
(2010) 03 GAU CK 0016
In the Gauhati High Court
Case No : W.A. No. 6 (SH) of 2009

Shri Deep Sharma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Constitution of India, 1950 — Article 254
Meghalaya Municipal Act, 1973 — Section 3(14)
Meghalaya Town and Country Planning (Amendment) Act, 2004 — Section 30(B)
Meghalaya Transfer of Land (Regulation) Act, 1971 — Section 2, 3, 8
Meghalaya Transfer of Land (Regulation) Rules, 1974 — Rule 8, 8(1)
Succession Act, 1925 — Section 59

Citation : (2010) 2 GLD 418 : (2011) 1 GLR 858 : (2010) 2 GLT 726

Hon'ble Judges : Biplab Kumar Sharma, J; Ashok Potsangbam, J

Bench : Division Bench

Advocate : A.S. Siddique and R. Kar, for the Appellant; S.P. Mahanta, A.A.G., N.D. Chuliai, Govt and H. Abraham, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The present batch of writ appeals filed against a common judgment and order has arisen on the following facts.

2. The appellants/writ petitioners are in possession of the respective plots of land with the structures standing thereon. They have got holding numbers in respect of the said structures allotted by the Shillong Municipal Board. It is on record that such holding numbers were allotted to the respective petitioners/appellants way back in 1999 and on the basis of such allotments, they had been paying house tax. The appellants/petitioners claimed their right of occupation of the respective houses over the respective plots of land, either on the basis of tenancy agreement or on the basis of inheritance through WILL.

3. At this stage, the facts involved in WA No. 13(SH)/2009 arising out of WP(C) No. 94(SH)/2005 may be briefly stated.

4. In the said writ petition, the petitioner No. 1 is one Shri Subrata Dutta and the remaining petitioners numbering 14 are his tenants. The petitioner No. 1 jointly with his 3(three) brothers inherited a plot of land measuring 05088 Sq. Mtrs, situated at a place called Burnside, Kench's Trace, Ril-bong at Shillong from his deceased father Raisaheb Shivnath Dutta, who was the original Lessee of land covered by a Lease Agreement executed by the Deputy Commissioner, the then Kashi and Jaintia Hills, Shillong dated 29.8.1931. After the death of the original Lessee i.e. the father of the petitioner and his 3(three) brothers, a fresh agreement was executed by the Deputy Commissioner, East Kashi Hills, Shillong, in favour of the petitioner and his brothers. The fresh lease agreement was executed on 1.7.1999 for a period of 30 years. After the death of the 3 (three) brothers of the petitioner, the petitioner No. 1 became the only owner of the land. Accordingly, his name was mutated and he has been paying land revenue to the authorities.

5. Reverting back to the facts involved as a whole, the petitioners No. 12 to 15 in the aforesaid WP(C) No. 94(SH)/2005 are the tenants under the petitioner No. 1 and they were allowed to have their own separate municipal holdings for the purpose of paying tax in respect of the respective area occupied by them.

6. Some time in the month of October, 2004, the holdings of the petitioners No. 2 to 15 were cancelled by the Shillong Municipal Board. Being aggrieved by such cancellation of holdings, the petitioners involved in the said writ petition, filed Title Suits in the Court of Assistant to Deputy Commissioner at Shillong and in the said suits, injunction orders are operating. The suits are still pending.

7. During the pendency of the aforesaid suit, the appellants/petitioners involved in this proceeding have been served with notice dated 7.3.2005 purportedly under Rule 8(1) of the Meghalaya Land Transfer Regulations Rules, 1974, asking them to show cause by 15.3.2005 as to why action should not be taken under the provisions of the said rules. For a ready reference, one of the notices addressed to one of the petitioners namely Smti. Mira Deokota is quoted below:

Schedule "A" Form "G" [See Rule 8(i)]

Where it has been found that you Smti Mira Deokota, Burn Side, Rilbong, Shillong are in possession of the land described in the schedule below without obtaining necessary permission under the Meghalaya Transfer of Land (Regulations) Act, 1971 (Meghalaya Act 1 of 1972) and Rules framed thereunder.

Now, therefore, in exercise of power conferred u/s 8 of the said Act you are hereby asked to show cause of fifteen (15) day of March 2005 at 11 a.m. before me as to why action under the provisions of the said Act shall not be taken against you.

Dated : 7.3.2005 SCHEDULE

Sd/illegible Competent Authority

8. In response to the said notice, reply was furnished on 15.3.2005 stating that the petitioners in WP(C) No. 94(SH)/2005 being the tenants, they have right to continue with the tenancy and such tenancy did not involve any transfer within the meaning of the aforesaid Acts and the Rules, and therefore, the notice was uncalled for.

9. In WP(C) 95(SH)/2005, which has given rise to writ appeal No. 22 (SH)/2009, the plea against the notice was that the petitioners involved therein had inherited the land and the house on the basis of the WILL executed by the original Lessee/Owner.

10. As regards the other writ petitions involved in this proceeding, their case is also that they have inherited their respective plots alongwith the house on the basis of the WILL executed by the original Lessee/Owner.

11. After the aforesaid suits filed by the petitioners/appellants against the cancellation of holdings and issuance of the above quoted notice, the Meghalaya Urban Development Authority (in short MUDA) also issued notice dated 24.10.2005 to the petitioners/appellants on the subject of unauthorised construction with a direction to dismantle such construction within 7 days. The notice was issued under the provisions of Meghalaya Building Bye-laws 2001 and Town Planning Act. For a ready reference, the said notice issued in respect of one of the petitioners is quoted below:

MEGHALAYA URBAN DEVELOPMENT AUTHORITY SHILLONG

No. MUDA, 188/38/2005-06/51 Dt. Shillong, 24th Oct, 2005

To Smti. Gayatri Devi, Kendh"s Trace, Shillong. Subject : UNAUTHORISED CONSTRUCTION. On site inspection by this office, it was detected that you have constructed a building in your compound at Kench"s Trace (Plot No. 47) without obtaining any valid permission from the competent Authority. In this regard you are direction u/s "A" Clause 11(ii) Meghalaya Building Bye-laws 2001 to dismantle immediately within 7 (seven) days time, failing which necessary action will be taken against you as per rules of the Meghalaya Building Bye-laws 2001 and Town Planning Act.

Sd/- illegible Secretary, Meghalaya Urban Development Authority, Shillong.
Dated : Shillong, the Oct" 2005.

Memo No. MUDA, 188/38/2005-06

Copy to

(1) The Deputy Commissioner, East Khasi Hills District, Shillong, for favour of information.

Secretary Meghalaya Urban Development Authority, Shillong.

12. From the aforesaid narration of facts, what has transpired is that, firstly the respective holdings of the petitioners involved in WP(C) Nos. 94 and 95 (SH) of

2005, which have given rise to writ appeal Nos. 13(SH) of 2009 and 22(SH) of 2009 were cancelled by the Shillong Municipal Board, making a grievance against which they had filed Title Suits, in which injunction order was granted in their favour. Thereafter, the above quoted notice purportedly under Rule 8(i) of the Rules framed under the aforesaid Act of 1971 were issued on the ground of possessing the land in question without obtaining necessary permission as per the provisions of the Act. The said notice was followed by the above quoted demolition notice issued by the MUDA.

13. It is under the aforesaid facts and circumstances, the petitioners/appellants filed the writ petitions challenging the action of the respondents towards issuance of the said two notices. It will be pertinent to mention here that the impugned notice dated 24.10.2005, issued by the MUDA, was at time when in respect of the earlier notice under Rule 8(i), this Court passed an order to maintain status-quo in WP(C) 94(SH)/2005 and 95(SH)/2005.

14. In the writ petitions, the respondents had filed their counter- affidavit disputing the fact of tenancy and WILL on the strength of which the petitioners/appellants had claimed exemption from the operation of the provisions of the aforesaid Act of 1971. It was the stand of the respondents that merely on the basis of the Municipal holdings obtained by the petitioners/appellants and payment of municipal taxes, no right was created in their favour and that the tenancy in respect of the petitioners involved in WP(C) 94(SH)/2005 virtually being in the form of transfer of land and building, which is prohibited under the provisions of the said Act and the rules, there was nothing wrong in issuing the notice under Rule 8(i).

15. As regards the execution of WILL in favour of the other petitioners, it was the stand of the respondents that such WILL being not in favour of family members and the petitioners/appellants who are the beneficiaries of the WILL being outsiders i.e. not being family members of the executants, such a WILL was not a valid one. In this connection, respondents placed reliance on the letter dated 13.6.1979, issued by the Govt. of Meghalaya in the Revenue Department and addressed to the various authorities. For a ready reference, the said letter dated 13.6.1979 is quoted below:

GOVERNMENT OF MEGHALAYA REVENUE DEPARTMENT

No. RDS. 11/76/Part/42, Dated Shillong, the 13th June, 1979

From : Shri P.J. Bazeley, IAS, Joint Secretary to the Govt. of Meghalaya.

To

1. All Deputy Commissioners and Sub-Divisional Officers.
2. All Chief Executive Members.
3. D.C.A., Department.

Subject : Meghalaya Transfer of Land (Regulation) Act, 1971.

Sir,

I am directed to say that the word "transfer" used in the Act mentioned above has been defined to mean the conveyance of land of one person to another and to include gift, sale, exchange, mortgage, lease surrender or any other mode of transfer. The term "any mode of transfer" will include any transaction by which transfer of land from one living person to another takes place. Relinquishment and in some cases, family settlement or partition may come under this term. Inheritance or succession to property due to the death of the owner implies devolution by operation of law and cannot appropriately be described as a mode of transfer under the Act. Any family partition or settlement, mutation, share or Will resulting there from will not, therefore, come under the purview of the said Act.

Yours faithfully Sd/-(P.J. Bazeley) Joint Secretary to the Govt. of Meghalaya, Revenue Department. Memo No. RDS. 11/76/Part/42, Dated Shillong, the 13th June, 1979.

Copy to:

The Director of Information and Public Relations for information and wide circulation.

By order etc., Sd/-(P.J. Bazeley) Joint Secretary to the Govt. of Meghalaya, Revenue Department.

16. Countering the particular plea of the petitioners/appellants that the demolition notice dated 24.10.2005 issued by MUDA, which has been quoted above was in violation of the principles of natural justice, the stand of the respondents in their counter-affidavit was that there was no question of providing any opportunity of being heard to the petitioners as they had failed to produce any valid document when the officials of the authority had visited their respective places. In the writ petition, the specific plea of the petitioners was that before issuing the demolition notice, they ought to have been provided with an opportunity of being heard. It will be appropriate at this stage to quote paragraphs 10 and 11 of one of the writ petitions, namely, WP(C) 364(SH)/2005.

10. That as stated above the petitioner's house was constructed long back by his land lord since deceased and was given to him by way of Will, which now stands probate and as such there is no question of violation of Meghalaya Building Bye-laws, 2001 or for that matter any other law for the time being in force.

11. That presuming that the petitioner has violated any law the respondents could not have taken a drastic step for dismantling the petitioner's house without providing him an opportunity of being heard and as such the impugned notice is liable to be quashed on this count alone.

17. In response to the aforesaid statement made in paragraphs 10 and 11, the

stand of the respondents in their counter-affidavit is as follows:

That with regard to the statement made in paragraphs No. 9 and 11 of the writ petition, the answering respondents states that on the site inspection by the officials of respondent No. 2, the writ petitioner could not provide any valid permission from the competent authority granting building permission for construction and as such the respondents has rightly issued notice dated 24.10.2005 (Annexure-4 to the writ petition). Further, there does not arise any question of providing an opportunity of being heard since the writ petitioner has failed to produce any valid documents while asked for by the officials of the authority concerned.

(Emphasis supplied).

18. By the common impugned judgment and order dated 8.5.2007 passed by the learned single Judge, all the writ petitions have been dismissed upholding the impugned notices. According to the learned single Judge, both the categories of petitioners i.e. the tenant petitioners and the petitioners inheriting under the particular WILL are, in fact, beneficiaries of transfer of the respective plots of land with the structures therein, which is prohibited as per the provisions of the aforesaid Act. Be it stated here that as per the provisions of the said Act, there is prohibition in respect of transfer of land in Meghalaya by a tribal to a non-tribal or by a non-tribal to another non-tribal, except with the previous sanction of the competent authority. For a ready reference, Section 3 of the Act is quoted below:

3. (1) No land in Meghalaya shall be transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority. (2) Any transfer of land made in contravention of the provisions of this section shall be void and shall not be enforceable in any Court.

19. According to the learned single-Judge, there being transfer of land either by way of tenancy or by way of WILL and there being no permission obtained by the petitioners/appellants permitting such transfer, there is violation of the aforesaid provisions of the Act and accordingly there was no legality in issuing the impugned notices under the provisions of the Act. As regards the demolition notices, the learned single Judge has held that the petitioners/appellants having failed to produce any valid document, there was violation of the Meghalaya Building By-laws 2001 and accordingly it was within the jurisdiction of the competent authority to issue such notices.

20. The writ petitions having been dismissed by the impugned judgment and order dated 8.5.2007, the petitioners have filed the instant batch of writ appeals challenging the legality and validity of the said judgment.

21. We have heard Mr. A.S. Siddique, learned Counsel for the writ petitioners/appellants as well as Mr. N.D. Chullai, learned State Counsel, Meghalaya, representing the State respondents. We have also heard Mr. H. Abraham, learned Counsel representing MUDA. We have also considered the entire materials on

record and have given our anxious considerations to the same.

22. The submissions made by Mr. Siddique, learned Counsel for the appellants are summarised below:

(i) The petitioners in WP(C) No. 94(SH)/2005 giving rise to WA No. 13(SH)/2009 admittedly being tenants under the original landlord, there is no question of any transfer of land in violation of the provisions of the Act of 1971 and consequently, the notice u/s 8 of the Act was totally uncalled for.

(ii) As regards the other petitioners, who are in occupation of the land and the building on the strength of the WILL executed in their favour, no transfer being involved, the provisions of the said act are not attracted.

(iii) The demolition notice dated 24.10.2005 being in-complete violation of the principles of natural justice and so also Section 30(B) of the Meghalaya Town and Country Planning (Amendment) Act, 2004, same is not sustainable in law.

(iv) Section 59 of the Indian Succession Act does not put any restriction towards execution of WILL by any person and thus the provisions of the aforesaid Act of 1971, if applied, so as to put such restriction will be repugnant of Article 254 of the Constitution of India.

23. Countering the above arguments, Mr. N.D. Chullai, learned State Counsel, exclusively referring to the impugned judgment and order, submitted that the petitioners No. 2 to 15 involved in WP(C) 94(SH)/2005, although, claimed to be tenants under the original landlord, but in fact, they are not. According to him, had it been a case of existence of any tenancy agreement, the said petitioners would not have obtained individual holding numbers from the Municipality. This, according to him, the said petitioners having obtained municipal holdings in their names, admittedly there is transfer of land in violation of the provisions of the aforesaid Act of 1971.

24. As regards the execution of WILL by the original landlord in favour of the remaining petitioners, he submitted that even such execution of WILL involved transfer of land and could not have been done so without obtaining prior permission from the competent authority. Referring to the above quoted letter dated 13.6.1979, he submitted that there being restriction even in the matter of WILL, the landlord could not have executed the WILL in favour of the petitioners/appellants, who are rank outsiders. He submitted that the Act of 1971 being a special Act enacted to protect the interest of the local people of Meghalaya, the very purpose of the same cannot be frustrated in the name of acquiring property through WILL.

25. Mr. Abraham, learned Counsel representing MUDA, during the course of his argument, submitted that the impugned demolition notice had been validly issued, inasmuch as, the petitioners/appellants could not produce any valid document to the officials of the authority why they had visited the respective site of the petitioners/appellants. According to him, reasonable opportunity of being

heard was given to the petitioners/appellants but they did not utilise such opportunity provided to them. According to him, the demolition notice is in respect of recent construction and not in respect of the construction carried out prior to coming into force of the Meghalaya Building Byelaws of 2001.

26. At this stage, it will be appropriate to refer to the rejoinder affidavit that was filed by the petitioners/appellants in the writ petitions. By filling the said rejoinder affidavits, it was brought on records that the constructions in question were of 1999 itself and the petitioners upon allotment of holding numbers by the Shillong Municipal Board, had been paying the municipal tax. Thus/it was contended that the constructions being in existence much prior to coming into force the aforesaid Meghalaya Building Byelaws of 2001, no notice could have been issued under the provisions of the said Bye-laws.

27. The sequence of events have been noted above. The holdings allotted in favour of the petitioners/appellants were first cancelled, making a grievance against which they had instituted Title Suits and as submitted, the said suits are still pending, with the orders of injunction granted in favour of the petitioners/appellants. Thereafter, Section 8 notice was issued to the petitioners/appellants, on the ground of possessing the land without obtaining necessary permission as per the provisions of the Act of 1971. This was followed by the demolition notice dated 24.10.2005.

28. So far as the cancellation of respective holdings is concerned, the matter is now subjudice in the trial Court. Same is not the subject matter in the instant proceeding.

29. We have quoted the Section 8 notice, which was purportedly issued by the competent authority. However, on perusal of the notice, it appears that the competent authority has not been named. Although, the notice was stated to be in respect of the land described in the schedule but the schedule itself in the notice is silent about the land. There is no description of any land whatsoever. The notice also does not specify any ground so as to say that the petitioners/appellants are in possession of the land without obtaining necessary permission under the Act of 1971 or the rules framed thereunder, if any. On a bare perusal of the notice, what has been revealed is that the same is absolutely indefinite and vague.

30. In so far as the petitioners involved in WP(C) 94(SH)/2005 are concerned, it is the finding of the learned Single Judge that the said petitioners are admittedly the tenants of the petitioner No. 1. The learned Single Judge has also noticed that the said tenant petitioners were apparently allotted municipal holdings enabling them to pay taxes in respect of the plots occupied by each one of them. This aspect of the matter has been noticed and discussed by the learned Single Judge in paragraph 3 of the impugned judgment and order. On such an admitted fact, the said petitioners/appellants could not have been held to have possessed the respective plots of land on transfer by the original landlord. If there is no

transfer involved, there is also no question of violation of the provisions of the Act of 1971.

31. As regards the others petitioners involved who have claimed to have inherited their respective plots through the WILL executed in their favour by the original landlord, it is not the case of the competent authority in the impugned notice dated 7.3.2005 that such inheritance through WILL is impermissible under the provisions of the Act. The only stand in the notice is that the notice is in possession of the land without obtaining necessary permission under the Act of 1971. However, it is not specified in the notice as to why such permission was required. In such circumstances, we are of the considered opinion that no action could have been taken on the basis of such a vague and indefinite notice, *moreso*, when the continuous and uninterrupted occupation of the respective plots of land by the petitioners/appellants at -least from 1999 is not in dispute. The vested right of the petitioners/appellants could not have been set at naught by the said notice dated 7.3.2005.

32. So far as the demolition notice is concerned, admittedly same was issued in violation of Section 30(B) of the Meghalaya Town and Country Planning (Amendment) Act, 2004. By the said amendment, a new section, namely, Section 30(B) has been inserted empowering demolition of building. As per the provisions of Section 30(B), the authority is empowered to make an order directing demolition of unauthorised construction with brief statement of the reasons thereof and delivering the same to the person concerned. In case of failure to comply with the directions contained in the order, the authority is empowered to remove or cause to be removed the construction. However, no such order shall be made unless the owner, occupier, manager or the person concerned has been given the reasonable opportunity to show cause, why the order shall not be made.

33. In the instant case, admittedly the petitioners/appellants had not been issued with any show cause notice and/or furnished with the order with reasons requiring them to remove the construction. Without observing any such formalities, the impugned notice dated 14.10.2005 was issued directing demolition of the purported unauthorised construction. The notice also did not specify as to what was the nature of the construction and when such construction was carried out and as to what is the portion of such unauthorised construction required to be removed.

34. The stand of the respondents in the counter-affidavit has been noted above. As per the said stand, since the petitioners/appellants could not produce any document pertaining to such construction, there was no question of providing any reasonable opportunity of being heard to the petitioners/appellants. Such a reasoning advanced in the counter- affidavit is quite strange. Firstly, by the impugned notice straightway direction was issued to demolish the entire building. Secondly, the notice did not specify as what was the nature and extent of the unauthorised construction as to when the same was carried out. It is the definite

case of the petitioners-appellants that the constructions in question are in existence since 1999 and the municipal holdings were also allotted to them in the same very year. Obtaining the municipal holding, the petitioners/appellants have been paying the municipal taxes in respect of the said holdings. All these aspects of the matter were not taken into consideration by the MUDA when the impugned notice was issued.

35. For all the aforesaid reasons we are of the considered opinion that both the impugned notices dated 7.3.2005 and dated 24.10.2005 are not sustainable in law and accordingly liable to be set aside and quashed.

36. The learned Single Judge has upheld the impugned notices primarily on the ground that there was transfer of land in violation of aforesaid Act of 1971. It has been held that the WILL involved amounted to transfer of land in violation of the provisions of the Act of 1971. As regards the tenant writ petitioners, the learned Single Judge even after holding that admittedly they have tenants of the petitioner No. 1 and were apparently given municipal holdings enabling them to pay taxes in respect of the plots occupied by each one of them, has held such tenancy involved transfer of the land.

37. The term "HOLDING" has been defined u/s 3(14) of the Meghalaya Municipal "Act. Under the said definition, even a tenant can have a holding in his" name. Thus, merely because the petitioners/appellants have their respective municipal holdings, that by itself cannot go to establish that there has been transfer of land in their favour.

38. As regards the transfer on the basis of WILL, the finding of the learned Single Judge that the same involved transfer, is contrary to two decisions of this Court as reported in (1989) 2 GLR 125 (S.H.K. Nungrum v. Shree Bimalendu Das Gupta) and the judgment and order dated 9.2.1998 passed by this Court in MA(F) No. 7(SH)/1996 (Shri Prem Prasad v. State of Meghalaya).

39. In S.H.K. Nungrum, (supra), upon a discussion of the provisions of the aforesaid Act of 1971 and answering the issue whether "WILL" is included with the meaning of transfer, this Court answered the same in the negative. In this connection, paragraph 8 of the judgment is quoted below:

8. At this stage it will be helpful to consider the meaning of "succession". "Succession" means the passing of property on the death of a person to a living person or persons under the law of descent and distribution. Therefore, transfer inter vivos, or from one living person to one or more living persons, has no application to the succession. In such a situation, "will" may aptly be called "testamentary succession." For these reasons, "any mode of transfer" u/s 3 of the Act does not include "will".

40. In Prem Nath Prasad (supra) also this Court has held that WILL does not come under the definition of the word "TRANSFER" of property and such devolution of property by way of WILL is not hit by the provisions of the Act of

1971 in any way.

41. The challenges in the writ petitions were basically the aforesaid two impugned notices. It was in that context, the petitioners had disclosed their right of possession as tenant and on the basis of the WILL. It was not the allegation in the impugned notice u/s 8 of the Act that the possession of the plots of land of the petitioners/appellants through the WILL being a transfer was illegal. In our considered view, it was really not necessary to decide in the writ proceeding as to the nature and purport of the WILL, in the context of transfer, as defined in the Act. u/s 2(d) of the Act of 1971, transfer means the conveyance of land of one person to another and includes gift, sale, exchange, mortgage, lease, surrender or any other mode of transfer. Section 3 of the Act has been noted above.

42. In the impugned notice, it was not the case of the respondents that the tenancy and/or the WILL involved transfer of the land in violation of the provisions of the Act. Only plea advanced in the notice was that the petitioners/appellants had been in occupation of the respective plots of land without obtaining permission as envisaged under the provisions of the Act. As to the manner and method in which the notice u/s 8 was structured has been noted above. In a matter in which the petitioners/appellants were sought to be deprived of their property, the respondents ought to have processed the matter with utmost precision and following the due procedure of law. However, they took action against the petitioner/appellants one after another and in the process even ignored the fact that the Title Suits were pending in the competent Court of civil jurisdiction and also that statusquo order was in existence in respect of Section 8 notice. Thereafter, the demolition notice was issued in gross violation of the principles of natural justice and so also the provisions of Section 30(B) of the Act of 2004. In our considered view, the fact of the WILL in the context of the provisions of the Act of 1971 was not the real issue.

43. For all the aforesaid reasons, we are of the considered opinion that the impugned notices are not sustainable and accordingly they are set aside and quashed. Consequently, the impugned judgment and order dated 8.5.2007 passed in the batch of writ petitions, which has given rise to the present batch of writ appeals, is also interfered with.

44. Writ appeals are allowed, without however, any order as to costs.