

Court No. - 82

Case :- MATTERS UNDER ARTICLE 227 No. - 4727 of 2023

Petitioner :- Rajendra And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Lalit Kumar Yadav,Raj Kishore Yadav

Counsel for Respondent :- G.A.,Gulab Chandra Pandey,Ved
Prakash Singh,Veerendra Kumar Shukla

Hon'ble Shree Prakash Singh,J.

Heard Sri Raj Kishore Yadav, learned counsel for the petitioners, Sri Ved Prakash Singh, learned counsel for the opposite party nos. 3 and 4, learned AGA for the State and perused the material placed on record.

The instant application has been filed with a prayer to quash the impugned order dated 27.02.2022 and 20.12.2022 passed under Sections 145(1) and 146(1) of CrPC and maintain the status quo regarding the abadi no. 930 measuring .328 hectare.

Factual matrix of the case is that on 21.10.2013, on an application moved by the respondent nos. 4 and 5, a report was called for with respect to the gata no. 930 bearing area .328 hactare, wherein, the dispute is with respect to the area 27*11 ft.² and thereafter, the Sub-Divisional Magistrate, without any ground has taken the note of the fact and invoked the power under Section 145 of CrPC, on 02.06.2014 and thereafter, the orders under Section 146(1) of CrPC was also passed.

Contention of the learned counsel for the petitioner is that the petitioners are having the possession over the said land since long back and that is being used as aabadi land. He further submits that the private respondents instituted a civil suit bearing no. 319 of 2004, which was dismissed vide order dated 19.04.2022. He also added that the petitioners have instituted a civil suit which is pending consideration before the trial Court concerned wherein, the private respondents have put their appearance. Adding his arguments, he submits that the subdivisinal magistrate without considering the fact that there is no exigency or any apprehension of breach of peace immediately over the land in question and initiated the proceeding under Section 145 of CrPC and passed the order under Section 146(1) of CrPC. He further contended that

once the civil suit which was filed by the private respondents, has already been dismissed, the respondents have no lien or locus to claim the land in question and the Sub-Divisional Magistrate, without considering the fact that the suit instituted by the private respondents have already been dismissed and further civil suit is also pending with respect to the same Gata, has passed the order. He also added that the findings of the Sub-Divisional Magistrate are perverse and against settled proposition of law.

In support of his contention, he has placed reliance on the judgement reported in **2000 Criminal LG 2226, Amresh Tiwari Vs. Lalta Prasad Dubey and Another** and has further placed reliance on a case of **Ram Sumer Puri Mahant, Vs. State of U.P.** reported in **1985 All.CJ 240** and added that the case of the present petitioners are squarely covered with the ratio of the judgement abovesaid. Therefore, submission is that the impugned orders of the Sub Divisional Magistrate dated 27.02.2022 and Revisional Order dated 20.12.2022 may be set-aside.

On the other hand, the learned counsel appearing for the respondents has vehemently opposed the contention aforesaid and submits that the respondent nos. 3 and 4 are having possession over the land in question and they are being dispossessed and therefore, looking into the breach of peace, the Sub Divisional Magistrate has rightly invoked the power under Section 145 CrPC.

Adding his arguments, he submits that if the order of the Sub-Divisional Magistrate and the Revisional Order are quashed, there would be apprehension of breach of peace over the land in question. Though, he could not dispute the fact that the civil suit with respect to the same Gata, filed by the respondent nos. 4 and 5 has already been dismissed by the civil Court.

Considering submission of the learned counsel for the parties and after perusal of the material placed on record, it transpires that the dispute arose between the parties with respect to the gata no. 930 having area 0.328 hectare which is being used as Abadi land, the Sub-Divisional Magistrate on the report of Lekhpal initiated the proceeding and has passed the order invoking jurisdiction under Section 145 and 146(1) of CrPC.

When this Court examines the impugned orders, i.e., the order of the Sub-Divisional Magistrate as well as the Revisional Court order, it transpires that the Sub-Divisional Magistrate has failed to consider that the civil suit with respect to the same Gata number filed by the respondent nos. 4 and 5 has already been dismissed

and civil suit is also pending between the parties which was filed by the present petitioners.

He has further failed to consider that the petitioners are having possession over the land in question since last 30 years as per the report of the Lekhpal.

In this view of the matter, the findings of the Sub-Divisional Magistrate as well as the Revisional Court are perverse and thus, liable to be rejected.

Resultantly, the orders impugned dated 27.02.2022 passed by the Sub-Divisional Magistrate in Case No. 71/2013-2014 and the order dated 20.12.2022 passed by the Revisional Court in Criminal Revision No. 69 of 2021 are hereby set-aside.

Accordingly, the writ petition is **allowed**.

Consequences shall be followed.

Consigned to record.

Order Date :- 17.11.2023

Anurag