

**HIGH COURT OF TRIPURA
AGARTALA**

CRP 90 of 2018

1. Shri Sankar Saha,
son of late Hiralal Saha
2. Smt. Mithu Paul (Saha)
wife of Sri Sankar Saha
3. Smt. Pratibha Rani Saha,
wife of late Hiralal Saha
4. Sri Krishna Lal Saha,
son of late Anath Bandhu Saha
[Heirs of Late Archana Saha]
- 5(a) Sri Subrata Saha,
son of late Shital Chandra Saha
- 5 (b) Sri Sukanta Saha,
son of late Shital Chandra Saha
all are resident of 12/2 Thana Road,
PS:East Agartala, District: West Tripura
- 5(C) Smt. Sarbari Saha,
wife of Sri Parimal Saha,
daughter of Late Shital Chandra Saha
6, HGB Road, Melarmath, PS: West Agartala,
District: West Tripura.

---- Petitioners(s)

Versus

1. The State of Tripura
represented by the Secretary,
Revenue Department Govt. of Tripura,
New Capital Complex,
PO: Kunjaban, Agartala,
PS: East Agartala, West Tripura.
2. The Director,
Land Records and Settlement,
Government of Tripura, Agartala, PO: Agartala
District: West Tripura

3. The District Magistrate and Collector
West Tripura, PO: Agartala,
PS: West Agartala, District: West Tripura
4. Agartala Municipal Corporation,
represented by the Chief Executive Office, at present
Commissioner , Agartala Municipal Corporation, City Centre,
Agartala, PO: Agartala, PS: West Agartala, District: West Tripura
5. The Executive Officer, East Zone,
Agartala Municipal Corporation, Math Chowmuhani, Agartala, PS:
East Agartala, District: West Tripura.
6. Sri Sambhunath Saha,
son of late Balaram Saha
7. Sri Priyanath Saha,
son of Balaram Saha
8. Sri Bholanath Saha,
son of late Balaram Saha
9. Smt Ujjala Saha,
wife of Sri Priyanath Saha
10. Sri Badal Saha,
son of Late Anathbandhu Saha
11. Sri Subhodh Saha,
son of late Suresh Chandra Saha

all are residents of 12/2 Thana Road, Banamalipur, PS: East
Agartala, District: West Tripura

12. Sri Suman Deb,
son of Late Santosh Chandra Deb
13. Sri Chandan Saha,
son of late Hiralal Saha
14. Sri Gopal Saha,
son of late Hiralal Saha
15. Smt. Tandra Saha,
wife of Sri Sudarshan Saha
daughter late Hiralal Saha

all are residents of 12/2 Thana Road, Banamalipur, PS; East
Agartala, District: West Tripura.

16. Smt Alo Rani Saha,
wife of Sripada Saha
daughter of late Hiralal Saha

resident of Jail Ashram Road, Dhaleswar,
PS: East Agartala, District: West Tripura

17. Smt. Jharna Saha,
wife of Sri Sudhir Chandra Saha
Kamarpukurpar, Agartala,
PS: East Agartala, District: West Tripura
18. Smt. Khusi Saha,
daughter of late Anathbandhu Saha
Kamarpukurpar, Agartala,
PS: East Agartala, District: West Tripura

----- Respondent(s)

For Petitioner (s)	: Mr. Somik, Deb, Adv.
For Respondent(s)	: Mr. P. Dhar, Adv. Mr. K.K. Pal, Adv Mr. P. Gautam, Adv.
Date of hearing	: 18.02.2020
Date of pronouncement	: 31.07.2020
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

By means of this petition, filed under Article 227 [as converted to] of the Constitution of India, the petitioner has urged this court for issuance of certiorari by quashing the order dated 20.04.2013 (signed on 02.05.2013) by the District Collector, West Tripura in exercise of power conferred by Section 96 of the TLR & LR Act on setting aside the order dated 31.09.2010 (Annexure-4 to the petition) as passed by the Settlement Officer, West Tripura, Agartala in Cases No.423/2008, 424/2008 and 425/2008 under section 95 of the TLR & LR Act, 1960. Further, it has been urged that the respondents No.1, 2 & 3 be directed to give effect of the order dated 31.09.2010 passed by the Settlement Officer in the

Cases No.423/2008, 424/2008 and 425/2008 concerning the proceeding land pertaining to Mouja Agartala sheet No.14.

[2] In a nutshell, the claim of the petitioners is that the petitioners are recorded owners of a common pathway since 1974 and they did never part with the ownership of the common pathway pertaining to Khatian No.4390, CS Plot No.11787 measuring .044 acre under Mouja Agartala Sheet No.14 West Tripura. It has been asserted by the petitioners that originally four sons of Ram Kumar Saha namely, Kumud Bandhu Saha, Jaga Bandhu Saha, Anath Bandhu Saha and Balaram Saha were the joint owners of the said pathway having 1/4th share each.

[3] After death of Kumud Bandhu Saha, the said pathway was recorded in the name of his two sons namely Aswini Kumar Saha and Mohini Mohan Saha having 1/8th share of the said pathway. According to the petitioners, the Khatian No.4390 was finally published on 20.06.1974 during survey and settlement operation reflecting the names of the co-sharers correctly. According to them, the said pathway was illegally recorded as the government khas land in the year 2007. The khatian No.1/43125, RS(Hal) Plot no. 2068 of Mouja Agartala amalgamating CS Plot No.11787 with several other plots. The said pathway was recorded in the said Khatian No.1/34 [as re-opened] showing the said path usable by the public.

[4] For the continuity of the said pathway, another Khatian being Khatian No.1-35 had been published but by that Khatian (Annexure-2 to the writ petition) the CS Plot No. 11787 was converted to a new plot No.2068. That was a revised Khatian. The petitioners had set in the proceeding under Section 95 of the TLR & LR Act, 1960 being case No.423/08 424/08 and 425/08 before the District Collector. However, the proceedings were transferred to the court of the Settlement Officer, West Tripura, Agartala.

[5] During the proceedings, a field inquiry was conducted and the report of the said inquiry was produced before the Settlement Officer. After hearing, the Settlement Officer had recorded the claim of the petitioner over the said pathway. Even, it has been recorded that those six co-owners of the pathway had formed the mutual agreement and applied to the Chairman, Agartala Municipal Council as it then was, jointly stating that they had decided to hand over the road to Agartala Municipal Council for development of the road and pucca drain on both sides. Subsequently, the revenue authority recorded the said land in the government Khatian. The said pathway has been extended and now, the pathway is used by about 30 families of the locality. Thus, the character of the road converted to that of a public pathway.

[6] The persons who were opposing the prayers of the petitioners have raised objection against the said claim of restoring the pathway as the private pathway. The petitioners who set in the proceedings under Section 95 of the TLR & LR Act, 1960 were all signatories to the said payer made to the Agartala Municipal Council. But their signatures on the said application have been questioned in the proceeding and it has been contended that even if it is assumed that such application was moved, but that cannot be treated as transfer of the land. It has been also brought to the light that such decision was taken in a conciliation meeting held in a local club. It has been further contended by the opposing party that under section 107 of the TLR & LR Act, the raiyat can relinquish the right of ownership to the government.

[7] It appears that in the final order dated 31.09.2010 (Annexure-4 to the writ petition) the provision of law has been incorrectly typed. For such purpose, the relevant provision is section 107 of the TLR and LR Act. The final conclusion as drawn by the Settlement Officer reads as follows:

"The contention made by the Ld. Advocates for the Ops regarding the right to raiyat(s) for relinquishment of their right on land to the Government without registered deed U/S 170 of the TLR & LR Act has been also examined. It appears that a raiyat/raiylats can relinquish his/their right on land in favour of the Government as per provision of the aforesaid section in a prescribed manner. But in the instant case, the owners of the land (road) did not relinquish the land in question to the Government as

per procedure laid down in the Act and Rules. During the Revisional Survey the Bhujarat Amin recorded the road in khas Khatian without any case proceeding or instruction from the competent Authority.

In view of the above, it is ordered that the land under hal plot No.2068 measuring 0.0700 acre of Agartala sheet No.14 shall be recorded in previous stage i.e. in the names of Aswini Kr. Saha, Mohini Mohan Saha both sons of Kumud Bandhu Saha, Jagabandhu Saha, Anath Bandhu Saha and Balaram Kr. Saha, all sons of Ram Kr. Saha as ejmali land with 1/4th the share against the name of Jaga Bandhu Saha, Anath Bandhu Saha, Balaram Saha, all sons of Ram Kr. Saha and 1/8th share against the name of Aswini Kr. Saha, Mahini Mohan Saha, by deleting the said plot from the khas Khatian.

All relevant records shall be corrected accordingly.”

[8] By the said order dated 31.09.2010 (Annexure-4 to the writ petition), it has been made absolutely clear that the conversion as made is set aside and the land has been restored to its previous status as was reflected in the Khatian No.4390 (Annexure- 1 to the writ petition). But this court does not find any explanation how the land measuring 0.0700 acre was recorded against the RS Plot No.2068 and restored in favour of the petitioners as ejmali land, inasmuch as they were the title holder and possessor of the land measuring .044 acre. The grievance of the petitioners is that subsequently the District Collector by drawing a proceeding under Section 96 of the TLR & LR Act, being Revenue Case No.339/2012, had reviewed the said order dated 31.09.2010 as passed by the Settlement Officer in the capacity of the Collector. The said review order dated 22.04.2013

has been challenged in this petition. For purpose of reference the entire review order is extracted hereunder:

20.04.2013

During last revision settlement, a co-sharer jote land was finally published as public land (road) for which one of co-sharer i.e. the second party of instant case Shri Sankar Saha and other were not satisfied and then submitted petition to the Settlement Officer, West under section 95 for record correction. The settlement Officer, West started proceeding under section 95 based on petition of Shri Sankar Saha and others. After hearing on several dates thereafter finally he passed order against the process of finally publication and the land in question has again been made private land. The first party of instant case Shri Shambhu Nath Saha and others were dissatisfied. As the limitation period of appeal under section 93 of TLR & LR Act was lapsed for which he filed condonation prayer, the condonation prayer was heard by the District Collector, West and it was accepted. Then again the second party of instant case Shri Sankar Saha and others became aggrieved and appeared before the Hon'ble High Court against the condonation order accepted by the District Collector.

The Hon'ble High Court after hearing has been passed order directing to the District Collector to dispose instant case u/s 96 of the TLR & LR Act within two months from the date of issuing of High Court order. Naturally this case has been arisen to comply with the Hon'ble High Court order and notices were issued to both the parties of instant case for hearing on 20-04-2013.

In response to notices the first party Shri Sambhu Nath Saha and others along with their Lawyer are present. The second party Shri Sankar Saha and others along with his Ld. Lawyer besides Smt. Prativa Rani Saha also along with her Ld. Lawyer are present.

Heard the first party Ld. Lawyer who submitted that the disputed land is a road as classification owned by 8 nos. of co-shares. The road is motorable but it cannot be developed due to objection raised by one co-sharer i.e. the second party of instant case. The location of this disputed land/road is in heart of the Agartala city and its adjoining road/sub-roads having connectivity with the habitations have been developed by Agartala Municipal Council. But due to objection this road remained undeveloped and other 7 nos. of co-sharers are suffering in various ways and cannot utilize the road. Except one co-sharer i.e. the second party of instant case jointly decided to hand over this road to Agartala Municipal Council as well as to the revision settlement authority in writing to make it a public road during final publication so that AMC can take up

development work. But it is due to second party of this case Shri Sankar Saha and others could not materialize.

The first party cordially appealed to the District Collector to set aside the order of Settlement Officer so that this land can be again be recorded as public land thereafter AMC can maintain from now onwards.

The Ld. Lawyer of second party submitted that his client will suffer if this disputed land is corrected as a public land/road. He will be unable to construct his dwelling house. Similar logic has also been placed by the Ld. Lawyer of Smt. Prativa Rani Saha.

After hearing both the sides it reveals that the intention of the first party is in favour of public interest but the intention of second party is in favour of his own interest. The land is located as motorable road since long back as per field report therefore, it needs to be developed and should be beyond the control of all the 8 nos. of co-sharers so that all the co-sharers besides other public can easily use this road. If it remains under their ownership it will never be maintained and developed for which the dwellers alongwith this road will suffer.

Settlement Officer while passing order under section 95 not shown any consideration towards the public interest.

Considering the above stated context this Revenue Court under section 96 of TLR & LR Act, 1960 is satisfied to set aside the order passed by the Settlement Officer West in Revenue case No.339/12. The finally published record of the Revenue Settlement shall be reinstated in public interest.

D.A. is asked to communicate this order to Settlement Officer and to the SDM Sadar to comply this order."

[Emphasis added]

[9] The petitioners in order to challenge the said order dated 20.04.2013 had filed a suit being TS 65 of 2013 in the court of the Civil Judge, Sr. Division Court No.2. styling the suit as if that was filed under Section 11(4) of the TLR & LR Act, but by the order dated 25.07.2015, on framing a preliminary issue the Civil Judge held that the suit was not maintainable inasmuch as no order was passed under Section 11(3) of the TLR & LR Act. The

suit under section 11(4) of the said Act can only be filed if the order is passed under section 11(3) of the said Act. The said order dated 29.07.2015 of the Civil judge was challenged in appeal under Section 96 of the CPC being TA 30 of 2015 in the court of the District Judge, West Tripura, Agartala. The said appeal was transferred to the court of the Addl. District Judge, Court No.3, West Tripura, Agartala for hearing. By the judgment dated 11.04.2017, the said appeal was dismissed on observing *inter alia* as follows:

"9. The Legislation has made the provision of section 271 as a mandatory provision of one month notice by adding the terms shall in section 271 of Tripura Municipal Act. So far as the judgment cited by the plaintiff-appellants is concerned this judgment relates to a market land and not related with the path way land. With such observation I am of the opinion that the learned trial court has rightly pointed out the violation of mandatory provision of one month notice by the plaintiff-appellants. Accordingly I came to the conclusion that the learned trial court has rightly decided the matter on preliminary issue. Accordingly, the appeal of the appellant is hereby dismissed."

[10] As the said legal action got aborted, the petitioner has approached this court for the judicial review of the order dated 20.04.2013 (Annexure5 to the petition). The said order was passed by the District Collector in exercise of the powers as conferred by section 96 of the TLR & LR Act. For purpose of reference, section 96 of the TLR & LR Act, is reproduced hereunder:

"96.Review of orders

(1) A revenue Officer may, either on his own motion or on the application of any party interested, review any order passed by himself or by any of his predecessors-in-office and pass such order in reference thereto as he thinks fit:

Provided that a revenue Officer subordinate to the Collector shall, before reviewing any order under this section, obtain the permission of Collector and the Collector shall, before reviewing an order passed by any of his predecessors-in-office obtain the permission of the #[State Government].

(2) No order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings or except after notice to the other party as no application for the review of such order shall be entertained unless it is made within ninety days from the date of the order.

(3) No order shall be reviewed except on the following grounds, namely:-

(i) discovery of new and important matter of evidence;

(ii) some mistake or error apparent on the face of the record ; or

(iii) any other sufficient reason.

(4) For the purposes of this section, the Collector shall be deemed to be the successor-in-office of any revenue Officer who has left the district or who has ceased to exercise powers as a revenue Officer and to whom there is no successor in the district.

(5) An order which has been dealt with in appeal or on revision shall not be reviewed by any Officer subordinate to the appellate or revisional authority."

[11] Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that in the finally published khatian No.4390, the said pathway was recorded as the private pathway and as such the recording of the said pathway as the government pathway by revising the Khatian was an act of illegality. When the said revision of the Khatian was challenged, by the order dated

31.09.2010 delivered in the Revenue cases No.423/2008 424/2008 and 425/2005, it has been held that the pathway is a private pathway and it cannot be converted to a public pathway. The so-called purported representation dated 20.04.2013 (Annexure -A to the reply filed by the respondents No. 4 & 5) made to the Chairman, Agartala Municipal Council cannot be the instrument of transfer or relinquishment . Thus, the interference with the order dated 31.09.2010 is grossly perverse.

[12] That apart, in view of section 96 (2) of the TRL & LR Act provides that no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings or except after notice to the other party and no application for the review of such order shall be entertained unless it is made within ninety days from the date of the order. But admittedly, the review petition was not filed within a period of 90 days. It appears that the petitioners are not very serious, probably, having regard to the decision of this court dated 25.02.2013 delivered in WP(C) 3 of 2013, which the petitioners had filed to challenge the order dated 28.11.2012 whereby the said delay that occurred in filing the review petition against the order dated 31.09.2010 was condoned.

[13] The petition for condoning the delay was filed on 07.09.2012, according to the petitioners. The petitioners filed their

objection against the prayer for condonation of delay of a period of one year and six month in filing the review petition. The petitioners had elaborately averred in the previous writ petition how the prayer for condonation was allowed by the order dated 28.11.2012, notwithstanding their serious objection in respect of the jurisdiction of the District Collector. Be that as it may, by the order dated 25.02.2013, the said writ petition being WP(C)03 of 2013 was disposed of. It would be apparent from the said order that the counsel for the petitioners had made a categorical statement that the said writ petition can be disposed of by directing the District Collector for providing opportunity to the petitioners and the respondents for placing their respective pleas. For purpose of reference, the order dated 25.02.02013 delivered in WP(C) 03 of 2013 is reproduced hereunder:

"25.02.2013

Heard Mr. P. Roy Barman, learned Counsel appearing for the petitioners including the added writ petitioner who submits that the instant petition can be disposed of with a simple direction to the respondent No.2, the District Collector, Government of Tripura, West Tripura, Agartala to hear the review application being Rev. P No.339 of 2012 filed by the respondent No.4 to 10 after providing opportunities to the present petitioners as well as respondent No.4 to 10.

Mr. S. Deb, learned senior Counsel appearing for the respondent No.4 to 10 submits that the submission of the learned Counsel appearing for the petitioners appears to be fair and the respondents also agree to his submissions that all the parties should be given proper opportunities before disposal of the review petition filed by the respondent No.4 to 10.

Heard also Mr. N. C Pal, learned Govt. Advocate appearing for the State respondents.

In view of the above submission of the learned Counsel for the parties, the instant writ petition is disposed of with a direction of the respondent No.2 to dispose of the review petition filed by the respondents 4 to 10 after providing all opportunities and the respondent No.2 shall himself hear the parties and decide the issue in the review petition preferably within a period of two months.

The respondent No.2 is further directed to issue notice upon the parties fixing a date so that they can appear and place their case.

With the above order, the writ petition is disposed of."

[14] Mr. Deb, learned counsel has contended that the respondents No. 6 to 11 and 14 had approached the District Collector, West Tripura by filing the petition dated 07.09.2012 under section 96 of the TLR & LR Act beyond the limitation as prescribed. The said review petition under section 96 of the TLR & LR Act was illegally entertained by the District Collector, West Tripura. By the said order dated 20.04.2013 the District Collector reviewed the order by setting aside the order dated 31.09.2010 of the Settlement Officer and set aside the same by restoring the previous position of the Khatian in the name of "public interest". According to Mr. Deb, learned counsel, the District Collector could have passed any order reviewing the order passed by him or by any of his predecessors only after obtaining permission of the State government, if the petition is made by any party within 90 days of the order, provided further that there is discovery of new

and important matter of evidence or some mistakes or error apparent on the face of the record or any other sufficient reason. But the District Collector did not seek or obtain any permission from the state government for purpose of reviewing the said order dated 31.09.2010 passed by his predecessor and hence the order passed by the District Collector is wholly without jurisdiction and cannot be sustained in law.

[15] Mr. Deb, learned counsel has also submitted that on 'inappropriate' legal advice the said order was challenged in the civil court but that cannot create any bar, inasmuch as the suit was dismissed at the threshold on the ground of lacking in jurisdiction. Thus the same cannot create any embargo for the petitioners to challenge the order dated 20.04.2013 by means of this application. Mr. Deb learned counsel has referred a few decisions of the apex court viz. **Mathura Prasad Bajoo Jaiswal and Others vs. Dossibai N.B. Jeejeebhoy** reported in **1970(1) SCC 613**, **Pujari Bai vs. Madan Gopal** reported in **(1989) 3 SCC 433** and **State of Maharashtra and Another vs. National Construction Company, Bombay and Another** reported in **(1996) 1 SCC 735**, on res judicata.

[16] In those decisions, the apex court has held that the question of jurisdiction of the court, or of procedure, or clear question of law unrelated to the right of the parties to a previous

suit cannot be instrumental to invoke the legal principle of res judicata. The rule of res judicata applies “if a suit or proceeding was directly and substantially on issue in the previous suit between the parties and has been heard and finally decided by a competent court”. For this purpose, a decision of this court in **Mridul Gupta and Ors. vs. Legal Representative of Late Hemendra Narayan Datta and Ors.** reported in **(2018) 1 TLR 168** where it has been observed as follows:

“On the question of the applicability of res judicata, it may be noted that the earlier suit was dismissed on the ground that the notice issued under section 106 of Act was invalid. Subsequently, the plaintiffs issued another notice upon the defendants under section 106 of the Act for quitting the suit premises. The law is now well-settled that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been one on merit. As the former suit was not dismissed on merit but on the ground of invalid notice, the instant suit filed by the plaintiffs cannot be barred by res judicata.”

[17] On the aspects of the limitation, a few decisions of the apex court viz, **Union of India vs. Popular Construction Co.** reported in **(2001) 8 SCC 470**, **Patel Brothers vs. State of Assam and Others** reported in **(2017) 2 SCC 350** and **Bengal Chemists and Druggists Association vs. Kalyan Chowdhury** reported in **(2018) 3 SCC 41** has been pressed in the service by Mr. Deb. These decisions are no doubt relevant for purpose of exclusion or inclusion of the Limitation Act vis-à-vis the special law. It has been held by analyzing the relevant provisions of the special act, its

history, schemes and objectives that if there is no express exclusion of the Limitation Act, such exclusion can be inferred. But this court is constrained to observe that the petitioners did not challenge the order dated 25.02.2013 as delivered in the previous writ petition being WP(C) 03 of 2013, whereby this court has recorded the statement of the counsel for the petitioners who had asked for opportunities of hearing in the review petition. Even though in the said writ petition, there had been a specific challenge against the order dated 28.11.2012, but the said challenge was not pressed when the said order dated 25.02.2013 was passed.

[18] The court has, rather, specifically stated that the respondent no. 2 has to dispose of the review petition filed by the respondents No.4 to 10 after providing all opportunities to the parties. The respondent 2 (the District Collector) was directed to hear pleas of the parties and decide the issues in the review petition preferably within a period of two months. Since the said order was not challenged in the considered opinion of this court, the petitioners are estopped from raising the issue of limitation inasmuch as the court did not interfere with the order dated 28.11.2012 whereby the delay was condoned by the District Collector. In **Sailendra Narayan Bhanja Deo vs. State of Orissa** reported in **AIR 1956 SC 346**, the apex court had categorically

observed that the judgment by consent of the parties is as effective an estoppel between the parties as a judgment passed in the contested case. Moreover, having regard to the principle of propriety, this court cannot dwell on the merit of the said order dated 25.02.2013. Even in this petition, the petitioners did not dwell on the factual aspects of the representation made by the counsel in the previous writ petition and hence it has to be deemed, the said representation was made by their counsel on instruction from the petitioners herein.

[19] Mr. Deb, learned counsel has, thereafter, raised jurisprudential issue whether once the power exercised by the delegate can it be revised by the authority to delegate such power. In this regard, few decisions of the apex court in **Roop Chand vs. State of Punjab and Another** reported in **AIR 1963 SC 1503**, **Behari Kunj Sahkari Awas Samiti and Another vs. State of U.P and Another** reported in **(1997) 7 SCC 37** and **State of Orissa and Others vs. Commissioner of Land Records and Settlement, Cuttack and Others** reported in **(1998) 7 SCC 162** where it has been decided that if the order is passed by the delegate such order has to be treated as the order of the delegating authority. Thence, such order cannot be revised by the delegating authority.

[20] In **Behari Kunj Sahkari Awas Samiti** (supra), it has been observed that it is axiomatic that when the order is approved

by the delegate, the very same delegating authority cannot undertake the exercise of revising the order as it would amount to an exercise of the review power. In that case, the delegating authority exercised power under section 27 of Administration of Evacuee Property Act, 1950, but within the four corners of the said provision, no review power was conferred on the said delegating authority and hence, the order as passed by the delegating authority was interfered.

[21] In that decision, the constitution bench decision in **Roop Chand** (supra) was referred where it was held that section 42 of East Punjab (Holding, Consolidation and Prevention of Fragmentation) Act, 1942 did not empower the state government to interfere with an order passed by an Officer to whom the power to hear the appeal filed under section 21 (4) has been delegated. But in **Commissioner of Land Records and Settlement, Cuttack (supra)** the apex court had further narrowed down even the scope of review of an order passed by the delegate by the delegating authority. In this regard, the following passages may be referred as follows:

28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to 'review' of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available to his successor.

29. The decision of the Privy council in Maharajah Maheshur Singh vs. The Government of India to which reference was made by learned senior counsel Sri T.L. Vishwanatha Iyer is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council.

"It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear, from all these Regulations that the primary intention of granting a review was re-consideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another tribunal."

Their lordships added:

"We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decisions from reviewing it: but we do say that such exceptions are allowable only ex necessitate. We do say that in all practicable cases, the same Judge ought to review;...."

It is, therefore, clear that the same Judge who disposes of a matter, if available, must "review" the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities.

30. In the light of the above, it is therefore clear that the Board of Revenue which never heard the case cannot review the order of the Commissioner, its delegate, passed under section 15 of the 1958 Act. In fact, if it does so, that will amount to the exercise of an indirect power of revision by the Board which is not permissible in the light of the rulings in Roop Chand case and case in Behari Kunj Sahakari Awas Samithi referred to above.

31. Before we go into the question of review powers of the delegate, we shall summarise the result of the above discussion. Firstly, if the Board has passed an order in revision under sections 6-D, 15, 25 and 32 of the Settlement Act, 1958 it can resort to Section 7 of the 1951 Act to review its own order. If the Government has delegated the revisional power of the Board under the sections 6D, 15, 25 and 32 to the Commissioner by virtue of section 33 of the 1958 Act, then the delegate, the commissioner when he exercises those powers of the Board and passes orders, those powers of the Board and

passes orders, those orders will have to be treated as orders of the Board of Revenue and will not be revisable on the principle that the Board cannot revise its own orders. Those orders passed by the delegate are also not reviewable by the Board because it was not the Board that passed the orders.

[22] On the scope of the review, Mr. Deb, learned counsel for the petitioners has submitted that the power of review as conferred under section 96 of the TLR & LR Act as reproduced before [para 10] is akin to the power of review of the civil court provided under Section 114 and Order 47, Rule 1 of the CPC. In this regard, Mr. Deb, learned counsel has relied on a decision of the apex court in **State of West Bengal and others vs. Kamal Sengupta and Another** reported in **(2008) 8 SCC 612** where the apex court having revisited its previous decisions has culled out the principles relevant for exercise of review by the authority which enjoys such power akin or analogous to the power of the civil court under Section 114 read with Order 41, Rule 1 of the CPC. Those principles are catalogued in para 35 of the said report. For purpose of reference, the passage is reproduced hereunder:

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47, Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

[23] Finally Mr. Deb, learned counsel has stated that the right to property is not a fundamental right any more, but now, the right to property is considered "not only a constitutional right but also a human right". In **Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd. and Others** reported in **(2007) 8 SCC 705** as relied by Mr. Deb, the apex court has observed as follows:

"56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law"

Thus, Mr. Deb has urged this court to interfere with the order dated 20.04.2013.

[24] In order to repel the submission made by Mr. Deb, learned counsel, appearing for the respondents No. 6 to 11 and 14, Ms. P. Dhar, learned counsel has submitted that in view of the decision of the civil judge and the first appellate court, in respect of the suit filed by the petitioners, this petition under Article 227 of the Constitution may not be entertained by this court as in the said suit the same order dated 20.04.2013 was challenged. That apart, Ms. Dhar, learned counsel has submitted that admittedly the suit path is an ejmali property and the majority of the co-owners have assigned the said suit pathway to Agartala Municipal Corporation or its earlier formation for treating the same as the public pathway as the same is used by not only the co-owners of the suit property but also by the other residents of the said locality. The petitioners' objections therefore are not that all the owners have their reservation in the said assignment.

[25] Ms.Dhar, learned counsel has submitted that when the easement by necessity has been well established and it has not been denied by the co-owners that the other residents of the locality had been using that path for more than 20 years, to be precise from the days of their predecessor, the petitioners do not have any right to ask for the said path to be treated as the private

pathway. Moreover, in this proceeding, those residents who have been using the said path have not been made parties with oblique purpose.

[26] As consequence, they have not received any notice from this court to have their say on their right to easement and usage on the said path. Hence, for non-joinder this, proceeding is not maintainable. Having referred to the order dated 25.02.2013 delivered in the previous writ petition filed by the petitioners, Ms. Dhar, learned counsel has submitted that the said order was passed on consensus of the parties and thus the said order was an order on agreement. In view of the decision of the apex court in **Byram Pestonji Gariwala vs. Union Bank of India and Others** reported in **AIR 1991 SC 2234**, it has been contended that if on the basis of the representation of the counsel any order is passed, that order is valid and binding on the parties. Even such agreement can be beyond the subject matter of the suit. Such order creates estoppel.

[27] In **Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke** reported in **AIR 1954 SC 352** the apex court had occasion to observe as follows:

"...It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum the compromise having been found not be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of 'res judicata.'"

[28] Ms. Dhar, learned counsel has also referred for the same purpose to **Sailendra Narayan Bhanja Deo** (supra). While refuting the contention of the petitioners that there had been implied exclusion of Limitation Act so far condoning any delay for purpose of action to be taken under TLR & LR Act, 1960 beyond the period of limitation as prescribed, Ms. Dhar, learned counsel has stated that Gauhati High Court in **Hrishiraj Sharma and Ors. vs. State of Tripura and Ors.** reported in **AIR 2010 GAU 31**, has enunciated the law in respect of application of the Limitation Act in the proceeding under the TLR & LR Act, 1960, in the manner as under-noted:

"It is clear that the provisions of the Act do not exclude operation of provisions of Sections 4 to 24 of the Limitation Act and therefore, it could not be said that these provisions will not be applicable. As in the TLR & LR act also, the Limitation Act, this court is of considered opinion that provisions of Section 3 of the Limitation Act shall apply. Therefore, to an appeal or an application, the provisions contained in Sections 4 to 24 of the Limitation Act shall apply and, particularly, as the provisions of Section 5 of the Limitation Act is within the provisions of Sections 4 to 24, it can be easily held by this Court that the said Section 5 of the Limitation Act is applicable when an appeal is preferred under Section 93 of the TLR & LR Act subject to sufficient cause for delay in preferring the appeal is explained."

Thus, Ms. Dhar, learned counsel has contended that the order dated 28.11.2012 condoning the delay cannot be faulted for absence of the power to condone in the special Act.

[29] Mr. K.K. Paul, learned counsel appearing for Agartala Municipal Corporation (the respondents No. 4 & 5) has submitted that the petitioners are estopped as the predecessor of the petitioners had given the consent as per the provisions of Sections 113 and 114 of the Tripura Municipal Act, 1954 for purpose of assigning the land for greater public interest. Hence, as the successor, they cannot take a different stand in respect of the assignment made by their predecessor. The petitioners are estopped from raising any such objection, as raised in this petition. In this regard, Mr. Pal, learned counsel has referred the decision of this court in the order dated 23.11.2015, as delivered in CRP No.135 of 2015. There is no dispute that the petitioners have instituted the Title Suit No.65 of 2013 under Section 11(4) of the TLR and LR Act, 1960 against recording of the said path as the public pathway. When some improvement works or construction of the drain was taken up, the same was objected by the petitioners. Finally, the said suit was instituted by them for obtaining a decree of perpetual injunction.

[30] The trial court had decided the suit against the plaintiffs [the petitioners, herein] and the plaintiffs filed an appeal from the decision of the suit, being TA 35 of 2013 as already recorded. The said appeal was also dismissed. Mr. D. R. Choudhury, learned counsel appearing for the petitioners had

submitted that the plaintiffs will have no objection, if some improvement work continued on the suit land, if the final order is not influenced by the order refusing injunction. The said revision petition, filed under Article 227 had been dismissed on observing that there has been no jurisdiction and there was no glaring perversity. Thus, the finding of the appellate court passed in the miscellaneous appeal in refusing the temporary injunction got approval of this court. In the order of the appellate court, it had been clearly observed that the plaintiffs would not suffer any loss if improvement works continued in the suit pathway.

[31] Mr. Pal, learned counsel has further submitted that in a decision of this court in **State of Tripura and Ors vs. Bhibu Kumari Devi and Ors** (judgment dated 06.01.2020 delivered in RFA No.11 of 2015), it is observed that if the intention is clear and unambiguous, the relinquishment be treated as final. That decision is in respect of relinquishment under section 107 of the TLR & LR Act along with Rule 136 of the TLR & LR Rules, 1961. The relinquishment under section 107 is nobody's case in the present petition, inasmuch as there is a great difference between assignment under Section 113 and 114 of the Tripura Municipal Act, 1954.

[32] Mr. P Gautam, learned counsel having appeared for the state-respondents has contended that the District Collector being

the delegator was well within his power of review and in view of the assignment made by the predecessor and other co-owners, the petitioners cannot claim any further right on the said road. Mr. Deb, learned counsel in the rejoinder has submitted that the contention that, the predecessor had assigned, has nowhere been established and no record has been placed in the proceeding in that regard. Therefore, this court should discard such contention.

[33] Having appreciated the rival pleas raised by the counsel for the parties, the pertinent question that emerge to be appreciated in this proceeding under Article 227 of the Constitution of India are broadly as follows:

- (1) Whether the District Collector has the competence to take up the review petition for decision as the delegator?**
- (2) Whether the petitioner can raise the question of limitation after the order dated 25.02.2013 which was passed on agreement?**
- (3) Whether this proceeding is barred by the principle of res judicata?**
- (4) Whether for absence of permission of the state government the order dated 20.04.2013 has turned to be nullity?**
- (5) Whether the District Collector had the power to condone the delay which as he had so done by the order dated 28.11.2012 ?**
- (6) Whether the proceeding is bad for non-joinder of the parties as the residents of that locality who use the said pathway for their easement etc. have not been arraigned?**

(7) Whether in the name of public interest, the government can convert a pathway owned by the private individuals to a government pathway?

(8) Whether the review power under section 96 of the TLR & LR Act is akin to section 114 read with Order 47, Rule 1 of the CPC?

(1) Whether the District Collector has the competence to take up the review petition for decision as the delegator?

It is the admitted position that the order dated 31.09.2010 which had been sought to be reviewed has been reviewed by the order dated 20.04.2013 as challenged in this petition. The said order dated 31.09.2010 was passed by the Settlement Officer as delegate of the District Collector. But the District Collector did not assign the review petition to be heard by the Settlement Officer on consideration that he had passed the order which had been sought to be reviewed. It is apparent therefore, that sub section 1 of Section 96 of the TLR & LR Act was not properly read before passing the said order dated 20.04.2013 (Annexure-5 to the petition). According to sub-Section 1 of section 96 of the TLR & LR Act, a revenue officer may either on his own or on application by the party interested may review any order passed by himself or by any Officer, predecessor in his office and pass such order in reference thereto as he thinks fit subject to the proviso below sub-Section 1. The word 'a revenue officer' also

include the District Collector. But that restriction that has been imposed by sub-Section 1 is plain and it advances that he can only review the order passed by himself or by any predecessor in his office. This clause is well qualified without any element of ambiguity. If this provision is read with the law as laid down in **Commissioner of Land Records and Settlement, Cuttack** (supra) where it has been clearly laid down that those orders passed by the delegates are also not reviewable by the delegator (the Board in that case) as it was not the board that passed the orders, would make the position of law further clear. Therefore, the District Collector did not have the competence to review the order dated 31.09.2010 as passed under Section 95 of the TLR & LR Act.

If the Settlement Officer who passed the order dated 31.09.2010 had left the district or who had ceased to exercise power as the revenue Officer and to whom there was no successor in the District in that event, the District Collector shall be deemed to be the successor in office of any such revenue Officer as referred in sub-Section 1 of Section 96 of the TLR & LR Act, but in this regard there is no reflection in the order.

(2) Whether the petitioner can raise the question of limitation after the order dated 25.02.2013 which was passed on agreement?

In view of the order dated 25.02.2013, where the duly authorized counsel of the petitioners made an unambiguous

statement that on a simple direction to the District Collector to hear the review petition being the review petition No.339 of 2012 filed by the respondents No. 4 to 10 of the writ petition being WP(C)No.03 of 2013, after providing opportunities to the parties including the petitioners, the writ petition can be disposed of, now, the said writ petitioners cannot challenge the order by which the delay in filing the review petition was condoned. The counsel for the other parties did agree to the said proposition and accordingly agreed order dated 25.02.2013 was passed by this court. In the said writ petition, the order dated 28.11.2012 condoning the delay, was challenged and it is apparent that the petitioners had abandoned the challenge while making the said representation for disposing of the writ petition. Hence, the writ petitioners are estopped from reviewing the said challenge.

(3) Whether this proceeding is barred by the principle of res judicata?

The object of the doctrine of res judicata is not to fasten upon the parties by the evolved principle of law as applicable to them *inter se*, but to ascertain their rights and the facts upon which these rights directly and substantially depend and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening and re-contesting which has been finally decided.

What Mr. Deb leaned counsel appearing for the petitioner has asserted appears based on the certain principle of law surveyed in **Pujari Bai** (supra) where the apex court had occasion to observe that when a writ petition after contest is disposed of by merit by a speaking order, the question decided in that petition would operate as res judicata but not a dismissal in limine or dismissal on the ground of laches or for availability of alternative remedy. Therefore, jurisprudential objection as raised in respect of maintainability of the writ petition cannot sustain.

(4) Whether for absence of permission of the state government, the order dated 20.04.2013 has turned to be nullity?

Proviso to Section 96 (1) of the TLR & LR Act clearly provides that a revenue officer subordinate to the District Collector shall before reviewing any order under this section, obtain the permission of the District Collector and the District Collector shall, before reviewing an order passed by any predecessor in his office obtain the permission of the state government. This proviso can be clearly divided into two parts viz (1) a revenue Officer subordinate to the District Collector, shall before reviewing any order under Section 96 obtain the permission of the District Collector and this prior permission is mandatory in nature and (2) the District Collector shall before reviewing any order passed by any predecessor in his office obtain the permission of the state

government. It is amply clear that Collector shall only obtain such permission of the state government when he will be required to review an order passed by any Officer of his predecessor in the office. But if the order is passed by the District Collector himself for purpose of reviewing the order he would not require the said permission. Thus, in this case as the matter was not assigned to the settlement Officer (the delegate) he could not act without obtaining the prior permission from the authority as prescribed. As such, on that ground alone, the order of the review cannot be held anomalous and unsustainable.

(5) Whether the District Collector had the power to condone the delay which he had so done by the order dated 28.11.2012 ?

In view of the decision rendered by the Gauhati High Court in **Hrishiraj Sharma** (supra), the objection as raised by the petitioner in respect of applying the provision of Limitation Act in the special law particularly for condoning the delay cannot be sustained inasmuch as in **Hrishiraj Sharma** (supra) Gauhati High Court has discarded the theory of implied exclusion on reading the history schemes and the objective of the TLR & LR Act. In **Hrishiraj Sharma** (supra) it has been clearly held that a provisions of Sections 4 to 24 of the Limitation Act shall apply. In particular, Section 5 of the Limitation Act for purpose of the TLR & LR Act can be imported. Hence, the said jurisprudential objection stands

rejected. Since the challenge against the order 28.11.2012 had been abandoned and in view of the proposition of **Hrishiraj Sharma** (supra) the order dated 28.11.2012 cannot be faulted with. Thus, the said order dated 28.11.2012 has to be deemed to have reached its finality.

(6) Whether the proceeding is bad for non-joinder of the parties as the residents of that locality who use the said pathway for their easement etc. have not been arraigned?

Though the objection on non joinder of the parties has been raised seriously but none of the respondents have placed any facts who are those residents using the said pathway for easement and as such, this court cannot decide in the vacuum. Accordingly, this objection stands rejected.

(7) Whether in the name of public interest, the government can convert a pathway owned by the private individuals to a government pathway?

Even though the right to property is not a fundamental right anymore, but by the constitutional provision of article 300A, the legal right has been created providing that no person shall be deprived of his property save by the authority of law. In **Jilubhai Nanbhai Khachar vs State of Gujarat** reported in **1995 Supp (1) SCC 596**, the apex court has lucidly observed that the right of eminent domain is the right of the sovereign state , through it regular agency, to reassert, either temporarily or permanently its

domain over any portion of the state, including private property, without its owner's consent on account of public exigency or for public good. Eminent domain is the highest and most exact idea, as regards the property, remaining with the government or in the body of people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by constitution and the laws of the state, whenever the public interest requires it. This court has noticed that the said public interest doctrine has been applied by the District Collector so brazenly, that as if he can decide the proprietary right of individuals in the review jurisdiction without having regard to the due process of law. Article 300A of the Constitution has rigidly pressed for observance for due process of law. Due process of law means acquisition and requisition or possession of the title following the appropriate legislation governing the field. Thus, nullifying the order dated 31.09.2010 on the ground of 'the public interest' is grossly unsustainable. On discovery of new and important matter of evidence or any error of the record or for any other sufficient reason or some mistake or error apparent on the face of the record or any other sufficient reason, particularly, having regard to *inter se* interest, the decision can be altered or modified. But from the exercise under challenge that aspect has not been surfaced at all.

(8) Whether the review power under section 96 of the TLR & LR Act is akin to section 114 read with Order 47, Rule 1 of the CPC?

It is apparent from the provision of sub section 3 of section 96 of the TLR & LR Act that no order shall be reviewed except on discovery of new and important matter of evidence, some mistake or error apparent on the face of the record or any other sufficient reason. These provisions are undoubtedly akin or analogous to the provisions of Order 41, Rule 1 of the CPC read with Section 114 of the CPC. Therefore, the principles of law as regards Order 41, Rule 1 of the CPC would be applicable while reviewing an order under section 96 of the TLR & LR Act. It appears to this court prima facie that the aspect of assignment has not been properly considered as a matter of evidence or for other reasons. Hence, the said aspect required to be re-evaluated by the reviewing authority.

Having observed thus, the order dated 20.04.2013 stands set aside but this court is of the considered view that the District Collector be directed to assign the review petition to the Settlement Officer. If he is not in the office to his successor in that office as the delegate. The settlement officer who himself passed the order shall decide the petition for review within a period of six months from the date when to him the said proceeding will be assigned having due regard to the observation made in this order. To make it abundantly clear, it is observed that the issue of the

delay should not be re-opened. The order dated 28.11.2012, for purpose stands affirmed. The parties including the petitioners be provided with reasonable opportunities in placing their pleas.

In the result, this revisional petition partly allowed. It is made further clear that the petitioners shall not obstruct or interfere with the use of the proceeding pathway during the review proceeding. The reviewing authority before passing the order on merit should make an endeavour for a conciliated settlement because majority of the co-owners are in favour of treating the pathway as the public pathway.

In the circumstances, there shall be no order as to costs.

A copy of this order be sent to the District Collector, West Tripura for doing his needful.

JUDGE