

SUDHANGSHU MOHAN DEB (DEAD) BY LRS.

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v.

NIRODA SUNDARI DEBIDHUP AND ORS.

FEBRUARY 20, 2004

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

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Land Laws:

Tripura Land Revenue and Land Reforms Act, 1960—Sections 134, 135, 136 and 43—Effect of sections 134 and 135—Held: All estates situated in notified area vests in the Government free from all encumbrances and all right, title and interest of every intermediary in such estates gets extinguished—However, by virtue of section 136 intermediary can retain possession of vested land subject to payment of land revenue directly to the Government—On facts, provisional Khaityan granted in favour of the party finalized and duly published, challenged—On appeal Held: Once the final khaityan is granted in favour of the party, fresh right is created in his favour by State Government in whom entire land vests—Thus, khaityan confers legal and valid right on grantee to remain in possession of suit land.

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Code of Civil Procedure, 1908:

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Section 144—Applicants dispossessed in execution of decree, which was set aside on appeal—Restitution of possession of land—Entitlement of—Held: Applicants not entitled due to coming into force of 1960 Act which has the effect of taking away right of possession of land of the party who was earlier in possession of land—Tripura Land Revenue and Land Reforms Act, 1960.

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Section 11—Plea entertained by forum below in previous litigation and not entertained in present litigation—Plea if barred by res judicata—Held: There was no adjudication on the issue involved in the previous litigation though order had become final—Hence, plea not barred by res judicata.

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Land of S acquired for public purpose was in excess of requirement. D-predecessor of appellant and J, nephew of S-predecessor of respondents applied for settlement of excess land. D was granted Takshishi Taluki rights and registered patta was executed in his favour. J encroached the

A land. D filed eviction suit. During pendency, D sold the suit land to appellant. Appellant filed suit for declaration of Takshishi Taluki right and recovery of possession and suit was decreed. J then filed an appeal which was dismissed. He then filed second appeal. However, appellant in execution of decree took possession of the suit land. Meanwhile, Tripura Land Revenue and Land Reforms Act, 1960 was passed and all estates situated in the notified area vested in the Government free from all encumbrances and all right, title and interest of every intermediary in such estates got extinguished. Appellant applied for fresh patta as a Raiyat under section 136 and provisional khatiyani was granted in his favour. J filed an appeal which was allowed since the land in question vested in the Government and appellant lost his right to seek its possession in view of the 1960 Act. Appellant filed an application to bring on record by way of additional evidence that after the vesting of the land in the Government, provisional khatiyani was granted in his favour. Application was rejected as Khatiyani was still provisional. After contest khatiyani was finalized in favour of appellant and was duly published. Appellant then filed suit for declaration of his title to the land and confirmation of possession in his favour and injunction. S-Original owner also filed suit under section 144 CPC for restitution of possession of the suit land to him in view of the decree in execution whereof he was dispossessed having been set aside. Trial Court decreed the suit filed by the appellant and dismissed the suit of S. Lower Appellate Court dismissed the suit for possession filed by appellant while the suit for restitution of possession was decreed. Appellant then filed a second appeal which was dismissed. Hence the present appeal.

F Appellants contended that their right to possession of land is legal, valid and justified while respondents have no right whatsoever to seek possession of the land.

G Respondents contended that the finalisation of khatiyani in favour of the appellants was wrong as it was contrary to rules; that in view of provisions of Section 144 CPC respondents were entitled to restitution of possession of the lands; and that the Judicial Commissioner did not entertain the plea based on grant of fresh khatiyani in favour of the present appellant and as such the decision becoming final it debars the appellant from raising the same plea again in the instant case.

Allowing the appeals, the Court

H HELD: 1.1. The claim of the appellant based on finalisation of

khatiyān in his favour in 1974 is fully justified. As a result of the Tripura Land Revenue and Land Reforms Act, 1960, the land in question had vested in the State Government free of all encumbrances. State Government was free to deal with the land in any manner it chose to do. On application of the appellant the State Government granted khatiyān in favour of the appellant with respect to the suit lands. The final khatiyān stood published in favour of the appellant which is presumed to be correct until the contrary is proved. The effect of grant of khatiyān in favour of the appellant is that his possession of the lands is under the Government and is with the consent of the Government and he is paying land revenue to the Government for the same. Thus, a fresh right is created in favour of appellant by State Government in whom the entire land had vested by virtue of Sections 134 and 135 of the Act. The khatiyān confers legal and valid right on the appellant to remain in possession of the suit lands.

[592-H; 593-A; 590-G]

1.2. In normal course, possession obtained in execution of a decree has to be restored to the party dispossessed, on the decree being set aside. But in the instant case statute has intervened. The 1960 Act contains a vesting provision as a result whereof the land in suit automatically vested in the State Government. The statutory provision has such a salutary effect that even if somebody was in actual possession of the land on the date of promulgation of the statute, he/she would lose the right to possession and would have to hand over the possession to State Government. Therefore, respondents do not have any right to ask for possession of the lands.

[591-C-E]

1.3. When the appeal before the Judicial Commissioner was decided since the khatiyān in favour of appellant was only provisional, the Judicial Commissioner had refused to entertain the plea based on the grant of fresh khatiyān in favour of the present appellant. There was no adjudication on the basis of khatiyān in the previous litigation. In the meanwhile, the khatiyān has been finalized in favour of the present appellant. Therefore, the question of plea regarding grant of fresh khatiyān being barred by principles of *res judicata* does not arise. [592-A-B]

1.4. Respondents cannot challenge the khatiyān in favour of the appellant in the present proceedings. They have to seek remedy, if available, elsewhere. The khatiyān was finalized in favour of appellant after contest. So long as the khatiyān exists, it is final in view of Section

A 43 of the Act. Director of Settlement and Land Records passing the order wherein the suit land was liable to be transferred in the khatiyani of the Government has himself stayed the order and is continuing, as such no value can be attached to the order. The said officer is an officer of the State Government. The State Government could cancel the khatiyani but has done nothing to cancel it. [592-C-E]

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 1.5. In the plaint of the suit giving rise to the instant appeals, the grant of fresh khatiyani in favour of the appellant has been duly pleaded. Respondents who had contested the suit all through did not even claim an issue on the question of legality and force of the khatiyani. Therefore, at this stage it cannot be argued that the khatiyani finalised in favour of the appellant has no strength or value. [592-F-G]

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 CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5112-5113 of 1997.

D From the Judgment and Order dated 27.8.1996 of the Gauhati High Court at Agartala Bench in S.A. No. 20 of 1993.

Dinesh Dwivedi and Ms. Madhu Moolchandani for the Appellants.

E K. Ramamoorthy, Tufail A. Khan, Ms. Shoba Nagarajan, J. Sriram, G.D. Gupta and Mukul Gupta for the Respondents.

The Judgment of the Court was delivered by

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 ARUN KUMAR J. This litigation has a chequered history. Land comprised in Jote No. 145 standing in the name of one Sonatani Dhopi was acquired by the then Maharaja of Tripura in the year 1347 T.E. corresponding to 1937 A.D. for a public purpose viz. construction of motor stand and pathway etc. It was found that the acquired land was in excess of the requirement, therefore, the excess land was decided to be settled in favour of tenants. One Dhirendrajit Singh Roy (predecessor of the appellant) and Jagabandhu Dhopi, who is said to be nephew of original owner Sonatani Dhopi, (predecessor of the respondents) were the applicants for settlement of the excess land. Application of Jagabandhu Dhopi was rejected while that of Dhirendrajit Singh Roy was accepted and a registered patta granting Takshishi Taluki rights in his favour was executed. In the year 1949 Jagabandhu Dhopi, however, encroached upon the land, subject matter of the patta which led Dhirendrajit Singh Roy to file a suit for eviction being

Miscellaneous Case No. 141 of 1956 in the Court of District Magistrate-cum A
Collector. During the pendency of the suit Dhirendrajit Singh Roy sold the
suit land to Sudhangshu Mohan Deb (since deceased and represented by
LRs), the appellant herein on 10th December, 1957. The name of the appellant
was duly substituted in place of Dhirendrajit Singh Roy in the eviction suit.
Vide order dated 27th June, 1958 the District Magistrate directed the SDO B
to arrange delivery of possession of portion of the suit land which was vacant
to the plaintiff and for the rest the appellant was directed to move civil court
for recovery of possession. Dhopi preferred an appeal against the said order
before the Chief Commissioner. The Chief Commissioner directed appellant
to file a civil suit for the relief of possession of the suit land. On 30th June,
1959 the appellant filed Title Suit No. 47 of 1962 for declaration of Takshshi C
Tuluki right and for recovery of possession. The said suit was decreed on
25th March, 1963. The appeal filed by Dhopi against the decree was dismissed
on 28th April, 1965. Dhopi filed second appeal before the judicial
Commissioner. However on 28th May, 1965, the appellant took possession
of the suit land in execution of the decree that was passed in his favour. D

On 25th October, 1961 the Tripura Land Revenue and Land Reforms
Act, 1960 (hereinafter referred to as the "Act") was notified. The said Act
came into force with effect from 14th November, 1961. The Judicial
Commissioner allowed the appeal filed by Dhopi on 12th April, 1971 holding
that in view of the Act, the land in question vested in the Government and E
the appellant had lost his right to seek its possession. The Act contained
provision in Sections 134 and 135 which had the effect of vesting all estates
situated in a notified area in the Government free from all encumbrances. All
right, title and interest of every intermediary in such estates got extinguished
as a result of the statutory provision. In the appeal the present appellant had
moved an application under Order 41 Rule 27 to bring on record by way of F
additional evidence the fact that after the vesting of the land in the Government,
provisional khatiyani had been granted by the Government in his favour with
respect to the suit land. The said application was, however, rejected on the
ground that khatiyani was still provisional and was yet to be finalised. Section
136 of the Act entitles and intermediary to retain possession of the vested G
land subject to payment of land revenue directly to the Government. The
Section is reproduced as under:-

"Section 136: (1) Notwithstanding anything contained in Section 134
and 135, an intermediary shall, subject to the provisions of sub-section
(2) be entitled to retain effect from the vesting date-

- A (a) homesteads, buildings and structures together with the appurtenant there to in the possession of the intermediary other than buildings vested in the Government under Section 135;
- (b) lands under the personal cultivation of the intermediary;
- B (c) lands in which permanent rights have not already accrued to a tenant under any custom, agreement or law and which have been leased by an intermediary who, both at the commencement of the lease and on the vesting date, was a person under disability;
- (d) lands held by the intermediary as mortgagor which are subject to usufructuary mortgage and are under the personal cultivation of the mortgagee;
- C (e) lands comprised in orchards or used for the purpose of live-stock breeding, poultry, farming or dairy farming, which are in the occupation of the intermediary.
- D (f) so much of the lands comprised in a tea garden, mill, factory or workshop as in the opinion of the State Government is required for such tea garden, mill, factory or workshop.
- (2) An intermediary who is entitled to retain possession of any land under sub-section (1) shall hold such land directly under the Government from the vesting date as a raiyat thereof or as a non-agricultural tenant thereof, as the case may be and be liable to pay therefore land revenue at full rate applicable to similar lands in the locality.
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F The appellant appears to have applied for fresh patta in pursuance of the said provision. Provisional khatiyān was granted in his favour. This was contested by Dhopi. However, the khatiyān was finalized in favour of appellant and it was duly published in 1974.

G The appellant filed Title Suit No. 13 of 1980 on 13th March, 1980 for declaration of his title to the land and confirmation of possession in his favour and injunction. It was pleaded in the suit that khatiyān had been finalised in plaintiff's favour after contest and the plaintiff was paying land revenue to the Government for the suit land. Thus the plaintiff (appellant herein) pleaded that there was a fresh settlement of the suit land in his favour which entitled him to retain possession of the land. This new settlement by the Government was after vesting of the land in the Government in pursuance

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of Sections 134/135 of the Act. The final khatiyān had been granted on 22nd June, 1974. In view of the final khatiyān being granted in favour of the plaintiff, the plaintiff claimed that he had a valid right to possession of the suit land. Sonatan Dhopi had also filed an independent suit under Section 144 of the Code of Civil Procedure for restitution of possession of the suit land to him in view of the decree in execution whereof he was dispossessed having been set aside. Both the suits were clubbed together. The Trial Court on 11th August, 1992 decreed the suit filed by the plaintiff i.e. present appellant while the suit of the defendant-respondent for restitution of possession was dismissed. The judgment and decree of the trial Court was set aside by the lower appellate Court by its judgment dated 10th June, 1993. The suit for possession filed by the appellant was dismissed while the suit for restitution of possession filed by the respondent judgment debtor was decreed. The present appellant filed a second appeal against said judgment which was dismissed by the High Court by its impugned judgment date 27th August, 1996. The present appeal has been filed in this background.

The learned counsel for the appellant has contended that the present appeals can be decided on the basis of subsequent events in view of which the previous litigation has lost all relevance.

For this purpose our attention has been drawn to Sections 134 and 135 of the Act. They are reproduced as under:

“Section 134: (1) As soon as may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, declare that with effect from the date specified in the notification (herein after referred to as the vesting date), all estates situated in any area or areas and all rights in, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances.

(2) Every notification under sub-section (1) shall also be published in such other manner as may be prescribed.

(3) The publication of notification in the manner provided in sub-sections (1) and (2) shall be conclusive evidence of the notice of declaration to the intermediaries whose interests are affected by such notification.

Section 135: Notwithstanding anything contained in any law for the time being in force or any agreement or contract, express or implied,

- A with effect from the vesting date-
- (a) each estate to which the notification relates and all rights, title and interest of intermediaries in such estate shall vest in the Government free from all encumbrances, including -
- B (i) right in hats, bazaars, ferries, forests, wastelands, abadi sits, fisheries, tolls and other interests;
- (ii) rights in any building other than a dwelling house or in any part of such building used primarily as office of cutcherry for collection of rent;
- C (b) all grants and confirmation of title to the estate and rights therein made in favour of an intermediary shall cease and determine;
- (c) any building used for educational or charitable purposes and held by the intermediary shall vest in the Government for those educational or charitable purpose;
- D (d) subject to the other provisions of this Act, every tenant holding any land under an intermediary shall hold the same directly under the Government as a raiyat thereof or as a non-agricultural tenant thereof, as the case may be and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date, subject to a maximum of the value of one-eighth of the gross produce which value shall be determined in the manner prescribed:
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- F Provided that the tenant shall become the owner of any building or structure constructed on such land at the expense of the intermediary on payment of such compensation to the intermediary as is equivalent to its market value on the vesting date, which value shall be determined in accordance with the rules made in this behalf;
- G (e) all arrears of land revenue, local rates, cesses and other dues lawfully payable to the Government by the intermediary on the vesting date in respect of the estate shall without prejudice to any other mode of recovery be recoverable by deduction from the compensation payable to the intermediary;
- H (f) all rents and other dues in respect of the estate for any period after the vesting date which, but for this Act, would be payable

to an intermediary shall be payable to the Government and any payment made in contravention of this clause shall not be valid discharging of the person liable to pay the same;

- (g) where under any agreement or contract made before the vesting date, any rent, cess, local rate or other dues for any period after the said date has been paid to or compounded or released by an intermediary, the same shall, notwithstanding such agreement or contract, be recoverable by the Government from the intermediary, and may, without prejudice to any other mode of recovery, be realized by deduction from the compensation payable to the intermediary."

In Sections 134 and 135, word 'intermediary' has been used.

The said word is defined in Section 133 as under:

"Section 133:

- (a).....
- (b).....
- (c) "Intermediary" means a person who holds in an estate the right, title or interest of a talukdar and includes -
- (i) a person who holds land either revenue-free or at a concessional rate.
- (ii) A tenure holder.
- (d)
- (e)

From a perusal of the above provisions, it will be seen that all estates in a notified area vest in the Government free from all encumbrances. All right, title and interest of every intermediary in the estates stands extinguished. After the notified date, no one except the State Government is left with any right, title or interest in the subject lands. Once the lands vested in the State Government, the State Government is free to deal with the same in any manner it decides. This may include a decision on the part of the State Government to grant tenancy rights with respect to the lands or any portion thereof in favour of any party on payment of land revenue. It appears that in 1968 the appellant applied for grant of right as a 'Raiyat' or as a non-

A agricultural tenant for the land in the suit on payment of land revenue under Section 136(2) of the Act. The State Government granted the right as a 'raiyat' in favour of the appellant which was evidenced by a "khatiaya" (entry in the revenue records showing tenancy) in appellant's favour. The khatiyani was initially granted on a provisional basis which was after contest

B finalized in favour of the appellant in 1974. The revenue entry was published in the revenue records which is evidenced by the khatiyani. The effect of grant of khatiyani in favour of the appellant is that his possession of the lands is under the Government and is with the consent of the Government and he is paying land revenue to the Government for the same. In other words the appellant gets a fresh right to possession of the land as a tenant. Section 43

C of the Act conveys the consequence of publication of khatiyani. The said Section is reproduced as under:

"Section 43 :

- D (1) When a record of rights has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom.
- E (2) When all objection have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner.
- (3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

F It will be seen from the above provision that once a khatiyani is finalised and its publication takes place, it is presumed to be correct until the contrary is proved. The final khatiyani stands published in favour of the appellant which gives the appellant right to remain in possession of the suit land. This is a fresh right created in favour of the appellant by the State Government in whom the entire land had vested by virtue of Sections 134 and 135 of the

G Act.

On the basis of these facts, it is submitted that the appellant's right to possession of land is legal, valid and justified while the respondents have no right whatsoever to seek possession of the land. On promulgation of the 1960

H Act, both parties lost the right to possession of the suit lands. The right to

possession of the lands had been subsequently conferred on the appellant by the State Government. So far as the respondents are concerned, there is nothing which entitles them to seek possession of the lands. A

In response to the above argument, the learned counsel for the respondents submitted that in view of provisions of Section 144 of the Code of Civil Procedure, the respondents were entitled to restitution of possession of the lands. The respondents had been dispossessed from the suit lands in execution of the decree which then existed in favour of the appellant. The decree was set aside in appeal. As a consequence thereof, the respondents were entitled to be restored possession of the lands. Even if the respondents were unauthorized occupants of the lands, since they were dispossessed in execution of a decree which had been set aside on appeal, they were entitled to restoration of the possession. In our view this argument does not hold good in facts of the present case. In normal course it may be correct to say that possession obtained in execution of a decree has to be restored to the party dispossessed, on the decree being set aside. But the present case is different. Here a statute has intervened. The 1960 Act contains a vesting provision as a result whereof the land in suit automatically vested in the State Government. The statute has taken away the right of possession of the lands of the party who was earlier in possession of the lands. The statutory provision has such a salutary effect that even if somebody was in actual possession of the land on the date of promulgation of the statute, he/she would lose the right to possession and would have to hand over the possession to the State Government. Therefore the respondents do not have any right to ask for possession of the lands. B C D E

Next the learned counsel for the respondents argued that the point regarding finalisation of khatiyani in favour of the appellant was taken before the Judicial Commissioner in the previous litigation. The Judicial Commissioner did not entertain this plea of the present appellant. The decision of the Judicial Commissioner has become final which debars the appellant from raising the same plea again in the present litigation. In other words, the plea of *res judicata* is sought to be raised with respect to the claim of the appellant based on grant of khatiyani in his favour. The learned counsel for the respondents concedes that the appellant had applied for the fresh khatiyani in 1968. Admittedly, the fresh khatiyani was finalised in favour of the appellant in 1974 when the same was published in accordance with Section 43 of the Act. We have carefully considered this argument. In our view the plea of *res judicata* raised by the learned counsel for the respondents is totally misconceived. The appeal before the Judicial Commissioner was decided on F G H

A 12th April, 1971. At that time, the khatiyān in favour of appellant was only provisional and therefore the Judicial Commissioner had refused to entertain the plea based on the grant of fresh khatiyān in favour of the present appellant. There was no adjudication on the basis of khatiyān in the previous litigation. In the meanwhile, the khatiyān has been finalised in favour of the present appellant which happened in 1974. Therefore, the question of plea regarding grant of fresh khatiyān being barred by principles of *res judicata* does not arise.

C The learned counsel for the respondents also contended that the finalisation of khatiyān in favour of the appellant was wrong as it was contrary to rules. Therefore the same should not be taken into consideration. This contention again, in our view, is devoid of any merit. The respondents cannot challenge the khatiyān in favour of the appellant in the present proceedings. They have to seek remedy, if available, elsewhere. The khatiyān was finalized in favour of appellant after contest. So long as the khatiyān exists, it is final in view of Section 43 of the Act. A reference was made to an order dated D 22nd February, 1992 passed by the Director of Settlement and Land Records, Government of Tripura, wherein it is observed that the suit land was liable to be transferred in the khatiyān of the Tripura Government. It was argued that the said order casts a shadow on the plea of grant of fresh khatiyān in favour of the appellant. We are informed that the officer passing the said order has himself stayed the order and the stay order is continuing. Apart E from this, we are of the view that the said officer is an officer of the State Government. The State Government could cancel the khatiyān. It has done nothing to cancel the khatiyān. No value can be attached to the order of the Director of Settlement and Land Records. The argument is devoid of any force.

F We note from the plaint of the suit which has given rise to the present appeals that the grant of fresh khatiyān in favour of the appellant has been duly pleaded. The plaintiff-appellant has based the relief in the suit on that plea. Yet we find that there is no issue on the question of legality and force of the khatiyān. The respondents who had contested the suit all through did G not even claim an issue on this aspect. Therefore, it is too late in the day to argue that the khatiyān finalised in favour of the appellant in 1974 has no strength or value.

H Thus, we find no merit in any of the submissions made by the learned counsel for the respondents. The claim of the appellant based in finalisation of khatiyān in his favour in 1974 is fully justified. As result of the 1960 Act,

the land in question had vested in the State Government free of all encumbrances. The State Government was free to deal with the land in any manner it chose to do. On application of the appellant the State Government granted khatiyā in favour of the appellant with respect to the suit lands. The khatiyā thus confers legal and valid right on the appellant to remain in possession of the suit lands. The appeals are accordingly allowed. The impugned judgment and decree of the High Court confirming that of the lower appellate court are hereby set aside. The suit of the plaintiff-appellant stands decreed. The suit for restitution of possession of lands filed by predecessor of respondent stands dismissed. The parties are left to bear their respective costs.”

N.J.

Appeals allowed.