

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.10 of 2025

Sri Dibakar Chakraborty S/o. Late Dilip Kumar Chakraborty of Village-Saradapalli, P.O., P.S. and Sub-Division-Kumarghat, Dist. Unakoti Tripura, PIN-799264.

.....Petitioner(s)

Versus

1. The Sub-Divisional Magistrate, Kumarghat Sub-Division P.O. & P.S. Kumarghat, District-Unakoti Tripura, PIN-799264.
2. The Revenue Inspector, Kumarghat Tehsil, Kumarghat, P.O. & P.S. Kumarghat, Dist. Unakoti Tripura, PIN-799264.
3. The State of Tripura, represented by Secretary, Department of Revenue, Government of Tripura.

..... Principal Respondent(s).

4. Sri Debanjan Chakraborty S/o. Late Debaranjan Chakraborty,
 5. Sri Debasish Chakraborty S/o. Late Dilip Kumar Chakraborty,
 6. Sri Mithun Chakraborty S/o. Late Dilip Kumar Chakraborty,
 7. Smt. Laxmi Chakraborty, W/o.Late Dilip Kumar Chakraborty,
 8. Smt. Dipika Chakraborty D/o. Late Debaranjan Chakraborty,
 9. Smt. Usha Chakraborty W/o. Late Debaranjan Chakraborty,
- Respondent Nos.4 to 9 are resident of Sarada Palli, P.O., P.S. & Sub-Division- Kumarghat, District- Unakoti Tripura, PIN-799264.

..... Proforma Respondent(s).

For Petitioner(s) : Mr. Himangshu Deb, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/02/2025

Heard Mr. Himangshu Deb, learned counsel for the petitioner and Mr. Karnajit De, learned Additional Government Advocate appearing for respondent Nos.1 to 3.

The revision petition under Article 227 of the Constitution of India is directed against the judgment dated 05.10.2024 passed by learned District Judge, Unakoti District, Kailsahhar in Civil Misc. (Appeal)

No.03/2024 whereby the refusal of the prayer for injunction made by the plaintiff-petitioner herein by order dated 20.02.2024 passed in Civil Misc. (Injunction) 12/2023 by Civil Judge (Jr. Division), Kailashahar, Unakoti Judicial District has been affirmed by the learned appellate Court. Petitioner has filed T.S. No.25 of 2023 before learned Civil Judge (Jr. Division), Kailashahar, Unakoti Judicial District seeking a declaration of his acquisition of right and title over the suit property by a prescription and adverse possession and further declaration that plaintiff and proforma-defendants have right to hold this property within their enjoyment and possession and also confirmation of the possession of the plaintiff and proforma-defendants over the suit property. Plaintiff also sought perpetual injunction restraining the principal defendants No.1, 2 and 3 from interfering with the possession and enjoyment of this suit property and dispossessing them. According to the petitioner, the plaintiff and proforma-defendants are in possession of the suit land for more than 50 years in a peaceful manner to the knowledge of public at large including the Government without any break. As such, they have perfected their title over the suit land by adverse possession. The plaintiff has received one notice under Section 4(1) of the Tripura Public Premises (Eviction of Unauthorized Occupants) Act, 1982 from defendant No.1 asking him to show cause as to why order of eviction should not be passed against him in respect of Plot No.2837/10054. According to the petitioner, thereafter they have preferred the suit for protection against the legal threats for dispossessing him from the suit property. The petitioner has also filed an application for injunction under Order XXXIX Rules 1 & 2 which was rejected by learned trial Court vide

order dated 20.02.2024 taking into consideration that as per the documents submitted by the plaintiff-petitioner it appeared to the Court that though initially the suit land measuring 0.15 acre pertaining to Dag Nos.2837/10054 (previously 2837) was owned by the plaintiff-petitioner and proforma-defendants but in the year 1989 the suit land was acquired by the Government of Tripura in the interest of Department of Fisheries. After the acquisition, the Khatian bearing No.4948, Mouja-Pabiacherra, Tehshil-Kumarghat, Revenue Circle-Kumarghat was also created in the name of the principal defendants. This fact was admitted by the plaintiff-petitioner. The plaintiff could not show any entitlement on their part for possessing the suit land whereas the documents particularly the Khatian bearing No.4948, prima facie shows the ownership and entitlement of possession of the defendants over the suit land.

The learned trial Court referred to certain decisions rendered by the Apex Court such as (i) ***Dalpat Kumar vs Prahlad Singh*** reported in (1992) 1 SCC 719; (ii) ***Padhiyar Prahladji Chenaji (Deceased) through LRs Vs. Maniben Jajmalbhai (Deceased) through LRs and others*** passed in ***Civil Appeal No.1382 of 2022*** and held that principal-defendants have better title than that of the plaintiff-petitioner which if injuncted or prohibited would not be justified in the eye and spirit of law. The learned trial Court also held that since the petitioner has not been able to prove his *prima facie* case, balance of inconvenience also does not lie in his favour. Petitioner cannot be said to suffer which cannot be compensated in terms of money if he succeeds in the suit. The plaintiff being aggrieved preferred an appeal bearing Civil Misc. (Appeal) No.03 of 2024. Learned appellate Court

after hearing the learned counsel for the parties and the contention of the petitioner, affirmed the order of the learned trial Court. Therefore, since the title of the petitioner is the main issue to be decided and the names of the principal defendants are entered into the Khatian after acquisition of the suit land, petitioner does not have a prima facie case for injunction. Being aggrieved, the instant revision petition has been preferred by the plaintiff.

I have heard the learned counsel for the petitioner and taken note of the relevant materials placed from record. I have also gone through the impugned orders dated 05.10.2024 and 20.02.2024 passed by the learned trial Court. On the basis of the undisputed materials on record as placed before the learned trial Court and the appellate Court, it is evident that though the plaintiffs have been claiming possession of the suit land since 1971 adverse to the principal-defendants but they also admit that the land has been acquired in the year 1989 by the Government and the entry in Khatian in the name of Principal Defendants was also recorded. The plaintiffs have approached the learned trial Court for relief only after they received a notice under Section 4(1) of the Tripura Public Premises (Eviction of Unauthorized Occupants) Act, 1982. Since the title of the plaintiffs is yet to be determined whereas the entry in the khatian are in favour of the principal defendants, the learned trial Court and the appellate Court have not find any prima facie case made out in favour of the plaintiff for granting injunction.

From the conspectus of the facts and circumstances noted above, it is evident that plaintiff has to establish his title on the basis of

adverse possession during trial. As such, this Court does not find any error in the impugned orders.

Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

