IN THE HIGH COURT OF TRIPURA
A G A R T A L A
CRP No.80 of 2019

Smti. Milan Bala Shil,
wife of Sri Haridhan Shil,
resident of South Badharghat,
Siddhi Ashram, P.S. Amtali,
District: West Tripura

..... **Petitioner (s)**

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary
to the Government of Tripura,
Revenue Department,
West Tripura, Agartala

2. **The Settlement Officer,**
Dukli Revenue Circle,
Tahashil - Badharghat,
Sadar, Agartala,
West Tripura

3. **The Tahashilder,**
Badharghat, Dukli T.K,
Agartala, West Tripura

..... **Respondent (s)**

For the Petitioner (s)	:	Mr. P. Chakraborty, Adv.
For the Respondent (s)	:	Mr. P. Saha, Adv.
Date of hearing & delivery of Judgment & order	:	**15.12.2020**
Whether fit for reporting	:	**No**

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER [ORAL]

Heard Mr. P. Chakraborty, learned counsel appearing for the petitioner as well as Mr. P. Saha, learned counsel appearing for the respondents.

[2] By means of this petition filed under Article 227 of the Constitution of India, the order dated 23.11.2013 passed by the Settlement Officer, West Tripura, Agartala in Case No.172 of 2012 has been questioned fundamentally. Even the order dated 04.05.2019 passed in Case No.28/Revision/Revenue/Secy/2014 under Section 95 of the TLR & LR Act, 1960 has been challenged as by that the order dated 23.11.2013 has been affirmed. As the challenge carried out by the petitioner against the order dated 23.11.2013 before the said revisional authority had fallen through the petitioner has asserted in this petition that by two separate sale-deeds being the sale-deed No.1-2048 dated 16.03.1982 and the sale-deed No.1-4229 dated 31.08.1994, the petitioner had purchased the pieces of land pertaining to Khatian No.2086 and CS Plots No.8559 and 8560 from one Chhaya Rani Das. It has been also asserted that her vendor namely Chhaya Rani Das, had purchased the demised land from one Hemchandra Sarkar by the registered sale-deed No.1-7817 dated 17.07.1974. According to the petitioner, the said land was mutated during the settlement operation finally in the name of Hemchandra Sarkar under Khatian No.2086 of mouja Badharghat, Sheet No.5. It is not also in dispute that the total area of the land as purchased by the petitioner from

her vendor is 10 gandas and classified as Viti and Tilla. The petitioner after purchase of the said pieces of land applied for mutation and according to her, her name was mutated as the title-holder in possession in Khatian No.16735 against Dag No.29428, 29430 and 29641 for the land measuring 1.150 acres and in Khatian No.2406 against Dag No.29429 for the land measuring 0.055 acres under mouja Badharghat Sheet No.5. The said khatian was thereafter corrected in the M/R Case No.20174 under Section 46(1) of the TLR and LR Act, 1960 by virtue of the order dated 22.03.2012 passed by the Assistant Settlement Officer. But, no khatian was opened in favour of the petitioner in spite of such correction made by the Assistant Settlement Officer.

[3] In para-5 of the petition, the petitioner has asserted that she had filed an application under Section 11(3) of TLR & LR Act, 1960 as the petitioner was *'told by the ASO that the land purchased by the petitioner is recorded as khash.'* It has been also told by the ASO that there was a field enquiry by Tahashilder and the Halka Officer, and they submitted two separate reports on 03.06.2013 and 22.06.2013. The petitioner, relying on those two reports which are enclosed with the petition as Annexures-1 & 2, has contended that the land purchased by the petitioner was not

vested in the government. In the said proceeding as drawn up under Section 11(3) of the TLR & LR Act, the Settlement Officer passed the order dated 23.11.2013 by rejecting the application filed by the petitioner observing that by the order dated 01.01.1976 passed in Revenue Case No.44 of 1974 and in Revenue Case No.45 of 1974, the Director of Land Records and Settlement had vested the land in question in the government. In the order of the Settlement Officer it has been clearly observed that the reports submitted by Tahashilder and the Halka Officer were submitted without appreciating the said order dated 01.01.1976. Hence, the reports are grossly erroneous.

[4] The petitioner has admitted in this petition that being dissatisfied with the said order dated 23.11.2013 whereby her application was rejected, she preferred a revisional application before the Principal Secretary, Revenue Department which was registered as Case No.28/Revision/Revenue/Secy/2014 under Section 95 of the TLR & LR Act, 1960. By the order dated 04.05.2019 passed in the said revision proceeding, the Principal Secretary, Revenue Department affirmed the order passed by the Settlement Officer on 23.11.2013.

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[5] Mr. Chakraborty, learned counsel appearing for the petitioner has submitted that the land of the petitioner is not covered by the order dated 01.01.1976 as passed by the Director of Land Records and Settlement and as such the order passed by the Settlement Officer and the Principal Secretary based on the order dated 01.01.1976 is grossly perverse.

[6] From the other hand, Mr. P. Saha, learned counsel appearing for the respondents has submitted that the said order dated 01.01.1976 was challenged by the predecessors of the petitioner but their challenge had fallen through. Even they had approached the Hon'ble High Court to challenge the order passed by the Principal Secretary affirming the order of the Director of Land Records and Settlement but the said challenge did not succeed. Before we embark on analyzing the preceding orders and judgment as we are to consider the element of the finality of the order dated 01.01.1976, a brief resume of facts may be placed at this juncture. The petitioner had purportedly purchased 10 gandas of land pertaining to CS Plot No.8559 and 8560 comprised in Khatian No.2086 by two sale-deeds, as stated before, from one Chayya Rani Das. Chayya Rani Das purchased the said land from Hemchandra Sarkar by the registered sale-deed No.1-7817 dated

17.07.1974 under Badharghat Sheet No.5. According to the petitioner, she is in possession over that land without any disturbance from any corner. The petitioner, as reflected in the order dated 23.11.2013, had applied for mutation but the said application for mutation was rejected. The petitioner though has averred in this petition that there are some orders mutating the khatian. But it is not clear from the said averment whether such orders, if any, were passed on consulting the order dated 01.01.1976. The order dated 23.11.2013 has been passed having perused the records including the order dated 01.01.1976. In the order dated 23.11.2013, it has been clearly recorded that CS Plots No.8559 and 8560 have been recorded in the khas khatian. It has been admitted that the petitioner is in the possession over that land by constructing dwelling house since 1982. However, it has been observed simultaneously by the Settlement Officer, West Tripura, Agartala as follows:

> **"Examine the case of the petitioner with relevant documents produced by the petitioner such as registered sale deeds, relevant map & records of the plots pertaining to 1st Settlement Operation as well as present map & records of the corresponding C. S plot numbers and field enquiry report where from it appears that the petitioner is in unauthorized possession of land measuring 0.040 & 0.080 acre intotal 0.120 acre surveyed in R.S plot NO.29642 & 29643 corresponding to C.S plot No.8559(P) & 8560 (P) recorded in Khash Khatian No.1/34635. On examination of preliminary 1st Settlement records, it appears that the lands comprised with the C.S plot NO.8559 & 8560 were recorded in the name of one Hem Chandra Sarkar in Khatian No.2086 jer 2399 and subsequently both the plots including other plots of the Khatian NO.2086 including Jer Khatian which was part &**

> **parcel of Dar Taluk No.3 & 22 were made Khash by order dated 01.01.76 passed in Rev. Case No.44/74 & 45/74 etc. passed by the Director of Land Records & Settlement, Agartala and the said order & Judgment dated 01.01.76 has been upheld by different Civil Court subsequently and as such this court has no jurisdiction to re-open the case again or interfere on it."**

[7] To challenge the order of the Settlement Officer dated 23.11.2013, the petitioner had filed the said revision petition being Case No.28/Revision/Revenue/Secy/2014 under Section 95 of the TLR & LR Act before the Principal Secretary (the appropriate Government), Revenue Department. By a short order dated 04.05.2019 the said revision petition has been shot down by observing that since the petitioner has not challenged the order dated 01.01.1976, there is no illegality or impropriety in the order passed by the Settlement Officer, West Tripura.

[8] The question that surfaced is whether the petitioner has any *locus standi* to challenge the order dated 01.01.1976. After going through the record, this court is of the view that the petitioner cannot have *locus-standi* to challenge the said order dated 01.01.1976 inasmuch as the predecessors namely Hemchandra Sarkar and others had challenged that order dated 01.01.1976 unsuccessfully. True it is that khatian in the stage of attestation being Khatian No.2399 was published in the name of Hemchandra Sarkar. The same was recorded on 16.08.1961 and

was attested on 29.05.1962. Thus, there exists no finally published khatian showing the name of Hemchandra Sarkar as the title holder in possession. On the contrary, in the Khatian No.1-490 which is finally published, the land under reference has been recorded in the name of the State of Tripura. The Director of Settlement and Land Records, Government of Tripura had taken that aspect of the matter where the predecessor of the petitioner namely Hemchandra Sarkar along with other similarly situated persons in Revision Cases No.44/74, 45/74, 46/74, 47/74, 48/74, 48/74, 49/74, 50/74, 51/74, 52/74, 53/74, 54/74, 87/1973 and 90 of 1973 were parties. All those revision cases were heard analogously and the predecessor of the petitioner namely Hemchandra Sarkar was represented by Mr. PM Palit, learned counsel in the Revision Case No.87/1973. The said revision case against the predecessors of the petitioner had commenced in the year 1973. By suppression, Hemchandra Sarkar sold out some pieces of land to Smt. Chayya Rani Das by the sale-deed No.7817 dated 17.04.1974.

[9] Finally, the Director of Settlement and Land Records by the judgment and order dated 01.01.1976 having elaborately discussed the evolution has observed thus:

> **"Since Shri Hem Ch. Sarkar has got no right in D.T. No.22 after his relinquishment and as Prafulla Sarkar has not claimed any retention in D.T. No.22 under section 136 of the Tripura Land Revenue & Land Reforms Act, 1960, the area falling within the D.T. No.22 should also be treated as Government khas land as vested in the Government free from encumbrances. I, therefore, order that all the disputed plots along with all the plots recorded in the Khatian No.2086 with the jer khatians be treated as Government khas lands and recorded as such."**

[10] The said order was challenged, as stated, by Hemchandra Sarkar before the Gauhati High Court by filing the writ petition being Civil Rule No.51 of 1976. Some other affected persons also filed similar writ petitions being Civil Rule No.50 of 1976 [Smti. Shefalika Sarkar represented by LRs vs. State of Tripura and Ors.] and Civil Rule No.56 of 1976 [Kali Sankar Sarkar vs. State of Tripura and Ors.]. All those matters were taken for hearing analogously and disposed of by a common order dated 27.03.1987. It would be apposite to mention that the Gauhati High Court while examining the validity of the order dated 01.01.1976 formulated a question for purpose of considering the challenge. Without referring to the detailed analogy as referred in the judgment as we are not required to go into those details, the relevant part of the said judgment which is absolutely relevant for us may be reproduced. In para-8, such formulation is available:

> **"The main and basic questions are that whether the Director had the jurisdiction to make the impugned order, and, if so, whether there was any illegality or error apparent on the record."**

[11] Those questions have been answered in the following manner:

> **"We are therefore satisfied that the Director had the jurisdiction, which was exercised in making the impugned order. In this view of the matter the submissions regarding 'Suo motu' exercise of jurisdiction need not be considered.**
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> **We may now consider that whether in exercise of the said jurisdiction there was error apparent on the face of record, as may justify or require interference by this writ Court.**
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> **In so far as the contentions raised on behalf of Smt. Shefalika Sarkar (since deceased and now represented by her legal representatives) are concerned, it is admitted that she had been served with notice on 28.08.1975. She had appeared on 1-9-1975 and was represented by her counsel. The learned counsel has submitted that even the grounds were not given to her and she could not adequately present her case, and she had therefore been denied opportunity of being heard. A consideration of record of the Revision Petition No.51 of 1974 discloses that on 1-9-1975 the petitioner had been provided a copy of the grounds as stated by her in para 1 of her application dated 8.9.1975. The Director on 1-9-1975 had made an order for further hearing on 8-9-1975 after the parties counsel in particular, of the present petitioners, had confirmed, that the Director had necessary jurisdiction. A consideration of the said records disclose that some parties were interested in stay of the hearing and petitioner Hem Chandra Sarkar had obtained an injunction from the civil court and hearing was stayed, which was again resumed after the injunction was vacated on 3.10.1975. The hearing was continued and was concluded on 19-12-1975 and the impugned order was made on 1-1-1976. The learned counsel for the respondent Director has submitted that petitioner Shefalika Sarkar is the wife of Hem Ch. Sarkar and other petitioner Kali Sankar Sarkar is the brother of Hem Ch. Sarkar, and that the petitioner's interest was being adequately looked after by the said other petitioners. Be that as it may, the fact remains that the petitioner was represented by her Counsel who had been heard and after the petitioners' appearance on 1-9-1975, she had been furnished copy of grounds. The hearing had continued and concluded on 19-12-1975. If therefore the petitioner had desired, she had enough time and opportunity to take action. We are therefore, quite satisfied that there was enough time and opportunity for petitioner Smt. Shefalika Sarkar to present her case etc. before hearing was concluded on 19-12-1975 and therefore there was no infringement of any principle of natural justice.**
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> **The learned Counsel on her behalf submitted that the Commissioner's report had been made earlier and it was taken into consideration by the Director in making the impugned order and that the petitioner was prejudiced. We think that having come on 1-9-1975 she could have filed or taken time for filing objection or made submission, if she had so desired, on the report of the Commissioner. The records of the aforesaid proceeding, do not reveal that any such request or plea had been made on her behalf. All that was said for her**

> **was that the proceedings were being taken in haste, which the Director had turned down. We therefore have not found any merit in the submission that there was any denial of opportunity to present her case.**
>
> **We are therefore satisfied that the Director (Respondent No.1) had the jurisdiction to make the impugned order and that in exercise of the said jurisdiction there was no error apparent on the face of the record.**
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> **It has been submitted that the order of the Director in relation to Amarendra Nath Mukherjee is not correct. The learned Govt. Advocate has conceded that it is so. However so far as the petitioners are concerned the mistake in relation to Amarendra Nath Mukherjee, does not make any difference."**

[12] Having noticed that matrix, crux which has been noted above, this court is of the view that the transactions as made after 1973 by Hem Chandra Sarkar were all illegal. Moreover, the challenge carried out by Hem Chandra Sarkar failed to bring about reversal of the order dated 01.01.1976. As such, the petitioner does not have any *locus standi* to challenge the order dated 01.01.1976 afresh. The said order dated 01.01.1976 having reached to its finality will be binding on the petitioner and as such the petitioner does not have any right to claim mutation on the basis of the sale-deeds by which she had purportedly purchased the land from Chayya Rani Das, her vendor who had claimed to have purchased the land from Hem Chandra Sarkar. The land as it appears from the record are wholly covered by the order dated 01.01.1976.

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Hence, this petition stands dismissed being bereft of merit.

It is needless to say that the petitioner will be at liberty to any recourse at law except challenging the orders as referred above.

However, in the circumstances, there shall be no order as to costs.

JUDGE

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