

**THE HIGH COURT OF MEGHALAYA**

**WA No. 46 of 2013**  
**IN WP(C)NO. 316 OF 2013**

Seven City Developers Pvt. Ltd.,  
A company incorporated under  
The provisions of the Companies Act, 1956  
And having its registered office at  
Mumbai : A – 302, Natraj Building,  
Yari Road Versova Village,  
Andheri (West),  
Mumbai – 400061, represented by its  
Director

.....Appellant

**-Versus-**

1. The State of Meghalaya  
Represented by the Secretary,  
Department of Revenue,  
Shillong-1, Meghalaya.

2. The Deputy Commissioner,  
Ri-Bhoi district,  
Nongpoh, Shillong,  
Meghalaya.

..... Respondents

1. Shri Binesh Marai,  
s/o Sri Burno Marai,  
r/o Umsop hai Village, Raid Marwet,  
Ri-Bhoi District,  
Meghalaya.

2. Shri Bepen Marai,  
s/o Sri Jursinah Marai,  
r/o Umsop hai Village, Raid Marwet,  
Ri-Bhoi District,  
Meghalaya.

3. Shri Lojen Teron,  
s/o Sri Ban Teron,

R/o Umsop hai Village,  
Raid Marwet,  
Ri-Bhoi District,  
Meghalaya.

4. Shri Binon Roagpeh,  
s/o Sri Ram Singh Roagpeh,  
r/o Umsop hai Village, Raid Marwet,  
Ri-Bhoi District, Meghalaya.

5. The Syiem Hima Myllem and Durbar,  
Mawkhar Main Road,  
Shilong-793001  
East Khasi Hills District,  
Meghalaya.

6. Syiem of Myllem,  
Myllem Syiemship,  
Mawkhar Main Road,  
Shillong-793001  
East Khasi Hills District,  
Meghalaya.

...Proforma Respondents

### **BEFORE**

**HON'BLE MR JUSTICE UMA NATH SINGH,  
CHIEF JUSTICE  
HON'BLE MR JUSTICE TNK SINGH**

**Advocate for Appellant : Mr S Sen, Adv.**

**Advocate for Respondents Mr ND Chullai, Sr. GA,  
Mr S Sen Gupta, GA.**

**Date of hearing : 31.03.2015**

**Date of Judgment : 31.03.2015**

### **JUDGMENT AND ORDER(Oral)**

(UN Singh, CJ)

This writ appeal arises out of a judgment and order dated 12.11.2013 passed in WP(C)No. 316 of 2012 by learned

single Judge, whereby the writ petition was dismissed having been found devoid of merits with liberty to writ petitioner to seek remedy available to it under Section 5 of the Meghalaya Land Transfer (Regulation) Act, 1971. Besides, the court also directed the authority concerned to consider the application for condonation of delay in filing the appeal.

2. Briefly stated the facts of appellant's case are thus :

- 2.1 An application under Section 4(1) of the Meghalaya Land Transfer (Regulation) Act, 1971 (hereinafter to be referred to the Act of 1971) was submitted by the appellant to seek prior sanction for transfer of land from a tribal to appellant, a company owned by non-tribal. It is submitted that the competent authority failed to take decision within a period of six months as envisaged under Sub-Section 3 of Section 4 of the Act of 1971. The appellant made out a case that it has by virtue of legal fiction acquired 'deemed sanction' on 07.10.2010 upon expiry of period of six months from the date of application by virtue of process of Sub-Section 4 of Section 4 of the Act of 1971.

It would also be relevant for ready reference to reproduce the letter dated 7.10.2010 submitted to Government of Meghalaya as under :

**“SEVEN CITY DEVELOPERS PRIVATE LIMITED**

**B1, Ashmita Jyoti Society,  
Marve Road, Malad West,  
Mumbai  
Government of Meghalaya,  
Nongpoh  
Dear Sir/Madam,**

***Please find enclosed an application for transfer of land under Rule 4(1) of the Meghalaya Transfer of Land (Regulation) Act, 1971 for transfer of ALL THAT piece or parcel of land situated at Umsophai Village, Raid Marweit, Myllem Syiemship, Ri-Bhoi District, Meghalaya measuring about 4,71,199,174 sq mts along with the following enclosures :-***

- 1) Schedule "A" Form A Part I-2 copies;***
- 2) Schedule "A" Form A Part II-2 copies;***
- 3) Pattah – 2 copies;***
- 4) NOC from Syiem of Myllem – 2 copies;***
- 5) Certificate of Incorporation – 2 copies;***
- 6) Memorandum of Association – 2 copies;***
- 7) Articles of Association – 2 copies***
- 8) Form No. 18 – 2 copies;***
- 9) Form No. 32 – 2 copies;***
- 10) Plan duly authenticated – 5 copies;***
- 11) Treasury challan for Rs. 250/-***

***We would request you to kindly accord us permission for transfer of the aforesaid land at the earliest and oblige***

***Thanking you***

***Yours truly,***

***FOR SEVEN CITY DEVELOPERS PRIVATE LIMITED"***

2.2 Thereafter, vide letter dated 09.03.2011, the appellant sent a reminder to the Deputy Commissioner, Ri-Bhoi District, Nongpoh for grant of permission to register the transfer of the land. Again thereafter vide letter dated 12.04.2011 further reminder was sent to Extra Assistant Commissioner (Revenue) Ri-Bhoi District, Nongpoh and then vide letter dated 24.11.2011 to Principal Secretary,

Revenue Department, Government of Meghalaya, again reiterating that as six months period has expired on October, 2010 it has acquired deemed sanction to seek transfer of land as per law. The appellant also filed WP(C)No.(SH) 82 of 2012, which was disposed of by learned single Judge of the then Shillong Bench of the Gauhati High Court by passing the following order dated 21.06.2012 as :

***“ Heard Mr VK Jindal, learned senior counsel assisted by Mr S Dey, learned counsel appearing for the petitioners and Mr HS Thangkhiew, learned senior counsel appearing on behalf of the respondents.***

***The petitioners herein (tribals) have been holding a plot of land situated at Raid Marwet in Ri-Bhoi District of Meghalaya by virtue of “Ka Dular Khyndew” (land document) issued in their favour. As per the land document, the petitioners have a right of possession and ownership of the land subject to condition that (1) they are to renew the document once in 3 years and to pay the renewal fee (2) not to sell or pay damages of the land to others, without informing the Darbar U syiem Hima Myllem; and (3) if they are not using the land or keeping it for after 3 years without using it, the Darbar of syiem Hima Myllem will hold the power, as per the custom of land Ri Raid community land under the Hima Myllem. The no objection certificate was also issued in favour of petitioners for registering the plot of land in question.***

***The petitioners (tribals) and the proforma respondent-Seven City Developers Pvt. Ltd. made application for grant of permission to transfer the said plot of land to proforma respondent No. 3 as per the provisions of the Meghalaya Transfer of Land (Regulation) Act, 1971. The said application has not been disposed of.***

**Under sub-Section 4 of Section 4 of the Meghalaya Transfer of Land (Regulation) Act, 1971, if no order is passed by the competent authority on such application within six months, it shall be deemed that sanction has been accorded. In compliance the provision of the Act, notices were also issued by the competent authority inviting tribal buyers to purchase the said plot of land and for spot inspection of the plot. Although, petitioners never acted upon this 'deemed sanction' and the plot of land was still standing in the name of petitioners and yet the respondent No. 2 vide a communication dated 07.03.2012 informed the petitioners that the land document granted to them vide registration No. 44 and all other related documents, including no objection certificate are cancelled. It is alleged in the said letters that it is prima facie transpires that the petitioners (tribals) have alienated and transferred the land to pro-forma respondent without prior permission of Darbar of Syiem.**

**It is submitted by the learned counsel for the petitioners that the petitioners were never given any opportunity to explain their position before the issuance of impugned communication. The impugned letter was purported to be issued as per the direction/order No. DCXXVII/Gen/91/2011-12, from the Deputy Secretary to the Executive Committee, Khasi Hills Autonomous District Council, Shillong. It is submitted that the said order is merely a general direction issued by the Executive Committee to chek the sale deeds which have been given to non-Khasis and if they have been wrongly given and against the administration and customs, which is under the Committee, Raid have the right to take back and return the land to the Committee.**

**The petitioners have repeatedly stressed that there has been no transfer of land in question and consequently no**

**violation of any existing law, rule, regulation or custom.**

**Considering the matter in its entirety, it transpires that the land documents issued in favour of the petitioners were cancelled. The petitioners have been deprived of their right of property without affording any opportunity to be heard is against the principle of natural justice.**

**Therefore, the communication dated 07.03.2012 issued by the respondent No. 2 is set aside. The respondents made enquire the matter as per law after giving due opportunity to petitioners to explain/establish their claim.**

***This disposes of this writ petition.”***

- 2.3 The appellant thereafter sent a communication dated 07.11.2012 to respondent No. 2, namely, the Deputy Commissioner, Ri-Bhoi District, Nongpoh, Meghalaya with a request to issue certificate with clarification that the company intends to transfer/lease the land situated at Umsohpai village in Ri Bhoi District because it had applied for transfer/lease on 7<sup>th</sup> April 2010 as per Clause 4(1)(d) of the Meghalaya Transfer of Land (Regulation) Act, 1971. The said letter on reproduction reads as :

**“ To  
The Deputy Commissioner,  
Ri Bhoi District, Nongpoh  
Meghalaya.**

**Subject : Issue of certificate**

**Dear Sir,**

**Some of the people are out to tar our image in the region. They have spread rumors that our company has transferred land in Ri Bhoi area. Since you are the only Competent Authority to decide on land transfer from tribal to non tribal. We**

*would request you to give us a certificate or letter clearly stating that we intent to transfer/lease All that piece or parcel of land situated at Umsohpai Village, Raid Marwet, Myloliem Syiemship in Ri Bhoi district. We had applied for land transfer/lease on 7<sup>th</sup> April 2010 as per the Meghalaya Transfer of Land (Regulation) Act 1971 clause 4(1)(d). The decision of transfer till date is pending with the State Government.*

*To ensure that the company is not doing anything illegally we are working in partnership with the landowners. The company is engaged in agriculture on the above mentioned land on the request of the villagers of Umsohpai.*

*Kindly give us a certificate for the same so that we can try and put all rumors to rest.*

*Thanking you*

*Regards*

*Sd/-*

*Kitty Sarkar*

*(Director)*

*Date : 7/11/2012”*

- 2.4 The Deputy Commissioner, in reply thereto vide communication dated 19.11.2012 clarified that the appellant cannot transfer, own, use or derive benefits from the land as per the Act of 1971. The communication, inter alia, also conveyed that following the enquiry made by respondent No. 2- namely, the Deputy Commissioner, the matter was reported to the Government. The said letter is also reproduced hereunder as :

**“GOVERNMENT OF MEGHALAYA  
OFFICE OF THE DEPUTY COMMISSIONER  
RI BHOI DISTRICT, NONGPOH**

**No. DCRB(LR)4/2010/23/1486 Dated  
Nongpoh 19.11.2012**

**To**



**The Director,  
Seven City Developers Pvt. Ltd,  
New Umsohpai Village,  
Ri Bhoi District**

**Sub : Regarding of Issuing of Certificate  
Ref : Your letter No. NIL, dt 7.11.2012**

***In referring to the subject cited above,  
this is to inform you that you cannot  
transfer it in your name at present and  
cannot own/use or derive benefits from the  
land as per Meghalaya Transfer Land  
Regulation Act, 2010. So far this office  
had enquired into the matter and the same  
has been reported to Government.***

***Yours faithfully,***

***Sd/-***

***Deputy Commissioner,  
Ri Bhoi District, Nongpoh.”***

3. Being aggrieved by the letter dated 19.11.2012, the appellant filed WP(C)No. 316 of 2012 which was disposed of by the impugned judgment and order dated 12.11.2013. Learned single Judge of this Court dismissed the writ petition having found it being devoid of merit. However, the Hon'ble single Judge also observed that the appellant if so liked may seek remedy available to it under Section 5 of 1971 Act and the authority concerned may consider the application for condonation of delay in filing the appeal. Now, being aggrieved by the aforesaid judgment, the appellant has filed the instant writ appeal, inter alia, on the following grounds : that the Court while dismissing the writ petition also held that the petition was devoid of merit even without appreciating the fact and law applicable thereto: that the Court misconstrued and misinterpreted the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971; that the Court failed to appreciate that in view of Section 4(4) of the Act, there was a deemed sanction for transfer of land in question by virtue of creation of a legal

fiction under the deeming provision; that the Court ought not to have accepted the communication dated 19.11.2012 as an order of refusal of sanction by the Deputy Commissioner; that in view of operation of Section 4(3) of the 1971 Act, the competent authority had no power to issue an order of refusal of sanction and the impugned communication dated 19.11.2012 was beyond the pale of his jurisdiction. It was also contended that the then Shillong Bench of the Gauhati High Court in WP(C)No. 82 of 2012 restored the patta of land owners by passing a conclusive judgment, for, they had not been given any opportunity to give reply and explain their position. That judgment is binding on respondent authorities who did not even question its legality in a higher forum. It is also an argument of the appellant that the writ petition was decided in haste even without allowing the exchange of pleadings. It is also a submission that the ratio of the judgment of Hon'ble the Apex Court regarding grant of sanction reported in **2009 (1) SCC 240 paragraph 23, Rikhabdao Nathusao Jain V. Corporation of the City of Nagpur** was also not considered by the learned Single Judge.

4. We have heard learned counsel for parties at length and also perused the rival pleadings.

5. We are not inclined to grant the relief(s) as prayed for, for the reasons (i) that the land belongs to tribal natives of the State of Meghalaya and there is no such terms and conditions in the articles of agreement entered between Dorbar Synjuk 10 Shnong, Tasku area and the appellant M/s Seven City Developers Pvt. Ltd. that either of them can transfer the land in question. For ready reference, the text of the agreement is reproduced as:

**“DATED THIS 25<sup>TH</sup> DAY OF JUNE 2011**

**BETWEEN**

**VILLAGE UMSOHPHAI .....FIRST PARTY**

**AND**

**SEVEN CITY DEVELOPERS**

**PRIVATE LIMITED .....SECOND PARTY**

**A G R E E M E N T**

**ARTICLES OF AGREEMENT made this 30<sup>th</sup> day of**

**August in the year Two Thousand Eleven**

**BETWEEN**

**DORBAR SYNJUK 10 SHNONG, Tasku area represented  
by the Chairman and Headman of Ten villages, Post  
Lailad, Police Station Nongpoh, Ri-Bhoi District,  
Meghalaya, hereinafter referred to as the “FIRST  
PARTY” (which term or expression shall unless  
excluded by a repugnant to the subject or context be  
deemed to mean and include its execution,  
administrators, legal representatives, successor and/or  
assigns) of the FIRST PARTY.**

**M/S SEVEN CITY DEVELOPERS PRIVATE LIMITED a  
company within the meaning of The Companies Act,  
1956 and having its office at B1/86, Ashmita Jyoti Coop  
Hsg., Society, Marve Road, Malad West, Mumbai,  
hereinafter referred to as “SECOND PARTY” (which term  
or expression shall unless excluded by or repugnant to  
the subject or context be deemed to mean and include  
its executors, administrators, legal representatives  
and/or assigns) of the SECOND PART.**

**W H E R E A S**

- A. The party of the Second Part is carrying on business  
near Village Umsohphai and the parties herein have  
offered to observe the terms and conditions as set forth  
in this agreement.**
- B. The Villagers under the banner of Dorbar Synjuk 10  
Shnong, Tasku area have unanimously authorized their**

*respective Village Headmen's to represent them and sign this agreement on their behalf.*

**NOW THIS AGREEMENT WITNESSETH** *and it is hereby mutually agreed by and between the parties hereto as follows:-*

**ECONOMIC EMPOWERMENT**

- 1. The party of the Second Part will try to fulfill its entire workforce requirement with the residents of the said villages, as per the qualifications and ability of the residents of the said Villages under Dorbar Synjuk 10 Shnong, Tasku area. If the requirement of the company is not fulfilled within a stipulated timeframe, only then will it hire people from outside.*
- 2. In case of the need by the Second Part to outsource any shop and establishment the party of the Second Part shall give first opportunity to the people of the said villages to open the same.*
- 3. For Fuelling a spurt in agricultural activities for the residents of the said Villages, the party of the Second Part offers contract farming to the residents of the said villages with mutually agreed terms and conditions.*
- 4. The party of the Second part shall bring the various Government schemes for the promotion and/or formation of self help groups, community based livelihood programmes and other various employment schemes to the notice of the residents of the Villages under Dorbar Synjuk 10 Shnong, Tasku area and shall extend all help and co-operation in order for the residents of the Villages to take advantage of the same in order to improve their income and quality of life.*
- 5. The Party of the Second Part shall educate and impart knowledge, which they are practicing and using in their business in Umsohphai, to the residents of the Villages under Dorbar Synjuk 10 Shnong, Tasku area, about the various new developments in the field of agriculture and various other methods of generating income like*

*development of animal husbandry, pisciculture, sericulture, arts and crafts, etc. They shall also buy back the produce of the Party of the First Part and/or help them to market the same wherever possible.*

- 6. The Chairman of Dorbar Synjuk 10 Shnong, Tasku area and the respective Village Headmen of the said Villages shall as and when required grant all No Objection Certificates required by the party of the Second Part in order to carry on their business and/or avail essential services and/or for any other purposes in accordance with law.*
- 7. The party of the Second Part shall work out schemes to provide the commodities so grown and/or produced by the Second Part at subsidized rates to the residents of the Villages for their own consumption only.*

#### **HEALTH AND SANITATION**

- 8. The Party of the Second Part shall extend all co-operation to the party of the First Part to reach out to the Government Of Meghalaya and The Government Of India in order to voice their concern over the absence of any primary health care centre and/or a hospital in the area and shall also extend all co-operation in setting up the same upon funds being provided by the concerned State or the Central Government and shall also provide their land free of cost for the same.*
- 9. Under the various schemes floated by the Government under National Rural Health Mission the party of the Second Part shall together with the Chairman/Secretary of Dorbar Synjuk 10 Shnong, Tasku area and the Headmen of the Villages try to ensure medical insurance for each of the residents of the Villages and also shall try and get availed of the medical facilities to the residents of the Villages.*
- 10. The party of the Second Part will encourage the residents of the said villages to segregate their domestic waste, with the purpose of vermicomposting. The agricultural waste and domestic waste can be used*

*in the vermicompost beds. The vermicompost, used as manure, will increase the agricultural output of the villages. In case the villages want to sell it; the party of Second Part will buy it at a mutually decided price.*

#### **EDUCATIONAL EMPOWERMENT**

- 11. The Party of the Second Part shall provide all possible assistance to the State government, any implementing agency(s) and the residents of the villages in their endeavours to provide primary education to the children of the said villages. In Pynker Village, the party of the Second Part has already provided this assistance free of cost.*
- 12. The party of the Second Part shall after the unanimous decision of the Village Dorbar, School and the Company provide for the primary education of the deserving children who are not able to attend school due to economic reasons.*
- 13. In case any educational institution is ever opened by the party of the Second Part on the said land the deserving students of the villages shall be given the opportunity to study there free of cost.*
- 14. The party of the Second Part as per the policy, adopted from time to time, would try to provide for higher education to deserving candidates, of the said villages who are not able to study further due to economic reasons.*
- 15. The party of the Second Part is providing Adult Education at their business area and invites all the residents of the said villages, who wish to avail this opportunity, to come to study free of cost.*

#### **INFRASTRUCTURE AND COMMUNICATION DEVELOPMENT**

- 16. The Party of the Second Part has already constructed various motorable agriculture roads leading from the Village Lailad to Village Umsophai and beyond, to ease transportation and communication. In the future, we*

*plan to raise and build the infrastructure of the region for the betterment of the residents. In Mawpnar, the company has repaired 3km connecting road, and constructed a school field also.*

- 17. Both the parties will try to extend all possible help to the state government to ensure that a good and short route to Guwahati and to NH40 is developed.*
- 18. The party of the Second Part shall request the mobile telecommunication companies to set up services in and around the Villages to set their towers so that mobile and internet connectivity will be available to the said villages in the near future. The party of the Second Part will also provide land for the said towers in their business area.*
- 19. NABARD schemes and initiatives have empowered the villages in Maharashtra to be self sufficient in power requirements by generating bio-fuel through their own waste. The party of the Second Part would request NABARD to start similar schemes in the area to generate bio-fuel. They would attempt to tope in the all the players, State government, Central government, the residents and themselves to make the area of self-sufficient in Green Power.*

#### **RELIGION CULTURE AND SPORTS**

- 20. The party of the Second part shall respect the religion, religious beliefs and practices of the residents of the said Villages. Similarly the part of the First Part shall respect the religion, religious beliefs and practices of the employees of the Second Part. The party of the Second Part had prepared the venue for a religious conglomeration in New Tasku.*
- 21. The party of the Second Part shall respect the customary land laws, beliefs and practices of the local people, it would also extend all help to the State government to preserve and document the cultural practices, art and music of the said villages.*

***22. The party of the Second Part also the purposes an annual fair on the dates to be mutually decided by both the parties to host a “Mela”. This would be a 2-3 day long festivities where in the residents of the said villages will have a market during the day followed by cultural programmes by the said villages during the evenings. The party of the Second Part will try to promote this in the region so that more people will come to buy the products.***

***23. The party of the Second Part will show entertainment and educational films every 3 months free of cost for all the residents of the villages.***

***24. The party of the Second Part proposes the formation of Club in each village. The Club would engage in sports and cultural activities. The company would also try to provide newspaper and other reading material, which can be used between Clubs as a circulating library. It would also provide sports equipment and musical instruments wherever necessary.***

***25. The party of the Second Part has constructed a football field in Umsohphai Village. The party of the Second Part shall construct a football field in their business area or in the land provided by the villages with mutual consent. If agreed, it proposes to hold an annual football tournament between the villages and provide for cash prize and a trophy.***

#### **MISCELLANEOUS**

***26. The terms of this agreement may be altered and/or amended from time to time with the mutual consent of both the parties.***

#### **ARBITRATION**

***27. All disputes and differences between the parties hereto arising out of this Agreement regarding the construction or interpretation of any of the terms and conditions herein contained or determination of the liabilities or otherwise touching these presents shall be referred to the two independent Arbitrators, one to be appointed by***



*each party, who shall jointly appoint an umpire at the commencement of the arbitration proceedings. That upon reference made by the parties regarding dispute the Arbitrators shall proceed as per The Arbitration And Conciliation Act, '996. Any award made by such Arbitrators shall be final, conclusive and binding on both the parties. The Arbitrators shall have summary powers and shall be entitled to give award(s) in lot or lots.*

**JURISDICTION**

*This agreement shall stand valid and enforceable in the courts of law till the time the party of the Second Part is carrying on business at the Village Umsophai.*

**IN WITNESS WHEREOF** *the parties hereto have put their respective hands and seals the day month and year first above written;*

**SIGNED, SEALED AND  
DELIVERED by the FIRST PARTY  
above named at Tasku in the  
presence of:-**

**SIGNED, SEALED AND  
DELIVERED by the SECOND  
PARTY above named at Tasku  
in the presence of:-**

**Dated: Tasku,  
The 30<sup>th</sup> August, 2011".**

As noticed hereinabove, the tribal natives of the area being the owners of land are to hold the land by virtue of Ka Dular Khyndew (land document) issued in their favour. As per the land document, they have a right of possession and ownership of the land subject to the condition that (i) they are

to renew documents once in three years and to pay the renewal fee (ii) not to sell or pay damages of the land to others, without informing the Darbar U Syiem Hima Myllem; and (iii) if they are not using the land or keeping it for three years without using it, the Darbar of Syiem Hima Myllem will hold the power of restoring the land to the community as per the custom of Ri Raid Community under the Hima Myllem. It would accordingly appear that there are serious customary restrictions on the alienation of the land. They are not to enter into any transaction without informing the Darbar U Syiem Hima Myllem and in the case of non-utilisation of the land, the same has to be restored to the Darbar. Thus, it is a kind of inalienable right of ownership in the land in question. In the instant case, even in the absence of no such terms and conditions in the agreement between the parties, the land owners and Seven City Developers applied for grant of permission to transfer the said plot of land to the Company under the Act of 1971. Though the land owners and the Company claimed to have acquired 'deemed sanction' for transfer of the land but they never acted thereupon till 21.06.2012 when the learned single Judge of Gauhati High Court passed the judgment. Rather, they repeatedly stressed that there was no transfer of land in question and therefore, there was no violation of any existing, rule, regulation or

custom. If they had acquired deemed sanction for transfer of land in 2010, as they claimed, we fail to understand as to why did they not act as observed in the judgment of learned Single Judge. Though the appellant herein claimed that it will try to achieve economic empowerment; provide health and sanitation facilities; provide all possible assistance for educational empowerment; infrastructural and communication development; and also facilities relating to religion, culture, sports and other miscellaneous activities to first party but the fact remains that the Company is only interested in doing business and wants to utilize the agreement for that purpose. It is mentioned in the agreement that the Company is carrying business near village Umsohpai and further that it also wanted to get the transfer of land for business, in agriculture products, Horticulture, Herbiculture, Pisciculture **and also Real Estate etc,** as it is obvious from its letter dated 12.04.2011 submitted to Extra Assistant Commissioner (Revenue), Ri-Bhoi District (Annexure P5 to the writ petition). That apart, the agreement in question which was entered between a tribal and non-tribal is also not registered in terms of Section 17 of the Registration Act, 1908. We also notice that the application for sanction to transfer the land was submitted to the Government of Meghalaya at Ri-Bhoi, whereas, the seat of Secretariat of Government of Meghalaya is

at Shillong. Besides, no notification was annexed with the petition or appeal to say that as to whether it is the Deputy Commissioner or the State Government that is the competent authority in the case of transfer of land in question. Section 2(a) of the Act of 1971 provides the definition of competent authority as follows :

***“2. Definitions. In this Act, unless the context otherwise requires –***

***(a) “competent authority” means such authority as the Government of Meghalaya may, by notification, appoint for the purpose of exercising all or any of the functions of a competent authority under this Act for the whole of Meghalaya or any part thereof;”***

Thus, the competent authority is to be appointed by Government of Meghalaya by issuing notification for the purpose of exercising of all or any of the functions of a competent authority, under this Act, for the whole of Meghalaya or any part of Meghalaya. Section 3 of the Act of 1971 deals with transfer of the land. It would thus be pertinent to reproduce it hereunder :

***“3. Transfer of land. (1) No land in Meghalaya shall be transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority :***

***Provided that the Government of Meghalaya, if satisfied, may from time to time by notification, prohibiting such transfer of land within such area or areas as may be specified in the notification and thereupon the competent authority shall not sanction***

*any such transfer of land under the provisions of this Act, within such area or areas.*

*(2) Every notification issued under the proviso to sub-S.(1) of this section shall,*

*(i) have effect on the date of its first publication in the official Gazette of Meghalaya;*

*(ii) be laid, as soon as may be after its publication in the official Gazette, before the House of the Legislative Assembly of the State.*

*(3) Any transfer of land made in contravention of the provisions of this section shall be void and shall not be enforceable in any Court.”*

Section 3(1) starts with no land in Meghalaya shall be transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority. Thereafter, there is a proviso that the Government of Meghalaya if satisfied may from time to time by notification prohibit such transfer of land within such area or areas as may be specified in the notification and thereupon the competent authority shall not sanction any such transfer of land under the provision of this Act.

Section 4 of the Act of 1971 deals with disposal of application. It is also reproduced as :

***“4. Disposal of applications. (1) In granting or refusing sanction under S. 3 the competent authority shall take into account the following matters according to the circumstances of each case :***

***(a) whether the non-tribal holds any other land in Meghalaya ;***

***(b) whether there is any other tribal willing to take the land on transfer at the market value ;***

- (c) whether the non-tribal seeking to take the land on transfer is carrying on any business, profession or vocation in or near the area and whether for the purposes of such business, profession or vocation, it is necessary for him to reside in the area;***
- (d) whether the proposed transfer is likely to promote the economic interests of the Scheduled Tribes in the area.***
- (2) Every order granting or refusing sanction shall be in writing and in the case of refusal shall contain reasons for such a refusal.***
- (3) Every application for sanction under this section shall be disposed of by the competent authority as early as possible and not later than six months.***
- (4) If no order is passed by the competent on such application within six months, it shall be deemed that the sanction has been accorded.”***

In granting sanction, the competent authority, inter alia, shall consider the requirements of Section 4(1)(a)(b)(c)(d). In Section 4(1)(c), the land can be transferred to businessman only for residence as it is necessary for him to reside in the area. This Section does not provide for transfer of the land of a tribal to a non-tribal for agricultural purpose.

6. After filing of appeal, the Deputy Secretary to the Government of Meghalaya, Revenue and Disaster Management Department has filed affidavit dated 19.02.2015 in compliance of order dated 22.09.2015 of this Court to bring on record the nature of the land in question situated at Umsohpai Village, Ri-Bhoi District. In the said affidavit, vide Annexure A, paragraph 3, it is mentioned that the land in question has 60% of forest coverage, although, it is not a reserved or protected forest. The affidavit is based on the report

submitted by Divisional Forest officer, Khasi Hills (T) Division, Shillong. It may not be out of place to reproduce the report of DFO for reference. It reads as :

**“GOVERNMENT OF MEGHALAYA  
FORESTS AND ENVIRONMENT DEPARTMENT  
OFFICE OF THE DIVISIONAL FOREST OFFICER:: KHASI  
HILLS(T) DIVISION:: SHILLONG**

**No.KH/Forest defn/2012-13/5589                      dated  
11.02.2015**

**To     The Principal Conservator of Forests & HoFF  
Meghalaya, Shillong**

**Sub    : Status of land in Umsop hai Village Raid Marwet,  
Ri-  
              Bhoi district.**

**Ref: Your    letter    No.    MFG.10/24/2015/14968    dt.  
10.02.15**

**Sir,**

**With reference to the above mentioned subject, I have the honour to submit to you that the undersigned had inspected the said land on 10.02.15 and report of the inspection is as below :**

- 1.    The said land is situated at Umsop hai Village, Raid Marwet, Ri-Bhoi District.**
- 2.    This office had not received the top sheet and GPS map of the said area for ascertaining the boundaries of the land in question.**
- 3.    The representative from M/s Seven City developers were not present during the inspection.**
- 4.    The area of the said land could not be verified.**
- 5.    Hence, the boundaries were identified roughly based on the natural features as mentioned in the letter No. GA/MHC/C-(25)/242 dtd. 04.02.15.**
- 6.    The said area is not a part of the Reserved Forests and Protected Forests under this Division.**
- 7.    The said land is having naturally grown trees and sympodial bamboos.**
- 8.    The some part of the land is predominantly having bamboo cover.**
- 9.    There are evidences of felling of large sized trees and clearing of bamboos for growing turmeric in the said land.**
- 10.   The representative sample plots (0.1 hectares size) were laid to enumerate the trees and bamboo clumps.**

11. *The number of trees having 15 cm and above diameter at breast height (DBH) and number of bamboo clumps within sample plots were enumerated (tree numeration data enclosed).*
12. *The data from sample plots has been used to determine the said land as Forest or Non Forest as per the definition of 'Forest' adopted by the Government of Meghalaya.*
13. *About 60% of the said land is 'Forest Land' as per the definition of 'Forest' adopted by the Government of Meghalaya.*
14. *Hence, about 2,83,19,504 sq meter (60%) of the said land requires prior approval of the Central Government under Section 2 of the Forest (Conservation) Act 1980 for non forestry activities.*

*This is for the favour of your kind information and necessary action.*

*faithfully,*

*Yours*

*Sd/-*

*Divisional Forest*

*Officer*

*Khasi Hills (T) Division, Shillong."*

It appears from the report that at the time of inspection, representative of the appellant/Company was not present. As per the report, the land is having naturally grown trees and sympodial bamboos, some part of the land is predominantly having bamboo cover and there are evidences of felling of large sized trees and clearing of bamboos for growing turmeric in the said land. However, it is mentioned that since 60% of the land area (2,83,19,504 sq meter), is forest land, as per definition of 'Forest' adopted by the Government of Meghalaya, the land transfer would require a prior approval of the Central Government under Section 2 of Forest (Conservation) Act, 1980 for using it for non-forest activities.



Section 2 of the Forest (Conservation) Act, 1980 reads as given below :

***“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -***

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion hereof, shall cease to be reserved;***
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;***
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;***
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.***

***[Explanation.- For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for-***

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants,***
- (b) any purpose other than reafforestation,***

***but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”***

Thus, there is a restriction of prior approval of the Central Government on the use of land or any portion thereof for any non-forest purpose and as per explanation for the purposes of this Section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants and any purpose other than reafforestation.

Shri MS Rao, Principal Secretary to the Government of Meghalaya, Forest and Environment Department has also filed affidavit in compliance of the order dated 23.02.2015 passed by this Court. In para 4 of the affidavit, the Principal Secretary has stated that the forest as defined in Meghalaya Forest Regulation (Amendment) Act, 2012 is not confined to notified forest area. The definition is in accordance with the ruling of Hon’ble the Apex Court in IA Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in WP(C)No. 202 of 1995 (TN Godavarman Thirumulpad vs. Union of India and others). In para 5 of the affidavit, it is stated by the Principal Secretary that with coming into force of Meghalaya Forest Regulation (Amendment) Act, 2012 all transfers of land which classifies as forest as per definition provided under Section 2 of the said Act requires the approval of Forest and Environment

Department to ensure that there is no contravention of Forest (Conservation) Act, 1980.

Section 2 of the Meghalaya Forest Regulation (Amendment) Act, 2012 provides as under :

***“In Section 3 of the Meghalaya Forest Regulation (Assam Regulation 7 of 1891 as adapted and amended by Meghalaya), after clause (9) , the following new clause (10) shall be inserted, namely,-***

***(10) An area would be “forest” if it is a compact or continuous tract of minimum 4 hectares land, irrespective of ownership, and where –***

***(a) more than 250 naturally growing trees per hectare of 15 cm and higher diameter at breast height (DBH) over bark are present; or***

***(b) more than 100 naturally growing bamboo clumps per hectare are present in case of the tracts containing predominantly sympodial bamboo:***

***Provided that in case of tract containing mixed crop of non-bamboo vegetation and bamboo, the qualifying number of trees including bamboo clumps would be proportionately modified from the above specified numbers for determining the land as “forest”***

***Provided further that a tract of land used for traditional way of agriculture by the tribal population or for bonafide community livelihood needs shall not be “Forest” irrespective of the density of vegetation growing on it:***

***Provided further that any area recorded as “Forest” in any of the Government records including the records of the Autonomous District Councils of the State shall ipso facto be “Forest” irrespective of the size and number of trees including bamboo clumps:***

***Provided further also that “Forest” shall also include all the areas irrespective of size, ownership and type of vegetation growing on such areas which have been identified by a competent authority and notified as protected areas or critical wildlife habitat or corridors for wildlife or habitat of endangered species or eco-sensitive/eco-fragile areas or critical catchment areas of rivers and other water sources or biodiversity heritage sites or sacred groves in the State”.***

It appears from proviso 2 of the Section that agriculture is permitted only by the tribal population or for bonafide community livelihood in the forest area. In the inspection

report dated 11.02.2015, the DFO has stated that the land is having naturally grown trees and sympodial bamboos, some parts of the land is predominantly having bamboo cover and there are evidences that large sized trees were over there but they were felled for growing turmeric. Thus, in forest area of Meghalaya, non-forest activities by a non-tribal is not permitted under Section 2 of the Act of 2012 and also the Forest (Conservation) Act, 1980. Besides, the agreement in question between the parties is not only unregistered but it is also in violation of the provisions (in the form of restrictions) as provided in Section 2 of the Forest (Conservation) Act, 1980, an enactment which had come into force much before the agreement of 2011 between the parties.

There is no dispute about the settled legal position of law regarding the legal fiction of deemed sanction but in the given facts and circumstances of the case when the State of Meghalaya is predominantly inhabited by 80% tribal population, that the area is governed by the Sixth Schedule to the Constitution of India, that the agreement which is said to form the basis of application for sanction to transfer the land is not a registered document having no stipulation for transfer of land, and that Section 2 of the Forest (Conservation) Act, 1980 and Section 2 of Meghalaya Forest Regulation (Amendment) Act, 2012 also do not permit such transfer of

land, we are not inclined to entertain the writ appeal. In addition to what is said hereinabove, the Hills of Meghalaya are badly affected by denudation of its forest coverage, illegal mining activities like rat hole coal mining etc, which have severely affected the local climate and ecological balance to the extent of shifting of site of highest rainfall in Cherrapunjee area, to some other area, thus, any attempt on the part of Appellant/Company to start non-forest activities in forest land belonging to the local tribes needs to be viewed seriously and as such, it cannot be permitted. Hence, we dismiss the writ appeal, being devoid of merits.

JUDGE

CHIEF JUSTICE

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