

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No. 1296 of 2017

Sri Sushanta Saha,
son of Sri Subhash Saha,
resident of Central Road, Udaipur, P.S. Radhakishorepur,
District- Gomati, Tripura

... *Petitioner*

- **Versus** -

1. **The State of Tripura,**
represented by the Secretary-cum-Commissioner,
Department of Revenue, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District- West Tripura
2. **The Sub Divisional Magistrate,**
Udaipur Sub Division, Udaipur
Government of Tripura, District- Gomati, Tripura
3. **The Deputy Collector and Magistrate,**
Gomati, Tripura

... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. BN Majumder, Advocate

For respondents : Mr. DC Nath, Addl. GA

Date of hearing & delivery
of Judgment and Order : 21.12.2017

Whether fit for reporting : NO

JUDGEMENT AND ORDER (ORAL)

Heard Mr. BN Majumder, learned counsel appearing for the petitioner as well as Mr. DC Nath, learned Additional Government Advocate appearing for the respondents.

2. There is no dispute that the petitioner purchased a plot of land measuring 0.23 acres by the registered sale deed no. 1-2817 dated 28.12.2016 from Debdas Das and Debasish Das. The said land pertains to khatian no. 2130 and khatian no. 1945 of Mouja- South Chandrapur under Tehsil- South Chandrapur, Udaipur Sub Division and comprised in CS plot nos. 1979,

3455/5013(part) measuring 0.04 satak in RS plot no. 1971,
3455/4889(part) measuring 19 acres.

3. The petitioner after purchase applied for the mutation of the records and for opening a new khatian in his name on the strength of the said sale deed, but the mutation was not granted and rejected by the mutation officer by the order dated 20.05.2017 observing as under:

“Pursuant to the letter of the Inspector, Industrial Finance, Udaipur, Gomati District which has been issued/endorsed upon me by the concerned Deputy Collector & Magistrate, Udaipur, Gomati District vide No. F.5/55-3/SDM/UDP/TLR/2017/58-60 dated 22.06.2017 in connection with an FIR vide No. 524 dt. 31.12.2012 was lodged at R.K. Pur P.S. against the said NBFC and subsequently, the case was handed over to CBI and later on the case was filed in the District Sessions Court, South Tripura, Udaipur and the case still Sub-judice in the Court.

Hence, the mutation case is hereby dropped until further communication is made to this end”

4. Against that order passed by the mutation officer on 20.05.2017, the petitioner herein filed an appeal under Section 93 (1)(a) of the Tripura Land Reform and Land Revenue Act, 1960 before the Sub Divisional Magistrate, Udaipur, Gomati District. The Sub Divisional Magistrate did not entertain the appeal and passed the order dated 28.08.2017 observing *inter alia* as follows:

“ Now, the court is of the view that though there is no evidence that the case has been concluded but the case is with the CBI and pending for final judgment by the Ld. District & Sessions Court. And the mutation was disallowed by the mutation officer on the ground that the petitioner could not submit original document. The concerned party may apply for fresh mutation u/s 46 of the TLR & LR Act, 1960 after the final judgment. Thus, the case is hereby disposed off”.

The said order dated 28.08.2017 and the order dated 20.05.2017 are under challenge in this writ petition.

5. Mr. BN Majumder, learned counsel appearing for the petitioner has submitted that even though there exists the alternative remedy for filing the second appeal but the exercise of the jurisdiction by both the courts below was without any authority of law and in defiance of the law. As such, it touches the fundamental right guaranteed under Article 14 of the Constitution of India and as such the petitioner has approached this court. Mr. Majumder, learned counsel has also submitted that the provisional attachment order is required to be passed by the Secretary, Government of Tripura under Tripura Protection of Interest of Depositors (in Financial Establishments) (Amendment) Act, 2011 but no such proceeding has been initiated by the Secretary, Revenue Department till today and hence there cannot be any valid attachment proceeding before the Sessions Judge, Gomati, Tripura.

6. Mr. DC Nath, learned Additional Government Advocate appearing for the respondents has vehemently argued that there is nothing wrong in this order. Moreover, if the petitioners had any grievance they might have approached the District Collector by filing the second appeal under Section 93(1)(b) of the TLR and LR Act, 1960. Mr. Nath, learned Additional GA has continued to submit that one Sushanta Saha, i.e. the petitioner had applied for the mutation initially for 0.04 acres in RS plot no. 3455/5031 of Mouja- South Chandrapur and the mutation case was accordingly registered. Again another application was filed for another plot of land measuring 0.19 acres comprised in RS

plot no. 3455/4849 and a separate mutation case was registered. The petitioner had applied on the strength of the registered sale deed no. 1-2817 dated 28.12.2016. On 14.02.2017 both the cases were placed for hearing before the mutation officer. After hearing, those cases were disallowed by the mutation officer on the ground that the petitioner had failed to produce the original documentary evidence i.e. the power of attorney. Mr. Nath, learned Additional GA has thus submitted that the cases were disallowed as an FIR was lodged at R.K. Pur police station in respect of the concerned land. The said case is still pending in the court of the Sessions Judge, Gomati District, Udaipur. According to Mr. Nath, learned Additional GA, the revenue officer did not commit any mistake by refusing the order of mutation. In this connection, Mr. Nath, learned Additional GA has referred to a communication of one Inspector, Institutional Finance, Udaipur, Gomati, Tripura which was issued on 16.05.2017 to the Deputy Collector and Magistrate, Udaipur, Gomati, Tripura giving reference to pendency of a CBI case in respect of one financial institution.

7. After considering the submissions of learned counsel for the parties, this court is faced with two pertinent questions, viz.

- (i) Whether this court can exercise its jurisdiction under Article 226 of the Constitution of India when there is an alternative remedy available under Section 93(1)(b) of the TLR and LR Act, and

(ii) Whether the order of the mutation officer as well as the first appellate officer can be maintained for the reason of what, they have considered as the ground for rejection.

8. This court is really taken aback how both the revenue officers have exercised their jurisdiction on the basis of a communication made by the Inspector, Institution of Finance and how on the basis of that communication they have ignored the registered sale deed by which the title was transferred in favour of the petitioner. There is no reflection or finding in the impugned order to show that there is any challenge against the title of the petitioner at any court of law. When there is no challenge against the title of the petitioner before any court, the mutation officer is bound to mutate the land if the other requirements, as laid down in Section 46 of the TLR and LR Act are concerned to. If the petitioner had not produced before the mutation officers the original registered sale deed that might have been a valid ground for rejecting the prayer but that was not assigned as the ground in either of the orders. In both the cases, the pendency of one case in the court of the Sessions Judge has been shown as the ground and Mr. Nath, learned Additional GA has fairly admitted that there is no order of attachment against the said land nor there is any order of disability regarding the transfer, in breach of which the transfer has been caused or no order from the Civil court injunctioning the transfer as such has been placed on record. Even there is no

existence of any dispute which is being adjudicated by the civil court concerning the land under reference.

9. In such circumstances, the orders passed by the mutation officer and the first appellate revenue officer are absolutely arbitrary and against the attribute of Article 14 of the Constitution of India. The mutation officer cannot devise their own law and own procedure to deprive a citizen to get the mutation when he is otherwise entitled to get such mutation. The extraneous matters which had been taken into the consideration has made this order arbitrary and unsustainable. As such, even if there is an existence of the alternative remedy available to the petitioner, this court can exercise its jurisdiction.

10. As consequence of such observation both the impugned orders are liable to be set aside and accordingly those are set aside. The mutation officer is hereby directed to reopen the proceeding and if the original sale deed had not been produced or if the petitioner is represented by his attorney, he might be directed for production of the original deed of sale or the deed of the power of attorney.

11. Mr. Majumder, learned counsel appearing for the petitioner has however pointed out that the original sale deed and the original power of attorney were produced before the mutation officer and the mutation officer had also conducted the field enquiry. The report of the field inquiry has also been produced before him. If those are borne in the record of the

mutation officer, the mutation officer shall pass the fresh order in accordance with the law ignoring the pendency of a case in the Sessions court inasmuch as merely some land is mutated in someone's name, the lien or charge created on their land cannot get jeopardized. The fresh mutation proceeding shall be completed within 31.03.2018 without fail.

12. In term of the above findings, this petition stands allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

Saikat