
(2007) 08 GAU CK 0023
In the Gauhati High Court

Kali Mohan Sahaji and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Tripura Land Revenue and Land Reforms Act, 1960 — Section 187(3), 95

Citation : (2008) 4 GLT 306

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Judgement

Hrishikesh Roy, J.—With the consent of the learned Counsels representing the parties in these four proceedings, the matters are being taken up for analogous hearing since the substantial issue involved in each of the cases is similar. The necessary facts in each of the cases are being set out later in the judgment being pronounced.

2. Heard Mr. M. Kar Bhowmik, learned senior counsel appearing for the petitioners in all the four writ petitions. Also heard Mr. R.B. Sinha, learned Counsel appearing for the State respondents in Civil Rule Nos. 574 of 1997, 577 of 1997 and 582 of 1997. Mr. J. Majumder, learned Govt. Advocate appears for the State respondents in W.P.(C) No. 352 of 2006.

Mr. A. K. Deb, learned Counsel appears for private respondent No. 4 in Civil Rule No. 574 of 1997. Similarly, Mr. Section Lodh, learned Counsel appears for the private respondent No. 4 in W.P.(C) No. 352 of 2006.

3. For the sake of convenience, the essential facts in the writ petitions are taken note of separately:

CIVIL RULE No. 574 OF 1997

(Kali Mohan Sahaji and Anr. v. State of Tripura and Ors.)

(i) The writ petitioner Lalit Mohan Sahaji (since dead and now represented by the two legal heirs) is challenging an order dated 13.2.1996 passed by the Sub-

Divisional Officer, Kanchanpur Sub-Division, North Tripura. By the said order, the S.D.O. had directed the writ petitioner, who is a non-tribal, to be dispossessed from the land under his possession and directed restoration of possession of the land to the respondent No. 4, Lalit Mohan Chakma, who is the legal heir of Late Nama Charan Chakma;

(ii) The petitioners claim possession of the said land on the strength of an unregistered deed dated 4.6.1967, which was executed by the vendor Nama Charan Chakma whereby the transferor agreed to sell the subject land to the petitioner for a consideration of Rs. 3,000/- and it was recorded that delivery of possession of the land on the strength of the said unregistered sale agreement deed has been made in favour of the petitioner;

(iii) It is claimed that the petitioner has been in possession of the land on the strength of the said unregistered deed dated 4.6.1967. While in possession of the land as aforesaid, the respondent No. 4 Lalit Mohan Chakma initiated a proceeding in the year 1981 for restoration of the land and threatened the dispossession of the petitioner. To protect his right over the land, the petitioner instituted Title Suit No. 9 of 1974 against the transferor Nama Charan Chakma for permanent injunction against his dispossession;

(iv) In course of the proceeding in Title Suit No. 9 of 1974, a compromise was arrived at between the plaintiff and the defendant and accordingly, the learned Munsiff on the basis of the consent given by the parties, decreed the suit on 10.1.1975 in favour of the petitioner against the defendant (transferor);

(v) Thereafter, in 1981 a proceeding was initiated u/s 187 (3) of the Tripura Land Revenue and Land Reforms Act, 1960 (hereinafter referred to as "TLR & LR Act") in the Revenue Court at Dharmanagar against the petitioner for restoration of land. The said proceeding was initiated by the respondent No. 4 Lalit Mohan Chakma, who is the son of the transferor Nama Charan Chakma;

(vi) On receipt of the notice of the said restoration proceeding, the petitioner appeared and produced the unregistered sale agreement deed dated 4.6.1967 as well as the certified copy of the mutual decree obtained by him in Title Suit No. 9 of 1974 to claim his right to possess the land and to deny the claim for restoration made by respondent No. 4;

(vii) The Sub-Divisional Officer, North Tripura by his order dated 4.3.1982 directed restoration of the land in favour of the applicant-respondent No. 4 Lalit Mohan Chakma;

(viii) The petitioner being aggrieved filed a revision petition u/s 95 of the TLR & LR Act, which was registered as Revision Case No. 12 of 1983. The Revisional Authority by his order dated 23.8.1990 found that there was no evidence to ascertain as to whether the transfer of possession of the land took place before or after 1.1.1969 and since that issue was considered to be an important issue, the Revisional Authority remanded the case back to the original authority for

taking further evidence of both the parties;

(ix) On the basis of the said remand, the S.D.O. took up the proceeding and by the impugned order dated 13.2.1996 opined that the date in the transfer deed has been changed later on as 4.6.1967, whereas the said unregistered deed might have been executed prior to 1.1.1969. On the basis of such finding, the S.D.O., Kanchanpur ordered that the non-tribal party Lalit Mohan Sahaji should restore possession of the land to the tribal party Lalit Mohan Chakma, who is the heir of late Nama Charan Chakma (the transferor of the land);

(x) Being aggrieved, the present writ petition has been filed before this Court against the order dated 13.2.1996 passed in favour of the respondent No. 4.

CIVIL RULE No. 577 OF 1997

(Jatindra Chowdhury v. State of Tripura and Ors.)

(i) The claim over the land in the present case has been made by the writ petitioner (non-tribal) on the strength of a unregistered sale agreement deed dated 6.5.1968, executed by four tribal transferors in favour of the writ petitioner. The four tribal transferors had earlier purchased the subject land from a tribal Subal Ch. Chakma by a registered deed dated 8.11.1967;

(ii) One of the four transferors, Debraj Chakma initiated a proceeding for restoration of land under the TLR & LR Act against the writ petitioner and the writ petitioner received notice of the said proceeding from the Revenue Officer who issued the same on 4.2.1979;

(iii) Another restoration proceeding initiated by Subal Chakma, the original land owner was rejected by order dated 8.3.1994 passed by the S.D.O. (Revenue Court), Dharmanagar. The S.D.O., Dharmanagar while rejecting the claim for restoration made by Subal Chakma indicated that Subal Chakma had already sold the said land to Debraj Chakma and three others by a registered sale deed dated 8.11.1967 and accordingly, Debraj Chakma and others have become the legal owners of the land on the strength of the registered deed. Therefore, the claim of restoration of possession made by the Subal Chakma cannot be accepted. But if such a claim is made by the tribal purchasers of the land who purchased the land by registered deed on 8.11.1967, the same could be considered;

(iv) Then Debraj Chakma filed an application for restoration of land to him and the said application filed by Debraj Chakma against the writ petitioner came to be disposed of by order dated 12.8.1997 passed by the Deputy Collector, Kanchanpur. In the said proceeding before the Deputy Collector, the writ petitioner as second party was also present where he claimed that he had purchased the land in question. But he could not produce any documentary evidence of such purchase;

(v) The Deputy Collector by his order dated 12.8.1997 held that the writ

petitioner obtained possession of the land without obtaining permission of Collector in contravention of, inter alia, the provisions of Section 187 of the TLR & LR Act and also without obtaining permission of Collector under the provisions of the Land Allotment (Bar on transfer of land within ten years of allotment) Rules. On the basis of such finding, the Deputy Collector ordered restoration of possession of land to the respondent No. 3 Debraj Chakma, which resulted in dispossession of the writ petitioner. This is the order under challenge in Civil Rule No. 577 of 1997.

CIVIL RULE No. 582 of 1997

(Gour Chand Mallik v. State of Tripura and Ors.)

(i) The writ petitioner Gour Chand Mallik (non-tribal) claimed possession of a parcel of land on the strength of an unregistered deed executed in his favour on 25.3.1967. The said deed was executed in favour of the petitioner by (i) Ramhari Reang, (ii) Jaddihum Reang, (iii) Sukuday Reang, (iv) Smt. Sashirang Reang, (v) Smt. Sandur Reang and (vi) Smt. Ganydar Reang (transferors) for a consideration of Rs. 16,540/-;

(ii) In respect of the aforesaid land, one Mama Mog initiated a proceeding for restoration of ownership of the land before the said land was come to be owned by the aforesaid six persons.

(iii) Eventually, by order dated 25.3.1996 the SDO, Amarpur recorded that the Mama Mog is the son of the brother of Marchainda Mog. The SDO could not, however, decide who is the successor-in-interest of the transferor, in respect of the land in question;

(iv) Without determining as to whom the land is to be restored, the S.D.O. held that the writ petitioner cannot, however remain in possession of the land. Accordingly, the S.D.O., directed that the Officer-in-charge of Nutanbazar Police Station will receive possession of the land and thereafter, the land would be returned to the legal successors/ heirs of Marchainda Mog;

(v) A Revisional proceeding was initiated by the present petitioner against the aforesaid order u/s 95 of the TLR & LR Act, but by order dated 2/16.5.97 the Commissioner of Revenue, Govt. of Tripura declined to admit the said revision filed by the writ petitioner;

(vi) As a consequence of the aforesaid proceeding initiated by Mama Mog, a notice was issued on 29.7.1997 by the Deputy Collector (Revenue), Amarpur directing the petitioner to restore possession of the land to Mama Mog, the person who initiated the restoration proceeding.

Being aggrieved by the orders dated 2/ 16.5.97 and the notice dated 29.7.1997, the present writ petition has been filed.

W.P.(C) No. 352 OF 2006

(Kanai Lal Sarkar v. State of Tripura and Ors.)

(i) The petitioner Kanai Lal Sarkar (non-tribal) claimed possession of certain lands on the strength of an unregistered deed executed in his favour by a tribal landowner Bhadagola Chakma. On the strength of the said unregistered deed, the petitioner claimed a right to remain in possession of the land on or after 18.11.1967;

(ii) The respondent No. 4, Ruhini Chakma, who claims to be the nephew of Bhadagola Chakma (transferor) filed an application for restoration of land under the provisions of Section 187 of the TLR & LR Act;

(iii) The Additional S.D.O., Chailengtaby his order dated 17.5.1994 after considering the materials on record ordered restoration of possession of the land in question to the respondent No. 4 by directing the petitioner to handover possession. The writ petitioner was present in the said proceeding initiated before the Sub-Divisional Officer, Chailengta.

It is averred in the writ petition that the writ petitioner carried the impression, while being present during the proceeding before the S.D.O. on 17.5.1994 that he will not be dispossessed of the land and no restoration order would be passed in favour of the respondent No. 4, Ruhini Chukma. Accordingly, it is claimed that he did not further inquire into the restoration proceedings beyond his presence on 17.5.1994;

(iv) But as is already noticed, the Addl. S.D.O. by his order dated 17.5.1994 directed restoration of possession to respondent No. 4 for the land in question;

(v) After a long gap of nearly 11 years after the restoration order dated 17.5.1994, the petitioner claimed to have received informatipn on 2.12.2005 to meet the Revenue Inspector of Chailengta in connection with the restoration proceedings. The petitioner on 6.12.2005 met the Revenue Inspector and it is contended that the writ petitioner only then came to know about the dispossession order passed by the Addl. S.D.O. dated 17.5.1994.

(vi) Accordingly, the petitioner sought certified copy of the order passed by the Addl. S.D.O. on 17.5.1994 ordering his dispossession and restoration of possession of the land to respondent No. 4. After obtaining the certified copy of the order dated 17.5.1994 on 28.12.2005, the petitioner has filed the present writ petition challenging the said order for his dispossession passed by the Addl. S.D.O. on 17.5.1994.

4. Mr. M. Kar Bhowmik, the learned senior counsel appearing for the petitioners submits that in the instant cases, no purchase of land has been made by the non-tribal writ petitioner in the four writ petitions. Instead, the writ petitioners, who are non-tribals, are in possession of their respective parcel of land on the strength of unregistered deeds executed by tribal landowners. On the strength of such unregistered deeds, the petitioners are in possession of the lands and the bar of "transfer" without previous permission of the Collector provided by Section

187(1) of the TLR & LR Act. would not be attracted in the present cases.

5. The learned senior counsel appearing for the petitioners also contends that under the provisions of Explanation given u/s 187D(2) of the TLR & LR Act, the word "transfer" would mean for the purpose of the Act, apart from sale, mortgage, lease, exchange and gift and also a right of possession. By referring to the said provision of the TLR & LR Act, the learned senior counsel submits that since the petitioners have been put in possession of the land and since such possession would amount to "transfer" as per the explanation given u/s 187D(2), the requirement of previous permission envisaged by Section 187(1) of the TLR & LR Act would not be attracted and the consequences for not seeking permission would also not be attracted in case of possession of tribal land by the petitioners (non-tribals).

6. It is also argued on behalf of the writ petitioners that the present writ petitions are maintainable, despite the alternate remedy provided under the Act as the concerned Revenue Officers directing restoration of possession of land by ordering dispossession of the writ petitioners, have exercised such powers without any jurisdiction inasmuch as, only in case of dispossession of a tribal of his land on or after 1.1.1969, the provisions of the Act would enable exercise of jurisdiction on a claim for restoration by tribal and accordingly, the present writ petitions are definitely maintainable in respect of the impugned proceedings.

7. With regard to the impugned order passed in Civil Rule No. 582 of 1997 (*Gour Chand Mallik v. State of Tripura and Ors.*), it is specifically contended that under the provisions of Section 187B(1) of the TLR & LR Act, restoration of possession of the land can be made only to the transferor or his successor-in-interest and since in the said case the restoration has been ordered, without identification of the transferor's successor-in-interest, in favour of the Officer-in-Charge of Nutanbazar Police Station, the said restoration order is vitiated in law and is liable to be interfered with by this Court.

8. Mr. R.B. Sinha, the learned Counsel appearing for the respondent State in three of the writ petitions and Mr. J. Majumdar, learned Govt. Advocate representing the State in W.P.(C) No. 352 of 2006, on the other hand, argue that the TLR & LR Act has been enacted as a beneficial legislation to protect the interest of the Tribals and since the provisions of the TLR & LR Act have been enacted specifically with the object of restoring possession of land to the Tribals, who have been dispossessed of their lands, interference of the Court would not be justified with the orders of restoration passed in favour of the Tribals.

9. It is also contended on behalf of the State that the writ petitioners have efficacious remedy by way of Appeal and Revision under the Act and exercise of jurisdiction by this Court without exhaustion of those alternate remedies, would not be justified in the facts of the instant cases.

10. The learned State Counsels and also Mr. A.K. Deb, learned Counsel appearing for the private respondent in Civil Rule No. 574 of 1997 further contended that

no "transfer" of tribal land to a non-tribal is permissible on the strength of an unregistered deed because of the provisions enacted u/s 187 (2)(a) of the TLR & LR Act and accordingly, no right would accrue in favour of the non-tribal petitioners, all of whom are claiming right over the land on the basis of unregistered instruments executed by Tribals in their favour.

11. It is also contended on behalf of the respondents that the exercise of jurisdiction by Civil Court is totally barred in respect of sale of land by a Tribal to a non-tribal and reference to the provisions of Section 188 of the TLR & LR Act has been made by the learned Counsels in support of the said submission.

12. To resist the contention of non-entertainment of the writ petitions on the ground of availability of alternate remedy, the learned Counsel for the petitioners has relied upon a decision of this Court reported in 1998 (2) GIT 470 (Sailen Sarkar v. State of Tripura). By citing this decision, the learned Counsel contends that only in case of a "transfer" of land made after 1.1.1969 by a tribal to a non-tribal, the Revenue Authority would acquire jurisdiction to entertain a claim for restoration of land made by tribal under the Act and since in the present cases, the possessions are on the basis of unregistered deed executed prior to 1.1.1969, the power to exercise of jurisdiction by the officer ordering restoration itself is lacking and accordingly, the writ petitions are very much maintainable.

13. Mr. Section Lodh, the learned Counsel appearing for the respondent No. 4 in W.P.(C) No. 352 of 2006, on the other hand, contends that the decision of this Court in Sailen Sarkar (supra) is not an authority for deciding on the jurisdiction of an officer while ordering restoration of land to a tribal vendor. It is pointed out that the challenge in Sailen Sarkar's case (supra) was with regard to "transfer" of land by a tribal allottee before expiry of ten years of allotment, which is hit under the provisions of the Land Allotment Rules and since the challenge in the Court in Sailen Sarkar's case (supra) was with regard to violation of Land Allotment Order the said decision cannot be cited as an authority for the purpose of determining the issue raised in the instant cases where restoration is sought on the ground of "transfer" of land to a non-tribal, without seeking prior permission of the Revenue Authority before effecting such transfer.

Mr. S. Lodh, the learned Counsel has further argued with regard to the submission of belated knowledge of the restoration order made in W.P.(C) No. 352 of 2006 that the writ petitioner was very much aware of the restoration proceeding initiated by respondent No. 4 as he was present before the Addl. S.D.O. on 17.5.1994, when the impugned order directing restoration of possession of land to respondent No. 4 was passed. Accordingly, it is contended that the plea advanced on behalf of the writ petitioner that he was unaware of the said restoration order dated 17.5.1994 till 2.12.2005 is totally unbelievable and even if it is true, it is on account of lack of reasonable alertness and vigilance on the part of the writ petitioner and he cannot be permitted to make a challenge to an order passed as far back as on 17.5.1994, by filing the writ petition 12 years after, in the year 2006.

It is further contended by the learned Counsel appearing for the respondent No. 4 in W.P.(C) No. 352 of 2006 that even on merit, if the writ petitioner had any grievance against the recording made by the Addl. S.D.O. in the impugned order dated 17.5.1994 as regards the year of execution of the deed as "Nil", he should have approached the Addl. S.D.O. for a clarification or correction of the said noting and this Court ought not re-appreciate the finding recorded by the Addl. S.D.O., which has attained finality for so many years.

14. The common thread in respect of the claims made by each of the writ petitioners over land under their possession is on the strength of unregistered deeds executed which are in the nature of sale agreements, delivery possession deeds and none of the agreement are sale deeds.

It is seen from the provisions of the Act that "transfer" of land to a non-tribal by a tribal without the previous permission of the Collector in writing is invalid by operation of law.

It is further provided that no "transfer" of a land owned by tribal shall be valid unless such "transfer" is made by a registered instrument.

The Act also provides for restoration of land to a transferor or his successor-in-interest, if such land is possessed by non-tribal without any lawful authority.

It is also provided that "transfer" of land is also possible by parting with possession of the land.

The writ petitioners claimed right over the lands, which were earlier owned by tribal land owners on the strength of deeds executed by such tribal land owners whereby possession of the land has been transferred to the non-tribal writ petitioners. All these transfers were made prior to 1.1.1969.

15. The provisions enacted under the TLR & LR Act indicate that the said enactments have been made to protect the interest of tribal land owners for which purpose, stringent provisions have been incorporated to prevent "transfer" of tribal land in favour of non-tribal. The enactment made for protection of the tribals byway of embargo on sale and transfer of land from tribal to non-tribal was in existence since before the enactment of the TLR & LR Act in the year 1960 and there is agreement in the bar that such an embargo was in place, by appropriate Royal Notification even during the pre-independent days.

16. In such a situation, it would be necessary to examine as to what right could accrue on the writ petitioners, on the strength of the unregistered instruments, on the basis of which they have put forward their respective claims over the lands, which were earlier owned by tribals and which have been ordered to be restored to the possession of the tribals or their successors-in-interest.

17. In my view, no "transfer" of tribal land is valid and permissible in favour of a non-tribal without the previous permission of the Collector in writing and such "transfer" shall not also be valid unless made by a registered instrument. That

being the position of law, as can be seen from the TLR & LR Act, the right of "transfer" claimed by the petitioners on the strength of transfer of possession by the unregistered instruments, cannot be made the basis for claiming a right over the land, although the said instruments appear to have been executed prior to 1.1.1969.

There are some dispute raised with regard to the actual date of execution of the deed in respect of Civil Rule No. 574 of 1997 and W.P.(C) No. 352 of 2006, where the writ petitioners claimed that the deeds have been executed prior to 1.1.1969, whereas a contra claim has been made that the deeds have been executed after 1.1.1969.

But in view of the view taken by this Court as above, the cut off date of 1.1.1969 would not have any bearing and accordingly, it is not necessary to give any finding with regard to the actual date of execution of the deeds on the basis of which, claim is made by the writ petitioners in Civil Rule No. 574 of 1997 and W.P. (C) No. 352 of 2006.

18. On the issue of jurisdiction, it is seen that the authority under the Act is provided with power to order restoration of land to tribal, from whom "transfer" of land has taken place in favour of a non-tribal, in violation of the provisions of TLR & LR Act. Whether such "transfer" has taken place in conformity with the provisions of the TLR & LR Act is a matter, which has to be examined by the jurisdictional authority, while deciding a claim for restoration of land by a tribal. During such consideration, the authority may have to also decide on the date of the deed, on the strength of which, the non-tribal claims transfer of land in his favour. Therefore, merely because a deed is claimed to be executed prior to 1.1.1969, would not in my view, oust the jurisdiction of the authority to decide on a claim for restoration of land by the Tribal. In appropriate cases, the authority may decline to order restoration while considering an application of a tribal claimant but merely because the deed of transfer is of a date prior to 1.1.1969 would not oust the jurisdiction of the authority to decide on a claim put forward by a tribal for restoration of land. A ban on transfer of land of tribal to a non-tribal existed even during the pre-independence days when the Tripura King was the monarch of the area and by incorporation of Section 187 B(1), applicable with effect from 1.1.1969, no new law for protection of tribal land is enacted. By Section 187 B(1), the power of Restoration of land to a dispossessed tribal has been conferred on a Revenue Officer and such power of restoration can be exercised, even for lands which got transferred, without legal authority, on a date prior to 1.1.1969.

The decision of this Court in *Sailen Sarkar* (supra) was rendered in different factual context where land allottee transferred land within ten years of allotment and cannot be regarded as an authority to declare lack of jurisdiction to consider and exercise power of restoration of land, which has been transferred prior to 1.1.1969.

19. The Supreme Court decision reported in Niladri Patel Vs. Khadi Sha and Others, clearly supports the view taken by this Court that a non-tribal who has secured possession of tribal land through deeds executed prior to 1.1.1969, cannot legally acquire any title or legal right of possession over the tribal land and, therefore, the Revenue Authority's jurisdiction to order restoration of such land to the ousted tribal cannot be held to be unavailable.

20. Having held that the Revenue Authority has the power to order restoration, it is seen that such restoration order can be passed only in favour of a transferor or his successor-in-interest. But in Civil Rule No. 582 of 1997 (Gour Chand Mallik v. State of Tripura), the restoration order has not been passed in favour of the transferor nor in favour of successor-in-interest of the transferor.

Because the successor-in-interest could not be identified by the Authority, the land restoration order has strangely been ordered, in favour of the O.C. of Nutanbazar Police Station. This could not have been done. Accordingly, the said order of restoration dated 25.3.1996 passed by the S.D.O., Amarapur is held to be vitiated in law.

As regards the impugned notice/order dated 29.7.1997 of the Deputy Collector (Revenue) ordering for restoring possession in favour of Mama Mog, the said order is sustained, subject to, Mama Mog furnishing adequate proof of being the successor-in-interest of the transferor of the land, before the competent authority.

21. As regards the plea of alternate remedy raised, since the impugned orders in each of the cases have been passed atleast as far as 10 years back, this Court has not considered it appropriate to reject the writ petitions on that ground of availability of alternate remedy and thought it appropriate to consider the writ petitions on merit.

22. In view of the discussions made above, the three writ petitions being Civil Rule No. 574 of 1997, Civil Rule No. 577 of 1997 and W.P.(C) No. 352 of 2(X)6 fail and the same are hereby dismissed.

23. However, Civil Rule No. 582 of 1997 is disposed of in terms of the order passed as above.

24. No. cost.