

THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No.456 of 2011

1. Sri Nirmalendu Deb,
son of late Nalini Deb,

2. Smti. Nilima Deb,
wife of Sri Shimul Das,

all are residents of Vill. Aadhi-dhepa, Kanchanpur,
P.O. Ambassa,
P.S. Ambassa, Tripura, Dhalai

.....Petitioners

- Vs -

1. The State of Tripura,
represented by the Secretary,
Revenue Department, Government of Tripura,
PO – Kunjaban, New Capital Complex, Agartala, Tripura West

2. The District Magistrate & Collector,
Dhalai District, PO – Jawaharnagar,
PS – Ambassa, Tripura, Dhalai

3. The Sub- Divisional Magistrate,
Ambassa Sub-Division,
PS & PO – Ambassa,
Tripura, Dhalai

4. Sri Bhanu Bikash Deb,
son of late Nalini Deb,
resident of Village – Kanchanpur,
Ambassa Sub-Division,
P.O. Ambassa, PS – Ambassa,
Tripura, Dhalai

.....Respondents

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

For the petitioners : Mr. D. K. Biswas, Advocate

For the respondent Nos.1, 2 & 3 : Mr. D. C. Nath, Advocate

For the respondent No.4 : Mr. S. Bhattacharjee, Advocate

Date of hearing : **26.06.2015**

Date of Delivery of Judgment
and Order : **20.07.2015**

Whether fit for reporting : **YES**

Judgment and Order

At the core of the challenge is the order dated 24.09.2011 delivered in case No.120/REV/2010, Annexure-5 to the writ petition.

02. By the revision petition under Section 95 of the TLR & LR Act, 1960 the sale permission under No.1899-1913 dated 01.04.2009 (Annexure-4 to the writ petition) was sought to be challenged by the petitioners. Couched therewith, serious objection was raised as to the validity of allotting 1.54 acres of land comprised in plot Nos.933/2597 (1.34 acres) and 1933/2598 (0.20 acres) corresponding to old plot No.1128 in khatian No.693 of mouja Kanchanpur by the order dated 30.09.1995 in the allotment case No.6 issued by the Collector, Dhalai, Ambassa, according to the petitioner surreptitiously and in collusion with the respondent No.4.

03. It is undisputed that the petitioners and the respondent No.4 are full-blood brothers and sister. The petitioners have asserted that their father namely Nalini Deb since deceased had been possessing a tract of land being old plot No.1125 (P) corresponding to new plot No.1933, measuring 2.05 acres comprised in the khatian No.1-143. After death of their father, the petitioners are in possession denying all rights of the Government over that land. It has been further asserted that they have been perennially cultivating the same. It has been alleged in the writ petition that the respondent No.4 stealthily obtained the allotment

by the order dated 30.09.1995 for a piece of land measuring 1.54 acres out of the land which is under possession of the petitioners.

04. The petitioners has categorically submitted that the revenue records would also show that the predecessor of the petitioners and the respondent No.4 was the possessor of the said land and his name was recorded as the illegal occupier. In support of that contention, they have annexed khatian No.01/143, wherein against the plot No.1128 (P), Nalini Deb, the predecessor of the petitioners has been recorded as the occupier over the said plot measuring 2.05 acres as the illegal occupier. When it was noticed by the petitioners that out of the said land, a piece of land measuring 1.54 acres has been allotted in favour of the respondent No.4 they filed an application dated 18.03.2004, Annexure P/2 to the writ petition, for cancellation of the allotment order. But no action whatsoever was taken. Sometime in September 2009 when some strangers were taking measurement of their land, on their query they came to know from those strangers that the respondent No.4 has got the sale permission for transferring the allotted land by sale. No sooner had they filed a petition for revision under Section 95 of the TLR & LR Act for cancelling the said sale permission granted by the order dated 01.04.2009, Annexure-4 to the writ petition. But the said prayer has been rejected by the impugned order dated 24.09.2011, Annexure-5 to the writ petition. Hence this writ petition.

05. The respondents have filed separate counter affidavits. The respondent Nos.1, 2 and 3 by filing a combined counter

affidavit have denied any illegal action as alleged by the petitioners and asserted that:

"9. That in reply to the averments and/or contentions made in Paragraph No.1 & 2 of the Writ Petition, I state that the Petitioner Sri Nirmalendu Deb, Smt. Nilima Deb and respondent Sri Bhanu Bikash Deb are the full-blooded brothers and sisters. Their father name is Lt. Nalini Deb, Allotment of the below scheduled of land was given in favour of Sri Bhanu Bikash Deb in the year 1995 vide allotment Case No.6 dated 30.09.1995.

LAND SCHEDULE

NAME OF MOUJA	KH. NO.	OLD PLOT NO.	NEW PLOT NO.	AREA (IN ACRE)
Kanchanpur	693	1128	1933/2597 1933/2598	1.34 0.20
TOTAL				1.54 acres

During allotment of the aforesaid land the present Petitioner ought to have challenged the said allotment. But no report is available regarding challenging the said allotment. The allotment order, passed by the D.M. & Collector, Dhalai was legal and proper and it did not suffer any illegality and arbitrariness and unreasonableness. The D. M. & Collector, Dhalai having competency to may allotment of khas land, in excise (sic) of power vesting in him by the TLR & LR Act and Rules framed there under, cause allotment of land in favour of the Respondent No.4, strictly complying with the procedure prescribed by the Act & Rules for such allotment.

10. That in reply to the averments and/or contentions made in Paragraph No.3 of the Writ petition, I state that sale permission was given for the below schedule of land in favour of the Respondent No.4 vide Memo No.1899-1913/F.2(11)/DM(D)REV/05 dated 01.04.2009. The land schedule of the permitted land for sale is as follows:-

NAME OF MOUJA	KH. NO.	PLOT NO.	CLASS	AREA (IN ACRE)
Kanchanpur	693	1933/2597(P)	Tilla	1.20

The answering Respondent submits that application for cancellation for allotment order dated 18.03.2004, was misconceived one and it was utterly meritless. The answering Respondent strongly dispute the further averments, that the application for cancellation of allotment order dated 18.03.2004 fetched no further advancement of the proceeding and found traceless. From the Annexure-P/2 it is revealed that, the application dated 18.03.2004 was defective one as in that application the description of the allotment land was not given correctly. It is further revealed, that after 1 ½ years the petitioner made further application dated 19.08.2005 for correction of their earlier application dated 18.03.2004. The very fact, that, in making application for correction of the defective application dated 18.03.2004 the petitioners consumed 1 ½ years, speaks eloquently of their laches (sic) and negligence. The petitioners have absolutely failed to show any paper/document to establish, that, they pursued the remedy opted for.”

06. On due inquiry and consideration, the permission for sale of part of the allotted land was granted. They have also categorically stated that the exercise of granting allotment to the respondent No.4 was well within the knowledge of the petitioners. It has been admitted in the writ petition that they came to know about the allotment at least from 10.02.2004 and as such the writ petition is hit by laches. Apart that, it has been contended by them that the impugned order dated 24.09.2011 does not suffer from any illegality or infirmity. Moreover, the writ petition has been filed without exhausting the alternative remedy and hence no interference is called for.

07. The respondent No.4 by filing a separate counter affidavit has replicated the stand taken by the respondent Nos.1, 2 and 3. The respondent No.4 has raised identical jurisprudential objection as to the laches and the existence of alternative remedy.

08. Mr. D. K. Biswas, learned counsel has submitted that the petitioners are still in the possession of the purported allotted land as they inherited that possession in continuation of the possession of their father and as such the allotment made in favour of the respondent No.4 was illegal ab initio inasmuch as even though the petitioners are in possession of the allotted land, they were never heard but behind their back the said allotment order has been issued. There has been serious breach of conditions of allotment and hence the provisions of Rule 12 (viii) of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 as framed in exercise of the powers conferred by Section 98 of the Tripura Land Revenue and Land Reforms Act, 1960 would be applicable as the respondent No.4 did not bring that land into cultivation within the stipulated period. From Appendix-B, read with Rule 12(iii) of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980, it would transpire that in case of waste land, allotted for agricultural purpose the allottee shall bring the whole area under cultivation within 5 years from the date of allotment. No such initiative was ever been taken by the petitioner. That apart, the condition No.9 of the Appendix-B prepared under Rule 12 of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 would come into play. The said condition No.9 provides as under:

"(a) except in cases falling under clause (4), the land is not used within two years of the date of allotment for the purpose for which it is allotted."

09. Even if the land is not waste land then for not using the allotted land within two years, the allotment is liable to be cancelled. But Mr. Biswas, learned counsel has emphatically argued that the respondent No.4 did not get any possession of the allotted land as the petitioners were all along in the possession. Mr. Biswas, learned counsel has further contended that the sale permission of the said land has been made without deciding the prayer for cancellation and hence the said order cannot be treated as valid, but collusive one.

10. On refuting such submission advanced by Mr. Biswas, learned counsel for the petitioner, Mr. Samarjit Bhattacharjee, learned counsel has submitted that the writ petition suffers from laches and in this regard he has referred a decision of the apex court in ***U. P. Jal Nigam and another vs. Jaswant Singh and another*** reported in ***(2006) 11 SCC 464*** where the apex court has held that when a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged the action. In ***U. P. Jal Nigam and another vs. Jaswant Singh and another*** it has been held by the apex court as under:

"8. Our attention was also invited to a decision of this Court in State of Karnataka v. S. M. Kotraya ((1996)6 SCC 267). In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under:(SCC p.268)

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in Sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under Sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under Sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

9. Similarly, in Jagdish Lal v. State of Haryana ((1997) 6 SCC 538) this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC P.542)

"The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Vir Pal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

11. Mr. Bhattacharjee, learned counsel has also raised the jurisprudential objection as to the maintainability of this writ petition inasmuch as according to him the impugned order dated 24.09.2011 is an appealable order in view of Section 93 of the Tripura Land Revenue and Land Reforms Act, 1960. Section 93 of the said Act provides for appeal. Without exhausting that remedy since this writ petition has been filed by the petitioners, this Court should not exercise the jurisdiction under Article 226 of the Constitution of India. Mr. Bhattacharjee, learned counsel appearing for the respondent No.4 has raised another objection that under Section 11(3) of the TLR & LR Act the petitioners had the remedy,

but they have not exhausted that remedy as well. Section 11(3) of the TLR & LR Act provides as under:

"Where any property or any right in or over any property is claimed by or on behalf of the Government, or by any person as against the Government and the claim is disputed, such dispute shall be decided by the Collector whose order shall, subject of the provisions of this Act, be final."

In this case no right has been claimed by the Government or on its behalf even no right has been claimed against the Government but it is a dispute fundamentally hovering on the possession over a Government land qua the order of allotment and as such the plea as raised by Mr. Bhattacharjee, learned counsel is absolutely misplaced and hence deserves no serious consideration.

12. Mr. D. C. Nath, learned counsel has submitted that the procedural requirement for granting the allotment or the sale permission has been followed and there is no infirmity in the impugned order and as such this writ petition deserves to be dismissed.

13. From the rival contentions, the points those emerged for response of this court may be noted as under:

(1) whether the petitioners acquiesced to the allotment order dated 30.09.1995 or

(2) whether the said allotment order dated 30.09.1995 can be held valid in law in view of the petitioners' possession on the allotted land long before the day of allotment and

(3) whether there is any alternative and effective remedy against the order dated 29.04.2011 for not exhausting which, this court may hold that the writ petition is not maintainable?

14. The petitioners have categorically stated that on 18.03.2004 when they gathered the knowledge of allotment, made in favour of the respondent No.4, they filed a petition dated 18.03.2004, Annexure-P/2 to the writ petition for cancellation of allotment. But no order whatsoever was passed on the petition. In reply to that, the respondents No.1 to 4 have stated as under:

"From the Annexure-P/2 it is revealed that, the application dtd. 18.3.2004 was defective one as in that application the description of the allotted land was not given correctly. It is further revealed, that after 1 and ½ years (1 ½ years), the petitioners made further application, dtd. 19.8.2005 for correction of their earlier application, dtd. 18.3.2004. The very fact, that, in making application for correction of the defective application, dtd. 18.3.2004 the Petitioners consumed one and half years (1 ½ years), speaks eloquently of their laches and negligence. The Petitioner did not pursue their application, dtd. 18.3.2004 and subsequent application, dtd. 19.8.2005. The Petitioners have absolutely failed to show any paper/documents to establish, that, they pursued the remedy opted for."

15. From the said response, it is obvious that no order had been passed on their application for cancellation of the allotment and the response, in this respect, is very vague. Had any order been passed on the application dated 18.03.2004 or on the application dated 19.08.2004, the respondents No.1 to 3 should have annexed that order or at least produced the records before this court but they have not done so and as such it cannot be held that the petitioners acquiesced by their conduct/action. As such,

the objection as to the laches is not tenable, inasmuch as neither the respondents No.1, 2 and 3 nor the respondent No.4 has placed any record that the petitioners had the knowledge of allotment prior to 18.03.2004. Remarkably, the respondents nowhere in their counter affidavit have denied that the petitioners were in possession over the allotted land as claimed. They have evaded a specific reply to that aspect. A strange plea has been taken by the respondents No.1 and 2 while making reply to para-7 where the petitioners have asserted that from the inquiry report of the Sub-Divisional Magistrate, it has transpired that the respondent No.4 is only possessing 0.34 acres of land under plot No.1933/2595(P). The respondents No.1 to 3 have stated in response as noted here under:

"From the enquiry report it transpired that, Respondent No.4 is possessing 0.34 acre land under Plot No.1933/2597 (P) is disputed by the Respondent No.4. In respect to the purported enquiry report to the effect that 1.54 acre land is under occupation of the Petitioners and Respondent No.4. The Respondent No.4 asserts, that, such report is utterly baseless and it was prepared without any inquiry. The Respondent No.4 is the allottee in respect of land measuring 1.54 acre and for this very reason the enquiry report has no relevancy. The purported enquiry report has been the result of the extraneous consideration."

16. It is really surprising that when a Sub-Divisional Magistrate has enquired as to the possession, how the said report can be discarded on the basis of the statement made by the respondent No.4 who is highly interested in the allotted land or how can it be stated that the inquiry report was the result of extraneous consideration. No such papers or the report from the other inquiry was placed on the record to show that the said inquiry

report was created on 'extraneous consideration'. Rather, the inquiry report shows that before allotting the land to the respondent No.4 there was no enquiry. These are the serious infirmities and those cannot be simply brushed aside. The response of the respondent No.4 is strangely identical. The respondent No.4 has asserted that the report is baseless and it was prepared without any inquiry. The respondent No.4 is the allottee in respect of the land measuring 1.54 acres. The allotment order is the culmination of the procedure as prescribed. Both the respondents No.1, 2 and 3 and the respondent No.4 are as it appears in tandem and as such this court is of the considered opinion that the respondent No.2 is under strict obligation to make a fresh inquiry about the claim and counter claim as to the possession over the land measuring 1.54 acres comprised in new plot Nos.1933/2594 (1.34 acres) and 1933/2598 (0.20 acres) corresponding to old plot No.1128 of khatian No.693 (mutated). The jurisprudential objection as raised in respect of availability of alternative remedy is entirely misconceived inasmuch as Section 93 which is the appellate provision in the TLR & LR Act, 1960 provides as under:

"93. Appeals.

(1) Save as otherwise expressly provided, an appeal shall lie from every original order passed under this Act,--

(a) If such an order is passed by an officer-subordinate to the sub- divisional officer, to the sub-divisional officer;

(b) if such an order is passed by the sub- divisional officer, to the Collector;

(c) if such an order is passed by the Collector, to the State Government;

(d) if such an order is passed by an assistant survey and settlement officer, to the survey and settlement officer or to a revenue officer notified by the Administrator in the Official Gazette to be the appellate authority; and

(e) if such an order is passed by a survey and settlement officer, to the director of settlement and land records or to a revenue officer notified by the Administrator in the Official Gazette to be the appellate authority.

(2) A second' appeal shall lie against any order passed in first appeal,-

(a) if such an order is passed under clause (a) of subsection (1) to the Collector;

(b) if such an order is passed under clause (b) of subsection (1), to the Administrator;

(c) if such an order is passed under clause (d) of subsection (1), to the director of settlement and land records or to a revenue officer notified by the Administrator in the Official Gazette to be the second appellate authority; and

(d) If such an order is passed under clause (e) of sub., section (1), to the Administrator."

17. Section 93 of the TLR&LR Act, 1960 has unambiguously provided that appeal shall only lie from original order passed under that Act. The revisional order dated 24.09.2011 having been passed under Section 95 of TLR & LR Act, 1960 in case No. 120/REV/2010 cannot be treated as the original order. The original order is the order dated 01.04.2009 and the allotment order dated 30.09.1995. Hence, the plea of existence of alternative remedy cannot be maintained. In ***Raj Mohan Chowdhury v. Mangchai Mag and Ors.,*** the Gauhati High Court by their Judgment and order dated 06.03.2007 delivered in ***Writ Appeal No.52 of 1999*** has held as under:

"The only question, which has been contended before us by the learned counsel for the appellant herein is that the finding of the learned Single Judge regarding

availability of alternative remedy under Section 93 of the T.L.R. & L.R. Act is misconceived inasmuch as such remedy is available only against an original order not against an order passed in revision."

[Emphasis Supplied]

18. From the impugned order dated 24.09.2011, it has emerged as under:

"Perused the enquiry report of SDM, Ambassa vide her letter No.6048/F.3(7-4)/SDM/ABS/REV/10 dated 04.10.2010 and found that 1.54 acres of land is peacefully occupying by Sri Nirmalendu Deb, Sri Bhanu Bikash Deb and Smt. Nilima Deb all son and daughter of Lt. Nalini Deb. Prior revisional survey the disputed land laws recorded in plot No.1933 under khatian No.1/144 and the said land was occupied by their father Lt. Nalini Deb."

19. Without taking any cognizance of the said enquiry report of the SDM, Ambassa, it has been observed by the District Collector by the impugned order dated 24.09.2011 that since the petitioners made the allegation against the respondent No.4 in the year 2004 after a long period from the day of allotment, the allotted land shall remain with the respondent No.4. From the records it has been availed that the petitioner had no knowledge of the allotment before 2004 and as such the reason given by the District Collector for passing the order dated 24.09.2011 is absolutely unsustainable and accordingly it is set aside. Since this court has already expressed its opinion that from the facts revealed from the enquiry report as conducted by the SDM, Ambassa, the District Collector should have either cancelled the allotment order dated 30.09.1995 for the reason that the respondent No.4 was not in possession or should have conducted a fresh inquiry but the

District Collector did not take any of such recourses. Hence, the impugned order suffers from serious infirmity.

20. Hence, it is directed that the District Collector, Dhalai, Ambassa shall conduct a special enquiry for ascertaining the possession over the land allotted to the respondent No.4 on 30.09.1995. Such enquiry shall be carried out primarily to ascertain the possession before the date of allotment. After the enquiry report is available from a competent officer, in terms of the above, observation, the copy thereof shall be served to the petitioners and the respondent No.4 and after hearing them, the District Collector shall pass appropriate order as to the allotment of the land as referred in the order dated 30.09.1995 afresh. During that exercise, the District Collector shall also consider whether there were any breach of the conditions as laid down in Rule 12 of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 read with Appendix-B containing further specified conditions. Till such decision is taken by the District Collector, the impugned sale permission granted to the respondent No.4 in respect of the undernoted land vide memorandum No.1899-1913/F.2(11)DM(D)/REV/05 dated 01.04.2009 shall remain suspended. The schedule of the land permitted to be sold by the respondent No.4 is as under:

Mouja	Kh. No.	Plot No.	Class	Area
Kanchanpur	693	1933/2597(P)	Tilla	1.20

21. If it is found that the petitioners and the respondent No.4 were in the joint possession of the allotted land before the

day of allotment, the order of allotment must be cancelled and in consequence thereof the order granting sale permission dated 01.04.2009 shall also be cancelled. But if it is established that the petitioners were not at all in possession of the allotted land, the allotment order dated 30.09.1995 may not be interfered with unless it is found that the respondent No.4 has caused breach of condition of the allotment. Both the petitioners and the respondent No.4 shall remain with liberty to produce their evidence before the Collector during the hearing. The entire exercise shall be completed within 31.03.2016.

With this observation and direction, this writ petition stands allowed to the extent as indicated hereinabove. There shall be no order as to costs.

JUDGE

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