

(1999) 09 GAU CK 0003
In the Gauhati High Court
Case No : M.A. (F) No. 10 of 1983

Bithika Basu (Sarkar)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 30, 4, 54, 6

Tripura Land Revenue and Land Reforms Act, 1960 — Section 130, 133, 134, 135, 136

Citation : (2000) 1 GLT 76

Hon'ble Judges : M.L. Singhal, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : U.B. Saha and R. Dasgupta, for the Appellant; B. Das, B.B. Deb, D.K. Biswas, B.N. Majumdar and T.K. Dey, for the Respondent

Judgement

M.L. Singhal, J.—The present two appeals preferred u/s 54 of the Land Acquisition Act (in short, LA act) emanate from the judgment and Decree dated 31.3.1983 passed by Land Acquisition Judge, West Tripura, Agartala (in short, LA Judge) in reference petitions made u/s 30 of the LA act.

2. We have heard the learned Counsel for both the parties at length and have gone through the records of the case. Since the two appeals arise out of the same judgment and involve adjudication on same law and common facts, hence they are decided together.

3. By notification issued u/s 4 of the LA act on 2.1.1973 and notification issued u/s 6 of the LA act on 12.2.1973.80 acres of land situate in Mouza-Badharghat under Kotowall Police Station, Sadar Sub-Division, West Tripura District, Agartala was acquired for Oil and Natural Gas Commission. The possession of the land was taken on 23rd March, 1973, the award was made by the Collector in favour of different persons u/s 11 of the LA act on 31.3.83. On petitions made by 16 persons including the Appellant late Kali Shankar Sarkar (since deceased) and late Amarendra Nath Mukherjee (sine deceased), the Collector made first reference u/s 30 of the LA act to LA Judge on 17.4.1974 and revised reference

under the same Section on 19th December, 1975, adding the Govt. of Tripura as one of the claimants. The LA Judge, by the impugned judgment as regards the Appellant Kali Shankar Sarkar has found that the land under acquisition vested in the Government under the provisions of the Tripura Land Revenue and Land Reforms Act, 1960 (in short TLR & LR Act), the rights and interests of the Appellant got extinguished and apportioned compensation, but upheld the claim of the Respondent Shri Amarendra Nath Mukherjee and awarded Rs. 2,64,068.30 to the claimant Shri Amarendra Nath Mukherjee and Rs. 2,03,509.79 to the Govt. of Tripura and a paltry sum of Rs. 103.48 to Shri Kali Shankar Sarkar towards the cost of fencing etc. of the Appellant on the acquired land.

MA (F) No. 10/1983 Smt Bithika Basu (Sarkar) v. State of Tripura.

4. Late Kali Shankar Sarkar has laid claim on the land under acquisition on the basis of registered lease deeds dated 5.1.1957 and 8.10.58 alleging that he was tenant of the acquired land from the intermediary one Shri Prafulla Sarkar and continued in possession of the land after the lease deeds till the date of delivery of possession. The sole argument of the learned Counsel for the claimant Appellant is that it is true that the rights of the intermediary stood vested in the Government on the date of enforcement of TLR & LR Act, but late Kali Shankar Sarkar being tenant, his rights are protected by virtue of Section 135(d) read with Section 133(b) of the TLR & LR Act and he became raiyat directly under the Government instead of the erstwhile intermediary. On the other hand, the contention of the learned Govt. Advocate is that the rights of all the intermediaries including that of the alleged late Kali Shankar Sarkar became vested in the State free from all incumbrances by operation of law on the enforcement of TLR & LR Act, the Government of Tripura is now the owner of the land under acquisition and, as such, late Kali Shankar Sarkar and his heir, Appellants are not entitled to any compensation.

5. The TLR & LR Act, 1960 came into force on 14.11.1961. Though the registered lease deed dated 5th January, 1957, the intermediary. Prafulla Sarkar created tenancy in favour of late Kali Sankar. Sarkar in respect of 4 drones (25.6 acres) under D.T. 22 and through another registered lease deed on the record on 8th October, 1958, the aforesaid intermediary. Prafulla Sarkar again created tenancy rights in favour of late Kali Sankar Sarkar leasing 3 drones 12 kanis (24.00 acres) of land under D.T. 22. The relevant portion of the lease deed (Ext. 8) dated 5.01.1957 executed in favour of late Kali Shankar Sarkar by the intermediary Prafulla Ranjan Sarkar is as under:

That I am the owner with right and title over dartuluk No. 22 standing in my own name, under Kayemi Taluk No. 169 of Sri Srimati Maharani Kanchan Prabha Debi, in mouza Badharghat, pgs. Agartala, Tahashil, P.S. & Sub-Registry Sadar, Sub-Division-Sadar, Dist. Tripura. At present you having prayed for rayati jote title over dwelling tilla & lunga land measuring 4 drones, constituting a part of Dag No. 5444/5504 under said dartaluk No. 22. I granted your prayer and you having demanded a deed of patta from me after executing kabuliyat. I, on receipt of

suitable premium, do hereby state by way of executing this deed of Patta that you will pay Rs. 128/- (Rupees one hundred and twenty eight) as annual rental for the said 4 drones of land of rayati jote title as Rs. 8/- as case for the same at the rate of one anna per rupee totalling/Rs. 136/- (one hundred and thirty six rupees) to my estate every year by instalments and take rent receipts; there will be no remission of rent. You will not get remission of rent on the pretext of the land being fellow or dry etc. You will remain in possession of the land from generation after generation by doing cultivation etc by making gift, sale, by digging and by filling the land with earth, by constructing pucca buildings and by leasing out to tenants. To this neither I, nor any of my successors have any sort of objection and even if any objection is raised, that will be rejected according to law. To this effect, I have executed this deed of patta today voluntarily and in sound health and mind and in good faith.

6. The relevant portions of the lease deed (Ext. 10) dated 8th October, 1958 executed in favour of late Kali Shankar Sarkar is also extracted below:

That Shri Hem Ch. Sarkar was in possession of land measuring 19 drones, 6 kanis & 7 gandas appertaining to daltaluk No.22 standing in my own name, under kayemi taluk No. 169 of Sri Srimati Maharani Kanchan Prabha Debi, in mouza Badharghat, Pgh. Agartala, RS. Sub-Registry and Tahashil-Sadar, Sub-Division-Sadar, Dist. Tripura, by way of taking settlement, at an annual rental of 232 rupees, 12 annas and 3 Pies in kayemi jote right, bearing No. 1. He has given up 15 drones, 10 kanis and 7 gandas of land out of the said kayemi jote No. 1 in my favour by a deed of relinquishment executed on 25.9.58 A.D. The said relinquished land is under my khash possession. You having approached me with a prayer for granting permanent jote settlement of 3 drones and 12 kanis of tilla and lunga land for the purpose of cultivation and setting up orchard etc. I granted your prayer and as I demanded kabuliyat from you, you executed a kabulyat for the said 3 drones and 12 kanis of land and since you have demanded a deed of patta after I received suitable premium from. I am stating and promising by way of executing this deed of patta of rayati jote title today, that you will pay Rs. 90/- as the annual rental for the 3 drones & 12 kanis of land taken settlement of Rs. 5/- & 10 annas as road-cess at the rate of 1 anna per rupee totalling rupees 95 & 10 annas, every year by instalments and accept rent-receipt for the same. There will be no remission of rent without rent-receipt. You will remain happily in possession of the land down to your son, grandson etc. heirs, by cultivating and reclaiming the land, making gift or sole of the same and by digging up the land and filling up with earth. To this neither I nor any of my heirs have any sprt of objection. If it is even done so, that will be rejected according to law. To mis effect I have voluntarily executed this deed of patta in sound health and mind and in good faith, with consent of the family on taking suitable premium, by putting my signature in the same.

7. On perusal of the aforesaid contents of the two lease deeds and other terms and conditions thereof we are satisfied that the aforesaid two documents are

lease deeds and the deeds created tenancy right in favour of late Kali Shankar Sarkar. The learned Govt. Advocate argued that in the lease deed dated 5th January, 1957 (Ext. D8) there is a permission also to late Kali Shankar Sarkar to lease out the land to the tenants, in the lease deed dated 8th October, 1958 (Ext. D10), right was also given to late Kali Shankar Sarkar to make gift of the land or to transfer the same. The learned Govt. Advocate contended that in view of these two terms and conditions, the two deeds cannot be said to be lease deeds. As pointed out by the learned Counsel for the Appellant, before the enforcement of the TLR Act 1960, the Law of Landlord & Tenant (Act I of 1296 T.E.) as revealed by item No. 1 of Schedule 1 of the act, was in force, the provisions of Transfer of Property Act were not applicable in the State of Tripura. Para 12 of the said Law of Landlord & Tenant (Act I of 1296 T.E.) runs as under:

No jote or raiyati right shall be transferred (sold or purchased) without the permission of the Landlord (Bhumyadhikari); provided that such sale or purchase shall not be held invalid by the provisions of this section, if any custom prevails anywhere for such sale or purchase without such permission.

8. Since the two lease deeds were executed in the year 1957-58, as per provisions of the aforesaid Law of Landlord & Tenant (Act I of 1296 T.E.), the rights of transferring and leasing out land to the tenants were conferred and the permission of the intermediary as required under the said act was granted. Under the two lease deeds rent was payable by late Kali Shankar Sarkar to the intermediary. From the tenor and on perusal of the contents of the two lease deeds there remains no doubt that the two deeds which conferred tenancy rights of late Kali Shankar Sarkar were lease deeds.

9. Thus, by the two lease deeds, total land 49.6 acres was given on lease to late Kali Shankar Sarkar. The present F.A. 10/83 relates to 27.5 acres of land. After the enforcement of the act, in statement under-Section 144 of the TLR & LR Act, submitted by the intermediary Prafulla Sarkar on 7.10.1966, late Kali Shankar Sarkar has been shown as tenant of the land under acquisition, the amount of rent payable by him has also been mentioned. Two rent receipts on the record (vide Ext. D/9 & D/1 1 on the record of second paper book) show that rent was paid by late Kali Shankar Sarkar to the intermediary Prafulla Ranjan Sarkar. The report dated 23rd March, 1973 relating to the delivery of possession submitted by the Addl. District Magistrate, West Tripura, states that one Shri Amar Saha uncle of late Kali Shankar Sarkar was present on the spot and on the land some pucca pillars with single wire fencing, a hut and some wooden posts were found and as the report further goes the possession of the land was delivered by the said Amar Krishna Saha after removing the huts, pillars and wire fencing etc. We are satisfied that the finding of the Land Acquisition Officer that the land acquired through the two lease deeds is not a compact block on the spot is based on misconstruction of Government land and misreading of oral evidence adduced in the case. It is also not the plea of the State Govt. that the acquired land does not fall within the land claimed by the Appellant. Even the learned LA Judge has

awarded a sum of Rs. 100/- and odd towards the cost of the huts, pillars, wire fencing etc to the Appellants tenants as amount of compensation The fact that even after a period of about 12 years of the enforcement of the TLR & LR Act, when the land was acquired, no plea or claim was raised by the District Magistrate/Collector of West Tripura District, Agartala that the land belonged to the Government but, on the other hand, the State Government proceeded to acquire the land on the premises that the land belongs to private persons clearly shows that the late Kali Shankar Sarkar was in possession of the land under acquisition. The counsel for the Government endeavoured to met out this plea of the learned Counsel for the Appellant by arguing that on the date of acquisition the name of certain other persons stood entered on the acquired land and, so, this mistake occurred. It may be observed that from the facts and circumstances, it is apparent that on the date of acquisition of the land, the Government of Tripura was not even aware that the land belongs to it.

10. Section 133(d) of the TLR & LR Act, 1960 defines the terms "tenant" as under:

Tenant means a person who cultivates or holds the land of an intermediary under an agreement, express or implied, on condition of paying therefore rent in cash or in kind or delivering a share of the produce and includes a person who cultivates or holds land of and intermediary under the system generally known as "bhag", "adhi" or "barga"; and the term "subtenant" shall be construed accordingly.

11. Section 135(d) of the TLR& LR Act, 1960 provides as under:

Subject to the other provisions of this act, every tenant holding any land under an intermediately shall hold the same directly under the Government as a raiyat thereof or (as a non-agricultural tenant thereof, as the case may be) and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date, subject to a maximum of the value of one-eighth of the gross produce which value shall be determined in the manner prescribed;

Provided that the tenant shall become the owner of any building or structure constructed on such land at the expense of the intermediary on payment of such compensation to the intermediary as is equivalent to its market value on the vesting date, which value shall be determined in accordance with the rules made in this behalf.

(Emphasis supplied)

12. In view of the discussion made above, it is clear that late Kali Shankar Sarkar was tenant of the land under acquisition from Prafulla Sarkar through registered deeds and he was a tenant within the ambit of Section 133(d) of the act. The further conclusion is that in view of the provisions of Section 135(d) of the act, the tenant late Kali Sankar Sarkar was entitled to hold the land under acquisition

direct under the Government as a raiyat thereof, subject to the condition that he continued to pay land revenue to the Government which he was paying earlier to the intermediary. The provisions of Section 133(d) read with Section 135 of the TLR & LR act unambiguously show that on the enforcement of the TLR& LR Act the tenant holding any land under an intermediary shall hold the same directly under the Government as the raiyat thereof or as a non-agricultural tenant thereof, as the case may be, actual cultivation of the land is not required for conferment of tenants' rights under the act, but any person who cultivates or even holds the land of intermediary under an agreement expressed or implied is to become a tenant as raiyat directly of the State Government. The learned Govt. Advocate argued that the term "hold" as defined in Black's Law Dictionary (Sixth Edition) runs as under:

"To possess in virtue of a lawful title; as in the expression, common in grants, "to have and to hold," or in that applied to notes, "the owner and holder.

13. The learned Govt. Advocate contended that in view of the said definition, a person can hold a land when he possesses the same in virtue of a lawful title, the land already having vested in the State of Tripura in the year 1961 when the TLR & LR Act came into force, late Kali Shankar Sarkar could not be said to be in possession of the land in virtue of lawful title. About the arguments on the learned Govt. Advocate it may be said that late Kali Shankar Sarkar had the land under the two lease deeds, under the provisions of the TLR & LR Act he was enjoying the status of a tenant--raiyat and, so, it can be rightly said that late Kali Shankar Sarkar was in possession of the land under lawful title. The learned Govt. Advocate also relied upon the decision of the Supreme Court in the State of Orissa v. Brindaban Sharma and in Ratan Kumar Tandon v. State of Uttar Pradesh AIR (1996) SC 2711. We have gone through both these decisions of the Supreme Court, they do not help the Respondents. The case of State of Orissa v. Brundaban Sarma (supra) is a case under Orissa Tenancy Laws. In that case the lease deed was granted by Tehsildar in favour of the tenant on a white plain paper without any approval by any competent authority. In the case of Ratan Kumar Tandon v. State of Uttar Pradesh (supra) the lease deed was granted for a period of seven years only, the land stands revested to the Government and, as such, the leasees were held not entitled to compensation. In the instant case the two lease deeds in favour of the deceased Kali Shankar Sarkar are registered deeds are permanent lease deeds for indefinite period.

14. Much argument was advanced by the learned Govt. Advocate that District Settlement Officer of Land Records (DSLRL) on 1.1.1976 in revision Under-section 95 of the TLR & LR Act recorded finding that the land under acquisition stood vested in the Government. It was also argued on behalf of the Appellant that the learned DSLRL has himself appeared before the LA Judge on 25.8.75, laying claim to the land under acquisition on behalf of the Government and, as such, it was not appropriate on his part to decide the case himself on 8.8.76. It was also urged that as against the finding recorded by the learned DSLRL, the late Kali

Shankar Sarkar also filed writ petition before the High Court, the High Court affirmed the order passed by the DSLR, the late Kali Shankar Sarkar also filed SLP before the Supreme Court which he withdrew subsequently. The finding recorded by the learned DSLR has been affirmed by the High Court and, so, it is not open to the Appellant to assail the finding recorded by the DSLR. About these various contentions raised by the learned Counsel for the parties, it is sufficient to observe that as held by Privy Council in *Nirman Singh v. Lal Rudra Partab* AIR 1926 PC 100 and by Supreme Court in *Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others*, and in *State of Himachal Pradesh Vs. Keshav Ram and others*, mutation proceeding is not a judicial proceeding and does not decide title cannot form basis for declaration of title, do not convey or extinguish title in the property. The learned DSLR in mutation proceedings under reference had no jurisdiction to record finding about the title of the parties as he was simply dealing with the mutation entries in records. In the writ petition against the order passed by the DSLR, before this Court, the judgment of this Court affirmed the jurisdiction of the learned DSLR in matters of mutation entries. So, the finding recorded by the learned DSLR that the land stood vested in the State Government had not nullified the statutory tenancy rights of the Appellant late Kali Shankar Sarkar which he enjoyed under the provisions of the TLR & LR Act. The orders passed in mutation proceedings do not create or extinguish any title of the parties of the land. So, the finding of the DSLR has not the effect of extinguishing the Appellant's title/interest in the land under acquisition.

15. It was also argued by the learned Counsel for the Appellant that the learned Collector has made reference u/s 30 of the Act once on 17.4.74 and second revised reference on 19th December, 1975 suo-moto adding the Government of Tripura as one of the claimants. The collector having made reference once Under-Section 30 of the act. It was not within his competence to make second reference Under-Section 30 of the act. Further, no person on behalf of the State of Tripura by way of petition Under-Section 30 of the act did appear before the Collector and, as such, it was not within the competence of the Collector to make reference suo moto. It may be observed that there appears no bar under the act in making the revised reference Under-Section 30 of the act when the first reference is still pending. The Collector, in the district himself represents the State of Tripura and if it appeared to him that the land belonged to the State Government, there is nothing illegal on his part in making the revised reference Under-Section 30 of the act before the learned LA Judge and adding the Government of Tripura suo moto as one of the claimants in the case. Furthermore, there is no bar under the act in sending a revised reference Under-Section 30 of the LA Act when the first reference sent under the same provision is pending decision. The Appellant late Kali Shankar Sarkar having become tenant Under-Section 135(d) read with Section 130(c) of the TLR & LR Act is entitled to the compensation. The learned LA Judge was not justified in rejecting his claim. Appeal therefore succeeds.

MA (F) No. 25/1983 State of Tripura v. Heirs of Amarendranath Mukherjee and Ors.

16. This instant appeal relates to 29.65 acres of land out of 52.50 acres of land subject of reference u/s 30 of the LA act. The admitted ease of the parties is that the land, subject matter of the appeal, is part of Dar Taluk No. 3, Kayemi Taluk No. 169. The said Dar Taluk No. 3 undisputedly was settled by the original owner Maharani Kanchan Prava Devi in favour of the Respondent Amarendra Nath Mukherjee. The learned LA Judge has held that Under-Section 136 of the TLR & LR Act and as per the order dated 18.3.75 (Ext. 4) passed by the Commissioner of Revenue, the Respondent Amarendra Nath Mukherjee was entitled to retain 12 acres of land Under-Section 164(A)(1)(c) read with Section 2(u) of the TLR & LR Act. The learned Govt. Advocate argued that there is no evidence whatsoever on the record adduced by the Respondent before the LA Judge with regard to his title. About the contention of the learned Counsel it is sufficient to observe that Shri Tribeni Nam Chakraborty (OW 1), Officer-in-Charge of Land Reforms, Govt. of Tripura, Revenue Department, who appeared on behalf of the Appellant before the learned LA Judge categorically admitted that originally Dar Taluk No. 3 was settled with Amarendra Nath Mukherjee. The learned Counsel for the State further argued that the acquired land was settled in favour of Shri Amarendra Nath Mukherjee for the purpose of tea garden and since no tea garden was found on the land, the Respondent was not entitled to retain the same in view of the provisions of Section 136(1)(f) of the TLR & LR Act. On the other hand, the contention of the learned Counsel for the Respondent Amarendra Nath Mukherjee is that Shri Amarendra Nath Mukherjee held the land as Dar Talukdar and under the provisions of Section 135(d). Shri Amarendra Nath Mukherjee became statutory tenant directly under the Government and, so, he was entitled to retain the land. Section 136(1)(f) of the TLR & LR Act reads as follows:

136(1)(f) : Notwithstanding anything contained in Sections 134 and 135, an intermediary shall, subject to the provisions of Sub-Section (2), be entitled to retain with effect from the vesting date,--so much of the lands comprised in a tea garden, mill, factory or workshop as in the opinion of the State Government is required for such a tea garden, mill, factory or workshop.

17. Section 135(d) of the TLR & LR Act stipulates as follows:

Section 135(d) : Notwithstanding anything contained in any law for the time being in force or in any agreement or contract, express or implied, with effect from the vesting date,--subject to the other provisions of this act, every tenant holding any land under an intermediary shall hold the same directly under the Government as a raiyat thereof or (as a non-agricultural tenant thereof, as the case may be) and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date, subject to a maximum of the value of one-eighth of the gross produce which value shall be determined in the manner prescribed:

Provided that the tenant shall become the owner of any building or structure constructed on such land at the expense of the intermediary on payment of such compensation to the intermediary as is equivalent to its market value on the vesting date, which value shall be determined in accordance with the rules made in this behalf.

18. It is undisputed between the parties that the acquired land is part of Dar Taluk No. 3 and in the same nature it was settled with Shri Amarendra Nath Mukherjee. In *Bina Das Gupta v. Sachindra Mohan* AIR 1968 SC 39 which was also a case under the Tripura Tenancy Act, 1296 T.E., the Supreme Court held that a Dar Talukdar is a tenant and is entitled to compensation under the provisions of the Act when the land is acquired under the provisions of the Land Acquisition Act. Similarly, in Civil Rule No. 178/1989, *Shri Subhasis Talapatra v. The State of Tripura and Ors.* decided by a Division Bench of this Court earlier on 21st September, 1989 it was also held that a Dar Talukdar is a tenant. The Special Appeal No. 12732/1989 preferred against the said judgment of this Court was dismissed by the Supreme Court on 5th November, 1990.

19. The learned Govt. Advocate argued that the decision of the Supreme Court in *Bina Das Gupta v. Sachindra Mohan* (supra) does not help the Respondent in the case as the decision was under the Tripura Tenancy Act 1269 (T.E. Act). The learned Counsel also urged that the decision of the Court in Civil Rule No. 178/1989, *Sri Subhasis Talapatra v. State of Tripura and Ors.* (supra) has no application in the present case. As held by the Supreme Court in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. Similar view has been taken by the Supreme Court in *Dalbir Singh v. State of Punjab* AIR 1979 SC 1384 and by this Court in *Smt. Jyotibala Chakraborty Vs. Hem Chandra Sarkar*, . We are of the considered view that there is categorical finding of the Supreme Court in *Bina Das Gupta v. Sachindra Mohan* (supra) and of Division bench of the Court in *Subhasis Talapatra v. State of Tripura and Anr.* (supra), that a Dartalukdar has acquired the status of a tenant. Consequently Sri Amarendra Nath Mukharjee being Dartalukdar became tenant Under-Section 135(d) read with Section 133(d) of the TLR & LR Act. The result is that Shri Amarendra Nath Mukherjee being Dar Talukdar in respect of the acquired land became tenant u/s 135(d), read with Section 133(d) of the TLR & LR Act. The Commissioner of Revenue in his order dated 18th March, 1985 (Ext. Ka-4) also held that Amarendra Nath Mukherjee was entitled to hold the land in aggregate up to the ceiling limit. The learned Land Acquisition Judge rightly held that Amarendra Nath Mukherjee was entitled to hold the land in aggregate up to the ceiling limit. The learned Land Acquisition Judge rightly held that Amarendra Nath Mukherjee was entitled to retain his plots of land under the provisions of Section 164(I)(c) of the TLR & LR Act in view of the Order passed by the learned Commissioner of Land Revenue and Taxes,

Government of Tripura.

20. The learned Govt. Advocate vehemently argued that as per provisions of Section 134 of the TLR & LR Act, all the land in the State vested in the State Government free from all encumbrances and, as such, Shri Amarendra Nath Mukherjee could have claim of tenancy rights in the land. The learned Counsel relied upon the decision of the Supreme Court in *State of Orissa v. Brundaban Sarma and Anr.* 1995 Supp. 3 SCC . The facts of the case are different, that was a case of granting patta by a Tehsildar in plain piece of paper without the sanction of the competent authorities after the enforcement of the Orissa State Abolition Act, 1951. The instant case is entirely different, the Dar Talukdar's rights were conferred on Amarendra Nath Mukherjee much before the enforcement of the provisions of TLR & LR Act, 1960. The learned Counsel for the State further relied upon the decision of the Hon'ble Supreme Court in *Union of India and another Vs. Sher Singh and others*, In that case the land had vested in the Gaonsabha under the provisions of Delhi Land Reforms Act. The Gaon sabha was held entitled to compensation. In the present case, Shri Amarendra Nath Mukherjee is a tenant under the provisions of Section 135 of the TLR & LR Act and also he is entitled to the compensation claimed for. Much argument was also advanced with regard to the decision of the learned DSLR passed on 1.1.76 Under-section 135 of the TLR & LR Act. The learned Govt. Advocate contended that the learned DSLR has recorded finding that the land under acquisition had vested in the Government, and, as such, Shri Amarendra Nath Mukherjee could not become tenant of the land. The learned Counsel contended that the said judgment was not placed before the learned LA Judge, was fraudulently suppressed. On the other hand, the learned Counsel for the Respondent urged that the learned DSLR had himself appeared before the LA Judge prior to the Order passed by him and, as such, it was not appropriate on his part to decide the case himself. We have already dealt with similar contentions raised by the learned Counsel for the parties while discussing the merit of the case i.e. M.A.(F) No. 10/1983, the observations made there will also apply here. It may also be observed that the question of bias does not apply in a case where a person is discharging his statutory function. The learned DSLR appeared before the LA Judge on behalf of the Government and under the provisions of the Act he decided the revision Under-Section 95 of the TLR & LR Act. So, the decision rendered by the DSLR cannot be said to be vitiated on the ground that simply because he has appeared before the learned LA Judge on behalf of the Government.

21. Consequently M.A.(F) No. 10/1983 is allowed as, the order passed by the learned Land Acquisition Judge is hereby modified, the order of the LA Judge awarding the sum of Rs. 2,03,509.79 to the Govt. of Tripura as compensation is set aside and the said sum of Rs. 2,03,509.79 is awarded as compensation of Shri Kali Shankar Sarkar.

22. M.A.(F) No. 25/1983 is hereby dismissed. In view of the legal interpretation

of law involved in two cases, the parties are directed to bear their own costs.