

(1993) 06 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 28 of 1983

Mohanlal Deb Roy and Others	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 16-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 31B
Tripura Land Revenue and Land Reforms Act, 1960 — Section 187, 187(1), 187(3), 197B
Tripura Land Revenue and Land Reforms Rules, 1961 — Rule 114(1)

Citation : AIR 1994 Guw 74

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Deb and R. Dasgupta, for the Appellant; U.B. Saha, Government Advocate, for the Respondent

Judgement

N.G. Das, J.—By this writ petition under Article 226 of the Constitution of India the petitioner has challenged the legal and constitutional validity of an order dated 31-8-82 contained in Annexure-A/ 2 whereby S.D.O., Kamalpur ordered restoration of land measuring 3.20 acres appertaining to C.S, Plot Nos. 133/134/139 of Khatian No. 63 to Kanchan Kumar Deb Barma.

2. The facts leading to this writ petition are that one Manik Chandra Deb Barma was the owner of land appertaining to C.S. Plots Nos. 42, 43 and 51 now covered under Khatian No. 53 of Mouja Kulai under Kamalpur Sub-Division. After the death of Manik Chandra Deb Barma, the respondents, namely, Kanchan Deb Barma, Prabin Deb Barma and Biswa Kr. Deb Barma inherited the aforesaid property in equal share.

3. While the aforesaid respondents Nos. 3, 4 and 5 were owning and possessing the land they entered into an agreement with the petitioners to sell the aforesaid land at a consideration price of Rs. 16,250/-. But as the respondents Nos. 3, 4 and 5 are the members of Scheduled Tribes community they as per the

provisions of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 (for short the Act of 1960) cannot sell any land without previous permission of the Collector. The respondents Nos. 3, 4 and 5 were in urgent need of money, so they entered into an agreement with the petitioners for sale of the land and accordingly on taking a sum of Rs. 12,001/- out of the total consideration money of Rs. 16,250/- they executed a deed of agreement on 9-3-1977 to the effect that they would sell the land to the petitioners after taking the sale permission and they also delivered the possession of the land in favour of the petitioners. The deed of agreement was, however, actually executed by respondent No. 3 only as he was entrusted with the responsibilities for carrying out the sale for and on behalf of all the legal heirs of late Manik Chandra Deb Barma.

4. So, from the date of execution of this deed of agreement the petitioners have been possessing the land and during the last Survey Settlement operation the record of rights in respect of this land was created in the names of the petitioners under khatian No. 53 of Mouja Kanchanpur, Tahasil Kulai. It was, however, mentioned in the khatian that the petitioners are in possession of the land against the provision of Section 187 of the Act of 1960.

5. As assured by the respondents Nos. 3, 4 and 5, the petitioners were expecting that the respondents Nos. 3, 4 and 5 will be getting the sale permission soon and would execute the necessary deed of sale in their favour. But suddenly the petitioners received a notice from respondent No. 2 purported to be a summons under Rule 114(1) of Tripura Land Revenue and Land Reforms Rules, 1951 (for short the Rules of 1961) wherefrom they could understand that respondent No. 3 filed an application for restoration of the land in question under the provisions of Section 187 (3) of the Act of 1960. So, the petitioner No. 1 approached the respondent No. 2 and submitted that respondents Nos. 3, 4 and 5 made an agreement with the petitioners for sale of the aforesaid land and it was also brought to the notice that respondent No. 3 was not the only owner of the land. But despite that respondent No. 2 passed the order on 31-8-1982 for restoration of the land in favour of respondent No. 3.

6. It has been alleged that respondent No. 3 in connivance with respondent No. 2 has taken up this evil design to get back the land without refunding the money. It was also alleged that the respondents Nos. 3 to 7 were under contractual obligation to obtain the sale permission from the competent authority. But they having failed to perform their part of reciprocal contract cannot take such step for getting the land back.

7. It has also been stated that since no transfer within the meaning of Transfer of Property Act has taken place respondent No. 2 has passed the impugned order in violation of natural justice as no opportunity was given to the petitioners Nos. 2 to 7.

8. The respondent No. 1 resisted the writ petition by filing a counter-affidavit wherein it was contended that respondent No. 1 was not aware of any bi-lateral

agreement and that no sale can be effected without previous permission as required u/s 187 of the Act of 1980. It was contended that since the transfer in question took place after 1-1-1969 such transfer violated the provision of Section 187 of the Act 1960. The further contention of the answering respondent is that the impugned order was passed after service of notice under Rule 114(1) of the Rules of 1961. It is also contended that the petitioners have admitted that respondent No. 3 was entrusted with the responsibilities for carrying out the sale for and on behalf of all the legal heirs of late Manik Chandra Deb Barma and he alone executed the alleged deed of agreement. So, respondent No. 2 passed the order of restoration in favour of respondent No. 3. It was contended that since the transfer was made without obtaining the necessary permission such transfer is invalid in law and hence respondent No. 2 rightly passed the order of restoration. The writ petition should, therefore, be dismissed in limine with costs. It is the correctness of this order I am called upon to examine.

9. To appreciate the contention canvassed at the bar by learned counsel for the parties, it may be useful to quote the material part of Section 187 of the Act of 1960 which reads:

"187. (1) No transfer of land by a person who is a member of the Scheduled Tribes shall be valid unless -

(a) the transfer is to another member of the, Scheduled Tribes; or

(b) where the transfer is to a person who is not a member of any such tribe, it is made with the previous permission of the Collector in writing in the manner prescribed; or

(c) the transfer is by way of mortgage to a Co-operative Society or to a bank or to the Central or the State Government:

Provided that the land transferred to a Cooperative Society or to a bank by way of mortgage in pursuance of Clause (c) shall not be transferred by such society or bank to a person who is not a member of the Scheduled Tribunal without the permission of the Collector in writing.

Explanation.-- In this sub-section, the expression "a bank" shall have the same meaning as in Section 109.

(2)(a) Notwithstanding anything contained in the Transfer of Property Act, 1882, but subject to the provisions of Section 187A, no transfer of land by a person belonging to a Scheduled Tribe shall be valid unless made by a registered instrument,

(b) No instrument of transfer made in contravention of Sub-section (1) shall be registered or in any way recognised as valid in any court exercising civil, criminal or revenue jurisdiction.

(3)(a) If a transfer of land belonging to a person who is a member of the Scheduled Tribes is made on or after the first January, 1969 in contravention of

the provisions of Sub-section (1), any revenue officer, appointed specially for this purpose by the State Government by notification in the official Gazette, may, of his own motion or on an application made in that behalf, and after giving the transferee an opportunity of being heard, by an order in writing eject the transferee or any person claiming under him from such land or part thereof...."

10. On a plain reading of this provisions it becomes obvious that a transfer of land by necessary instrument by a Scheduled Tribe to a person who is not a member of any such Tribe may be affected if necessary permission in writing is obtained from the Collector. It is clear from the Section that it lays down a condition in which such transfer becomes valid. Evidently, Section does not cover any contract to transfer the land and such a contract is neither prescribed by any provisions of the Act of 1960. Since there is no statutory bar of making any contract to transfer land, Mr. S. Deb, the learned counsel appearing on behalf of the petitioner has, at first, urged that the expression "transfer" has not been defined in the Act of 1960 for the purpose of Section 187 of the Act. But Mr. U. E. Saha, the learned Govt. Advocate appearing on behalf of the State of Tripura has repelled the contention of Mr. Deb by drawing my attention to the provision of Section 197B(d) of the Act which was incorporated by the Third Amendment Act of 1975. Section 107B(d) defines the term "transfer" and according to the definition the word "transfer" includes lease, mortgage with possession, sale, exchange or otherwise part with the rights of any land, but shall not include gift to any member to the family and inheritance.

11. But Mr. Deb has contended that this definition is only meant for the provisions contained under Chapter 9A and it can in no manner be meant for the purpose of Section 187 of the Act which comes under Chapter 15 of the Act. But on perusal of Section 107E(1) I find that this provision is extended to the village or tehsil specified in the Second Schedule of the Act. Admittedly, the land in question is situate within the Mouja Kulai under Kamalpur Sub-Division. The Second Schedule of the Act shows that Mouja Kulai of Kamalpur Sub-Division is covered. So, in view of the provisions discussed above, I am of the opinion that the word "transfer" as defined u/s 107B(d) is also applicable to Section 187 of the Act of 1960.

12. In this context, Mr. Deb has also argued that Section 53A of the Transfer of Property Act will apply in the present case. But on examination of the records I do not find the agreement which, was executed on 9-3-1977. Section 53A applies to the cases where there is a written agreement. But in the present case, no written agreement has been annexed with the writ petition. Moreover, respondent No. 1 in the counter-affidavit stated that they are not aware of the bi-lateral agreement. So, the contention of Mr. Deb that respondent No. 2 had no jurisdiction to pass the impugned order cannot be accepted in view of the definition given under the terms "transfer" in Section 107B(d) of the Act of 1960.

13. The next contention of Mr. Deb is that the date 1-1-1969 occurring in Section 187 was arbitrarily fixed by way of Second Amendment which got the

Presidential consent on 30-4-1974. The contention of Mr. Deb is that there was no rationale behind fixing this date. According to him this choice of date was wholly arbitrary and for fixing the date as on 1-1-1969 the Government did not adopt any principle. Hence, according to him it is violative of the Article 14 of the Constitution. But here it may be pertinent to mention that writ petitioners did not challenge the vires of the Act of 1960 or did make any specific pleadings that this choice of date was arbitrarily made. However, in support of his contention Mr. Deb has repeatedly referred to the decision rendered by the Apex Court in the case of D. S. Nakara v. Union of India reported in D.S. Nakara and Others Vs. Union of India (UOI), But Mr. U. B. Saha, learned Government Advocate in his reply on behalf of the answering respondents has submitted that the decision of Nakara's case is not applicable to the present case. It is urged by Mr. Saha that date is an integral part of the Act of 1960 and it cannot be severed from the main object of the Scheme. If the date is wholly removed the amended provision will be applicable to all transfer i.e. the transfer which took place before 1-1-1969. In D. S. Nakara's case, the question that posed for consideration was whether the date of retirement was a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date. Since liberalised pension formula was introduced with effect from 1-4-1979 Their Lordships held that such choice of date was arbitrary and discriminatory by reason of the fact that pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.

14. In this context, Mr. Saha, the learned Govt. Advocate has quite forcefully argued that the Act of 1960 is not only a statute but a part of the Constitution of India and in view of the provisions laid down under Article 31B there is no scope to say that it is violative of the provision of Article 14 of the Constitution of India as this Act is included in the 9th Schedule of the Constitution of India. In support of his contention Mr. Saha has placed reliance on the decision rendered by the Supreme Court in the case of Gopal Singh Vs. State of U.P. and Ors, In this case Section 5(6) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 was assailed. While dealing with this point their Lordships held under para 7 of the judgment as follows :

"that Section 5, Sub-clause (6) of the amended U.P. Imposition of Ceiling on Land Holdings Act, even if it contravenes the second proviso to Clause (1) of Article 31A -- a matter on which we do not wish to express any opinion since it is unnecessary to do so --is validated under Article 31B and "that Section 5 Sub-clause (6) of the U.P. Imposition of Ceiling on Land Holdings Act is valid and its constitutionality cannot be assailed by reason of the immunity enacted in Article 31B".

15. Mr. Saha has argued that this amendment was made with a view to making some agrarian reform as the existing agrarian reforms legislation was running into rough weather and the policy of agrarian reform was being frustrated. It is

submitted by Mr. Saha that without a dynamic programme of agrarian reform it is not possible to change the face of rural India and to upgrade the standard of living of Tribal people of this tiny State. It is submitted that the object and principles of introducing Article 31 and 31B of the Constitution was to protect the agrarian reforms legislation from invalidation. It would, therefore, be apparent from the provisions laid down under Article 31B of the Constitution of India that it saves from invalidating an enactment specified in the Ninth Schedule even if it happens to be inconsistent with Part-III of the Constitution.

16. In the instant case, it is the case of the petitioner that agreement in question was made on 9-3-1977. The amended Act in question got the Presidential consent on 30-4-1974 and it was given effect from 1-1-1969. So, from this fact it is clear that the petitioners were aware of the provisions. So, under no circumstances, it can be said that the petitioners were adversely affected by this amendment which came into force long before the execution of the agreement dated 9-3-1977.

17. Now the crucial question which is to be determined is whether the impugned order was passed behind the back of the petitioners. It is argued by Mr. Deb that all the petitioners are in possession of the land in question and record of rights was also prepared in their names showing that they are in possession of the land in question against the provision of Section 187 of the Act of 1960. But in the instant case, the respondent No. 2, namely S.D.O., Kamalpur served notice under Rule 114 of the Rules of 1961 only to the petitioner No. 1 Shri Mohanlal Deb Roy. In the writ petition also it has been contended that all the petitioners are in possession of the land in question. In the counter which has been filed on behalf of the State it has not been denied that the petitioners are in possession of the land in question. But Annexure-1 notice shows that it was issued to be served only on petitioner No, 1 Mohanlal Deb Roy. There is nothing on record to show that notice or summons under Rule 114 (1) of the Rules, 1961 was served upon the petitioners Nos. 2 to 8. Sub-section (3)(a) of Section 187 of the Act of 1987 shows that Revenue Officer who is specially appointed for this purpose shall give the transferee an opportunity of being heard before passing the order of ejectment. But in the instant case the respondent did not show any document, whatsoever that the other petitioners, namely petitioners Nos. 2 to 8 were given any opportunity of hearing.

18. Mr. Shaha has, however, argued that the petitioners could have filed a revision against the impugned order. But Mr. Deb has contended that how the petitioners can file a revision unless and until the enquiry report or the order is made available to the rest of the petitioners, Referring to the 5th Edition of Administrative Law by H.W.R. Wade Mr. Deb has argued that principles of personal and fair hearing has been accepted in our country and our law enjoins giving opportunity of hearing. According to him it is mandatory on the part of the S.D.O. to give an opportunity of hearing to petitioners Nos. 2 to 8 before passing the impugned order which is also devoid of reasons. At page 379 of Wade's

Administrative Law it is stated under the heading "The right to know the opposing case a proper hearing must always include a "fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their views"". Lord Denning has added:--

"If the right to be heard is to be a real right which is worth anything, it must carry it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them." (Discipline of Law p 85)

19. It is quite obvious from Sub-section 3(a) of Section 187 of the Act of 1960 that if any transfer is made to a person who is not a member of the Scheduled Tribe on or after the first day of January, 1969 in contravention of the provisions of Sub-section (1) of Section 187 by a member of Scheduled Tribe, any Revenue Officer, who is appointed for this purpose by notification in the official Gazette may of his own motion or on an application in that behalf, and after giving the transferee an opportunity of being heard, should pass the order of ejectment. So, in the instant case, admittedly petitioners Nos. 2 to 8 who are also in possession of the land in question have neither been served with a notice as per Rule 114(1) of the Rules, 1961 nor they have been heard.

20. In Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc., it has been observed (Para 6):--

"In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court."

21. Mr. Deb has argued that the petitioners case may not be considered, but they can at least expect a fair hearing as Section 187 of the Act of 1960 does not totally bar such a transfer. The precise submission of Mr. Deb is, therefore, that natural justice has been denied to the petitioners. I find much substance in the submission of Mr. Deb as admittedly the petitioners Nos. 2 to 8 are also in possession of the land in question and they were not heard by the S.D.O. before passing the impugned order.

22. The traditional English Law recognised two principles of natural justice. (1) *Nemo Debet Esse Judex in Propria Causa* :--no man shall be a judge in his own cause or the deciding authority must be impartial and without bias; (2) *Audi Alteram Partem*:--hear the other side or both sides must be heard, or no man should be condemned unheard or that there must be fairness on the part of the deciding authority. However, due to repeated development or growth Administrative Law, a third principle of natural justice has also been evolved viz., speaking order or reasoned decisions: All order should be supported by reasons.

23. In the instant case, the order impugned reads:--

"order dated 31-8-1989.

Both sides present. Applicant states that he is not in position to refund the consideration money as decided in the last hearing now he wants back the proceeding land as per provision of Section 187 of the T.L.R. & L.R. Act, 1960. The O.P. produced an unregistered deed dated 22-4-1977. It is absolutely clear that the transfer has taken place after 1-1-69 in violation of Section 187 of the T.L.R. & L.R. Act, 1960. In fact the question of refunding the consideration money to the O.P. does not arise as per provision of Section 187.

I, therefore, order in accordance with the provision of Section 187 of the TLB & LR Act 1960 that the land described below be restored to the applicant by the O.P. w.e.f. 1st Baisak 1390 B.S.

Description of the land.

Khatian No. 53, plot No. 133/134/139, Area 3.20 acres, classification-Nal, Mouja-Kanchanpur.

No. 8042-44 dt. 6-9-1982 Sd/ B. Sinha, Sub-Divisional Officer Kamalpur, North Tripura."

24. This order does not indicate what was the submission of petitioner No. 1. The S.D.O. did not record anything about that. I have already mentioned above that Section 187 does not totally bar for transfer of land by Scheduled Tribe to a person other than Scheduled Tribe. But section lays down a condition in which such transfer can become valid.

25. In the instant case, the case of the petitioners is that the respondents Nos. 3 to 7 while executing the deed of agreement dated 9-3-1977 gave them to understand that they would be taking the necessary permission from the Collector and thereafter execute the necessary deed of sale. But there is nothing on record to show whether the respondents took any endeavour to take such a permission from the Collector and if any such endeavour was taken why the Collector refused. The order impugned does not indicate anything about that. There are so many persons of tribal community who are not only owning vast lands but are also unable to look after these lands for proper utilisation and they will surely not be landless if they are permitted to sell 2/3 acres of lands. As for Maharaja Kirit Bikram Kishore Deb Barma or persons alike him who are also members of the Scheduled Tribe will not be landless in case they are permitted to sell 2/3 acres of land. But from the impugned order we are unable to know what is the status of Respondents 3, 4 and 5, what is their monthly income and whether they will be landless in case they are permitted to sell the land in question.

26. So, if the facts of the present case are examined, in the back-drop of the propositions of law the contention raised by Mr. Deb challenging the procedure

followed by respondent No. 2, I find merit in this case as the impugned order is not only devoid of reasons but it was passed behind the back of the petitioners Nos. 2 to 8 and as such in violation of the provisions laid down under Sub-section (3)(a) of Section 187 of the Act of 1960.

27. For the reasons aforesaid, the impugned order dated 31-8-1982 is quashed. The matter is remitted to the S.D.O., Kamalpur Sub-Division, Kamalpur for disposal of the matter afresh after giving proper opportunity of hearing to all the petitioners and in the light of the observations made above.

28. The petition is accordingly disposed of. But in the circumstances, there would be no order as to costs.