

GAHC040004312020



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

Case No. : Crl.Rev.P./5/2020

Topi Riba
S/O LT. JITO RIBA, VILLAGE OLD DARI, PO DARI, PS BASAR, DIST.
LEPARADA, AP.

VERSUS

THE STATE OF AP AND ANR.
REPRESENTED THROUGH THE LEARNED PUBLIC PROSECUTOR, GOVT.
OF AP, NAHARLAGUN 2:RIKO RIBA
Age: 0
Occupation

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 13.09.2023

Heard Mr. T.T. Tara, learned counsel for the petitioner. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State/respondent No. 1. None appears for the respondent No. 2 though notice has been properly served.

2. The petitioner has filed an application under section 397 r/w Section 401

and 482 Cr.P.C. for quashing of the impugned order dated 04.06.2020 passed by the Additional Deputy Commissioner-cum-Executive Magistrate, Leparada District, Basar under Section 145 Cr.P.C. in connection with LRD-KEBA/(19-01)/2020.

3. Though the case is fixed for admission hearing, however, with the consent of learned counsel for the parties, matter is taken up for final disposal.

4. The brief facts of the case is that there was a dispute between the petitioner and the father of the respondent No. 2 Damrik Riba over a plot of land called Gabi situated at Ego camp. In order to resolve the dispute, Bango Level Keba was held on 28.09.2019, wherein the Keba after a threadbare discussion held that the petitioner is the rightful owner over the disputed land but divided the land into 50:50 share between the petitioner and father of respondent No.2 with a condition that father of the respondent No.2 Damrik Riba shall be offered a pig as well as valuable ornaments to the petitioner in consideration of 50% of the land in question. The father of respondent No.2 being aggrieved with the decision of Bango Level Keba dated 20.08.2019, submitted an application before the Deputy Commissioner, Leparada District, Basar with a request of holding District Level Keba in connection with land dispute between him and the petitioner. Accordingly, the deputy commissioner issued series of orders by directing the Gaonburas of different villages of Leparada District to settle the issue through the district Bango Level Keba.

5. Being aggrieved with the order dated 19.11.2019, the petitioner preferred a writ petition before this Court and after hearing the parties, this court stayed the order of Deputy Commissioner dated 19.11.2019.

6. The learned counsel for the petitioner has submitted that the ADC-cum-Executed Magistrate, Leparada District, Basar has manifestly committed errors while passing the aforesaid impugned order which does not reveal apprehension of breach of public peace and tranquility arising out of dispute between the parties over possession of the disputed land and as such being a private dispute, it is civil in nature, which is beyond the scope and ambit of jurisdiction of the Executive Magistrate provided under section 145. Cr.P.C.

7. It is also the submission of learned counsel for the petitioner that the Executive Magistrate, Basar has failed to appreciate that the dispute between the parties is civil in nature. If a person is dispossessed from his land, he shall sue for recovery of the immovable property under the provision of the Specific Relief Act and if there is a threat of his dispossession, aggrieved party can institute a suit to obtain injunction. Therefore, the said impugned order is bad in law and is liable to be set aside.

8. It is also submitted by learned counsel for the petitioner that the learned Executive Magistrate, Basar has failed to appreciate that the dispute between the respondent No.2 and the petitioner is a private dispute and the remedy is available in the civil court. Whereas in instant case, Keba already decided the title over the disputed land in question and the Keba is a competent court and has a jurisdiction to decide title/ownership of land as per Assam Frontier Regulation, 1945. The said Keba decision dated 28.09.2019 is still in force as no competent court has interfered.

9. In support of his submissions, the learned counsel for the petitioner has relied on the following case laws-

(i) 2007 (4) GLT 889 (Kaushal Mishra & Ors. vs. Raj Kumar Mishra).

(ii) 2012 (5) GLT 442 (Madhu Sarma & Ors. vs Ajit Sarma).

10. In response, the learned Additional Public Prosecutor has canvassed in favour of the impugned order. She has submitted that prior to passing of the order, the petitioners were served with the notice of complaint under section 145 Cr.P.C. but they did not turn up. On the other hand, under section 145 Cr.P.C., the Executive Magistrate has the power to pass order in case any apprehension of breach of peace. Under such backdrop, the order passed by the learned Executive Magistrate dated 04.06.2019 does not call for any interference.

11. I have considered the submissions of learned counsel for the parties and perused the materials on record. In order to properly appreciate the contentions of the parties, it is necessary to understand the object and scope of Section 145 Cr.P.C. which reads as follows-

“S.145. Procedure where dispute concerning land or water is likely to cause breach of peace.--(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual

possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so on the required to attend, exists or has existed; and in such case the Magistrate shall cancel his said or any other person interested, from showing that no such dispute as aforesaid order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such 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; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce

of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

12. On a bare look at the provision of Section 145 Cr.P.C., it is clear that this Section deals with the preventive jurisdiction of the Magistrate concerning the disputes regarding possession of immovable property between two or more persons, which are fraught with consequences dangerous in themselves and likely to result in breach of public order and tranquility. While dealing with such dispute, the Magistrate is not required to go into the question of title but he is supposed to meet the urgency of the situation by maintaining the party in possession. To arrive at a just decision, the Magistrate can call upon the parties to submit written statements in support of their claims to actual possession. The Magistrate, before passing any order under Section 145 Cr.P.C. is under obligation to peruse the statements of the parties, hear them and weigh the evidence, if any, in order to ascertain which party was in possession on the date of the order. If a party has been wrongfully dispossessed within two months of

the police report/information, or after the date of police report/information, the Magistrate is required to put persons so dispossessed in possession of the property. To initiate the proceedings under Section 145 Cr.P.C., the Magistrate must be satisfied of following three conditions i.e. (1) There must be real threat of breach of peace inviting said proceedings; (2) There must be material on record to prove the actual breach of peace and (3) The Executive Magistrate shall form a subjective satisfaction on the basis of record to initiate such proceedings. The purpose of Section 145 Cr.P.C. is not to evict a person from any land but it is primarily concerned with prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom.

13. In the case of ***R.H. Bhutani v. Mani J. Desai***, reported in ***AIR 1968 SC 1444***, while dealing with the object and scope of Section 145 Cr.P.C., Hon'ble Supreme Court observed thus:

"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 enquiry 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 -exist. The enquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry 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."

14. In the case of ***Ranbir Singh v. Dalbir Singh***, reported in ***(2002) 3 SCC 700***, Hon'ble Supreme Court has held thus:

"....The Court, while dealing with a proceeding under Section 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide

either title to the property or right of possession of the same....."

15. In the light of the aforesaid proposition relating to the procedure under Section 145 Cr.P.C., it is to be seen whether the notice has been served to the present petitioner prior to passing of the order. According to learned counsel for the petitioner, the petitioner did not receive any notice and without his knowledge, the order was passed by the learned Magistrate declaring possession of the respondent No. 2 over the land in question.

16. I have perused the order of learned Executive Magistrate dated 04.06.2020, which reads as follows-

“A petition was received from Shri Rikgo Riba, S/O Shri Damrik Riba, Ego Camp-Dari, Leparada District, AP (Petitioner) to the effect that his possession of ancestral land at Gabi located near Ego Camp is claimed and disturbed by one Shri Tope Riba (Respondent)S/O Late Jito Riba of Dari, Leparada District, AP. In view of the obstruction created by the Respondent over the peaceful possession of the land there is likelihood of peace being breached.

From the preliminary inquiry and other sources, it appears that there is apprehension of serious breach of the peace arising out of the said land dispute. Accordingly, OC, PS, Basar was directed to inquire into the matter and submit report as to existence of apprehension of breach of the peace.

On 28th May, 2020, the report was submitted by the OC, PS, Basar indicating that there is every possibility of peace being breached at any moment and requested for invoking section 145 CrPC to maintain peace and order.

.....

Therefore, I am satisfied from police report and other reliable information that there is an indication of a breach of the peace. For the purpose of preventing serious breach of the peace following orders are passed for immediate compliance:

1. Shri Rikgo Riba, petitioner has been in possession of the land all along. The object behind the provisions of section 145 is merely to prevent breach of the peace by maintaining one party to the dispute in possession and forbidding the other on pain of a penalty, to interfere with it.

2. Therefore, Shri Rikgo Riba shall continue to possess the land till matter is decided by the civil court. Peace will be breached if other parties make entry into plot where permanent dwelling house of Rikgo Riba is constructed and entire family is housed. There will be no interference from other parties.

3. Any violation of these orders shall be treated seriously and necessary proceedings shall be drawn against any defaulter in accordance with law."

17. On a bare look at the order of the learned Magistrate, it transpires that

the order was passed ex-parte. There is no indication in the aforesaid order that any notice was issued to the present petitioner. As per report of the O/C, Basar, the respondent No.2 has been possessing the said land for long years by constructing a house thereon. It appears from the report that both the parties claimed the said plot of land to be their own. No documents are available in the record regarding claiming of the property in question by the parties. As per report of O/C, Basar, there were construction materials like iron rods, Bamboos stored by the father of the respondent No.2 for construction of new house building. But due to imposition of status-quo the materials were drastically rusting exposed to the open atmosphere day by day. Undoubtedly, there was apprehension of possible confrontation if either of the parties initiate any kind of activity on the land.

18. From the report of the O/C concerned P.S., it cannot be ascertained whether there was likelihood of breach of the peace in a given locality. It also appears that the dispute is between the petitioner and the respondent No. 2 and his father regarding landed properties which are private in nature between the parties. The basis of jurisdiction under section 145 (1) is a dispute which is likely to cause a breach of the peace. It is not a mental piece of the parties to apprehend danger of breach of peace in the locality. The acts of a private party which affects personal rights of another party do not disturb the peace of the society.

19. 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 law and order or breach of the peace in the locality, the provision of Section 145 Cr.P.C. does not come into play. The forum for getting relief is the civil court of competent jurisdiction and not an Executive

Magistrate's Court. In the instant case, the learned Executive Magistrate has drawn a proceeding under section 145 Cr.P.C. on the complaint filed by the respondent No. 2 wherein he has not alleged about even a single instance which could give rise to apprehension of breach of peace.

20. As per the report of O/C, Basar police station and the order of the Executive Magistrate revealed that there is a dispute over landed properties between the parties. Both the parties have claimed the alleged plot of land to be their own. But there is no clear allegation in the complaint which was filed by the respondent No. 2 and his father which could give rise to the apprehension of breach of peace. As per report of the O/C, Basar, there is apprehension of possible confrontation if either of the parties initiate any kind of activity on the land.

21. Thus, in my considered view, the conditions precedent for taking action under section 145 Cr.P.C. was lacking in this case. As such, the order passed by the learned Magistrate dated 04.06.2020 cannot be sustained. It is accordingly set aside with a direction that both the parties may approach before the civil court which is the proper forum to settle the dispute regarding ownership of the land.

22. With the above observation, the matter is disposed of at the admission stage.

23. Send back the case records.

JUDGE

Comparing Assistant