

HIGH COURT OF TRIPURA
AGARTALA
CRP 52/2019

1. **The State of Tripura**, represented by the Secretary, Revenue Department, Government of Tripura, Agartala having its office at Capital Complex, New Secretariat Complex, Agartala, West Tripura, PIN-799006.

2. **The District Magistrate & Collector**, Government of Tripura, South Tripura, Belonia.

3. **The Sub-Divisional Magistrate**, Sabroom Sub-Divisional Office, Sabroom, South Tripura

---- **Petitioner**

Versus

1. **Communist Party of India (Marxist)**, Sabroom Divisional Committee at Sabroom, P.O. Sabroom, P.S. Sabroom, District- South Tripura, represented by the Secretary, Sabroom Divisional Committee of CPI(M), Sri Dipak Choudhury, S/o Lt. Debendra Kr. Choudhury, resident of Brajendra Nagar, P.O. & P.S. Sabroom, Sub-Division- Sabroom, District- South Tripura

2. **Bharatiya Janata Party (BJP)**

3. **Indian National Congress (INC)**

----**Respondents**

For Petitioner(s)	:	Mr. D. Bhattacharjee, GA Mr. S. Saha, Advocate
For Respondent(s)	:	Mr. J. Majumder, Advocate
Date of hearing and delivery of Judgment & Order	:	30.03.2023
Whether fit for reporting	:	Yes / No

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)

30/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. D. Bhattacharjee, learned GA assisted by Mr. S. Saha, learned counsel appearing for the petitioner as well as Mr. J. Majumder, learned counsel, appearing on behalf of the respondents.

2. By means of filing this writ petition, the petitioner has challenged the impugned order dated 30.01.2019 passed by the learned Civil Judge (Junior

Division), Sabroom, South Tripura in case no. T.S. 01 of 2018 rejecting the petition filed by the defendants, the petitioners herein.

3. Briefly stated, the respondents herein, being plaintiffs filed a suit being no. T.S. 01 of 2019 before the learned Civil Judge (Junior Division) Sabroom, South Tripura against the defendants i.e. the petitioners herein, for declaration of right, title and interest and possession by way of adverse possession and perpetual injunction. The plaintiff in the plaint averred that the plaintiff is in possession of 'A' & 'B' schedule land, as described in the plaint, since 30.12.1964 wherein 'B' schedule land is government khas land which had been possessing by the plaintiff by constructing local party office under the name Sabroom Divisional Committee under CPI(M) party adversely denying right, title and interest of the defendants. Vide memo dated 19.04.2018, the SDM, Sabroom asked the plaintiff to vacate the 'B' schedule land within 7 days else action will be taken as per norms. Thereafter, the plaintiff approached the learned court of Civil Judge by filing a suit for declaration of right, title and interest and possession over the 'B' schedule land and for confirmation of possession and perpetual injunction against the defendants and also prayed for declaring the memo dated 19.04.2018 issued by the SDM, Sabroom as illegal, void.

4. The defendants appeared in the suit by filing written statement wherein they denied the claim of the plaintiff. They have also pleaded that the plaintiff entered into the suit land during the period of 2013 to 2017 so question of adverse possession does not arise at all. The defendants also

pleaded that the notice dated 19.04.2018 issued by the SDM, Sabroom is as per law. The defendant also filed an application for rejection of the plaint under Order VII Rule 11 of the CPC claiming rejection of the plaint. The defendant also averred that the plaintiff is trying to defect the rights of the true owner of the scheduled land.

5. After hearing both the parties, the learned trial court in the light of the judgment passed in *State of Tripura vs. Dilip Kumar Majumder*, reported in (2016) 1 TLR 166, dismissed the application under Order VII Rule 11 of the CPC filed by the defendant by its order dated 30.01.2019 holding that the civil court has not been barred by special law.

6. Learned GA appearing for the petitioner herein has submitted that the notice has been served under the provision of Tripura Public Premises (Eviction of Unauthorized Occupants) Act, 1982 and any civil suit against such proceeding is barred by Section 17 of the Act, hence, the order dated 30.01.2019 is required to be interfered with by this court.

7. Learned counsel for the respondent has prayed for maintaining the order dated 30.01.2019 passed by this court and also prayed for dismissal of the instant petition

8. Considered the submission of learned counsel appearing for the parties. We have also perused the record.

9. The solitary question that arises in this petition is as to whether the learned court below has any jurisdiction to entertain any suit challenging any proceeding under the TPP Act, 1982, and whether the order dated 30.01.2019

passed by the learned court below dismissing the application filed by the defendants under Order VII Rule 11 of the CPC is maintainable or not.

8. It is evidently clear that the notice dated 19.04.2018 issued by the SDM upon the plaintiff is under the provisions of TPP (Eviction of Unauthorized Occupants) Act, 1983 and thereafter the defendants filed an application under Order VII Rule 11 of the CPC for rejection of the plaint filed by the plaintiff.

9. In regard to determination of jurisdiction of the learned trial court, a learned Single Judge of this Court in *State of Tripura vs. Dilip Kumar Majumder and others*, reported in (2016) 1 TLR 166, (para 20), has observed as under:

“20. The question that has been raised that whether the civil court has got the jurisdiction to determine the dispute which may fall within the ambit of Section 15 of the TLR & LR Act, 1960. Proviso to Section 188 of the TLR & LR Act which has not been printed in some of the subsequent editions even though that was not deleted by any amendment, clearly provides that when the dispute is relatable to the question of title or determination of the title then the bar as created under Section 188 of the TLR & LR Act would not be applicable. Apart that, it is well settled that when it is a question of title, the revenue court does not have any jurisdiction, it is the civil court and the civil court alone is to determine the question of the title. If there arises a situation of co-terminus jurisdiction then the option remains with the person who would take the action at law to opt the forum. As such the argument that has been advanced by Mr. Deb, learned senior counsel cannot be sustained. Apart that, another latent issue has been made part of the substantial question of law is that whether would extinguishment of the title of the true owner when the true owner is the Government and the land is the Government land be under Section 27 read with Article 112 of the Limitation Act 1963 or can such prescription eclipse the provisions of Section 15 of the TLR & LR Act, 1960? Section 15 of the TLR & LR Act, 1960 confers powers to evict the illegal or unauthorised possessor from the Government land. Section 27 or Article 112 if read together clearly, it makes out a special provision. The special provision always derogates the general provision. If the law is not interpreted in that way, the provisions of Section 27 or Article 112 of the Limitation Act would be rendered otiose and no court can interpret law to make it otiose. It must be made workable. It has to be stated clearly that provisions of Section 15 of the TLR & LR Act, 1960 is subject to provisions of Section 27 read with Article 112 of the Limitation Act, 1963 and thus the first substantial question is answered in the negative.”

10. In the light of above, the instant petition stands dismissed. The order dated 30.01.2019 passed by the learned court below in T.S. 01 of 2018 is hereby confirmed since there is no remedy under TPP Act. The trial court is

directed to take this matter on priority basis and expedite the civil suit. The defendants i.e. the petitioners herein are at liberty to file all documentary evidence and take any pleadings on factual or legal basis before the court below.

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

JUDGE

CHIEF JUSTICE (ACTING)

Saikat

HIGH COURT OF TRIPURA



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