

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.48 of 2023

Sri Yeahia Khan & others

.....Petitioner(s);

Versus

Sri Idrish Khan & another

.....Respondent(s)

For Petitioner(s) : Mr. P.K. Dhar, Sr. Advocate,
Mr. J. Islam, Advocate,
Mr. R. Debnath, Advocate.

For Respondent(s) : Mr. Karnajit De, Addl. G.A.,
Mr. Dipjyoti Paul, Advocate.

CRP No.11 of 2024

Idrish Khan

.....Petitioner(s);

Versus

Yeahia Khan & others

.....Respondent(s)

For Petitioner(s) : Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. P.K. Dhar, Sr. Advocate,
Mr. J. Islam, Advocate,
Mr. R. Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

14/03/2024

Heard learned counsel for the parties.

2. The order dated 05.08.2023 passed by the Principal Secretary, Revenue Department, Government of Tripura in Case No.02/Appeal/REV/P. Secy/2023 under Section 93 of the TLR & LR Act, 1960 is under challenge by both the private parties i.e. the appellant/petitioner herein in CRP No.11/2024 and the opposite parties/petitioners herein in CRP No.48/2023.

3. The petitioner in CRP No.11/2024 Sri Idrish Khan initially approached the District Magistrate & Collector, Unakoti for cancellation of allotment of land in Khatian No.544 of Mouja Dhaliarkandi allotted in favour

of Abdul Azij Khan, S/o Sanjar Khan of Baburbazar, Kailashahar. The learned District Magistrate & Collector heard the Case No. Rev/Revision/49/2022 under Section 95 of the TLR & LR Act, 1960 read with Rule 12 of the Tripura Land Allotment Rule, 1980 and rejected the prayer with an observation that the land in question was allotted to one Abdul Azij Khan, S/o Sanjar Khan during revision survey and settlement period in the year 1986. After 35 years, the applicant claimed that the aforesaid land is required to be reverted as khas land. The learned Court of District Collector, Unakoti did not find any valid documents in support of the claim made by the applicant. Therefore, the proceedings were rejected. The learned DM & Collector recorded that no correction is required. Being aggrieved, the applicant Idrish Khan approached the learned Secretary, Revenue in appeal under Section 93 of the TLR & LR Act, 1960. The opposite parties also appeared. The learned Secretary directed the DM & Collector, Unakoti to inquire into the physical possession and submit a report on the status of 1.55 acres of land in Khatian No.544 of Mouja Dhaliarkandi. The DM & Collector submitted his report vide letter dated 27.07.2023. The inquiry about the status of 1.55 acres of land was conducted through the Deputy Collector, O/o the SDM, Kailashahar in presence of the appellant, the respondents and local people. The status of physical possession of the suit land as per the inquiry report was incorporated in a tabular chart in the impugned order which is also being extracted hereunder:

Name of possessor	RS plot No.	Area in possession (in) acre	Total area under possession (in) acre
Idrish Khan	1468/p	0.18	0.27
	1471/p	0.03	
	1483	0.06	
Yeahia Khan	1468/p	0.08	0.48
	1471/p	0.19	
	1472	0.10	
	1477/p	0.11	

Dewan Khan	1477/p	0.20	0.20
Joynob Bibi	910	0.15	0.15
Disputed land	1439	0.14	0.45
	1440	0.20	
	1471/p	0.11	
Total area			1.55 acre.

4. The learned Secretary, Revenue found that the allottee or his legal heirs had no possession over 0.62 acres of land in RS Plot No.1468/P, 1471/P, 1477/P, 1483 and 910 of Mouja Dhaliarkandi. The Appellate Authority—Secretary, Revenue therefore came to the conclusion that the allottee or his legal heirs violated the condition no.4 of the allotment order that the allotted land has to be under cultivation within 5 years from the date of allotment i.e. 1984. He also held that as per Rule 12(vi) of the TLR & LR (Allotment of land) Rules, 1980, the allotment of land of 0.18 acres in RS Plot No.1468, 0.03 acres in RS Plot No.1471, 0.20 acres in RS Plot No.1477, 0.06 acres in RS Plot No.1483 and 0.15 acres in RS Plot No.910; in total 0.62 acres of land recorded in Khatian No.544 of Mouja Dhaliarkandi were cancelled as being in violation of the condition no.4 of the Allotment Rules, 1980. The DM & Collector, Unakoti was directed to arrange for incorporating the 0.62 acres of land in the khas khatian of Mouja Dhaliarkandi deleting the said area from the allottee in Khatian No.544 of the same mouja.

5. On the part of the petitioners Yeahia Khan & others in CRP No.48/2023, Mr. P.K. Dhar, learned senior counsel has asserted that the impugned order was passed without any opportunity to file objection. The report of the DM & Collector, Unakoti relied upon by the learned Secretary, Revenue is incorrect. Petitioners are in physical possession of certain area in the 1.55 acres of allotted land in Mouja Dhaliarkandi. He submits that had an

opportunity been granted to the petitioners Yeahia Khan & others, they would have been able to adduce evidence and demonstrate before the learned Secretary, Revenue that the report of DM & Collector, Unakoti relied upon by him is factually incorrect. Therefore, the impugned order be interfered and the matter be remanded to the Secretary, Revenue to decide it afresh.

6. On the part of the petitioner Idrish Khan in CRP No.11/2024, who is also respondent in CRP No.48/2023, reliance is placed upon the report dated 30.05.2022 of the Sub-Divisional Magistrate, Kailashahar which reveals that RS Plot No.1471/P and 1483 measuring 0.20 acres of Khatian No.544 of Dhaliarkandi Mouja is in peaceful possession of the petitioner Md. Idrish Khan, S/o Dilbar Khan by construction of dwelling house and cultivating fruit bearing trees and plantation of Agar trees on the said plot. The Sub-Divisional Magistrate further opined that RS. Plot No.1471/P and 1483 area measuring 0.20 acres of Khatian No.544 of Dhaliarkandi Mouja may be reverted to khas land if the authority approves. It is submitted that the DM & Collector, Unakoti however rejected the prayer outrightly and did not allow any reversion of the allotted land as khas land. Being aggrieved, the applicant Idrish Khan approached the Secretary, Revenue, who on the basis of tabular chart, has opined that 0.18 acres of land in RS Plot No.1468/P is in violation of allotment rules and has cancelled the entry and directed it to be recorded as khas land in khas khatian of Mouja Dhaliarkandi. As such, there is an apparent contradiction in the report submitted by the Sub-Divisional Magistrate, Kailashahar and the report submitted by the DM & Collector, Unakoti on the basis of which, the learned Secretary, Revenue has cancelled 0.62 acres of land in Khatian No.544

of that mouja. The petitioner is aggrieved as the entire land in that mouja ought to have been reverted as khas as the opposite parties Sri Yeahia Khan & others, successors of the original allottee, are in violation of the Allotment Rules, 1980.

7. In CRP No.48/2023, the District Magistrate & Collector, Unakoti was impleaded as an opposite party since the issue related to correction of land records under the TLR & LR Act, 1960 where the concerned authorities of the State are necessary parties. Any correction in the entry of khatian is to be made after proper observance of the rules and procedure by the District Magistrate & Collector of the concerned district.

8. The Counter Affidavit of the official respondent in CRP No.48/2023 *inter alia* states that the report furnished by the DM & Collector, Unakoti reveals that the legal heirs of the original allottee Abdul Azij Khan are not in possession of 1.55 acres of land entirely as per the inquiry report. 0.62 acres of land out of 1.55 acres are under possession of different individuals which is in contravention of the Allotment Rules, 1980. The Appellate Authority i.e. the Principal Secretary, Revenue, upon being satisfied with the documents/inquiry report and after extending enough scope of hearing to both the parties, passed the order on 05.08.2023 with a direction to cancel 0.62 acres of land from Khatian No.544 and to record it in khas khatian as it was found under occupation of different individuals in violation of the Allotment Rules of 1980.

9. Mr. Karnajit De, learned Additional Government Advocate for the State, submits that the order of the learned Secretary, Revenue is proper in the

eye of law. It is based upon an official inquiry report of the DM & Collector, Unakoti. The field inquiry conducted through the office of Deputy Collector, O/o the SDM, Kailashahar reveals that certain area i.e. 0.62 acres of the allotted land of 1.55 acres in Khatian No.544 of Mouja Dhaliarkandi are not in occupation of the legal heirs of the original allottee. Therefore, the learned Secretary, Revenue rightly ordered cancellation of the entries in the name of the original allottee and directed it to be converted as khas land so far as 0.62 acres in Khatian No.544 of Mouja Dhaliarkandi is concerned. Therefore, the impugned order does not suffer from any error. It is further submitted that in case any of the parties dispute the inquiry report, the matter can only be adjudicated in a properly constituted civil suit where parties can adduce oral and documentary evidence for a declaration regarding their physical possession on the allotted land in question. Therefore, this Court under Article 227 of the Constitution of India may not enter into inquiry on facts in absence of any admissible, cogent and contrary material adduced by the parties.

10. On consideration of rival submission of the parties and upon going through the pleadings on record, this Court finds that the impugned order is based on an enquiry conducted by the Secretary, Revenue through the District Magistrate & Collector, Unakoti on the status of physical possession of 1.55 acres of land in Khatian No.544 of Mouja Dhaliarkandi which was allotted in the name of the original allottee Abdul Azij Khan, the predecessor of Sri Yeahia Khan & others in the year 1984. The physical inquiry report revealed that considerable portion of the land totaling 0.62 acres are in the hands of strangers who are neither the legal heirs of the original allottee, nor have any

valid basis to continue with the possession. Based on this report, the impugned order has been passed.

11. The petitioners in CRP No.48/2023 Sri Yeahia Khan & others dispute the inquiry report submitted by the DM & Collector, Unakoti on facts. I am afraid this Court cannot enter into inquiry on fact in exercise of power under Article 227 of the Constitution of India. Under Article 227 of the Constitution of India, this Court is required to keep the inferior authorities within bounds of their jurisdiction and to interfere only if the orders are patently without jurisdiction or in excess of jurisdiction or while exercising such powers, the inferior authority has taken into consideration extraneous materials rendering the finding perverse in the eye of law. There are no contrary documents to show that the physical inquiry report of the DM & Collector, Unakoti was incorrect on facts. Even if the petitioners Yeahia Khan & others or any other private party contest the physical inquiry report submitted by the DM & Collector, Unakoti, this issue of disputed question of fact can only be raised and adjudicated in a properly constituted suit where parties are free to adduce oral and documentary evidence in support of their case. Therefore, this Court does not find any ground to interfere in the impugned order.

12. These revision petitions are accordingly dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/