

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 561 OF 2023

- 1. Sri Dharmacharan Tripura,**
aged 60 years, son of late Rabi Das Tripura, resident of
Sonaichari, Ratanpur, P.O. Ratanpur, P.S. Belonia,
District-South Tripura.
- 2. Smt. Harairang Tripura,** aged 60 years, wife of
Sri Dharmacharan Tripura, resident of
Sonaichari, Ratanpur, P.O. Ratanpur, P.S. Belonia,
District-South Tripura.

.....**Petitioners.**

Vrs.

- 1. The State of Tripura,** represented by the Secretary, Government of
Tripura, Revenue Department, Civil Secretariat, P.O. New Capital
Complex-799010, P.S. New Capital Complex, District-West Tripura.
- 2. The Secretary,** Revenue Department, Government of Tripura, Civil
Secretariat, P.O. New Capital Complex-799010, P.S. New Capital
Complex, District-West Tripura.
- 3. The Under Secretary,** Revenue Department (L.R. Cell), Government of
Tripura, Civil Secretariat, P.O. New Capital Complex-799010, P.S. New
Capital Complex, District-West Tripura.
- 4. The District Magistrate and Collector,** South Tripura, Belonia.
- 5. The Sub Divisional Magistrate,** Belonia, South Tripura.
- 6. Department of Forest,** represented by the Principal Chief Conservator of
Forest, Govt. of Tripura, Aranya Bhavan, Nehru Complex, Kujaban, Dist-
West Tripura, Pin-799010.
- 7. The Principal Chief Conservator of Forest,** Govt. of Tripura, Aranya
Bhavan, Nehru Complex, Kunjaban, Dist-West Tripura, Pin-799010.
- 8. District Forest Officer,** Belonia, Dist-South Tripura.
- 9. Sub-Divisional Forest Officer,** Belonia, Dist-South Tripura.
- 10. Range Officer,** Belonia, Dist-South Tripura.
- 11. Beat officer,** Ratanpur, Sonaichari, Belonia, South Tripura.

.....**Respondents.**

For the petitioner (s) : Mr. P.K.Biswas, Senior Advocate.
Mr. Sankar Bhattacharjee, Advocate.
Mr. P. Majumder, Advocate.
Mr. C. Mog, Advocate.
Mr. P. Biswas, Advocate.

Ms. R. Nandi Majumder, Advocate.
Mr. R. Nath, Advocate.

For the respondent (s) : Mr. D. Sarma, Addl. G.A.

Date of hearing and
date of delivery of
judgment and order : **21.05.2024**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(Oral)

Heard Mr. P.K.Biswas, learned senior counsel assisted by Mr. Sankar Bhattacharjee, learned counsel appearing for the petitioners. Also heard Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents (here-in after referred to as “**respondents**”).

2. By means of filing the present writ petition, the petitioners have challenged the decision of the respondents to allot a land measuring 2 gandas in favour of them cancelling the earlier allotment order dated 04.05.1992 for a land measuring 4.08 acres.

2.1 Briefly stated, the petitioners had earlier filed a writ petition bearing WP(C) No.13 of 2023 challenging the action of the respondents to evict/dispossess them from the land measuring 3.20 acres. In that writ petition, the petitioners claimed that in the year 1984 they were allotted the said land by the competent authority and since then they have been possessing the land taking over physical possession and planting trees. However, while disposing of the aforesaid writ petition, this Court had directed the respondents to consider the case of the petitioners in accordance with law within a period of one month from the date of receipt of copy of the order dated 09.01.2023. It was further directed that it would be open for the petitioners to file any documents in support of their claim and also make a personal representation.

“[See rule 6(1)]

CLAIM FORM FOR RIGHT TO FOREST LAND

1. Name of the claimant(s): **Sri Dharma Charan Tripura.**

2. Name of the spouse: **Smt. Harai Rang Tripura**

3. Name of father/mother: **Lt. Rabidas Tripura**

4. *Address:*

5. Village: *Ratanpur*

6. Gram Panchayat: **Ratanpur ADC Village.**

7. Tehsil/Taluka: **Ratanpur.**

8. *District: South Tripura.*

9. (a) Scheduled Tribe: ☒ Yes/No

(Attach authenticated copy of Certificate)

(b) Other Traditional Forest Dweller: ☒ Yes/No

If a spouse is a Scheduled Tribe (attach authenticated copy of certificate)

10. Name of other members in the family with age (including children and adult dependents) : 1.Sri Jaharnanda Tripura(Son) Age-33

: 1. Sri Jaharnanda Tripura (Son) Age-33

2. *Sri Gobinda Tripura (son), Age-28*

Nature of claim on land:

1. Extent of forest land occupied

(a) ✓for habitation

(b) *for self-cultivation, if any:*

[See section 3(1)(a) of the Act]

2. *Disputed lands, if any:*

[See section 3(1)(f) of the Act]

3. *Pattas/leases/grants, if any:*

[See section 3(1)(g) of the Act]

4. *Land for in situ rehabilitation or alternative land, if any:*

[See section 3(1)(m) of the Act]

5. Land from where displaced without land compensation:

[See section 4(8) of the Act]

6. *Extent of land in forest villages, if any:*

[See section 3(1)(h) of the Act]

7. Any other traditional right, if any:

[See section 3(1)(1) of the Act]

8. *Evidence in support:*

(See rule 13)

9. Any other information:

Sd/-

Signature/Thumb-Impression of the Claimant(s).

*Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2007,
Government of India,
Ministry of Tribal Affairs”*

2.2 Thereafter, the Sub-Divisional Level Forest Rights Committee held a meeting on 16.09.2023 and it was decided by the members present in the meeting that proposal for total 3.20 acres of land as claimed by the petitioners would be allowed and the said decision was forwarded to the District Level Forest Rights Committee for taking necessary action. When the said decision of the Sub-Divisional Level Forest Rights Committee was communicated to the District Level Forest Rights Committee, then, it was detected that the allotment in favour of the petitioners was already cancelled under order dated 04.05.1992 for the reason that the earlier allotment order allotting land in favour of the applicants/the petitioners herein was erroneously allotted in violation and contrary to the Rules prescribed under Forest Conservation Act, 1980 and the said land was reverted back to the Forest Khatian. At this juncture, reference may be drawn to Section 2 of the Forest Conservation Act, 1980 which reads as under:

“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 organization not owned, managed or controlled by Government.”

3. It is an admitted position that the land in question is situated within the reserved forest area and it is not a Government Khas land. According to Section 2 of the Forest Conservation Act (for short, Act of 1980), no forest land can be declared to be ceased to be a reserved land

without the prior concurrence/approval of the Central Government and the Act of 1980 is applicable to all the States irrespective of any law or statute prevalent in such States. On plain perusal of the Section 2 of the Act of 1980, it comes to fore that the said provisions start with a *non obstante* clause which has made the provisions as mandatory and thus, no State or authority can pass any order *de hors* the provisions mentioned in the Act of 1980. The claim of the petitioners as submitted by Mr. Biswas, learned senior counsel is that the land measuring 4.08 acres was allotted by the DM & Collector, South Tripura in the year 1984. According to Tripura Land Allotment Rules, 1980(for short, "Allotment Rules") the cancellation of any land has to be made within 2(two) years in case the land is not physically possessed or the land is used contrary to the conditions laid down in the Allotment Rules.

4. Mr. Biswas, learned senior counsel has emphatically submitted that the allotment order was cancelled in the year 1992 i.e. after lapse of 8 years and as such, the cancellation of the allotment being made after 2 years is *non est*, arbitrary and is not enforceable in law. Learned senior counsel appearing for the petitioners has also relied upon some judgments passed by this Court regarding consequence of cancellation of allotment order passed after expiry of 2 years.

5. I have taken note of all the decisions cited, however, the facts of the instant case, is quite distinguishable from the facts of the referred/cited cases. In the cited cases, it is apparent that those lands were not situated within the reserved forest area and the Act of 1980 could not be made applicable in those cases. But, here, the questioned land is situated within the forest reserved area and come within the purview of Section 2 of the Act of 1980. Since the land was allotted in the year 1984 i.e. after the introduction of the

Act of 1980, the said allotment was made *de hors* the rules provided under Section 2 of the Act of 1980.

6. It is stated in the counter affidavit that the said allotment was made out of inadvertence and it was a mistake on the part of the authority concerned due to ignorance of the provisions of the Act of 1980. So, according to this Court, in this situation, when the initial allotment was made *de hors* the statutory provisions, then, at the very inception the said allotment was illegal and invalid in the eye of law and is liable to be cancelled. It is settled proposition of law that a mistake cannot be a ground for committing any future mistake and it may be rectified when it is detected by the competent authority.

7. I have noticed that not only allotment of the land of the petitioners has been cancelled by the competent authority but also the similar orders were made against other 160 persons. So, by the impugned order of cancellation [Annexure-R/4 to the counter affidavit], the competent authority intended to rectify the mistakes or the defects even in the order of the allotment and rectified accordingly in accordance with the provisions as embodied in the Act of 1980.

8. It is settled proposition of law that if the State or its instrumentalities has committed any mistake or wrong, it cannot be forced to perpetuate the same mistake or wrong. In the case on hand, the allotment not being made in consonance with the statutory provisions it would not constitute a precedence for directing the respondents to perpetuate the error for all times to come.

9. In the case in hand, the Sub-Divisional Level Forest Rights Committee of TTAADC has also taken decision providing allotment in favour of the petitioners for a land measuring 3.20 acres in contrary to the Act of 1980. There is no quarrel at the Bar that TTAADC is a State as defined under Article 12 of the Constitution of India, hence, the Act of 1980 is squarely applicable to the TTAADC authority also and being a State it is also bound to comply with the provisions as embodied in the Act of 1980. In view of this, the decision of the respondents not to go by the decision of the Sub-Divisional Level Forest Rights Committee is legally valid as it is inconsistent with the Act of 1980 and does not call for interference.

10. However, I have taken into consideration that for the last more than 40 years the petitioners have been possessing the said land and according to learned senior counsel appearing for the petitioners, several valuable trees are planted over the said allotted land measuring 4.08 acres. This Court will not decide about the quantum of loss the petitioners have incurred due to cancellation of the allotment, which was made in favour of the petitioners in the year 1984.

11. In the light of the said submission, I direct the State-respondents to make an on-spot verification and examine whether there are valuable trees over the said plot of land and if it is found that there are some valuable trees, in that case, the petitioners are entitled to compensation out of the said trees because the said trees from now would be belonged to the Forest authority. Furthermore, the Forest authority would be benefitted of such trees, if planted over the said plot of land. For this reason, the Forest authority should pay some compensation to the petitioners.

12. I have further noticed that according to the policy decision of the Government that 2(two) gandas of land shall be allotted in favour of a landless person in urban areas and 3(three) gandas of land shall be allotted in favour of a land less person residing in rural areas. It is informed that Ratanpur is situated in rural areas under the South Tripura District. If it is a rural area, then, the petitioners are entitled to get allotment of 3(three) gandas of land instead of 2(two) gandas as allotted to the petitioners under the order dated 25.04.2023 [*Annexure-16* to the writ petition]. Accordingly, necessary land should be allotted in favour of the petitioners considering the area where the land is situated.

13. For the reasons discussed and recorded here-in-above, following directions have been made:

(i) The decision of the respondents cancelling the allotment of land measuring 4.08 in favour of the petitioners under order dated 04.05.1992 is not interfered with and it is hereby upheld;

(ii) The decision of the respondents not to accept the decision of the Sub-Divisional Level Forest Rights Committee of TTAADC is also not interfered with and is thus upheld and affirmed.

(iii) The impugned order dated 25.04.2023 [*Annexure-16* to the writ petition] issued by the Sub-Divisional Magistrate, Belonia, South Tripura stands good and does not call for any interference.

(iv) The respondents are directed to consider the matter of compensation in the light of the observations made here-in-above in respect of the entitlement of the petitioners for the loss they incurred out of plantation of the trees, now in possession of the respondents and the respondents are further directed to allot 3(three) gandas of land in favour of the petitioners, if the

present land is situated within the rural areas. The said exercise of allotment and assessment of quantum of compensation for the loss the petitioners may have suffered shall be made within a period of 6(six) months in accordance with law from the date the respondents shall receive a copy of this order.

14. With the above observations and directions, the instant writ petition stands allowed and disposed.

JUDGE

sanjay
SANJAY GHOSH
Digitally signed
by SANJAY
GHOSH
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