

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP No. 61 of 2015

1. Sri. Gouranga Ch. Adhikari,
S/o. Lt. Sachindra Adhikari.
2. Sri. Nityananda Adhikari
S/o. Lt. Sachindra Adhikari.
3. Sri. Gobinda Adhikari
S/o. Lt. Sachindra Adhikari,
All are R/o. Chowrangipara,
Badharghat, A.D. Nagar,
P.S. Amtali, Dist. West Tripura.
4. Smt. Manju Adhikari Chakraborty
W/o. Sri. Ashu Chakraborty,
D/o. Lt. Sachindra Adhikari,
Ishanpur, P.O. Panchabati,
P.S. Mohanpur, Dist. West Tripura.
5. Sri. Jnanendra Ch. Adhikari,
S/o. Lt. Ramani Kanta Adhikari,
R/o. Chowrangipara, Badharghat,
A.D.Nagar, P.S. Amtali,
Dist. West Tripura.

..... **Petitioners.**

- *Versus* -

1. The State of Tripura,
Represented by the Secretary,
Revenue, Govt. of Tripura,
New Capital Complex,
P.O. Kunjaban, Agartala,
P.S. East Agartala,
Dist. West Tripura.
2. The Director, Land Record & Settlement,
Govt. of Tripura, Agartala,
P.S. West Agartala,
Dist. West Tripura.
3. The District Magistrate & Collector,
West Tripura District, Agartala,
P.S. West Agartala,
Dist. West Tripura.

..... **Respondents.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioners : Mr. S. Roy, Advocate,
Mr. R.K.P. Singh, Advocate.

For the respondents : None.

Date of hearing & delivery
of Judgment & Order : 03.09.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 05-06-2015 passed by the Civil Judge, (Senior Division), Court No.3, West Tripura, Agartala whereby he has granted time to the defendants to move an application for vacation of the *ex parte* order.

2. I am of the considered view that this order is beyond the jurisdiction of the Civil Court and the reasons for this are enumerated hereinafter.

3. The petitioners (hereinafter referred to as 'the plaintiffs') filed a suit for declaration under Section 11(4) of the Tripura Land Revenue and Land Reforms Act (TLR & LR Act). This suit was registered and notices were issued to the defendants on 26.9.2014, returnable for 08.12.2014. It is apparent that the summons must have been received prior to 08.12.2014 because the State Government put in appearance through Sri Gitanshu Sekhar Das, learned Government pleader in the trial Court on 08.12.2014. The matter was then adjourned to 31.01.2015 for

filing written statement by the defendants. No written statement was filed on 31.01.2015 and the learned Addl. G.P., Mr. L. R. Khadim prayed for time to file written statement. This request was granted and the case was adjourned to 20.02.2015.

4. Again on 20.02.2015, Sri Khadim prayed for further adjournment. The regular Presiding Officer was on training and the case was adjourned to 12.3.2015 for filing written statement. By this time 90(ninety) days had expired even from 08.12.2014. On 12.3.2015 though 90(ninety) days had expired, again no written statement was filed and at the request of the defendants another opportunity was given to file written statement by 20.4.2015.

5. This request was allowed without giving reasons as contemplated under proviso to Order VIII, Rule 1 CPC which clearly lays down that even for any extension beyond thirty days the reasons should be recorded.

6. On 20.4.2015 the written statement was still not filed. Learned counsel for the defendants again prayed for time to file written statement. This request was opposed by the learned counsel for the plaintiffs and the learned trial Court refused to grant any further opportunity and recorded as follows:-

“20.04.2015

Ld counsel for the plaintiff is present. Ld. Counsel for defendant has again prayed for time to file written statement.

Ld. Counsel for the plaintiff has vehemently opposed the prayer of the defendant on the ground that the statutory period is already over and the defendant is

clearly unable to submit any written statement even after getting final opportunity. I have perused the record. In this case the defendants received notice in the month of December, 2014 and they have been provided sufficient opportunity and time to submit written statement. However, the defendant could not submit written statement inspite of getting final opportunity on the previous date. Therefore, the instant case shall proceed exparte against the defendant.

Next date is fixed for exparte hearing.

Fix. 5.6.15. for exparte hearing.”

7. This order is partly incorrect. Though the right of the defendants to file written statement is lost, the defendants can still appear in the case and contest the case by cross examining the plaintiff's witnesses. They are not *ex parte* but only their right to file written statement has been closed. It appears that the learned trial Court did not understand the ambit of Order VIII, Rule 1 CPC.

8. On 05.6.2015 the impugned order was passed which reads as follows:-

“05.06.2015

Ld. Counsel Soumendu Roy is present for the plaintiff. Today a prayer has been made by the Addl. G. P. Mr. L. R. Khadim wherein prayer has been made by the defendants to provide more time to file written statement in this suit. This suit is already proceeding exparte against the defendants and I have heard Ld. Counsel for the plaintiff on the prayer made by the defendants today. At this juncture, I do not find any reasonable ground to allow more time for filing of written statement since the suit is proceeding exparte.

Defendant side has not made any prayer for vacation of exparte order today.

However, for ends of justice, I am allowing one week time to the defendants side to move a prayer for

vacation of the ex parte order. This opportunity is given in view of the fact that the defendant side comprises purely of state machinery. It is further made it clear that no further time will be allowed to the defendants.

Fix 16.6.2015 for further necessary order."

9. On this date also the State did not file any written statement. One could have understood if the State had filed the written statement along with an application for reviewing or recalling the earlier order and then the learned Court below could have passed some orders on the same. What has happened is that the learned Addl. G.P. Mr. L.R. Khadim again prayed time to file written statement and the learned Court below held that there is no reasonable ground for filing of written statement. He, however, granted one weeks' time to the defendant-State to file an application for setting aside the *ex parte* order.

10. The State is being represented on each date of hearing. There are no *ex parte* proceedings against the State. What has happened is that the right to file written statement of the State has been closed. This may have very serious consequences but this does not mean that the State is proceeded against *ex parte*. The State can still cross-examine the witnesses of the plaintiffs and can establish its case only on the basis of its cross-examination. It can also at the time of hearing argue the case. Therefore, there is no question of setting aside any *ex parte* proceedings because the initial order proceeding against *ex parte* itself is wrong.

11. No party can be proceeded against *ex parte* when it is present in Court. When the defence of a party is struck off or when

the party's right to file written statement is closed or when the party is visited with other penal consequences, this may have other effect but it is not that the said party is proceeded against *ex parte*. Furthermore, I am also of the considered view that the Court had no authority or right to give an opportunity to the State to grant time to the State to file an application. If a party wants to file an application, it is free to do so at any stage. It is not for the Court to grant time for this purpose.

12. In view of the above discussion, I set aside the order of the learned trial Court and hold that the second part of the order dated 05.6.2015 is totally illegal. It is, however, clarified that the State has not been proceeded against *ex parte* and though its right to file written statement has been closed, it can cross examine the witnesses and also argue the case at the time of hearing.

13. The revision petition is disposed of accordingly.

CHIEF JUSTICE