
(2004) 12 GAU CK 0059

In the Gauhati High Court

Case No : Civil Rule No. 429 of 1994 (Re-Writ Petition (C) No. 473 of 2003)

Sridam Chandra Debnath and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Tripura Land Revenue and Land Reforms Act, 1960 — Section 187, 187(1), 187(2), 187(3)

Citation : (2004) 12 GAU CK 0059

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and R.R. Dutta, for the Appellant; D.K. Bhattacharjee, P. Dutta and P.K. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—By this writ petition, the petitioners sought for a writ of certiorari to quash/set aside the impugned order dated 28.6.1994 passed by Deputy Collector, Dharmanagar, North Tripura in Restoration Case Nos. 100 of 1994 and 102 of 1994 ordering thereby physical restoration of the lands in question from the possession of the petitioners to that of the respondents.

2. The facts leading to the present writ petition are that by an unregistered sale deed dated 18.2.1962 certain lands, which are subject matter of this case, appertaining to C.S. Plot Nos. 5252, 5253/5358 and 5359 measuring 2.24 acres recorded in Khatian No. 2398 of Mouja-Panisagar were purchased by them from the respondents Manik Lal Halam (later, on his demise, substituted by his legal heirs, respondents Nos. 2 to 5), Manik Lal Halam (respondent No. 6) and Manik Mani Halam (respondent No. 7), all sons of late Sabut Bul Halam. After the sale, possession was handed over to the two petitioners, late Sridam Chandra Debnath (later, on his demise, substituted by his legal heirs) and his brother Shri Naresh Chandra Debnath and since then they have been in peaceful possession of the aforesaid lands. The sale deed could not be registered as it was a transfer by

tribals to non-tribals because of the restrictions imposed by Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 (herein after referred to as "the Act"). Such transfer was, however, permissible with the previous sanction of the Collector as provided in Clause (b) of Sub-section (1) of that Section. Accordingly, the respondents submitted application on 1.11.1969 to the Collector seeking permission for sale of the said land. No permission, however, could be obtained and on 24.4.1979 (after a period of about 17 years from the date of sale), one of the respondents, Manik Lal Halam (now deceased) filed an application before the District Magistrate and Collector, North Tripura seeking restoration of the lands from the possession of the petitioners. The other two respondents, who were brothers of Manik Lal Halam did not, however, make any such petitioner for restoration. The petitioners could not produce all relevant papers before the District Magistrate & Collector, who passed an order on 24.4.1979 (Annexure-3) observing that the petitioners failed to prove beyond doubt that the transfer had taken place prior to 1.1.1969 and directing restoration of possession of the said lands to Manik Lal Halam. This order, however, was not implemented and in 1994, after another period of about 15 years, the respondent Manik Lal Halam again made another application that he was dispossessed from the said lands by the petitioners and sought restoration. The Deputy Collector by his order dated 218.6.1994 in Restoration Case Nos. 100 of 1994 and 102 of 1994, held that though the order of restoration was passed by the D.M. and Collector on 26.2.1979, no restoration was in fact done and, therefore, the claim of the petitioner (respondent herein), Manik Lal Halam that the lands were restored to him following that order but he was dispossessed later was not true. The Deputy Collector further held that the transfer of the unregistered document had taken place in favour of the petitioners prior to 1.1.1969. As the order of restoration was originally passed by the D.M. and Collector on 26.2.1979, the Deputy Collector observed that he had no jurisdiction to set aside that order and for that reason, he directed physical restoration to be given effect to in terms of the order of the District Magistrate and Collector passed on 26.2.1979. Against this order and direction, the present writ petition has been filed.

3. Respondent Manik Lal Halam contested the claim of the petitioners denying transfer of the lands by unregistered sale deed. Even he denied his prayer for seeking permission of the Collector for transfer. He, however, contended that after the coming into force of the Act, such transfer was invalid as no permission was obtained from the Collector. His other two brothers, the respondent Nos. 6 and 7 filed separate counter-affidavit admitting that they along with their brother Manik Lal Halam had transferred the lands to the petitioners at a consideration of Rs. 2,500 as they were in dire necessity of money for treatment of their deceased father as well as to meet the expenditure of marriage ceremony of their two sisters. In fact, the three brothers and two sisters had inherited the property of their deceased father out of which the land in proceeding measuring 2.25 acres was transferred to the petitioners. Thus, they did not agree with the

contention of their brother, who had subsequently taking the opportunity of 3rd amendment of the Act sought restoration of the land already transferred. They did not make any prayer to the Collector seeking restoration.

4. The State of Tripura was made respondent No. 1, who filed a counter-affidavit supporting the impugned order by which the Deputy Collector directed restoration of the lands.

5. To appreciate the legal position in relation to transfer of land by a member of the Scheduled Tribes community to a person, who is not a member of that community. Section 187 of the Act needs to be carefully examined. Clauses (a) and (b) of Sub-section (1) of Section 187 of the Act reads : -

"187.(1) No transfer of land by a persons 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."

This provision shows that the transfer by a tribal to a non-tribal was not altogether banned, what was necessary only was a permission from the Collector before such transaction took place. The intent and purpose of this provision is undoubtedly salutary for the reason that the legislature tried to ensure the Tribals did not became landless. The restriction was not made absolute perhaps for the reason that a complete ban on such transaction deprives the Tribals from getting the value of the land at market rate because of less competition from the buyers. However, Sub-section (3) (which was introduced later by amendment) provides for restoration of the tribal land in violation of the restoration imposed by Sub-section (1) if such transfer was made on or after 1.1.1969. Any Revenue Officer appointed for this purpose by the State Government has been vested with the power to eject the non-tribal transferee from the land so transferred and restore the possession of the same to the tribal transfer. Sub-section (2) is quoted below : -

"187(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 oh 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.

(6) When the revenue officer has passed any order under Clause (a) he shall restore the transferred land or part thereof to the transferer or his successor-in-interest :

Provided that such order shall have effect from the first day of Baisakh next following the date of the order."

The aforesaid provisions make it very clear that even though transfer of land from tribal to non-tribal was invalid with effect from the date of coming into effect of the Act, the provision to restore such land to the tribal has been given effect only in respect of lands transferred on or after 1.1.1969. In other words, land transferred before 1.1.1969 in violation of Sub-section (1) of Section 187 of the Act would not come within the mischief of the provisions relating to restoration of lands. The date is, therefore, very crucial for the purpose of deciding the issue between the parties.

6. I have heard Mr. K.N. Bhattacharjee, learned senior counsel, assisted by Mr. R.R. Dutta, learned counsel for the petitioners and learned counsel Mr. D.K. Bhattacharjee and others from the respondents.

7. Mr. Bhattacharjee, learned senior counsel for the petitioners submitted that the Revenue Officer (Deputy Collector) had no jurisdiction to order restoration of the lands in question after he held that the lands were transferred prior to 1.1.1969. His further submission is that respondent Nos. 6 and 7 being the co-transferers were honest in declaring that because of their dire necessity, they had to sell the lands which they inherited from their father. Even in the prayer for permission to sell the lands submitted by the D.M. and Collector (Annexure-2), the applicants were three brothers and two sisters, where they explained the necessity to sell the lands and that even after such sale, there would be left to them nine kanis of land. Therefore, they would not be landless even after the sale. It will appear from the order on the body of the petition that on 1.11.1969, the then Sub-Divisional Officer, M.R. Goswami instructed the Circle Officer, Shri Debnath to enquire and report as per procedure. What happened to that prayer and why the permission was not granted has not been explained in the counter-affidavit filed by the State respondents. Learned counsel further submits that the order of restoration by the District Magistrate and Collector 26.2.1979 and by the Deputy Collector on 28.6.1994 only on the prayer of Manik Lal Halam were improper and arbitrary.

8. Learned counsels Mr. D.K. Bhattacharjee and others on the other hand submitted that the instant petition is hopelessly time barred, particularly because the D.M. and Collector passed the order of restoration on 26.2.1979 and the instant petition has been instituted only in 1994, after a period of more than 15 years. His second submission is that the lands having been transferred by the invalid document after 1.1.1969, the direction for restoration was within the provision of Sub-section (3) of Section 187 of the Act. Mr. P. Dutta, learned counsel, tried to establish that the subject matter of the case relates to certain disputed facts which cannot be decided by the writ Court.

9. Having regard to the rival submissions of the learned counsels and land laws applicable in the State of Tripura on the relevant date, let us now examine the

controversial issues. The order impugned before me is only the order of the Revenue Officer (Deputy Collector) passed on 28.6.1994 in Restoration Case Nos. 100 of 1994 and 102 of 1994 and the present writ petition was filed in August 1994. Unless there is a long period and unreasonable delay, the law of limitation normally has no application in writ cases. As already pointed out, there was absolutely no delay in filing this writ petition as the impugned order was passed in June 1994 and the present writ petition was filed in August 1994, within a period of two months. Therefore, the argument of the learned State counsel is misplaced.

10. As already discussed above, the respondent Nos. 6 and 7 who were the co-transferers, were honest in declaring that they along with their brother, Manik Lal Halam had transferred the land by unregistered deed in 1962 out of dire necessity and they along with their two sisters submitted application to the D.M. and Collector seeking permission for sale of their land. They admitted that immediately after the transfer of the land in 1962, the possession of the lands was handed over to the petitioners. This statement about handing over of possession is supported by the record of rights prepared in the name of Manik Lal Halam, Manik Leyan Halam and Manik Mani Halam showing the petitioners in Column No. 24 in possession of the lands since 1370 B.S., which correspondence to 1962 A.D. Manik Lal Halam made a second prayer for restoration alleging that the lands were restored to him by virtue of the order dated 26.2.1979 of the D.M. and Collector but later, 6/7 years before his filing the petition for restoration, he was again dispossessed. But this claim was not found correct by the Revenue Officer in his impugned order dated 28.6.1994, where he clearly held that the physical possession of the land was never restored to Manik Lal Halam in execution of the order dated 26.2.1979 of the D.M. and Collector. This position unequivocally establishes the fact that the lands in question were transferred to the petitioners in 1962 and since then they were in continuous possession of the same. The order dated 26.2.1979 of the D.M. and Collector for restoration of the lands was never given effect to and as a result, the Revenue Officer found them in possession even in 1994. It is really surprising that both the D.M. and Collector and Deputy Collector passed their respective order for restoration of the lands only in favour of Manik Lal Halam though the lands were admittedly transferred by Manik Lal Halam and his two brothers, who were co-transferers. However, the position now emerges from the claim and counter-claim is that the lands were transferred by invalid transaction in 1962 A.D. Though the unregistered sale deed confers no title and cannot be taken into consideration for deciding title, but such document can be looked into for collateral purpose like deciding the question of possession. The two orders of D.M. and Collector and the Deputy Collector, discussed above, clearly establish that the petitioners were in possession and so even without the help of the unregistered document, it can be decided that there was no interruption at any point of time in possession of the petitioners in the lands after the invalid transfer.

11. The question is whether the Deputy Collector was right in directing

restoration of the lands for the second time after holding that the transaction had taken place before 1.1.1969. His only compulsion seems to be the order of the D.M. and Collector passed on 26.2.1979. A careful perusal of that order in Annexure-2 shows that he did not decide independently on any valid evidence that the lands were transferred after 1.1.1969. He referred to an order of the Gauhati High Court in Criminal Revision No. 32 of 1972 for drawing a presumption that the transfer had taken place on or after 1.1.1969. Before concluding, he observed "since the respondent have failed to prove beyond doubt that the transfer of the land was made prior to 1.1.1969, I conclude that the transfer was made without any valid document and without prior permission of the competent authority which contravenes the provisions of TLR and LR (Second Amendment) Act, 1974. The transfer is prohibited by the Act and is, therefore, void." Thus as the respondents could not prove beyond doubt that the transfer had taken place prior to 1.1.1969, he had to conclude accordingly. He did not make any inquiry independently or discussed documents regarding the invalid transaction. His conclusion thus seems to be on mere surmise and conjecture. But in the impugned order dated 28.6.1994, another revenue officer, after a long lapse of 15 years, discussed and examined the unregistered document, record of rights, register of non-tribals occupying the tribal lands in contravention of Section 187 of the Act, certified copy of the petition filed by the first party Manik Lal Halam, the judgment of the High Court and judgment of the District Magistrate and Collector dated 26.2.1979 and held that the lands were transferred prior to 1.1.1969 by unregistered document. The decisions arrived at by him, which are relevant for disposal of this case are quoted below : -

" But as far as record available in the T.K. no restoration was made as yet. So, the statement of the 1st party is not true.

(2) The unregistered document of transfer executed by 1st party members in favour of the O.Ps. has been made prior to 1.1.1969 was proved. The register available in the T.K., the possession of non-tribal O.P. members was recorded in the year 1966."

It is thus clear that even the Government record, which was the register maintained in the Tehasil recorded in 1966 that the possession was transferred to the non-tribal O.P. members (petitioners herein). If the two orders are read together, it would appear that what the D.M. and Collector could not decide in 1979 for want of adequate evidence had been decided by another officer in 1994. The earlier order was only a presumption but the later order was on a series of documents available at that time.

12. Having a clear picture about the transaction and possession in relation to the lands in dispute, I am confined only to the validity of the impugned order of the Deputy Collector passed on 28.6.1994 in Restoration Case Nos. 100 of 1994 and 102 of 1994. As there is absolutely no doubt that the unregistered deed did not confer any title on the petitioners though the possession had passed in their favour, the only question is whether the transaction came within the mischief of

Subsection (3) of Section 187 of the Act. The date of transfer having been crucial and the impugned order leaving no doubt that it had taken place long before 1.1.1969. I have no hesitation to hold that the aforesaid Sub-section regarding restoration of the land had no application in the present transaction, which had taken place long before the cut off date and only on this score, the impugned order directing restoration is invalid. A Revenue Officer duly authorised for restoration cannot restore the land after he holds that the transaction had taken place before 1.1.1969. It is not the previous order of the Collector, which was important to him for deciding the issue, rather the law embodied in Sub-section (3) of Section 187 of the Act should have been his prime consideration for deciding the issue. The moment he held that the transaction had taken place before 1.1.1969, he had lost jurisdiction to give direction for restoration under Sub-section (3) of Section 187.

13. For the reasons aforesaid, the impugned order dated 28.6.1994 passed in Restoration Case Nos. 100 of 194 and 102 of 1994 is invalid and liable to be set aside, which I hereby do and direct the possession of the lands in question shall not be restored to the concerned respondents in execution of the said order.

14. In the result, the writ petition is allowed. There shall be no order as to cost.