

GAHC010002402021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./5/2021

SMT. SANDHIYA RANI DAS
W/O LATE KAMAL DAS, R/O KHATKHATI BONGRUNG, BLOCK NO. 1,
NEAR KHATKHATI PETROL PUMP, P.O. AND P.S.-KHATKHATI, DIST-KARBI
ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ON THE DEATH OF THE RESP. NO.2
HIS LEGAL HEIRS

KARBI ANGLONG

2.1:MRS. RAHILA BEYPI
W/O LATE BARITHE TERON

2.2:MISS. LARSIKA TERONPI
D/O BARITHE TERON

2.3:MISS. LARBEEN TERONPI
D/O BARITHE TERON

2.4:MISS. LARLEEN TERONPI
D/O BARITHE TERON

2.5:MR. ANGSONG TERON
S/O BARITHE TERON
ALL ARE R/O VILL.-DIPHU LURJULANGSO
WARD NO. 5
RONGKOTHAR

P.S.-DIPHU
DIST.-KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR. S ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 06.05.2024

Heard Mr. M. H. Laskar, learned counsel appearing for the accused petitioners as well as Mr. A. Tewari, learned counsel appearing for respondent No.2.

1. By this application under Section 482 Cr.P.C., the petitioner has prayed for quashing of the impugned orders dated 15.12.2020 and 5.11.2018 passed by learned Sub-Divisional Magistrate (hereinafter SDM), Bokajan, Karbi Anglong in M.R. Case No. 07/2014 as well as impugned judgment and the order dated 30.04.2019 passed by the learned Sessions Judge, Karbi Anglong in Criminal Revision Petition No. 1/2019.

2. The case of the petitioner is that she is in peaceful possession of a government land measuring 10 Bighas situated under Borjan Mouza, Dist- Karbi Anglong, Assam since more than 34 years. As the respondent No.2 tried to forcefully disposses her from her land in June, 2014, she filed a petition under Section 145/146 Cr.P.C. before the learned Sub-Divisional Magistrate, (SDM), Bokajan apprehending serious breach of peace and clash between the parties. The said case was registered vide MR Case No. 7/2014 and the said case was forwarded to O/C Khatkati PS for enquiry and submit report. The O/C Khatkhati PS made inquiry in the matter and submitted a report on 14.10.2014 wherein he clearly stated that there was apprehension of breach of peace and clash between the parties. Accordingly, learned SDM, Bokajan vide order dated 17.10.2014 initiated a proceeding under Section 145 Cr.P.C. and directed both the parties to maintain *status quo*.

3. It is further stated that the respondent No.2 subsequently, filed a written statement and thereafter evidence of some witnesses were also recorded. When the case was at the stage of evidence, the learned SDM, Bokajan vide order dated 20.09.2018 directed the O/C Khatkhathi PS to inquire and submit report as to whether continuation of proceeding under Section 145 Cr.P.C was still required or not. Accordingly, the O/C, Khatkhathi PS submitted an inquiry report dated 10.10.2018 stating that proceeding under Section 145 Cr.P.C. was not relevant. On the basis of the report, the learned SDM, Bokajan vide order dated 13.10.2018 passed an order that further continuation of the case was no more required and the case was accordingly closed.

4. Being highly aggrieved, the petitioner approached before the Sessions Judge, Karbi Anglong vide Crl. Rev. Petition. No.1/2019 which was also dismissed vide impugned judgment and order dated 30.04.2019. Thereafter, the respondent No.2 filed an application before the learned SDM, Bokajan praying for passing necessary order to the concerned authority for demarcation and peaceful handover of the possession of the land from the petitioner to him. The learned SDM, Bokajan then re-opened the case vide MR Case No. 07/2014 and passed the impugned order dated 15.12.2020 directing the Assistant Revenue Officer, Diphu Revenue Circle to initiate proper arrangement for demarcation of the land as well as to hand over peaceful possession of the land to the respondent No.2. It was alleged that aforesaid order was passed without issuing any notice to the petitioner. Hence, this petition.

5. The learned counsel for the petitioner has argued that on 10.09.2019, the respondent No.2 along with some other persons threatened the petitioner and her family members to vacate the plot of land otherwise they would be forcefully dispossessed. In this regard, the petitioner filed a complaint before the SDM, Bokajan seeking appropriate direction to the Khatkhathi PS for registration and investigation of the case. However, the learned SDM, Bokajan did not take any action in the matter.

6. It is further submitted that the respondent No.2 in the meantime, again filed an application before the learned SDM, Bokajan for demarcation and peaceful handover of the disputed land from the petitioner to him. Thereafter, the petitioner filed a complaint before

the Superintendent of Police, Karbi Anglong seeking protection. The petitioner also filed a representation before the Principal Secretary, Karbi Anglong Autonomous council seeking cancellation of the patta which was fraudulently issued in respect of the land under her possession.

7. According to learned counsel for the petitioner, the initial impugned order dated 31.10.2018 passed by the learned SDM, Bokajan is unsustainable in law as there is no provision under the law for closing a proceeding under Section 145/146 Cr.P.C. in the midst of the trial on the basis of any police report. As such the impugned order is liable to be set aside. It is also submitted by learned counsel for the petitioner that the impugned order dated 15.12.2020 passed by the learned SDM, Bokajan also is unsustainable in law as he had reopened the case and passed the impugned order without issuing any notice to the petitioner. It is further submitted that once the MR case No. 7/14 was closed vide order dated 31.10.2018 which was also upheld by the learned Sessions Judge, Karbi Anglong vide order dated 30.04.2019, the learned SDM, Bokajan has no jurisdiction to re-open the case as the same attained finality. As such, the impugned order dated 15.12.2020 is liable to be set aside.

8. In response, learned counsel for the respondent No.2 submits that the respondent No.2 is the owner of the property occupied by the present petitioner. The order passed by the learned SDM, Bokajan and subsequent order passed by the learned Session Judge reflects that the land dispute is prevailing between the parties and asked the petitioner to take recourse to civil court. But instead of filing any civil suit, the petitioner filed petition one after another before different authorities just to linger the matter.

9. Learned counsel for the respondent also contended that there is no illegality or infirmity in the impugned order passed by the revisional court for setting aside the criminal proceeding under Section 145 Cr.P.C. before Executive Magistrate because it is settled principal of law that in case of any civil dispute in regard to any landed property regarding title and possession, civil court has exclusive jurisdiction and parties are required to move civil court rather than Executive Magistrate. Jurisdiction under Section 145 Cr.P.C. arises to Executive Magistrate only when there is apprehension of breach of public peace and tranquility on account of dispute between the parties in regard to possession. But as per the material on record, it does not manifest that affect of the dispute regarding the land in

question is over the public at large and even the step of Executive Magistrate does not show that there is any such apprehension of breach of public peace and tranquility.

In support of his submission, learned counsel has placed reliance on the following case law-

- (i) 2003 (7) Supreme 719 (Shanti Kumar Panda vs. Shakuntala Devi)
- (ii) 2004 0 Supreme (Gau) 146 (Pending Tayo Beki vs. State of Arunachal Pradesh)

10. I have considered the submissions of the learned counsel for the parties and perused the relevant orders available in the trial court records.

11. Section 145 Cr.P.C. is the part of chapter X of the Code of Criminal Procedure 1973 dealing with maintenance of public order and tranquility. Section 145 Cr.P.C. is the part of Sub Chapter-D dealing with disputes as to immovable property. Besides Section 145 Cr.P.C. Section 146, 147 and 148 Cr.P.C. are also part of Sub Chapter-D of Chapter X of Cr.P.C. when it is found that the disputes over the land and water often results in breach of the peace, violence and bloodshed, the Executive Magistrate have been empowered under Section 145 -148 Cr.P.C. to intervene at an incipient stage of such a dispute and to compel the disputants to have recourse to legal remedies. If upon a report of police officer or if upon other information, an Executive Magistrate is satisfied that a dispute concerning any land or water or the boundaries thereof exists within his jurisdiction and that such dispute is likely to cause a breach of the peace, he shall make an order in writing, requiring the parties concerned in such dispute to attend to his court on a specified date and time and to put in written statements of their claims regarding the fact of actual position of subject of dispute. While making such order the magistrate shall state the grounds for his satisfaction.

12. The very foundation of the jurisdiction of a magistrate in cases u/s 145 is based on the existence of a dispute giving rise to apprehension of breach of peace and as soon as such apprehension ceases to exist or if it never existed, the jurisdiction of the magistrate to proceed with the case ceases and the only order he has to pass is to drop the proceedings.

13. The inquiry u/s 145(4) is limited to the question of actual possession on the relevant date and is not concerned with the claims and merits of the parties in regard to the right to possess the subject of dispute. If the Magistrate decides that one of the parties was in

possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction.

14. Hon'ble Supreme Court in the case of ***R.H. Bhutani vs. Moni J. Desai***, reported in **1968 SC Online SC 5**, held that the object of section 145 no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent court. The section requires that the magistrate must be satisfied before initiating proceedings that a dispute regarding an immoveable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub section (1) and thereafter to make an inquiry under sub section (4) and pass a final order under sub section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exists.

15. The inquiry u/s 145 is limited to the question as to who was in actual possession on the date of preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully disposes within two months next preceding the date of the preliminary order may for the purpose of the inquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of section 145 Cr.P.C.

16. In the case of ***Ansaruddin vs. State of Assam and others***, reported in **2008 CRLJ (NOC) 479 GAU**, has held that when the members of the public have no interest in a dispute, such a dispute cannot become the foundation for exercise of powers u/s

145(1). Section 145 deals with maintenance of public order and tranquility. A private dispute or a dispute which has no bearing on public order and tranquility cannot be regarded as a dispute and such a dispute does not empower an Executive Magistrate to exercise jurisdiction under sub section 1 of section 145.

17. A close analysis of the provision of section 145 shows that the magistrate is empowered to draw a proceeding under sub section 1 of section 145, if he is satisfied from report of a police officer or upon other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof within his local jurisdiction. The provisions contained in sub section 1 of section 145 show that the source of information for the purpose of drawing a proceeding under sub section 1 of section 145 is not material; what is material is that the Executive Magistrate must feel satisfied about existence of a dispute as envisaged in section 145(1) and must assigned the grounds of its being so satisfied. This apart the dispute must relate to any land, water or boundaries thereof and the dispute must be such which is likely to cause breach of the peace. The expression "breach of the peace" does not really mean mental peace of the parties concerned. Disturbance of public order is distinct and different from actions of the individuals, which do not disturb the society to the extent of vibrating a general disturbance of public order.

18. The basis of jurisdiction u/s 145 (1) is a dispute which is likely to cause a breach of the peace. Ordinarily, a person, disposes from his land shall sue for recovery of the immoveable property under the provisions of the Specific Relief Act and if there is a threat of his dispossession, he should institute a suit to obtain injunction. These are ordinarily forum for establishing the rights of the litigants. A proceeding u/s 145 is therefore an extraordinary provision to grant extraordinary relief when there is likelihood of the breach of the peace in a given locality. The final order of the magistrate is subject to the decision of the civil court. It is therefore clear that private dispute between two persons which does not disturb the law and order or occasion for breach of the peace in the locality, cannot form basis for drawing up a proceeding u/s 145 Cr.P.C and the forum for obtaining relief in such a case is the civil court of competent jurisdiction and not the Executive Magistrate's court.

19. In another case ***Kaushal Mishra and others vs. Raj Kumar Mishra, reported in 2008 CRLJ (NOC) 272 (GAU)***, held that the dispute in the present case was

out and out a private dispute in as much as the dispute did not involve any one other than the parties to the proceeding and the members of the general public were neither affected nor were they shown to be interested in the dispute. Hence, it was held that the learned magistrate has no jurisdiction in the matter and could not have drawn a proceeding u/s 145.

20. In the case of ***Chirstalin Costa vs. State of Goa, reported in 1993 MHLJ 1409***, it was observed that quarrels between two individuals does not create any problem of public order and at the most, it may lead to a problem of law and order which may be dealt with appropriate penal laws.

21. Hon'ble Supreme Court in the case of ***Jhummamal @Devandas vs. State of Madhya Pradesh and others, reported in 1988 4 SCC 458***, has held that "an order made u/s 145 Cr.P.C. deals only with the factum of possession of the parties as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to the decision of the civil court."

22. In the case of ***Yugal Kishore Chauhury vs. State of Bihar and others, reported in 2023 SCC Online Patna 3883***, it has been held that the concept of public peace and tranquility is much wider concept than that of simple problem of law and order. All law and order problems cannot be equated with breach of public peace unless it affects the public at large like riot, affray or wide spread unrest. Simple dispute between two individuals involving violation of penal laws on the part of the two cannot be termed as breach of public peace. Occasion for invoking jurisdiction u/s 145 Cr.P.C. comes to Executive Magistrate only where there is apprehension of breach of public peace and tranquility so that such breach may be nipped in the bud.

23. In the case in hand, the proceeding before the Executive Magistrate has been initiated only between two individuals. Though the land in question is the government land, but the first party before learned Executive Magistrate was only single individual and not the people of the locality and the second party is also a single individual. As per police report, there was tension between both the parties and on account of which there was an apprehension of breach of peace. Though initially learned Executive Magistrate drew up a proceeding u/s 145 Cr.P.C. but subsequently on receipt of further police report, the magistrate

dropped the proceeding because it appears to be dispute between two individuals. However, in his order learned Executive Magistrate did not mention whether in the alleged dispute the public at large are involved or interested. The material on record shows that the effect of the alleged dispute is confined only to two individuals who are parties to the proceeding before the learned Executive Magistrate.

24. As it appears that the alleged dispute is between the two individuals and no public at large are involved or interested in the alleged dispute, as such alleged facts and circumstances cannot be ground for any apprehension of breach of peace. Hence, learned Executive Magistrate had no occasion to invoke extra ordinary jurisdiction u/s 145 Cr.P.C. The proceeding in fact is an abuse of the process of the court and is liable to be set aside and learned sessions judge has rightly dismissed the Criminal Revision filed by the present petitioner with a direction to agitate the matter before the civil court.

25. Admittedly, the land occupied by the petitioner is the government land and she has occupied the said land for more than 30 years but in support of the fact, she did not produce any document for paying any revenue in respect of the land occupied by her. The respondent No.2 has claimed the said land in respect of a gift deed made in favour of him.

26. This is not the Court to decide regarding ownership of the land or the petitioner has illegally occupied the land or the claim of the respondent No.2 is genuine.

27. However, it is pertinent to point out that there was no need for learned SDM, Bokajan to conduct further enquiry and pass fresh order on the petition filed by the respondent No.2 before the SDM, Bojajan. Accordingly, the present petition being bereft of merit, is dismissed. The Criminal proceeding u/s 145 Cr.P.C. pending before learned SDM, Bokajan bearing no. MR case no. 07/2014 is also quashed. The criminal petition is disposed of accordingly. No cost.

JUDGE

Comparing Assistant