
(2015) 06 TP CK 0012
In the Tripura High Court
Case No : WP(C) No. 394 of 2010

Rajkumari Goala and Others

APPELLANT

Vs

Laxmi Goala and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 06 TP CK 0012

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : D.C. Roy, for the Appellant; D. Bhattacharji, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.

1. By filing this writ petition under Article 226 of the Constitution of India the petitioners challenged order dated 11.02.2010 passed by the Principal Secretary to the Government of Tripura in the Revenue Department in case No. 38/REV/PS/98 which was renumbered as Misc. Case No. 09 of 2003 under Sections 95 and 96 of the Tripura Land Revenue and Land Reforms Act, 1960(for short, TLR and LR Act, 1960).

2. Heard learned counsel, Mr. D.C. Roy for the petitioners, learned counsel, Mr. D. Bhattacharji for respondent No. 1 as well as learned Addl. G.A., Mr. S. Chakraborty for the State respondent Nos. 1 and 2.

3. At the outset, learned counsel, Mr. Roy, for the petitioners, while arguing the matter has prayed for treating the petition filed by the petitioners as one under Article 227 of the Constitution also in addition to Article 226 of the Constitution so far filed for granting relief to the petitioners as prayed in the writ petition. Learned counsel for the respondents have no objection and therefore the writ petition filed under Article 226 of the Constitution is also treated as one under

Article 227 of the Constitution.

4. The petitioners, inter alia, contended that one Pulin Behari Gun, son of late Priya Nath Gun was the Talukdar(intermediary) of Kayemi Taluk No. 114/7 of Mouja-Samrurpur. In the year 1956, i.e. before the TLR and LR Act, 1960 came into force, an agreement known as Kabuliyat was settled between Pulin Behari Gun and late Gouri Gowala alias Gouri Ram Gowala, the predecessor of respondent No. 1, Laxmi Gowala and thereby under the said Kabuliyat Pulin Behari Gun settled 7(seven) kanies 10(ten) gandas of land in favour of Gouri Gowala alias Gouri Ram Gowala out of Kayemi Taluk No. 114/7. The Kabuliyat was granted after taking Nazrana/rent from Gouri Gowala alias Gouri Ram Gowala by Talukdar, Pulin Behari Gun. After the death of Pulin Behari Gun, his wife Lila Gun also used to collect Nazrana/rent from Gouri Gowala. Khatian No. 1580 of Mouja-Samrurpur was opened wherein Gouri Gowala alias Gouri Ram Gowala was shown as permissive possessor under the intermediary, Pulin Behari Gun. After TLR and LR Act, 1960 came into force, the intermediary right was abolished and was vested in the Government as per Section 135(d) of the TLR and LR Act and Gouri Gowala alias Gouri Ram Gowala should have been treated as the Raiyat of the land settled under the Kabuliyat but in the finally published khatian bearing No. 1588 the land was jointly recorded in the name of Gouri Gowala alias Gouri Ram Gowala and Mahadev Gowala, son of late Bhanuram Gowala in equal share. The position remained unchanged during revisional survey operation and Khatian No. 162 was recorded at the time of revisional survey operation. In the meantime, Mahadev Gowala died and in his place, name of his son Ram Narayan Gowala was recorded in the khatian No. 162. Thereafter, Gouri Gowala alias Gouri Ram Gowala, the predecessor of respondent No. 1 filed revision petition before the District Collector, North Tripura under Section 95 of the TLR and LR Act seeking correction of the record of right by way of deleting the name of Ram Narayan Gowala from khatian No. 162 of mouja-Samrurpur and that petition was registered as Revision Case No. 09 of 1997. After hearing both side the Collector dismissed the petition and held that since the record of right was prepared finally at the time of revisional survey it should not be changed.

Aggrieved, Gouri Gowala alias Gouri Ram Gowala filed a review petition before the Collector under Section 96 of the TLR and LR Act, 1960 for reviewing the order passed in Revision Case No. 9 of 1997 and that review petition was registered as Review Case No. 74 of 1997. The Collector obtained statutory permission from the Government, issued notice to the parties and after hearing both side by order dated 17.04.1998 allowed the review petition and thereby directed deletion of name of Ram Narayan Gowala, i.e. the predecessor of the present petitioners from khatian No. 162.

Aggrieved, the present petitioners being the legal representatives of deceased Ram Narayan Gowala filed the revisional application before the Principal Secretary to the Government of Tripura in the Revenue Department challenging

order dated 17.04.1998 and that revisional application has been registered as 38/REV/PS/98 which was renumbered as Misc. Case No. 9 of 2003 under Sections 95 and 96 of the TLR and LR Act, 1960 and the Principal Secretary to the Revenue Department after hearing both side by impugned order dated 11.02.2010 dismissed the revisional application filed by the petitioners and hence the present writ petition is filed challenging order dated 11.02.2010.

5. Learned counsel, Mr. Roy appearing for the petitioners submitted that the review order dated 17.04.1998 passed by the Collector in Review Case No. 74 of 1997 was wrong and perverse since there was no new or important matter or evidence and also there was no mistake or error apparent on the face of the record and also no other sufficient ground to exercise power of review whereas the Collector exercised his power without having jurisdiction and hence the review order was altogether wrong but those aspects have not been considered by the Principal Secretary to the Revenue Department and the Principal Secretary has passed a wrong order dismissing the revision petition and hence the writ petition may be allowed and the order passed by the Principal Secretary of the Revenue Department may be set aside.

6. On the other hand learned counsel, Mr. Bhattacharji appearing for respondent No. 1 has submitted that judicial review of an order passed by quasi judicial authority or administrative authority is very limited. The petitioners have to show that the order passed by the Principal Secretary of the Revenue Department suffers from want of jurisdiction, errors of law or that the finding is perverse and otherwise the order passed by the revenue authority cannot be interfered. He has also submitted that the review order dated 17.04.1998 has not been challenged and so the writ petition itself is defective and should be dismissed in limini. He has also submitted that the name of Mahadev Gowala is wrongly included in the khatian having no right or possession at all and therefore the Collector rightly passed order for correction of the khatian by way of deleting the name of Ram Narayan Gowala, son of Mahadev Gowala.

7. Learned Addl. G.A., Mr. Chakraborty has submitted that the Principal Secretary, Revenue Department exercised his power according to law and there is nothing illegal in the order and hence no interference is called for.

8. It is the case of the petitioners that the land originally belonged to one Pulin Behari Gun, a Talukdar(intermediary of Kayemi Taluk No. 114/7 of mouja Samrurpur) and late Gouri Gowala alias Gouri Ram Gowala, the predecessor of respondent No. 1 got settlement of the land by way of execution of a Kabuliyat on payment of Nazrana to the Talukdar. The said land was recorded in khatian No. 1580 and Gouri Gowala alias Gouri Ram Gowala was shown as permissive possessor under the Talukdar before TLR and LR Act came into force. After the TLR and LR Act came into force during survey and settlement operation, the name of Mahadev Gowala was also recorded in khatian No. 1588 along with Gouri Ram Gowala with fifty percent share. In the revisional survey, the record of right was maintained and khatian No. 162 of mouja-Samrurpur was prepared.

Gouri Gowala alias Gouri Ram Gowala by filing revisional case No-9 of 1997 challenged the entry of Ram Narayan Gowala, son of Mahadev Gowala, the predecessor of the present petitioners in the khatian. It is, therefore an admitted position that the name of Mahadev Gowala, and after him the name of his son Ram Narayan Gowala was entered in the khatian without having any supported document in respect of right of Mahadev Gowala or his successor Ram Narayan Gowala. According to the petitioners, the land was part of Kayemi Taluk No. 114/7 of mouja Samrurpur belonged to one Pulin Behari Gun and Pulin Behari Gun settled the land measuring 7(seven) kanies 10(ten) gandas by executing the Kabuliyat in the name of Gouri Gowala alias Gouri Ram Gowala, the predecessor of respondent No. 1. After the TLR and LR Act came into force the intermediary right vested in the Government and the under rayats who were possessing the land under the intermediary were treated as rayats as per Section 135 of the TLR and LR Act and so Gouri Gowala alias Gouri Ram Gowala was supposed to be recorded as rayat for the land which was settled in his name under a Kabuliyat. The Collector, though at the time of deciding the revision case, did not interfere in the khatian but while deciding the review petition, considering the material which was not earlier considered, reviewed the earlier order and directed correction of khatian by way of deleting the name of Ram Narayan Gowala. The Principal Secretary to the Revenue Department by impugned order dated 11.02.2010, as it appears, has carefully considered the facts and the relevant provisions of law. The issues raised before him, he has carefully considered and in the impugned order the Principal Secretary of the Revenue Department observed:-

".....

Having gone through the statutory provision, I have decide the following issues in respect of the Review case 74/97.

- (a) Whether the review was made suo motu or on the basis of the petition made by the party concerned and whether the defendant was given reasonable opportunity of being heard;
- (b) Whether the petition for such review was made on time i.e. within 90 days;
- (c) Whether the District Collector, North took statutory permission from the Government before reviewing the dated 28-04-97 passed in revision case No. 9/97,
- (d) What was/were the actual ground(s) of reviewing the order passed u/s. 95;

Let us examine those issues.

First, this court has to examine whether the review was made suo motu or on the basis of the petition submitted by the party concerned. To examine this issue, this Court has collected the original records of Revision Case bearing No. 9/97 passed by the District Collector, North Tripura u/s. 95 of the TLR and LR Act and the Review case No. 74/97 passed u/s. 96 of the said Act. Having gone

through these case records it appears that impugned suit was instituted on the basis of the petition of Shri Gouri Gowala alias Gouri Ram Gowala and during hearing of the proceeding the instant petitioner Shri Ram Narayan Gowala was summoned by the reviewing authority to appear and thus gave him reasonable opportunity of being heard.

Now I have to examine as to whether the review petition was made on time. It appears from the case records that the original order u/s. 95 of the TLR and LR was passed by the District Collector, North Tripura on 28-04-97 and the review petition was preferred on 12-06-97 i.e. it was on time.

Now I have to examine whether the District Collector obtained statutory permission from the Government before reviewing the order dated 28-04-97. The record reveals that before reviewing the order dated 28-04-97, the District Collector sought for necessary permission vide his letter No. 2504/DNR/87 dated 18/06/97 and said permission was accorded by the Government vide letter No. F.39 (34)-REV/77 dated 19-07-97.

Now I have to examine the real issue, the basis on which a revision can be made. These grounds are contained in 96(3) of the TLR and LR Act, 1960. These are:- a)Discovery of new and important matter of evidence)Some mistake or error apparent on the face of the record; or c)Any other sufficient ground. Nowhere in the review order it is specifically mentioned as to why the order dated 28-04-97 was reviewed. On perusal of the records of the proceeding u/s. 95 it appears that the District Collector had ignored a vital document, i.e. field enquiry report that was submitted by the then SDO, Kailashahar vide No. 3775/F.10(2)/SDO/KLS/REV/96 dated 10-01-97, and which showed that Shri Ram Narayan Gowala was not in possession of the suit land. That could be a valid ground for reviewing the order dated 28-04-97.

JUDGMENT AND ORDER:-

In view of the above, I am of the considered opinion that the District Collector, North Tripura has passed the order in review case No. 74 of 97 in a proper way after observing all the codal formalities. So this order is a valid order. The instant petitioner has produced one khatian which was created at the time of First Settlement Operation and which also remained so during the revision operation. On the other hand, the respondent is able to produce one copy of kabuliyat which was executed by Pulin Behari Gun, ex-intermediary. He is also able to produce the rent receipts and one khatian bearing No. 1580 which shows his possession over the land at the time of first settlement operation. Above all the field enquiry report which got conducted by the Court of the District Collector at the time of the section 95 proceedings also indicates the possession of Shri Gouri Gowala @ Gouri Ram Gowala."

9. The Principal Secretary exercised his jurisdiction of revision as vested under Section 95 of TLR and LR Act on the application made by the petitioners themselves. The jurisdiction of the Principal Secretary in deciding the matter has

not been challenged. He has decided the matter according to law and there is no error of law. The finding given by the Principal Secretary, as it appears, is based on the issues raised before him by the learned counsel of the petitioners which is clearly reflected in the order. Therefore, there is no perversity in the finding. The order was passed after hearing the learned counsel of both the side and so there was no violation of the principal of natural justice.

10. I, therefore, find nothing wrong in the order passed by the Principal Secretary to the Revenue Department, and hence the writ petition stands dismissed.

11. Parties to bear their own costs.