

**HIGH COURT OF TRIPURA
AGARTALA**

CRP 95 of 2022

1. **Smt. Babita Saha,**
wife of late Subal Saha, Age-53
2. **Smt. Pinky Saha,**
daughter of late Subal Saha, Age-37
3. **Shri Mithun Saha,**
son of late Subal Saha, Age-32
4. **Smt. Simran Saha,**
daughter of late Subal Saha, Age-23

All are the residents of Pratapgarh, near Ekta Club,
Agartala, P.O. Agartala, P.S. East Agartala,
District- West Tripura

.....**Petitioners**

VERSUS

1. **The Sub-Divisional Magistrate,**
Sadar Sub-Division, Agartala,
P.O. Agartala, P.S. West Agartala,
District- West Tripura.
2. **Waris Finance International Ltd.**
Having its local offices at Waris Bhaban,
L.N Bari Road, P.O. Agartala,
P.S. East Agartala, District- West Tripura,
represented by its Chairman-cum-Managing
Director,
Present Address-
22 Camac Street, Block-A(1st Floor),
Kolkata-700016, West Bengal.
3. **North Eastern Development Finance
Corporation Ltd. (NEDFi),**
NEDFi House, G.S. Road, Dispur,
Guwahati- 781006, Assam.

..... **Respondents**

**With
CRP 76 of 2021**

1. **Hotel Simran Pvt. Ltd.,**
represented by its Managing Director,
Smt. Babita Saha, wife of late Subal Saha,
L.N. Bari Road, Agartala, P.S. East Agartala,
District- West Tripura.
2. **Smt. Babita Saha,**
wife of late Subal Saha,
3. **Smt. Pinky Saha,**
daughter of late Subal Saha,

- 4. **Shri Mithun Saha,**
son of late Subal Saha,
- 5. **Smt. Simran Saha,**
daughter of late Subal Saha,

All are the residents of Pratapgarh, near Ekta Club,
Agartala, P.O. Agartala, P.S. East Agartala,
District- West Tripura

.....Petitioners

VERSUS

- 1. **M/s Waris Finance International Limited,** Shane Ahmed Warsi,
Chairman-cum-Managing Director,
5-A Lenin Sarani, Opposite Metropoli,
First Floor, Hotel Kapoor Cottage,
Kolkata-700013.
- 2. **North Eastern Development Finance Corporation Limited(NEDFi),**
NEDFi House, G.S. Road,
Dispur, Guwahati- 781006, Assam.
- 3. **The State of Tripura-**
through Secretary, Department of
Revenue,
Government of Tripura, P.O. Agartala
Secretariat, Agartala, West Tripura,
PIN- 799010

.....Respondents

For Petitioner(s)	: Mr. SM Chakraborty, Sr. Advocate. Mr. RR Datta, Advocate. Ms. Ankita Pal, Advocate. Ms. A. Begam, Advocate.
For Respondent(s)	: Mr. Kohinoor N. Bhattacharya, G.A. Mr. M. Debbarma, Addl. G.A. Mr. K. De, Addl. G.A.
Date of hearing and delivery of judgment and order	: 01.02.2024
Whether fit for reporting	: Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

Heard Mr. SM Chakraborty, learned senior counsel assisted by
Mr. RR Datta, learned counsel, Ms. Ankita Pal, learned counsel and Ms. A.

Begam, learned counsel on behalf of the petitioners. Also heard Mr. Kohinoor N. Bhattacharjee, learned G.A. assisted by Mr. M. Debbarma, learned Addl. G.A. and Mr. K. De, learned Addl. G.A.

[2] The present CRP 95 of 2022 is filed under Article 227 of the Constitution of India against the order dated 18.11.2022 passed by the learned District Judge, West Tripura, Agartala in Civil Misc(Rev) 05 of 2021 dismissing the Review petition.

[3] The brief facts of the case of the petitioners in CRP 95 of 2022 are that the predecessor-in- interest of the petitioners took loan from NEDFi, a financial institutions, but he could not repay the loan and ultimately NEDFi initiated a proceeding in DRT against him and after his demise, it continued against his legal heirs, the petitioners herein. The matter was settled between the petitioners and NEDFi and the amounts so settled was deposited by the petitioners and consequent upon that NEDFi issued a clearance certificate dated 06.04.2021 in favour of the petitioners.

[4] It is contended by the petitioners that the auction process initiated by DRT also closed following the clearance of dues by the petitioners but respondent No.2 i.e. Waris Finance International Ltd. managed to get mutation for the said property by showing a purported sale certificate for the immovable property, namely Hotel Simran Pvt. Ltd. The Revenue Authority granted mutation in favour of them without serving any notice upon the petitioners. The petitioners when came to know about the said mutation, they filed a Review petition before the Collector to review the order of mutation, but he rejected the prayer.

[5] Thereafter, a Revision was filed before the Revisional Authority and that revision was also dismissed by taking into consideration the purported sale certificate, issued in the name of respondent No.2.

Challenging that order of Revisional Authority (Revenue Secretary), the petitioners filed a CRP before this Court numbered as CRP 76 of 2021 which is now taken for disposal along with this CRP 95 of 2022. The State Government at one point of time closed the Chit Fund business in Tripura and started taking action against them, including the respondent No.2. and to refund the deposit to the depositors, the properties of the Chit Funds were attached in which the property of the petitioners namely, Hotel Simran Pvt. Ltd. was also attached, as the mutation was in the name of respondent No.2 that too without any notice to the petitioners. The respondent No.1, Sub-Divisional Magistrate, Sub-Division- Sadar, Agartala filed a petition in the Court of learned District Judge, West Tripura, Agartala seeking permission to sell the property in auction, which was registered as Civil Misc (TPID) 09 of 2016, but in the said proceedings, the petitioners were not made parties. When the petitioners came to know about that judgment, they filed a Review Petition in that Court, but the said learned Court rejected the Review petition by taking into consideration the sale certificate ignoring the final order of the DRT dated 25.11.2011 and the clearance certificate dated 06.04.2011 issued by NEDFi in favour of the petitioners.

[6] Being aggrieved by and dissatisfied with the same, the petitioners have preferred this present CRP 95 of 2022 seeking following reliefs:

- i) Admit the petition;**
- ii) Issue notice upon the respondents.**
- iii) Call for the records of Civil Misc. (TPID) 09 of 2016 and Civil Misc. (Review) 05 of 2021 arising out of the above numbered case;**
- iv) After hearing the petition, to set aside the order dated 18.11.2022 passed in Civil Misc.(Review) 05 of 2021 along with the order dated 15.03.2021 passed in Civil Misc. (TPID) 09 of 2016.**
- v) Stay the operation of the order dated 18.11.2022 passed by the learned Court below and the auction sale of the property of the petitioners till disposal of the Revision Petition.**

[7] The CRP 76 of 2021 is filed by the petitioners under Article 227 of the Constitution of India for exercising the power of superintendence

against the order dated 12.03.2021 passed by the Secretary, Government of Tripura, Revenue Department in case No.04/Revision/Rev./Secy./2016 under Section 95 of the Tripura Land Revenue and Land Reforms Act, 1960 (TLR& LR Act, 1960).

[8] In the present CRP 76 of 2021, the case of the petitioners in brief is that the petitioner No.1 is a private limited company and the petitioner No.2 is the Managing Director of the said company. The predecessor-in-interest of the petitioners took a loan from the respondent No.2, but could not liquidate it during his lifetime. Ultimately, one proceeding was initiated by the Debt Recovery Tribunal (DRT), In which a One Time Settlement (OTS) was made and the entire settled amount was paid by the petitioners and thereafter, the recovery proceeding was withdrawn and a Loan Liquidation Certificate (LLC) was issued by the respondent No.2 in favour of the petitioner No.1. It is contended by the petitioners that the Collector, West Tripura created a Khatian in the name of the respondent No.1 with reference to a purported sale certificate, which was invalid, void and nullity in all respects. After getting information of such creation of the Khatian, when the petitioners filed review petition before the Collector, it was rejected. Thereafter, a revision petition was filed to the Revenue Secretary, Government of Tripura, but that also has been rejected without appreciating the fact properly and without exercising his jurisdiction in accordance with law.

[9] Aggrieved thereby, the petitioners have preferred the instant CRP 76 of 2021 seeking following reliefs:

- i) Admit the petition and call for records from the learned Revisional court below and issue notice upon the respondents;
- ii) To set aside the impugned order dated 12.03.2021 passed by the learned Revisional court below in the case No.04/Revision/Rev. Secy./2016 under Section 95 of the TLR & LR Act, 1960 confirming the order of the Collector, West Tripura dated 26.12.2015 passed in Rev. Case No.460 of 2014, with direction to restore the Khatian No.11904 of Mouja-Agartala Sheet No.14, Sub-Division- Sadar, TK- Agartala East, Revenue Circle- East Agartala, which was created in the name of the petitioner No.1, or to create a fresh Khatian in that name by

cancelling/quashing the Khatian created in the name of the respondent No.1.

[10] Mr. SM Chakraborty, learned senior counsel while representing petitioners in CRP 95 of 2022 submits that learned Court below committed serious error of law and fact at the time of passing impugned order. Learned Court below ought to have taken into consideration the fact that the petitioners were not made parties in Case No. Civil Misc. (TPID) 09 of 2016 rendering the order dated 15.03.2021.

[11] It is also contended that learned Court below have failed to appreciate the fact that the grounds taken in the Review Petition filed before it were all supported by the documents on record which should not have been kept aside by giving importance only to an untenable Sale Certificate purportedly issued by DRT on 19.01.2011 when in the final order of the DRT dated 25.11.2011, it would be found that the recovery proceeding was closed in view of depositing of the amount by the petitioners who were the certificate debtors in the proceeding before the DRT, and since the order dated 25.11.2011 passed after the date of the alleged Sale Certificate, the learned Court below could conclude that the said sale certificate was a void and untenable document as the interim order stands merged into the final order and also that no auction sale was conducted by DRT at any point of time so no scope was there before DRT to issue any sale certificate to anybody. Learned senior counsel, therefore, urges this Court to set aside the order dated 18.11.2022 passed in Civil Misc. (Review) 05 of 2021 along with the order dated 15.03.2021 passed in Civil Misc. (TPID) 09 of 2016.

[12] Learned senior advocate, Mr. SM Chakraborty while representing the petitioners in CRP 76 of 2021 contends that the impugned order dated 12.03.2021 passed by the learned Revenue Secretary, Government of Tripura in Revision case No.04/Revision/Rev./Secy./2016 is

a result of serious error of law and fact and is totally perfunctory and mechanical in the eye of law. He submits that learned Court below miserably failed to appreciate that after payment of the full OTS money by the petitioner No.2, Smt. Babita Saha against the loan taken by her predecessor-in-interest and issuance of Loan Clearance Certificate by the respondent No.2 in favour of the petitioner, there was no scope for any third-party to claim any type of right, title and interest over the property of the petitioners as per law. Learned senior counsel, therefore, urges this Court to set aside the impugned order dated 12.03.2021 passed by the Revisional Court below in case No.04/Revision/Rev. Secy./2016 under Section 95 of the TLR & LR Act, 1960 confirming the order of the Collector, West Tripura dated 26.12.2015 passed in Rev. Case No.460 of 2014.

[13] On the other hand learned G.A. assisted by Addl. G.A. on behalf of the State respondents urges before this Court that the present CRPs filed by the petitioners be dismissed.

[14] Since both the CRPs are arising out of a common issue and the subject-matter involved is also common, the same are taken together for disposal. CRP 95 of 2022 is a consequential lis in pursuance of the lis involved in CRP 76 of 2021.

[15] The issue involved in CRP 76 of 2021 is the proceedings dated 12.03.2021 which is issued by the Secretary, Revenue Department is the one relating to changes through the mutation and declaring by way of title through the revenue records as Waris Finance International Limited as the owner of the property. The revenue records have been changed and the khatiyan has been issued. The same was done at the level of the District Collector at the request made by the Waris Finance International Limited.

[16] The District Collector without causing any enquiry and asserting the facts on the issue of pendency of order of the DRT has

straightway proceeded to issue the same, which is in gross violation of principles of natural justice and the same is liable to be set aside.

[17] Insofar as CRP 95 of 2022 is concerned which is filed challenging the proceedings of the District Judge dated 18.11.2022 in not interfering with the proceedings dated 15.03.2021 in Civil Misc.(TPID) 09 of 2016 and allowing the revenue department to go ahead with the property for auctioning. This Court finds that this is purely a consequential proceeding in pursuance of the CRP 76 of 2021 and the Court below has given very much weightage to the revenue proceedings and it has also gone to the extent of observing that at this point of changing the mutation proceeding is not proper on the strength of the objection made by the petitioners. This opinion of the respondents cannot be appreciated as the rights of the petitioners to properties are protected under Article 300 A of the Constitution of India and by no means, the constitutional rights can be infringed by any authority without following due process of law.

[18] It is a clear case where the predecessor-in-interest of the petitioners has borrowed finance from North Eastern Development Finance Corporation Limited (NEDFi) and at the level of proceedings in the DRT, the petitioner has cleared the amounts and obtained LLC (Loan Liquidation Certificate) from the financier and filed before the DRT resulting pending proceedings been closed for the petitioners.

[19] It is strange that Waris finance International Limited has come into the picture and claimed title on the property of the petitioners and the respondent has changed the mutation proceedings without putting the petitioners to notice. This is unheard of any departmental or judicial proceedings. When the Waris Finance International Ltd. has no title over the said property, the Government cannot attach the same and put to auction

to make good the depositors' amounts. When the Waris Finance International Ltd. has no right & title, the same cannot be transferred to the Government for auctioning. The action of the official respondents is arbitrary & highhanded and has no legally enforceable right.

[20] In view of the same, this Court finds that the grave injustice has been done with the petitioners and they are made to suffer all through.

[21] Thus, the proceedings under challenge in CRP 76 of 2021 and consequential proceedings in CRP 95 of 2022 both are liable to be set aside and accordingly, the same are set aside.

[22] With the above observation, the instant CRPs are allowed and the same are disposed of.

As a sequel miscellaneous application(s) pending if any, shall stand closed.

JUDGE

Sabyasachi. G.

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