal Bhattacharjee concerning his residential address, available so far after adopting proper measure.

viii. Pass necessary direction to complete the de-novo ceiling proceeding as per provision of TLR & LR Act, 1960 and inconformity of the judgment dated 05.12.2018 in Case No.WP(C)555 of 2016.

ix. Pass necessary order declaring the paper publication is band in the eye of law.

x. Pass necessary direction upon the respondent (competent authority) to issue notice in to the residential address of original proprietor (Jyotilal Bhattacharjee) at 15, Officers Quarter Lane.

xi. After hearing the parties band being satisfied make the rule in terms of (i) to (x) are above absolute.

xii. Pass any other order/orders/ writ as the Hon'ble Court may deem fit and proper for ends of justice."

3. Heard Mr.Kohinoor N. Bhattacharjee, learned counsel appearing for the petitioners as well as Mr. D. Bhattacharjee, learned G.A. assisted by Mr. K. De, learned Addl. G.A. appearing for the respondents.

4. Mr. Kohinoor N. Bhattacharjee, learned counsel appearing for the petitioner also prayed to declare the extraordinary (gazette) issue dated 13.11.2020 inflected and also inoperative. The learned counsel prayed to declare the

draft statement dated 10.11.2020 as purported/motivated in connection with Case No.1-ceiling/2019. The learned counsel for the petitioner also prayed for initiating the fresh ceiling procedure in respect of the original jotedar namely, Jyotilal Bhattacharjee concerning his residential address, available so far after adopting the proper measure. The learned counsel further prayed to complete the de-novo ceiling proceeding as per the provision of TLR & LR Act, 1960, and in conformity with the judgment dated 05.12.2018 in Case No.WP(C)555 of 2016. The learned counsel appearing for the petitioner submits that notice to the order of retention was issued at the address where the Malabari Tea Estate was located but the same needs to be served in favour of Jyotilal Bhattacharjee, wherein his residential address was shown as 15, officers Quarter Lane, Agartala.

5. The State respondents have filed their respective counter affidavit and Mr. D. Bhattacharjee, learned counsel appearing for the State respondents has vehemently opposed the said prayer of the learned counsel appearing for the petitioner and urged this Court to dismiss this appeal since the same is not maintainable.

6. Heard both sides and perused the evidence on record. Since the impugned gazette notification dated

13.11.2020 which is under challenge is an appealable proceeding under Section 93 of the TLR & LR Act, this Court is not inclined to go into the other disputed question of facts as contended by the learned counsel appearing for the petitioners in respect of issue of notice and service of notice, and with regard to the title and all other issues what have been stated in his prayer. Hence, this present writ petition is dismissed giving liberty to the petitioners to avail remedies under the law.

7. Stay order, if any, stands vacated. Pending application(s), if any also stand closed.

CHIEF JUSTICE (ACTING)

suhanjit

