(2008) 08 GAU CK 0049

Gauhati High Court (Agartala Bench)

Case No: None

Sonu Bala Deb Barma	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision: Aug. 5, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 1 GLR 350 : (2008) 3 GLT 807

Hon'ble Judges: Maibam B.K. Singh, J; Biplab Kumar Sharma, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B.K. Sharma, J.
This writ appeal is directed against the judgment and order passed by the learned Single Judge on 2.7.1997 in the writ petition being Civil Rule No. 86/1990 reversing three concurrent findings arrived at by the prescribed authorities in respect of restoration of the land to the appellant, a Tribal lady (ST).

2. The respondent No. 5 herein (since expired) and presently represented by his legal heirs, filed the aforesaid Civil Rule No. 86/1990 making a grievance against the three successive orders passed by the prescribed authorities restoring the land in question to the present appellant, who was the respondent No. 5 in the writ petition.

3. According to the writ petitioner, he had purchased 2.80 acres of land from the husband of the appellant in the year 1966. However, nothing was indicated in the writ petition as to on which date such purchase was made. Further, such purchase was stated to be by way of an unregistered Deed of Sale. In the writ petition, it was the case of the writ petitioner/respondent that ever since the purchase of the land in the year 1966, he had been possessing the land by all acts of possession. After the death of Krishnakumar Debbarina, the husband of the present appellant from

whom the land was allegedly purchased, the appellant filed petition before the revenue Officer (SDO), Khowai, West Tripura invoking the provisions of Section 187(3)(a) of the Tripura Land Revenue and Land Reforms Act, 1960 praying for restoration of the land.

4. Section 187(3)(a) of the Act puts restriction on transfer of land belonging to a member of the Scheduled Tribe, which the appellant is. Such restriction is to operate with effect from 1.1.1969. Relevant provisions of Section 187 of the Act read as under:

187. (1) 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 of the Collector in writing in the manner prescribed; or

(c) ....

2. ....

(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 on 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.

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

5. The aforesaid petition filed by the appellant u/s 187(3)(a) was withdrawn and the same was allowed by order dated 2.9.1985 with liberty to file fresh petition. After withdrawal of the first petition, the appellant filed another application, which was also withdrawn and allowed by order dated 1.11.1985. Such withdrawal was on the ground that, infact another petition was filed before the appropriate authority seeking restoration of possession. It appears that subsequently, the appellant filed a further application before the appropriate authority for restoration of possession of the land and the said application was registered and numbered as Case No. 149/RSE/Kh/86.

6. On receipt of notice etc., the respondent No. 5 herein, who was the writ petitioner, appeared before the respondent No. 4. As per the averments made in the writ petition the original unregistered Sale Deed was produced before the said authority. The learned SDO upon hearing the parties and on perusal of the materials

on record passed the order dated 28.4.1988 holding that the transfer of land had taken place after 1969 and thus, was in violation of the aforesaid provisions of the Act. Accordingly, order for restoration was passed from the effective date prescribed in Section 187 itself. It was found that in the unregistered Sale Deed, the land was stated to be in West Tripura District, which came into existence only in 1970.

7. Being aggrieved by the aforesaid order, the writ petitioner preferred an appeal to the District Collector as per provisions of the Act and the same was registered and numbered as Revenue Case No. 29/1988. The appeal was also dismissed by order dated 22.5.1988. While confirming the order passed by the SDO, it was observed by the District Collector that the unregistered Sale Deed was unreliable and that the same having stated the land to be in West Tripura District, which came into existence only in 1970, could not have been a document of 1966.

8. Being aggrieved by such dismissal of the appeal, the writ petitioner preferred a Second Appeal to the Revenue Commissioner-cum-Secretary to the Government of Tripura as per the provisions of the Act and the same was registered and numbered as Appeal No. 30/1988. Subsequently, the appellate power of the State Government having been vested with the Tripura Sales Tax Tribunal, the appeal was entertained by the said Tribunal. The Tribunal also rejected the appeal by order dated 24.2.1990 affirming the concurrent findings arrived at by both the authorities below i.e. the SDO and the District Collector.

9. Exhaustively dealing with the appeal, the Tribunal held that the transfer of the land being much after the target date i.e. 1.1.1969, same was not valid in the eye of law. The Tribunal elaborately discussed the evidence on record. Referring to the depositions made by the DWs, the Tribunal found that the evidence adduced did not help the case of the writ petitioner. It was found that as against the production of the first unregistered Sale Deed before the learned SDO, the respondent writ petitioner also produced two more unregistered documents at the first appellate stage. It was found that there was an attempt to incorporate "Tripura" in place of "West Tripura". Considering the matter in its entirety, the Tribunal found that the subsequent documents were prepared after the unregistered Sale Deed. It will be pertinent to mention here that the said two documents were not produced before the SDO. It was observed by the Tribunal that, had the two documents been in existence, there was no reason why the writ petitioner could not produce the same before the SDO.

10. The Tribunal rejected the appeal with the reasoned findings. Thus, by the time, the writ petition was filed, there was three concurrent findings of fact favouring the case of the appellant. The writ petition was filed praying for setting aside and quashing of all the three orders. The writ petition having been allowed, the respondent No. 5 in the writ petition filed the present appeal.

11. From the aforesaid narration of facts, it will be seen that an order passed in favour of the appellant way back in 1988 directing restoration of the land to her is yet to be implemented because of the ongoing litigation.

12. We have heard Mr. S. Talapatra, learned Sr. Counsel assisted by Ms. S. Deb (Gupta), learned Counsel for the appellant as well as Mr. B. Das, learned Sr. Counsel assisted by Ms. S. Das, learned Counsel for the private respondents, who are the legal heirs of the original writ petitioner Manindra Chandra Das. We have also heard S. Chakraborty, learned State Counsel, representing the official respondents. While Mr. Talapatra submitted that the Writ Court ought not to have sat on appeal like an appellate forum so as to reverse the findings of facts arrived at consecutively by three prescribed authorities under the Act, Mr. Das, referring to the materials on record submitted that there being perversity of findings recorded by the prescribed authorities, the Writ Court rightly interfered with the same. Mr. Chakraborty, learned State Counsel submitted mat when the prescribed authorities exclusively dealt with the evidence on record, the Writ Court ought not to have sat on appeal over the same so as to reverse the findings.

13. We have considered the submissions made by the learned Counsel for the parties as well as the materials available on record. The only question, which came up for consideration was as to whether the transfer of land took place after the prescribed date 1.1.1969. Although, the writ petitioner claimed that such transfer took place by virtue of the unregistered Sale Deed executed in 1966, but we find that no date was indicated on which the Deed was allegedly executed. The Tribunal found that the writ petitioner tried to make out a case of transfer of the land before 1.1.1969 by producing two more documents at the appellate stage. While in the unregistered Sale Deed the district was mentioned as West Tripura, in the subsequent documents it was tried to be shown as Tripura. It has been rightly held by the Tribunal that there was no reason as to why the petitioner could not produce the said two documents at the first instance. Thus, we are also of the view that the said two documents were prepared afterwards to lend support to the plea of the petitioner that the land was purchased before 1.1.1969.

14. The concurrent findings of fact arrived at by both the prescribed authorities i.e. the SDO and the District Collector found the seal of approval of the second appellate authority i.e. the Tribunal. The Tribunal in its elaborate and exhaustive order, considered every aspects of the matter. Referring to the entire evidence on record, the Tribunal found that the purported transfer, in fact did not take place prior to 1.1.1969. The Tribunal also discussed the oral evidence adduced by the writ petitioner. It also considered the statements of the appellant as well as the report furnished by the jurisdictional Tehsildar dated 17.1.1987. The report was prepared on the basis of field verification and the statements of three local witnesses. The Tehsildar, in his report categorically stated that the transfer took place in the year 1974 and if that be so, as per the aforesaid provisions of the Act, such transfer was

against the mandate of the said provisions.

Tripura, which came into existence only in 1970. Thus, while preparing the unregistered Sale Deed, the author of the same rightly described the land as falling in the district of West Tripura, which will go to show that the transfer took place after 1970 and going by the report of the Tehsildar, it took place in 1974,

15. The learned Single Judge by the impugned judgment and order dated 2.7.1997 set aside and quashed the aforesaid three orders once again appreciating the evidence on record. On the face of it, such an exercise was carried out as a first appellate authority. It was not within the ambit, scope, jurisdiction and domain of the Writ Court to re-appreciate the evidence on record so as to arrive at a different finding. All the three prescribed authorities passed orders in favour of the appellant on the basis of the materials and evidence on record and such findings could not have been interfered with in the manner and method in which the same was done by the learned Single Judge. Power of judicial review as envisaged under Article 226 of the Constitution of India does not extend to that extent.

16. The learned Single Judge also failed to/appreciate the stand of the official respondents in their counter affidavit. In fact, it has been observed in the impugned judgment and order that the official respondents did not file any counter affidavit, although, in fact, they had filed their counter affidavit supporting the impugned orders. The learned Single Judge appreciated the evidence on record like a first appellate authority even to the extent of finding fault with the appreciation of evidence by the Tribunal. Further, the learned Single Judge entered into the statements made by the witnesses produced by the writ petitioner. Heavy reliance was placed on the statement made by some of the witnesses that the transfer took place about 20/22 years back and since the deposition was made on 24.4.1987, it was presumed that the transfer took place before 1.1.1969. Such a course of action adopted by the learned Single Judge, in our considered view is beyond the jurisdiction of the Writ Court. To quell any doubt, we have also gone through the evidence on record and what we have found is that, none of the witnesses could establish anything relating to the transfer of the land before the target date.

17. As against the findings of the Tribunal that the appellant made her statement in the proceeding which was duly supported by the report of the Tehsildar as mentioned above, the learned Single Judge held that the appellant did not adduce any evidence. When the documentary evidence failed to establish the case of the writ petitioner that the transfer took place before 1.1.1969, the learned Single Judge could not have held otherwise drawing an inference on the basis of the depositions of some of the DWs that the transfer took place about 20/22 years back. The statement like "about 20/22 years back" cannot lead to the inference that in fact the transfer took place before 20 years. It could be less than that also.

18. As regards the technical plea raised on "behalf of the private respondents, suffice is to say that such technical pleas do not hold good considering the fact that the issue involved is under a piece of legislation which was enacted as a measure of land reforms. As per the aforesaid provisions of the Act, there is bar on transfer of land of members of the scheduled tribes, if the purchaser is not a member of the scheduled tribe. Any transfer, which took place after 1.1.1969 in contravention of such a provision would entail ejection of the transferee or any person claiming under him from such land. Upon passing the order to that effect the land is to be restored to the transferer.

19. In the instant case, when it was found by the prescribed authorities that the transfer took place in contravention of the mandatory provisions of the Act, same was interfered with on the basis of the evidence on record. We are of the considered opinion that such concurrent findings of fact arrived at by three prescribed authorities could not have been interfered with by the learned Single Judge exercising the power of judicial review under Article 226 of the Constitution of India sitting on appeal over such findings and re-appreciating the evidence on record. Thus, we have no hesitation to set aside and quash the impugned judgment and order dated 2.7.1997 passed in Civil Rule No. 86/1990.

20. In view of the above, the writ appeal is allowed byway of setting aside and quashing the aforesaid impugned judgment and order dated 2.7.1997 passed in Civil Rule No. 86/1990 with further direction to the prescribed authorities to restore back the possession of the land to the appellant in accordance with the provisions of the Act.

21. Writ appeal is allowed, without, however, any order as to costs.