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(2001) 01 GAU CK 0015

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 320 of 1994

Jogendra Sarkar	APPELLANT
Vs	
District Magistrate and Collector and Others	RESPONDENT

Date of Decision: Jan. 2, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tripura Land Revenue and Land Reforms Act, 1960 - Section 187, 187(1), 187(2), 187(3)

Citation: (2001) 1 GLT 304

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: Mr. S. Deb and Mr. A. De, for the Appellant; Mr. R.B. Sinha, for the Respondent

Final Decision: Disposed Off

Judgement

A.K. Patnaik, J.
In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the order dated 14.12.1990 of the Revenue Officer (SDO Khowai), West Tripura, directing restoration of possession of 0.20 acre of land in favour of the respondent No. 3 and the order dated 18.3.1994 of the District Collector, West Tripura, rejecting the appeal of the petitioner against the order dated 14.12.1990 of the Revenue Officer, West Tripura.

2. The facts briefly are that the petitioner was in possession of 0.20 acre of land which was recorded in favour of the respondent No. 3. The respondent No 3 filed complaint case No. 131/RST/KH/ 90 u/s 187 of the Tripura Land Revenue and Land Reforms Act, 1960 (for short "the Act"). An enquiry was conducted and after examination of field enquiry report and records of rights, the Revenue Officer. (SDO Khowai), West Tripura, held that the petitioner was in possession of 0.20 acre of land in plot No. 801 (part) in contravention of section 187 of the Act and ordered for eviction of the petitioner from the

said land and for restoration of the said land to the respondent No. 3. Aggrieved by the said order, the petitioner preferred an appeal before the District Magistrate, West Tripura, which was registered as Revenue Case No. 43/92. The said appeal was rejected by the District Collector, West Tripura, by order dated 18.3.1994. In the said order dated 18.3.1994, the District Collector, West Tripura, while rejecting the appeal held that he agreed with the enquiry report dated 30.7.1993 of the Sub-Divisional Officer, Khowai.

3. Mr. S Deb, learned counsel for the petitioner, submitted that the Revenue Officer has the power under sub-section 3(a) of section 187 of the act to eject the transferee or any person claiming under him from such land or part thereof only if the transfer has been made by a member of Scheduled Tribe to a person who was not such a member of Scheduled Tribe in contravention of section 187 of the Act on or after 1.1.1969. But in the instant case, no such finding has been recorded by the Revenue Officer that the transfer by a member of Scheduled Tribe to a person who was not a member of Scheduled Tribe has taken place on or after 1.1.1969. Mr. Deb further submitted that this point was raised by the petitioner in his appeal before the District Magistrate but the District Magistrate did not record any such finding that the transfer by the member of Scheduled Tribe has been made to a person who was not a member of Scheduled Tribe after 1.1.1969.

4. Mr. Sinha, learned counsel for the respondent Nos. 1, 2 and 4, on the other hand, submitted that since the petitioner did not produce any documentary evidence before the Revenue Officer (SDO Khowai), to show the purchase of the said 0.20 acre of land from, it was presumed that the land was transferred after 1.1.1969 by an unregistered deed as would be clear from the report of the Sub-Divisional Officer, Khowai to the District Magistrate submitted on 30.7.1993, a copy of which has been annexed to the writ petition as Annexure-2.

5. Sub-section 3(a) and 3(b) of section 187 of the Act are quoted hereinbelow:

"(3) (a) if a transfer of land belonging to a person who is a member of the Scheduled Tribes is made on nor 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 transferrer 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.".

It would be clear from the bare language of sub-section (3)(a) of section 187 of the Act quoted above that transfer of land belonging to a person who is a member of Scheduled

Tribe made on or after 1.1.1969 in contravention of the provisions of sub-section (1) of section 187 of the Act is the basis of jurisdiction of the Revenue Officer to pass an order in writing ejecting the transferee or any person claiming from such land or part thereof. Sub-Section 3(b) further states that where the Revenue Officer has passed an order under clause (a), he shall restore the land or any part thereof to the transferrer or his successor-in-interest. Since an order under clause (a) of sub-section (3) of section 187 of the Act can only be passed in case of a transfer of land belonging to a person who is a member of Scheduled Tribe on or after 1.1.1969 in contravention of sub-section (1) of section 187 of the act, an order of restoration under clause (b) of sub-section (3) of section 187 of the Act can only be passed where the transfer of land belonging to a person who is a member of Scheduled Tribe takes place on or after 1.1.1969. Thus for an order under clauses (a) and (b) of sub-section (3) of section 187 of the Act, a finding has to be recorded by the Revenue Officer that the transfer of land in question was made on or after 1.1.1969 and unless such finding is recorded the Revenue Officer cannot either eject the transferee or any person claiming under him from such land or restore the land to the transferee or his successor-in-interest.

6. In the instant case, neither the Revenue Officer (SDO Khowai) nor the District Magistrate have recorded any finding that the land measuring 0.20 acre under the possession of the petitioner belonging t the respondents No. 3 have been transferred in contravention of sub-sections (1) and (2) of section 187 of the Act on or after 1.1.1969. In the enquiry report dated 30.7.1993 of the Sub-Divisional Officer (Khowai) under Annexure-2, the Revenue Officer has sought to presume that the land was transferred after 1.1.1969 by an unregistered deed or without any deed because the petitioner did not produce any document before him. Mr. Deb, learned counsel for the petitioner, produced before the Court some documents to show that by an unregistered deed executed on 30.3.1965. the original Scheduled Tribe owner of the land had transferred the land to Smt. Haribashi Das and that thereafter the said land had been acquired by Sri Sukumar Chandra Deb and the said Sukumar Chandra Deb executed an unregistered sale deed dated 3.12.1988 in favour of the petitioner. It is not for this Court in exercise of powers under Article 226 of the Constitution to record any finding on the basis of the documents produced before it as to when the land was transferred in contravention of sub-sections (1) and (2) of section 187 of the Act. A finding, however, has to be recorded by the Revenue Officer on the basis of the said document and other documents that may be adduced by the parties as to whether the land in question had been transferred on or after 1.1.1969 in contravention of the provisions of sub-sections (1) and (2) of section 187 of the Act.

7. For the aforesaid reasons, I quash the order dated 14.12.1990 of the Revenue Officer (SDO Khowai) and the order dated 18.3.1994 of the District Magistrate and Collector. West Tripura, and direct that the matter will now go back to the Revenue Officer (SDO Khowai) who will hear the petitioner and the respondent No. 3 and on the basis of the evidence that the said two parties may adduce before him record his finding on the point

indicated above and thereafter pass fresh orders in accordance with law.