
(2010) 06 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 417 of 1999

Rangamayee Chowdhury and Others	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Tripura Land Revenue and Land Reforms Act, 1960 — Section 187, 187(1), 187(B)(C),
187(B)2, 187(B)4

Citation : (2011) 2 GLT 407

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : P.K. Dhar, S. De, B. Das and D. Gowswami, for the Appellant; D.C. Nath, K.K. Paul and S. Deb, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. P. K. Dhar, learned Counsel appearing for the Petitioners. Also heard Mr. D. C. Nath, learned Govt. Advocate representing the official Respondents. Mr. K. K. Paul, learned Counsel appears for Respondent No. 4. Submissions are also heard from Mr. S. Deb, learned senior counsel with regard to the provisions of the Tripura Land Revenue & Land Reforms Act, 1960 (hereinafter referred as the TLR & LR Act).

2. The Petitioners who are non-Tribal and are in occupation of land purchased from the predecessor-in-interest of Respondent No. 4, Late Rangamani Reang challenge the order dated 14.6.1999 passed by the Collector of the North Tripura District (Annexure-6) in a review proceeding initiated u/s 96 of the TLR & LR Act. By rejecting the review, the Collector has upheld the earlier order passed on 25.9.1997 by the SDO, North Tripura in the Restoration Case No. 87/96 whereby the land under Petitioner's possession was restored to the First Party (Tribal). The restoration of 6.11 Acres of land was ordered inter alia, on the ground that no deed of transfer of the land from the tribal land owner could be produced by

the occupier and their occupation was found to be forcible. Restoration of 0.9 Acres of land was declined as the said lands were found to be homestead land where the writ Petitioner (s) had their residence.

BACKGROUND FACTS

3.1. On 5.9.1957, a proceeding u/s 145 of the Code of Criminal Procedure was initiated by Late Rangamani Reang from whom the Petitioner (s) claimed to have purchased the land in the year 1955. Three others joined Rangamani as first party in the 145 proceeding claiming that each of the 3 had purchased 4 Kani land each from Rangamani. The first party's case was that out of total 1 Drone land under Jote No. 74, Rangamani Reang sold 4 Kani land to 3 members of the first party by Regd. Kabala dated 8.3.1956 and he retained for himself, the remaining 4 Kani land. It was also alleged that the members of the second party (writ Petitioners and their predecessors) were trying to disturb the lawful possession of the first party (tribal).

3.2. By the judgment dated 6.6.1961, the learned Court disposed of the Misc. Case No. 150/1957 by recording that the second party (writ Petitioners and their predecessors) were in possession of the land.

3.3. Thereafter Title Suit No. 75/1962 was filed by the legal heirs of Late Rangamani Reang and other tribal land owners, but said suit was not pursued to its logical end and was withdrawn on 20.9.1963 by the Plaintiffs with liberty to institute a fresh suit and the Court granted this liberty to the Plaintiffs by ordering cost against them. The order 10.10.1963 of the Court shows that the cost amount was deposited.

3.4 Subsequent thereto, the Respondent No. 4 Birendra Reang instituted a restoration proceeding under the provisions of TLR & LR Act against the writ Petitioners which was registered as Restoration Case No. 87/1996 in the Court of SDO, North Tripura. In the said proceeding the evidence on record was considered and it was found that the first party (Respondent No. 4) is the recorded owner of the land and the possession of the Opp. Party (writ Petitioners) was "forcible". It was further concluded that although the writ Petitioners are forcibly occupying the land since the year 1955, no deed of transfer from the Tribal Jotedar Late Rangamani Reang could be presented by the writ Petitioners. Accordingly after recording the satisfaction that there was no valid transfer of land from the tribal land owner to the writ Petitioners and having thereafter found the possession of writ Petitioners to be illegal and forcible, the Revenue Officer by the order dated 25.9.1997 restored the possession of 6.11 Acre of land under Dakshin Machmara to the Applicant/Respondent No. 4 Birendra Reang. However as earlier noted a part of the said land measuring 0.91 Acre was classified as homestead land and exemption from the restoration of the said land was granted, as the writ Petitioners did not have any other alternate land.

4. The writ Petitioners being aggrieved challenged the restoration order in a

revision proceeding u/s 95 of the TLR & LR Act which was registered as Revision Case No. 5/REV/PS/1998. By an order dated 27.3.1998 (Annexure-5), the Principal Secretary to the Revenue Department after noting that the writ Petitioner (s) possession was established as far back as in the year 1961, referred the matter back to the Collector for review of the restoration order.

5. On remand for review, the restoration matter was considered by the Collector. In the review proceeding the object of the TLR & LR Act was noted by the Collector to the effect that it is to prevent wrongful possession of land of tribal by a non-tribal and since it was found that the possession of the non-tribal (writ Petitioners) was not through a registered Instrument and/or with due permission, the Collector found no justification to review the restoration order passed by the SDM on 25.9.1997.

PETITIONERS' SUBMISSIONS

6.1. On behalf of the Petitioners it is contended by Mr. P. K. Dhar, learned Counsel that in the instant case the Petitioners obtained possession of the land in the year 1955 and not after 1.1.1969 and therefore the provisions of Section 187 of the TLR & LR Act cannot be applied to restore possession of land to the tribal land owner.

6.2. The learned Counsel further submits that as far back as in the year 1961, possession in favour of the writ Petitioners was found by a competent Court in a 145 Code of Criminal Procedure proceeding and under such circumstances, there could be no application of the provisions of the TLR & LR Act to restore possession to the tribal land owner, as the Petitioners have been in uninterrupted possession of the land atleast since 1961.

6.3. Mr. Dhar also points out that the T. S. No. 75/1962 filed by the tribals seeking to recover the suit land was withdrawn on 20.9.1963 and as such, there can be no justification for applying the provisions of the TLR & LR Act to restore possession of the land to the Respondent No. 4.

TRIBAL RESPONDENT'S

CONTENTIONS

7.1. Par contra, Mr. K. K. Paul, learned Counsel appearing for Respondent No. 4 submits that the provisions of Section 187 of the TLR & LR Act are meant to be applied to restore possession, when a tribal is dispossessed from his land through unauthorized means and since the writ Petitioner (s) could not demonstrate that they lawfully secured the land of a tribal, there can be no justification to interfere with the discharge of statutory responsibilities by the Revenue Authorities.

7.2. It is also submitted on behalf of the Respondent No. 4 that the District Magistrate while recording his impugned order dated 14.6.1999 was exercising review power u/s 96 of the TLR and LR Act and since the circumstances under

which review power is to be exercised are enumerated in Section 96 of the TLR & LR Act and since none of the circumstances are present in the instant case for exercising review power, there can be no basis to interfere with the affirmation of the earlier order passed on 25.9.1997 by the SDM, affirmed through rejection of the Review Proceeding on 14.6.1999.

7.3. The learned Counsel further submits that if the writ Petitioners were aggrieved by the order of the District Magistrate, they could have availed of the alternate remedy of appeal provided u/s 93 of the TLR & LR Act and intervention by the Writ Court with the restoration order passed is not at all warranted in the facts and circumstances of the instant case.

7.4. The order dated 20.9.1963 whereby the T.S. No. 75/1962 was withdrawn is pointed out by Mr. Paul to show that Plaintiffs withdrew their suit with liberty to initiate a fresh proceeding. Accordingly he contends that the later proceeding was maintainable in law.

GOVERNMENT'S STAND

8.1. Appearing for the State Authorities, Mr. D. C. Nath, learned Govt. Advocate submits that although it is claimed by the writ Petitioner (s) that they purchased the subject land from the father of Respondent No. 4 Birendra Reang, but they failed to produce any legal document to show that they had actually purchased the land as claimed from Late Rangamani Reang.

8.2. The learned Govt. Advocate refers to the Revenue Records after the Settlement Operation in the year 1965 annexed to the counter affidavit as Annexure R/1 as well as the Revenue Records prepared in the year 2000 (Annexure R/2) to show that the land is recorded under Khatian No. 64 of Dakshin Machmara Mouza in the name of Respondent No. 4 Birendra Ch. Reang and the name of the writ Petitioners are recorded as forcible occupier in the revenue records. In the Khatian No. 92/1 prepared in the year 2000, the name of the writ Petitioners are recorded as transferee in contravention of Section 187 of the TLR & LR Act. On the basis of these revenue records, the learned Govt. Advocate submits that since it is a case of forcible occupation of tribal land through unauthorized transfer, restoration of possession to the tribal land owner has been rightly ordered by applying the provisions of Section 187 of the TLR & LR Act.

OBJECT OF THE STATUTORY

ENACTMENT

9. At this point, it would be appropriate to take note of the Statement of Objects and Reasons recorded at the time of plotting the 2nd Amendment Bill in the year 1974 whereby restoration of land to dispossessed Tribal is provided under the 1960 Act. They are extracted hereinbelow for ready reference:

STATEMENT OF OBJECTS AND

REASONS

The Tripura Land Revenue and Land Reforms (Second Amendment) Bill, 1974 seeks to introduce land reforms which are essential to remove the impediments in the matter of agricultural production and eliminate elements of exploitation and social injustice in the agrarian system by giving security of tenure to under-raiyats including bargadars till they are brought into direct relationship with the Government, reducing the ceiling on holdings to 2.00 standard hectares at the minimum and 7.20 standard hectares at the maximum with retrospective effect from the 24th January, 1971, restricting the transfer or partition of any land in certain circumstances to facilitate the operation of the ceiling law and making other ancillary changes in the existing Act. The existing measurement units used in the Act have been proposed to be converted into metric measurement units. There are also provisions for regularising the record-of-rights already prepared in respect of a part of a village.

Some extensive amendments have also been proposed in section 187 of the principal Act for giving relief to the members of the Scheduled Tribes in the States. The important changes proposed in this section are--

- (i) making the transfer of land by a person belonging to a Scheduled Tribe by a compulsory registered instrument,
- (ii) making provision for restoration of the land transferred illegally on or after the 1st January, 1969, in contravention of the aforesaid section, by a revenue officer specially appointed for this purpose,
- (iii) barring the jurisdiction of Court for the sale of land of a person belonging to a Schedule Tribe in execution of a court decree, and
- (iv) making provisions for executing a certificate field for recovery of an arrear of land revenue in respect of the land of a person belonging to a Schedule Tribe.

Provisions have also been made for effective implementation of the aforesaid measures of land reforms by providing for imposition of penalty etc.

10. In the same way, we may also take into account the Statement of Objects and Reasons recorded at the time of introducing the 6th Amendment Bill in the year 1994 and they are quoted hereinbelow for ready reference:

Statement of Objects and reasons

1. The Bill seeks to further strengthen the measures to prevent alienation of Tribal land and also for effective implementation of the provision for restoration.
2. The Bill permits mortgage of land not only to a co-operative Society or a Bank but also to the Tripura Housing Board as well as any other financial Institution. The proposed Bill bars transfer of land by mortgages to a non tribal, vide provision to section 187(1) (c).
3. The Bill prohibits not only transfer of the tribal land to non tribal but also

prohibit occupation of the tribal land by non tribal and for the purpose the definition of transfer has been made very broad based.

4. For violation of any of the provision a fine upto Rs. 3000/- and imprisonment for a period upto 2 (two) years has been visualised via section 187(B)(2). The offence will be cognizable and non bailable via section 187(B)(C). The provision of constitution of a Special Courts for trying such cases via section 187(B)(4) has also been provided.

5. It provides provisions for presentation re-transfer and instrument to a committee for a period upto one year if after the re-transfer the tribal alienation the land via section 187D (1).

6. It bars alienation by land by tribal in favour of a company via section 187G.

11. By referring to the amendments made in the year 1974 and 1994, Mr. S. Deb, the learned senior counsel submits that by these amendments, the transfer of tribal land is permitted only through a registered document and restoration of land to dispossessed tribal is now provided under the 1960 enacted Act. The learned senior counsel points out that the object of the amendment is to confer security of land ownership to a tribal land owner and accordingly he submits that the provisions have to be interpreted to secure the objects of the TLR & LR Act and not to the detriment to the interest of a tribal land owner.

FACTS TO BE CONSIDERED

12.1. The writ Petitioners claimed to have purchased the land in the year 1955 from Late Rangamani Reang, the father of Respondent No. 4. But in none of the legal proceedings, they could show any instrument, registered or otherwise, to establish that they had purchased the land from Late Rangamani Reang.

12.2 The possession over the land was declared in favour of the writ Petitioners on 6.6.1961 in a proceeding u/s 145 of the Code of Criminal Procedure initiated by Late Rangamani Reang and 3 others. Importantly the writ Petitioners are found to be in possession of the land since before 1.1.1969 and the provisions of Section 187 was inserted through the 6th Amendment of the 1960 Act, enforced with effect from 11.2.1996.

12.3. The T.S. No. 75/1962 was withdrawn by the Tribal Plaintiffs on 20.9.1963 with liberty granted by the Court to institute a fresh suit.

12.4. The Revenue Records (Annexure R/1 and R/2) show that the Respondent No. 4 is recorded as the owner of the land where the writ Petitioners are shown to be forcible occupier of the land in contravention of Section 187 of the TLR & LR Act.

THE IMPLICATION OF

AMENDMENT

13. When the TLR & LR Act was originally enacted, Section 187 provided that

transfer of Tribal's land to a non-tribal shall not be valid, unless transfer is made with previous written permission of the Collector. The Section 187 as it originally stood is extracted hereinbelow for easy reference:

187. 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 in writing of the Collector, or

(c) the transfer is by way of mortgage to a co-operative society.

Since the consequential relief of restoration of lost land was not provided in the original Act, significant amendments were incorporated in Section 187 in the years (1974 and 1994) to provide for practical protection of Tribal land owners, who are dispossessed of their lands. Amendments as can be gathered from the objects and reasons was intended as a beneficial piece of legislative enactment to provide for restoration of land to a dispossessed tribal. If this was the purpose for the 4th and 6th Amendment, the Court must strive to achieve the legislative intent, in application of the amended statutory provisions made in the 1960 Act.

14. As can be seen from the Amendment carried out in the year 1994, the Act not only prohibits transfer and possession of tribal land, the definition of transfer in the explanation incorporated in Section 187D(2) has been given an expanded meaning to include parting of ownership or possession of land in any.

15. Section 187 of the TLR & LR Act as originally enacted placed restriction on transfer of tribal land to a non-tribal without previous written permission from the Collector but in the Act no provisions were made for restoration of land to disposed tribal. But through the 6th Amendment brought into effect from 11.2.1996, a Revenue Officer, either on an application or on his own motion may order ejection of a transferee or any person claiming under him. Under the provisions of Section 187B(I)(b) of the TLR & LR Act, if any tribal land is found to be occupied by a non-tribal without lawful authority, the Revenue Officer may order restoration of possession of such land to the dispossessed person or his successors.

APPLICATION OF EARLIER

DECISION TO PRESENT FACTS

16. In this case, the writ Petitioners could not show that they are occupying the tribal owned land under lawful authority and the Revenue Records clearly reflect the writ Petitioners to be in forcible occupation. It could not also be shown that the non-tribal occupier acquired the land after 1.1.1969 and the writ Petitioners only claim that they are in possession of tribal land since before 1.1.1969.

17. A decision of this Court rendered in the case of Jogendra Sarkar v. District

Magistrate and Collector reported in 2001 (I) GLT 304 is relied upon by Mr. Dhar, learned Counsel for the Petitioner to contend that an ejectment order against a non-tribal can be passed only when the tribal's land has been transferred on or after 1.1.1969 in contravention of the provisions of the TLR & LR Act. The learned Counsel contends that since no land transfer has taken place after 1.1.1969 in this case, the provisions of Section 187 of the TLR & LR Act including the amendments brought about with effect from 11.2.1996 (6th Amendment) cannot be applied for restoration of the land to the tribal.

18. The Section 187B(1) and 187B(1)(b) and other provisions incorporated with effect from 11.2.1996 (6th Amendment), in the 1960 Act provide for restoration of land to a dispossessed tribal land owner. Since power of restoration of land to a dispossessed tribal landowner. Since power of restoration is made applicable for land found to be under occupation after 1.1.1969 without lawful authority, I am of the view that it would be inappropriate to apply the ratio of decision in Jogendra Sarkar (supra) where the Court had recorded that restoration can be ordered only when transfer took place after 1.1.1969. The cut off date of 1.1.1969 should in my view be understood as reference to illegal occupation continuing after the cut off date and not in the narrow sense of illegal occupation taking place after 1.1.1969. This approach would be consistent with the object of the statutory amendments. This apart in the present case, the writ Petitioners have not shown that transfer of ownership of the land took place after 1.1.1969 or for that matter on any other date.

19. As the writ Petitioners could not produce any document to reflect transfer of land to them from the original tribal owner Late Rangamani Reang, their possession of the tribal land has to be declared as possession without lawful authority and the Revenue Officer are expected to restore land to be dispossessed tribal, it cannot be said that such power of restoration can be exercised only for post 1.1.1969 land transfers and not for unlawfully occupied land possessed from an earlier date, as such an interpretation would defeat the very objects of the amendment incorporated in the TLR & LR Act.

20. The writ Petitioners in the present case, could have availed of the remedy available u/s 93 of the TLR & LR Act to challenge the impugned order of restoration. But instead of availing the statutory Appeal, the Petitioners have approached this Court in its writ jurisdiction. When the TLR & LR Act provides for remedies by way of Appeal, Revision and Review and a complete redressal mechanism is provided for those aggrieved by any order passed under Act, I am of the opinion that exercise of the writ jurisdiction in a case of this nature would be wholly unjustified in the absence of any special circumstances warranting exercise of writ power.

21. I find from the reading of the order passed by the SDM on 25.9.1997 as well as the order passed by the District Magistrate on 14.6.1999 that the relevant considerations to adjudicate the rival claim have been made by the two Revenue Authorities. It must also be noted that the District Magistrate was exercising

review power in pursuant to an order passed on 27.3.1998 in Revision and since no challenge is made to the Revisional Authority's order dated 27.3.1998 passed at the instance of the writ Petitioners, this is an additional ground for this Court to decline to interfere with the restoration order affirmed by the District Magistrate on 14.6.1999.

22. It must also be noted that the disposed land owners were not debarred from seeking remedy under the Act as they had withdrawn the Title Suit filed earlier, with liberty to file a fresh suit-which can be understood to take into account a proceeding under the TLR & LR Act.

23. Having regard to the fact that amendments have been incorporated prohibiting occupation of tribal land by non-tribal and obligating Revenue Officer to restore possession of such land to the dispossessed tribal, I am of the view that the Revenue Authorities in the present case have discharged their lawful responsibility as is expected by the Act and the restoration orders are found to meet the objectives of the Act.

24. Apart from the above reasoning, it is also seen that u/s 96(3) of the TLR & LR Act only on 3 specified grounds i.e. (i) discovery of new and important matter or evidence; (ii) some mistakes or errors apparent on the face of the record; or (iii) any other sufficient reason are provided for exercise of review power. Having regard to the circumstances in the present case, I do not see any justification for the District Magistrate to interfere with the order passed by the SDM in exercise of his review jurisdiction and on this ground also, I am disinclined to interfere with the impugned order.

25. The writ Petitioners in this case claim ownership of the land on the basis of a transfer made by the predecessor-in-interest of Respondent No. 4 and previous ownership of the land by a tribal is clearly admitted. But the Petitioners have failed to produce any document, lawful or otherwise, to show that the transfer of land took place in their favour at any point of time before 1.1.1969 or even thereafter. In such circumstances, considering the objects and reasons for which the provisions have been made for restoration of the land to the dispossessed tribal, I see no justification to interfere with the impugned orders.

26. For the foregoing discussion and reasoning, I find no merit in the instant proceeding and the same is hereby dismissed. No cost.