

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) NO.146 OF 2013

1. **Smti. Madhura Manjari Singh Deo @ Manika Rana,**
daughter of late Major Rajkumar Dahal Bahadur Rana,
a resident of Vill-Kuarmunda, P.O. & P.S. Birmitrapur,
District-Sundargarh, Orissa

2. **Rana Janardhan Jungbahadur**
@ Shri Jagat Dipendra Rana,
son of late Major Rajkumar Dahal Bahadur Rana,
a resident of Vill-Gonda Town, Kanke Road,
P.O. & P.S. Bariatu,
District-Ranchi-834008, Jharkhand

The petitioners Nos.1 and 2 are represented by their
constituted attorney, the petitioner No.3.

3. **Kumari Modita Rana,**
daughter of late Major Rajkumar Dahal Bahadur Rana,
a resident of Ujjayant Palace, Agartala,
P.S. West Agartala, District-West Tripura,
PIN-799 001

..... **Petitioners**

- V e r s u s -

1. **The State of Tripura,**
through the Secretary to the Government of Tripura,
Animal Resources Development Department,
Civil Secretariat, Agartala-799 006

2. **The Tripura Co-operative Milk Producer Union Ltd.,**
Indranagar, Agartala-799 006, West Tripura
represented by its Managing Director

3. **The Settlement Officer,**
Government of Tripura, Office of the District Magistrate
& Collector, West Tripura, Agartala-799 001

4. **The Assistant Survey Officer,**
Sadar Revenue Circle, Office of the Sub-Divisional Magistrate,
Sadar, Agartala, West Tripura, PIN-799 001

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. S. M. Chakraborty, Sr. Advocate
Ms. P. Sen, Advocate

For the respondents : Mr. S. Deb, Sr. Advocate
Mr. B. Debnath, Advocate

Date of hearing : 11.03.2016

Date of delivery of Judgment & Order : **31.03.2016**

Whether fit for reporting : **No**

JUDGMENT & ORDER

By means of this writ petition, the petitioners have challenged fundamentally the order dated 31.12.2012, Annexure-P/7 to the writ petition, passed by the Settlement Officer, Government of Tripura in case No.38 of 2003 in exercise of the power of revision as provided under Section 95 of the Tripura Land Revenue and Land Reforms Act, 1960, in short TLR & LR Act, directing mutation of the land comprised in Khatian No.448/1 of Mouja-Indranagar against the plot No.3735 (new) measuring 2.63 acre which is the jote land of the petitioners as inherited as the legal heirs of the original owner, Smti. Jugal Kishori Devi, since deceased.

[2] The petitioners have further prayed for directing the respondents No.1 and 2 to handover of the vacant possession of the said land to the petitioner or to acquire their said land by

observing the procedure of law on payment of fair compensation at the prevailing market rate on the day when the writ petition has been filed. They have further asked to prohibit the respondents No.3 and 4 from opening any new Khatian in the name of Animal Resources Department or in the name of the Tripura Co-operative Milk Union Ltd., which is admittedly in possession of the said land for a quite long time. By an interim order dated 03.06.2013, the following observation was made by this court:

"Till the returnable date, the respondent shall not take any decision adverse to the interest of the petitioners in terms of the impugned order dated 31.12.2012 passed by the respondent No.3 in case No.38 of 2003 (Annexure-7 to the writ petition)."

The said interim order was extended by the order dated 05.08.2013. As such, it is assumed on the basis of records that the mutation in view of the order dated 31.12.2012 has not taken place.

[3] The factual gamut of this case is primarily divided in two parts, viz. (1) as to the title and (2) consequence of long possession. So far as the title of the said land is concerned, it is admitted that the title of the land was with Smt. Jugal Kishori Devi and her name had been recorded as rayat under column 13 of Khatian No.722 (jer 1929) of Mouja-Indranagar against plot Nos.1708 and 1709. Even in the impugned order the following has been observed:

"It appears from the inquiry report of the Amin dated 25.09.02 that the Milk Union Ltd. is occupying land measuring 1.37 acre under Hal Plot No.3734 recorded in Khatian No.4/4 of the Department of Industries and 2.63 acre under Hal Plot No.3735 recorded in Khatian No.4438/1 of Jugal Kishori Devi."

Even thereafter the Settlement Officer, the respondent No.3 herein, in exercise of the power conferred under Section 95 of the TLR & LR Act has directed the Sub-Divisional Magistrate, Sadar for deleting the name of Jugal Kishori Devi and to record the land pertaining to Khatian No.4438/1 in the name of Animal Resources Department.

[4] Mr. S. M. Chakraborty, learned senior counsel appearing for the petitioners has submitted that Jugal Kishori Devi is the mother of the petitioners. After her death in 1985, by virtue of inheritance the petitioners become joint owners of the said land. When they discovered that the respondent No.2 had unauthorizedly occupied their land for their activities, they raised their objection but the respondent No.1 and 2 did not take any initiative for handing over the vacant possession, neither did they acquire the same as per the procedure as laid down in law. The petitioners by a letter dated 10.11.1999, Annexure-3 to the writ petition had demanded to the respondent No.2 for vacating their unauthorised occupation. In para-4 of the said letter, it has been asserted that "Khatian No.722 prepared in the name of Rani Jugal Kishori Devi (My mother), the Xerox copy is annexed herewith, shown plot No.1709, 1708 and 1707/8254 covering an area 2.50 acres

occupied by "Tripura Dugdha Sarwaraha Kendra on which pacca construction has been made as per remarks on Khatian". Thereafter, on 24.11.1999 the Managing Director of the Tripura Milk Producers Union Ltd. had written a letter, Annexure-4 to the writ petition, to the Director, Animal Resources Development Department having referred the letter of the petitioner No.3. It had been stated in the said letter that:

"Further, we are to refer your letter no.F1-12/AHD/GEN/87/29 dated 31.10.1998 addressed to the Director, Land Records and Settlement, Govt. Of Tripura and No.F1-12/AHD/GEN/97 dated 24.11.1998 addressed to the Settlement Officer (West Tripura), Palace Compound, Agartala in respect of examining the matter of actual states and land presently under occupation of the Tripura Cooperative Milk Producers' Union Ltd."

[5] On the basis of the said letter dated 24.11.1999 addressed to the Settlement Officer, the Assistant Settlement Officer caused the field inquiry and disallowed the prayer of the respondent No.2 to get the mutation as prayed. The final order dated 26.06.2002 has recorded the finding in the following terms:

"Heard the party and Examined the all papers submitted in favour of the Tripura Co-operative Milk Producer Union Ltd., Indranagar, the letters submitted/send by Smt. Modita Rana daughter of Rani Yugal Kishori Devi, field enquiry report submitted by Sri Shyam Sundar Sarkar Amin and all the concerned records available in this Halka office and found that following.

- (i) **Mr. Chakraborty admitted that the said land in question is under the possession of Tripura Co-operative Milk Producer Union Ltd., Indranagar since 1973 and they have submitted all the concerned**

documents relating to this case No.230 to this Rev. Court which are available with them.

- (ii) As per the letters of Smt. Modita Rana, Tripura Co-operative Milk Producer Union Ltd. are unauthorisedly occupying their land.**
- (iii) Total 19.34 acres of area of savek Plot nos.1706/p, 1708/p, 1710/p, 1696/p, 1703/p, 1626, 1627, 1628/p, 1629, 1630/p, 1631/p, 1640/p, 1641/p, 1645/p, 1647/p, 1625/p, 1529, 1527, 1517, 1518/p, 1519/p, 1522/p, 1523, 1526, 1530, 1534, 1535/p, 1538/p, 1540/p, 1520/p, 1621, 1624, 1619/p, 1617, 1618, 1615/p, 2720/p, 2721/p, 2722, 2725 & 2726/p were notified for a public purpose viz. for construction of Industrial Training Institute vide Tripura Gazette No.10148-52/DM/LA/SN/703/58 dt. Agartala the 8th Dec, 1958.**
- (iv) In accordance with Govt. Memo no.FDI/TRG/2(33)/64-65/3801-05 dt. 28th Sep, 1973 total 4.00 acre of land was handed over by the than principal I.T.I. on behalf of the Director of Industries to the Asstt. Dairy Development officer on behalf of the Director of Animal Husbandry & Vety Service.**
- (v) According to the field enquiry report submitted by Sri Shyam Sundar Sarkar Amin 2.50 acres of area of hal Plot No.3735 corresponding to savek of area of hal Plot No.1709, 1708, 1707/8254p of KH No.-722 and 1.27 acres savek Plot No.1707, 1703, 1706, 8260p, 8258p & 8259p, of KH No.575 jer 1936 are under the possession of Tripura Co-operative Milk Producer Union Ltd.**
- (vi) Total 1.27 acres of area is recorded against hal Plot No.3734 in KH no.1936 of Industries Deptt. And total 2.50 acres of area is recorded against hal Plot No.3735 in KH No.722 of rayati Yugal Kishori Devi W/O- Rana Dahal Jung Bahadur.**
- (vii) Now from the above, it reveals that the 4.00 acres of area of savek Plot No.1710, 8254, 8258, 8259, 8260 & 1707 was taken over by the Asstt. Dairy Development officer on behalf of the Director of Animal Husbandry & vety, services but the plot No.825 of area of savek Plot No.1710, 8254, 8258, 8259, 8260 & 1707 was taken over by the Asstt. Dairy Development officer on behalf of the Director of Animal Husbandry & vety, services but the plot No.8254, 8258, 8259 & 8260 are not mentioned in the notification (Gazette) No.10148-52/DM/LA/SN/703/58 dt. Agartala the 8th Dec, 1958 and it is not clear that which part or portion of land of**

savek Plot No.1710 & 1707 was notified by the above mentioned Gazette notification.

And the applicant or his representative could not produce any memo or notification regarding approval. Revenue Deptt. For the said 4.00 acres of land of savek Plot No.1710, 8254, 8258, 8259, 8260 & 1707 which was handed over by the than principal I.T.I. on behalf of the Director of Industries to the Animal Husbandry & vety. services on 19th 1973.

Hence, due to non submission of the proper document/documents in support of the claim of recording of the said 4.00 acres of area in favour of the Tripura Co-operative Milk Producer Union Ltd. the case is hereby disallowed.

Ordered that the objection rejected. The earlier record prevails."

[6] After the said order dated 26.06.2002 was passed, on 20.08.2002 the respondent No.2 wrote another letter to the Settlement Officer, West Tripura, Annexure-6 to the writ petition, contending that the land in occupation by them was handed over by the Animal Husbandry Department as it then was. On 08.06.1994 in terms of the letter dated 31.05.1994 written by the Director of Animal Husbandry, Annexure-R/7 to the counter affidavit, the land as comprised in Dag No.1710, 8254, 8258, 8259, 8260 and 1707 of mouja-Indranagar was transferred to the Animal Husbandry Department by the Director of Industries, Government of Tripura in terms of the memorandum dated 28.09.1973, annexure-R/5 to the counter affidavit. According to the respondent No.2, the appropriate Government had acquired the said land by publishing the notice in the Tripura Gazette in its Extra-ordinary Issue dated 09.12.1958. The respondent No.2 had submitted the

said notification to the Settlement Officer along with the said letter. Thereafter, having referred the said letter of the petitioner No.2, where it has been asserted that their land pertaining to the plot Nos.1709, 1708, 1707/8254 of Khatian No.722 jer 1929 of Mouja Indranagar has been encroached by the respondent No.2, the respondents No.1 and 2 raised their serious grievance against the said order dated 26.02.2002 passed by the Asstt. Settlement Officer stating that, that order "court not protect the interest of the milk union as well as the government". On the basis of the letter, a proceeding under Section 95 of the TLR & LR Act was launched and by the impugned order dated 31.12.2012 it has been directed that:

"The land under plot No.3734 measuring 1.37 acre and hal plot No.3735 measuring 2.63 acre of Mouja-Indranagar shall be recorded in the name of Animal Resources Development Department by deleting the same from the Khatian No.474 of Department of Industries & Khatian No.4438/1 of Jugal Kishori Devi respectively. For deletion of name of Jugal Kishori Devi from Khatian No.4438/1 the Settlement Officer has considered various documents including the declaration dated 05.12.60, gazette notification dated 10.03.1965 whereby 4.48 acres of land were derequisitioned from the land as shown in the declaration dated 05.12.60. Copy of the letter dated 26.08.1972 for acquisition of the additional land measuring 2.80. Memorandum dated 28.09.1973 on the basis of which it has been inferred that the land measuring 2.80 acre after withdrawal of 4.84 acre was acquired by the department of Industries for extension of the ITI, Indranagar from the old jote No.645 owned by Jugal Kishori Devi. Part of Niskar Taluk Mahal owned by Rani Bhanu Prava Devi. Thereafter, the settlement officer has observed that the location of the earlier acquired land measuring 19.34 acre. That without making any referene to the plot Nos. Vis-a-vis the relevant Khatian No. it has been bluntly observed by the settlement officer that the land measuring 2.80 acre of which possession was handed over for 2.545 acre was acquired by the

department of Industries for extention of industrial training institute, Indranagar from the land owned by Jugal Kishori Devi. Thereafter, the settlement officer relied on the inquiry report of Amin dated 25.09.2002 which was also relied by the Asstt. Settlement Officer. The said report has admittedly recorded that the respondent No2 has been occupying the land measuring 1.37 acre under hal plot No.3734 recorded in Khatian No.4/4 of the Department of Industries and 2.63 acres under hal plot No.3735 recorded in Khatian No.4438/1 of Jugal Kishori Devi.

[7] Mr. S. M. Chakraborty, learned senior counsel has submitted that the respondents have entirely failed to produce any piece of paper to show that the land measuring 2.63 acre comprised in hal plot No.3735 recorded in Khatian No.4438/1 was acquired or they had the title over the said land by any other means. As such, the 'correction' by way of mutation of record as directed by the impugned order is entirely illegal and in breach of the provisions of law. He has further submitted that neither the mother of the petitioner namely Jugal Kishori Devi nor the petitioners themselves have permitted the respondents No.2 to occupy the said jote land, owned by them by means of inheritance.

[8] Mr. S. Deb, learned senior counsel appearing for the respondents has submitted in reply that the Director of Animal Husbandry had handed over the land to the Agartala Dairy as it then was. In the course of time, the dairy activities have been taken over by the Tripura Milk Producers' Union Ltd., the respondent No.2 herein. Mr. Deb, learned senior counsel has relied on the declaration dated 08.12.1958, Annexure R/1 to the counter

affidavit filed by the respondents No.1, 2 and 4. In particular, he has referred to the serial No.27 where the name of the predecessor of the petitioners appears for acquisition of her land measuring 1.06 acre. It appears that the plot No.1708/p was included inside the boundary of the acquired land. Mr. Deb, learned senior counsel has further referred to the memorandum dated 28.09.1973 whereby the administrative approval for handing over the land measuring 4.00 acres was given. In the said memorandum dated 28.09.1973, the new survey plot Nos. which were handed over to the respondent No.2 have been referred as Settlement Dag No.1710, 8254, 8258, 8259, 8260 and 1707 at Mouja-Indranagar, Agartala, Tripura and those plots were taken over by the competent officer of the respondent No.2.

[9] It is not in dispute that in Khatian No.4438/1 (from the Khatian No.722 jer 1929) which was opened on 13.04.2004, the plots No.1719, 1708 and 1707/8254 part are covered. But those plots are converged to the new plot No.3735. The name of Jugal Kishori Devi has been recorded there as rayat. In terms of Section 99 of the TLR & LR Act the rights of a rayat in his land shall be permanent, heritable and transferable. The ordinary meaning of the rayat is a tenant under the Government having those rights as stated. Section 46 of the TLR & LR Act has provided that any person on acquiring by succession, survivorship, inheritance, partition, purchase, gift, mortgage, lease or otherwise any right in

the land shall make an application for mutation and on due inquiry the mutation can be permitted. In this case on inquiry it was found by the Amin that the land measuring 2.63 acre comprised in plot No.3735 and recorded in Khatian No.4438/1, is the land of Jugal Kishori Devi in possession of the respondent No.2 without any valid transfer or acquisition. What Mr. Deb, learned senior counsel has stated that by declaration dated 08.12.1958 the land in the plot No.1708/p was acquired. But it has been recorded by the respondent No.3 in the impugned order that from the memorandum dated 28.09.1973 issued by the Joint Secretary, Government of Tripura it is apparent that transfer/handing over of 4.64 acre of land by the Department of Industries to the Department of Animal Husbandry had taken place for setting up of a dairy at Agartala and since those are official documents and those documents clearly show that the land measuring 2.80 acre (after withdrawal of 4.80 acres) was acquired by the department of Industries for extension of ITI from the old jote No.645 owned by Jugal Kishori Devi, it has to be inferred that the land in question was acquired. No record to support acquisition of the land as recorded under Khatian No.4438/1 has been produced either before the Asstt. Settlement Officer or before the Settlement Officer. Merely on the basis of some communication it has been assumed by the Settlement Officer that acquisition of new plot No.3735 (corresponding to old plot No.3709, 3708, 1707/8254) had taken place but no notification in this regard had been placed, even not

before this court. The respondent No.2 has filed a separate counter affidavit and they also could not produce any such record and by virtue of the declaration dated 02.11.1961, Annexure-R/2 of the counter affidavit filed by the respondent No.2, it has surfaced that the following plots were covered by the said declaration: Survey plot Nos.1041/p, 1044/p, 1048/p, 1051, 1805/p, 1050/p, 1052, 1047 from the niskar jatuk mahal owned by Bhanu Prava Devi. But the Settlement Officer, the respondent No.3 herein nor the Asstt. Settlement Officer did not notice the notification No.F.17(2)-Acq/Rev/65 dated 10.03.1965 part of Annexure-R/2 whereby out of the said land covered by the said declaration dated 02.01.1961, 4.48 acre of land was withdrawn from the acquisition. In the schedule the land as withdrawn has been shown. The land is comprised in the survey plots No.1051, 1048/p, 1044/p, 1041/p, 1052 measuring 12 kanis 12 gandas i.e. 4.84 acre. On comparison it appears that the plot No.1708/p was not withdrawn from the acquisition. But if the plot No.1708 is partly acquired the remaining part might be with Jugal Kishori Devi. Therefore, on the basis of the declaration dated 08.12.1958 it cannot be stated that the original rayat Jugal Kishori Devi did not have the title over the plot No.1708/p comprised in Khatian No.4438/1 of mouja-Indranagar. Hence this court is of the view that the Settlement Officer while passing the impugned order dated 31.12.2012 has committed patent illegality on assuming acquisition and directing deletion in the name of Jugal Kishori Devi against the plot No.3735 measuring

2.63 acre recorded in the Khatian No.4438/1 of Mouja-Indranagar and recording the same in the name of the Animal Resources Department. As such, that part of the observation and direction are interfered with and set aside. However, the order in respect of hal plot No.3734 is liable to be not interfered with. That part of the impugned order be duly acted upon.

[10] This court however cannot direct the respondent No.2 for vacating the possession for obvious reason that the Settlement Officer did not examine any other aspect except the ownership of the land. The petitioner shall be at liberty to take appropriate recourse for recovery or vacation of the land in accordance with law.

In the result the writ petition is partly allowed. There shall be no order as to cost.

JUDGE

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