

GAHC010032402023



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

Case No. : Crl.Pet./152/2023

ABDUL KAYUM BARBHUIYA
S/O LATE HAZI KONAMIA BARBHUIYA
VILL- KHELMA PT.VII
P.O. GUMRA BAZAR, P.S.KALAIN
DIST. CACHAR, ASSAM, PIN-788815

VERSUS

EAKBAL HUSSAIN CHOUDHURY @ IKBAL HUSSAIN CHOUDHURY AND 2
ORS
S/O LATE ABDUL KAYUM CHOUDHURY
R/O VILL- KHELMA PT.II,
P.O. GUMRA BAZAR
P.S. KALAIN
DIST. CACHAR, ASSAM
PIN-788815

2:SETAB UDDIN
S/O ABDUL KHALIK
VILL- KHELMA PT.II

P.O. GUMRA BAZAR
P.S. KALAIN
DIST. CACHAR
ASSAM
PIN-788815

3:BADAR UDDIN
S/O LATE MOIN UDDIN
VILL- KHADIMAN
P.O. BADARPUR
P.S. BADARPUR

DIST. KARIMGANJ
ASSAM
PIN-78880

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : MR. JUNM LASKAR (r-1,2,3)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 04-08-2023

- 1.** Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. P. Kataki, learned counsel for the respondents.
- 2.** The petitioner Abdul Kayum Barbhuiya has filed an application u/s 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) read with Article 227 of the Constitution of India for quashing and setting aside the order dated 27.01.2023 passed by the learned Sessions Judge, Cachar, Silchar in Criminal Revision Case No. 22/2023.
- 3.** The petitioner has submitted that he and his brother Asaddar Ali Barbhuiya are joint owners of the disputed land (D/L for short) in question, admeasuring 1 Bigha 16 Kathas and 6 Chattaks appertaining to 2nd R.S. Patta No. 46, Dag No. 286 at Porgana Gumra, Mouza-Kalain Pt-VII, in the Dist.-Cachar. Vide registered Sale Deed No. 802 dated 05.05.2011 the petitioner and his brother became the owners of the D/L and they have been in possession of the same, without any hindrance from any corner and they have also constructed a *pucca* house (concrete house). In the year 2016, they obtained an NOC from the concerned Gaon Panchayat for setting of a Weigh Bridge in the name and style of M/s. KBI Weigh Bridge over

the D/L and another NOC was obtained for electricity connection. The Weigh Bridge was set-up in the year 2017 and the electricity connection was also acquired at the same time. However, in the year 2022, the Weigh Bridge was shifted from D/L to a nearby location, but the concrete structure of the Weigh Bridge is still lying in the D/L.

4. It has been contended that as the D/L is near the respondent No. 1's residential house. The respondent No. 1 Eakbal Hussain Choudhury @ Ikbali Hussain Choudhury @ Eagbal Hussain Choudhury along with the other proforma respondents Setab Uddin and Badar Uddin illegally and forcefully entered into the D/L. Subsequently, on 10.01.2023 at about 8 PM the respondents trespassed into the petitioner's house constructed on the D/L and took away all the valuable materials from the house by breaking the lock. The respondents also encroached into the D/L. The elderly residents of the village tried to settle the dispute but the respondents refused to settle the matter. Again on 11.01.2023, the respondents tried to enter into the land, and this impelled the petitioner to lodge an FIR against the respondents. Thereafter, the respondents started to threaten the petitioner to dispossess him from the D/L and they also threatened to kill the family members of the petitioner.

5. Apprehending breach of peace and tranquility in the locality as well as loss of human lives and property, the petitioner filed a petition on 12.01.2023 which was registered as M.R. Case No. 46^M/2023 and the Additional District Magistrate, Cachar, Silchar, after hearing the petitioner and on perusal of the police report vide order dated 20.01.2023, drew up a proceeding u/s 145 Cr.PC and attached the D/L u/s 146(1) Cr.PC and restrained both the parties from entering into the D/L until further order(s) and a date was fixed for written statement by both the parties. Against this order the respondent No. 1 approached the Court

of the Sessions Judge at Cachar by filing a Criminal Revision Petition on 27.01.2023, registered as Criminal Revision No. 22/2023. The learned Sessions Judge, Cachar vide order dated 27.01.2023 admitted the criminal revision petition filed by the respondent No. 1 and stayed the order dated 20.01.2023 passed by the learned Additional District Magistrate, Cachar.

6. It is argued that the order of stay, paved way for fresh dispute between the parties causing disturbance of peace and public tranquility in the locality which may escalate to any extent. It is submitted by the petitioner that the order dated 27.01.2023 is not maintainable in the eye of law and amounts to abuse of the process of law. The learned Additional District Magistrate has rightly exercised his power by drawing a proceeding under the provisions of Section 145 and 146(1) of the Cr.PC to maintain peace and tranquility after considering the urgent situation. It is submitted that the impugned order dated 27.01.2023 was arbitrarily passed. An interlocutory application registered as IA No. 200/2023 was preferred by the respondents/applicants against the order of this Court dated 17.02.2023 granting stay of the proceedings of the C.R. Case No. 22/2023 pending in the Court of the learned Sessions Judge, Cachar, Silchar. Through the IA and through their arguments, the respondents have submitted that the original owner of the disputed land in question was Hafijul Haque Barbhuiya, son of Late Faijur Rahman Barbhuiya. Subsequently the disputed land was purchased by one Abdul Karim Talukdar, son of late Nabab Ali Talukdar @ Gulam Nabi Talukdar of Khelma Part-VI village, Pargana - Gumra, P.S. Katigora, District-Cachar vide Deed No. 1297 dated 08.07.2019 registered before the Sub Registrar, Katigora, Cachar. The disputed land admeasures 1 Bigha, 10- Kathas appertaining to Dag No. 286 and Patta No. 46 of 2nd R.S. under Khelma Part-IV, bounded by -

East – Land of Gautam Nath and Kripamoy Nath

West – Land of Kripamoy Nath

North – National Highway No. 6 connecting Jowai and Badarpur

South – Land of Khoka Nath

The Deed of Sale is marked as Annexure No. A.

7. The respondents have purchased the afore-mentioned plot of land by Deed No. 2839 from Abdul Karim Taludkar and their land measures 1 Bigha 8 Kathas.

8. It is contended that the Sale Deed marked as Annexure-1 reflects the names of the vendors as –

1] Sri Subodh Chandra, Son of Late Sunil Chanda

2] Sri Amalendu Chanda

3] Sri Vivek Chanda

4] Sri Jagada Chanda (all sons of Late Harendra Chanda) residents of village Khelma, Part-VII, P.O. Gumra P.S. Katigora, District- Cachar and the plot of land measures upto 1 Bigha 16 Kathas 6 Chataks covered by Dag No. 286 Patta No. 46 of 2nd R.S. situated at Mouza- Khelma Part-VII, Pargana - Gumra, Tehsil - Katigora, District – Cachar, Assam and the Sale Deed is numbered as Deed No. 802 dated 05.05.2011. This plot of land is shown to be bounded by –

East – Land of Gautam Nath and Kripamoy Nath

West –Land of Kripamoy Nath

North –Government Road

South – Land of the applicants measuring 2 Kathas

It is contended the names of the above sellers are purportedly shown as citizens of India but in fact they are citizens of Bangladesh and their actual address is

Village – Nowagram
P.O. – Kash Kanakpur,
Sub-Division – Jokiganj
District – Shylet, Bangladesh.

9. The concerned Sub-Registrar of Katigora, without verifying the nationality and relevant documents about identification of those above-mentioned citizens from Bangladesh had registered the Sale Deed No. 802 dated 05.05.2011.

10. It is averred that when the respondents learnt that the petitioner prepared a sale deed and projected four members of sellers who are originally Bangladeshi nationals, then they immediately collected the voters-list of Khelma Part-VII of Katigora constituency for verification and did not find the names of those projected sellers in the voters list dated 01.01.2010 published by the concerned authority. It is contended that the respondents are in possession of the alleged disputed land but the petitioner has falsely stated that the respondents are trying to encroach the disputed land and they have also threatened the petitioner. The petitioner has submitted documents relating to the years 2015-16. The question of breach of peace and public tranquility between the parties does not arise at all. On the contrary the petitioner has been threatening the respondents. The question of attachment of land does not arise at all as the respondents are bonafide purchasers of the disputed land. To unearth the facts the respondent No. 1 went to Bangladesh after obtaining visa on 14.02.2023 and returned on 24.02.2023 and managed to collect certified copies of the PRC, Voters Lists of the four Bangladesh nationals projected as sellers of Sale Deed No. 2 dated 05.05.2011. These photocopies of PRC and Voter Lists are marked as Annexure-F [in I.A.(CrI.) No. 200/2023].

11. It is contended that probably the petitioner by hatching a conspiracy may have prepared the Aadhar Cards, Pan Cards, Voters ID Cards, Photos etc. in the names of the Bangladesh nationals. The petitioner with a view to cause wrongful loss to the respondents has filed a petition u/s 145/146 Cr.PC before the District Magistrate.

12. Vide impugned order dated 27.01.2023 in Criminal Revision Case No. 22/2023 the learned Sessions Judge admitted the revision for hearing and the case record of M.R. Case No. 46^M/2023 was called from the Court of the learned Addl. District Magistrate, Cachar, Silchar, staying the operation of the impugned order dated 20.01.2023 passed by the learned Addl. District Magistrate in M.R. Case No. 46^M/2023. A copy of the order of the Sessions Judge is marked as Annexure-6. From the copy of the order of the Addl. District Magistrate dated 20.01.2023 in M.R. Case No. 46^M/2023 it is apparent that the order was passed after perusal of the petition and the police report. It was observed by the learned Magistrate that on perusal of the police report and on hearing the submissions made by the Lawyer for the first party, he was of the opinion that the dispute of land between the parties may lead to serious apprehension of breach of peace and public tranquility in the locality. Thereafter he drew up a proceeding u/s 145 directing both the parties to file written statements in respect of the claims over the D/L, restraining both the parties from entering into the D/L until further orders.

13. The learned counsel for the petitioners relied on the decision of this Court in *Ismail Sheikh and Another v. Bani Hussain And Ors.*, reported in 2007 (4) GLT 537, wherein it has been observed that:-

“Coming to the merit of the impugned order, I also find that this order

suffers from legal infirmities. Under Section 146(1) Cr.PC, a Magistrate can attach the subject of dispute or appoint a receiver, if any of the three circumstances given therein are fulfilled. The circumstances are (i) the Magistrate considers the case to be one of emergency; (ii) the Magistrate finds that none of the parties was then in possession of the subject matter of the dispute and (iii) the Magistrate is unable to satisfy himself as to which of the contending parties was in possession of the subject of dispute.”

14. The learned counsel for the petitioner also relied on the decision of the High Court of judicature at Allahabad in *Rajendra Prasad and Others v. State of Uttar Pradesh and Others*, reported in *AIR Online 2019 ALL 2700*, wherein it has been observed that:-

“In view of above provisions of law, if the facts of the present case be analysed, it is apparent that there was report of the tehsildar on record which indicated that there was apprehension of breach of peace between the two sides concerning the disputed land as both of them were claiming ownership and possession of the same. In such a situation, finding a strong possibility of breach of peace between the parties, the Magistrate appears to have rightly taken the decision to attach the property and has also invited the parties to appear before it and adduce evidence in support of their respective claims. Therefore, it is open to the Magistrate still to come to a conclusion as to which of the parties was in possession two months prior to the passing of this order under Section 145(1) of the Code and could restore possession accordingly. These proceedings appear to have been stayed by this Court vide order dated 25.07.2014, which needs to be vacated, because till the said order remains in force directing the parties to maintain status quo, the Magistrate concerned would not be able to proceed ahead and take evidence of both the sides and arrive at a conclusion with respect to the possession over the disputed property. It is apparent that the property which has been attached, shall remain attached only till the Magistrate comes to the conclusion as to who actually deserves delivery of possession of the said property, as to who was actually in possession within two months prior to issuing order under Section 145(1) of the Code. The Magistrate does not have power to judge the correctness or illegality of the possession because that is the domain of the civil court to judge the correctness of the possession as well as ownership of the parties.”

15. The respondent has relied on the decision of this Court in *Jesmin Rahman v. Afruza Begum & Another*, reported in *(2008) 1 GLR 577* wherein it has been observed that :-

“A preliminary order, under [Section 145\(1\)](#), is the first order, whereby a proceeding is initiated. A preliminary order is, thus, nothing, but the foundation of the jurisdiction of the Magistrate, who draws the proceeding. Such an order cannot be regarded as interlocutory order, for, it can always be tested as to whether foundation of jurisdiction exercised by a judicial authority is legally sustainable or not or whether the exercise of judicial or quasi-judicial power by an authority is or is not valid under the law. Construed thus, it is clear that if a preliminary order is made under [Section 145 \(1\)](#), when the Magistrate, drawing such a proceeding, has no jurisdiction or when the conditions precedent for exercise of such jurisdiction do not exist, such an order, which affects valuable rights of the parties, cannot be termed or regarded as interlocutory order.”

16. In the case at hand, it is apparent that both the parties are claiming right, title and interest over the D/L. They have annexed certain sale deeds. Thus the order dated 20.01.2023 was passed on the basis of a police report after drawing of a proceeding u/s 145 Cr.PC. was appropriate. Both the parties were directed to file written statements. At this juncture it cannot be ascertained if the petitioner is the rightful owner and was in possession of the D/L or if the respondents are the rightful owners and they were in possession of the disputed land. Without evidence and without scrutinizing the written-statements filed by both the parties, the Sessions Judge will also be unable to decide judicially which of the parties is the rightful owner of the D/L. To decide the ownership of the D/L is within the domain of a Civil Court. The M.R. Case No. 46^M/2023 was at its nascent stge. The case prima facie appears to be a civil dispute but breach of public peace and tranquility in the locality is apprehended. Without written statements or evidence the Sessions Judge may not be able to decide the case in its proper perspective.

17. Thereby the order dated 27.01.2023 passed by the learned Sessions Judge, Cachar in Criminal Petition Case No. 22/2023 is hereby set aside, upholding the order of the learned Additional District Magistrate dated 20.01.2023 and the learned Additional District Magistrate

is directed to decide this case within 2 (two) months.

JUDGE

Comparing Assistant