

**HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.17 of 2022

Sri Harendra Kumar Das,
S/o Lt. Upendra Kumar Das
Resident of- Pashchim Charakbai (Madhyapara)
P.S- Baikhora, District- South Tripura

.....Defendant-Appellant

Versus

01. Sri Moti Lal Saha,
S/o Lt. Jagabandhu Saha
Resident of Pashchim Charakbai (Madhyapara)
P.S.-Baikhora, District- South Tripura.

02. Smt. Chandana Saha (Baishnab)
W/o Sri Ratan Baishnab
Resident of Pashchim Charakbai (Madhyapara)
P.S- Baikhora, District- South Tripura.

03. Smt. Archana Saha (Paul),
W/o Sri Badal Paul
Resident of Pashchim Charakbai (Madhyapara)
P.S- Baikhora, District- South Tripura.

.....Plaintiff-Respondents

04. The State of Tripura,
Represented by:-
District Magistrate & Collector, South Tripura
Belonia, District- South Tripura.

05. The Sub-Divisional Magistrate,
Santir Bazaar, South Tripura.

06. Sri Nimai Das,
S/o Lt. Nani Das
Resident of Pashchim Charakbai (Madhyapara)
P.S- Baikhora, District- South Tripura.

07. Smt Santoshi Das,
W/o Sri Nepal Das
Resident of Pashchim Charakbai (Madhyapara)
P.S- Baikhora, District- South Tripura

.....Defendant-Respondents

For Appellant(s)	:	Mr. D.R Chowdhury, Sr. Adv, Mr. S. Sarkar, Adv.
For Respondent(s)	:	Mr. S.M. Chakraborty, Sr. Adv, Ms. S. Deb (Gupta), Adv.

Date of Hearing : 01.03.2024
Date of delivery of
Judgment and Order : 13.03.2024
Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The appellant Harendra Kumar Das, by means of this appeal has challenged the judgment and decree dated 16.02.2022 delivered by Learned District Judge, South Tripura, Belonia in connection with Title Appeal No. 11 of 2016 whereby the Learned First Appellate Court has affirmed the judgment dated 07.05.2016 and decree dated 27.05.2016 delivered by Learned Civil Judge, Junior Division, Belonia in connection with case No. T.S. 16 of 2011.

02. Heard Learned Senior Counsel, Mr. D.R. Choudhury assisted by Learned Counsel Mr. S. Sarkar for the appellant-defendant and also heard Learned Senior Counsel S.M. Chakraborty assisted by Smt. Sujata Deb (Gupta) for the respondent-plaintiffs. None appeared on behalf of the rest defendant-respondents i.e. the State.

03. Before entering into the merit of the case, let us discuss about the subject matter of the dispute amongst the parties for which the suit was filed. The respondent-plaintiffs filed one suit before the Court of Learned Civil Judge, Junior Division, Belonia, South Tripura which was numbered as T.S. 16 of 2011 seeking a decree for declaration of title of the

plaintiffs over the suit land and along with recovery of possession over the suit land with further declaration that the order dated 27.02.2010 passed by SDM, Santirbazar, cancelling the order of allotment of the suit land in the name of respondent-plaintiffs as void and illegal. The total suit land comprised land measuring 0.16 acres as mentioned in Schedule-B of the plaint. According to the respondent-plaintiffs, the predecessor of the respondent-plaintiffs, Jagabandhu Saha got allotment of land measuring 0.20 acres of land and land measuring 2 acres on 31.07.1973 and 15.03.1974 respectively as per Section 14(1) of TLR & LR Act and the TLR & LR (Allotment of Land) Rules, 1962 from the Government. The said allotment was given with condition that the allottee will not transfer any portion of the allotted land within 10 years from the date of allotment. After the allotment 0.20 acres of allotted land was recorded in Khatian No. 918 comprising Old C.S. Plot No. 1521 and 1522/2383 and another 2 acres of land was recorded in Khatian No. 944 comprising Old C.S. Plot No. 1522/2384 in the name of the predecessor of the respondent-plaintiffs. Thereafter, on expiry of 10 years, from the date of allotment, said Jagabandhu Saha (since dead) sold 1.63 acres of land out of the aforesaid land and rest land measuring 0.57 acres of land remained with him. After the death of said Jagabandhu Saha, the present respondent-plaintiffs and their mother Late Ashubala Saha, being the legal heirs of late Jagabandhu Saha became the owner of the suit land and during resurvey

operation the name of the respondent-plaintiffs and their mother was recorded in Khatian No.937 for land measuring 0.57 acres as joint possessors. In the middle part of December, 1987, the defendant No.3 of the main suit was given permission to possess 8 gandas of land i.e. 0.16 acres of the suit land as mentioned in Schedule-B of the plaint and later on, during resurvey operation, the name of Nani Das was mentioned in column No. 16 of the said Khatian as a permissive possessor and since then, the suit land as mentioned in Schedule-B was under his peaceful possession. But thereafter, in the year 2004, said Nani Das without any authority handed over the possession of the said land i.e. the suit land to the present appellant-defendant, Harendra Kumar Das. The respondent-plaintiffs requested said Nani Das and Harendra Kumar Das to hand over the possession of the suit land to the respondent-plaintiffs but they did not pay any heed to their request. Thereafter, the appellant-defendant made an application to the D.M. & Collector, South Tripura, Udaipur for cancellation of allotment of the suit land and the SDM, Santirbazar drew up of a revenue proceeding and on 27.02.2010, the SDM, Santirbazar cancelled the allotment order of Jagabandhu Saha/Respondent plaintiffs in respect of the suit land as mentioned in Schedule-B of the plaint i.e. 0.16 acres in respect of Plot No. 1552(P) corresponding to resurvey Plot No. 3878 and Khatian No. 937 with an observation that the appellant-defendant has been possessing the land for the last 45 years and on the

basis of enquiry report of Tahashildar Belonia, TK. After that, the respondent-plaintiffs had sent a legal notice to DM & Collector, South Tripura, Udaipur and SDM, Santirbazar but inspite of receiving notice they did not take any steps.

04. Hence, the respondent-plaintiffs filed the suit before the Learned Trial Court. The appellant-defendant contested the suit by filing written statement denying the claim of the respondent-plaintiffs and submitted that although 0.16 acres of land was recorded in the name of respondent-plaintiffs even though the said land was under possession of said Nimai Das and Smt. Santoshi Das i.e. the defendant Nos. 3(A) and 3(B) of the main suit and the present appellant-defendant prior to allotment of land to the respondent-plaintiffs. According to them, since the respondent-plaintiffs were not in possession of the suit land at any time, so, the SDM, Santirbazar rightly cancelled the allotment of the suit land as mentioned in Schedule-B of the plaint.

05. Upon the pleadings of the parties, Learned Trial Court (Civil Judge, Junior Division, Belonia, South Tripura) framed the following issues:

Issues

- 1) Whether the suit is maintainable in its present form and nature?**
- 2) Whether the plaintiffs are the joint owners over the B schedule of the plaint as mentioned in the plaint?**
- 3) Whether the order passed by the SDM Shantirbazar in Revenue Case No.**

09/09 dated 27.02.2010 is liable to be declared as illegal and void?

4) Whether the plaintiffs are entitled to get a decree of recovery of possession by evicting the defendant Nos 3 and 4 from the 'B' schedule of the land as mentioned in the plaint?

5) Whether the plaintiffs are entitled to get any other relief or reliefs, as prayed for?

06. To substantiate the issues, both the parties have adduced oral/documentary evidence on record:

A) Plaintiffs' Witnesses:-

PW-1 Sri Matilal Saha

PW-2 Sri Umesh Sutradhar

PW-3 Sri Ratan Das Baishnab

B) Plaintiffs' Exhibits:-

i) Certified Copy of Khatian No. 944 under Mouja-West Charakbai (Exhibit 1),

ii) Khatian No. 918 under Mouja-West Charakbai (Exhibit 2),

iii) Certified Copy of finally published Khatian no-937 under Mouja-West Charakbai (Exhibit 3),

iv) Postal receipt and acknowledgement there on in respect to notice u.s 80 (1) of CPC (Exhibit 4 series).

C) Defendants' Witnesses:-

DW-1 Sri Harendra Kr Das

DW-2 Sri Gopal Krishna Debnath

DW-3 Sri Subhash Kuri Reang

DW-3A Sri Nema Das Banik

DW-4 Sri Shiba Prasad

D) Defendants' Exhibits:-

i) True copy of registered partition deed (Exhibit D-1 series, 5 sheets)

ii) Certified copy of Khatian No. 937, Exbt. D-2

iii) Certified copy of sale deed bearing no 1-670 (Exbt D-3Series 4 sheets)

iv) Certified copy of sale deed bearing no 1-221 (Exbt D-4Series, 4 sheets)

v) Certified copy of application dated 13.07.2006 (Exbt D-5 Series, 2 sheets)

vi) True copy of map (Exbt D-6)

vii) True copy of map (Exbt D- 7Series, 1 sheet)

Viii) Original copy of show cause notice (Exbt D-8 Series, 2 sheets)

ix) Original copy of allotment (Exbt D-9 Series, 2 sheets)

x) Original copy of allotment order (Exbt D-10)

xi) Original copy of inquiry report (Exbt D-11 Series, 2 sheets)

xii) Original copy of inquiry report (Exbt D-12 Series, 2 sheets)

xiii) Certified copy of Khatian no 628/1, 628/2, 1243 (Exbt D-13 Series, 2 sheets)

xiv) Certified copy of Khatian no 1/81 (Exbt D-14)

xv) Certified copy of order dated 27.02.2010 and 31.07.2010 (Exbt D-15 Series, 4 sheets)

xvi) Original copy of notice in revenue proceeding (Exbt D-16 Series, 2 sheets)

xvii) True copy of Sabek Khatian bearing No. 396, 457 and 272 (Exbt D-17 Series, 3 sheets)

07. Finally, on conclusion of trial and after hearing arguments of the parties, Learned Court below by judgment dated 07.05.2016 decreed the suit in favour of the respondent-plaintiffs. For the sake of convenience, the operative portion of the order of Learned Trial Court runs as follows:

"In view of my decisions on the aforesaid issues the suit of the plaintiffs is hereby decreed.

It is hereby declared that the plaintiffs are the joint owners over the land specified B schedule of the plaint.

It is also declared that the order passed by the Ld SDM Shantirbazar in Revenue Case No. 09/2009, dated

27.02.2010 is illegal, void and inoperative.

The defendant No 3 and 4, their men and agents are hereby directed to hand over the possession of the suit land to the plaintiffs.

With the aforesaid orders, this case is disposed of on contest.

Prepare a decree accordingly and place before me for signature within 15 days from today."

08. Challenging that judgment, the present defendant-appellant preferred an appeal before the Court of Learned District Judge, South Tripura, Belonia which was numbered as Title Appeal No.11 of 2016 and the Learned First Appellate Court, after hearing arguments of both the sides, by judgment dated 16.02.2022 dismissed the appeal filed by the appellant. The operative portion of the judgment of the Learned First Appellate Court runs as follows:

"In the result, I find no merit in the appeal to interfere with the judgment and decree passed by the learned trial Court in Case No. T.S. 16 of 2011. Therefore, the appeal merits rejection which I hereby do.

Prepare appellate decree accordingly.

The case is thus disposed of on contest."

09. Challenging that judgment of the Learned First Appellate Court, the appellant-defendant has preferred this appeal under Section 100 of CPC before the High Court. At the time of admission of the appeal, vide order dated 18.04.2022 the following substantial question of law was framed:

I. Whether the Ld' courts below without proper appreciation of the Exbt. D-11 the field verification report

of the Revenue Inspector and the order of cancellation of the allotment in question in the name of the Plaintiff-Respondents by the SDM, Santir Bazaar, Belonia, South Tripura District, Exbt. D-16 passed the judgment and decree in favour of the Plaintiff-Respondents?

II. Whether the judgment and decree passed by the Ld' Courts below are perverse?

10. At the time of hearing of argument, Learned Senior Counsel for the appellant, Mr. D.R. Choudhury assisted by Learned Counsel Mr. S. Sarkar drawn the attention of the Court that the respondent-plaintiffs did never possess the suit land at any point of time rather it was under peaceful possession of one Nani Das and thereafter, the present appellant-defendant and for that on the basis of his prayer, the SDM, Santirbazaar rightly cancelled the allotment order illegally granted in favour of the respondent-plaintiffs. But the Learned Courts below did not consider the same and most arbitrarily misinterpreted the judgment of this High Court delivered in connection with case no. W.A. No.4 of 2015 and cancelled the order of SDM, Santirbazar without any basis for which the interference of the Court is required.

Learned Senior Counsel also referred the para no. 5 of the said judgment and submitted that by the said judgment this High Court considered the period of '3' years but that 3 years would be counted from the date of knowledge. Because according to Learned Senior Counsel, the defendant-appellant and Sri Nani Das had no knowledge

that the suit land as mentioned in Schedule-B of the plaint was allotted in the name of the respondent-plaintiffs and when the matter came to his knowledge, immediately, he sought redress before the Revenue Authority and the Revenue Authority after physical verification found that the suit land was under peaceful possession of the appellant-defendant since last 45 years and cancelled the order of allotment granted in favour of the respondent-plaintiffs. He also referred another judgment of the Hon'ble Andhra Pradesh High Court reported in **AIR (1995) AP 23** and **AIR (2009) SC 3115** and further referred the provision of Section 14 and 15 of TLR and LR Act, 1960 and finally, submitted that by the said impugned judgment, the lawful title of the defendant-appellant has been cancelled by the Learned Trial Court and finally urged for setting aside the judgment passed by Learned First Appellate Court.

11. On the contrary, Learned Senior Counsel for the respondents, Mr. S.M. Chakraborty, assisted by Learned Counsel Ms. S. Deb(Gupta) submitted before the Court that both the Courts below, after considering the evidence on record decreed the suit in favour of the respondent-plaintiffs and Learned Senior Counsel submitted that the suit land as mentioned in Schedule-B was under the possession of the of the respondent-plaintiffs and their predecessor Jagabandhu Saha since long back beyond the statutory period of limitation and finding the predecessor of the respondent-

plaintiffs in possession, the Revenue Authority vide allotment order dated 15.03.1974 allotted land measuring 2 acres in favour of the predecessor of the respondent-plaintiffs and also vide allotment order dated 31.07.1973 allotted land measuring 0.20 acres in favour of the predecessor of the respondent-plaintiffs.

Learned Senior Counsel also submitted that had the defendant-appellant or said Nani Das be in possession of the suit land as mentioned in Schedule-B, in that case, either the name of said Nani Das or the present defendant-appellant definitely could be reflected in relevant column of the respective Khatian Nos. 944 and 918. So, it is crystal clear that on those lands excepting Sri Jagabandhu Saha, during his life time no other person/persons have/had any possession over the same which reveals from Exhibit-1 and 2. Learned Senior Counsel further submitted that the respondent-plaintiffs in their plaint admitted that said Jagabandhu Saha during his life time transferred land measuring 1.63 acres of land from his allotted land keeping the rest land measuring 0.57 acres with him. And after his death, vide mutation proceeding No.MR 20080049 the said land measuring 0.57 acres was recorded in the name of the respondent-plaintiffs and their mother in Khatian No.937.

12. Learned Senior Counsel further submitted that the respondent-plaintiffs in their plaint also mentioned that in the year 1987 they gave permission to one Nani Das

(defendant No.3 of the main suit) to possess land measuring 0.16 acres (8 Gandas) i.e. the suit land as mentioned in Schedule-B of the plaint for the purpose of utilization for which his name was reflected in Khatian No.937 in the respective column of possession against Old C.S. Plot No.1522(P) corresponding to Revisional C.S. Plot No.3878 as permissive possessor. But later on, said Nani das, in the year 2004 without any authority handed over the possession of the suit land as mentioned in Schedule-B of the plaint to the present defendant-appellant and after that he could manage the survey staff and obtained a concocted report of possession over the suit land and on the basis of which SDM, Santirbaazar cancelled the allotment of the suit land most arbitrarily and illegally as because according to Learned Senior Counsel, the SDM, Santirbaazar had no authority to cancel the order of allotment granted to the predecessor of the respondent-plaintiffs or the present respondent-plaintiffs in view of Rule 15 of TLR and LR (Allotment of Land) Rules 1980. Furthermore, according to Learned Senior Counsel, prior to given permission to said Nani Das, in the middle part of December, 1987, he never possessed the suit land and he only came to possess the suit land as a permissive possessor from the month of December, 1987 and thereafter, he handed over the possession to defendant No.4, i.e. the present appellant without any authority and managed to obtain order in his favour for which Learned Trial Court below rightly decreed the suit in favour of the respondent-plaintiffs

cancelling the order of SDM, Santirbaazar dated 31.07.2010 in Revenue Case No.9 of 2009.

Learned Senior Counsel further submitted that the judgment of the Division Bench of this High Court passed in W.A. No.4 of 2015 (supra), the limitation period of 3 years was rightly mentioned and the Learned Court below in view of the principle of the said judgment decreed the suit in favour of the respondent-plaintiffs and finally submitted that the substantial questions of law in this case stands in favour of the respondent-plaintiffs and urged for dismissal of this appeal with costs confirming the judgment and decree of the Learned First Appellate Court.

13. I have heard detailed arguments of Learned Counsel of both the sides and gone through the records of the Learned Court below. Admittedly, both the Learned Courts below gave concurrent findings and decreed the suit in favour of the respondent-plaintiffs. The respondent-plaintiffs filed the suit before the Court of Learned Civil Judge, Junior Division seeking decree of declaration of title of plaintiffs over the suit land as mentioned in Schedule-B of the plaint along with recovery of possession with further declaration that the order dated 27.02.2010 passed by SDM, Santirbaazar, cancelling the order of allotment in the name of respondent-plaintiffs as void and illegal.

14. Their case was that originally their predecessor Jagabandhu Saha got allotment of land measuring 2 acres on

15.03.1974 and also got allotment of land measuring 0.20 acres on 31.07.1973 as per the TLR and LR Act and its connected allotment rules and after the allotment ROR was prepared in the name of their predecessors. Then after expiry of 10 years, their predecessors sold land measuring 1.63 acres of land out of the entire land keeping land measuring 0.57 acres with him and after his death, the respondent-plaintiffs got their land mutated in their favour. It was also the case of the respondent-plaintiffs that in the middle part of December, 1987, they allowed defendant No.3 to possess 8 gandas of land as permissive possessor who thereafter in the year 1994, without any authority handed over possession to defendant No.4 i.e. the present appellant. Then the respondent-plaintiffs requested said Nani Das and Harendra Das i.e. the appellant to hand over possession but they did not respond rather made an application to D.M. and Collector for cancellation of allotment and on the basis of his prayer, the matter was enquired into and a revenue proceeding was drawn up and SDM, Santirbaazar by order dated 27.02.2010 cancelled the allotment of the land as mentioned in Schedule-2. After that the respondent-plaintiffs filed the suit. Before the Learned Trial Court, both the parties have adduced their oral/documentary evidence on record. From the side of respondent-plaintiffs three witnesses were adduced and from the side of defendant-appellant five numbers of witnesses were adduced.

15. PW1, Matilal Saha is one of the plaintiffs of the original suit. He in his examination-in-chief in affidavit submitted his version in the plaint and relied upon the documentary evidence. In course of cross-examination by the defendant Nos. 1 and 2, he admitted that Harendra Kumar Das filed a case before the Revenue Court for cancellation of the allotment order of the suit land and as per order of that Court one enquiry was held and thereafter, allotment was cancelled. During cross-examination by defendant Nos.3(A) and 3(B), he submitted that on the basis of prayer of Harendra Kumar Das, allotment was cancelled and he did not prefer any appeal challenging that order. During cross-examination by PW4, he stated that they sold some portion of land from the land which was allotted in the name of their father and further stated that the suit land was partitioned between him and other plaintiffs by a registered deed. Nothing more came out relevant. Similarly, PW2 Umesh Sutradhar in his examination-in-chief tried to support the version of the respondent-plaintiffs in the plaint. During cross-examination by defendant Nos.1 and 2, he stated that he cannot say the Dag Number, Khatian Number and the boundary of the suit land. During cross-examination by defendant Nos.3 and 4, he submitted that the father of the defendant Nos.3(A) and 3(B) namely, Nani Gopal Das expired in the year 1978. PW3 Ratan Das Baishnab in his examination-in-chief in affidavit supported the case of the respondent-plaintiff. During cross-examination by defendant

Nos.1, 2 and 3, nothing came out relevant. During cross-examination by defendant No.4, he stated that he was unable to say the dag number and Khatian Number of the suit land.

16. The appellant-defendant adduced few witnesses. The appellant as DW1 submitted his examination-in-chief before the Court and relied upon some documentary evidence. During cross-examination by the respondent-plaintiffs, he stated that in Khatian No.937, nowhere his name was recorded as permissive possessor or forceful possessor. He also could not say as to whether his father raised any objection against the allotment order of land under Khatian No.937 or not. DW2 Gopal Krishna Debnath submitted his examination-in-chief in affidavit. He tried to support the case of the appellant-defendant. During cross-examination by the respondent-plaintiffs, he stated that the Khatian Number of the suit land is 937 and Plot No. is 3878, but he could not say in whose name Khatian was issued. Similarly, DW3, Subhash Kuri also deposed in the same manner. During cross-examination, he reiterated the same fact as stated by DW2. DW4 Shiba Prasad Banik also deposed in the same manner. DW 3A Nimai Das also tried to support the case of the defendant-appellant and he is the defendant No.3A of the suit. But during cross-examination, he stated that the suit land is not under his possession and he could not say the dag number and Khatian number where

his father constructed hut. These are the synopsis of the evidence on record.

17. I have perused Exhibit-1 and 2 i.e. the certified copy of Khatian No.944 and 918 standing in the name of the predecessor of the respondent-plaintiffs. From the said documents it appears that 2 acres of land was recorded in the name of Jagabandhu Saha vide allotment order No.8/74 dated 15.03.1974 and 0.20 acres of land was recorded in the name of said Jagabandhu Saha vide allotment order No.177/73 dated 31.07.1973 in Khatian No.918. In both the Khatians, nowhere I find the name of appellant-defendant or Nimai Das as possessor in the respective column of possession. Had said Nani Das or the present appellant or his father could utilize any plot of land in the aforesaid lands, in that case definitely their names could have reflected in the relevant column of possession either as permissive possessor or as forceful possessor. So, the contention of the appellant-defendant that they are using the land since last 45 years cannot be legally accepted as lawful and as per TLR and LR Act before preparation of finally published Khatian, so many stages are being followed and after exhausting of all the processes Khatians are being prepared in final shape. There is no evidence on record from the side of the appellant-defendant that prior to 1973, the appellant-defendant or his predecessor had ever possessed any portion of aforesaid land measuring 2 acres or 0.20 acres and on any portion of

suit land i.e. land measuring 0.20 acres. Even there is no evidence on record that prior to allotment of the suit land along with other lands in favour of the predecessor of the respondent-plaintiffs, the defendant appellant or his predecessor or said Nani Das ever made any attempt to get allotment of the same.

18. In this regard, I would like to mention herein below the relevant provisions of Section 43(2) and Section 43(3) of TLR and LR Act which provides as under:

"43(2)When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner."

"43(3)Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

19. In course of hearing, Learned Senior Counsel for the appellant submitted that the appellant had no information about the allotment of the suit land in favour of the predecessor of the respondent-plaintiffs and subsequent mutation of their name in Exhibit-3 and when it came to his knowledge, immediately, he filed a petition before the District Collector, South Tripura for cancellation of allotment of the suit land. Accordingly, a revenue proceeding was drawn up and SDM, Santirbazar rightly cancelled the order of allotment in the name of the respondent-plaintiffs or their predecessor. He further submitted that on careful scrutiny of the judgment of the High Court, it appears that there was no

embargo to file a petition after gathering information of allotment of land which the appellant did in the present case.

20. In course of hearing, Learned Senior Counsel referred one citation of **AIR (1985) AP 23** in Para No. 4 of the judgment, the Hon'ble High Court of Andhra Pradesh observed as under:

"4.*****

Therefore the Court would not adopt unduly rigid or overstrict view in construing whether sufficient cause has been established or not. The Court also should not readily accept the submissions made, but has to scrutinize each case on the facts whether sufficient cause has been established or not. In this case, admittedly intimation was given on the last day of the 90th day from the date of death of the deceased defendant. Obviously he wants to avail of full period of limitation prescribed to see that the application is filed beyond 90 days. It should also be noted that the details of legal representatives have not been given. In this case on the above facts, admittedly a report was submitted to the petitioner on 15-9-76 informing the names of the proposed respondent to be the L.Rs. entitled to represent the estate of the deceased proprietor of the first defendant firm. On the next day i.e., on 16-9-76 an application to that effect has been filed. I am satisfied on the facts in this case that the petitioner has established sufficient cause for not bringing the L.Rs. on record within the prescribed period of limitation."

The lower Court did not approach the problem from the above perspective and thereby committed material irregularity in exercise of the powers conferred under S.5 of the Limitation Act. Accordingly, C.R.P. No. 781/83 is allowed and the delay in seeking to set aside abatement to bring the legal representatives of deceased defendant on record is condoned. Consequently I.A. No. 340/77 is allowed and the abatement is set aside. Hence C.R.P. No. 1497/82 is allowed. Accordingly, I.A. No. 959/76 and C.R.P. No. 2231/82 are also allowed and the lower Court is directed to bring the proposed respondents as L.Rs. of the deceased proprietor of the defendant

and proceed with the trial of the suit according to law, subject to the petitioner paying a sum of Rs. 250/- to Sri G. Krishna Murty, learned counsel appearing for the respondent. This amount has to be paid on or before 13th June 1983 and if the amount is not paid, the C.R.Ps. shall stand dismissed. There will be no order as to costs."

21. Referring the same, Learned Senior Counsel submitted that when the matter came to the knowledge of the defendant-appellant, so, immediately he sought redress. So, according to Learned Senior Counsel, limitation was not a bar against the appellant to sought redress before the Collector in time. Learned Senior Counsel further referred another citation of this High Court reported in **(2015) 2 TLR 661** in Para No.5 of W.A. 4 of 2015, this High Court observed as under:

"5. At the outset, we may notice that the land was allotted in favour of the writ petitioner in the year 1988. Assuming that there was any error in the allotment, such allotment should have been challenged within a reasonable time. Allotments cannot be set aside after expiry of reasonable period. What is a reasonable period may depend on the facts of a particular case but normally the reasonable period will not exceed 3 years at the most. It is only in cases where fraud is proved that the period of limitation will start from the date of discovery of the fraud. Otherwise within a reasonable period, proceedings to cancel allotment must start. A person who is allotted land develops the land by dint of his hand work. He invests money and time on the land. After he has developed the land the allotment cannot be set aside after two decades on the ground that the objector had a better claim to the land."

22. Learned Senior Counsel submitted that although the Learned Courts below relied upon the said judgment, but

if the principle of the aforesaid judgment is meticulously scrutinized, it would be observed that there was no default on the part of the appellant to seek redress to the Revenue Authority in time. Learned Senior Counsel also relied upon another judgment of the Hon'ble Apex Court reported in **AIR (2009) SC 3115** in Para No.35 observed as under:

"35. Regarding the limitation, the High Court observed as under:-

"Undisputedly, the period of limitation prescribed under the law for such a suit is three years from the date the cause of action accrued to the plaintiff. It has been averred by the plaintiff in para 9 of his plaint, as to cause of action, as under:-

"that the cause of action has arisen on 31.10.87 from death on 20.2.88 from mutation and on various other dates from the knowledge of the illegalities and wrongful actions of Village Jabal Jamrot Pargana Haripur Teh. and Distt. Solan within the jurisdiction of this Court, hence this matter has jurisdiction in the matter."

23. Finally, Learned Senior Counsel submitted that there was no error in the order passed by SDM, Santirbazaar in Revenue Case No.9 of 2009 and lastly, Learned Senior Counsel submitted that since both the Courts below have misinterpreted the judgment of the High Court as mentioned above, so, the judgments of the Learned Courts below cannot sustain in the eye of law and prayed for setting aside the judgment of the Learned First Appellate Court. Here I would like to mention herein below the relevant provision of Section 14 and 15 of TLR Act.

Section 14 of TLR Act

14. Allotment of land.

(1)The Collector may allot land belonging to the Government for agricultural purposes or for construction of dwelling houses, in accordance with such rules as may be made in this behalf under this Act; and such rules may provide for allotment of land to persons evicted under section 15.

(2)The [State Government] shall have power-

(a)to allot any such land for the purpose of an industry or for any purpose of public utility on such conditions as may be prescribed, or

(b)to entrust the management of any such land or any rights therein to the gram panchayat of the village established under any law for the time being in force.

(3) The rules under sub-sections (1) and (2) allotment of land shall provide for giving preference to the members of the co-operative farming societies formed by marginal farmers, landless agricultural labourers, jumias and members of the Schedules Tribes and Scheduled Castes in allotting land.

Section 15 of TLR Act

15. Unauthorised occupation of land.

(1)Any person who occupies or continues to occupy any land belonging to Government without lawful authority shall be regarded as a trespasser and may be summarily evicted therefrom by the competent authority and any building or other construction erected or anything deposited on such land, if not removed within such reasonable time as such authority may from time to time fix for the purpose, shall be liable to be forfeited to the Government and to be disposed of in such manner as the competent authority may direct:

Provided that the competent authority may, in lieu of ordering the forfeiture of any such building or other construction, order the demolition of the whole or any part thereof.

(2)Such trespasser shall also be liable by way of penalty to pay a sum which may extend to six times the annual assessment on such land as may be specified by the competent authority and such sum shall be

recoverable in the same manner as an arrear of land revenue.

(3) Upon payment of the penalty referred to in sub-section (2), the trespasser shall have the right of tending, gathering and removing any ungathered crops.

From the aforesaid provisions, it appears as to how allotment of land is given to any person under the TLR and LR Act and what procedure is to be followed for unauthorized occupants of the Government land. From the records, it appears that till 1973 to 2010, the appellant defendant could not show any document in respect of his possession over the suit land save and except the entry of his possession as "permissive possessor" in Khatian No.937. Now, if we see the evidence of the respondent-plaintiffs, it appears that in the middle part of 1997, they allowed said Nani Das to possess the suit land as permissive possessor but later on, said Nani Das beyond their knowledge and without any authority handed over possession of the suit land to the present appellant.

24. In course of hearing of argument, Learned Senior Counsel for the respondent-plaintiffs has drawn the attention of the Court, Rule 15 of the Tripura Land Revenue and Land Reforms Allotment Rules, 1980 wherein it provides as under:

"Nothing in these rules shall affect any previous order of allotment passed and any right, privilege, obligation or liability acquired, accrued or incurred under the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1962."

25. Referring the same, Learned Senior Counsel submitted that in view of the aforesaid rule there was no

scope on the part of SDM, Santirbazaar to illegally cancel the order of allotment in respect of the suit land in favour of the appellant-defendant. According to Learned Senior Counsel, both the Courts below in view of the judgment of the Division Bench of the High Court, rightly decreed the suit in favour of the respondent-plaintiffs and the aforesaid rule of 1980 clearly bars the cancellation of allotment, by the Government to any person, if issued, in view of the earlier allotment rules of 1962.

26. In **Civil Rule No.64 of 1989** dated 02.11.1995 reported in **(1996) 2 GLR 27**, the then Agartala Bench of Gauhati High Court in para no.5 Hon'ble the Gauhati High Court observed as under:

"5. *****

A plain reading of the aforesaid Rule-12 of the 1980 Rules makes it clear that an allotment of land made under Section(1) of Section-14 of the 1960 Act and in accordance with the 1980 Rules only would be subject to the conditions specified in Rules-12 of the 1980 Rules. Accordingly an allotment of land under Section(1) of Section-14 of the 1960 Act made in accordance with the 1962 Rules would not be subject to the conditions specified in Rule-12 of the 1980 Rules. This conclusion is further reinforced by the fact that in Rule-15 of the 1980 Rules, orders of allotment under the 1962 Rules have been expressly saved from the operation of the 1980 Rules and it has been stated therein that any rights, privilege, obligation or liability acquired, accrued or incurred under the 1962 Rules shall not be affected by the 1980 Rules. This being the position of law, I am of the considered opinion that the Sub-Divisional Officer, Amarpur could not resort to the provisions of Rule 12 of the 1980 Rules to cancel the allotment of land made in favour of the petitioner under the 1962 Rules. Thus the impugned order dated 3.2.89 of the Sub-Divisional Officer, Amarpur, South Tripura directing issue of notice to the petitioner to show cause as to why the

allotment of the aforesaid land made in favour of the petitioner under the 1962 Rules shall not be cancelled under Rule 12 of the 1980 Rules and the impugned show cause notice dated 3.2.89 issued pursuant to the impugned order are without jurisdiction and are liable to be quashed."

27. From the above citation, it appears that allotment of land given under Rule 1962 cannot be cancelled by invoking the rule made under Tripura Land Revenue and Land Reforms (Allotment of Land) Rules 1980 in view of the bar provided in Rule 15. The allotment of land in favour of the predecessor of the respondent-plaintiff, Jagabandhu Saha was made by the Government in the year 1973 and 1974 in view of the Allotment of Land Rules 1962 as existed that time but the Revenue Authority i.e. SDM, Santirbazar vide order dated 27.02.2010 in Revenue case No.9 of 2009 most illegally cancelled the allotment order of the suit land ignoring the bar provided in Rule 15 of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules 1980. So, in my considered view the Learned First Appellate Court rightly upheld the order of the Learned Trial Court below because from the pleadings of the parties and also from the oral and documentary evidence on record of the parties and also from the judgment of the Learned Courts below, it appears that the defendant-appellant or his predecessor or Nani Das who was arrayed as defendant No.3 of the original suit never have/had any lawful right, title and interest over the suit land rather Nani Das in the year 1987, came to possess the suit land as permissive possessor and thereafter,

he most illegally handed over possession of the suit land to the present defendant-appellant and on the basis of an imaginary and concocted report, SDM, Santirbazaar most arbitrarily and illegally cancelled the order of allotment of the suit land in favour of the appellant-defendant by order dated 31.07.2010. Accordingly, the substantial questions of law formulated are answered in affirmative in favour of the respondent-plaintiffs.

28. In the result, the appeal filed by the present appellant-defendant stands dismissed on contest with costs being devoid of merit. The judgment and decree dated 16.02.2022 delivered by Learned District Judge, South Tripura, Belonia in connection with Title Appeal No. 11 of 2016 whereby the Learned First Appellate Court affirmed the judgment dated 07.05.2016 and decree dated 27.05.2016 delivered by Learned Civil Judge, Junior Division, Belonia in connection with case No. T.S. 16 of 2011 is hereby affirmed and accordingly it is upheld.

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

Prepare decree accordingly and send down the LCRs.

JUDGE

SABYASACHI
BHATTACHARJEE

Digitally signed by
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