



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

Case No. : Crl.Rev.P./11/2023

Techi Murkhi
S/o Lt. Techi Tekli,
R/o Model Village, Naharlagun, PO/PS Naharlagun, Papumpare District, Arunachal Pradesh.
Mob. 8729830959

VERSUS

THE STATE OF AP and Anr.
Represented by the PP, Govt. of Arunachal Pradesh. 2:Karanzel Kholie
Age: 0
Occupation

Advocate for the Petitioner : Duge Soki

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT

Date : 23.11.2023

Heard Mr. D. Soki, learned counsel appearing on behalf of the petitioner. Also heard Mr. G. Tado, learned Addl. Public Prosecutor, appearing on behalf of the State of Arunachal Pradesh and Mr. O. Pada, learned counsel, appearing on behalf of the Respondent no. 2.

2. By instituting the present criminal revision petition, the petitioner has

assailed an Order, dated 09.03.2023 passed by the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar, under the provisions of Section 145 Cr.P.C.

3. The facts requisite for considering the issue arising in the present proceedings is noticed as under:-

The petitioner aggrieved by non-payment of the amount due to him from one Shri Likha Saaya on account of sale of land to the later, had approached the jurisdictional Deputy Commissioner by filing an application, praying for cancellation of the Land Possession Certificate (LPC), issued in favour of Sri Likha Saaya, pertaining to the land sold to him by the petitioner.

The said application was considered and disposed of by the Deputy Commissioner, Itanagar, Capital Complex vide Order, dated 11.01.2023 holding that there is no any pending liabilities left by Likha Saaya as per the money receipts produced, wherein, it was clearly mentioned that the amount received was the full and final cost of the land. The land, wherein, Likha Saaya had LPC was transferred to Shri Karanzel Kholie, the respondent No.2 herein. The respondent No.2 approached the Extra Assistant Commissioner (EAC), Naharlagun, District Papumpare, raising a complain that one Shri Techhi Talum (son of the petitioner herein) had illegally entered into his plot and started construction of fencing post inside the compound. The said application was taken on record and a hearing was called by the EAC in his office chamber for an amicable settlement of the dispute. The same not being amicably resolved, the matter was referred to the Deputy Commissioner of the District. Vide Order, dated 10.10.2022 in terms of the directions of the Deputy Commissioner, the Executive Magistrate, Capital Complex, Naharlagun took up the matter for amicable settlement and vide Order, dated 10.10.2022 fixed 26.10.2022 for joint verification of the land and also for measurement of the same.

Thereafter, vide Order, dated 09.03.2023, the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar, holding that the claim of actual possession of the said land by the respondent No.2 herein to be convincing, declared the Respondent No. 2 to be in possession of the said disputed land and directed that he was entitled to retain such possession until ousted in due course of law, and Shri Techhi Talum Tara, i.e. the son of the petitioner was directed to remove all structures whatsoever constructed/erected inside the disputed plot within the time frame prescribed therein. It is this Order, passed under Section 145 Cr.P.C., which is under challenge in the present proceeding.

4. Mr. Soki, learned counsel for the petitioner, by drawing the attention of

the Court, to the impugned Order, dated 09.03.2023 has contended that there is no disclosure in the order that the Executive Magistrate had carried out any enquiry to satisfy himself that there is a likelihood of breach of peace on account of the land dispute between the parties. It is further contended that the possession of the land in dispute, was with the petitioner since February 2022 and there was no apprehension of any breach of peace, on the date, the respondent no. 2 has lodged the complaint. It is contended that the Executive Magistrate for arriving at the conclusion, as arrived at by him in the Order, dated 09.03.2023, heavily relied upon the Order, dated 11.01.2023, passed by the Deputy Commissioner, Capital Complex, Itanagar, rejecting the application of the petitioner for modification of the LPC issued to Likha Saaya.

5. Mr. Soki, learned counsel for the petitioner has placed on record a copy of the Order, dated 06.09.2023, passed by this Court in WP(C)129(AP)2023, instituted by the petitioner herein against the said Order dated 11.01.2023 and has contended that in view of the nature of the order passed by a co-ordinate bench of this Court, vide Order, dated 06.09.2023, the findings recorded by the Executive Magistrate in the Order, dated 09.03.2023 cannot be sustained. Accordingly, Mr. Soki, learned counsel for the petitioner prays for an interference with the impugned Order, dated 09.03.2023 with a further direction to the parties to move before the Civil Court of competent jurisdiction for determining their respective rights.

6. Per contra, Mr. Pada, learned counsel for the respondent No. 2 submits that there is a dispute between the parties of civil nature and accordingly, as already held by this Court vide Order, dated 06.09.2023 in WP(C)129(AP)2023, the parties should be left at liberty to approach the Civil Court of competent jurisdiction for resolving their grievances. Accordingly, he prays that the interim order, dated 06.09.2023, passed in the present proceedings is required to be vacated and the revision petition closed by granting liberty to the parties to

approach the Civil Court of competent jurisdiction for redressal of the grievances.

7. I have considered the submissions advanced by the parties to the proceedings as well as the materials produced on record of the present proceeding.

8. Before considering the challenge presented to the Order, dated 09.03.2023, I would like to deal on the scope and ambit of the power of the Executive Magistrate for entertaining a proceeding, under Section 145 Cr.P.C. The relevant provisions of Section 145 Cr.P.C., are quoted hereinbelow for ready reference:-

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)

(3)

(4) The Magistrate shall then, without, reference to the merits or the claims of any 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 and 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 on the date of his order under sub- section (1).

(5)

(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)

(8)

(9)

(10)

9. Section 145 is placed within Chapter 10 of the Code of Criminal Procedure, 1973, which deals with maintenance of public order and tranquility, particularly, the object of the Section is to maintain law and order and to prevent a breach of peace by maintaining possession of either one or the other party in possession of the subject of dispute or the date, the Magistrate passes an order under sub-Section of (1) of Section 145 of the Code. It also mandates that if it appears to the Magistrate that anybody has been forcefully and wrongfully dispossessed within 2 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 its order under sub-Section (1), such party so dispossessed may be held to be in possession on the date of passing of the order in terms of sub-Section (1) of Section 145 of the Code. The Magistrate under Section 145 cannot enquire into the rights of the party so far as the title of the land in dispute is concerned and he can only decide the question of possession by considering the evidence adduced before him by the parties. Every dispute between the parties regarding the possession of the land would not come within the

purview of Section 145 of the Code of Criminal Procedure, 1973, unless there is likelihood of breach of peace and if there is no material before the Magistrate which suggests apprehension of likelihood of breach of peace then the proceeding under Section 145 of the Code, would be one without jurisdiction. Accordingly, for initiating a proceeding under Section 145 of the Code, relating to a dispute of land, an apprehension of breach of peace in and around the locality is *sine qua non*. It is not a breach of mental peace of the parties but apprehended breach of peace in the locality. Ordinarily, in a dispute pertaining to land, an appropriate forum would be a Civil Court of competent jurisdiction.

10. A proceeding under Section 145 of the Code of Criminal Procedure, 1973, is a proceeding under an extraordinary provision to grant extraordinary relief which can be invoked only when there is a likelihood of breach of peace in the locality. The final order of the Magistrate is, however, subject to the decision of a Civil Court of competent jurisdiction. It is, therefore, seen that private dispute between two persons which does not disturb the law and order or occasion a breach of peace in the locality; the forum for the parties involved to get the relief, is the Civil Court of competent jurisdiction.

11. Having considered the factors requisite to exist for the Magistrate to exercise power, under Section 145 Cr.P.C. and the manner, in which, such power can be exercised, the Order, dated 09.03.2023, now requires to be examined.

12. The complaint filed by the respondent no. 2 on 31.01.2023 culminated in the impugned Order, dated 09.03.2023.

13. The Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar, vide Order, dated 28.02.2023 reckoning the submission

of the respondent No. 2 that there has occasioned deliberate violation of the Order, dated 11.01.2023, passed by the jurisdictional Deputy Commissioner, in the matter of land dispute between the petitioner herein and the respondent no. 2 drew satisfaction that the dispute is likely to cause breach of peace and accordingly, directed the parties to maintain status quo and fixed 09.03.2023 for final disposal.

14. On a perusal of the Order, dated 09.03.2023 as well as the earlier orders passed in the proceedings, as available in the records of the present case, it is seen that there is no material disclosed basing on which the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar, had drawn satisfaction about the existence of apprehension of occasioning a breach of peace concerning the land in dispute.

15. There being no material disclosed basing on which, the authority issuing the Order, dated 09.03.2023 could have drawn conclusions that the dispute is likely to induce a breach of peace, exercise of jurisdiction under Section 145 Cr.PC is questionable. Accordingly, in absence of an apprehension based on materials that the dispute is likely to cause a breach of peace, the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar had no jurisdiction to entertain the complaint submitted by the respondent No.2.

16. It appears from the submissions of the parties as recorded in the Order, dated 09.03.2023 that none of them had stated anything regarding the likelihood of breach of peace in the locality on account of the dispute existing between them.

17. In my considered view, when any land dispute, which in no way disturbs the peace and tranquility of the locality is taken up in exercise of

power conferred under Section 145 of the Code of Criminal Procedure, 1973, then such an exercise of power would not be towards protection of the interest of justice, rather, it would defeat justice.

18. Further, the Order, dated 09.03.2023 has heavily relied upon the Order, dated 11.01.2023, passed by the jurisdictional Deputy Commissioner, in an application filed by the petitioner herein for modification of the LPC issued to Likha Saaya. The said Order, dated 11.01.2023 was already considered by a co-ordinate bench of this Court and vide Order, dated 06.09.2023 in WP(C)129(AP)2023, while disposing of the writ petition, granting liberty to the parties to approach the Civil Court of competent jurisdiction for resolving the dispute has held that the jurisdictional Deputy Commissioner did not have the jurisdiction to make any such observations regarding the civil liabilities of the parties to the proceedings. As such, the Order, dated 11.01.2023 having already been held by this Court, to be one issued without jurisdiction, the reliance placed on the said order by the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar while passing the Order, dated 09.03.2023 vitiates the said order.

19. In view of the above; I allow the revision petition by setting aside the impugned Order, dated 09.03.2023 passed by the Additional Deputy Commissioner-Cum-Executive Magistrate, Capital Complex, Itanagar, under the provisions of Section 145 Cr.P.C.

20. The land dispute involved in the Order, dated 09.03.2023 being a civil dispute, the parties are at liberty to approach the Civil Court of competent jurisdiction for determination of their rights and redressal of their grievances. It is further provided that in the event, any of the parties, so approach the Civil Court of competent jurisdiction, the Trial Court shall not be swayed by the observations made in this order and shall decide the dispute so raised by

the parties on its own merit.

JUDGE

Comparing Assistant