
(2002) 02 GAU CK 0035

In the Gauhati High Court

Case No : Civil Rule No's. 238, 239, 340, 394, 395, 397, 398, 573, 624 and 650 of 1997 and 21 and 166 of 1998

Sunil Deb

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Tripura Land Revenue and Land Reforms Act, 1960 — Section 187, 187B

Citation : (2002) 1 GLT 538

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : M. Kar Bhowmik, S. Deb, K.N. Bhattacharjee and R.R. Dutta, for the Appellant; B.R. Bhattacharjee, A.G., U.B. Saha, Sr. GA and R.B. Sinha and S. Chakraborty, for the Respondent

Judgement

B.B. Deb, J.—In the aforementioned bunch of cases beside the factual controversies of individual cases, an identical question of law appertaining the application of the Provisions of Section 187 of Tripura Land Revenue and Land Reforms Act, 1960 (shortly "the TLR & LR Act") to the territorial areas of Tripura Tribal Areas Autonomous District Council (shortly "ADC") has been raised in view of para 12AA under the Sixth Schedule of the Constitution of India.

2. The subject-matter of all the cases relates to restoration of land to the members of the scheduled tribes who once transferred their respective land to the members belonging to non-tribal community in violation of Section 187(1) of TLR & LR Act.

3. To decide this question the provisions of 187(1) of TLR & LR Act, and paragraph 3(1) (a) and paragraph 12AA(a) of the Sixth Schedule of the Constitution of India are to be examined.

4. u/s 187(1) of TLR & LR Act, no transfer of land belonging to a person who is a member of scheduled tribe community shall be valid unless the transfer is in

favour of another member of the scheduled tribe or where the transfer is to a person who is not a member of the scheduled tribe, but it is done with the previous written permission of the Collector concerned, or such transfer is by way of mortgage to a Co-operative Society or to a Bank or to the Central or the State Government or to Tripura Housing Board or other Financial Institutions or Corporation as may be notified by the State Government in official gazette from time to time for the purpose.

5. Inter-vivos transfer by a Vendor belonging to scheduled tribe community in favour of a Vandee not belonging to scheduled tribe community is not valid but a contraband transfer in view of Section 187(1) of TLR & LR Act. Though the aforementioned transfers of land in contravention of Section 187(1) of TLR & LR Act are not valid, but the State Government took the responsibility for restoration of such land to the vendor, scheduled tribe member which happened on or after "1st January, 1969" and for that purpose the provision of 187(3)(a) is enacted by way of TLR & LR Second Amendment Act, 1974. Pursuant to that provision of 187(3)(a) any Revenue Officer appointed specially for the purpose, may, either his own motion or on the application made in this behalf and after affording reasonable opportunity of being heard the transferees pass order for ejecting the transferee or any person claiming under such transferee.

6. From the aforementioned provisions of TLR & LR Act, it reveals that in case of any transfer made in contravention of Section 187(1) of the TLR & LR Act, on or after 1.1.1969, such transfer of land is liable to be restored to the vendor pursuant to Sub-section (3) of Section 187 of the said Act.

7. Having raised no controversy to the aforesaid provisions of law, the learned senior counsel Mr. M. Kar Bhowmik, appearing for the petitioners confidently argues that in view of para 12AA (a) of the Sixth Schedule of the Constitution of India, provisions of Section 187 of the TLR & LR Act, as a whole, are not applicable within the territorial jurisdiction of Tripura Tribal Areas Autonomous District Council (shortly "the ADC") unless the District Council or the Regional Council as the case may be, (in Tripura no Regional Council yet constituted under the Sixth Schedule) directs its application within ADC area by a public notification. In developing his argument Mr. M. Kar Bhowmik submits that the Parliament has in its wisdom delegated more autonomy to the ADC for making some laws of their own with respect to the subject-matters enumerated in para 3 of the Sixth Schedule. In the present case, we are concerned with the matters enumerated under Clause (a) of para 3(1) of the Sixth Schedule which is reproduced below :

"SIXTH SCHEDULE OF THE CONSTITUTION OF INDIA.

3. Powers of the District Councils and Regional Councils to make laws. - (1) the Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional

Councils, if any, within the district shall have power to make laws with respect to

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(a) The allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;"

8. The paragraph 12AA under the Sixth Schedule of the Constitution of India, was initially inserted by the Constitution (Forty-ninth Amendment) Act, 1984 (with effect from 1.4.1985). In that provision it was prescribed that the provision of any law made by the District Council or the Regional Council in the State of Tripura with respect to any matters specified under sub-para (1) of para 3 of this Sixth Schedule or any regulation made by the District/Regional Council under paragraph 8 or paragraph 10 of the Schedule which appears to be repugnant to any provision of law made by the State Legislature with respect to those matters, then, the law or regulation of the District/Regional Council whether made before or after the law made by the State Legislature, shall, to the extent of repugnancy, be void and the law made by the State Legislature shall prevail. The pre-amended provision of 12AA was conveniently understandable, distinctly intelligible, having left no scope for ambiguity.

9. But the said provision of para 12AA has been amended by the Sixth Schedule of the Constitution (Amendment) Act, 1988, effective from 19.12.1988 (the date of publication in Gazette of India). For convenience sake the said provision is reproduced below:

"12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous district and autonomous regions in the State of Tripura. - Notwithstanding anything in this Constitution. -

(a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that State unless, in. either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the. District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to the district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit."

10. From a combined reading of paras 3(1)(a) and 12AA{a) of the Sixth Schedule it remains crystal clear that no Act of the Legislature of the State of Tripura in respect of the subject-matters enumerated in para 3(1)(a) of the Sixth Schedule is applicable within the periphery of the ADC, unless the District Council by public notification so directs and in issuing of such notification it may direct the

application of State Act as it is or in a modified manner. Mr. Kar Bhowmik, submits that the ADC has not issued any notification so far under para 12AA(a) of the Sixth Schedule and, as such, the provisions either of 187(1) or of 187(3) of the TLR & LR Act is no way applicable to any transfer of land within the ADC area.

11. The learned Advocate General, having fairly conceded to the aforesaid proposition of law and having acknowledged the implication of para 12AA of the Sixth Schedule, submits that the matters with respect of "transfer of land" has never been an item enumerated in para 3(l)(a) of the Sixth Schedule and, as such, the District Council has never been vested with any power to make law with respect to "transfer of land" to be applied to the ADC area. This Legislative power to make law relating to "transfer of land" remains enlisted in Entry No. 18 of List II of the Seventh Schedule in respect of agriculture land and Entry No. 6 under List III so far it relates to land other than agricultural land.

12. On careful perusal of the List II, i.e., State list and List III, i.e., Concurrent List under Seventh Schedule, it appears that the State Legislature has been vested with power to make law relating to "transfer and alienation of agricultural land" when the power to make any law relating to "transfer of property other than agricultural land" remains included under the List III (Concurrent List of Seventh Schedule).

13. The learned Advocate General submits that no such identical legislative power has been vested with the ADC so far, and as such, the entire provisions of Section 187 are very much applicable to any transaction of transfer of land within the territorial area of ADC.

14. Mr. Kar Bhowmik, learned counsel for the petitioners having referred the dictionary meaning of the term "occupation" as available in Oxford Dictionary, Blacks Law Dictionary, Chambers Dictionary, submits that the term occupation appeared in para 3(l)(a) of the Sixth Schedule means and includes possession/possessory right including the right of possessory transfer/occupancy transfer.

The term occupation which undoubtedly includes possession, residence, remaining with right to possess, right to occupy etc. but right to occupy or right to possess cannot be construed as a right to transfer of possession or right to transfer of occupancy over the land unless such right is otherwise recognised by any valid law. "Right of transfer of land" or right of transfer of possession or occupation must have some legal recognition having its lawful source under a valid law. In para 3(l)(a) of the Sixth Schedule, the District Council or the Regional Council has never been vested with a right to legislate any law relating to "transfer of land" including the transfer of its occupancy or possessory right.

15. Having regard to the aforesaid discussion, I am of the considered opinion, that the ADC has been vested with the legislative power to regulate the occupation or use of any land putting any reasonable restriction required for the better, effective and fruitful utilisation thereof for the purpose of agricultural,

residential, grazing or otherwise, but the District Council has never been vested with any power to make law relating to transfer of land including its occupancy or possessory right.

16. No doubt, the ADC can make law controlling the occupation or use of any land within ADC area, it can make law fixing minimum ceiling limit of allotment, it can make law prohibiting conversion of agricultural land to non-agricultural land or preventing diversion of land, it can compel the land holder to keep some portion for grazing purpose, it can compel the inhabitants by making law to promote social forestry. It can set up its own infrastructure to supervise the proper fruitful beneficial occupation and use of the land. It can make law compelling the land holder to keep some place vacant within its boundaries for flow of air and light, it can make law to constitute community farm for the benefit of poorer section.

17. On careful analysis of para 3(l)(a) and having regard to the Entries No. 18 & 6 as have been mentioned, I find that the Parliament deliberately used the word "transfer" of agricultural land while enacting entry No. 18 under the State List and the "transfer of property other than agricultural land" in entry No. 6 under the Concurrent List of the Seventh Schedule, but such identical term "transfer" appears to have been consciously avoided by the Parliament while enacting para 3(l)(a) of the Sixth Schedule. In that view of the matter, I am of the considered opinion that the entire provisions of Section 187 (including the amended Section 187B of the TLR & LR Act) are applicable through out the State including the area falling within the TTA ADC and for that purpose no notification directing the applicability of those provisions is required under para 12AA(a) of the Sixth Schedule of the Constitution of India.

18. The Constitutional question raised by the petitioners has accordingly been answered.

19. Now, the individual cases would be decided separately according to their own merits.