

(1992) 03 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule No. 627 of 1987/96 (SH) of 1989

Jagadish Prasad Shah

APPELLANT

Vs

State Of Meghalaya and Ors.

RESPONDENT

Date of Decision : 20-03-1992

Acts Referred:

Meghalaya Transfer of Land (Regulation) Act, 1971 — Section 3(1), 3(1)

Citation : (1993) 1 GLJ 485

Hon'ble Judges : J.M.Srivastava, J and S.Barman Roy, J

Bench : Division Bench

Advocate : K.K.Dey, S.Dutta, P.Mahanta, P.K.Goswami, N.Dutta, A.Sharma,
Advocates appearing for Parties

Judgement

J. M. Srivastava, J.—The petitioner challenges the letter dated 29.1.82 (Annexure B) whereby the prayer for permission to transfer land by a tribal to a nontribal was rejected.

2. The petitioner's case is that he has been residing in Shillong in the State of Meghalaya from about 1950. One Ka Molibon Kharshkar was the owner of a plot of land in Laitumkhrach, Shillong as described in para 1 (a) of the petition. The said Ka Malibon has taken a loan of Rs.40,000/ from the respondent No.2 and having been unable to repay the loan sold the aforesaid land to the respondent No.2 in the year 1963. The respondent No.2 "had on 4.7.63 entered into four separate agreements with four different persons including the petitioner to sell a part of the aforesaid plot of land. The agreement with the petitioner was for sale of a plot of land for Rs.17,500/ and she had received Rs.8,500/ from the petitioner out of the agreed price. The petitioner had entered into possession and improved the land for construction thereon. The petitioner further alleges that one Ka Lakasbon Kharbahkar filed title suit against the respondent No.2 challenging the sale in her favour by Ka Malibon. The suit was decreed. The respondent No. 2 and Ka Malibon Kharshkar jointly preferred an appeal against the aforesaid decree. The appeal was dismissed. However, this Court allowed the

revision and dismissed the suit by judgment dated 30.7.80. During the aforesaid period of litigation regarding the property, the petitioner had been in possession of the aforesaid plot of land. In the year 1971, the Meghalaya Transfer of Land (Regulation) Act, 1971 hereinafter referred as the Act came into force. The provisions of section 3 of the Act provide

"Section 3.(1) No land in Meghalaya shall be transferred by a tribal to a nontribal or by a nontribal to another nontribal except with the previous sanction of the competent authority."

The respondent No. 2 in her petition dated 15.9.81 applied to the competent authority for permission to transfer the land. The petitioner stated that the aforesaid prayer was rejected by letter dated 29th January, 1982 (Annexure B). The petitioner submits that the respondent No.3 had made claim to the land on the allegation that he had purchased the land from the respondent No.2. The petitioner along with three others who had entered into agreement with the respondent No.2 applied for permission for transfer of the land, but by letter dated 5.9.84 they were informed that prayer by respondent No.2 in that regard had already been rejected. The petitioner has, therefore filed the petition challenging the aforesaid communication dated 29th January, 1982 (Annexure B).

3. The respondent No 3 has resisted the petition and the respondent No.4 to 5 have also filed affidavit in opposition justifying the impugned action.

4. We have heard Shri N. Dutta, learned counsel for the petitioner, Shri S. Dutta, learned counsel for the respondent No, 3 and Shri A. Sarma, learned Senior Govt Advocate for the respondent Nos. 1, 4 to 5.

5. Shri N. Dutta, learned counsel for the petitioner has submitted that the impugned order dated 29.1.82 and 5.9.84. were not in accordance with law because section 3 (1) of the Act gave the competent authority the power to accord sanction for transfer of land from a tribal to non tribal and that since the impugned order stated that there was no provision under the Act to accord sanction, the order was bad in law and that the matter should be remanded to the competent authority to consider the matter afresh.

5. Shri A. Sarma, learned Senior Government Advocate, Meghalaya has submitted that the "Act was amended in 1978 whereafter by issue of a notification the transfer of land was totally prohibited.

7. Section 3 (1) of the Act prior to amendment read as under : Section 3. (1). No land in Meghalaya shall be transferred by a tribal to a nontribal or by a nontribal to another nontribal except with the previous sanction of the competent authority."

By the Meghalaya Transfer of Land Regulation (Amendment) Act 1 of 1978, proviso was added to section 3 (1) which is as under :

"Provided that the Government of Meghalaya if satisfied may, from time to time,

by notification, prohibit such transfer of land within such area or areas as may be specified in the notification and thereupon the competent authority shall not sanction any such transfer of land under the provision of this Act, within such area or areas."

8. The Government was thus given the power to prohibit transfer by issue of notification in areas as considered necessary.

9. The Government of Meghalaya issued a notification No. RDS. II/ 76/187 on 7th June, 1978 which is as under :

""In exercise of the powers conferred by proviso to subsection (1) of section 3 of the Meghalaya Transfer of Land (Regulation; Act, 1971 the Government of Meghalaya hereby prohibit transfer of land by a tribal to nontribal within the areas specified below :

(1) The areas within the East East Khasi Hills District except the areas to which the Act aforesaid does not apply.

(2) The areas within the Jaintia Hills District.

(3) The areas within the West Khasi Hills District.

Sd/M. D. Rapthap,

Special Secretary to the Govt. of Meghalaya

Revenue, etc., Departments."

10. It is undisputed that the land in question is situated in an area to which the Act, extends. The aforesaid notification copy of which has been placed on record clearly prohibits transfer of land from a tribal to nontribal. The petitioner is a nontribal. The respondent No. 2 is a tribal. Accordingly the impugned orders dated 29.1.82 and 5.9.84 were in accordance with law as it stood on the date the orders were made and were therefore quite correct.

11. Shri N. Dutta submitted that the agreement between the petitioner and the respondent No. 2 was of the year 1963 and the law prohibited transfer in 1978. In our opinion the agreement being of 1963, does not make any difference because the permission for transfer of land was sought in 1982 when such transfer had been totally prohibited in 1978.

12. The impugned orders dated 29.1.82 and 5.9.84 were valid. This petition fails and is dismissed. We leave the parties to bear their own costs.