

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.586 OF 2010

1. Smt. Haridasi Sarkar,
W/O Late Girendra Sarkar,

2. Shri Sanjoy Sarkar,
S/O Late Girendra Sarkar,

3. Shri Sujoy Sarkar,
S/O Late Girendra Sarkar,

4. Smt. Archana Mallik,
W/O Shri Promode Mallik and
Daughter of Late Girendra Sarkar.

-All of village Narayanpur(Paul Para),
P.O. Sarma, P.S. Gandacherra, District-Dhalai.

5. Shri Sujit Sarkar,
S/O Late Girendra Sarkar of
villageKumarghat Sukanta Palli,
P.O. & P.S. Kumarghat, District-North Tripura.

6. Smt. Arpana Sarkar,
W/O Shri Dilip Sarkar,
Daughter of Late Girendra Sarkar of
Village Sholanola, Baghacherra,
P.O. & P.S. Pecharthal,
District-North Tripura.

..... *Petitioners*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary,
Revenue Department,
Government of Tripura,
New Secretariat Complex,
Khejurbagan, P.O. Kunjaban, Agartala.

2. The District Collector,
Dhalai District, Jawharnagar,
Ambassa, P.O. Ambassa.

3. Shri Sudhangshu Sarkar,
S/O Late Prafulla Sarkar of
Village Narayanpur(Paulpara),
P.O. Sarma, P.S. Gandacherra,
District-Dhalai.

..... *Respondents*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioners : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For respondent Nos.1 &2 : Mr. S. Chakraborty, Addl. G.A.

For respondent No.3 : None

Date of hearing : **23.04.2015.**

Date of delivery
of Judgment & order : **29.04.2015.**

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER

By filing this writ petition the petitioners prayed for issuing a writ of certiorari quashing order dated 20.11.2010 passed by District Magistrate & Collector, Dhalai, Ambassa in Case No.113/REV/2010 under Section 95 of TLR & LR Act, 1960(*Annexure-2* to the writ petition) thereby directing deletion of entry made in Column No.24 of Khatian No.17 of Mouja-Sarma.

2. Heard learned senior counsel, Mr. A.K. Bhowmik for the petitioners and learned Addl. G.A., Mr. S. Chakraborty for the respondent Nos.1 and 2. Respondent No.3 did not participate in spite of service of notice.

3. The petitioners, *inter alia*, contended that land measuring 0.66 acres of Khatian No.17, Mouja-Sarma under Tehshil and Revenue Circle-Gandacherra recorded in Hal Plot Nos.1044, 1045 and 1046, stands in the name of respondent No.3,

Sudhangshu Sarkar as a raiyat and in Column No.24 of said Khatian, Girendra Sarkar, the predecessor of the petitioners was shown as permissive possessor and the present petitioners are the legal heirs of said Girendra Sarkar who died on 19.04.2007.

3.1. It is contended by the petitioners that before the revisional survey and settlement, the said land along with other lands were recorded in the name of Putul Bala Sarkar and Sarojini Sarkar in 50 percent share each, showing them as allottees and Putul Bala Sarkar died long ago when respondent No.3 was infant. Sarojini Sarkar has died on 08.08.1983 and she was full-blood sister of father of Girindra Sarkar and she used to reside in the family of late Girindra Sarkar. The land of Plot Nos.1044, 1045 and 1046 were in the share of Sarojini Sarkar and it was all along in the possession of Girendra Sarkar and thereafter was in the possession of the petitioners, being successors of Girendra Sarkar and they used to cultivate and grow paddy in Hal Plot No.1044 and used to reside by constructing their hut on Hal plot No.1045 and also used to possess Hal plot No.1046 as an adjacent plot to their homestead.

3.2. It is also alleged by the petitioners that respondent No.3 by influencing the revenue authorities managed to record the land in his name claiming him to be the heir of Putul Bala Sarkar although the land was in the possession of Girendra Chandra Sarkar, the predecessor of the petitioners.

3.3. The respondent No.3 making false allegation initiated a criminal proceedings under Section 145 of CrPC vide case No.1 of 2009 before the Executive Magistrate (SDM, Gandacherra) wherein the petitioner No.5, Sujit Sarkar was made second party and the SDM, Gandacherra by judgment dated 07.07.2009 decided the case in favour of the second party, Sujit Sarkar and held that the land in question was in possession of Sujit Sarkar, *i.e.* the petitioners herein. A copy of the judgment dated 07.07.2009 has been annexed as Annexure-1 to the writ petition.

3.4. It is the case of the petitioners that the respondent No.3 having failed to disturb the possession of the petitioners initiated a proceedings under Section 95 of TLR & LR Act before the District Collector, Dhalai claiming that he had been possessing the land in question and prayed for deleting the name of Girendra Sarkar from Column No.24 of the Khatian No.17 and that revenue proceedings was numbered as Case No.113/REV/2010 under Section 95 of TLR & LR Act and by impugned order dated 20.11.2010 the District Collector based on a field report of the SDM, Gandacherra decided the claim of respondent No.3 in his favour and ordered that the entry made in Column 24 in respect of occupation of Girendra Sarkar as permissive occupier should be deleted from Khatian No.17 of Mouja Sarma.

3.5. It is the contention of the petitioners that at the time of hearing of revenue proceedings the petitioners produced a copy of

order dated 07.07.2009 passed by SDM, Gandacherra in the proceedings under Section 145 of CrPC but the District Collector wrongly and illegally discarded that order and directed correction of khatian and deletion of the name of Girendra Sarkar as permissive occupier from Column No.24 of the khatian and therefore that order passed by the District Collector cannot sustain and liable to be quashed.

4. Respondent Nos.1 and 2 by filing a counter affidavit contended that the land in question along with other land were recorded in the name of Putul Bala Sarkar and Sarojini Sarkar in Khatian No.63 of Mouja-Sarma and subsequently through a Mutation Case No.3 dated 14.06.1990 land measuring 0.66 acres was recorded in the name of Sudhangshu Sarkar in Khatian No.17. The SDM, Gandacherra made a field enquiry in connection with the revenue proceedings and submitted report to the District Collector contending that the entry made in Column No.24 of Khatian No.17 was wrongly made and considering that report, the District Collector passed the order directing correction of the records. The order was passed within the jurisdiction of the Collector and hence the writ Court may not interfere in the order.

5. The jurisdiction of an Executive Magistrate in respect of maintenance of public order and tranquility, contemplated in the Code of Criminal Proceedings, 1973 is different and distinct

jurisdiction than that of the jurisdiction of a Revenue Officer/Collector prescribed under the TLR & LR Act.

6. Section 145 of CrPC deals with the dispute as to the immovable property, which is likely to cause breach of peace. The power of the Executive Magistrate is exercised to prevent breach of peace when it is apprehended concerning possession to immovable property as mentioned in Section 145 of CrPC.

In the impugned order dated 07.07.2009 passed by SDM, Gandacherra in Case No.1 of 2009 under Section 145 of CrPC, I find no mention of any alleged apprehension of breach of peace by the Magistrate. However, the Magistrate has passed an order that the plots of land belonged to Sarojini Sarkar and it was used by second party and his late father late Girendra Sarkar since 1956. However, we are not here to decide the legality of order dated 07.07.2009 passed by SDM, Gandacherra, but we are simply to decide whether in view of that order the District Collector was bound to reject the petition filed under Section 95 of TLR & LR Act.

7. Section 95 of TLR & LR Act prescribes thus:

"95. State Government or the Collector may, at any time, either on his own motion or on the application of any party, call for the records of any proceedings before any revenue officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of any order passed by such revenue officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not vary or reverse any order affecting any right between private persons without having given to the parties interested notice to appear and be heard."

The above provision, no doubt, empowers the Collector to see correctness of entry made in khatian pursuant to an order of a revenue officer.

8. It is not in dispute that the entry in Column 24 of Khatian No.17 regarding permissive occupation was made by an order of revenue officer and so the Collector has jurisdiction to entertain a revision either on its own motion or on the application of any party thereto. The Collector while deciding the issue made a field enquiry through SDM, Gandacherra and the enquiry report is placed on record as *Annexure-R1* which shows that SDM, Gandacherra made a field enquiry in respect of the petition and thereafter hearing both side on the issue, the Collector passed impugned order dated 20.11.2010(*Annexure-2* to the writ petition). The copy of the order was received by both side. The Collector categorically mentioned that Sujit Sarkar, the second party in the revenue proceedings produced a copy of order dated 07.07.2009 passed by SDM, Gandacherra and the Collector held that the said order is not relevant for correction of the record is concerned. The Collector while deciding a revenue proceedings is empowered under the TLR & LR Act to decide on the basis of the materials placed before it and while exercising its jurisdiction the Collector passed

the order, the writ Court is not required to interfere in that order. The petitioners, as it appears, raised several disputed questions in respect of the rival claim of the petitioners and the respondent No.3 which should be decided by a competent Court of jurisdiction and not by the writ Court. The Executive Magistrate in exercise of power under Section 145 of CrPC passed order to prevent breach of peace in respect of an immovable property and that order is not binding on the Collector while deciding a revenue matter regarding entry in the khatian.

9. In my considered opinion, the Collector has passed the order within its jurisdiction in exercise of the power vested under Section 95 of the TLR & LR Act and that order should not be interfered by this Court in exercise of its writ jurisdiction. The writ petition, is therefore, found to be devoid of any merit and hence stands dismissed.

10. Parties are to bear their own costs.

JUDGE