THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.49 OF 2014

1. Sri Kunja Mohan Paul,
S/O Late Krishna Paul,
Resident of East Kalyanpur,
P.S. Kalyanpur,
District-Khowai, Pin-799203.

………… *Petitioner*

- Vs –

1. The State of Tripura,
Represented by the Revenue Secretary,
Government of Tripura,
Capital Complex, Agartala-799006.

2. The District Magistrate & Collector, Khowai,
District-Khowai, Pin-799203.

3. The Sub-Divisional Magistrate, Khowai,
District-Khowai, Pin-799203.

4. Sri Prabindra Debbarma,
S/O Late Chikaniya Debbarma,
Resident of East Kalyanpur,
P.S. Kalyanpur,
District-Khowai, Pin-799203.

…………. *Respondents*

5. Sri Monuranjan Pal,
S/O Late Lal Mohan Pal,
Resident of East Kalyanpur,
P.S. Kalyanpur,
District-Khowai, Pin-799203.

…………. *Proforma-respondents*

BEFORE

HON'BLE MR. JUSTICE S.C. DAS

For the petitioner	:	Mr. K.N. Bhattacharji, Sr. Advocate Mr. S. Acharjee, Advocate
For respondents	:	Mrs. A.S. Lodh, Addl. G.A.
Date of hearing & delivery of judgment & order	:	**19.03.2015**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER(ORDER)

The matter is taken up for hearing and final disposal at the order stage itself on the consent of learned counsel of both side.

2. Heard learned senior counsel, Mr. K.N. Bhattacharji for the petitioner and learned Addl. G.A., Mrs. A.S. Lodh for the State respondent Nos.1, 2 and 3 and learned counsel, Mr. P.K. Dhar for respondent No.4.

3. The simple case of the petitioner is that he purchased three kanies of land of Old Khatian No.84, present Khatian No.96/1, 96/2, 96/3 and 96/4 of Mouja-East Kalyanpur under Tehsil-Kalyanpur from Chikaniya Debbarma, father of respondent No.4 vide un-registered Sale Deeds dated 11.01.1964, 15.09.65 and 12.03.1968. He has been possessing the land from the date of purchase without any interference from any corner. That Chikaniya Debbarma filed Restoration Case No.2623/RST/KH/76 and 2134/76 under Section 187 of TLR & LR Act in the Court of Revenue Officer(SDO, Khowai) seeking restoration of the land transferred by him to the petitioner, and after proper consideration, by order dated 23.05.1988 the prayer of Chikaniya Debbarma was rejected. A copy of that order is annexed as Annexure-1 to the writ petition. Subsequently, that Chikaniya Debbarma again insisted his prayer for restoration and the Revenue Officer(SDO, Khowai) by order dated 05.04.1995 rejected the prayer of restoration. After the death of Chikaniya Debbarma, the respondent No.4 filed Revenue Case No.527 of 2010 under Section 95 of TLR & LR Act before the District Collector, Khowai and by order dated 07.01.2014 the District Collector, Khowai set aside order of SDM dated 05.04.1995 and further directed the petitioner, i.e. the respondent No.4 herein, to submit fresh petition before SDM, Khowai under Section 187 of TLR & LR Act. The operative portion of the impugned order(Annexure-8 to the writ petition) passed by the District Collector, Khowai reads as follows:

> "*…………..*
>
> *i). The petitioner is not debarred by limitation since Section 95 of T.L.R. & LR Act, 1960 allows for a Revenue Officer to draw proceeding at any time.*
>
> *ii). Regarding the question, if the matter relates to "legality and propriety", the court has kept an open mind to consider the points put forth by the petitioner and the matters discussed in later section deal with legality of the impugned order.*
>
> *iii) Regarding question No.3, that is the maintainability of the case due to non-joinder of the all valid heirs of original recorded owners, the court decides the matte can be treated under admissibility under the court whose jurisdiction this case may fall if decided in favour of the plaintiff. In this case it shall be in the SDM's court.*
>
> *iv). In respect of issue 4, the submission of the opposite party indicates that the land that was recorded in favour of Chikania Debbarma was*

transferred by an unregistered deed before 01.01.1969 to a non tribal. The opposite party claimed that since the transfer took placed before 1969 there shall be no need for Collector's permission, thereby, making it a valid transfer without contravening any provision of the TLR & LR Acts. However, this court of the opinion that since the transfer was through unregistered deed it cannot be presumed to be a valid transfer just because it was executed before 01.01.1969.

the Court therefore, quashes the impugned order dated 05.04.1995 passed by the SDM Office and hereby orders the petitioner to resubmit fresh petition before the SDM Court U/S-187 of the TLR & LR Acts. Hence, the case is disposed."

4. The petitioner challenged this order contending that the District Collector while arriving at a decision that the transfer was held before 01.01.1969 should not have set aside the order of the Revenue Officer(SDO, Khowai) and should not have directed the respondent No.4 to file a fresh petition. The petitioner, therefore, prayed for quashing the order of the District Collector dated 07.01.2014(Annexure-8 to the writ petition).

5. The respondent No.4 by filing counter contended that the documents which were filed by the writ petitioner before the Revenue Court were un-registered documents and the transfer of tribal land to non-tribal by un-registered documents was altogether void and therefore even if it was before 01.01.1969 no right was conferred on the petitioner to retain the land and therefore the land was restorable in operation of Section 187 of TLR & LR Act. It is also contended that the District Collector considering all materials simply allowed the prayer of petitioner, i.e. the respondent No.4 to file a fresh petition for restoration and there is nothing wrong in the order.

6. In course of hearing learned senior counsel, Mr. Bhattacharji referring to the Full Court decision of this Court in Writ Appeal No.89 of 2007 submitted that the Revenue Officer has no jurisdiction to restore a land from non-tribal to tribal transferred before 01.01.1969. A copy of the judgment is placed on record. The Full Court decided two questions, namely---

> "(i*) Whether the 6th Amendment to the Tripura Land Revenue and Land Reforms Act, 1960(in short TLR & LR Act, 1960) in any manner changes the cut off date of 01.01.1969?*
>
> *(ii) Whether in terms of Section 187(3) of the TLR & LR ACT, 1960 the possession of the lands which were transferred by tribals to non-tribals prior to 01.01.1969 can be restored?"*

After elaborate discussions the Full Court held thus:

> "*17. In this view of the matter, we answer both the questions by holding that the 6th Amendment to the Tripura Land Revenue and Land Reforms Act, 1960 does not in any manner change the cutoff date, 01.01.1960. The second question is answered by holding that if transfer of the land has been made by a tribal to non-tribal in violation of the Act prior to*

01.01.1969 then the same cannot be restored by the revenue officer acting under the Tripura Land Revenue and Land Reforms Act, 1960."

7. It is an admitted position that the transfers between Chikaniya Debbarma and the petitioner Kunja Mohan Paul were held long before 01.01.1969 and the question is whether the transfer which was effected before 01.01.1969 shall be subject to the operation Section 187 of TLR & LR Act.

8. Learned counsel, Mr. Dhar appearing for respondent No.4 has submitted that the matter requires to be decided afresh after taking evidence of both side and therefore the District Magistrate simply set aside the earlier order of the SDM and directed the respondent No.4 to file a fresh petition for restoration and the same may be adjudicated by the SDM afresh.

9. Learned Addl. G.A., Mrs. A.S. Lodh referring to the decision of the Full Court has submitted that the point has already been decided by the Full Court and so she relies on the Full Court decision.

10. In the admitted position of this case while the transfers of land between the petitioner and Chikaniya Debbarma, the father of respondent No.4 were held before 01.01.1969, the Revenue Officer has no power to deal with such transfers under Section 187 of TLR & LR Act. Respondent No.4 may resort to other avenues of law to redress his grievance, if permissible by law but in view of the decision of the Full Court while admittedly the transfer of land was held before 01.01.1969 the Revenue Officer is ceased of exercising the power under Section 187 of TLR & LR Act.

11. The writ petition is therefore allowed. Order of the District Magistrate dated 07.01.2014 passed in Revenue Case No.527 of 2010 under Section 95 of TLR & LR Act(Annexure-8 to the writ petition) is set aside and quashed.

12. Accordingly, the writ petition stands disposed of. Parties to bear their own costs.

JUDGE