

IN THE HIGH COURT OF TRIPURA
AGARTALA

R.S.A. No. 50 of 2008

- 1. Shri Kohinor Debbarma,**
son of late Ramanath Debbarma
- 2. Smt. Gopa Debbarma,**
wife of late Ramanath Debbarma

- both are residents of Colonel
House, Colonel Chowmuhani,
Agartala, P.S. West Agartala,
District- West Tripura
- 3. Smt. Uditā Debbarma,**
wife of late Samir Debbarma,
daughter of late Ramanath
Debbarma, resident of North
Banamalipur, Near Lal Bahadur
Chowmuhani, Agartala, P.S. East
Agartala, District: West Tripura
- 4. Smti Chandrika Debbarma,**
wife of Shri Dhimanendra
Debbarma, daughter of late
Ramanath Debbarma, resident of
Bidurkarta Chowmuhani,
Agartala, P.S. West Agartala,
District: West Agartala
- 5. Smti. Tandra Debbarma,**
wife of Shri Shantanu Debbarma,
daughter of late Debabrata
Debbarma, resident of Sankar
Chowmuhani, Agartala, P.S.
West Agartala, District: West
Tripura
- 6. Smti. Kohali Chakraborty (Debbarma)**
wife of late Dilip Chakraborty,
daughter of late Debabrata
Debbarma, resident of Colonel
Chowmuhani, P.S. West
Agartala, District: West Tripura

- 7. Smti Sangita Debbarma,**
wife of Shri Sanjoy Krishna Debbarma,
daughter of late Debabrata
Debbarma, resident of Old Ujir
Bari, on the back side of Town
Hall, Near Palace Compound,
Agartala, P.S. East Agartala,
District: West Tripura

*** As per Hon'ble Courts order dated
20.12.2011 passed in CM. Appl. No.143 of 2011,
the name of the appellant No.5 has been struck
off from the cause title.

..... **Appellants**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary,
Department of Revenue, Govt. of Tripura
- 2. The Collector,**
West Tripura, Agartala
- 3. The Sub-Divisional Officer,**
Sadar, Agartala

*** As per Hon'ble Courts order dated
20.02.2009, the name of all the proforma
respondents have been struck off from the
cause title.

..... **Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants	:	Mr. A.K. Bhowmik, Sr. Advocate Ms. A. Banik, Advocate.				
For the respondents	:	Mr. A.K. Deb, Advocate, Mr. H. Deb, Advocate.				
Date of hearing	:	27.07.2015 & 09.10.2015				
Date of delivery of Judgment & order	:	23.11.2015				
Whether fit for reporting	:	<table><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
√						

JUDGMENT & ORDER

This is an appeal under Section 100 of the C.P.C. against the judgment and decree dated 13.06.2008 delivered in Title Appeal No. 26 of 2002 by the Addl. District Judge, West Tripura, Agartala affirming the judgment and decree dated 04.04.2002 passed by the Civil Judge, Sr. Division, No.2, West Tripura, Agartala in Title Suit No.103 of 1998.

[2] The facts which are not in dispute are that the predecessor of the appellants No.1 to 4 and the predecessor of the appellants No.5 to 7 instituted a suit being Title Suit No.103 of 1998 in the court of the Civil Judge, Sr. Division, No.2, West Tripura, Agartala, hereinafter would be referred to as the trial court, pleading *inter alia*, that the suit land measuring 80 kanies appertaining to the original '*Niskar Taluk*' No.32 was held by Dhirendra Chandra Debbarma, the predecessor of the plaintiff-appellants and others during his lifetime. He used it as the tea garden, known as Jadavnagar Tea Estate. Maharaja Birendra Kishore Manikya Bahadur, the erstwhile king of the princely State settled that tract of land measuring about 12(twelve) drone including the suit land in favour of Dhirendra Chandra Debbarma in the month of Kartika, 1392 Tripura Era (T.E). Till that time, Dhirendra Chandra Debbarma had been possessing the said land without paying any revenue and that Dhirendra Chandra Debbarma converted his tea estate into the horticultural and agricultural land. During the settlement operation,

the said tea garden had no existence but the Khatian Nos.168, 270, 284 and 289 were opened in respect of that *Niskar* land in the name of Dhirendra Chandra Debbarma in the aftermath of the settlement operation, which was carried out since 1963. According to the plaintiff-appellants, Dhirendra Chandra Debbarma retained the said land under Section 136 (1) (b) of the Tripura Land Revenue & Land Reforms Act, 1960, the TLR & LR Act in short. During his lifetime, he had transferred the land in favour of the appellants by way of gift. After mutation, Khatian Nos.4004, 4005, 4006, 4014 and 4015 were opened in the name of the plaintiff-appellants and these khatians have been mutated out of the original Khatian No.168. All the aforesaid khatians were opened in the draft stage but later on those were cancelled during the attestation stage and according to the plaintiff-appellants, such cancellation was grossly illegal. After cancellation, the suit land was recorded in the name of the Government of Tripura. However, having been approached by the plaintiff-appellants, it has been stated that the Revenue Commissioner directed the plaintiff-appellants to file an application under Section 138 of the TLR & LR Act but the Collector did not allow the retention of the property by Dhirendra Chandra Debbarma and in that background, the predecessor of the plaintiff-appellants filed an application under Section 11(3) of the TLR & LR Act before the Collector. But such applications were rejected after consideration. As consequence thereof, the suit as referred was filed under Section 11(4) of the TLR & LR Act. It is on record that the defendants,

particularly the official defendants, resisted the claim of the plaintiff-appellants contending *inter-alia* that the predecessors-in-interest of the plaintiff-appellants never held any *Niskar Taluk* and Khatian No.168 was never created in his name. It has been also asserted that the '*Parchas*' created in the name of the predecessor-in-interest of the plaintiff-appellants were prepared at the very initial stage but finally those were rejected. According to the official defendants, the entire land as settled earlier in favour of Dhirendra Ch. Debbarma had been vested to the Government free from all encumbrances and he had never filed any application under Section 136 (1) (a) of the TLR & LR Act for retention of the tea garden. The Secretary to the Government of Tripura, Revenue Department by the notification under No.F.42/TE/62 dated 22.11.1978 had directed to record the said land as khas land and accordingly, Khatian was prepared in the name of the Government. They have categorically stated that Dhirendra Ch. Debbarma did not file any objection regarding preparation of the record of rights. Moreover, Dhirendra Ch. Debbarma did never submit any return in the Form No.53 for retention of the land under Section 136 of the TLR & LR Act. Thus, the land was rightly recorded as khas land (the Government land) and there is no infirmity in the order dated 16.05.1998 which was passed in the proceeding under Section 11(3) of the TLR & LR Act.

[3] The trial court has framed several issues which were under noted:

(A) Is the suit maintainable in its present form and nature and is the suit barred by limitation?

(B) Whether the record of right created in the name of Government of Tripura for the suit properties for any part thereof are wrong and illegal?

(C) Have the plaintiffs right, title and interest over the suit properties or any part thereof?

(D) Whether the order of the District Collector dated 16.05.1998 passed in Misc. Case No.24 of 1997 is illegal, void and inoperative?

(E) Is the plaintiff entitled to get decree as prayed for?

(F) What other relief/reliefs the parties are entitled in the suit?

[4] The trial court on recording the evidence, both oral and documentary dismissed the suit by the judgment and decree dated 04.04.2002. Being aggrieved thereby, an appeal under Section 96 of the C.P.C. being Title Appeal No.26 of 2002 was preferred in the court of the District Judge, West Tripura, Agartala and in the course of the time, the said appeal was transferred to the court of the Additional District Judge, No.3, West Tripura, Agartala who by the impugned judgment and decree dated 13.06.2008 dismissed the said appeal.

[5] To challenge that judgment and decree dated 13.06.2008, this appeal has been preferred by the plaintiff-appellants. At the time of admission, the following substantial questions of law were formulated for consideration of the appeal:

(i) Whether the impugned judgment passed by the learned first appellate Court is perverse for

non-consideration of a vital document like Exbt.9 while deciding the appeal?

(ii) Whether the learned first appellate Court misdirected by way of wrongly interpreting the provisions of Sections 134,136,138,178 and 11(3) of the TLR & LR Act, 1960 while deciding the appeal?

The plaintiff-appellants were also given liberty to raise any other substantial questions of law at the time of hearing.

[6] Mr. A.K. Bhowmik, learned senior counsel appearing for the appellants at the outset has candidly submitted that the substantial questions of law as framed are so liberally constructed that it would not serve any purpose and he has therefore, urged to reframe the substantial question of law for a meaningful purpose.

[7] This court at the outset has examined Exbt.9 to understand the nature of the substantial question No.(i). To the utter surprise, it appears that Exbt.9 is a robkari (the agents of the Darbar of the erstwhile king dated 7th Kartika, 1332 Tring). Only the relevant entry which is available there is that a tract of land measuring 12(twelve) drone would be provided to Dharendra Ch. Debbarma without any revenue as reward. The said land has been shown to be situated at West Bamutia under Tehshil – Mohanpur and Mouja – Harinakhala. The next entry is that Dharendra Ch. Debbarma would appear before the erstwhile king for receiving the gift. From this document (Exbt.9) the settlement as claimed by the plaintiff-appellants is liable to be presumed. But the settlement in favour of Dharendra Ch. Debbarma is not the basic plank of dispute

but whether the land as settled in favour of Dhirendra Ch. Debbarma had been correctly vested in favour of the Government of Tripura with advent of TLR & LR Act, 1960 or not. Thus, fundamentally there is no difference between the first and the second substantial question of law. As such, whether there was any illegality in vesting the land in favour of the Government of Tripura was the crux of the dispute. The trial court by its judgment dated 04.04.2002, after observing that the suit was filed within the period of limitation, has returned the finding that the finally published Khatian as opened in the name of the Government of Tripura comprises 7(seven) plots and those under the occupation of various persons but not under the plaintiff-appellants. Khatian Nos.1/140, 1/142, 1/143, 1/149 and 1/153 were in the name of the Government of Tripura and under the column No.24 possession of the several persons was recorded. It has been further observed that in Para-8 of the plaint, it has been stated that late Dhirendra Chandra Debbarma submitted return in Form No.53 with details for retention of the land under Section 136 of the TLR & LR Act on 29.08.1963. But in support of this contention, the plaintiffs, the appellants herein produced no documentary evidence. From the true copy of the letter submitted by the Director of Land Records and Settlement of Tripura, it appears that there was no plantation in the garden and no area was recognized by the Settlement Officer for retention under Section 136(1) (f) of the TLR & LR Act. The revenue department by the order dated 19.10.1970 did not allow exemption

for any land under Sections 136(1) (f) and 178 of the TLR & LR Act in favour of the tea estate as the garden was abandoned and non-existent. So the land measuring 49.35 acres was transferred in the Khatian of Government of Tripura and accordingly, it was finally published. The return in Form No.53 was not available in the evidence. The D.M. & Collector, West Tripura by the order dated 01.01.1975 opined that no application for retention of any land under Section 136 of the TLR & LR Act had been filed by the predecessor of the plaintiffs before any authority. The question of possession under Section 138 of the TLR & LR Act thereafter arose much later. The trial court has categorically observed that no copy of the Form No.53 is submitted by the plaintiffs. However, that petition under Section 138 of the TLR & LR Act was rejected. Exbt.8 series includes the order of the Revenue Secretary. The plaintiffs have failed to prove their possession and accordingly, the Khatian was finally published. The trial court has observed that the Khatian published in the draft stage has no value and as such, the *Parchas* under Exbt.2 cannot be appreciated for any meaningful purpose. The petition as filed under Section 138 of the TLR & LR Act was not allowed and it was finally decided in the year 1978 and the similar issue was also determined in the same manner on 23.04.1981 and 15.01.1985 by the competent authorities. The plaintiffs filed an application under Section 11(3) of the TLR & LR Act long after the finally published Khatian was opened and the said petition was rejected by the order dated 16.05.1998 against which the said suit

was filed. On the basis of the observation as above, the suit was dismissed.

[8] The appellate court has affirmed the said judgment and held that as the order dated 19.10.1978, Exbt.8 passed by the Revenue Secretary there was no question of allowing exemption under Sections 136(1) (f) and 178 of the TLR & LR Act. As the matter was finally decided by the superior authority, the Collector had virtually no jurisdiction to unsettle the settled matter under Section 11(3) of the TLR & LR Act and accordingly, by the impugned order dated 16.05.1998 the said proceeding was terminated on rejecting the prayer for correcting the records.

[9] Mr. A.K. Bhowmik, learned senior counsel appearing for the plaintiff-appellants has submitted that the return was filed in the Form No.53 under Section 136(1) (b) of the TLR & LR Act but he has candidly admitted that since the copy of return was not retained by the predecessor of the plaintiff-appellants that could not be produced in the evidence. However, he was silent why such return was not asked to be produced by the defendants-revenue authority. According to Mr. Bhowmik, learned senior counsel, the Revenue Commissioner has started proceeding being case No.42 (Tea Estate) of 1963 under Sections 136(1)(f) and 178 of the TLR and LR Act, 1960 in respect of the land as settled in favour of Dharendra Ch. Debbarma, namely Jadavnagar tea estate, Sadar. No notice was

issued to the predecessor of the plaintiff-appellants about the said proceeding.

[10] On the face of such submission and on scrutiny of the records, it appears that such contention was not under proper instruction. It appears that a notice was issued to Dhirendra Ch. Debbarma by the Assistant Survey Commissioner and the Revenue Officer, Tripura Administration, in the Form No.54 of the Tripura Land Revenue and Land Reforms Rules for filing the return in Form No.55 as the intermediary, Dhirendra Ch. Debbarma has claimed to have filed the return in Exbt.11 but the said return does not carry any attestation of receipt. Whether the said return was at all filed in the Form No.53 of the Tripura Land Revenue and Land Reforms Rules or not has been concurrently settled by the fact finding courts and as such, no reverse presumption can be drawn up on the basis of Exbt.11 as available in the records. That apart, the order dated 19.01.1998, Exbt.8 reads as under:

' A number of dates has been given in this case but nobody has appeared. The garden as per reports is abandoned.

In view of the report of the settlement officer and the report of the committee, there is no question of allowing exemption under Section 136(1)(f) and under Section 178 of the TLR & LR Act.'

[11] For purpose of reference, Section 136(1) (f) of the TLR & LR Act is extracted hereunder and thereafter, Section 178 of the said act is also extracted:

(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,

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

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178. (1) The State Government may, on an application made to him in this behalf within three months from the commencement of this Act, exempt from the operation of Section 164-

(a) any land which is being used for growing tea, coffee or rubber including lands used or required for use for purposes ancillary to, or for the extension of, the cultivation of tea, coffee or rubber to be determined in the prescribed manner;

(b) any sugarcane farm operated by a sugar factory;

(c) any specialised farm which is being used for cattle breeding, dairy or wool raising;

(d) any person who holds a compact block of land exceeding the ceiling limit which-

(i) is being used as an orchard from before the 1st January, 1958 ; or

(ii) is being used as a farm in which heavy investment or permanent structural improvements have been made and which, in the opinion of the Administrator, is being so efficiently managed that its break up is likely to bring a fall in production: Provided that where such person holds the compact block of land together with any other land, he shall be permitted to elect to retain either the compact block of land, notwithstanding that it exceeds the ceiling limit or the other land not exceeding the ceiling limit;

(e) any land which is being held by a co-operative society, provided that where a member of any such society holds a share

in such land, his share shall be taken into account in determining his ceiling limit: Provided that the Administrator may entertain the application after the expiry of the said period of three months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) Where any land in respect of which exemption has been granted to a person under clause (d) of sub-section (1) is transferred to another person, the Administrator may, on an application made to him within three months from the date of the transfer, exempt the transferee from the operation of section 164 and section 173 and the provisions of the said clause shall, as far as may be, apply to the grant of such exemption.

(3) Where the Administrator is of opinion that the use of land for any specified purpose is expedient or necessary in the public interest, he may, by notification in the Official Gazette, make a declaration to that effect and on the issue of such notification, any person may, notwithstanding anything contained in section 173, acquire land in excess of the ceiling limit for being used for such specified purpose and such person shall, within one month from the date of such acquisition, send intimation thereof to the competent authority.

(4) Where any land, in respect of which exemption has been granted under sub-section (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 Administrator may, after giving the persons affected an opportunity of being heard withdraw such exemption.

[12] It has been admitted in Para-5 of the plaint by the plaintiff-appellants that a part of the said *Taluk* was used as tea garden for which the said part of land was named and known as Jadavnagar Tea Estate. During lifetime of Dharendra Chandra Debbarma, he was unable to maintain the tea garden and that tea garden was totally destroyed. Thereafter, Dharendra Chandra Debbarma converted the said tea garden into horticulture and

agricultural land and for that reason during settlement operation in Tripura, the said tea garden had no existence. In view of this admission within the meaning of Section 17 of the Evidence Act, no retention could be permitted lawfully by any authority under Section 136(1)(f) which entirely deals with the land comprised of tea garden, mill and factory related thereto. The suit land did not fall within that category of land and hence, the order dated 19.10.1978 does not suffer from any infirmity. As such, the order passed by the Revenue Commissioner on 23.04.1981 sought to provide an alternative remedy for retention in favour of the predecessor of the plaintiff-appellants, if he was so entitled. It has been observed and clarified in the said order dated 23.04.1981 that if any land is retainable by the predecessors of the plaintiffs under Section 136(1) (a) to (e), naturally that right is not sought to be taken away. The interested parties may approach to the Collector under Section 138 of the TLR & LR Act. The Collector was accordingly approached. By the communication dated 07.01.1985, the Collector has clearly indicated that no return in the Form No.53 was available in the record. As such, the said petition was rejected by the order 15.01.1985 by the District Collector, West Tripura which reads as under:

"Seen the petition U/S 138 of TLR & LR Act, objection petition dated 15th Sept. '84. Clarification given by petitioner on 20th October, 84 in pursuance of orders dated 22-9-84 . Also seen the enquiry report of SDO, Sadar, dated 25th June, 84. Seen the orders of Revenue Commissioner dated 23-4-81. No application for retention of any land U/S 136 (1) (a) –(e) has

apparently been filed by petitioner before authority. The question of any dispute regarding possession U/S 138 can arise only thereafter. No copy of form 53 submitted by petitioner has been produced. In facts, the instant petition cannot be treated as U/S 138 since it does not refer to any dispute as to the possession of any homestead or land or building as referred to in Section 136(1). A preliminary field verification also indicates most of the land in question under possession of other and not the petitioner.

The petition is, therefore, rejected."

[13] Section 138 of the TLR & LR Act, 1960 unambiguously provides that:

"If there is any dispute as to the possession of any homestead or land or building referred to in sub-section (1) of section 136, the Collector shall, on application made to him in this behalf, make such inquiry as he deems fit and pass such orders thereon as may appear to him just and proper."

The District Collector, West Tripura has rightly observed in the order dated 15.01.1985 that the question of any dispute regarding possession under Section 138 of the TLR & LR Act can only arise after retention. As no return in the Form No.53 was submitted by the predecessor of the plaintiff-appellants was submitted at any point of time, the said petition was held not tenable. Hence, this Court does not find any infirmity in the said order. The impugned order dated 16.05.1998 delivered in Revenue Misc. Case No.22 of 1977 under Section 11(3) of the TLR & LR Act has been based on the previous orders which reached to finality by efflux of time and it has been observed as under:

"As the Government of Tripura (Revenue Department) and the Collector have already

passed the order in the matter, this Court has no jurisdiction to pass any order in the matter again. The petitioner may seek redress from any other forum."

Having observed thus, this petition was rejected.

[14] On thorough scrutiny, it appears that the plaintiff-appellants have failed to show that as the intermediary, their predecessor never sought to retain the suit land by following the procedure even though the notice was properly served on him as transpired from the records. As such, their claim is fundamentally based on the draft khatians which according to law carries no substantive evidentiary value as those were superseded by the finally published Khatian, opened in favour of the Government of Tripura.

[15] Having held so, this Court does not find any infirmity in the finding so returned by the first appellate court by the impugned judgment and decree and accordingly, this appeal stands dismissed.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Sujay