

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.104 of 2023

Smt. Padmabati Reang and others

.....Appellant(s);

Versus

The State of Tripura and others

.....Respondent(s).

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

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Karnajit De, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

12/09/2023

These writ petitioners/appellants herein, belonging to Scheduled Tribe, have invoked Section 187B of the Tripura Land Revenue and Land Reforms Act, 1960 [hereinafter referred to as 'Act of 1960'] for ejection of the private respondents by filing a petition before the Sub-Divisional Magistrate, Santirbazar, South Tripura. There was a previous round of litigation at the instance of the same petitioners/appellants who had sought their substitution as legal heirs of the original petitioner, Mahendra Reang on his death. By order dated 12.04.2022 passed in WP(C) No.311/2022 [Annexure-1], the writ petition was disposed of with an observation that the persons sought to be evicted, are to be given notice.

2. The present round of litigation revolves around the plea of the appellants to adduce evidence during pendency of the restoration proceedings before the Sub-Divisional Magistrate, Santirbazar, South Tripura. The prayer has been rejected by the order dated 01.04.2023 [Annexure-2] impugned in the writ petition. It is extracted hereunder:

“01-04-2023

Both parties present along with Ld. Counsel.

Heard them.

The second party namely Sri Sudip Majumder submitted the written statement.

The Ld. Counsel of the first party submitted an application where he appeals for record of evidence of the parties to decide the case.

At this stage of this case, this appeal is rejected and it is instructed to both parties to remain present on 17-04-2023 for arguments.”

3. Learned Single Judge, by the impugned order dated 05.07.2023 passed in WP(C) No.254/2023 has however, without expressing any opinion on the merits of the case, disposed of the writ petition with a direction upon the respondents to decide the impugned matter pending before them within 2(two) months, if not already decided.
4. Petitioners have approached this Court in appeal as the main grievance of the petitioners relating to adducing of evidence has not been redressed by the learned Single Judge.
5. Mr. Somik Deb, learned senior counsel for the appellants, has drawn the attention of this Court to the relevant provisions of the Act of 1960 i.e. Section 187B and Section 187C, under Part VI Chapter XV-General and Miscellaneous, which are extracted hereunder:

“**[187B. Restoration of land.]**-(1) On or after the 1st January, 1969-

(a) if a transfer of land belonging to a person who is a member of the Scheduled Tribes is made in contravention of the provisions of sub-section (1) of section 187 to a person other than a member of the Scheduled Tribes, a revenue officer specially appointed for this purpose by a notification in the Official Gazette, and having local jurisdiction may, notwithstanding anything contained in any other law for the time being in force, on its own motion or on an application made in that behalf, and after giving the transferee and the transferor an opportunity of being heard, by an order in writing evict such or any person claiming under him from such land or part thereof and shall restore the possession of the land to the transferor, or his successor-in-interest and for this purpose the revenue officer may use or cause to be used such force as may be considered necessary.

(b) if any land owned by person belonging to the Scheduled Tribes is occupied by any person who is not a member of the Scheduled Tribes without lawful authority, then the revenue officer in the same manner as provided in clause (a) may restore the possession of such land to the person or successor-in-interest so dispossessed.

(c) if a person belonging to the Scheduled Tribes is in occupation of Government land and eligible for allotment of such land under section 14 of this Act, parts with possession or is dispossessed therefrom by a person not belonging to the Scheduled Tribes, then the revenue officer in the same manner as provided in clause (a) may restore the possession of such land to that person or his successor-in-interest, as the case may be, and refer to the competent authority under section 14 of this Act for allotment of the land to such person.

Explanation.- For the purpose of this sub-section, the successor-in-interest means heirs, transferee or assignee in accordance with law or custom as applicable.

⁸⁵{(2) (a)} If any person not being a member of the Scheduled Tribes occupies or possesses the land held by or in occupation of a person belonging to the Scheduled Tribes in any manner as specified in sub-section (1) after the commencement of the Tripura Land Revenue and Land Reforms (Sixth Amendment) Act, 1994 without any lawful authority he shall be punishable with imprisonment for a term which may extend to two years and also with a fine which may extend to three thousand rupees.

⁸⁵{(b) This sub-section shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.}

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sub-section (2) shall be cognizable and non-bailable and wherever any person is arrested and detained in custody in pursuance of provision of this section, the officer-in-charge of the police station or police officer making the arrest shall forward the person to the Presiding Officer holding the Special Court of the jurisdiction and the provisions of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* for summary trial.

(4) For the purpose of speedy trial of offence under this section, the State Government may, after consultation with the High Court, by notification, constitute as many Special Courts as may be considered necessary, each consisting of an officer not below the rank of a Judicial Magistrate of the First Class.

(5) For the cases referred to in sub-section (2), the revenue officer immediately after restoration of land under sub-section (1) shall file a complaint in the Special Court constituted under sub-section (4) for action as provided in sub-section (2).

(6) An appeal shall lie to the High Court from every order passed by a Special Court under this section within sixty days of the passing of such order.

187C. Onus of proving.-Notwithstanding anything contained in any other law for the time being in force, the burden of proof for the purpose of section 187B that the transfer of land was not made in contravention of sub-section (1) of section 187 or occupation of land was not made without lawful authority shall lie on the transferee or occupier, as the case may be.”

Mr. Deb, learned senior counsel has also drawn the attention of this Court to Section 81 and Section 85 under Chapter VIII-Procedure of Revenue Officers: Appeals and Revisions. Sections 81 and 85 are extracted hereunder:

“81. Revenue officers to be courts.- (1) A revenue officer, while exercising power under this Act or any other law for the time being in force to inquire into or to decide any question arising for determination between the Government and any person or between parties to any proceedings, shall be revenue court.

(2) Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the revenue court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the revenue court.

85. Power to take evidence, summon witnesses, etc.- (1) Every revenue officer not lower in rank than a circle officer acting as a revenue court shall have power to take evidence and to summon any person whose attendance to considers necessary, either as a party or as a witness or to produce any document, for the purpose of any inquiry which such officer is legally empowered to make; and all persons so summoned shall be bound to attend either in person or by an authorized agent as such officer may direct, and to produce such documents as may be required.

(2) Every summons shall be in writing, signed and sealed by the officer issuing it and shall be in such form and be served in such manner as may be prescribed.”

Learned senior counsel for the petitioners/appellants has further drawn the attention of this Court to Rule 216 framed under the Rule making power provided under Section 132 of the Act of 1960. Rule 216 is also reproduced hereunder:

“[216. Restoration of transferred land to the member of the Scheduled Tribes.- {(1) The application for restoration of possession under clause (a) of sub-section (1) of section 187B shall be in Form 64 and application for the purpose of clause (b) of the said sub-section may be in the same Form with such addition, alteration as may be necessary.}

(2) On receipt of any application or any information regarding transfer of any land by a member of Scheduled Tribe made in contravention of sub-section (1) of section 187, the revenue officer specially appointed for the purpose of sub-section (3) of section 187 shall draw up a proceeding and issue notice in Form 65 to the transferee or any person claiming through or under him to show cause within the time specified in the notice why possession of the land should not be restored to the transferor or his successor-in-interest, after ejecting the transferee or the person claiming through or under him.

(3) If the transferee or any person claiming the land through or under him, files an objection within the period specified in the notice or such extended period not exceeding fifteen days in the aggregate allowed by the revenue officer, the revenue officer shall hold a summary enquiry in the manner laid down in Schedule III of the Tripura Land Revenue and Land Reforms Rules, 1961.

(4) If the transferee or any person claiming through or under him files no objection within the time allowed or if after enquiry the revenue officer finds that the transfer of any land or part thereof was made in contravention of sub-section (1) of section 187 he shall order the transferee or any person claiming through or under him, to make over possession of such land to the transferor or his successor-in-interest.

(5) If the transferee or any person claiming through or under him fails to comply the order passed against him under sub-rule (4) then the

revenue officer or any other officer authorized in this behalf may take such steps or use such force as may be necessary to enforce compliance of the orders on any date following the date mentioned in sub-rule (4) without any further notice to the defaulting person and may also enter any building or place for the purpose.]

[(6) A complaint to Special Court by a revenue officer under sub-section (5) of section 187B shall be in the Form 69.]”

6. Learned senior counsel for the appellants submits that as per sub-rule 3 of Rule 216, if the transferee or any person claiming the land through or under him, files an objection within the period specified in the notice or such extended period not exceeding fifteen days in the aggregate allowed by the revenue officer, the revenue officer shall hold a summary enquiry in the manner laid down in Schedule III of the Tripura Land Revenue and Land Reforms Rules, 1961 [hereinafter referred to as ‘Rules of 1961’]. Learned senior counsel has then drawn the attention of this Court to Schedule III of the Rules of 1961. Schedule III prescribes the procedure of Revenue Courts and has reference to Rule 124, which provides for procedure for revenue courts and that the proceedings before the revenue officers shall be governed by Schedule III. Sub-rule 2 thereof provides that subject to the other provisions of these rules, any enquiry by a revenue court, not specifically required to be held in the manner of a formal enquiry, shall be held in the manner provided for summary enquiry in Schedule III.

7. A combined reading of Rule 216 with Rule 124 and Schedule III therefore indicates that the same relates to procedure for revenue courts in the matter of conduct of a summary inquiry as conceived under Rule 216 of the Rules of 1961. It appears from the impugned order that respondent No.4-the Sub-Divisional Magistrate, Santirbazar has not at all dealt with the prayer of the petitioners for adducing of evidence. In the body of the writ petition, we may passingly observe that the petitioners have not indicated the documents on

which they seek to rely upon to claim ownership and possession, neither referred to the date of alleged dispossession of the petitioners. However, since the respondent No.4 has not dealt with the prayer of the petitioner relating to adducing of evidence, we refrain from making any observation as to whether the prayer ought to be allowed or refused in the given facts of the case. The respondent No.4, exercising the power of a revenue officer, is obliged to look into the pleadings of the plaint/petition while dealing with any such prayer by a party as to whether adducing of evidence of a documentary nature would suffice in the nature of restoration proceedings conceived under Section 187B of the Act of 1960 or whether oral evidence would be necessary, of course keeping into mind the provisions of the Act, objection, if any, thereto by the private respondents. Since the impugned order dated 01.04.2023 does not reflect any such application of mind, we deem it proper to remit the matter to the respondent No.4 to consider the prayer afresh in accordance with law.

8. Let it be made clear that this order is being passed without making any comments whether such a prayer for adducing evidence at the stage of the restoration proceedings is worth acceptance or not by the Sub-Divisional Magistrate.

9. With these observations, the writ petition is disposed of. Let such decision be taken by respondent No.4 upon the prayer of the petitioners/appellants herein for adducing evidence after due opportunity to reply to the other side within a reasonable period, preferably 6(six) weeks from the date of receipt of copy of this order.

10. In view of the observations and directions made hereinabove, the order dated 05.07.2023 passed in WP(C) No.254/2023 by the learned Writ Court is set aside.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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