

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.29/2022

The State of Tripura & others

..... Appellant(s).

V E R S U S

Shri Tarun Baidya & another

.....Respondent(s).

Along with

W.A. No.294/2021

The State of Tripura & others

..... Appellant(s).

V E R S U S

Shri Birendra Debbarma & others

.....Respondent(s).

For Appellant(s)

: Mr. H. Sarkar, Advocate.

For Respondent(s)

: Mr. P.K. Biswas, Sr. Advocate,
Mr. Sankar Bhattacharjee, Advocate,
Mr. Rishiraj Nath, Advocate,
Mr. Pujan Biswas, Advocate,
Mr. C. Mog, Advocate.

Along with

WP(C) No.91/2022

Smt. Mani Bala Debnath

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.93/2022

Sri Ananta Sadhan Jamatia

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.94/2022

Smt. Sinati Reang

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.95/2022

Sri Raj Chandra Jamatia

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.96/2022

Smt. Bhakti Rani Jamatia

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.97/2022

Sri Jarma Sadhan Jamatia

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

WP(C) No.98/2022

Sri Narahari Debbarma

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Petitioner(s)

: Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s)

: Mr. Dipankar Sarma, Addl. G.A.,
Mr. Mangal Debbarma, Addl. G.A.,
Mr. Karnajit De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

Date of hearing and judgment : **05th February, 2024.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Both the writ appeals and the connected writ petitions have been tagged together as they raise common issues. All the writ petitioners claimed to have been granted letter of allotment by the TLR and LR Department in different years though after coming into force of the Forest (Conservation) Act, 1980. One such allotment order dated 23.08.1985

issued by the Collector under Rule 12 of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 in Writ Appeal No.29 of 2022 is being extracted hereunder:

APPENDIX 'B'
(See rule 12)
THE TRIPURA LAND REVENUE AND LAND REFORMS
(ALLOTMENT OF LAND) RULES, 1980

NO.94/6

Dated 23/8/85

ALLOTMENT ORDER

Land described in the Schedule below is allotted to Sri Tarun Baidya, Son of Brajendra Kumar Baidya of village Purba Pepuriakhola, P.O.:Purba Pepuria Khola of District: South Tripura for the purpose of Agriculture under sub-section (1) of the Section 14 of the Tripura Land Revenue and Land Reforms Act, 1960 subject to the following conditions, namely:

- 1) The land is heritable but not alienable without the written consent of the Collector;
Provided that, the land may be mortgaged to the Government, a co-operative society or a Bank or such other institution as may be notified in the Official Gazette by the State Government.
Explanation:-The expression "bank" shall have the same meaning as assigned to it by the Explanation under section 109 of the Tripura Land Revenue and Land Reforms Act, 1960.
- 2) The allottee on giving three months notice before the end of the agricultural year and on payment of all government dues in respect of the allotted land upto the end of the said agricultural year may surrender being made, the land shall revert to the Government.
- 3) In case the allottee is a co-operative framing society and the registration of such society is cancelled within ten years from the date of allotment, the land allotted to such society shall thereupon be deemed to have been resumed by the Government and the Government shall not be liable to pay any compensation. Any person holding or retaining possession of such land thereafter shall be deemed to be a trespasser.
- 4) In case of waste land allotted for agricultural purpose the allottee shall bring the whole area under cultivation within five years from the date of allotment.
- 5) The allottee shall be liable to pay Rs.2.50 (Rupees two point fifty paise) only as premium either in lump sum or in annual installments together with interest at two and a half percent, per annum on the unpaid amount. The premium or the first installment, as the case may be, shall be paid on or before.....
- 6) The allottee shall be liable to pay of Rs.11.10 (Rupees Eleven point ten) only as land revenue and Rs.....(Rupees.....) only as cess per year subject to such alteration as may be made under the Tripura Land Revenue and Land Reforms Act, 1960.
- 7) The allottee shall be entitled to plant trees on his land to enjoy the products thereof and to fell, utilize or dispose of the timber of nay trees on his land.
- 8) The allottee shall be liable to pay all other taxes for the time being in force or impose in future under any law.
- 9) The allotment shall be liable to be cancelled if:-
 - a) Except in cases failing under clause (4), the land is not used within two years of the date of the allotment for the purpose for which it is allotted; or
 - b) The allottee commits a breach of any of the conditions mentions hereinbefore or any of the provisions of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980; or
 - c) At any time it is discovered that the allottee was not eligible for this allotment it terms of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 or guilty of misrepresentation at the time of allotment:

Provided that before such cancellation is ordered, a notice is given to allottee to show cause against cancellation within a period of 15 days from the receipt of the notice.
- 10) No compensation shall be payable by the Government on amount of cancellation of any allotment order or re-entry by the Collector, but if the allottee has built any construction on the land, he shall be allowed a reasonable opportunity to remove the same.

Schedule of Land allotted

Name of Mouja: Purba Pepuria Khola
Plot No.69/viti, 70/viti, 73/1803/viti, 75/lunga, 76/viti, 504/Nal
Area 0.12+0.17+0.12+0.86+0.31+0.87=2.45 acres

Sd/- Illegible
Collector
25/4/1985

2. The allotment letters to different writ petitioners are in similar language. As per clause (7) in the allotment letter, the allottees were entitled to plant trees on their land and to enjoy the products thereof and to fell, utilize or dispose of the timber of the trees on the land. These writ petitioners claim to have planted teak trees over the allotted land which became ripe over a period of time for being extracted. However, on refusal to grant permission by the State Government, the writ petitioners approached for the first time before this Court in WP(C) No.505 of 2018. The respondents-State appeared and objected to the extraction of the trees. The case of the respondents has been taken note of in the order dated 25.03.2021 by which the writ petition was disposed. They contended that the land allotted to the petitioners formed part of a reserved forest which was so notified way back in the year 1966. As per the Forest (Conservation) Act, 1980, no part of the reserved forest could have been allotted by the State Government without the permission of the Central Government. The learned Writ Court at that instance found two options before the Government; either to permit extraction of the trees or to compensate the petitioners by the current market value that the trees if sold may fetch. For that purpose, the learned Writ Court directed verification by a competent Forest Official and assess the approximate age of the trees standing on the land which the petitioner claims to have planted. The writ petition WP(C) 505 of 2018 was finally disposed of by order dated 18.11.2021 with the following observation and directions:

"I have considered the submission of learned counsel appearing for the parties to the *lis*.

Annexure-3 to the writ petition makes the cloud clear that the trees were purchased and planted by the petitioner. From the purchase voucher issued by the Forest Department on 29.05.1990, it is revealed that the petitioner had purchased 500 nos. of 'Teak Stamps' for Rs. 250/-. If we compare the said purchase voucher with the report of the Expert Committee constituted by the State-respondents, then, it is found that the teak trees, according to the members of the Committee, were aged about 25 years. Some

of the trees may be aged about 2-5 years, which might be planted within a period of 2-5 years.

Accordingly, there is no scope to doubt the statement of the petitioner that he had purchased the trees from the Forest Department and planted the same which were grown up gradually.

I have given my thoughtful consideration that Section 2 of the Forest Conservation Act creates an embargo to cut the trees grown up within the Reserved Forest. It is also equally true that the land was allotted to the petitioner by the government and he had planted the trees with the legitimate expectation that one day the trees would grow and he will sell the trees for his earning. I have also observed that the learned Single Judge (Akil Kureshi, CJ) by order dated 25.03.2021 held that the *State-respondents shall either permit extraction of the trees or compensate the petitioners by the current market value that the trees if sold today may fetch.*

When this court unhesitantly holds that the teak trees which the petitioner wanted to cut and extract had been purchased and planted by him, then, I have no other alternative but to follow the observation of the learned Single Judge made in the order dated 25.03.2021 that the State-respondents shall either permit extraction of the trees, as sought for by the petitioner, or compensate the petitioner according to the present market rate.

Accordingly, I direct the respondents either to permit the petitioner to cut and sale those trees, as sought for by him, or compensate him for those trees which he wanted to extract. The said direction is to be complied with within a period of 6 (six) weeks from the date of receipt of the copy of this order.

With the above observation and direction, the instant writ petition stands disposed.

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

3. Similar directions have been issued in the case of the other writ petitioners with which the State being aggrieved has approached this Court. In WP(C) No.233 of 2021 from which W.A. No.294 of 2021 arises, the learned Writ Court directed the respondents to issue necessary certificate of registration and accord permission to the petitioner for registration and to extract the trees as per his application within a period of 30 days from the date of receipt of copy the order. In the said case, the learned Writ Court also observed that the communication submitted by the SDM, Kamalpur, Dhalai revealed that the land of the petitioner was allotted prior to 1980, i.e. in the year 1976.

4. In the other connected writ petitions, same grievance has been raised relating to extraction of teak trees grown on the allotted land under the TLR and LR Act, 1960 and the rules framed thereunder, as permission for extraction has been denied. For ready reference, the details of all the connected cases have been enumerated below:

Sl. No.	Case No.	Land Details	Land allotted details	Barred under notification
1.	W.A. 29 of 2022 State of Tripura v. Tarun Baidya Against judgment no. W.P. (C) 505 of 2018	Allotted land- 2.45 acres C.S. Plot no.- 76 Khatian no. 205 of MOUJA- Purba Pipariakhola, Taheshil- Barpathari, Belonia, under South Tripura Dist. (Annex-5 of WP)	Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 & Tripura Land Revenue & Land Reforms Act, 1960 vide allotment no. 94/6 Dt.- 23.08.1985 recorded in 11.09.1985 (Annex-B of WP)	Kashari Reserved Forest Gazette Notification No. F. 18-4/6/FOR 80/ 404 Dated 03.03.1980 (Annex-10 of WP) per mission rejected by letter dated 10.01.2018
2.	W.A. 294 of 2021 State of Tripura v. Birendra Debbarma Against judgment no. WP (C) 233 of 2021	Allotted land- 4.13 acres R.S. Plot no.-2533,2534 Khatian no. 435 Mouja- Katalutma, Tehsil- Salema, Kamalpur, sub- division Classified as "Lunga and tilla" (From order dt. 30.09.21 of WP)	Allotment year- 1976 (Annex-8 of WP)	-----
3.	WP(C) 91 of 2022 Mani Bala Debnath v. State of Tripura	Allotted land- 2.70 acres R.S. Plot no.- 38,40,41,42,43,44,74 Khatian no. 501 Mouja-Uttar Chellagang , sub- division- Amarapur (Annex-3 of WP)	Allotment no. 5/88 Dt.- 15.01.1988 by SDM Status of land: Khas (Annex-4 of WP)	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-7 & 8 of WP) permission rejected by letter dated 31.12.2020
4.	WP(C) 93 of 2022 Ananta Sadhan Jamatia v. State of Tripura	Allotted land- 6 acres R.S. Plot no.- 2108, 2133,2139 Khatian no. 251 Mouja-Rangkang , sub- division- Amarapur	Allotment no. 11033/82 by SDO Dt.- Petitioner claims 1982 (Annex-3 Jote Enquiry Report of WP)	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-6 of WP) permission rejected by letter dated 31.12.2020
5.	WP(C) 94 of 2022 Sinati Reang v. State of Tripura	Allotted land- 4 acres R.S./ C.S Plot no.- 624 Khatian no. 170 of MOUJA- Lougang, Sub- division- Karbook	Allotment no. 37/87 Dt.- 11.11.87 from forest land by SDO (Protected Forest) (Annex-3 of WP)	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-6 of WP) permission rejected by letter dated 01.06.2021
6.	WP(C) 95 of 2022 Raj Chandra Jamatia v. State of Tripura	Allotted land- 6.20 acres R.S. Plot no- 2105 & 2167 Khatian no. 277 of MOUJA- Rangkang, Revenue Circle Sub- division- Amarapur	Allotment no. 11032/82 As per petitioner 1982 from forest land by (Annex-3 of WP)	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-8 of WP) permission rejected by letter dated 31.12.2020
7.	WP(C) 96 of 2022 Bhakti Rani Jamatia v. State of Tripura	Allotted land- 3.48 acres R.S. Plot No.- 2348 Khatian no. 542 of MOUJA- Sonachara, Revenue Circle, Sub- division- Amarapur	Land allotted- 18.06.87 (Annex-3 of the WP) Jote Enquiry permitted extraction of Plot no. 2348 Later denied in year 2020	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-5 of WP) permission rejected by letter dated 16.07.2020
8.	WP(C) 97 of 2022 Jarma Sadhan Jamatia v. State of Tripura	Allotted land- 2.20 acres R.S. Plot no.- 2275 Khatian no. 661 of MOUJA- Sonachara, Revenue Circle, Sub- division- Amarapur	Land allotted no.- 11534/83 Dt.- 31.01.1984 from Protected Forest Land (Annexure-3 of the WP)	As the land was allotted after 24.10.1980 (Annexure-6 of WP) permission rejected by Letter dated 14.09.2020
9.	WP(C) 98 of 2022 Narahari Debbarma v. State of Tripura	Allotted land- 4.12 acres R.S. Plot no.- 2486 & 2487 Khatian no. 527 of MOUJA- East Karbook, Revenue Circle- Shilachari, Sub- division- Karbook	Allotment no. 11262/ 83 (Annexure-6 of WP) Dt.- 11.11.87 from forest land by SDO (Protected Forest)	Notification No. 7(99)/FOR/FP/P- II/1447-57 Dated: 23.04.2005 (Annex-8 of WP) permission rejected by Letter dated 15.06.2020

5. The common stand of all the writ petitioners are that teak trees which fall within the meaning of "forest activity" having been planted by the writ petitioners under proper allotment orders issued by the Government under TLR and LR Act have over a period of time grown up

and become ripe for being extracted which the respondent-department is not acceding to.

6. The State has resisted the prayer on the ground that these lands fall within the meaning of "forest" and no such assignment or allotment could have been made without prior approval of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980. Since the allotments were made without prior approval of the Central Government, the petitioners cannot claim a legal right to extract these trees grown on the allotted land in contravention of the provisions of the Forest (Conservation) Act, 1980 and the notifications issued thereunder. In some of the writ petitions, learned counsel for the petitioners have pointed out that either the land allotted to them are outside the bounds of the reserved forest or protected forest or in some cases are protected forest under the Forest Act of 1927 but are out of the definition of reserved forest under Section 2 of the Forest (Conservation) Act, 1980. Even in these allotted plots the extraction of the teak trees are being resisted or permission is not being granted on application being made by the writ petitioners. Therefore, appropriate direction may be issued upon the respondents to allow the petitioners to extract the teak timber trees or to compensate them in lieu of the cost of such trees which they may fetch. It is submitted that the directions of the Writ Court in one of the matters [WP(C) No.505 of 2018] may, therefore, govern the case of the similarly situated petitioners.

7. Learned counsel for the State has, *inter alia*, submitted that any allotment letter issued by the Revenue Department containing such a condition for planting of trees on lands which fall within the meaning of

"forest" under the Forest (Conservation) Act, 1980 can create no valid legal right in favour of the writ petitioners to extract those trees or to seek compensation in lieu thereof.

8. However, learned counsel for the State have not been able to give a categorical answer as to why such an allotment letter issued in favour of the individual writ petitioners purportedly without prior approval of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980 have neither been rescinded nor recalled. In the process, the allottees claimed to have grown teak trees which are now ripe for felling and to be used for forestry purposes. It is also not clear as to why if such allotments have been allowed to stand for a period ranging more than 35 to 40 years, the State Government has not considered fit and proper to approach the Central Government for post facto approval of such allotment if the plots in question are falling within the description of "forest" either as a protected forest or a reserved forest or a designated forest within the meaning of "forest" under the Forest (Conservation) Act, 1980 as understood by the decision of the Apex Court rendered in the case of *T.N. Godavarman Thirumulkpad vrs. Union of India and others* reported in (1997) 2 SCC 267. Paragraph-4 of the judgment in the case of *T.N. Godavarman* (supra) which explains the meaning of the word "forest" in terms of the Forest (Conservation) Act, 1980 is reproduced hereunder as it is illuminating on this issue:

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include

“forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213], *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (1) SCC 504] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

9. We are also informed by Sri Chandan Lal Das, IFS, Chief Conservator of Forests, who has appeared to assist the Court in terms of the order dated 22.01.2024 that a procedure has been prescribed for persons seeking permission to extract trees through the proper channel. He has submitted that the writ petitioners may be directed to submit proper application with supporting documents through proper channel for the competent authority to take a decision on the question of seeking post facto approval from the Central Government and upon such approval, to consider grant of permission to extract trees in case the petitioner(s) fall under the category within the meaning of "forestry activity" in respect of the trees which they claim to have planted on their respective plots as understood under the Forest (Conservation) Act, 1980. He also submitted that such an application can be made through the Sub-Divisional Forest Officer of the area under which the plot of land falls.

10. The prescription of law under Forest (Conservation) Act, 1980, specifically Section 2 thereof as extracted hereunder, provides that

notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing any of the enumerated categories of acts which under Section 2(iii) includes assignment by way of a lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by the Government, any forest land or any portion thereof.

Section 2 of Forest (Conservation) Act, 1980 reads thus:

"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose: Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

[Explanation:- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]"

11. A reading of the aforesaid provisions of the Act of 1980 together with the opinion of the Apex Court in the case of *T.N. Godavarman* (supra), therefore, makes it clear that the State Government before making any assignment by way of a lease or otherwise to individual persons like the writ petitioners of any forest land or any portion thereof ought to have obtained the prior approval of the Central Government. The State Government seems to have been sitting idle over the matter despite

being conscious of such allotment letters made in favour of the individual persons like the writ petitioners way back in the 1980s or even earlier in some of the cases. Those allotment letters do not stand rescinded or revoked and petitioners claim to have grown teak trees over the allotted piece of land in terms of the conditions prescribed in the allotment letters.

12. However, for the purposes of seeking permission for extraction of such trees, petitioners are required to make an application complete in all respects through the proper channel as per the prescribed mode. Such applications are required to be scrutinized by the competent authority under the Forest Department. Upon such scrutiny, if it is found that the allotted piece of lands fall within the meaning of "forest" as understood under the Forest (Conservation) Act, 1980 in terms of the opinion of the Apex Court in the case of *T.N. Godavarman* (supra) and that prior approval of the Central Government had not been taken before making such allotment, the State Government should approach the Central Government for seeking post facto approval explaining the background facts and justification for doing so. In case, upon scrutiny, the plot of lands of individual writ petitioners are found to be beyond the boundary of any such forest as understood within the meaning of Forest (Conservation) Act, 1980 the competent authority would take a decision on granting permission for extraction of the land and its transit and sale.

13. The petitioners should make such an application within a period of two weeks from the date of receipt of copy of this judgment. The competent authority under the respondent-department would process and scrutinize such application in accordance with law within a period of 12

(twelve) weeks from the date of receipt of such application. In case, the competent authority under the Government of Tripura is satisfied that post facto approval is required in respect of such claim by individual persons, they would approach the Central Government for such approval. In case, such a request is made by the State Government before the Central Government for approval, the competent authority under the Central Government would consider it in accordance with law in a time bound manner, preferably within a period of three months from the date of receipt of such application. Needless to say, if the claim of the individual writ petitioners is declined on any grounds, it would be open for the individual writ petitioners to raise their grievances in an appropriate proceeding in accordance with law.

14. These writ appeals and writ petitions are disposed of in the aforesaid manner.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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