

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 268 of 2023

1. M/S Dilkhusa Tea Co. Ltd. registered office: 3, Wood Street, Kolkata 700016.
2. M/S Fortuna Agro Plantation Ltd., a company registered under the Companies Act, 1951 having its registered office at P.O. Sadhanashram, Dist: Unakoti, Kailashahar, Tripura, Pin-799227.

.....Petitioners

-V E R S U S-

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, Secretariat, Capital Complex, P.O. Kunjaban, Agartala, Pin-799010.
2. Secretary to the Government of Tripura, Revenue Department, Civil Secretariat, Capital Complex, P.O. Kunjaban, Agartala, Pin-799010.
3. The District Magistrate and Collector, Unakoti, P.O. Gournagar, Kailashahar, Pin-799227.
4. Sub-Divisional Magistrate, Kailashahar, District-Unakoti, Pin-799277.

..... Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. S. M. Chakraborty, Sr. Advocate. Ms. Ankita Pal, Advocate. Mrs. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. S. S. Dey, Advocate General. Ms. A. Chakraborty, Advocate.
Date of hearing	:	08.08.2024
Date of delivery of judgment and order	:	14.08.2024
Whether fit for reporting	:	YES.

JUDGMENT & ORDER

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel appearing for the petitioners also heard Mr. S. S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for restraining the respondents from changing more than 2100 acre of land in Record of Right (ROR, for short) created in the name of the petitioners No.1 without affording reasonable opportunity of being heard also restraining the respondents from recording the running tea garden land in khas khatian by deleting the name of the petitioner No.1 without following due process of law.

[3] The case of the petitioner is that cultivation of more than 2100 acre of tea is generally taken up on vast tract of land which normally cannot be held by a single person or a family, but to encourage the industry special provisions have been made in the TLR & LR Act to relax the ceiling limit by providing opportunities under Section-178 of the said Act. Murticherra Tea Garden comprised in about 2066 Acre land in North Tripura (now Unakoti) is owned by Dilkhusa Tea Co. Ltd. (petitioner No.1) which was accorded the said permission under Section-178(1) and 136(1)(f) of the Act. Subsequently in 1997 said Murticherra Tea Estate was transferred to the 2nd petitioner company i.e. M/S Fortuna Agro Plantation Limited by lease for 99 years. The permission accorded under Section 178(1) in 1975 continued to be valid even after the said transfer, but suddenly in 2010 the Government of Tripura initiated a proceeding under Section 178(4) of the Act contemplating withdrawal of permission granted.

[4] In pursuance of the above, the Petitioner approached the respondents and filed Written Statement and the Respondent No.1/Secretary Revenue, passed order on 06-10-2012 withdrawing the permission under section 178(1) accorded in 1975. The Ld. District Collector declared the land in Murticherra Tea Estate to be treated as Government Khash land barring only 7.20 standard hectares and directed to correct the Record of Right.

[5] Writ Petition No.509 of 2012 was filed challenging the orders dated 06.10.2012 and consequential memo dated 03.11.2012 and

the same has been dismissed with observation on 18.03.2016 to the respondents to give an opportunity to the petitioners under Chapter-X111 of TLR & LR Act before converting the land to khas. The order dated 18.03.2016 was not challenged by the respondents and same attained finality.

[6] In view of the observations made in the judgement dated 18.03.2016, writ appeal No.40 of 2016 was filed and by order dated 09.02.2021 the same has been allowed by setting aside the order dated 06-10-2012 passed by Secretary, Revenue Department, Government of Tripura. The Review petition No.53 of 2022 was filed by State against judgement in WA. No.40 of 2016 dated 09.02.2021 and the same is allowed by order dated 09.02.2023. Thus, the respondent/State has changed the entries in ROR.

[7] Hence, the present writ petition against the action of the respondents in changing the entries in the Record of Rights.

[8] Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel has submitted that the cause of action for filing this petition arose on 11.04.2023 when the entries in khatians reflected the name of government by deleting the names of the petitioners.

[9] The respondents have also changed the khatian of Manuvalley from the name of the petitioner No.1 to the name of government of Tripura with reference to orders dated 13.03.2023, 19.03.2023 and 27.03.2023 and created a khas kahtain No.1/2 for land measuring 59.11 acres. The respondents have also changed the khatian of Murticherra Mouza from the name of the petitioner No.1 to the name of the government of Tripura with reference to orders dated 02.02.2023 and 25.01.2023 and created a khas khatian No.1/1 for land measuring 2000.78 acres of land.

[10] The petitioners are limited companies and thereby the quantum of land which can be held by them within the ceiling limit ought to have been decided by the respondents in accordance with the provision contained in Section-164A(6) of the TLR&LR Act before converting land of petitioners as khas land. Having not done so the respondents have acted in a high handed, illegal and un-constitutional manner requiring interference of his Court.

[11] Murticherra Tea Estate is a tea garden in North Tripura (now Unakoti) comprised of about 2100 acres of land owned by the petitioner No.1 has been leased out to the petitioner company No.2 for 99 years from the year in 1997. Since then, the petitioner No.2 has been running the garden for cultivation of tea and rubber exempted under Section-178(1) of TRL& LR Act, 1960. The land under cultivation and ancillary purposes in the tea garden is the 'jote' land of the company and no part of it has ever been claimed as government khas land.

[12] The petitioner No.1 has applied for permission to hold the land in excess of the permissible ceiling limit for the purpose of cultivation of tea in the year 1962 under Section-178(1) of TLR&LR Act and the permission was accorded by the Revenue Commissioner to the Govt. of Tripura, Revenue Department, Agartala vide order dated 23rd August, 1975.

[13] It is contended that suddenly by a notice, the respondent No.2 initiated a proceeding in 2010 under Section-178(4) of the TLR & LR Act for the purpose of withdrawing the permission. The respondent No.2 considered the written statement submitted by the petitioner and passed order on 26.11.2011. The said order correctly recorded the contention espoused in the written statement, that the petitioner company is otherwise entitled to hold the land comprised in Murticherra Tea Estate by virtue of the provisions under Section-164(6) of the TLR&LR Act and considered from that point of view the concession required under Section-178 is redundant. The respondent No.2 was called upon to

continue the validity of the permission in the interest of the garden when the petitioner company is otherwise entitled to hold the entire area applying Section-164(6) of the Act.

[14] Ultimately, the respondent No.2 in a hasty manner instead of following any consistency with the earlier order and without maintaining the commitment made therein and without passing a speaking order supported by reasons recorded the application of petition made in 1962 under Section-178(1) of TLR & LR Act read with Rule-211 of TLR&LR passed order on 06.10.2012 withdrawing the permission granted.

[15] Having received the copy of the order dated 06.10.2012, the petitioner addressed letter dated 31.10.2012 pointing out the apparent infirmities and illegalities in the order disclosing the intention of moving the higher judicial forum against the illegal order and at the same time, requested not to take the next step until a reasonable time for obtaining appropriate order from the Court of law.

[16] In the above background the respondents issued the memorandum as under:

“Government of Tripura
Office of the District Magistrate & Collector
Unakoti District: Kailashahar
(Revenue Section)

No.IX-1(25)DUR/Vol-II/2012/3711-14

Dated, 03.11.2012

M E M O

As per decision of the Revenue Department, Govt. of Tripura, the exemption of retention against Murticherra Tea Estate has been withdrawn by the order dated 6-10-2012 passed by the Secretary, Revenue Department in Case No.03/Rev/PS/2010 U/S 1/8 (4) of TLR&LR Act, 1960. Hence, the entire Tea Garden land measuring 2066.00 acres (existing total area) should be reverted to Khas land. According to the ceiling limit prescribed in Section-164(1) (d) of TLR&LR Act, 1960 beyond 7.20 Standard Hectare will be treated as surplus land and hence the SDM, Kailashahar is directed to declare the said area of Murticherra Tea Estate as Khas land excluding 7.20 Standard Hectare and correct the land records.

(Abhishek Chandra)
District Magistrate & Collector
Unakoti District, Kailashahar”

[17] It is argued that after withdrawal of the exemption order, no such notice to Dilkhosa Tea Estate was issued for submitted the return within a specified period but, the Collector has passed the impugned memorandum which is absolutely beyond his competence. It will not out of place to mention that in or around 2012, the respondent authorities changed the ROR of the petitioner company No.2 and declared the company status as permissible possessor in some of the khatians and in some of the khatians, the name of the petitioner was totally deleted whereas till the time company status was as a raiyat.

[18] Mr. Chakraborty, learned senior counsel also contended that in WP(C) No.509 of 2012 wherein, the present petitioner was also a party it was observed that “19. *It is further to be determined that if the exemption order is withdrawn, whether the petitioners will have any right including the intermediary right to retain the permissible area of land or not. leaving all these issues unanswered, issuance of the memorandum dated 03.11.2012 observing that beyond 7.20 standard hectare the remaining land will be treated as surplus and on such premises, direction to the SD, Kailashar for declaring the Murticherra Tea Estate as khas land excluding 7.20 standard hectare or for correcting the land records, is unsustainable in law inasmuch as, in terms of Section-165 of the TLR &LR Act every person who retained land in excess of the ceiling limit on 24th January, 1971 shall submit to the competent authority in the prescribed form and within such period as the State Government may by notification in the official gazette appoint, a return giving the particulars of all land held by him indicating therein, the persons of the land not exceeding the ceiling limit which he desires to retain. The last date of submission was fixed for purpose of Section-166 of the TLR&LR Act on 28.02.1974. But, the discretion had been left to the competent authority to accept the return on assigning reasonable cause since sub-section(3) of Section-166 of the TLR&LR Act provides that if the persons fail to comply the notice of the Collector in declaring*

the ceiling surplus land without offering him any further opportunity, the Collector may take possession.”

[19] In this case, after the withdrawal of the exemption order no such notice to Dilkhosa Tea Estate was issued for submitting the return within a specified period but the Collector has passed the impugned memorandum which is absolutely beyond his competence.

[20] Mr. Chakraborty, learned senior counsel in support of his case has cited certain decisions of the Hon'ble Apex Court in **2005 AIR SCW 3727** titled as ***State of H.P. and Another v. Gujarat Ambuja Cement Ltd. and Another***, (2207) 10 SCC 88 titled as ***M.P. State Agro Industries Development Corpn. Ltd. and Another v. Jahan Khan and 2009 AIR SCW 654*** titled as ***Mariamma Roy v. Indian Bank & Others*** and prayed to allow the writ petition and to restore the lands to the petitioners.

[21] At the threshold, Mr. S.S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the respondents has submitted that there is no cause of action for filing of the present petition and there is no violation of principle of natural justice. He draws attention of this Court in proceeding under Section-136(1) (f) and 178(1) of the TLR&LR Act, 1960 dated 23rd August, 1975 under in respect of Dilkhosh (Murticherra) T.E. under Kailashahar sub-division and in this regard a gazette notification dated March, 22, 1963 was also placed on record. For the purpose of reference, memo dated 23rd August, 1975 may be reproduced herein below:

“Case No.29(TE) 62-03
Government of Tripura
Revenue Department.

Agartala, the 23rd August, 1975

Sub: Proceedings u/s 136(1) (f) and 176(1) of the TLR & LR Act, 1960
in respect of Dilkhosh (Murticherra) T.E. under Kailasahar sub-division

ORDUR

The commissioner of Revenue, Land Reforms & Tzxes, Tripura is pleased to order that the Dilkhosh (Murticherra) Tea Estate be allowed to retain an area of land measuring 849.86 hectares (2100.00) acres

belonging to land at moujas Murticherra, Samrurpar and Manuvalley under Kailasahar sub-division u/s 136(1)(f) of the TLR&LR Act, 1960.

An area of land measuring 221.12 hectares (546.39) acres is not included in the area allowed to be retaining and would be resumed by the Government.

The Commissioner of Revenue, Land Reforms & Taxes is further pleased to order that the tea estate be exempted u/s 178(1) of the TLR&LR Act, 1960 the area of land measuring 849.87 hectares (2100.00) acres at moujas Murticherra, Samrurpur and Manuvalley under Kailasahar sub-division from the operation of ceiling provision of section-164 of the said Act.

The estate authorities should show definite improvement in the management of the garden in the development of the area and proper utilization of lands etc. within a period of 3 years from the date of issue of this order. In the event of any failure in this direction, the exemption order issued would be withdrawn and land resumed.

The Estate authorities may exercise option to retain plots not exceeding the area of 849.87 hectares (2100.00) acres within a period of two months from the date of this order and to intimate the same to the Director of Settlement & Land Records, Tripura, Agartala and the D.M. & Collector, Kailasahar, North Tripura Dist. who would go into the issue separately.

By order of the Commissioner of

Revenue, Land Reforms & Taxes.

(S. Banerjee)

Under Secretary to the Govt. of Tripura.”

[22] It has been submitted by the learned senior counsel appearing for the petitioner that no notice was issued to the petitioner to taking appropriate steps. But Mr. Dey, learned Advocate General has pointed out that on 24.09.2011 notice was duly served by the Court of the Secretary, Government of Tripura, Revenue Department wherein, counsel for the respondent No.2 was asked, if the area of land held by the respondents were within the ceiling limit there was no reasons for them to reply to this question although he stated that it may be either due to lack of knowledge of the respondents companies or due to misinterpretation of statutory provisions.

[23] The case has been initiated on the basis of report of Collector, North Tripura that Dilkhusa (Murticherra) Tea Estate of Kailashahar sub-division has diverted its tea garden land by establishing saw mill and raising rubber and teak plantation, M/s Dilkhusa

(Murticherra) Tea Estate was allowed to retain an area of land measuring 849.87 hectares (2100 acres) spreading over mouja Murticherra, Samrurpur and Manuvalley under Kailashahar sub-division under Section-136(1)(f) of the TLR& LR Act. Exemption of the said areas under Section-178(1) of the TLR& LR Act 1960 from the operation of the ceiling provisions under Section-164 of the Act was given on condition that the tea estate authority should show definite improvement in the management of the garden. But, the proprietor Dilkhusa (Murticherra) Tea Estate and its lessee violated the provision of Section-178(1) and as such the exemptions granted vide No. 29(Tea)/62-63 dated 23.07.1975 is hereby withdrawn.

[24] In writ petition No. WP(C) No.509 of 2012 and others it has been observed that *“As consequence thereof, the said memorandum dated 03.11.2012 is set aside. On the basis of the order dated 06.10.2012, Dilkhosa tea estate would be provided opportunity of filing their return for retaining their preferred land and for declaring the ceiling surplus land to be vested with the government by passing the appropriate order. Only thereafter, the consequential order on the basis of the return or for non filing of the return may be passed by the competent authority i.e. the District Collector.”*

[25] Mr. Dey, learned Advocate General has submitted that as per the gazette notification dated 22.03.1963 in the Tripura Gazette, the estate in question, situated with the then Kailashahar sub-division now Unakoti district was already vested in the government of Tripura free from all encumbrances. Consequently, the entire land claimed by the petitioners falling within Unakoti district as of date, in any view of the matter is a Govt. khas land.

[26] There is no averment in the writ petition with regard to that gazette notification and the same is unchallenged. It is further contended that the petitioners have concealed the real facts and made untrue statements. Initially, the petitioner company applied for the exemption

from the operation of Section-164 of the TLR & LR Act, 1960 and also prayed for retention of the ceiling surplus land. However, the same was rejected and no retention order was issued in their favour and further the Revenue Department, government of Tripura directed the Collector to take over the land after observing all formalities.

[27] Learned Advocate General has placed his reliance on a similarly situated case i.e. in **WP(C) No.31 of 2023** wherein, the Court by judgment dated 12.07.2024 held thus:

“15. The petitioner, Silkota Tea Co. Ltd. claim as the owner of Tea Garden named “Hiracherra Tea Estate” and according to them, it is 105 years old company registered in the year 1917. The petitioner-company has contended that they are in possession of tea estate and are cultivating tea since its inceptions. The Tripura Land Revenue and Land Reforms Act, 1960 (in short TLR&LR Act) came into force and on perusal of record, it is seen that on 22.03.1963, a gazette notification vide No. F.39(93)-REV/62 was published in the Tripura Gazette, which is extracted hereunder for appreciation of fact:

“...In exercise of powers conferred by sub-section (1) of section 134 of the Tripura Land Revenue and Land Reforms Act, 1960 (43 of 1960) the Administrator is pleased to declare that with effect from the 15th April, 1963 all estates situated in Kailashahar sub-division and under Puranrajbar police station of Belonia sub-Division and all right, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrance....”

[28] He has placed reliance on some decisions of the Hon’ble Apex Court to establish his case beyond reasonable doubt. **AIR 1969 Calcutta 424** titled as **Shyamlal Purohit and Another v. Jagannath Ray and Another and (2015) 12 SCC 501** titled as **Uttar Pradesh State Industrial Development Corporation Limited v. Monsanto Manufacturers Private Limited and Another.**

[29] Heard both sides.

[30] The claim of the petitioners as owners of the subject land and their names reflected in the Khatian which is only the entries in the revenue records and the same cannot be treated as a title deed. The petitioners have not explained as to how their names came to be entered in the revenue records and on the strength of

what documents i.e. either sale deed or by succession or in heritance. In the absence of any such title deed, it cannot be said that the petitioners are the owners. More so, when the petitioner is a company, it cannot be construed that company would own the property without there being any legally entitled documents. Mere giving an impression on the strength of the entry in revenue record do not entitle the petitioners to claim themselves as owners.

[31] In *Shyamlal Purohit and Another v. Jagannath Ray and Another* reported in *AIR 1969 Calcutta 424* the Hon'ble Apex Court has observed thus:

"7. The case most relied upon by the respondents is a Bench decision of this Court, *Basanta Kumar Roy v. Charu Chandra Pal*, . The facts hi that case were as follows: The respondent Charu Chandra Pal obtained a money decree against the principal debtor Burdwan Fisheries and Industries Ltd. and the guarantor, the Managing Director of the principal debtor company. The decree was put into execution in Money Execution Case No. 18 of 1955 and on 21st May, 1956 it was sold by auction to the highest bidder, namely the decree-holder who had been permitted to bid at the sale. On 21st June, 1956 the appellant Basanta Kumar Roy, describing himself as the principal judgment-debtor of the company, filed an application under Order 21, Rule 90 for setting aside the sale. The ground was that the decree-holder had purchased the properties "secretly and fraudulently and in an illegal and irregular way by causing a show of auction sale." The decree-holder auction-purchaser contested the application. The learned judges referred and relied upon the English cases, *Macaura v. Northern Assurance Co.*, (1925) AC 619 and *Commissioner of Inland Revenue v. Forest*, (1924) 8 Tax Cas 704 (710) as well as two Supreme Court decisions--*Sholapur Mills case*, and *Bacha F. Gazedar v. Commissioner of Income-tax, Bombay*, . Reference was also made to a Madras case, *Vaidyanatha v. Bank of India Ltd.*, . The Court held as follows:-

"We are of opinion that there Is no substance in the contention. However, wide may be the meaning of the expression any person whose interests are affected by the sale" such person must have an existing or present interest, which is affected by the sale of the property. The existing or the present interest must be in the property which is sold. A corporator is not the corporation, which is a distinct legal person. In the assets of a corporation. Its share-holders have no legal or equitable interest.

There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest In the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder Is that on buying shares an Investor becomes entitled to participate in the profits of the company

in which he holds the shares. If and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it.

The legal position of a shareholder being hereinbefore Indicated the appellant had no interest in the auction-sold property, which was adversely affected by the sale."

8. It was held accordingly that the application for setting aside the sale was not maintainable and the appeal was dismissed.

9. Since great reliance has been placed before us on this Division Bench judgment. I shall briefly notice the authorities mentioned therein. In the House of Lords' decision 1925 AC 619 (Supra) the facts were as follows-
- The owner of a timber estate sold the whole of the timber thereon to a timber company in consideration of fully paid-up shares in the company. He was the sole shareholder in the company and also a creditor of the company to a large extent. Subsequently, by policies effected in his own name with several insurance companies, he insured this timber against the risk of fire. The greater part of the timber having been destroyed by fire, he sued the insurance company to recover the loss. The point was as to whether he had any "insurable interest" in the goods Insured. Lord Buckmaster said as follows:-

"Turning now to his position as shareholder, this must be independent of the extent of his share interest. If he were entitled to insure holding all the shares in the company, the shareholders would be equally entitled, if the shares were in separate hands. Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to share in the profits while it continues to carry on business and a share in the distribution of the surplus assets when the company is wound up."

[32] In ***Uttar Pradesh State Industrial Development Corporation Limited v. Monsanto Manufacturers Private Limited and Another*** reported in (2015) 12 SCC 501, the Hon'ble Apex Court observed ad infra:

"22. For deciding the issue involved in the present case it is necessary to refer certain clauses of licence agreement, lease deed and guidelines issued by the appellant-Corporation which are common in all the cases.

23. Clause 4(h) of the licence agreement prohibits licensee's acts to directly or indirectly transfer, assignment, sale, encumber or part with its interest under the benefit of the said Agreement without previous consent in writing of the Grantor, relevant portion of which reads as follows:

"4(h). That the Licence will not directly or indirectly transfer, assign, sell, encumber or part with its interest under or the benefit of this Agreement or any part thereof in any manner whatsoever without the previous

consent in writing of the Grantor and it shall be open to the Grantor to refuse such consent or grant the same subject to such conditions as may be laid down by the Grantor in the behalf."

24. Sub-Clause (p) of Clause 3 of lease deed also prohibits any alteration in the Memorandum and Articles of Association or in its capital structure without the written consent of the Lessor, relevant portion of which reads as follows:

"3(p) That the Lessee being a registered partnership firm declares, affirms and undertakes that during the subsistence of the terms of this agreement, the said partnership shall not be dissolved, reconstituted or wound up, and/or dealt with in any way which may jeopardize the rights and interests of the Lessor in the matter of this lease, nor shall its constitution be altered in any manner otherwise written consent of the Lessor, first and obtained, and it shall not stand dissolved on the death or insolvency of any of its partners;

OR The Lessee being an individual or sole proprietor of a firm, shall not allow any person(s) as partner(s) with him without the prior written consent of the Lessor;

OR The Lessee being a Company shall not make or attempt to make any alterations, whatsoever in the provisions of its Memorandum and Articles of Association or in its capital structure without the written consent of the Lessor, first had and obtained, and the Lessee hereby undertakes to get registered the prescribed particulars of the charge hereunder created with Registrar of Joint Stock Companies under Section 126 of Companies Act, 1956, within stipulated period.

While granting its consent as aforesaid the Lessor may require the successor in interest of the Lessee to enter into a binding contract with the Lessor to abide by and faithfully carry out the terms, conditions, stipulations, provisos and agreements herein contained or such other terms and conditions as the Lessor may, in its discretion, impose including the payment by the successor-in-interest such additional premium and/or enhanced rent as the Lessor may in its discretion think proper. In the even of breach of this condition the agreement shall be determined at the discretion of the Lessor.

Provided that the right to determine this agreement under this clause will not be exercised if the industry at the premises has been financed by the State Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India, or the U.P. Financial Corporation or Pradeshya Industrial and Investment Corporation of Uttar Pradesh or any scheduled bank(including the State Bank of India) and the said financing body or bodies mentioned above decide to take over possession or sell, or lease or assign the mortgaged assets in exercise vesting in it or them by virtue of the deeds or deed executed in its or their favour by the Lessee as provided herein above, or under any law for the time being in force."

26. In the present case the entire shareholding of Goyal family headed by Mr. Amar Nath Goyal in the said company was transferred to the Mehta-Lamba Family. The entire list of shareholders, Managing Director and

Board of Directors was provided by Monsanto to the appellant-Corporation vide letter dated 7.5.1994. The record shows that the original subscribers of shares were members of Goyal family and the entire shareholding was transferred to Mehta-Lamba family. Therefore, the original subscribers of shares of respondent No. 1 Company were totally changed.

27. The "Memorandum of Association" of a company limited by shares mandatorily prescribes in "Table-B" (Table-B of 1956 Act and Table-A of 2013 Act deals with Company Limited by shares) of the Companies Act mandatorily prescribed that the names, addresses, description, occupation of subscribers shall be given in Memorandum of Association. In this case as the original subscribers of shares were changed in 1994, there was material alteration in the "Memorandum of Association" of respondent no. 1 Company.

[33] Learned senior counsel appearing for the petitioners has placed his reliance in a decision of the Hon'ble Apex Court in **2005 AIR SCW 3727** titled as ***State of H.P. and Another v. Gujarat Ambuja Cement Ltd. and Another***, wherein, it has been held thus:

"22. In *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.*, [2003] 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

[34] In another case in ***M.P. State Agro Industries Development Corpn. Ltd. and Another v. Jahan Khan*** reported in **(2007) 10 SCC 88** the Hon'ble Apex Court has held as under:

"11. Be that as it may, we are of the opinion that in the light of our interpretation of the aforementioned Regulations, the imposition of penalty vide composite order dated 19th December, 1989, directing recovery of loss of Rs.16903.41 and stoppage of three increments with cumulative effect, is a major penalty, clearly envisaging a regular enquiry before punishing the respondent. Since admittedly this procedure was not followed, the High Court was justified in coming to the conclusion that imposition of the impugned penalty without holding enquiry was illegal and without jurisdiction.

12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the

ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: *Whirpool Corporation Vs. Registrar of Trade Marks*, *Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors.*, *State of H.P. Vs. Gujarat Ambuja Cement Ltd.* and *Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd.*).

[35] In *Mariamamma Roy v. Indian Bank & Others*, reported in *AIR SCW 654*, the Hon'ble Apex Court has observed as under:

"3. We have heard the learned counsel for the parties and examined the impugned order as well as the other materials on record. After examining the impugned order as well as the materials on record, we are of the view that the order of the High Court cannot be sustained. Before the High Court, the appellant sought to contend that before passing the impugned order, the appellant was not at all issued with any notice. The High Court, however, without going into the question whether the notice was at all served on the appellant or not, dismissed the writ petition only on the ground that the appellant has got a right of appeal against the impugned order under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. In our view, the High Court was not justified in passing the impugned order on the aforesaid ground. It is well settled that even if an alternative remedy was available to an aggrieved party against a particular order, but if it was open to such party to move a writ application and the court has the power to entertain the same if it finds that while passing the order there has been a violation of the principle of natural justice. That being the position, in the present case the appellant was not served with any notice before passing the impugned order. That being the position and without going into the merits, the impugned order is set aside and the matter is remitted back to the High Court for decision on merits in accordance with law. The High Court is requested to dispose of the writ petition at an early date preferably within six months from the date of supply of a copy of this order to it. We make it clear that we have not gone into the merits of the dispute raised by the parties before us, all questions are left open to be decided by the High Court in accordance with law. The impugned order is, therefore, set aside and the appeal is allowed to the extent indicated above. There will be no order as to costs"

[36] For the purpose of reference, some relevant provisions such as Sections-99, 133, 134, 136, 164 & 178(4) of the Tripura Land Revenue and Land Reforms Act, 1960 are extracted hereunder:

“99. Rights of raiyats.-(1) For the removal of doubts, it is hereby declared that subject to the other provisions of this Act,-

(a) The rights of a raiyat in his land shall be permanent, heritable and transferable;

(b) The raiyat shall be entitled by himself, his servants, under-raiyats, agents or other representatives to erect farm buildings, construct wells or tanks or make other the better cultivation of the land or its convenient or profitable use;

(c) the raiyat is entitled to plant trees on his land, to enjoy the products thereof and to fell, utilise or dispose of the timber of any trees on his land

(2) Nothing in sub-section (1) shall entitle a raiyat to use his land to the detriment of any adjoining land which is not his or in contravention of the provisions of any other law for the time being in force applicable to such lands.***

133. Definitions-In this Part,-

(a) "estate" means lands included under one entry in any of the general registers of revenue-paying and revenue-free lands and includes-

(i) revenue-free lands not entered in any register, and

(ii) a part of or a share in an estate;

(b) "homestead" means a dwelling house together with any courtyard, compound, garden, or out-house and includes any out-buildings used for purposes connected with agriculture and any family graveyard, library, office, guest-house, grain store, latrines, boundary walls, tanks, wells or places of worship appertaining to such dwelling house;

(c) "Intermediary" means a person who holds in an estate the right, title or interest of a talukdar and includes-

(i) A person who holds land either revenue-free or at a concessional rate, and

(ii) A tenure holder,

(d) "tenant" means a person who cultivates or holds the land of an intermediary under an agreement, express or implied, on condition of paying therefore rent in cash or in kind or delivering a share of the produce and includes a person who cultivates or holds land of and intermediary under the system generally known as "bhag", "adhi" or "barga"; and the term "sub-tenant" shall be construed accordingly;

(e) "tenure holder" means a person who has acquired from an intermediary the right to hold lands for the purpose of collecting rents or bringing them under cultivation by establishing tenants thereon***.

134. Notification vesting estates in the State.-(1) As soon as may be after the commencement of this Act, the [State Government] may, by notification in the Official Gazette, declare that, with effect from the date specified in the notification (herein-after referred to as the vesting date),

all estates situated in any area or areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances.

(2) Every notification under sub-section (1) shall also be published in such other manner as may be prescribed.

(3) The publication of notification in the manner provided in sub-section (1) and

(2) Shall be conclusive evidence of the notice of declaration to the intermediaries whose interests are affected by such notification***

136. Rights of intermediary to certain lands. (1) Notwithstanding anything contained in Sections 134 and 135, an intermediary shall, subject to the provisions of sub-section (2) be entitled to retain with effect from the vesting date;

(a) Homesteads, buildings and structures together with the appurtenant thereto in the possession of the intermediary other than buildings vested in the Government under section 135;

(b) Lands under the personal cultivation of the intermediary:

(c) lands in I rights have not already accrued to a tenant under any custom, agreement or law and which have been leased by an intermediary who, both at the commencement of the lease and on the vesting date, was a person under disability.

(d) Lands held by the intermediary as mortgagor which are subject to usufructuary mortgage and are under the personal cultivation of the mortgage;

(e) lands comprised in orchards or used for the purpose of live-stock breeding, poultry, farming or dairy farming, which are in the occupation of the intermediary,

(f) so much of the lands comprised in a tea garden, mill, factory or workshop as in the opinion of the State Government is required for such tea garden, mill, factory or workshop.

(2) An intermediary who is entitled to retain possession of any land under sub-section(1) shall hold such land directly under the Government from the vesting date as a raiyat thereof [or as a non-agricultural tenant thereof, as the case may be] and be liable to pay therefore land revenue at full rate applicable to similar lands in the locality"

137. Collector to take charge of estates, etc., vested in the Government-
(1) The Collector shall take charge of estates and interests of intermediaries which vest in the Government under section 135.

(2) For the purpose aforesaid, the Collector may, by written order served in the prescribe manner, require any intermediary or other person in possession of any such estate or interest to give up such possession by a

date to be specified in the order (which shall not be earlier than sixty days from the date of service of the order) to deliver by that date any documents, registers, or records, connected with the management of such estate or interest which are in his custody to furnish a statement in the prescribed form in respect of such estate or interest.

(3) The Collector or any other officer authorized by him in this behalf may take such steps or use such force as may be necessary to enforce compliance with the order and may also enter any building or place for the purpose of taking possession of the documents, registers or records referred to in sub-section(2),

(4) An intermediary shall be entitled to make inspection of any documents, registers or records which have been delivered to or taken possession of by the collector, to make notes there from or to have certified copies thereof granted to him. No fees shall be charged for making inspection or for making notes, but fees may be charged, according to the prescribed scale, for the grant of certified copies.

(5) Nothing in this section shall be deemed to authorise the Collector to take possession of-

(a) Any land or of any right of an intermediary therein, which may be retained by the intermediary under section 136, or

(b) Any religious institution or any building connected therewith***.

164. Ceiling on holdings. On and from the 24th January, 1971 no person shall, whether as a raiyat or as an underraiyat or as a mortgage in possession or otherwise or partly in one capacity and partly in another, hold in the aggregate any land in excess of the ceiling limit applicable to him under section 164A.

164A. Ceiling limit. (1) The ceiling limit shall be-

(a) In the case of an adult unmarried person, two standard hectares;

(b) In the case of a person who is the sole surviving member of a family, two standard hectares,

(c) In the case of a person having a family consisting of two or more but not more than five members, four standard hectares;

(d) in the case of a person having a family consisting of more than five members, four standard hectares plus 0.60 standard hectare for each member in excess of five so, however, that the total ceiling limit for such a person shall not in any case exceed 7.20 a surplus;

(2) Notwithstanding anything contained in sub-section (1), where in the family of person there are more members than one, owing land, the ceiling limit for that person together with the ceiling limit of all the members of the family, shall not in any case exceed-

(a) Where the member of members of such family does not exceed five, four standard hectares;

(b) Where such member exceeds five, four standard hectares plus 0.60 standard hectares for each member in excess of five so, however, that the aggregate of the ceiling limit shall not in any case exceed 7.20 standard hectares.

(3) For the purpose of sub-section (2), all the land owned individually by the members of the family or jointly by some or all of the members of the family shall be deemed to be owned by the members in the family.

(4) In determining the extent of land owned by a person having a family or the sole surviving member of a family or an adult unmarried person, the share of such person or sole surviving member or such adult unmarried person, as the case may be, in the lands owned by a cooperative society, company, co-operative farming society, a Hindu undivided family or a firm shall be taken into account.

Explanation. For the purposes of this sub-section, the share of a person having a family or the sole surviving member of a family or an adult unmarried person in the lands owned by a co-operative society, company, co-operative farming society, a Hindu undivided family or a firm shall be deemed to be the extent of land which could be allotted to him, had such lands divided or partitioned, as the case may be.

(5) The lands owned by a trust or endowment, other than a public nature, shall be deemed to be lands owned by the beneficiaries under the trust or endowment and each such beneficiary shall be deemed to be a person holding land under this Act to the extent of the share of his beneficial interest in the said trust or endowment.

(6) The ceiling limit for a co-operative society, company, co-operative farming society, a Hindu undivided family or a firm, as the case may be, shall not exceed the sum total of the ceiling limits of each member of such co-operative society, company, co-operative farming society, a Hindu undivided family or each partner of such firm.

Explanation. For the purpose of determining the ceiling limit of each member referred to in this sub-section, any land held separately by a person who is a member of a cooperative society, company, co-operative farming society or a Hindu undivided family or a partner of a firm shall be deducted from the ceiling limit referred to in sub-sections. ***

(5) So that the sum total of the area of land held by such person whether as such member or partner or individually or as a member of a family may not in any case exceed the ceiling limit applicable to him under these sub-sections.*****

178. Power to exempt, etc..***** (4) Where any land, in respect of which exemption has been granted under subsection (1) or sub-section (2) or sub-section (3), ceases to be used, or is not within the prescribed time used, for the purpose for which exemption had been granted, the [State Government] may, after giving the persons affected an opportunity of being heard, withdraw such exemption.....”

[37] This case is not as simple as it is filed and argued on the point of challenging the names in khatian without giving notice. But the basic issue

and root of the matter is something else. The petitioners have not explained how the petitioners were in possession of the property. Their claim is petitioner No.1 is owner and respondent No.2 is lessee of the land. It is also seen from the revenue records i.e. the khatian placed by the senior counsel for the petitioner that there are some illegal occupants in possession of the land which is reflected in column No. 9 and in column No.6, the petitioners are shown as the owner and there is no basic documents or any title deed filed in support of their contention to say that the petitioners are owners.

[38] The petitioners have not filed any relevant document nor made a specific pleading as to how they became owners and who is their vendor and under what document, they are claiming ownership and from which period the petitioners being registered companies obviously if they are owners under the deed they would submit in the registration of companies before Tea Board, and also retain originals with them. But no such averment or document is placed on record before this Court. In view of the same, this Court draws an adverse inference against the petitioners.

[39] It is reasonably construed that all land in a State is the property of a State unless it is claimed under lawful alienable title. The series of proceedings which relate to exemption, withdrawal of exemptions, are noticed by this Court that they have not dealt with the issue of ownership and there is no reference as to how the petitioners claimed ownership on the said properties. Unless the petitioners establish that he is the owner of the said land, it is not open for him to claim equities. Insofar as the contention that petitioner No.1 has granted long lease in favour of petitioner No.2 is concerned, petitioner No.1 cannot transfer a better title upon petitioner No.2, when petitioner No.1 itself is not having a proven lawful alienable title. The said proposition is settled law.

[40] Insofar as the change of entries in the khatian by replacing the name of the petitioners with the government as owner is concerned, this Court is of the view that no notice is required and there is no violation of principle of natural justice since the petitioners were already represented before this Court in earlier round of litigation and in pursuance of the same, consequential steps

have been initiated by the respondents in changing the entries in the Record of Right i.e. the Khatian.

[41] Accordingly, the writ petition fails and is liable to be dismissed.

[42] However, in the event, if the petitioners feel that they are the lawful owners of the said property, they shall approach before the Revenue Secretary on or before 31.08.2024 and submit relevant documents i.e. title deed enabling the Revenue Secretary for taking appropriate steps in accordance with law as expeditiously as possible.

[43] In the light of the above, the present petition stands dismissed. As sequel, miscellaneous application, pending if any, shall stand closed.

T. AMARNATH GOUD, J

A.Ghosh

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