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

**WP(C) No.79/2020**

Sri Swaraj Chakraborty

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

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| For Petitioner(s) | : | Mr. K.N. Bhattacharjee, Sr. Advocate,<br>Mr. Kohinoor N Bhattacharjee, Advocate. |
| For Respondent(s) | : | Mr. Dipankar Sharma, Addl. G.A. |

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

**Order**

**25/11/2020**

The petitioner has challenged an order dated 13.09.2019 passed by the Deputy Collector & Magistrate, Agartala Revenue Circle in following background:

Petitioner Swaraj Chakraborty is son of Gopal Chakraborty and Malina Chakraborty. Gopal Chakraborty had made a will on 29.02.1984 bequeathing all his properties in favour of his wife Malina Chakraborty. The will also contained a recitation that after the death of his wife his only son Swaraj Chakraborty alone will be the owner of the property by virtue of the said will. If by chance the son predeceases the mother, his successors will receive the properties. This will was probated. Gopal Chakraborty died on

26.09.1988. Malina Chakraborty received all his properties under the said will. According to the petitioner during her lifetime the mother gifted certain properties to his two sisters as well as sold some properties. On 14.03.2019 leaving behind the rest of the properties received by her from Gopal Chakraborty, Malina also passed away. On the strength of the said will, the petitioner applied to the Deputy Collector for making necessary entries in the revenue records in some immovable properties in the nature of a house and some landed properties of which he had become the owner after the death of his mother. The said authority had some doubt and, therefore, consulted the District Collector as is apparent from an order dated 06.07.2019 he passed on such petition of the present petitioner. On 13.09.2019 he passed following order:

> "Clarification was sought on 19/8/19 and on 13/9/19 the undersigned received the required clarification from the authority vide no.F.4(3)/SDM/SDR/REV/2019/3337 dt. 9/9/2019 wherein it is stated that "It will not be appropriate to mutate the property in" the name of Swaraj Chakraborty. Hence based on the views of Law deptt. The instant mutation proceeding is hereby dropped."

In my opinion, the said authority committed a serious error in ignoring the contents of the will made by Gopal Chakraborty. As noted, under the will Gopal Chakraborty bequeathed all his properties in favour of

his wife and also made a provision that after the wife passes away the remaining properties would go to his sole son. In fact, he also made it clear that if son predeceases the mother, his successors would receive the properties. Once the mother of the petitioner passed away, this condition contained in the will of his father would be activated. There is no prohibition in law in making such a provision. Essentially, therefore, the petitioner has received all the properties which were not divested by his mother during her lifetime, under the will made by his father. The authorities must give effect to this probated will.

Since the Deputy Collector has passed his order after consulting the Collector, there is no purpose in asking the petitioner to file appeal before the Collector. This objection of the learned Addl. Government Advocate is, therefore, rejected.

The Deputy Collector is, therefore, directed to make necessary entries in the revenue records of the properties in question on the strength of the said will dated 29.02.1984. This shall be done within four months from today.

Before closing, needless to add that revenue entries are primarily for fiscal purpose and do not decide right, title and interest in any immovable property.

With these observations, petition is disposed of.

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

**(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA
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