

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.526/2021

Smt. Sima Majumder and others

.....Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Abir Baran, Advocate.

For Respondent(s) : Mr. D.K. Daschoudhury, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Order

13/02/2023

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel appearing for the petitioners. Also heard Mr. D.K. Daschoudhury, learned counsel appearing for the private respondent No.6.

2. This instant writ petition has been filed under Article 226 of the Constitution of India seeking a direction to quash the order dated 04.11.2008 and the impugned order dated 14.09.2009 (Annexure-7 to the writ petition) and also directing the respondents to dispose of the Second Appeal dated 30.12.2009 (Annexure-8 to the writ petition)

preferred by the petitioners before the District Magistrate & Collector, Gomati Tripura, Udaipur expeditiously.

3. Petitioners have prayed for the following reliefs:

"(i) Issue Rule, calling upon the official 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, quashing/setting aside the Order dated 04.11.2008 (referred to supra) & the impugned Order dated 14.09.2009 (Annexure-7 supra);

(ii) Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/commending them, to forthwith revoke/rescind the Order dated 04.11.2008 (referred to infra) & the impugned Order dated 14.09.2009 (Annexure-7 supra), and to record the names of the petitioners in the Khatian, in connection with their respective shares of the land in question, and/or, for directing them to dispose of the Second Appeal dated 30.12.2009 (Annexure-8 supra) expeditiously, preferred by the petitioners, before the District Magistrate & Collector, erstwhile South Tripura (now Gomati Tripura), Udaipur, within a specific time frame;

(iii) Call for the records, appertaining to this writ petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;

(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.”

4. Background facts of the case, in brief, is that one Raisaheb Krishna Mohan Majumder, now deceased, was the sole owner of a vast landed proper in Comilla District, erstwhile East Pakistan and he exchanged the same with the properties of one Abdul Dhab and others situated at Sataria, Dhajanagar. He had several legal heirs and after exchange of properties, it was noticed that the same had exceeded the ceiling limits of holding by an individual and accordingly, as per his desire, the land in question was exchanged in favour of his son namely Monoranjan Majumder. After the death of Raisaheb since said Monoranjan Majumder, now deceased, had claimed his individual right over the entire land, the other legal heirs filed a suit being T.S. No.29 of 1969 which was disposed of on 30.05.1975 by the learned Court declaring said Monoranjan Majumder as Benamdar whereupon he preferred an appeal being T.A. No.16 of 1975 (later on, renumbered as T.A. No.04 of 1976) which was allowed on 07.06.1977 quashing the judgment and decree dated 30.05.1975. Thereafter, the predecessor of the petitioners preferred a Second Appeal being S.A. No.28 of 1977 before the Hon'ble Gauhati High Court, Agartala Bench which was

allowed vide judgment dated 11.04.1992 quashing the judgment and decree dated 07.06.1977 and remanding the matter before learned Addl. District Judge, West Tripura, Agartala to decide the appeal T.A. No.04 of 1976 which was dismissed for default on 22.06.2004. The purported purchasers of the land prayed for readmission of the said appeal which was rejected on 05.09.2012 by the learned Addl. District Judge, West Tripura. Thereafter, the petitioners filed mutation petitions which was dropped by the DCM, Udaipur on 04.11.2008. Assailing the same, the petitioners preferred an appeal, but the SDM, Udaipur vide order dated 14.09.2009 did not entertain the appeal. Thereafter, the petitioners filed a Second Appeal on 30.12.2009 before the District Magistrate & Collector, Udaipur but the same has not yet been disposed of. Aggrieved thereby, the petitioners preferred this writ petition. Hence, this case.

5. Mr. Somik Deb, learned senior counsel appearing for the petitioners, contends that the pursuant to the death of Raisaheb Krishna Mohan Majumder, all his legal heirs became the absolute owner and possessor of the land in question, each holding 1/6th proportionate share thereof but despite the same, one of his legal heirs Monoranjan Majumder claimed his individual rights refraining others from giving any share thereof. Counsel also contends that the present petitioners

being the legal heirs of late Kedareswar Majumder, who is the son of Late Raisaheb Krishna Mohan Majumder, are entitled to their proportionate share of land in question and vide Judgment and Decree dated 30.05.1975 in T.S. No.29 of 1969, it was unambiguously clear that Monoranjana Majumder was the Benamidar of Late Raisaheb and as such, said Monoranjana is not the absolute owner of the land in question and the sale deed executed in his favour was a benami transaction and the said judgment dated 30.05.1975 has attained finality because of dismissal for default of the appeal (T.A. No.04 of 1976) due to non-representation of Monoranjana Majumder and others. Counsel further contends that even after filing of the second appeal by the petitioners on 30.12.2009, the same is still pending for disposal. Accordingly, he prays for quashing the order dated 04.11.2008 and order dated 14.09.2009 and also directing the respondents to dispose of the Second Appeal dated 30.12.2009 as expeditiously as possible.

On the other hand, Mr. D.K. Daschoudhury, learned counsel appearing for the private respondent No.6 fairly submitted that the appellate authority may be directed to dispose of the second appeal since it is pending for disposal for a long time.

6. In view of submissions of learned counsel of both sides, this Court is of the considered opinion that the respondent with whom the Second Appeal dated 30.12.2009 is pending since long is directed to dispose of the appeal, if not already disposed of, in accordance with law within a period of 2(two) months from the date of receipt of the copy of this order, provided the said appeal is in order. However, the decision shall be communicated by the appellate authority to the petitioners within the period indicated above.

7. With the above observations and directions, the writ petition is allowed and stands disposed of.

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

CHIEF JUSTICE (ACTING)

Pulak