HIGH COURT OF TRIPURA
AGARTALA

W.A. No.02/2017

Tripura Tea Development Corporation Limited,
Represented by it's Managing Director,
Lake Chowmuhani, Agartala, P.O. – Agartala, P.S. – West Tripura,
District – West Tripura, Tripura, Pin – 799001.

.....Appellant(s)

Versus

1. Peerless Tea and Industry Limited, now Kamala Tea Co. Ltd.,
   Having it's office at 240B, AJC Bose Road, 3rd Floor,
   Kolkata – 700 020.

2. The State of Tripura,
   Represented by the Chief Secretary, Department of Industries and Commerce, Secretariat Complex, P.O. – New Secretariat Complex,
   Kunjaban, Agartala, West Tripura, Pin – 799006.

3. The Secretary to the Government of Tripura,
   Department of Industries and Commerce, Government of Tripura,
   Having his office at Khejurbagan, P.O. – Kunjaban, Agartala,
   West Tripura, Pin – 799006.

.....Respondent(s)

For Appellant(s) : Mr. Bijan Saha, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Nepal Majumder, Advocate.

Along with

W.A. No.11/2017

1. The State of Tripura,
   Represented by the Chief Secretary,
   Department of Industries & Commerce,

Government of Tripura, Secretariat Complex,
P.O. – New Secretariat Complex, Kunjaban,
Agartala, West Tripura.

2. The Secretary to the Government of Tripura,
Department of Industries and Commerce,
Government of Tripura,
Having his office at Khejurbagan,
P.O. – Kunjaban, Agartala, West Tripura.

.....Appellant(s)

Versus

1. Peerless Tea Industry Limited,
Having its office at 240B, AJC Bose Road,
Kolkata – 700020.
Represented by its duly constituted
Attorney Sri Mangaram Chowdhury,
S/O. Mularam Chowdhury of
Fatikcherra, P.O. Fatikcherra,
P.S. Sidhai, Tripura, Pin - 799210

2. Tripura Tea Development Corporation Limited,
Represented by its Managing Director,
Lake Chowmohani, Agartala, P.O. – Agartala,
P.S. – West Tripura, District – West Tripura,
Pin – 799001.

.....Respondent(s)

For Appellant(s) : Mr. Nepal Majumder, Advocate.

For Respondent(s) : Mr. Bijan Saha, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing : 24.11.2020.

Date of delivery of Judgment & order : 04.12.2020.

Whether fit for reporting : No.

JUDGMENT & ORDER

(Akil Kureshi, CJ).

These Appeals arise from a common Judgment of the learned Single Judge dated 27.09.2016 in W.P. (C) No.257 of 2016. W.A. No.02 of 2017 is filed by the Tripura Tea Development Corporation Limited ('TTDC', for short), original respondent No.3 and W.A. No.11 of 2017 is filed by the State Government and its authority who are original respondents No.1 and 2.

2. This litigation has chequered history. Briefly stated the facts are that the original petitioner-Peerless Tea and Industry Limited (hereinafter to be referred to as 'Peerless'), a company registered in the Companies Act, owned and managed Fatikcherra Tea Estate. The management of the Tea Estate was taken over by the Government of Tripura on 10.11.1986 and the management was handed over to TTDC in terms of the provisions of Tripura Tea Company (Taking Over of Management of Certain Tea Units) Act, 1986 (hereinafter to be referred to as 'the said Act of 1986). This Act authorized the State Government by issuing a Notification to take over the management of a Tea Estate initially for a period of 5 years, which period could be extended from time to time. The Act also provided that after taking over the management, during the period the same remained under the management of the State Government or its custodian, the Government

would pay to the company annual compensation of such amount as may be specified by this State Government for suspending the right of user.

3. Peerless had previously filed a Writ Petition before the Gauhati High Court seeking proper compensation, which was disposed of by the High Court directing the Government to take a final decision within a stipulated time. The Peerless had to file yet another petition W.P. (C) No.401 of 2004 before the Tripura High Court in which it was pointed out that instead of paying any compensation to the petitioner, the Government had raised a demand of Rs.1.41 crores (rounded off). This petition was disposed of by the learned Single Judge by a Judgment dated 08.05.2015. The learned Single Judge was of the opinion that the petitioner-company was entitled to receive adequate compensation for depriving it the right to manage the Estate and the Government cannot take over the management without payment of adequate compensation.

4. During the pendency of the said petition, another development took place. The State Government had filed a regular civil suit M.S. No.27 of 2006 before the learned Civil Judge (Sr. Division), West Tripura, Agartala seeking recovery of the sum of Rs.1.41 crores (rounded off) from Peerless, who was the defendant. The case of the plaintiff-State Government was that after taking over the management of the said Tea Estate, the Government had made substantial investment to the tune of Rs.1.90 crores

(rounded off). Along with interest @ 12% per annum on such investment which came to Rs.22.88 lakhs (rounded off), the total out flow from the Government funds was Rs.2.13 crores (rounded off) as against this, during the period when the management was in the control of the custodian of the Government, total sale proceeds of the tea manufactured came to Rs.72.04 lakhs. After giving credit of the said sum of Rs.72.04 lakhs, the remaining sum of Rs.1.41 crores became due and payable by the defendant to the plaintiff. This suit was decreed *ex parte* by a Decree dated 19.09.2009.

5. These developments were brought to the notice of the learned Single Judge and were noted in the judgment also. In this respect, it was observed as under:

> "23. Having regard to the decision of the Govt. of Tripura as reflected in the communication dated 12.08.2014 (Annexure P/2), it appears that, now the Government has determined the compensation at `6.00, meaning the previous amount as determined by the Committee, is no more insisted on. However, since the said ex parte decree appears to be in existence, this court would not pass any further observation as regards its executability on face of the said development."

6. The learned Judge was of the opinion that the decision of the State Government to pay token compensation of Rs.1/- per annum for 6 years of deprival of right user estate to its owner was simply impermissible. In the result, writ petition was disposed of with the following directions:

"24. Having regard to the discussion as made above, this court, however, is not inclined to take over the responsibility of computing the compensation in exercise of its discretionary jurisdiction, rather it would pass some directions for purpose of computing the just compensation to be awarded to the petitioner in terms of Section 3 and Section 5 of the said Act. It is directed that within 2(two) months from the day when the petitioner sall furnish a copy of this order, the State Govt. either shall appoint a reputed chartered valuer else they would appoint SBA Associates, having their office at 27, Mirza Ghalib Street, 5th Floor, Kolkata-700016, for purpose of making assessment for determining the annual compensation. In the event of the engagement of the SBA Associates, they will be entitled to get `50,000 (rupees fifty thousand) excluding the actual cost of travel and lodging. If the Government fails to engage a chartered valuer within 2(two) months as stipulated, within a fortnight thereafter, they shall issue the letter of appointment or engagement of SBA Associates with the terms and reference, for computing the compensation, in full compliance with the provision of Sections 3 and 5 of the said Act with further direction that such survey shall be completed within 2(two) months from the date of issue. The chartered valuer shall, following the scientific method, determine the annual compensation. Both the petitioner, the State Govt. and the custodian of the State Govt., the TTDC shall extend all sorts of cooperation to the chartered valuer who are under obligation to complete the survey or assessment within two months from the date of their engagement. The petitioner, State Government and the Custodian shall produce all necessary documents for the survey, whenever they are so asked without delay.

25. It is again made clear that, the profit and loss account during the period of suspension of the management will have no impact on determining the compensation as stated. On the basis of the assessment that would be made, the State Government shall pay the compensation within 3(three) months thereafter. If such payment is not paid within three months as stipulated, they shall have to pay interest @ 18% in terms of the order dated 28.01.2000 delivered in Civil Rule No.142 of 1986 by the Gauhati High Court."

7. Pursuant to such directions, the State Government constituted a Committee for assessing the compensation payable to Peerless for the period in question. Pursuant to the report of the Chartered Accountants, a decision was taken to pay compensation to the tune of Rs.22,63,051/- after deducting a sum of Rs.17,88,388/-. The petitioner was aggrieved by such computation and decision of the Government. The petitioner, therefore, filed a fresh petition W.P. (C) No.257 of 2016. In the said petition, the petitioner-Peerless raised several issues contesting the valuation of the Chartered Accountants appointed by the Government. Following prayers were made in the said petition:

"24. That this application is made bona fide and for the ends of justice.

Under the circumstances, it is most humbly prayed that Your Lordships would graciously be pleased to issue:-

a) A Writ of and/or order and/order direction in the nature of Mandamus do issue commanding the respondent no 2 and 3 their servants, agents or assignees to not to give to effect or

further effect to the calculation or inadequate compensation namely Rs.22,63,856/- made and communicated to the petitioner by the letter dated 05/12/2015 and to allow the petitioner reasonable opportunity to file an appropriate rejoinder and after considering that make a fresh valuation and compensation along with interest as ordered by the court and further treat the payment made as ad hoc part payment of the due compensation along with 18% interest, amounting to Rs.218 Lakhs, as ordered by the Hon'ble High Court.

b) A writ of and/or order and/or direction in the nature of Mandamus do issue commanding the respondent No.2 and 3, their servants, agents or assignees to forthwith disburse the amount of Rs.17,88,388/- to the petitioners which had been illegally deducted by the respondent authorities;

c) A Writ of and / or order and / or direction in the nature of Mandamus do issue commanding the respondent No.2 and 3, their servants, agents or assignees to forthwith take steps to appointment an authentic chartered Valuer or SBA Associates in terms of the order passed by this Hon'ble High Court, in W.P. (C) No.401 of 2004;

d) A writ of and/or order and/or direction in the nature of Mandamus do issue commanding the respondent No.2 and 3, their servants, agents or assignees to forthwith provide for a report disclosing a detailed valuation chart of the property of Fatikcherra Tea Estate, in terms of the prayer (C) made above;

e) A writ of and/or order and/or direction in the nature of Certiorari do issue commanding the respondent No.2 and 3, their servants, agents or assignees to transmit the entire records in relation to the decisions taken by them in

HIGH COURT OF TRIPURA

connection with the queries put forth in the representation dated 09/12/2015 and other records relating to the same case certify the same so that conscionable justice may be done;

f) Rule NISI in terms of prayers (a) to (d) above;

g) An interim order in terms of prayer (a) to (d) above;

h) Such further and /or other order or/orders as this Hon'ble Court may deem fit and proper."

8. This fresh petition was disposed of by the learned Single Judge by the impugned Judgment dated 27.09.2016. The learned Judge was not inclined to disturb the valuation part of the exercise. Only modification made in the Judgment was to the extent of deduction of a sum of Rs.14,56,173/-, which was with the consent of the Advocate General. Eventually therefore, Peerless received a total compensation of Rs.40,51,439/-, which would carry interest @ 18% per annum. However, while doing so, the learned Single Judge expressed an opinion that the petitioner was thereafter not liable to pay any further sum to the Government. He authorized the petitioner to use this observation in difference of the execution proceedings which had been filed against it. It may be recorded that against the Decree passed by the civil Court in Money Suit No.27 of 2006, the Peerless had filed FAO No.01 of 2012 before the High Court, which was dismissed by a Judgment dated 22.02.2016.

9. The relevant portion of the impugned Judgment of the learned Single Judge reads as under:

> "[3] The petitioner has approached this Court again to lay the post judgment facts that the State has not engaged any chartered valuer as directed by this Court. However, in the reply filed by the State respondents, this Court has come across the report of the Contemporary Brokers Pvt. Ltd. Dated 05.12.2015, which is a part of Annexure-2 to the reply. The said agency as engaged by the State to ascertain the compensation that might be paid to the petitioner-company, M/s. Peerless Tea & Industry Ltd., Fatikcherra Tea Estate in discharge of the statutory obligation. From the said reply, the following has appeared before this Court :
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> > **" We have also considered the capital investment made of Rs. 14,27,696 made in planting 62.75 acres of young tea (14,00,967 plants0 and infilling tea (18,372 plants) at an expenditure of Rs. 28,477/- which totals Rs. 14,56,173 (Rupees fourteen lakhs fifty-six thousand one hundred and seventy-three) and added the average interest rate prevailing at the time.**
> >
> > **The valuation of the property stands at Rs. 20,97,300/-.**
> > **This is arrived at, by taking the valuation which is Rs. 28,64,400 plus interest Rs. 40,51,439. Less 14,56,173 plus interest Rs. 17,88,388, amounting to Rs. 22,63,051.**
> >
> > **Therefore, as per Tripura Tea Companies (Taking Over of management of Certain Tea Units) Act, 1986. Chapter II 3/3and 4/5 the compensation payable to M/s Peerless is Rs. 22,63,051 (Rupees twenty-two lakhs sixty-three thousand and fifty-one only)."**
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> > **[Emphasis added by the Court]**

HIGH COURT OF TRIPURA

[4] Having perused the report, it has surfaced that the petitioner would be paid only Rs. 22,63,051/-. having noticed the said report, this Court has passed the followed order on 08.09.2016 as follows:

> **"As Mr. B. C. Das, learned Advocate General has stated that in respect of deduction as made on account of the investment made for the new plantation which is available at Page-64 of this writ petition, he required some instruction, let the matter be listed for continuation of hearing on 14.09.2016 as part heard."**

[5] Mr. B. C. Das, learned A.G. has fairly submitted that the deduction that has been made by the said agency to the extent of Rs. 14,56,173/- with interest at the prevailing rate is wholly unreasonable unjustified and this cannot be permitted within the ambit of Tripura Tea Companies (Taking Over of management of Certain Tea Units) Act, 1986.

[6] Having this statement taken into notice, this Court is of the view that the said deduction is unsustainable and accordingly the petitioner shall be entitled to compensation for the said period when this Tea Estate was under the management of the respondent No. 3 to the extent of Rs. 40,51,439/-. If the said amount is not paid within 3 months from the day of receipt of a copy of the judgment from the petitioner, the said amount shall carry interest @ 18% till the payment is made.

[7] In view of the observations made above, this Court is of the considered view that the petitioner is not liable to pay any further sum to the respondents. The petitioner may utilize this observation in their defence in the execution proceeding as reportedly set in terms of the judgment and decree passed in Money Suit No. 27 of 2006."

HIGH COURT OF TRIPURA

10. The appellants of both the Writ Appeals i.e. TTDC as well as the State Government are aggrieved by the observations made by the learned Single Judge in paragraph-7 of the Judgment. They have not disputed liability to pay total compensation of Rs.40,51,439/- with interest to Peerless. Their only grievance is that the learned Single Judge was not justified in providing that the Peerless has no further dues towards the Government and that on such basis the Peerless may oppose the execution of the Decree passed by the civil Court.

11. We have heard learned counsel for the appellants. Though served, no one appeared for Peerless. In our opinion, for multiple reasons, the learned Single Judge was not justified in making above observations. Firstly, the Writ Petitions filed by Peerless before the High Court concerned its demand for receiving adequate compensation for loss of right of user of the Tea Estate during the period when the management was taken over by the State Government under a statute and handed over to TTDC. Initially, Government paid no compensation. Thereafter, the Government issued a Notification deciding to pay compensation of Rs.1/- per annum. This was found to be expropriatory by the High Court. The High Court, therefore, required the Government to appoint committee for assessing the compensation payable. On the basis of the report of the

Chartered Accountants, the Government granted compensation of Rs.22,97,300/-. Peerless disputed even this quantification in the present petition. The only change made by the Single Judge was to set aside a deduction of Rs.14,56,173/- made by the Government. Consequently, the Peerless was entitled to receive compensation of Rs.40,51,439/- with interest.

12. On the other hand, the demand raised by the Government from Peerless in the civil suit was based on different set of facts. According to the Government, after taking over the management of the Tea Estate, the Government had invested a sum of Rs.1.90/- crores. With interest of Rs.22.88 lakhs, the total expenditure came to Rs.2.13 crores. As against this, total sale of the tea manufactured during the said period came to Rs.72.04 lakhs. The difference between the two i.e. a sum of Rs.1.41 crores was payable by Peerless to the Government. The civil suit was decreed by the civil Court. Even if it was an *ex parte* decree, nevertheless, the same would be binding to the parties unless recalled by the same Court or set aside by the High Court. The Peerless preferred Appeal against the said Decree but the Appeal was dismissed by the High Court.

13. We are not on the question of the correctness of the demand of the State Government of the said sum of Rs.1.41 crores from Peerless. We have neither been called upon, nor can we judge the correctness thereof

since Peerless faces a decree which has achieved finality. What we are suggesting is that the two heads, one involved in the civil suit filed by the State Government and another in Writ Petitions filed by Peerless were entirely different. To reiterate, the claim of Peerless was based on its right to receive just compensation for loss of right to use the Tea Estates. The claim of the Government was based on higher capital investment compared to the sale realization of the produce of the Estate.

14. Significantly, the Decree of the civil Court was very much before the High Court when earlier petition of Peerless, W.P. (C) No.401 of 2004 was decided. No directions were issued to ignore the Decree of the civil Court while disposing of the writ petition. In the fresh litigation i.e. in the present petition, no such directions could have been issued. We have reproduced the prayers made by the petitioner in the said petition. None of the prayers relate to absolving Peerless from satisfying the Decree of the Civil Court. In absence of any such prayer and in absence of any debate or discussion on this issue, in any case, the learned Single Judge could not have made those observations.

15. Effectively, the learned Single Judge has set aside a decree passed by the competent Civil Court as confirmed by the High Court, that too without a matching prayer for such purpose, without any pleadings on record to enable the Court to carry out full scrutiny and examination of

relevant aspects and apparently, without full arguments on the issue. In fact, such an issue did not arise in the said petition at all.

16. In the result, Appeals are allowed. Observations made in paragraph-7 of the impugned Judgment of the learned Single Judge, are set aside. Rest of the Judgment remains un-affected by these directions.

17. Pending application, if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

HIGH COURT OF TRIPURA
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