

## Mohan Lal Deb Roy Vs Sub-Divisional Officer and Another

**Court:** Gauhati High Court (Agartala Bench)

**Date of Decision:** Sept. 12, 2000

**Acts Referred:** Constitution of India, 1950 " Article 31B

Tripura Land Revenue and Land Reforms Act, 1960 " Section 107A, 107B, 107C, 107D, 107E

**Citation:** (2000) 3 GLT 398

**Hon'ble Judges:** H.K. Sema, J

**Bench:** Single Bench

**Advocate:** Mr. S. Deb and Mr. P. Rathor, for the Appellant; Mr. U.B. Saha and Mr. A. Ghosh, for the Respondent

**Final Decision:** Dismissed

### Judgement

1. Facts leading to the filing of the present writ petition in compendium are these Respondent No. 2 belonging to a member of Scheduled Tribe in

the State of Tripura is the owner of land measuring 2.48 acres of Mouja Kanchanpur, Kamalpur, North Tripura, Jote No. 21, khatian No. 29,

C.S. Plot No. 965/1184 measuring 1.60 acres and Jote No. 6, Khatian No. 10, C.S. Plot No. 46 measuring 0.88 acre. The 2nd respondent

being a member of Scheduled Tribe community is forbidden to transfer his land to a member not belonging to Scheduled Tribe, except with

previous permission by the Collector and after fulfilling all the requisite prescribed procedures as envisaged under the Act. A special provision has

been made under Tripura State Land Revenue and Land Reforms Act in this regard which I shall be dealing in detail at appropriate time. On 10-4-

1974 "an agreement for sale was executed between petitioner (who is not a member of Scheduled Tribe) an the respondent No.2 (a member of

Scheduled Tribe). In the said agreement for sale the total price of land was settled at Rs. 7, 200 and the respondent No.2 also received Rs. 6, 200

being part of the consideration money. On receipt of the part-payment, respondent No.2 delivered possession of the land to the petitioner and the

petitioner took possession of the land. It was also agreed that a registered sale deed would be executed after obtaining permission from the District

Magistrate & Collector for sale of the tribal land. Thereafter, an application dated 8-8-1975 (Annexure-1) was filed by the 2nd respondent

seeking permission from the District Magistrate & Collector for sale of his land. In the application, the 2nd respondent stated that his family

member consist of 12 persons and that he had taken a loan from the Government for excavating a tank but the said loan cannot be repaid. It was

further stated that the respondent No.2 has a vast land measuring more than 1 (one) acre but there was no willing purchaser amongst the tribal

members and he could not sell his land to the non-tribal without permission. In the said application, the 2nd respondent sought permission from the

Collector to sell his land measuring about 2.48 acres, ultimately, the permission was not granted by the District Collector and the 2nd respondent

filed a complaint before the learned S.D.O. Kamalpur being registered as Case No. REV/25/92 for restoration of alienated tribal land u/s 187(3)

of the Tripura Land Revenue and Land Reforms Act, 1960. The learned S.D.O, Kamalpur by its order dated 23rd Nov." 92 had held that the

transaction of sale has been taken place between the petitioner and the 2nd respondent in violation of the provision of section 187 of the Act. It

was further ordered that the land in Plot No. 376, Khatian No.91 of Kanchanpur Mouja measuring an area of 1.60 acres and Plot No. 377,

Khatian No. 166 of Mouja Kanchanpur measuring an area of 0.38 acre be restored to the 1st party (2nd respondent herein). Being aggrieved this

writ petition has been preferred.

2. I have heard Mr. S. Deb, learned Senior counsel for the petitioner as well as Mr. U.B. Saha, learned Senior Govt. Advocate for the State at

length.

3. The main thrust of the argument of Mr. S. Deb is that the agreement executed between the 2nd respondent is only an agreement for sale and no

transfer of the land has taken place and therefore, the learned SDO has no jurisdiction to pass an order u/s 187(3) of the Act. It is further

contended by Mr. S. Deb that the transfer of land means the transfer of right in land and since no right of the land has been transferred to the

petitioner, it does not amount to transfer as envisages u/s 187 of the Act. On the other hand it is contended by Mr. U.B. Saha that even on their

own admission, the petitioner has taken over the possession of the land in question as it is stated in paragraph 2 of the petition that the possession

of land has been delivered to the petitioner and the petitioner has taken possession of the land and therefore, such transaction amounts to transfer

of land and such transfer is in violation of the provision prescribed u/s 187 of the Act inasmuch as no previous permission was taken from the

Collector and the other procedures prescribed under the Act has not been followed.

4. In the afore stated facts, not the questions that revolves around for determination in this writ petition are :-

(a) Whether the transaction taken place between the petitioner and the 2nd respondent in the deed of agreement of sale executed on 10-4-1974

amounts to transfer of land as envisages u/s 187 of the Act.

(b) if so, whether such transfer of land ultra vires the procedure prescribed u/s 187 of the Act and void ab initio.

To answer the aforesaid queries, it is necessary to have a quick survey of the relevant sections of the Act.

5. The Parliament has enacted an Act called ""The Tripura Land Revenue And Land Reforms Act. 1960 (43 of 1960)"" (in short TLR& LR Act).

The aforesaid Act has been notified in the Official Gazette on 14th Nov. 1961 and became effective from that date. Mention may be made that the

Act has found place in the 9th Schedule of the Constitution of India in list 64 (Principal Act), list 86 (2nd Amendment Act, 1974) and in list 122

(3rd Amendment Act, 1975) and therefore, the Act is protected under Article 31B of the Constitution. However, in the instant case, Article 31B

has no application because petitioner has not challenged the vires of the Act. I am only pointing out to show the importance of the Act.

6. Section 187 of the Act provides special provision regarding Scheduled Tribes. The Principal Act has undergone many changes after the

introduction of 2nd Amendment. The 2nd Amendment of the Act was made effective from 20-2-1974 and it has changed the entire character of

section 187.

7. Section 187 (after the 2nd Amendment) of the Act reads :-

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) the transfer is by way of mortgage to a co-operative society or to a bank or to the Central or the State Government:

Provided that the land transferred to a co-operative society or to a bank by way of mortgage in pursuance of clause (c) shall not be transferred by

such society or bank to a person who is not a member of the Scheduled Tribes without the permission of the Collector in writing.

Explanation :- In this sub-section, the expression "a bank" shall have the same meaning as in section 109.

(2)(a) Notwithstanding anything contained in the Transfer of Property Act, 1882, but subject to the provisions of section 187A, no transfer of land

by a person belonging to a Scheduled Tribes shall be valid unless made by registered instrument.

(b) No instrument of transfer made in contravention of sub-section (1) shall be registered or in any way recognised as valid in any court exercising

civil, criminal or revenue jurisdiction.

(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 transferee of his

successor-in-interest:

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

(4) No decree or order shall be passed by any court for the sale of the land or any portion thereof, of a person belonging to a Scheduled Tribe nor

shall any such land be sold in execution of any decree or order.

(5) When a certificate is filed for recovery of an arrear of land revenue in respect of the land of a person belonging to a Scheduled Tribe, the

Certificate Official shall, before a proclamation for sale of the land is issued in execution of the certificate, refer the case to a revenue officer

appointed under clause (a) of sub-section (3) who may sell the land to a member of the Scheduled Tribes, if available, and if not available, to any

other person at a fair market price to be fixed by such revenue officer, not being less than the amount due in respect of the Certificate.

Provided that if the homestead of the defaulting person is comprised in the lands such homestead shall not be sold :

Provided further that any amount remaining out of the sale proceeds after satisfaction of the amount due in respect of the certificate shall be paid to

the defaulting person.

8. Section 187 as read after the 22nd Amendment has brought may important changes in the Act giving further reliefs to the members of the

Scheduled Tribe. Apart from prohibiting a transfer of land from member of Scheduled Tribe to non-member of the Scheduled Tribe without

previous permission of Collector in writing, the important changes introduced in section 187 of the Act by the 2nd Amendment Act are these :-

(1) Making a transfer of land by person belonging to a Scheduled Tribe by a compulsory registered instrument.

(2) Provision for restoration of the land transferred illegally on or after the 1st Jan. "1969" in contravention of the section, by a Revenue Officer

specially appointed for this purpose.

(3) Barring the jurisdiction of court for the sale of a land of a person belonging to a Scheduled Tribe in execution of a court decree, and

(4) Provisions for executing a certificate filed for recovery of an arrear of land revenue in respect of the land of a person belonging to a Scheduled

Tribe and prohibiting the certificate official for proclamation of sale of land in execution of certificate unless the case is referred to a Revenue

Officer who may sell the and to a member of Scheduled Tribe first, if available, and if not available, to any other persons at a fair market price to

be fixed by such Revenue Officer not being less than the amount due in respect of the Certificate.

The Act further provides that the homestead of the defaulting Scheduled Tribe person if comprised in the land shall not be sold.

9. Section 187 as read is a composite in itself, aimed at rendering protective umbrella for member of Scheduled Tribe from alienating their land so

that they are not subjected to exploitation by reasons of economic or other disparities.

10. Having said so, I now proceed to answer the questions framed. The word "Transfer" has not been defined in the Act. Section 168 has been

amended by 2nd Amendment Act of 1974. Section 168 deals with restriction on transfer or partition of excess land. Explanation to section 168

define transfer. It reads :-

168. Explanation -In this section, "transfer" means transfer by act of parties (whether by sale, gift, mortgage with possession, exchange, lease or

any other disposition) made inter-vivo ;

11. The Explanation of transfer given in the section 168 is of wider import and includes transfer by way of sale, gift, mortgage with possession,

exchange, lease or any other disposition. Since the word "transfer" has not been defined in the Act, the definition of transfer given in the

Explanation to section 168 of the Act is applicable in the context of the present case. In the instant case, the petitioner categorically stated in

paragraph 2 of its petition that on receipt of the part-payment of the consideration amount of Rs. 6,200 on 10-4-1974, the possession of the land

was delivered to the petitioner by the 2nd respondent. There is also no dispute that the petitioner has been in physical and effective possession of

the land so delivered. The word, "or any other disposition" employed in Explanation to section 168 of the Act is adequately enough to cover the

present transaction inasmuch as the possession of the land has been delivered to the petitioner which would amount to disposition of the land.

Therefore, in my view, the transfer of the land is effected from the date i.e., 10-4-1974 when the possession of the land had been delivered to the

petitioner. It is also recited in the deed of agreement that after receiving the part-payment of the consideration amount of Rs. 6,200 in cash, the

executants delivered the possession of land in favour of the petitioner. It is further recited that the petitioner being in possession of the said land

continued to possess the same. There is no doubt in my mind that from and on 10-4-1974 the land in question had been transferred to the

petitioner and the petitioner had taken effective and physical possession over the land in question and it amounts to transfer of land.

12. The intendment of the legislature can also be gathered from the fact that the Act has stood amended 7 (seven) times and every amendment is in

aid of section 187. Chapter IXA has been introduced by 3rd Amendment Act, 1975. It deals with certain restriction on the rights of transfer for

the protection of the interest of Scheduled Tribes. By the 3rd Amendment Act, section 107A, 107B, 107C, 107D and 107E has been introduced.

13. Section 107B(d) define transfer. It reads :-

107B, In this Chapter, -

(d) ""transfer"" includes lease, mortgage with possession, sale, exchange or otherwise part with the rights of any land, but shall not include gift to any

member of the family and inheritance.

14. Mr. Saha has rightly invited my attention to the 6th Amendment Act by which the word "Transfer" appearing section 187 has been further

explained. The 6th Amendment Act of 1994 was published on 18th Oct. 1996. By the 6th Amendment, section 187 was further amended and

section, 187B, 187C and 187D has been inserted. In explanation to section 187, 187B 187C and 187D, the word ""transfer"" has been explained,

it reads :-

Explanation :- For the purpose of Section 187, 187B, 187C and 187D, the word ""transfer"" shall mean sale, mortgage, lease, exchange and gift as

defined in Transfer of Property Act, 1882 and include parting with fully or partly of ownership or possession of any land or any interest therein in

any other manner whatsoever but shall not include the requisition and acquisition of land under any law for the time being in force.

15. The aforesaid Explanation makes it abundantly clear that parting with full or partly of ownership or possession of any land would amount to

transfer of land, As already pointed out in the instant case, the admitted position is that the possession of the land in question had been delivered to

the petitioner from and on 10-4-1974 and the petitioner had taken effective and physical possession of the land and therefore, it is clearly a

transfer of land within the meaning of Explanations as referred to above.

16. There is no dispute that the word "Transfer" has not been defined under the Act. However, this being the important piece of legislation aimed

at rendering protective umbrella to the weaker sections of society, the Explanations of ""Transfer"" given in section 107B(D), 168, 187, 187B,

187C, and 187D (introduced by the 6th Amendment Act) are of wider import and adequately elastic to cover the present case and must be given

its full meaning so as to cause the advancement of the intendment of the legislature and not to frustrate it. To held otherwise, would be a negation of

the intendment of the legislature thereby frustrate the pious intendment of the Act.

17. The next question that arises for consideration is that whether such transfer has been taken place in violation of the provision prescribed in

section 187 of the Act and ultra vires of the Act. Section 187 as quoted above contemplates amongst others that (1) the transfer of land to a

person who is not a member of Scheduled Tribe by a Scheduled Tribe is invalid unless it is made with a previous permission of the Collector in

writing in the instant case, admittedly, the transfer of land was sought to be made to the petitioner who is a non-tribal. It is also admitted that the

previous permission of the Collector in writing has not been obtained inasmuch as the possession of the land was delivered on 10-4-1974 and the

application for permission has been filed only on 8-8-1975 subsequent to the transfer of the land. The requirement of section 187(1)(b) is a

condition precedent that before the transfer of land is effected, the previous permission of the Collector in writing is mandatory. The requirement of

section 187(2)(a) that the transfer of land by a person belonging to a Scheduled Tribe shall not be valid unless made by a registered instrument is

also absent. The mandatory requirement of sub-section (3) of section 187 is clearly attracted inasmuch as the transfer has been taken place on or

after 1st January 1969 and in contravention of the provision of sub-section (1) of section 187.

18. By now it is well settled principle of law that if the statutes directs that certain acts shall be done in a specified manner, or by certain person,

their performance in any other manner than that specified in the statutes, or by "any other person than one of those named, is impliedly prohibited.

In the present case, the whole transaction is in violation of the mandatory provision of section 187 of the Act and it is void ab initio. The order

dated 23rd Nov. '92 passed by the learned S.D.O. Kamalpur in Case No. REV/25/92 is validly made and not warranted any interference.

19. In the result, there is no merit in this writ petition and the same is dismissed. Interim order dated 31-5-1993 stands vacated. No costs.