

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

RFA. No. 11 of 2015

- 1. *The State of Tripura***, represented by the Secretary (Revenue), Government of Tripura, Agartala.
- 2. *The Secretary***, to the Government of Tripura, Department of Information, Cultural Affairs & Tourism, Agartala.
- 3. *The Secretary***, Revenue Department, Government of Tripura, Agartala.
- 4. *The District Magistrate & Collector***, West Tripura, Agartala.

.....Defendant-appellants

-VERSUS-

- 1. *Smti. Bibhu Kumari Devi***, wife of Lt. Kirit Bikram Kishore Debbarman.
- 2. *Shri Pradyut Bikram Kishore Debbarman***, son of late Kirit Bikram Kishore Debbarman,

Both are residents of Palace Compound, Agartala, P.S. West Agartala, District: West Tripura.

..... Plaintiff-respondents

**B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH**

For Appellant(s)	:	Mr. A. K. Bhowmik, A.G. Mr. D. Bhattacharjee, G.A. Mr. D. Chakraborty, Sr. Advocate.
For Respondent(s)	:	Mr. D. R. Chawdhury, Advocate. Mr. S. Sarkar, Advocate.
Date of hearing	:	25.11.2019
Date of judgment	:	
And order	:	06.01.2020
Whether fit for reporting	:	YES

J _ U _ D _ G _ M _ E _ N _ T

(ARINDAM LODH, J)

We have taken up the present civil appeal to determine the ownership of a monument, a proud edifies of the State of Tripura called '*Nirmahal Palace*' popularly known as '*Rudrasagar*' comprising of huge land and water body constructed by Lt. Maharaja Bir Bikram Kishore Manikya Bahadur which symbolises rich cultural heritage of the State.

[2] The entire land is situated under Mouja-Rudijala and recorded under shabek khatian No.510 bearing CS plot No.1003, 1016/3317 and 1002 present khatian No.291, Hal plot No.1437,1439, 1440 and situated in a land measuring 6.01 acres described in details in the schedule of the plaint. The said land is situated under the Melaghar Sub-Division, District Sepahijala.

[3] The erstwhile king of the State of Tripura, Lt. Maharaja Bir Bikram Kishore Manikya Bahadur was the owner of the land and the entire water body over which '*Nirmahal Kothi and Palace*' was constructed in a land consisting of 6.01 acres. The background of the case is necessary to be elucidated for proper determination of the ownership of the said '*Nirmahal Kothi and Palace*'.

[4] Indisputably, the erstwhile king of the State of Tripura, Lt. Maharaja Bir Bikram Kishore Manikya Bahadur was the owner of the '*Nirmahal Kothi and Palace*' along with the surrounding water body. The said palace is situated over the

area measuring 26.61 acres and it was constructed before 1949.

[5] After the death of Maharaja Bir Bikram Kishore Manikya Bahadur, his son, Maharaja Kirit Bikram Kishore Debbarman, the sole legal representative, became the absolute owner of the said '*Nirmahal Kothi and Palace*' which is situated over the land measuring 6.01 acres, and he passed away on 27.11.2006. During his lifetime, as far back as in the month of November, 1994, the government of Tripura took over the possession of the suit property at the expressed desire of the then Maharaja Kirit Bikram Kishore Debbarman in the year 1982. After taking over the possession of the suit land along with entire water body, the Govt. of Tripura had converted the said palace and the Rudrasagar Lake as an important tourist destination. Huge development activities were carried on in the process to make it an interesting tourist spot.


Case of the plaintiff-respondents:

[6] In the aforesaid backdrop, suddenly dispute appears to be cropped up in the year 2008 when the legal heirs of Lt. Maharaja Kirit Bikram Kishore Debbarman, particularly, his wife Smt. Bibhu Kumari Devi and his Son Pradyot Bikram Kishore Debbarman had instituted a suit for declaration of title and recovery of possession by way of making following prayers:-

" A) For eviction of the defendant Nos.1 to 4 from the property of schedule of the plaint and for

mesne profit of Rs.10 crores and also for compensation for damage tentatively valued at Rs.20 crores against the Defendant Nos.1 to 4.

b) For any other relief/reliefs as the Ld. Court deem fit and proper under the pleading and evidence on record.

Schedule

Within District West Tripura under P.S. Melaghar, Mouja Rudijala and recorded under Khatian No.510 bearing C.S. Plot No.1003, 1016/3317 & 1002 present Khatian No.291, Hal plot Nos.1437, 1439, 1440 and is situated land measuring 6.01. acre with Nirmahal Kothi and Palace is bounded on the North-Rudrasagar, on the South-Rudrasagar, on the East Rudrasagar, on the West-Rudrasgar”

[6.1] The suit was registered as Case No. T.S. 20 of 2008 before the Court of learned Civil Judge, Senior Division, Court No.2, Tripura, West Agartala.

[6.2] Shorn of unnecessary details, the issues relevant to resolve the dispute in regard to title/ownership of the suit property have been taken into consideration.

[6.3] The plaintiffs established their title stating in the pleadings and adducing evidence that 'Nirmahal Kothi and Palace', comprises of the palace with the land and the huge watery portion popularly known as 'Rudrasagar' with an area measuring 26.61 acres of land which were the personal property of Lt. Maharaja Kirit Bikram Kishore Debbarman and in terms of the merger agreement, the said property became the personal property of Lt. Maharaja Kirit Bikram Kishore Debbarman. The plaintiffs being the wife and son of the Lt. Maharaja, Kirit Bikram Kishore Debbarman have projected their case stating *inter alia* that Lt. Maharaja had accorded permission to the Government of Tripura to use temporarily

the 'mahal' and the surrounding areas, including the watery portion of the land thereof on condition of its maintenance along with homogeneity without any fiduciary condition and that it was given to the Government of Tripura in good condition. The plaintiffs have further stated that Lt. Maharaja had received a letter dated 24.09.2002 from the Secretary (Revenue), Govt. of Tripura, Agartala. For purpose of reference the letter dated 24.09.2002 is reproduced as under:

**"Government of Tripura
Office of the District Magistrate & Collector
West Tripura, Agartala (Revenue Section)
No. F.3(27)/DM/W/REV/74/2587-88 Dated 24th
Sep. 2002**

**To,
The Secretary to
Sri K. B. K. Debbarman, the Ex-ruler of Tripura
Palace Compound, Agartala.**

**Sub: Donation of Nir Mahal Palace and its
surrounding lands of Rudrasagar to the Govt. of
Tripura by way of gift.**

Sir,

**Kindly refer to our letter vide No.
F.3(27)/DM/W/REV/74/791-92 dtd. 26.03.2002
and your reply vide No. 370/PAL/2002 dtd.
05.04.2002 on the subject noted above.**

**In this regard, i am to state that a long span of
time has already been elapsed and no progress
could be achieved for execution of the "Gift deed"
as per Govt. decision.**

**The Govt. is pressing hard for taking the
signature of Shri K. B. K. Debbarman Ex-Maharaja
on the body of the Gift deed to be executed
between the Shri K. B. K. Debbarman and the
Govt. of Tripura.**

**I am to request you to let this office know how
we may get in touch with Shri K. B. K.
Debbarman, the Ex-ruler of Tripura, in order to fix
a suitable date and time so that the execution of
the Gift deed could be done.**

**Yours faithfully,
(K. Ambuly)
Addl. District Magistrate &
Collector
West Tripura."**

[6.4] It is further stated that the palace has not been properly maintained, and the Government of Tripura is charging entry fees. The Government of Tripura had approached Lt. Maharaja to execute gift deed in favour of the Government but Maharaja denied to make any gift deed reserving his right to apportion his property according to his wish and desire. Lastly, Maharaja Kirit Bikram Kishore Debbarman during his lifetime had bequeathed 'Nirmahal' with surrounding land including watery portion to the plaintiff by way of executing a Will dated 11.02.2008 wherein, he declared that after his death, Maharani Bibhu Kumari Devi would become the absolute owner of the said suit property along with the surrounding land and water body.

[6.5] There were several other correspondences between the then Maharaja and Government of Tripura, but, it is stated in the plaint that those would be produced after collection. Along with the plaint, the plaintiffs have enclosed the readily available documents, like khatian No.510, Khatian No.291, letter dated 04.08.1984 written by the DM & Collector, addressed to Maharaja, letter dated 24.09.2002 written by Addl. DM & Collector addressed to Secretary to the Ex-Ruler, letter dated 04.12.2002 written by Kirit Bikram Kishore Debbarman addressed to the Secretary, Revenue Department, the copy of the notice dated 15.09.2007 under Section-80 CPC and its reply dated 26.11.2007.

[6.6] The plaintiffs have stated that by way of issuing the notice dated 15.09.2007, the plaintiffs had revoked the

permission given to the Government of Tripura to use of the suit property with immediate effect from 15.09.2007 i.e. the date of the said notice.

[6.7] It is further stated in the plaint that, the Government of Tripura through Addl. D.M. & Collector, West Tripura vide communication dated 26.11.2007 responded to the said notice stating *inter alia* that the possession of the suit property was handed over on 16.12.1974 by Captain Negendra Debbarma and Narendra Das, Surveyor and accordingly, Record of Right was created showing ICAT Department as possessor of the suit property since 16.12.1974 as per decision of the Government. The plaintiffs have stated that the Government had no right to take such decision without informing and hearing the real owner i.e., Maharaja Kirit Bikram Kishore Debbarman. The plaintiff have demanded 10 crores as *mesne profit* per year which is tentatively valued at Rupees 20 crores.

[6.8] In the plaint and in the evidence, the plaintiffs have categorically stated that the cause of action of the suit arose when possession was delivered on 16.12.1974 and permission to posses the suit property was revoked on 15.09.2007 and it is continuing thereafter also.

Case of the Defendants:

[7] On the other hand, the State of Tripura being the defendants contested the suit by filing written statement and also adduced evidence. Based on the documentary evidence,

the defendants denied the case of the plaintiffs. In their evidence, the defendants stated that in the year 1968, Maharaja Kirit Bikram Kishore Debbarman, the predecessor of the plaintiffs initially had proposed to sell '*Nirmahal*' palace to the Government due to his inability to maintain the property and the building thereon.

[7.1] By letter dated 5th August, 1968, personal secretary of Lt. Kirit Bikram Kishore Debbarman requested the Public Relations Officer, Government of Tripura to inform the predecessor of the plaintiffs as to the position of the '*Nirmahal*' building and its valuation. In the reply whereof, the officer designate informed the personal secretary on the same day vide letter dated 5th August, 1968 that net price of the building was Rs.41,500/-. By the same letter, the said Officer also requested the Personal Secretary to the then Maharaja to let him know as to whether Lt. Kirit Bikram Kishore Debbarman was agreeable to sell '*Nirmahal*' building to the Government at the price as stated above. Thereafter, by a letter dated 27th August, 1968 the Personal Secretary of Lt. Kirit Bikram Kishore Debbarman informed the Public Relations Officer that the matter was referred to Maharaja i.e., the predecessor of the plaintiffs for consideration. At the same time, said Personal Secretary requested the Public Relation Officer to furnish the detailed assessment of the valuation of the '*Nirmahal*' building. In reply to the aforesaid letter, the Public Relation Officer by letter No. F.21(4)/PUB/68 dated 7th September, 1968 sent a copy of the letter dated 10th July,

1968, received from the Principal Engineer (PWD), Agartala regarding the assessment of valuation of 'Nirmahal' building.

[7.2] It was the specific stand of the State-respondents that since the predecessor of the plaintiffs was not in a position to maintain the building which was in dilapidated condition, and finding no other alternative, the then Maharaja Lt. Kirit Bikram Kishore Debbarman had relinquished his right, title and interest over the suit property in favour of the State-respondents in compliance with the provisions of Section-107 of the Tripura Land Revenue and Land Reforms Act, 1960 with effect from 19th March, 1974 by a letter dated 19.03.1974 addressed to the Hon'ble Chief Minister of Tripura, Sukhamoy Sengupta.

[7.3] After receipt of the notice of relinquishment, the then District Magistrate and Collector, West Tripura requested the Personal Secretary vide his letter dated 25th November, 1974 to fix a convenient date for handing over the possession of the said 'Nirmahal' palace with its surrounding water-body and land to the Government. The then Maharaja Lt. Kirit Bikram Kishore Debbarman had expressed his desire vide letter dated 28th November, 1974 stating *inter alia* that the possession of 'Nirmahal' palace with its surroundings would be handed over to the Government on 16.12.1974 at 11.00 A.M. Maharaja on its own wisdom had appointed three of his officers, namely, i) Col. Rana Bilayant Jung Bahadur, ii) Captain Narendra Ch. Debbarma & iii) Sri Narendra Kumar Das, Surveyor to deliver the possession of the 'Nirmahal'

palace with its surrounding land to the Government. On execution of such handing over and taking over of the possession of the said '*Nirmahal*' building along with its surrounding land, the Circle Officer, Sonamura submitted a report to the Sub Divisional Officer (SDO), Sonamura on 16.12.1974 that possession of '*Nirmahal*' building, along with its surrounding land was handed over by the aforesaid officers in favour of the Government on 16th December, 1974 itself. The Circle Officer on behalf of the government took over the possession of the said building with land measuring 6.01 acres from the said representatives of the predecessor of the plaintiffs, and since then the State of Tripura has been possessing the suit property. A record of right also was created in favour of the Government of Tripura after observing all formalities as envisaged in the relevant provisions of the Tripura Land Revenue and Land Reforms Act, 1960.

[7.4] In pursuance of the said handing over and taking over of the possession of the suit land in question, Deputy Collector on behalf of the District Magistrate and Collector, West Tripura, informed the Joint Secretary to the Government of Tripura vide letter No.F.3(27)/DM/REV/953/55/741 dated 17th March, 1975, that the possession of the '*Nirmahal*' building along with its surrounding land i.e. the suit property herein was taken over by the Govt. on 16.12.1974. It was also informed that the building was in dilapidated condition and required immediate repair and proposal was made to create a government post of Care Taker to look after the suit property.

[7.5] Immediately thereafter, the State-government had decided to take appropriate steps to convert the place into an interesting tourist destination. The Government had started bus services for the tourists and also was able to bring necessary funds from the Government of India to renovate the building. Time to time, the Government of India had provided necessary funds to make expansion and development of the said building and the surrounding areas. As the days passed on, at the request of the Finance Department, the administrative control of the Revenue Department was transferred to the Tourism Department and in view of such proposal the Information and Cultural Affairs of Tourism Department Government of Tripura had taken over the possession and administrative control of the said suit property on 16th January, 1985. The State-government had invested crores of rupees for developing the suit property and also undertook huge constructions for tourist guest house.

[7.6] Recently, the suit property was brought under '*National Wetland Conservation Programme*' along with other 103 wetlands and the name of '*Rudrasagar*' around '*Nirmahal*' palace has been found in the list as item No.82 and was identified as "National Wetland". Further, a State Level Steering Committee was founded by the Govt. of Tripura for service and management of "Rudrasagar".

[7.7] In order to substantiate the pleadings, the State-government being the defendants adduced evidence and introduced the following documents in course of Trial:-

"i. Xerox copy of the Will Dated 11-3-2002 executed by Maharaja Kirit Bikram kishore Debbarman, original whereof is lying in the custody of the plaintiff; (Exbt.2)

ii. Certified copy of the Khatian No.291 of mouja Rudijala; (Exbt.4)

iii. Original letter dated 5th August 1968 written by Personnel Secretary to the H.H. the Maharaja Manikya Bahadur of Tripura addressed to the Public Relation Officer, Govt. of Tripura, Agartala; (Exbt.A)

iv. Original letter dated 5th August 1968 written by Public Relation Officer, Govt. of Tripura, addressed to the Personnel Secretary to the H.H. the Maharaja Manikya Bahadur of Tripura;(Exbt.G)

v. Original letter dated 27th August 1968 written by Public Relation Officer, Govt. of Tripura, addressed to the Personnel Secretary to the H.H. the Manikya Bahadur of Tripura; (Exbt.B)

vi. Original letter dated 7th September, 1968 written by Public Relation Officer, Govt. of Tripura, addressed to the Principal Engineer, Public Works Department, Govt. of Tripura, Agartala, with original assessment of valuation of Nirmahal Palace dated 10th July 1968; (Exbt.H)

vii. Original letter dated 10th December 1968 written by Technical Assistant for Principal Engineer, Tripura, addressed to the Public Relation Officer, Govt. of Tripura, Agartala; (Exbt.I)

viii. Original D.O. Letter dated 19.08.1974 written by Commissioner Revenue, Land Reforms & Taxes addressed to A. Sinha with a letter dated 19.03.1974 written by Shri Kirit Bikram Kishore Debbarma addressed to Shri Sukhamoy Sengupta; (Exbt.C)

xi. Original letter dated 25.11.1974 written by the District Magistrate & Collector, West Tripura addressed to the Personal Secretary to H. H. Maharaja Manikya Bahadur of Tripura; (Exbt.J)

x. Original letter dated 28.11.1974 written by Personal Secretary to H. H. Maharaja Manikya Bahadur addressed to District Magistrate & Collector, West Tripura; (Exbt.D (S.O))

xi. Certificate of delivery of possession of Nirmahal building dated 16.12.1974 signed by the Circle Officer, Sonamura; (Exbt.K)

xii. Original letter dated 17.03.1975 written by the Dy. Collector addressed to the Joint Secretary to the Government of Tripura;(Exbt.L)

xiii. Copy of the letter dated 06.12.1977 written by B. Parekh. Dy. Secretary, Govt. of Tripura, Agartala; (Exbt.M)

xiv. Original Office Memorandum dated 21.09.1977 signed by the Secretary to the Government of Tripura; (Exbt. S.O)(page-195)

xv. Certified copy of the Statement showing the expenditure incurred for development of Nirmahal building and its surrounding areas; (Exbt.O)

xvi. Original office Memorandum dated 02.03.2007 relating to sub allocation of fund for the development of Nirmahal building;(Exbt.P)”

Submission on behalf of defendant-State-appellants:

[8] In course of hearing of the appeal, Mr. A.K. Bhowmik, learned Advocate General appearing for the State-government contended that the Government of Tripura never initiated any proposal to take over the suit land and it was the then Maharaja who was the absolute owner of the suit property himself had initiated the proposal. It was due to his inability to maintain the suit property he had expressed his desire to unequivocally relinquish his right, title and interest as a matter of donation in regard to the suit property in favour of the Government of Tripura, though, initially, Maharaja i.e., the predecessor of the plaintiffs, wanted to sell the property to the Government. Accordingly, the Government of Tripura had assessed the valuation of the suit property, but, ultimately, the then Maharaja Kirit Bikram Kishore Debbarmann had relinquished the right, title and interest over the suit property in favour of Government of Tripura. Criticising the judgment of the learned Trial Court, learned Advocate General contended that the learned Civil Judge, Senior Division misinterpreted the provision of Section-107 of the TLR & LR Act 1960, and the findings of the learned Trial Court in regard to the applicability

of Section-107 of the said Act, was misconceived and untenable in law.

[8.1] On the point of the communication dated 24.09.2002 wherein the State-government had requested the then Maharaja to execute a gift deed in favour the government, the learned Advocate General contended that such correspondence was made due to misconception of law and execution of the gift deed, in the facts of the case, was not the requirement of law.

[8.2] Learned Advocate General further contended that the present suit initiated by the plaintiff was wholly barred by law of Limitation.

Submission on behalf of plaintiff-respondents:

[9] Mr. D.R. Chowdhury, learned counsel appearing for the plaintiff-respondents in support of the decree passed by the learned Trial Court contended that the alleged relinquishment should not be treated as a notice of relinquishment in terms of Section-107 of TLR & LR Act, 1960 because the alleged letter of relinquishment did not fulfil the essential requirements of Section 107 of the Act since there is specific prescribed format under the TLR & LR Act for issuing such notice of relinquishment. According to learned counsel, no transfer of the suit property was made according to the prescription mentioned in Section 5 of T.P. Act.

[9.1] Learned counsel appearing for the plaintiff-respondents further contended that the then Maharaja i.e., the

predecessor of the plaintiff-respondents executed a Will in favour of the plaintiff No.1 i.e., the wife Smt. Maharani Bibhu Kumari Devi wherein Lt. Maharaja had bequeathed all his properties in the State of Tripura and other States in favour of his wife Maharani Bibhu Kumari Devi. In the said Will dated 11.02.2002, the suit property also was mentioned which would indicate that Maharaja had never transferred the suit property in favour of the Government of Tripura.

[9.2] Next, the learned counsel for the plaintiff-respondents contended that the then Chief Minister was not the authorised person to take a decision on the proposal of the then Maharaja expressing his desire to relinquish the suit property.

[9.3] Next, Mr. Chowdhury, learned counsel tried to persuade this Court that the learned Trial Court taking note of the provision of Article-153 of the Constitution of India correctly held that the Chief Minister was not the head of the State and since the suit property was not taken over for and on behalf of the Governor, the said taking over of the possession should not be treated as legally transferred property.

Analysis and findings of this court:

[10] Having regard to the rival submissions of the parties, we have given our thoughtful consideration to the core issue to be decided in this appeal, which is enumerated here-in-below:

[10.1] The core issue centred around is as to whether the letter of donation or relinquishment is a notice and valid in law. However, before delve into the core issue what is suggested above, let us make a short survey of the findings of the learned Trial Court. In course of proceeding, the learned Trial Court had framed the following issues:-

i) Is the suit maintainable in its present form and nature?

ii) Whether the 'Nirmahal' and the land surrounding 'Rudrasagar' are the personal properties of the plaintiff and her predecessors as per merger agreement dated 09-09-1949?

iii) Is the plaintiff entitled to a decreed of recovery of khas possession of the suit land?

iv) Is the plaintiff entitled to the decree for mesne profit and damages?

v) Is the plaintiff entitled to get decree as prayer in her pliant?

vi) To what other relief/reliefs the parties are entitled to get?

[10.2] While deciding the issue No.1, the learned Trial Court held that the defendants could not raise any such question which would render the suit as not maintainable.

[10.3] The learned Trial Court had taken up the issues No.2 & 3 together for decision. We find while deciding the issue No.2 as to whether the suit property was the personal property of the plaintiff and her predecessor as per merger agreement dated 09.09.1949, the learned Trial Court on the basis of the said merger agreement held that on being asked by the Govt. of India, the then Maharaja had submitted an inventory mentioning his entire properties

in the State of Tripura and other parts of the country. In the said inventory there was mention of '*Nirmahal Kothi*' as his '*private*' property at serial No.4 at the said inventory dated 9th September, 1949. Relying on the basis of the said entry of the suit property in the inventory, the learned Trial Court had decided the issue in favour of the plaintiff declaring that the suit property is the personal property of the plaintiffs being the inheritor of Lt. Maharaja Kirit Bikram Kishore Debbarman.

[10.4] While deciding the said issue we have noticed that the learned Trial Judge had unnecessarily taken the burden of discussing various case laws and took the strain of downloading the inventory to justify as to whether the suit property was the personal property of Maharaja Kirit Bikram Kishore Debbarman or not. In fact, the State-appellant had never disputed the fact that the suit property belonged to Lt. Maharaja Kirit Bikram Kishore Debbarma, the predecessor of the plaintiffs. Rather, in our opinion, in absence of any challenge in regard to the ownership of the then Maharaja over the suit property, the framing of issue relating to ownership and discussion thereon, is not at all called for.

[10.5] However, the learned Trial Judge held that in view of the inventory so made by the then Maharaja, the Will dated 11.02.2002. (**Exbt.2 & Exbt.-E**) also included the suit property and the plaintiff No.1 being bequeathed of the said suit property was entitled to have the decree of

recovery of khas possession of the property as described in the schedule of the plaint and in that way, the learned Trial Judge had decided the issue Nos.2 & 3 in favour of the plaintiffs.

[10.6] While deciding the issue No.4 in regard to the claim of the plaintiffs to pass decree for 'mesne profit' and damages, the learned Trial Judge held that the State-appellants were liable to pay a sum of Rs.20.05 lakhs as 'mesne profit' on/and from 26.11.2007 along with 6 per cent interest thereon till the date of making payment as 'mesne profit'. Though it was observed by learned Trial Judge that "*it is evident on the record that the possession of the suit property was handed over to the Govt. through its agent at Sonamura on the concurrence of the Maharaja. Therefore, the defendants in possession of the suit property cannot be held to be the persons in wrongful possession of the suit property*".

[10.7] After being so observed, the learned Trial Judge has held that since the State-appellants did not hand over the possession to the plaintiff-respondents after receipt of the demand notice under Section-80(1) CPC seeking eviction, the period possession by the Government subsequent to such notice dated 26.11.2007 was/is illegal entitling the plaintiffs to have a decree for mesne profit.

[10.8] As we have said earlier, the core issue involved in the present suit is centred around as to whether

the then Maharaja Kirit Bikram Kishore Debbarma being a Raiyat had donated or relinquished his right, title, interest and possession of the suit property in favour of the Government of Tripura.

[10.9] The TLR & LR Bill, 1959 (Bill No. 88b of 1959) having been passed by both the Houses of Parliament, received the assent of the President of India on the 21st of September, 1960, published in the Gazette of India, Extraordinary, Part-II, Section-I, page-571, dated September 22nd, 1960 and re-published in the Tripura Gazette, Extraordinary, Part-IV, dated 02.12.1960. This Act is called as the Tripura Land Revenue and Land Reforms Act, 1960 (TLR & LR Act, 1960 for short) which has been extended to the whole of the State of Tripura. Sub-section-S of Section-2 defines 'Raiyat' which reads as under:

"2 (S). "Raiyat " means the person who owns land for purpose of agriculture paying land revenue to the Government and includes the successors-in-interest of such persons."

[10.10] The plaintiff No. 1 as PW-I had introduced certified copies of Khatian bearing No. 291 (Exbt.4), Khatian No. 510 (Exbt. 5), Khatian No. 169 (Exbt.6), Khatian No. 147 (Exbt.7) and Khatian No. 510-194 (Exbt.12 series). Khatian No. 291 of Mouza Rudijala (Exbt.4) reveals that though some of the plot numbers in this khatian were showing Lt. Maharaja Kirit Bikram Kishore Debbarman as "Raiyat", but, Information and Cultural Affairs and Tourism (ICAT, for short) on behalf of the Government of Tripura has been shown as possessor of

the land belonging to the said khatian numbers since 16.12.1974 which was corrected as per order No. 1.SDM/SNM and as per order No. DM & Collector West, No. F.3 (27) DM (W) REV/74/1954. However, the name of Lt. Maharaja Kirit Bikram Kishore Debbarman was shown in khatian No. 510 and the relevant plot under this khatian was recorded as the "Nirmahal" palace.

[10.11] From khatian No. 169 of Mouja Rudijala (Exbt.6) reveals that Rudrasagar Matsajibi Samabai Samiti Ltd. (Samiti, for short) has been given the possessory right at column No. 13 of the said khatian and it was recorded on 10.01.1964. Similar is the position of khatian No. 147 (Exbt. 7). However, in the said khatian, the name of some persons have been recorded as permissive possessor under the Samiti in khatian No. 510 of Exbt.12 series. The name of Lt. Maharaja Kirit Bikram Kishore Debbarman has been shown as possessor at column No. 13 under the head of "description" of right and possessor. Plot No. 1003 has been recorded as building to Nirmahal Palace and against the plot No. 1002, the name of one Jogesh Ch. Dey was recorded as permissive possessor. From khatian No. 194 (Exbt.12 series) it reveals that the possessory right of the lands under this khatian was given to Secretary on behalf of Samiti under column No. 13 of the said khatian since 26.10.1964. The plots of land under this khatians were recorded in favour of some persons as permissive possessors.

[10.12] From the aforesaid exhibited khatians i.e. the record of rights, it becomes apparent that substantial portion of the suit property was recorded in the name of 'Samiti' having their possessory rights. It is apparent that the possessory rights have been given to Samity since 1964, and the plots of land under these khatians are being occupied by many persons as permissive possessors under the Samity. Nowhere the name of Lt. Maharaja Kirit Bikram Kishore Debbarman was recorded in the said khatian, only in one khatian i.e khatian No. 291, the name of Lt. Maharaja Kirit Bikram Kishore Debbarman was recorded as 'Raiyat'. However, the said land is under the occupation/possession of the ICAT department, Government of Tripura since 16.12.1974 and the records of rights accordingly, was corrected by way of initiation of appropriate proceedings under the TLR & LR Act.

[10.13] In khatian No. 510 (Exbt.12 series) only possessory right has been declared in the name of Lt. Maharaja Kirit Bikram Kishore Debbarman which was recorded on 20.10.1964. The khatian as stated above indicates three important aspects: (i) the possessory rights of substantial portions of the suit property have been awarded to the Secretary on behalf of Samiti and they have been in possession since 1964; (ii) though, the name of Lt. Maharaja Kirit Bikram Kishore Debbarman was recorded as Raiyat , but under a due proceeding the record of right was corrected, and in view of such correction, ICAT department has been

possessing the land on behalf of the Government of Tripura since 16.12.1974; (iii) In khatian No. 510 the possession has been recorded in favour of Lt. Maharaja Kirit Bikram Kishore Debbarman where the 'Nirmahal' palace is situated.

[10.14] During his life time, Lt. Maharaja Kirit Bikram Kishore Debbarman i.e. the predecessor of the plaintiffs had never raised any objection against recording of such name in favour of the samity. In furtherance thereof, it also becomes crystal clear that a vast areas of lands and the water body around the suit property were recorded in the year 1964, even prior to the proposal of Maharaja to donate entire property including the water body and the suit property in favour of the Government of Tripura. Though no issue was framed as to whether the suit was barred by mis-joinder and non-joinder of necessary parties, but, from the judgment of the learned trial judge it appears that the said issue was raised at the time of hearing of the suit and the learned trial judge also discussed the issue, where it was held that the suit was not bad for defect of parties.

In view of such discussion and finding of the learned trial court, it is necessary to ascertain whether the decree, as prayed for, by the plaintiffs, is executively formal keeping in mind will establish principle of law that a court should not pass any such decree which is not possible to execute in accordance with law. Here, one of the most significant aspects has come up as to whether the decree, if passed, is at all executable. The khatians which have been brought on record

by both the plaintiffs and the defendants remained uncontroverted as to the existence of 'Rudrasagar Matsha Samabai Samiti' having the possessory right over the entire water body. The said 'Rudrasagar Matsha Samabai Samiti' i.e. the Samiti, has not been impleaded as party and the plaintiff-respondents have not sought for recovery of possession of the entire water body from the said 'Samiti'. As such, according to us, while decreeing the suit in favour of the plaintiffs, the learned trial Judge ought to have decided the question as to whether the decree of recovery of 'Nirmahal' palace from the State-appellants was at all possible in absence of any claim of recovery of the entire water body from the said samiti, as are manifest in the record itself. For more clarity, we may hold that if the 'samiti' does not allow the plaintiffs to enter into the water body and step into the 'Nirmahal' palace then the decree of recovery of possession in favour of the plaintiffs of the suit property will be a futile exercise since such decree would be a non-executable one. Resultantly, in our opinion, 'Rudrasagar Matsha Samabai Samiti' is a necessary party to the suit and in their absence, the suit cannot be adjudicated in an equitable manner.

[10.15] In the instant suit, the suit property relates to R.S. (Hal) khatian No. 291 having Sabek khatian No. 510. Against R.S. (Hal) plot No. 1437, C.S.(Sabek) plot No. 1002, which includes 'Nirmahal' palace, the name of ICAT department has been recorded as possessor (Exbt.4). The striking point here is that the suit property was handed over to

the Government of Tripura on 16.12.1974 which would be evident from the letter dated 28.11.1974 (Exbt.D) and the khatian was corrected showing the name of ICAT department as possessors of the suit property since 16.12.1974 on behalf of the Government of Tripura i.e. from the date of handing over of possession. The plaintiffs have asserted that the said correction has been done illegally behind the back of the plaintiff's husband i.e. Lt. Maharaja Kirit Bikram Kishore Debbarman. The learned trial judge while deciding the issue Nos. 4 and 5 has held that **"it is evident on the record that the possession of the suit property was handed over to the Government of Tripura through its agent at Sonamura on the concurrence of the Maharaja. Therefore, the defendants in possession of the suit property cannot be held to be the persons in wrongful possession of the suit property"**. From the aforesaid finding, it is clear that according to the learned trial judge also the suit property was handed over to the Government on the concurrence of the then Maharaja.

[11] Having held so, the learned trial judge has held that the donation or relinquishment of the right, title and interest of the suit property by Lt. Maharaja was not in accordance with the essential requirements of Section-107 of TLR & LR Act. We may extract the letter dated 19.03.1974 (Exbt.C) to find out whether the land was unequivocally donated to the Government of Tripura and the then Maharaja had relinquished his 'Raiyat' status in favour of the

Government of Tripura. The letter dated 19.03.1974, reads as under:

"To, **Dated,**
19.03.1974
Shri Sukhamay Sen Gupta,
Chief Minister,
Government of Tripura,
Agartala.

Dear Shri Sen Gupta,

After carefully considering all the prevailing conditions of the country in general and of Tripura in particular, I have decided to donate the Nirmahal Palace with all lands surrounding the same, which is one of my Private Properties as mentioned in the Merger Agreement and which had been build on an island inside a Lake, named -Rudra Sagar, in Sonamura Divisions by my late father of revered memory at a huge cost, for the benefit of general public of Tripura. The same may be utilized in a manner as thought fit and proper by your Government.

The Lake may kindly be named as Bir Bikram Sagar and the Palace mentioned as a Gift of my family.

Hope the donation and the suggestions mentioned above will kindly be accepted and the general public informed accordingly.
With kind regards.

Yours sincerely,
Sd/
Shri Kirit Bikram Kishore Deb Varma."

[12] In our thoughtful consideration the aforesaid communication to the Chief Minister of Tripura being the head of the council of ministers and the council of ministers being the executive head of the government had responded to the said letter written by the then Maharaja as extracted above vide communication dated 19/21st August, 1974 which reads as under:

"K. D. Menon

Dated, 19th/21st August, 1974,

Dear Shri Sinha,

I am enclosing a copy of the letter of Shri Kirit Bikram Kishore Deb Varma, dated 19.03.1974, regarding donation of the Nirmahal Palace with land surrounding the same together with a copy of my Note issued to Shri Sen and others.

You may please take necessary steps to take over the property and assess the value in conjunction with the Chief Engineer-cum-Secretary, PWD."

It is evident from the (Exbt.C) that the said letter was addressed to one Sri A. Sinha, District Megistrate & Collector, West Tripura, Agartala and the office of DM & Collector had received the said letter on 22.08.1974.

[13] For better understanding in regard to the communication of the then Maharaja to donate the land, we may look back to the findings and the backgrounds of such decision of the then Maharaja. For purpose of reference, the letter dated 5th August , 1968 (Exbt.A) written by the Personal Secretary to the then Maharaja, addressed to the Public Relation Officer, Government of Tripura is reproduced here-in-below:

**"To,
The Public Relation Officer,
Govt. of Tripura,
Agartala
05.08.1968
Subject: NIR MAHAL PALACE**

Dated

Sir,

I shall be obliged if you kindly inform me as to how the position of the Nirmahal stands and I hope you have by this time received from P.W.Department the valuation of the same. I shall be very grateful if I be kindly informed regarding the valuation of the same so as to enable us to understand our position.

Yours faithfully

Sd/

Personal Secretary to

H. H. The Maharaja Mainkya Bahadur of Tripura"

[14] Responding to the aforesaid letter, the Public Relation Officer, Government of Tripura, Agartala, vide his letter dated 5th August, 1968 (Exbt.G) had informed the Personal Secretary to the then Maharaja that as per Public Works Department the estimated cost of Nirmahal Palace including the land, was at Rs.3,55,000/- from which Rs. 3,13,000/- would be deducted as the cost of repairing. Accordingly, the total cost of the palace was estimated at Rs. 41,500/-. The letter dated 5th August, 1968 may be reproduced therein below for reference:

**"Government of Tripura,
Office of the Public Relation Officer.**

**Dated the 5th August,
1968.**

**To,
The Personal Secretary to,
H. H. the Maharaja Manikya Bahadur,
Of Tripura, Agartala,
Sir,**

Please refer to your letter No. 1010/N-I dated the 5th August, 1968. I am to inform you that the Public Works Department has estimated the cost of Nir Mahal Palace including land at Rs. 3,55,000/- and according to their estimate from this amount will be deducted the cost of necessary repairs to make the building suitable for habitation which will come to Rs. 3,13,000/-. Hence, the net cost of the palace according to them is Rs. 41,500/-.

I shall be grateful if you would kindly let me know whether you are agreeable to selling the Nirmahal Palace at the above cost to the Government.

**Yours faithfully,
Sd/**

**Public Relation Officer,
Government of Tripura."**

[15] Again, on 27th August, 1968 the personal secretary to the then Maharaja had written a letter to the Public Relation Officer, Government of Tripura, Agartala, whereby the Public

Relation Officer was requested to inform immediately about the valuation of the 'Nirmahal' palace and also the officer was requested to submit detailed valuation to enable the then Maharaja to take a decision on the matter. The said letter dated 27th August, 1968 may be reproduced hereunder for convenience:

**"To,
The Public Relation Officer,
Government of Tripura,
Agartala, dated 27th August,
1968
Sir,
Please refer to your office No. F.21(II)-PUB/68,
dated the 5th August, 1968, the matter was
referred to H. H. the Maharaj Manikya Bahadur
and I have been directed to request you to kindly
inform me at the earliest as to how the valuation
of Nirmahal as mentioned in your letter under
reference has been obtained. A detailed valuation
may kindly be sent to enable His Highness to take
a decision on the matter.
Please treat this as Very Urgent.**

**Yours faithfully,
Sd/
Personal Secretary,
To, H. H. the Maharaja Manikya Bahadur
Of Tripura."**

[16] On the aforesaid background, it is clear that the then Maharaja Kirit Bikram Kishore Debbarman had written the letter dated 19.03.1974 (Exbt.C) to the then Chief Minister of Tripura on 25th November, 1974. The District Magistrate & Collector, West Tripura, Agartala had made a communication with the Personal Secretary to the then Maharaja on the subject **"donation of Nir Mahal Palace and other surrounding lands under sonamura subdivision"** wherein, the DM & Collector wanted to know the date of handing over the possession of the Nir Mahal Palace in favour of the

Government of Tripura (Exbt.J). For purpose of reference the relevant extract may be reproduced here-in-below:

**"Government of Tripura,
Office of the District Magistrate & Collector
West Tripura, Agartala
No. F.3(27)/dm/rev/west/10945-46
dated the 25th November, 1974**

**To,
The Personal Secretary,
To the Highness Maharaja Manikya Bahadur
Of Tripura, Ujjayanta Palace,
Agartala.**

**Subject: Donation of Nirmahal Palace with
surrounding land under Sonamura Sub-division.**

**Sir,
Kindly refer to this office letter No. F.3(27)-
DM/REV/10467-70/74 dated 19.10.1974 on the
subject noted above.**

**I would request you kindly to intimate a
convenient date for handing over possession of
Nirmahal Palace along with its surrounding land
well ahead so that all concerned may be informed
accordingly.**

**Yours faithfully,
Sd/
District Magistrate & Collector,
West Tripura, Agartala.
Copy forwarded to the SDO, Sonamura for
information please."**

[17] In response to the said letter dated 25th November, 1974 (Exbt.J) the personal secretary to the then Maharaja by his letter dated 28.11.1974 intimated the DM & Collector, West Tripura, Agartala, that the land in question would be handed over to the Government of Tripura on 16.12.1974. In the body of the said letter, the names of authorized representatives of Maharaja, engaged for such purpose were also mentioned. They were Col. Rana Bilyat Jung Bahadur, Capt. Nagendra Ch. Deb Barman, Sri Narendra Kumar Das, Surveyor. As a matter of reference the said letter dated 28.11.1974 (Exbt.D) is reproduced here-in-below:

"No. 354/NIR/74

Dated. 28.11.1974

To,

**The District Magistrate & Collector
West Tripura, Agartala**

**Subject: Donation of Nirmahal Palace with
surrounding land under Sonamur Sub-division.**

Sir,

**Please refer to your office No.
F.3(27)/DM/REV/WEST/I0946-46/74 of 25.II.74
on the subject noted above.**

**I am directed by his Highness Maharaja Manikya
Bahadur of Tripura to hand over Nirmahal Palace
with surrounding land on 16.12.1974 at II. Am.
The under-noted representatives of His Highness
will be sent accordingly to hand over the same to
your Representatives.**

Yours faithfully,

Sd/

Personal Secretary,

**To H. H. Manikya Bahadur
Of Tripura, Agartala.**

I. Col. Rana Bilyaet Jung Bahadur,

II. Capt. Nagendra Ch. Dev Barman,

III. Sri Narendra Kumar Das, Surveyor."

[18] As per specified date the suit property was handed over to the Government of Tripura on 16.12.1974 which would be evident from (Exbt.K), and is reproduced here-in-below, in extenso:

"The possession of Nirmohal Palace, now in dilapidated condition, situated under C.S. Plot No. 1003 of Mouja Rudijala, along with the surrounded lands under C.S. Plot Nos. 1002, 1003 and 1016/3317 measuring 6.01 acres under Khatian No. 148 (F.G.O. No. 510) and Jote No. 6 of Mouja Rudijala has been handed over and taken over by us, today the 16th December, 1974 as per S.D.O., Sonamura No. 11356-58/XV-53/SDO/SNM/LA/74 dated 11.12.197.

Handed over by

Nagendra Ch. Deb Barman

16.12.1974

(Capt. Nagendra Ch. Deb Barma)

(Capt. Narendra Kr. Das, Surveyor)

**On behalf of His Highness Maharaja Kirit Biram Kishore
Manikya Bahadur.**

Taken over by,

(S. Das)

Circle Officer, Sonamura."

[19] Now the disputed position is that the possession is taken over by the Government of Tripura on 11.12.1974

through its Circle Officer, Sonamura and such possession was handed over by authorized representatives of the then Maharaja Manikya Bahadur Dev Barman.

[20] The question has been raised about due compliance of the provisions of Section-107 of the TLR & LR Act. The said provision reads as under:

"(1) Subject to any rules that may be made under this Act, a raiyat may relinquish his rights in respect of any land in his possession in favour of Government by giving a notice in writing to the competent authority in such form and manner as may be prescribed, not less than three months before the close of any year and thereupon he shall cease to be a raiyat in respect of that land from the year next following the date of notice:

Provided that relinquishment of only a part of a holding or of a holding which, or part of which, is subject to an encumbrance or a charge, shall not be valid.

(2) If any person relinquishes his rights to a land under sub-section (1), the way to which lies through other land retained by him, any future holder of the land relinquished shall be entitled to a right of way through the land retained."

[21] On careful perusal of the said provision it becomes apparent that the essential requirements for relinquishment are: (i) there should be notice in writing by a 'Raiyat ' (ii) the notice is to be given to the competent authority (iii) the notice must in such a form and manner as may be prescribed.

[22] As we have noticed earlier, the then Maharaja has made a communication on 19.03.1974 which was addressed to the then Chief Minister expressing his willingness to donate the suit property to the Government of Tripura in view of the conditions prevalent at that period of time in the State of Tripura and other parts of the country. By the said letter the

then Maharaja has also expressed his desire that the Lake should be named as 'Bir Bikram Sagar' and the Palace mentioned as a 'gift' of his family. Noticeably, while concluding the letter, Maharaja has urged to accept his proposal for donation and the suggestion as mentioned in the said letter dated 19.03.1974.

[23] A bare reading of the said letter dated 19.03.1974 clearly manifests to distinguishable features; (i) 'intention' and (ii) 'suggestion'. The contents of the first part of the said letter connotes Maharaja's clean and clear state of mind expressing his strong desire to donate the entire suit property in favour of the Government of Tripura. The second part denoting specifically "Lake" may kindly be named as 'Bir Bikram Sagar' and the "Palace" mentioned as a 'gift of my family', are nothing, but, mere suggestions. Most importantly and more significantly that 'intention' relates to transfer of the entire property including the suit property in favour of the State-government by way of donation and accordingly the said properties were handed over to the Government of Tripura in unequivocal terms. Subsequently, thereafter, we have noticed that the government has acted upon such transfer in all materialistic features and nature and also Record of Right has been created in favour of the Government of Tripura and possessory right of 'Rudrasagar' lake and other adjacent land remained with 'Rudrasagar Matsha Samabai Samiti'. We have also noticed that his 'suggestion' which the Maharaja made has not been acted upon and the 'suggestion' of Maharaja to

name the lake as 'Bir Bikram Sagar' and treat the 'palace' as 'gift of his family' has not been acted upon, being mere suggestion. Maharaja in the last paragraph of his letter dated 19.03.1974 himself has revealed the distinct character of the said letter where he has indicated the donation part in the first paragraph and his 'suggestion' in the second paragraph of his letter.

[24] In our considered view by using the word "gift" in his suggestion, the then Maharaja has not expressed his mind to use the word 'gift' in its legal perspective. It is important to notice that the then Maharaja also has expressed that the proposal should also be informed to the general public. We find no reason why this letter should not be treated as notice. Another striking feature is that the then Maharaja has also expressed that the proposal should be informed to the general public. By this 'expression' it is quite eminent that the then Maharaja had intended to donate the properties to the Government of Tripura for noble object and purpose and in the interest of general public. We find no reason why this letter should not be treated as 'notice'.

[25] Next, the learned trial judge has held that proper notice, as prescribed, has not been given to the competent authority. "Competent Authority" as defined in Sub-section-F of Section-2 of the TLR & LR Act, reads as under:

"Competent Authority in relation to any provision, means any officer appointed by the Government (State Government) to be the competent authority for purpose of the provisions."

[26] The learned counsel appearing on behalf of the plaintiff-respondents has failed to inform this court, who is the 'competent authority' under the Act. We also do not find anywhere either in the 'Act' as well as in the 'Rules' designating any particular officer of the Government as 'competent authority'. Rather a meticulous reading of the definition of 'competent authority', as stated above, we find that a competent authority may be any officer who is appointed by the government for the purpose of the provision. In the case in hand, the entire matter was taken up by the D.M. and Collector, Government of Tripura and the possession of the properties was taken over by the Circle Officer, Sonamura on behalf of the Circle Officer of Sonamura, under whose area the suit land belongs. In our thoughtful consideration, the Circle Officer being the official of the government under the D.M. & Collector, West Tripura, is competent enough to take over the possession on behalf of the government and we failed to understand why he shall not be treated as competent officer for the purpose of provision of section 107 of the TLR and LR Act to take over the possession in absence of any such provision designating a particular officer for the said purpose.

[27] As we stated earlier, the Act does not designate any officer as competent authority and now remains about the 'prescribed format' which takes us to note the entire prescribed format mentioned in Form no. 42 of the TLR & LR Rules, 1961. The said form is re-capitulated here-in-below:

**"T. R. L. R. Form No. 42
[See rule 136]**

**Notice for relinquishment of raiyats in land
Description of the Land**

**To,
The Competent Authority,
I.....s/o.....resident of
village.....District.....hereby give notice for
relinquishing my raiyat's rights in the land as
shown in the scheduled below situated ion village
J. L. No.Thana.....Sub-
Division.....and of which I am the raiyat form
the agricultural year.....**

Rule-136 reads as under:

"136. Notice of relinquishment:

(I) The notice for relinquishment of a holding under Sub-section(1) of Section 107 shall be made in Form 42 and shall be endorsed by two witnesses.

(II) The notice shall contain particulars of each plot which the raiyat wishes to relinquish and of the land revenue payable thereof.

(III) It shall also bear a certificate denoting that the holding or any part thereof is not subject to any encumbrance or charge."

[28] Now, on meticulous reading of the contents of the letter dated 19.03.1974 which is authored by the then Maharaja himself and has been addressed to the Chief Minister, we find that, true it is, that the letter dated 19.03.1974 was not given in the format specified in Form-42 of the TLR & LR Rules, 1961, but, from the contents we find that the then Maharaja writing the said letter to the Chief Minister, has specifically mentioned the properties he wants to donate in favour of the Government of Tripura, the record of which were already being with the government itself. He has decided to donate Nirmahal Palace with all lands surrounding to the same which is one of his private properties as mentioned in the Merger Agreement.

[29] The learned trial judge after perusal of the inventory which the then Maharaja had submitted at the time of execution of the Merger Agreement with the Union of India where there is specific mention of Nirmahal Palace in item No. 4. Thus, according to us, there is no ambiguity in mentioning and identifying the 'Nirmahal' palace along with its properties. In the prescribed Form No. 42, the khatian and plot numbers etc., has been prescribed for identification of the land only.

[30] It is not in dispute that the Nirmahal Palace is not identifiable. The plaintiff has produced the Sabak khatian No. 510 under Mouja Rudijala where the name of Maharaja has been shown as Raiyat and 'Nirmahal' palace is situated over the plot No. 1003 under the said khatian No. 510 (Exbt.5). There was existence of the said khatian as on the date of 19.03.1974.

[31] We reiterate that the purpose of mentioning khatian, plot numbers, area, the soil class, land revenue, name of under- Raiyat, if any, are only required to identify the land unambiguously. As we have stated earlier that in the letter dated 19.03.1974 addressed to the Chief Minister, we did not find any ambiguity in regard to the identification of the land, Maharaja wanted to donate in favour of the Government of Tripura. The then Maharaja has also clarified the property in his letter dated 19.03.1974 (Exbt.C) where he has specifically stated that the said palace was built on an island inside a lake named, 'Rudrasagar', in Sonamura Sub-division and it has led the identification of the property more unambiguous.

[32] Furthermore, there is no need to certify that whether the land in question was subjected to any encumbrance or charge against the then Maharaja as he himself has stated that Nirmahal Palace is his personal property as per the inventory, he has submitted during Merger Agreement with the Union of India.

[33] Furthermore, even if for argument sake, we hold that the notice was not strictly in accordance with the procedure as prescribed in Form no. 42 of the Rules read with section 136 of the said Rules, then also, we may hold that the procedure are only handmade and not the mistress. It is now well settled that procedural provisions are to be construed in a manner that advances and does not subvert the cause of justice. The procedural law is used as an aid to render justice in consonance with the intent and object, the true legislature wanted to achieve. The implication and importance of procedural law has been discussed in **Jagatjit Industries Limited v. Intellectual Property Appellate Board**, reported in **(2016) 4 SCC 381** where the Apex Court at para-18 had made a reference to the case of **Kailash vs Nanhku & Ors**, reported in **(2005) 4 SCC 480** wherein the Apex Court has held in paragraphs 28 and 29 as under:

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and

specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar (1975) 1 SCC 774, are pertinent:-

"The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable.....Justice is the goal of jurisprudence-processual, as much as substantive."

29. In State of Punjab and Anr. v. Shamlal Murari, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." In Ghanshyam Dass and Ors. v. Dominion of India and Ors. (1984) 3 SCC 46, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle".

[34] Having given our anxious thought to the entire scheme of the TLR & LR Act, introducing the provision of Section-107 of the TLR & LR Act & Rule-136 of the TLR & LR Rules, 1961 and the format prescribed for the purpose, according to us, a Raiyat or an owner of land only needs to make a communication to the Government expressing his desire to relinquish the property and for this purpose, willing owner is to furnish adequate information in regard to the

identification of the property he wants to relinquish in favour of the government. In a common parlance, notice means 'information'; in its legal sense it is "information concerning a fact, actually communicated to a person by an authorized person, or actually derived by him from a proper source and is regarded in law as "actual" when the person sought to be affected by it knows thereby of the existence of the particular fact in question. It is knowledge of facts which is naturally lead an honest and prudent person to make inquiry, and does not necessarily mean knowledge of all the facts. In another sense, "notice" means information, an advice or written warning, in more or less formerly shape intended to apprise a person of some proceeding in which his interests are involve, or informing him of some fact which it is his right to know and the duty of the notifying party to 'communicate'. (Black's law dictionary 6th Edition Page-1061)."

[Emphasis supplied]

[35] By enacting the provision of Section-107 of the TLR & LR Act and the rules therein, in our opinion, the legislature wanted a Raiyat to furnish substantive information in regard to the plots of land he wants to relinquish in favour of the government and this land must be identifiable to the government. Thus, Section-107 of the TLR & LR Act mandates a person i.e. the Raiyat to supply substantive information to the government about the ownership and identity of the land he wants to transfer by way of relinquishment of the property. As such, we hold that the information about his genuinity as

Raiyat and the identification is mandatory but the format prescribed under the rule is directory in nature for the reason that the language or phraseology in the format of notice should not defeat the real meaning and intention of the framers of the legislation or statute.

[36] Having regard to the principle laid down in **Jagatjit Industries (supra)** and **Kailash (supra)** in our view the format being a part of processual law should be liberally construed so that it does not frustrate the real purpose and object the legislature wanted to achieve. In the instant case, when mandatory requirement of supplying necessary information relating to the suit property are complied with as envisaged under Section-107 of the TLR & LR Act, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirement that is the prescribed format under Rule-136 of the TLR& LR Rules. The enactment that comes in the way of furthering the legislative intendment creating serious general inconvenience to persons, the same should be construed as directory. [Hazari Mal Kuthiald vs. I.T.O., Special Circle, Ambala Court, AIR 1961 SC 200, P. 202; State of U.P. VS. Babu Ram Upadhaya, AIR 1961 SC 751, p.765; Raza Buland Sugar Co. Ltd., Rampur, vs. Municipal Board, Rampur, AIR 1965 sc 895, p.899; Kailash vs. Nanhku, (2005) 4SCC 480, p.497]. In view of the law discussed above, we repel the submission of the learned counsel appearing for the plaintiff-respondents that the information given by the Maharaja i.e.

the predecessor of the plaintiff vide communication dated 19.03.1977 should not be treated as notice.

[37] In our considered view, the letter dated 19.03.1974 authored by the then Maharaja i.e. the predecessor-in-interest of the plaintiff-respondents is a complete notice and fulfils all the essential requirements of Section-107 of TLR & LR Act and is not hit by Rule-136 of the TLR & LR Rules.

[38] As we have stated earlier, that the TLR & LR Act does not designate a particular officer as 'competent officer' for the purpose of section 107 of the TLR & LR Act read with Rule-136 of the TLR & LR Rules and by that way it cannot be said that the Chief Minister is not the competent authority to receive such letter. Moreover, according to the Rules of executive business, the Chief Minister is the head of the council of Ministers and the council of Ministers are the executive head of the government. Significant enough is that the Chief Minister of Tripura only has received the letter dated 19.03.1973 but, he has referred the letter to the concerned D.M. & Collector, Government of Tripura and subsequent thereafter, all correspondences were made with the then Maharaja through the authorised officers acted on behalf of the Government of Tripura. We have lost our sight to the important fact revealed from the letter dated 28.11.1974 where the personal secretary of the then Maharaja had written the said letter to the D.M. & Collector, Government of Tripura on the subject 'donation of Nirmahal palace along with surrounding lake under Sonamura Sub-division'. In the said

letter, the then Maharaja through his authorised representatives had unequivocally intimated to the D.M. & Collector, Government of Tripura that the land and palace in question would be handed over on 16.12.1974 at 11.00 am. Accordingly, we find no defect in the said communication dated 19.03.1974 and the final communication dated 28.11.1974 fixing the date and time of handing over the possession of the said properties in question. In view of the above analysis, we are unable to agree with the finding of the learned trial Judge that the notice dated 19.03.1974 should not be treated as 'notice' and it suffers from procedural defects laid down under Section 107 of TLR & LR Act.

[39] Further, we make it clear that the TLR & LR Form No. 42 read with Rule -136 is not mandatory in nature and it is directory and the mere purpose of framing such rule is to ensure that the person who wants to relinquish the property has to be specific to his right title and interest over the suit property and the said property must be identifiable to the government.

[40] Another striking feature that we should discuss herein that the land was handed over to the Government of Tripura on 16.12.1974 and the record of right was duly corrected showing ICAT department as the possessor of the suit property on behalf of the Government of Tripura.

[41] Since the time of handing over the possession of the said land, the Government of Tripura has taken various

measures to improve and develop the suit property. Many funds were sanctioned in the name of the Governor which would be evident from the memorandum dated 21st September, 1977 (Exbt. N), which reads as under:

**"No. F. 96(60)-Tourism/77/623-27
Government of Tripura,
Department of Public Relation and Tourism
Dated 21st September, 1977
MEMORANDUM**

Subject: Administrative approval and expenditures sanction for the work strengthening the foundation and plinth wall of Nirmahal.

The Governor has been pleased to accord administrative approval and expenditure sanction to the estimated cost of Rs. 1,66,000/- (Rupees one lakh and sixty six thousand) only for strengthening the foundation and plinth wall of Nirmahal building in Rudrasagar, Melagaharh as per estimated framed by the PWD under teir letter No. 3698-99 dated 18.03.77.

The expenditure is debitable to the head "459-Capital outlay on Public Works -3(2)-Publicity and Tourism-Strengthening of foundation and plinth wall of Nirmahal in Rudrasagar (Plan) in the budget for 1977-78.

This issues with the concurrence of the Finance Department vide their U.O.No. 2798/FIN(G)/77 dated 17.09.77.

**Secretary
to the Government of Tripura."**

[42] The then Maharaja never had raised any objection to such activities of the Government of Tripura. The finding of the learned trial judge that the Government has obligation to protect every monument, declared by any law or by parliament as national importance, according to us, has no bearing to adjudicate the real question arising out of the instant suit.

[43] Next, the finding of the learned trial judge that there is no material that Rudrasagar along with 'Nirmahal' palace has been identified as a place of national importance is

wholly misconceived. The D.O. letter bearing No. J.22012/ 35/ 2007-CS(W) dated 07.05.2008 (Exbt.R), clearly manifests that the suit property has been declared to be the national importance and has been brought under "Nirmahal Wetland Conservation Programme". According to us, no other material is required to hold that the suit property has already been declared as the place of national importance and has been brought under the active control of the authorized departments of the Central Government and the State Government was also duly informed. For convenience, the D.O. letter dated 07.05.2008 is reproduced here-under:

**"Government of India
Ministry of Environment & Forests
D.O. No. J-22012/35/2007-CS(W)
Dated 7th May, 2008**

Dear sir,

As you are aware wetlands are unique and distinct ecosystems which need coordinated and concerted efforts for their conservation. With a view of promotion holistic and integrated approach for the management and conservation of wetlands, Ministry of Environment & Forests operationalized a scheme entitled "National Wetland Conservation Programme" under which 103 wetlands have been identified from 24 States and one UT in the country (list enclosed). Under this scheme, financial assistance is provided to various concerned State Govts. for undertaking conservation activities in the identified wetlands on hundred percent grant basis. This is further backed up by Research & Development activities to supplement Management Action Plans (M. A. Ps) for effective implementation on the basis of scientific inputs.

2. Of late, these fragile ecosystems have been subjected to various anthropogenic and biotic pressures resulting in habitat destruction, loss of biodiversity, affecting avifauna and their migration paths. Unsustainable aquaculture, siltation, weed infestation, uncontrolled discharge of waste water, industrial effluents, surface run-off, encroachment around these water bodies, etc. is resulting in shrinkage of their area. As

such, we need to implement some effective measures to stop their further deterioration which can only be done through execution of Management Action Plans in a comprehensive manner.

3. It is noticed that in respect of on-going schemes, MAPs are not received in time form concerned State Govts. because of which, there is delay in processing and subsequent release of money. As such, i would request you to use your good offices to instruct concerned officers to submit MAPs latest by end of June, 2008. This would help us to release the financial assistance to be concerned Govt., after due processing, well in time.

4. In the context of the foregoing, I seek your support in the following areas:

(i) Submission of comprehensive Management Action Plans for new wetlands identified from your State, latest by June end, 2008.

(ii) Submission of proposals for next instalment of assistance for on-going proposals of already identified wetlands and also comprehensive MAP for achieving long terms conservation goals, by June end.

(iii) Multi-disciplinary research projects need to be sent to supplement conservation activities as per R& D priority areas. Proforma prescribed for the Research projects can be downloaded from Ministry website:<http://enfor.nic.in>.

(iv)Regular convening of State Steering Committees in States which have on-going projects under MAP. You are requested to re-active these committees so that they are functional and perform the job for which they have been constituted. They should meet at least twice a year. The purpose of the Committees was to ensure healthy consensus among various concerned departments under the chairmanship of Chief Secretary.

(v) Constitution of Authority of Wetland in your State (as requested earlier also vide our letter number D.O. No. J-22012/55/2006-CS(W) dated 24th September, 2007, written by Secretary, M/o Environment & Forests copy enclosed)

5. You are requested to issue instructions to the concerned functionaries of all Departments concerned to take wetland conservation programme in the right earnest utilize the money released fully, send progress report/utilization

certificate/expenditure statement as per prescribed performa in time. Your positive response and pro-active interest in this regard will give tremendous boost to the conservation efforts through effective implementation of Wetland Conservation Programme.

With kind regards.

**Yours sincerely,
Sd/
(S. Kaul)**

**Secretary,
Department of Forest,
Govt. of Tripura.
Agartala:799001"**

[44] In regard to the question of execution of the gift deed, as are discussed in the preceding paragraphs, we are of the opinion that the then Maharaja i.e. predecessor-in-interest of the plaintiffs has never intended to make or execute any 'gift deed' in favour of the Government of Tripura, but, it is a transfer simplicitor by way of unequivocal donation and relinquishment of his right, title and interest as 'Raiyat', and the correspondences made by some officers of the Government of Tripura through Exhibit 1, 3 and 8 are wholly misconceived and were made only due to mis-conception of law and facts.

[45] Next, the finding of the learned trial judge in deciding the issue Nos. 4 and 5 that the plaintiffs are entitled to receive Rs. 2.5 lakhs as made previous on and from 26.11.2007 @ 6% interest per annum thereon is also bad in law because of the fact that the learned trial judge has himself held that the suit property was handed over to the Government of Tripura with full concurrence of the then

Maharaja and for that reason the possession of the defendants cannot be held to be wrongful, and according to us, in that situation the learned judge ought not to have determined the quantum of mesne profits, and the decree declaring the plaintiffs' entitlement to mesne profits to the tune of Rs. 2.5 lakh along with interest, is not at all called for.

[46] From the analysis made here-in-above and after reading of the provision of section 107 of the TLR and LR Act read with Rule-136 of the TLR and LR Rules, it became crystal clear that a person having his right, title and interest over a certain property/properties may relinquish his status as 'Raiyat'. In other words, section 107 of the TLR & LR Act empowers a 'Raiyat' to relinquish his property in favour of a person of his desire and choice. What is the impact of such relinquishment. The meaning of the word 'relinquish' is found in Black's Law Dictionary (10th Edition) where-under it means that 'the abandonment of a right or thing'. Stroud's Judicial Dictionary of Words and Phrases (7th Edition) (Vol III) defines the word 'relinquish' as "relinquish is not a word of art, and may be satisfied by an abandonment or non-claim" (Home vs. Booth) 11 L.J.C.P. 78. The Apex court in the case of **ICICI Bank Ltd. vs. Sidco Leathers Ltd. and ors.** reported in **(2006) 10 SCC 452**, explains the word in the manner as follows: (see p 469 para 53).

**"53. The expression "relinquish" has a different connotation. In P. Ramanatha Aiyar's Advanced Law Lexicon at page 4047, it is stated:
"Relinquish: To give over possession or control of; to leave off"**

It envisages a conscious act, i.e., an act where a person was aware of his right and then relinquishes the same.”

Again, in the case of ***Commissioner of Income Tax vs. Rasiklal Maneklal (H.U.F.) and ors.*** reported in ***(1989) 2 SCC 454, paragraph 9***, the Apex Court has held that ‘relinquishment’ takes place when the owner withdraws himself from the property and abandons his right thereto.

[47] From the above definition and meaning of the word ‘relinquishment’ we may hold, in the context of the present case, that the then Maharaja Kirit Bikram Kishore Debbarman consciously being aware of the fact that the ‘Nirmahal’ palace and its surrounding lands are his personal properties and he has withdrawn himself from the suit property and abandoned all his rights and claims thereof and are easily identifiable in terms of entry no. 4 of the inventory he furnished at the time of Merger Agreement with the Union of India and the fact revealed from his expression that he was not in a position to maintain the said properties has virtually abandoned and withdrawn all of his claims by way of serving the letter in the form of notice dated 19.03.1974 and “handing over” notice dated 28.11.1974 which has been materialized on 16.04.1974 by way of handing over and taking over the possession of the suit properties by the respective representatives of the then Maharaja and the Government of Tripura. Such ‘relinquishment’, as discussed here-in-above, in our opinion, is legally valid in the ken of the provision of section 107 of the TLR and LR Act, 1961.

[48] In the context of the case, here we may again take note of the definition of the word 'donate' which according to Black's Law Dictionary (10th Edition) means "to give (property or money) without receiving consideration for the transfer". The then Maharaja in his communication has expressed his desire to 'donate' the suit properties along with other adjacent properties to the Government of Tripura without any consideration. The suit properties were donated in the interest of the general public and the government has acted upon it and has converted the 'palace' into an important tourist destination of the country. In our considered view, it is a donation purely gratuitous and Maharaja during his life time never intended to revoke such donation.

[49] Accordingly, the core issue that we have formulated herein-above and all other issues which were framed by the learned trial judge after being taken into consideration, in our considered view, the plaintiffs have miserably failed to establish the case that the Government of Tripura was a mere permissive possessor having no right title and interest over the suit property. As we have noticed, that the plaintiffs have failed to adduce any such evidence to establish that the Government of Tripura was a mere permissive possessor and i.e. also for a temporary period. The said assertion of the plaintiffs, according to us, is not only a vague or omnibus statement, but, also has been made without any foundation.

[50] From careful reading of the correspondence made by the then Maharaja i.e. the predecessor of the plaintiffs, we

are fortified to hold that such donation or relinquishment of the entire suit property has been divested to the Government of Tripura who being the donee, has taken over his control on the suit property and has also started developmental activities with the knowledge of the public in general as desired by the donor i.e. late Maharaja Kirit Bikram Kishore Debbarman.

[51] That apart, we have noticed that at the time of donating the suit property, Lt. Maharaja in his own wisdom has never imposed any such condition which may entail him to get back the said suit property. The way the Lt. Maharaja has relinquished his status as Raiyat over the suit property, aptly proves that he wanted to transfer the land in favour of the Government without any rider. Maharaja Kirit Bikram Kishore Debbarman died in the year 2006 and the plaintiffs had miserably failed to produce any iota of evidence that during the period commencing from the year 1974 i.e. the date of transfer of the suit land in favour of the Government till his death in the year 2006, he has ever claimed ownership over the suit property.

[52] We have given due regard to the submission of learned counsel appearing for the plaintiff-respondents that Section-5 of the Transfer of Properties Act does not recognize such transfer but we find no force in the said submission of the learned counsel for the reason that TLR & LR Act, 1960 has been enacted to consolidate and codify the law governing land revenue administration in the territory and also to governing the land related issues within the territory of the

State of Tripura, and such enactment has its own statutory force and we find no conflict with the central legislation as envisaged under the Transfer of Properties Act, 1882.

[53] While legislating the TLR & LR Act it might have swayed in their mind that there must be an occasion when a person having right, title and interest over a certain property would intend to donate or relinquish his status as Raiyat over the said property in favour of the Government for certain good cause and for that purpose, the legislature thought it prudent to incorporate specific provision to enable such person/persons to relinquish his/her property voluntarily, thereby permanently transferring ownership of such property only upon the government. Furthermore, we have noticed that legislature consciously limits such transfer only in favour of the government and none else.

[54] From the language of Section-107 of the Act it is crystal clear that when a Raiyat relinquishes his right in respect of any land in his possession in favour of Government, it is a transfer and transfer outright, conferring ownership upon the Government, and such Raiyat shall cease to be a Raiyat in respect of that land from the year next following the date of notice. In our considered view the language in the said provision that "he shall cease to be a Raiyat in respect of that land from the year next following the date of notice". The legislature unambiguously intended to clarify that a Raiyat relinquishing his property shall cease to be Raiyat from the year next following the date of notice i.e. after one year. In

other words, we may hold that government shall become the owner of such property after one year from the date of issuance of notice of relinquishment by a Raiyat and thus, his/her right to claim as "Raiyat" over the property is permanently extinguished by operation of Section-107 of the TLR & LR Act.

[Emphasis supplied]

[55] We have meticulously perused the contents made in the WILL dated 11.03.2002. Maharaja K. B. K. Debbarman has specifically stated in the said WILL that the plaintiff Smt. Bibhu Kumari Devi shall be the owner of all of his properties of which he is the absolute owner. At the time of execution of WILL the then Maharaja was well aware of the fact that he was not the owner of the suit property since he has relinquished all his claim over the suit property long back. In our considered view, the WILL dated 11.03.2002 does not relate to the suit property.

[56] In the present case, keeping in view the language of Section-107 of the TLR & LR Act, we may un-hesitantly hold that on and from 19.11.1975 (19.11.1974 being the date of notice), the Government has become the absolute owner of the suit property in terms of Section-107 of the TLR & LR Act. The statute is to be read in a manner so as to give an effect to the true intent to the legislature so far it has been deciphered in its proper spirit having due regard to the language used therein. When the TLR & LR Act being a special statute by

prescription empowers a Raiyat to transfer his land in favour of the Government by way of relinquishment, then, according to us, Section-5 of the Transfer of Property Act has no manner of application. As such, we hold that transfer of the suit property by way of relinquishment under Section-107 of the TLR & LR Act, has its statutory flavour and is a valid transfer in the eye of law for all practical purposes. We further hold that revocation of such transfer after a lapse of one year is impermissible and prohibited as per the provision of Section-107 of TLR & LR Act. The plaintiffs being stepped into the shoes of the then Maharaja, Lt. Kirit Bikram Kishore Debbarman have no right to re-claim the status of right after such right was extinguished decades back by prescription of law as encapsulated here-in-above.

Conclusion:

[57] In the backdrop of above analysis coupled with the entire facts and law, we find no substance in the projected case of the plaintiffs that government is a permissive possessor, that too for a temporary period. In contrast, we find the communication dated 19.11.1974 authored by Lt. Maharaj Kirit Bikram Kishore Debbarman expressing his sincere intent and desire to donate and transfer the suit property relinquishing his right or claim over the suit property substantially conforms the essential requirements/ingredients of Section-107 read with Rule-136 of the TLR & LR Rules and thus, it is a valid notice. Consequent to such notice, possession of the suit property has been handed over, the

government being satisfied with the nature and character as well as ownership and identification of the suit property accepted such transfer by way of relinquishment and has taken up various developmental activities in its pursuit to convert the property into an important tourist destination and as per mandate of Section-107 of the Act the then Maharaja Kirit Bikram Kishore Debbarman has ceased to be a Raiyat over the suit property from the year next following the date of such notice i.e. 19.11.1974 and further, we hold and declare that the Government has become Raiyat after one year from the date of the said notice dated 19.11.1974 by applying the doctrine of moulding relief.

[58] Having held so, the judgment and decree dated 8th June, 2015 in connection with the case No. T.S. 20 of 2015 passed by learned Civil Judge (Senior Division), West Tripura, Agartala, Court No. 1, is not tenable both on facts and law and accordingly the same is set aside and consequently, the suit of the plaintiffs stands dismissed. The appeal preferred by the State of Tripura is allowed as indicated above.

(ARINDAM LODH), J

(AKIL KURESHI), CJ