

GAHC040004892023



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

Case No. : Crl.Petn. 60/2023

1:Molam Rema
W/o Shri Karma Tsering,
A Resident of Chingi Village, PO/PS Kalaktang, District West Kameng, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and Anr.
Represented through its Public Prosecutor.

2:Additonal Deputy Commissioner cum Executive Magistrate
Kalaktang
West Kameng District
Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 18-04-2023

Heard Ms. T. Y. Bhutia, learned counsel for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the State respondent No. 1 and 2.

This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside of Order dated 13.02.2023, passed by the learned Additional Deputy Commissioner-cum-Executive Magistrate, Kalaktang, West Kameng District, whereby, the petitioner along with other parties concerned were directed to maintain status quo and refrain from carrying out any sort of activity in the disputed area.

Ms. T. Y. Bhutia, learned counsel for the petitioner has submitted that the disputed land belongs to the present petitioner and the said land was gifted to her by her father on 23.10.2012. Thereafter, the complainants namely, Shri Urjen Karma, Shri Rinchin Karma and Shri Sonam Phuntso filed a complaint letter against the present petitioner along with other concerned parties before the Additional Commissioner, West Kameng District on the ground of trespassing their private land by way of distraction of fencing, cutting trees and digging by knowing the fact that the case is pending before the Gaoh Burah, Chingi village for passing the judgment.

It is further submitted that from the order passed by the learned Additional Deputy Commissioner-cum-Executive Magistrate, Kalaktang, it reveals

that the Executive Magistrate had passed the order to maintain status quo until the settlement of the case. However, as per the Arunachal Pradesh Civil Courts Act, 2021, the Deputy Commissioner or the Assistant Commissioner, no longer has the power to adjudicate either civil or criminal matters within the State of Arunachal Pradesh and have fallen out of the purview of a Civil Court under the Assam Frontier (Administration of Justice) Regulation, 1945, and that any proceedings under Section 145/146 of the Cr.P.C cannot proceed once the Civil Court is seized of the matter as the possession is eventually to be determined by the Civil Court, which in this case, is the village authority. Hence, this petition u/s 482 of the Cr.P.C. for setting aside and to quash the impugned order dated 13.02.2023.

Further, the learned counsel for the petitioner also relied on the decision passed by the Hon'ble Supreme Court in CrI.No.5444/2022 dated 01.11.2022, wherein, it has been held that *"once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end"*.

In this regard, Mr. J. Tsering, the learned Public Prosecutor submitted that the learned Additional Deputy Commissioner-cum-Executive Magistrate, Kalaktang, had passed the impugned order without following the mandate required as per section 145 of the Cr.P.C. by directing the parties to maintain peace and tranquility of the said disputed land.

He also relied on the decision of the Hon'ble Apex Court reported in 1984 (0) Supreme (SC) 361, wherein, it has been held that;

“.....when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating parallel criminal proceedings under Section 145 of the code.”

Considering the submissions made by the learned Advocates of both sides and also considering the entire facts of the case, it is seen that the learned Additional Deputy Commissioner-cum-Executive Magistrate, Kalaktang had passed the order under Section 145 Cr.P.C. despite knowing the fact that the matter is pending before the Civil Forum.

So considering the entire aspect of the case and also considering the view of the Hon'ble Supreme Court, the impugned order dated 13.02.2023, passed by the learned Additional Deputy Commissioner-cum-Executive Magistrate, Kalaktang, stand set aside and quashed.

In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant