**HIGH COURT OF TRIPURA**
**AGARTALA**

**W.P. (C) No.36/2020**

Mosobbir Ali

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate.
Mr. S. De, Advocate.

For Respondent(s) : Mr. D. Sarma, Addl. GA.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

**Order**

**25/11/2020.**

Petitioner is aggrieved by the action of the respondent-authorities in not deciding his application for joint verification of trees standing on a particular piece of land. His prayer therefore is that direction should be issued to the respondents for conducting such joint inspection.

Brief facts are as under:

The petitioner holds Power of Attorney with respect to certain parcels of lands belonging to members of Scheduled Tribes, details of which are given in the Schedule to the said Power of Attorney dated 29.04.2009 and which hereafter shall be referred to as 'the said land'. To

the terms of his Power of Attorney, we would make a reference later. For the present, we may record that in terms of the guidelines issued by the Government of Tripura under Circular dated 20.10.2010 described as 'DETAILED PROCEDURE FOR EXTRACTION OF TREES FROM NON-FOREST AREAS', on the strength of the said Power of Attorney, the petitioner applied to the Sub-Divisional Forest Officer, Kailashahar Forest Sub-Division in April, 2019 for joint verification of the standing trees on the said land. This application was forwarded by the Sub-Divisional Forest Officer to the Sub-Divisional Magistrate, Kailashahar. For a long time, the said authorities took no further action on the application of the petitioner. He, therefore, filed this petition.

In response to the notice issued, the respondents have appeared and filed reply dated 21.05.2020 in which the main stand taken for opposing the prayer of the petitioner is that the Power of Attorney in question authorizes the petitioner to sell a tribal land. The petitioner is a non-tribal and therefore, according to the respondents, the Power of Attorney is an invalid document, being opposed to Section 187(1)(b) of TLR & LR Act.

I have heard the learned counsel for the parties, perused documents, particularly, the Power of Attorney. Clause-1 of Power of Attorney authorized the holder to commence any action or other legal proceedings in Court regarding right, title, interest and cause of action concerning the land. Clause-2 of the Power of Attorney authorizes the Attorney to obtain

sale permission concerning the land from the District Collector or the competent authority for transferring the same. Clause-3 of the Power of Attorney authorizes the holder of the power to prefer any appeal in proper court against any judgment or decree and to engage any advocate for such purpose. Clause-4 which is heavily relied by the counsel for the petitioner and clause-5 which is also relevant, read as under:

> "4) That, the Attorney for the said purposes aforesaid to certain Advocates as our said attorney shall think fit and shall sign and execute all retainers, Vokalatnamas, Plaints, written statements, petitions and all other paper and documents for filing any suits or to defend the same as our said attorney shall think fit and also shall verify the same when occasion shall arise and to sell all the standing trees in the schedule land by obtaining all kinds of Forest pass & permission.
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> 5) To appear before any registers or sub-registrar to execute sale deed in respect of schedule land and to person for registration the sale deed already executed or that may hereafter the sale deed already executed or that may hereafter be executed by us and to admit the execution of succeed and otherwise to all acts, deeds, maters and things and get the said deed registered in the form of law and to sell the property absolutely after obtaining sale permission in our behalf and for our interest and benefits."

I am not convinced by the stand of the department taken in the affidavit-in-reply. The Power of Attorney in question authorized the petitioner to approach the Collector and obtain necessary permission for

transfer of the land. This is vastly different from actual transfer of the land which in case of a land belonging to a Scheduled Tribes member in favour of a non-Scheduled Tribes person is prohibited under Section 187 (1) (b) of the TLR & LR Act. However, the question is does the Power of Attorney permit the petitioner to remove the existing trees from the land in question till the same is sold or transferred in favour of any other person. As noted, clauses 1, 2 and 3 pertain to the action that the Power of Attorney can take for sale of the land by obtaining necessary permission from the Collector. Clause-5 reproduced above would authorize the Power of Attorney to execute such sale once the permission is granted. Clause-4 provides that for the aforesaid purposes that is those referred to in clauses-1 to 3 the Power of Attorney would be authorized to engage advocates and sign authorization in favour of such advocates as well as other legal documents such as plaints, written statements etc. He would also be authorized to file suits and other proceedings. In this context, clause-4 further says that "…and to sale all the standing trees in the schedule land by obtaining all kinds of Forest pass & permission".

This reference to permission to sell existing trees after obtaining permission must be seen in light of the earlier portion of clause-4 which authorizes the holder of the power to take appropriate actions of engaging advocate for legal proceedings and instituting or defending legal proceedings for the purposes mentioned in clauses-1 to 3.

The entire document thus is in the nature of authorizing the Power of Attorney holder to take necessary steps for sale of the land after obtaining necessary permissions from the competent authorities. This power does not authorize the holder thereof to cut down existing trees till at least the sale is complete. To reiterate, reference to allowing the Attorney to sell the trees must be seen in view of the purposes mentioned in clauses-1 to 3.

Under the circumstances, not for the reasons cited by the Government in its affidavit-in-reply, but for the above noted reasons petition is dismissed.

Pending application(s), if any, also stands disposed of.

**(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA
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