
(2015) 06 TP CK 0010
In the Tripura High Court
Case No : WP(C) No. 204 of 2010

Tara Sinha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) AIR (Tripura) 13

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

Bench : Single Bench

Advocate : S.M. Chakraborty, Senior Advocate and Sekhar Dutta, for the Appellant; B. Dutta, 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 petitioner challenged judgment and order dated 22.02.2010 passed by the Principal Secretary to the Revenue Department of the Government of Tripura in Revenue Appeal case No. 17 of 2007.

2. Heard learned senior counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Mr. S. Dutta for the petitioner and learned counsel, Mr. B. Dutta for the State respondent No. 1 as well as learned counsel, Mr. P. Chakraborty for respondent No. 2.

3. At the outset learned senior counsel, Mr. Chakraborty for the petitioner has prayed for treating the present petition as one under Article 227 of the Constitution in addition to Article 226 of the Constitution for granting appropriate relief to the petitioner. Learned counsel of the respondents have no objection and therefore the petition filed under Article 226 of the Constitution of India is also treated as one under Article 227 of the Constitution.

4. Smt. Khanung Khatrani, since deceased (the original petitioner), the predecessor of the present petitioner, Smt. Tara Sinha donated 0.02 acres of land to respondent No. 2, Sri Chandra Kumar Sinha by executing a registered deed of gift bearing registration No. 1-1674 dated 17.06.1992. It is contended by the petitioner that the gifted land comprising an area of 0.01 decimal was covered by Hal Plot No. 3166 and another 0.01 decimal was covered by Hal Plot No. 3167. After such donation of the land by the predecessor of the present petitioner, the respondent No. 2 applied for mutation in his name and accordingly M.R. Case No. 176/1993 was registered and the mutation officer recorded 0.02 acres of land in the name of respondent No. 2, but it is alleged that the entire 0.02 acres of land mutated in the name of respondent No. 2 was taken from plot No. 3167 and no land was taken from plot No. 3166 though the petitioner actually gifted equally from both the plots. The petitioner, thereafter, filed a revisional application under Section 95 of the Tripura Land Revenue and Land Reforms Act, 1960 (for short, TLR and LR Act, 1960) before the Collector, North Tripura for correction of the record of right and that was registered as Revision Case No. 65 of 2006. After hearing both sides the Collector, North Tripura District, Kailashahar by order dated 27.08.2007 allowed the revisional application and set aside the order of mutation passed by the mutation officer and directed correction of the record of right according to the prayer of the petitioner that the gifted land comprised equally from both the plot Nos. 3166 and 3167.

4.1. Felt aggrieved, the respondent No. 2, Chandra Kumar Sinha preferred Revenue Appeal No. 17 of 2007 before the Principal Secretary to the Revenue Department of the Government of Tripura under Section 93(1)(c) of the TLR and LR Act, 1960 and the Principal Secretary to the Revenue Department by impugned order dated 22.02.2010 converted the appeal to a revisional application and allowed it in favour of the respondent No. 2 and thereby set aside the order passed by the Collector and upheld the order passed by the mutation officer.

4.2. Felt aggrieved, Smt. Khanung Khatrani, since deceased, the predecessor of the present petitioner, filed the present writ petition challenging order dated 22.02.2010 passed by the Principal Secretary to the Revenue Department of Government of Tripura.

5. Appearing for the petitioner learned senior counsel, Mr. Chakraborty has submitted that a revenue officer has no plenary power to convert an appeal to a revisional application and hence order dated 22.02.2010 passed by the Principal Secretary to the Revenue Department is wrong and liable to be interfered. According to Mr. Chakraborty, learned senior counsel, under the scheme of the TLR and LR Act, 1960, an appeal lies against an original order only, under Section 93 of the TLR and LR Act. No appeal lies against an order passed in revision under Section 95 of the TLR and LR Act. Learned counsel, Mr. Dutta for respondent No. 1 and learned counsel, Mr. Chakraborty for respondent No. 2 have conceded that an appeal lies only against an original order and not a

revisional order. So, the appeal filed before the Principal Secretary to the Revenue Department challenging order dated 27.08.2007 passed by the Collector was not maintainable.

The Principal Secretary to the Revenue Department has converted the appeal to a revisional application suo motu and according to learned senior counsel, Mr. Chakraborty, the Principal Secretary to the Revenue Department had no authority to convert the proceedings. According to Mr. Chakraborty, learned senior counsel, only High Court in exercise of its plenary power can convert an appeal to revision and vice versa and the other statutory Courts cannot have any such jurisdiction. On the other hand, learned counsel, Mr. Dutta and learned counsel, Mr. Chakraborty for the respondents submitted that there is no bar at all under any statute that a judicial officer or a revenue officer exercising quasi judicial function cannot exercise such power of converting an appeal to revision or vice versa.

6. It is a fact that challenging the order passed by the Collector, respondent No. 2 preferred an appeal under Section 93 of the TLR and LR Act and while hearing that appeal it was converted to a revisional application and the Principal Secretary to the Revenue Department passed the impugned order dated 22.02.2010 and allowed the revisional application. While passing the order the Principal Secretary observed:

"It is an admitted fact that the instant appeal is not maintainable under section 93(1)(c) of the TLR and LR Act, 1960 since an appeal under this section lies against an original order and the order passed by the District Collector, North in revision case No. 65 of 2006 dated 27-08-2007 is not an original order as per meaning of this act. However, during the hearing of admissibility of the case the Ld. Advocate for the respondent did not raise this point and the case was admitted accordingly. During the final hearing, the respondent had raised this issue and demanded for dismissal of the petition on this ground. I think it is not fair to drop this case at this juncture, when the court is ready for delivering judgment after the conduct of so many hearings. I also do not think it is fair to prolong the litigation by leaving the case undecided when the fact of the matter is clear to this Court and the method through which the matter can be resolved. As a summary court and in the interest of justice with emphasize on the merits of the case, I suo-moto convert this case into a revision case u/s. 95 of the TLR and LR Act, 1960."

7. Section 95 of the TLR and LR Act prescribes the power of revision which reads as follows:

"95. State Government or the Collector may, at any time, either on his own motion or on the application of any party, call for the records of any proceedings before any revenue officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of any order passed by such revenue officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not vary or reverse any order affecting any right between private persons without having given to the parties interested notice to appear and be heard."

8. Power of revision can be exercised by the State Government or the Collector and it is a concurrent power. No time limit is prescribed for exercising such power. The State Government, i.e. the Secretary to the Government can exercise the power of revision against any order passed by any sub-ordinate revenue officer including a Collector. Even an order passed by the Collector in revision, may be revised by the Secretary to the Revenue Department in exercise of the power of revision. There is no legal bar in the exercise of revisional power against a revisional order. The only question here what is raised by learned senior counsel, Mr. Chakraborty for the petitioner is whether the revenue officer has any power to convert an appeal to a revision. There is no legal embargo in converting an appeal to a revision. No rigid view can be taken that an appeal cannot be converted to a revision or vice versa. In the interest of justice, in my considered opinion, a revenue officer also is not barred in converting an appeal to a revision or vice versa unless it is barred by limitation or otherwise barred by law. To meet the ends of justice a revision may be converted into an appeal or an appeal may be converted to a revision in exercise of the discretion by any judicial court or quasi judicial authority if it is not specifically barred by the law of limitation or is barred otherwise by operation of law. TLR and LR Act prescribes provision of limitation in entertaining an appeal but no limitation has been prescribed in entertaining a revisional application. Section 95 of the TLR and LR Act clearly stipulates that a revision may be entertained by the State Government or the Collector at any time either on own motion or on the application of any party and decide the same. Since there is no bar of limitation, the Principal Secretary to the Revenue Department was within the jurisdiction in entertaining the revisional application and there is nothing wrong in converting the appeal to a revision. I cannot agree with the submission of learned senior counsel, Mr. Chakraborty that only the High Court is empowered to convert a proceeding and the other Courts or the Tribunals cannot exercise any such power while exercising judicial or quasi judicial function.

9. On merit also I find that the Principal Secretary to the Revenue Department assigned reason while setting aside the order of the Collector. Copy of the gift deed has not been filed by the petitioner before this Court. Any way, it is an admitted fact that the petitioner gifted land measuring 0.02 acres to respondent No. 2 by executing a gift deed on 17.06.1992 and the respondent No. 2 prayed for mutation of the gifted land in his name and accordingly M.R. Case No. 176 of 1993 was registered and in due course mutation was allowed in the name of the respondent No. 2. It is clearly mentioned in the order of the Principal Secretary to the Revenue Department that the donor gifted land mentioning C.S. Plot No. 1790 and Hal Plot Nos. 3166 and 3167 with specific boundaries mentioned in the gift deed. Taking into consideration the boundary of the gifted land mutation was allowed after field verification. According to rules, at the time of mutation, notice

is given to all the interested parties including the transferor and after physical verification and measurement the mutation is done. The Collector passed the order based on a report submitted by Sub-Divisional Magistrate but the Sub-Divisional Magistrate's report, so far it is reflected in the order of the Collector, does not show that the report was prepared after giving notice to all the interested parties and so the order passed by the Collector, simply based on the report of the SDM was correctly interfered by the Principal Secretary to the Revenue Department. While passing the impugned order dated 22.02.2010 the Principal Secretary to the Revenue Department formulated five issues and while deciding issue No. 3 he has observed thus:

"In deciding the question raised in point no-(iii), this court has examined the registered gift deed bearing No. 1-1674 dated 17-06-1992. It appears from the gift deed that the donor Khanug Khatrani(Kunnu) gifted the above 0.02 acres of land covering CS plot No-1790 corresponding to RS plot Nos. 3166 and 3167 under khatian no 90/2 butted and bounded by- Own shop(Dokan) of the donor (Khanung Khatrani) on the North side, the land of Shambhu Bhattacharjee on the South, PWD Road on the East side and again the land of the donor Khanung Khatrani on the South. Nowhere in the gift deed was it stated that the land was gifted from two plots in equal proportion i.e. 0.01 acres from each plot. Usually deeds are executed mentioning more than one plot but mutation is done as per actual possession which may fall in only plot or more mentioned in the deed."

10. In my considered opinion, the observation of the Principal Secretary to the Revenue Department has been correctly made and it does not deserve any interference. The writ petition, therefore, is found to be devoid of any merit and hence stands dismissed.

11. Parties to bear their own costs.