

**(2004) 04 GAU CK 0037**  
**In the Gauhati High Court**  
**Case No : W.A. No. 10 of 2004**

Kirit Bikram Kishore Deb Barman

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

**Date of Decision :** 30-04-2004

**Acts Referred:**

Constitution of India, 1950 — Article 295, 3

**Citation :** (2004) 3 GLR 258 : (2005) GLT 461 Supp

**Hon'ble Judges :** T. Vaiphei, J;P.G. Agarwal, J

**Bench :** Division Bench

**Advocate :** Suman Bose, K.N. Bhattacharjee, S. Chakraborty and M. Gupta, for the Appellant; B.R. Bhattacharjee and T.D. Majumder, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

P.G. Agarwal, J.—This Writ Appeal is directed against the judgment and order passed by the learned Single Judge on 10.7.2003 in W.P(C) No. 110 of 2002 whereby the said writ petition was dismissed.

2. We have heard Mr. S. Bose, learned senior counsel, Mr. K N Bhattacharjee, learned senior counsel Mr. S, Chakraborty and Mr. M. Gupta, learned counsel for the appellant and Mr. B. R. Bhattacharjee, learned senior advocate assisted by Mr. T D Majumder, learned additional government advocate, appearing for the State Respondents.

3. The facts leading to the present appeal are :

Tripura was a princely State in the year 1949 and the writ petitioner/ appellant before us (hereinafter referred as the appellant) is a former ruler of Tripura. On 9th September, 1949 a merger agreement was executed in between the Governor General of India and Regent Maharani Sahiba of Tripura, acting for and on behalf of the Maharaja of Tripura whereby the Administration of the State of Tripura was transferred to the Government of India and the Maharaja ceded to the Government of India. The merger agreement contained as many as IX

Articles and Article III which is relevant for our purpose reads as follows :

#### ARTICLE-III

"..... .Maharaja shall is entitled to the full ownership, use and enjoyment of all private properties (in distinct from state properties) belonging to him on the date of this agreement.

The Maharaja will furnish the Dominion Government before the 10th October 1949, in inventory of all the immovable property, securities and cash balance held by him as such private property.

If any dispute arises as to whether any items of property is the private property of Maharaja the State property it shall be referred to a judicial officer qualified to be appointed as High Court Judge and the decision of that officer shall be final and binding on both purpose."

4. An inventory of all the immovable property of his Highness of the Maharaja of Tripura, furnished under Article III of the agreement has been appended by the appellant as (Annexure-3) and it provides as follows:

#### INVENTORY OF IMMOVABLE PROPERTY OF HIS HIGHNESS THE MAHARAJA OF TRIPURA FURNISHED UNDER ARTICLE III OF THE AGREEMENT DATED 9TH SEPTEMBER 1949

(1) Ujjayanta palace with all the Private buildings within the compound walls (2) Tripura House, Calcutta Private (3) Tripura Castle, Shillong Private (4) Nirmahal Kothi Private (5) Kunjaban House with compound State Note : A portion of the Kunjaban House is required for the occupation by the Chief Executive Officer of the State but the remaining portion will be maintained by the State as a distinguished visitor's Guest House. His Highness' Guests will have the prior right of occupation of this Guest House. (6) Malanchabash House Private (7) Stable : This will be considered as the Ruler's private property till such time as a new garage is constructed by the State within the palace compound If this is not constructed, the stable will remain with the Ruler as private property His Highness will allow the use of such portions of it as are not required by the Ruler. (8) Old Guest House State (9) Brown's House State (10) Khas lands (i) Resham Bagan (measuring about 6 drones) (ii) Fruit and Vegetable gardens upto Hatipara Lichi Bagan on either side of Shillong Road, measuring about 135 drones. (iii) Hatipara Sal Garden (measuring roughly about 50 drones) (11) Chakla Roshnabad Zamindaries, situated in East Pakistan along with the buildings, vacant place and rights appertaining to the Zamindari. (12) House at Dacca, Pakistan."

5. The dispute between the parties is in respect of the khas land described at Sl. No. 10 of the above inventory. The State of Tripura created Kayemi Taluk Nos. 203, 304 and 205 in the name of the appellant in respect of the lands described in item No. 10 above vide Order 23.10.1950 and, thereafter, pursuant to the provisions of the Tripura Land Revenue and Land Reforms Act, 1960, the land

covered by the above Kayemi Talluk No. 203, 204 and 205 were vested in the Government u/s 134(1) of the said Act vide order dated 14.11.1961. According to the appellant, the total land covered by the above talluk is approximately 10.254 acres. The appellant, on being asked to submit returns, filed his returns and expressed his desires to retain the entire land of the above Kayemi taluk and also filed an application for exemption u/s 178 of the Tripura Land Revenue and Land Reforms Act, 1960 (for short "the Act"). The proceedings under the said Act and the Ceiling Case No. 151 of 1975 had a chequered history. The appellant had also approached this Court in Civil Rule No. 15 of 1983 and by an order dated 22nd August, 1994, this Court remitted the matter to the Collector for fresh disposal in accordance with law. Subsequently, the matter was disposed of by the collector and the appellant also preferred an appeal before the District Judge, and the appeal was also disposed of. The respondent State has claimed that the proceedings under the Act have reached its finality. We do not propose to enter into the merit of the above proceedings in this writ petition.

6. In the present writ petition/appeal the appellant's case is that the khas land described in at Sl. No. 10 of the inventory as quoted above, hereinafter referred to as "the land" for convenience sake, is the private properties of the appellant and as per the terms of the merger agreement, the appellant is entitled to enjoy the full ownership of the said private properties and the provisions of the Act are not applicable. It is further submitted that as the land was not properly described, i.e., no boundary etc. were given, providing of the kayemi Taluk Nos. 203, 204 and 205 was for a limited purpose of identification of the land and the appellant who was the absolute owner of the said land cannot be delegated to the status of an intermediary. The appellant claims that he was the superior landlord and owner of all properties in the Princely State of Tripura prior to the merger agreement and he cannot be equated to either as an intermediary or a talukdar and hence, 1960 Act which offends and contrary to the merger agreement cannot be applied to the above land as the rights of the appellant are governed by Article III of the merger agreement which has been protected under Article 295 of the Constitution of India.

7. The respondent-State filed counter affidavit wherein broad facts of the merger agreement, inventory conversion into Kayemi taluk and subsequent proceedings under the Act are not disputed. The stand of the respondent-State is that all rights of the writ petitioner/appellant are not governed and guided by the merger agreement and that the provisions of the Act are applicable to the land and the private properties of the appellant are not excluded from the operations of the Act. It is further contended that the land described in Item No. 10 of the Inventory was termed as a khas land only and not a private property as the private properties were distinctly shown in the inventory with a remark "private". The respondent-State claimed that the khas lands are the Government lands and as per the merger agreement, these were allowed to be returned by the appellant as an intermediary and after the enactment of the 1960 Act, the land came to vested with the State and thereafter ceiling proceedings were initiated in

accordance with law. Although, the appellant was entitled to retain the land measuring 11.37 acres only under the Act, the Collector, however, allowed the appellant to retain land measuring 38.52 acres and land measuring 30.88 acres was also exempted.

8. In the impugned judgment, the learned Single Judge, has held that as the appellant-petitioner himself had taken recourse to the provisions of 1960 Act, he cannot challenge the applicability of the said Act. It was further observed that the law is universally applicable to all and there cannot be any discrimination among the citizens in application of such law in the State. The learned Single Judge, further observed that the proceedings before the Collector is on the verge of completion as the judgment is still awaited and, if the petitioner is aggrieved by the decision of the Collector, he may take appropriate steps. Shri B. R. Bhattacharjee, learned senior advocate appearing for the State, has submitted that in the meantime, the Collector has rendered his decision, and, as such, the appellant if he so aggrieved, may challenge the decision of the Collector, but the present writ petition/appeal does not lie.

9. It is submitted that the khas land described in item No. 10 of the merger agreement are protected in view of the provision of Article 295 of the Constitution which reads as follow:

"..... 295. Succession to property, assets, rights, liabilities and obligations in other cases. - (1) As from the commencement of this Constitution -

(1) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(2) all rights liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List, subject to any agreement entered into in that behalf by the Government of India with the Government of that State, and

(3) subject as aforesaid, the Government of each State specified in Part B of that First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in Clause (1)"

10. There is no dispute at the Bar that ruler of a Princely State was the owner of

all the properties in the State and apparently there was no distinction between the State property or any private owner property as a ruler. In view of the merger agreement (Annexure 1) there is no dispute that Maharani Sahiba did submit a list of private properties, which has been made of the inventory. The point for determination in this case is whether the land was set apart as private property of the appellant. In support of his submission, learned counsel has placed reliance on a decision of the Apex Court in the case of Maharaja Pratap Singh v. Maharani Sarojini Devi and Ors. 1994 (7) SCC 734. The facts of the case in Pratap Singh (supra) are altogether different and dispute was in respect of a particular property the sterling castle and the question had arose for determination was whether the said property belonged to the State of Nabha or was it the private property of Pratap Singh. The dispute was in between the heirs of the Maharaja. In the present case, we find that the properties belonging to the appellant were described in the inventory submitted by the Maharani Sahiba as private or State, but so far the land described in Item No. 10 are concerned, there is no remark in the inventory and it has been kept open. In view of the merger agreement, the entire land situated in the State of Tripura were transferred and vested with the State of Union of India except the private properties for which the Maharaj a submitted the inventory. If the land described in Item No. 10 were to be treated as private property, we find no reason to describe this part of land in a different manner as khas land. We, therefore, find force in the submission of Shri Bhattacharjee, that khas lands were Government land and the petitioner was allowed to enjoy the land as an intermediary and accordingly, the Kayami Taluk were made and as a matter of fact the appellant had paid the revenue till 1954.

11. Section 133(C) of the Tripura Land Revenue and Land Reforms Act, 1960 defines intermediary as: "intermediary" means a person who holds in an estate the right, title or interest of a talukdar and includes :

- "(i) a person who holds land either revenue free or at a concessional rate, and
- (ii) a tenure holder."

12. Shri Bose, learned senior counsel for the appellant has submitted that the rights of the appellant which are protected under Article 295 of the Constitution, cannot be taken away by way of definition in the Act. There should have been a substantial provision to take away the rights acquired by the appellant. Learned counsel has referred to a decision of the Hon'ble Calcutta High Court in the case of Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, In the above case, the provision of the West Bengal Estate Acquisition Act, 1953 were under challenge and the Court held that, rights of lessees and sub-lessees of mines and minerals cannot be taken away by including them in the amended definition of intermediary. The above provision was made to abolish the middlemen in respect of mines and minerals lying under the surface and it was for a public purpose. Court held that a fresh notification in terms of Section 4 of the Act is necessary to vest in the State Government underground rights of the lessees and sub-

lessees

13. The facts of the present case are altogether different and the khas land vested with the State prior to coming to the force of 1960 Act and as a matter of fact, Land Reforms Act Was enacted for public purpose. We, therefore, hold that the appellants were not brought under the purview of the 1960 Act by way of any definition clause.

14. The learned counsel for the appellant has placed reliance on the decision of the Constitution Bench in a case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, wherein it was held that, "There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppels is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess so will not enforce any particular fundamental right, cannot create and estoppels against him in that or any subsequent proceeding. Such concession if enforced would defeat the purpose of the Constitution. Were the argument estoppels valid, an all powerful State could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits AIR 1959 AC 149 Rel. on".

15. There cannot be any dispute to the above ratio of law but in the present case the State has not claimed any estoppel against Maharaja; fundamental rights of the Maharaja is precluded from claiming the khas lands because of any estoppel.

16. The second phase of the argument of the appellant is the provision of the Ceiling Act are not applicable as the right of the appellant are protected under the terms of the merger agreement. The question of applicability or the non-applicability of the Ceiling Agreement will arise only when it is held that the land described in item No. 10 are to be treated as private property of the Maharaja. We have perused Annexure 2 which is a letter issued by Shri V. P. Menon, signatory to the merger agreement on behalf of the Government of India and addressed to Maharani Sahiba. The letter dated 9th September, 1949 and it has been produced by the appellant in respect of their/his claim. In the inventory as quoted above, there were as many as 12 items and in respect of 8 item, there is a special remark these are to be treated as private or State. Item No. 7 is concerned, there is a self-explanation. In respect of Item 1, in Annexure 2 there is a specific mention that the Government of India have agreed to treat the Chakla Roshnabad Zamindaries as a ruler, private property.

17. After the merger of the State of Tripura, Maharaja became an ordinary

citizens of India and is amenable all the laws applicable to the citizens of India subject to the rights and privileges granted to him under the merger agreement. As regards Mr. Bose's contention that in view of the provision of Article 3 a dispute whether a property is a private property or State property should have been referred to a Judicial Officer for decision, we hold that in the instant case there is no dispute to that effect as the inventory is specific and clear.

18. In the result, for the reasons stated above, we find no merit in this appeal and, accordingly, the appeal is dismissed.