THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO. 391 OF 2010

Indian Oil Corporation Limited,
Represented by its General Manager,
North East Integrated Estate Office,
Bamuni Maidan,
Guwahati – 21.

... ***Petitioner***

- Vs –

1. The State of Tripura,
Represented by its Secretary,
Revenue Department,
Government of Tripura,
Secretariat Building, Gurkhabasti,
Agartala.

2. The Principal Secretary,
Government of Tripura,
Revenue Department,
Secretariat Building, P/O Gurkhabasti,
Agartala, West Tripura.

3. The Director,
Land Revenue and Settlement,
Government of Tripura,
P/O Agartala, West Tripura.

...Respondents

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner : Mr. A. Lodh, Advocate.

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing : 27.08.2015.

Date of delivery of Judgment & order. : **24.09.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

Heard learned counsel, Mr. A. Lodh for the petitioner and learned Additional Government Advocate, Mr. S. Chakraborty for the respondents.

2. Undisputed facts are that one Akhil Ch. Ghosh and Beni Madhab Ghosh were the Talukdars (intermediaries) of Kayami Taluk Nos.37, 37/1, 37/2 and 37/3 of Mouja Pabiacharra and there was a registered lease agreement dated 18.08.1959 (annexure-I to the writ petition) between Akhil Ch. Ghosh and Beni Madhav Ghosh, lessors and Burma Oil Company, lessee. The period of lease was for twenty years commencing from 01.09.1959 to 31.08.1979, at a yearly rental of Rs.150/- and cess totaling Rs.159/-. There was a stipulation in the lease deed that the period of lease may be extended for another 20 years on the written approach by the lessee within the period of lease. The Burma Oil Company took the lease to set up a depot for Petroleum products at Kumarghat. It is also an undisputed fact that Tripura Land Revenue & Land Reform Act 1960(TLR & LR Act), came into force w.e.f. from 14th November, 1961 and after the Act came into force all right of intermediaries were abolished and was vested in the State Government under Section 134 of the TLR and LR Act. Section 134 reads as follows:-

> ***"134. (1) As soon as may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, declare that, with effect from the date specified in the notification (herein-after referred to as the vesting date), all estates situated in any area of areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances.***

> ***(2) Every notification under sub-section (1) shall also be published in such other manner as may be prescribed.***
>
> ***(3) The publication of notification in the manner provided in sub-sections (1) and (2) shall be conclusive evidence of the notice of declaration to the intermediaries whose interests are affected by such notification.”***

3. After the right of the intermediaries was abolished and vested with the Government in view of the above provision, a Khatian was prepared in the name of Burma Oil Company and a copy of the Khatian has been annexed by the petitioner as annexure-II, which shows that the leased out land was recorded in Khatian No.1218 of Mouja- Pabiacharra, Tehashil-Kumarghat and Touji- No.180 was opened and Burma Oil Company was shows as raiyat of the land as per the provisions of Section 135(d) of the TLR & LR Act. For ready reference let us reproduce the provision of Section 135 (d) of the TLR & LR Act, which reads as follows:-

> “***135(d) subject to the other provisions of this Act, every tenant holding any land under an intermediately shall hold the same directly under the Government as a raiyat thereof or [as a non-agricultural tenant thereof, as the case may be] and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date, subject to a maximum of the value of one-eighth of the gross produce which value shall be determined in the manner prescribed:***
>
> ***Provided that the tenant shall become the owner of any building or structure constructed on such land at the expense of the intermediary on payment of such compensation to the intermediary as is equivalent to its market value on the vesting date, which value shall be determined in accordance with the rules made in this behalf;”***

4. It is also an undisputed fact rather an admitted position that after the above referred Khatian No. 1218 was prepared, one Revenue Inspector of Kumarghat filed an objection case under

Section 43(1) of TLR & LR Act which was registered as case No.16 before the Additional Survey and Settlement Officer, Kumarghat and that objection Case was rejected by the Addl. Survey and Settlement Officer by order dated 05.05.1988, a copy of that order is annexed by the petitioner as annexure-3, and the respondent also annexed a copy of that order as an annexure R-I. The relevant order reads as follows:-

> ***" The objection Case No.16 & objection Case No. 153 are analogsis and amalgated for decision. On examination of the field enquiry report that forms part of the proceeding, it trausperis that the land measuring 2.01 acres is lying vacant and the neighbouring childrens play there. But today one Chitta Ranjan Kar also appeared today with a revenue receipt No.61 dt. 4.4.88 A.D. issued by the Tehasildar Kumarghat T.K. That land revenue is clear up to 1394 B.S. in respect of Holding No.180. So, the land is not and never concern ciling excess land Ex. K.T. No.37 of Ex. Intermading Akhil Ghosh. Hence it is ordered that the objection is dis-allowed.***
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> ***Sd/- K.D.Saha,***
> ***Addl. Settlement Officer,***
> ***North Tripura, Kumarghat,"***

5. Subsequently challenging that order dated 05.05.1988 a Revision Petition under Section 95 of TLR & LR Act was filed before the Sale Tax Tribunal which was vested with the power of Collector, that Petition was registered as Revision Case No. 11 of 1990. On 30.04.1990 the Tribunal passed an ex-prate order contending that the land of the intermediary was vested with the Government and after such vesting of intermediary right with the Government the lessee did not pray for fresh renewal of the lease and so the tribunal directed that the khatian should be prepared in the name of the State Government of the said leased out land and accordingly Khatian No.1 Jer 445 of Mouja Pabiacharra was prepared.

6. It is also an undisputed rather an admitted position that the said order dated 05.05.1988 was challenged by the petitioner company by filing a writ petition before the Agartala Bench of the Guwahati High Court, which was registered as WP(C) No.474 of 1999 and by order dated 11.09.2006 passed by the single bench of the High Court, the writ petition was allowed and the order of the Tribunal dated 30.04.1990 was set aside and the Case was remanded back to the Tribunal for passing appropriate order in accordance with law after giving notice to the petitioner. It is also an undisputed rather admitted fact that the Burma Oil Company was subsequently named as Assam Oil Company and then was incorporated as Indian Oil Corporation i.e. the present petitioner.

7. It is also an undisputed rather admitted fact that Sale Tax Tribunal was temporarily vested with the power of Collector by notification and the original power of revision under Section 95 was actually vested on the State-Government or the Collector as prescribed in Section-95 of TLR and LR Act which reads as follows:-

> ***" State Government or the Collector may, at any time, either on his own motion or on the application of any party, call for the records of any proceedings before any revenue officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of any order passed by such revenue officer, and may pass such order in reference thereto as he thinks fit:***
>
> ***Provided that he shall not vary or reverse any order affecting any right between private persons without having given to the parties interested notice to appear and be heard."***

8. After such remand of the case, it was registered before the Principal Secretary to the Government of Tripura in the Revenue Department as Case No. 15/REV/Com/07 under Section 95 of the

TLR & LR Act and by a detail order dated 20.02.2010 the Principal Secretary to the Government of Tripura disposed the Revisional Application holding that the recording of the suit land in the name of State Government as khas land as directed by the Sale Tax Tribunal earlier was justified. That order has been put in challenge by filing the present writ petition.

9. Mr.Lodh, learned counsel for the petitioner has submitted that it is an admitted position that the petitioner was a tenant under a lease agreement for the period between 01.09.1959 to 31.08.1979 and there was a stipulation in the lease agreement that the lease may be extended for another 20 years. During pendency of the lease TLR & LR Act came into force and the intermediary right was abolished and all rights of intermediary to the land was vested with the State Government. He has also submitted that as per Section 135(d) the petitioner was treated as a raiyat of the leased out land and accordingly khatian was prepared in the name of the petitioner. The Sale Tax Tribunal by order dated 05.05.1988 directed ex-prate that the land shall be recorded in the name of the State-Government as the Khas land since the lease was not extended for any further period. According to learned counsel, Mr.Lodh, the non-agricultural tenant also were entitled to be treated as a raiyat under the provisions of 135(d) of the Act and accordingly Khatian was also prepared in the name of the petitioner-tenant and, therefore, the direction given by the Sale Tax Tribunal, which has been subsequently affirmed by the Principal Secretary Revenue by order dated 20.02.2010, were illegal and not inconformity with the provisions of the law prescribed under the TLR & LR Act and thereby legal rights of the petitioner has been infringed for which the writ petition is maintainable and the impugned order dated 20.02.2010 (annexure-7 to the writ petition) is liable to be set aside.

10. Though in the writ petition in para-14 the petitioner stated that a copy of the order dated 30.04.1990 passed by the Sale Tax Tribunal has been annexed as annexure-5, but practically that order has not been annexed and something else has been annexed as annexure-5.

11. Learned Addl. G.A., Mr. S. Chakraborty submitted that Burma Oil Company was a tenant of the intermediary but they have not utilized the land for the purpose they took it on lease. After the TLR & LR Act came into force the right of intermediary was abolished and the land owned by the intermediary was vested with the Government free from all encumbrances. Since the lease period was not extended and the petitioner did not pray for extension of the period of lease as per the agreement with the intermediary, the records of right prepared in the name of Burma Oil Company was rightly changed in view of the order passed by the Sales Tax Tribunal and the Principal Secretary of the Revenue Department of the Government of Tripura. There is nothing wrong in the order.

12. It is admitted position that the petitioner was a non agricultural tenant pursuant to a registered lease between the intermediary and the predecessor Company of the present petitioner company. The word non-agricultural tenant has been defined in Section 2(ll) of the TLR & LR Act which reads as follows

> ***"'non-agricultural tenant' means a persons who holds land for purposes other than***

agriculture paying land revenue to the Government;"

13. It is not at all disputed that the petitioner was a non-agricultural tenant. Section 135 (d) of the TLR & LR, Act which has already been reproduced herein before clearly stipulates that a non-agricultural tenant holding land under an intermediary shall also hold the same directly under the Government as raiyat. It reveals that in view of the provisions contained in Section 135(d) of the Act Khatian No.1218 of Mouja Pabiacharra (annexure-II to the writ petition) was prepared in the name of Burma Oil Company limited. While the law was very clear that a non-agricultural tenant shall also be treated as a raiyat directly under the Government and that such raiyat shall be liable to pay to the Government land revenue, the subsequent order to change the khatian under the name of the State-Government was altogether in violation of the provision of the Section 135(d) of the TLR & LR Act. It was totally immaterial whether the lease agreement was further extended or not. No doubt the right of intermediary was vested with the Government in view of Section 134 of the TLR & LR Act but simultaneously the Section 135(d) has clearly stipulated that a non-agricultural tenant shall also be treated as a raiyat directly under the Government and so subsequent direction of change of khatian was wrong and illegal. The impugned order dated 30.04.1990 passed by Sale Tax Tribunal in Revenue Case No.11 of 1990 was set aside by the High Court by order dated 11.09.2006 in WP(C) No. 474 of 1999, so, that order has no existence. Now by the impugned order dated 20.2.2010 (annexure-VII to the Writ Petition) the Principal Secretary Revenue, Government of Tripura, has again held that the land has been correctly recorded in the name of the Government. No reason has been assigned by the Principal Secretary, Revenue, while ignoring the provision of section 135(d) of TLR & LR Act. The claim that the petitioner should be treated as raiyat under the State-Government is consistent with the provision contemplated in the TLR & LR Act. The petitioner nowhere stated that they have paid revenue to the Government as prescribed in section 135(d) of the TLR & LR Act. It is reflected in the impugned order dated 20.02.2010 that the petitioner is not in possession of the land and that some part of the land is in active possession of the State Government and remaining part is lying vacant and that the petitioner never used the land for the purpose it was taken on lease.

14. While recording such observation no evidence had been recorded by Principal Secretary Revenue. The petitioner also nowhere stated that they are in possession of land rather in the writ petition the petitioner prayed for directing the respondents to demolish structure and construction over the land in question which means the petitioner is not in possession of the land and simply the petitioner claiming the right on the basis of the khatian prepared earlier after TLR & LR Act came into force. No doubt the petitioner is a non-agricultural tenant and khatian was also rightly prepared as per the provision contained in TLR & LR Act. The petitioner has to show that the petitioner company has/had been in possession of the land and that they have not paid revenue to the Government as per the provisions prescribed in Section 135(d) of TLR & LR Act. No action has been taken by the Collector or the State Government against the petitioner company for non-payment of the revenue.

Whether the petitioner is in possession or not is a matter of fact to be decided after taking evidence but the fact that petitioner was a non-agricultural tenant under an intermediary at the time when the TLR & LR Act came into force and while the khatian was prepared in the name of the petitioner as raiyat, that recording of khatian cannot be changed by the Collector or the State Government on the ground that the petitioner was not in possession or that the lease was not extended. If the right of petitioner has been extinguish for not being in possession of the land after it was recorded in Khatian pursuant to the provisions of TLR & LR Act, that may be dealt with by separate proceeding but so far as the present action is concern it is quite clear that the petitioner company was a tenant under intermediary and after TLR & LR Act came into force the petitioner has acquired the right to be treated as a raiyat under the Government and for all practical purpose the petitioner was treated accordingly and khatian was prepared in the name of the petitioner and so the subsequent direction to change the khatian and to prepare the record of right in the name of the Government was not justified and it was in violation of the provision prescribed in the TLR & LR Act, and, hence, the order passed by the Principal Secretary Revenue dated 20.02.2010 is liable to be interfered and set aside.

15. Accordingly, it is hereby ordered that the impugned order dated 22.02.2010 passed by the Principal Secretary Revenue in Case No.15 REV/COM/07 under Section 95 of the TLR & LR Act (annexure-7 to the writ petition) is set aside and quashed. The record of right prepared in the name of the petitioner i.e khatian No.

1218 of Mouja-Pabiacharra (Annexure-2 to the writ petition) shall be restored.

16. There is no justification at all to give any direction to the respondents to demolish the structure of construction raised on the land in the meantime.

17. It is left open to the State Government as well as the petitioner take appropriate steps regarding non-payment of revenue or regarding possession of the suit land in accordance with law.

18. The writ petition accordingly stands disposed of.

19. Parties to bear their own costs.

JUDGE

Sohanjit