



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

Case No. : Crl.Petn./41/2021

Shri Rending Tayo Beki,
S/o Lt. Tayo Tagung,
R/o Kesang Putung,
P.O & P.S Ziro, District: Lower Subansiri,
Arunachal Pradesh.

.... Petitioner

-Versus-

1. The State of Arunachal Pradesh represented though Public Prosecutor, Arunachal Pradesh.

2. Shri Nyilyang Rika,
S/o. It. Nyilang Tada
R/o Tajang village,
P.O & P.S Ziro, District: Lower Subansiri
Arunachal Pradesh

..... Respondents

Advocates:

For the petitioner: Mr. Chorpok Modi
Mr. T. Torum
Mr. T. Taje
Mr. A. Bodo
Mr. T. Nech

For the respondents: Ms. T. Jini, Addl. P.P.

Ms. S. V. Darang, Amicus Curiae

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 31.01.2024

Date of Judgment: 02.02.2024

JUDGMENT & ORDER (CAV)

Heard Mr. C. Modi, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State and Ms. S. V. Darang, learned Amicus Curiae appearing for the respondent No. 2.

2. This is an application under Section 482 of the Cr.P.C, praying for quashing of the impugned dismissal order, dated 09.08.2021, passed by the learned District & Session's Judge, Ziro, and order, dated 08.06.2021, in CR. Case No. 08/2016 passed by the Executive Magistrate, Ziro.

3. It is the case of the petitioner that 145 Cr.P.C proceeding was initiated by the Executive Magistrate, Ziro against the petitioner, private respondent and the forest Department on 29.12.2016 and without following the proper procedure, the eviction order was passed on 29.11.2017 by the Executive Magistrate, Ziro against the petitioner, directing him to remove the standing structures of the petitioner in the disputed land within 15 days from the date of the order. The petitioner then approach this Court in the form of writ petition being WP(C)814(AP)2017 wherein, this Court was pleased to set aside and quashed

the eviction order, dated 29.11.2017, issued by the learned Executive Magistrate, Ziro vide its order, dated 11.09.2018, with a direction to the learned Executive Magistrate, Ziro to proceed with the matter afresh by complying all the provisions as stipulated under Section 145 Cr.P.C. However, under political pressure on the Deputy Commissioner, Ziro, who was holding the Office of the Executive Magistrate, Ziro passed the eviction order against the petitioner by abusing the judicial power conferred on the Court and also by violating the order, dated 11.09.2018, passed by this Court in WP(C)814(AP)/2017. The learned Executive Magistrate, Ziro passed the order during the pandemic period of Corona, though, all the Courts works were suspended in all trial Courts of the entire Arunachal Pradesh and, accordingly, disposed the matter on 08.06.2021 during the period of the lock down, evicting the petitioner from the disputed land.

4. On being aggrieved with the impugned order, dated 08.06.2021, passed in the CR. Case No. 08/2016, passed by the learned Executive Magistrate, Ziro, the petitioner approached before the learned District & Session's Court, Ziro, Lower Subansiri District, in the form of CRP No. 03/2021. But the learned District & Session's Court, Ziro made an observation that there is no illegality, impropriety and perversity in the impugned order, dated 08.06.2021, passed by the Executive Magistrate, Ziro and dismissed the Criminal Revision Petition (CRP) ex-parte against the petitioner vide its order, dated 08.09.2021. After the order passed in the CRP by the learned District & Session's Judge, the Deputy Commissioner in the capacity of the District Magistrate has passed the eviction order on 12.08.2021 against the petitioner to demolish the dwelling house and other permanent structures of the petitioner without serving any proper notice. On being aggrieved by the order of eviction as well as the order passed by the learned District & Session's Judge, upholding the order of the learned Executive

Magistrate, dated 08.06.2021, passed in the CR Case No. 08/2016, the petitioner filed this petition for setting aside and quashing of the same.

5. The learned counsel for the petitioner further submitted that the learned Executive Magistrate passed the order of eviction was under the proceeding of 145 Cr.P.C, and also illegally declared the Title in favour of the private respondent which as per the law is not at all maintainable and liable to be set aside and quashed. The learned Executive Magistrate has no authority to evict the or decide the Title over the disputed land under the proceeding of 145 Cr.P.C. But the learned Session's Judge did not consider all these aspects of the case and opined that no illegality, perversity or impropriety is made by the learned Executive Magistrate.

6. The learned counsel for the petitioner relied upon the decision of this Court, passed in Crl.Petn. No. 400 of 2010 and mainly stress on the paragraph Nos. 6 and 7 of the said judgment, which is read as under:

“6. What is, however, pertinent to note, now, is that sub-Section (1) of Section 145 CrPC requires the Magistrate to direct the parties to put their written statements in respect of their respective claims as regards the fact of actual possession of the subject of dispute. Coupled with this, Section 145(4) requires the Magistrate to determine, on the basis of the written statements and the evidence adduced by the parties, as to who was, on the date of the drawing of the proceeding, in possession of the subject of the dispute. Unless, as laid down under the proviso to sub-Section (4) of the Section 145, the person, who is found in possession of the subject of dispute on the date of the drawing of the proceeding, is one, who come into possession by dispossessing the other party wrongfully within two months from the date of the police report or other information, which made the Magistrate initiate the proceeding.

7. In short, thus, a Magistrate, upon drawing of the proceeding under

Section 145 CrPC, has to determine, if possible, in exercise of his power under Section 145(4) CrPC, as to who was in possession of the disputed land on the date of drawing of the proceeding. Conversely, the Magistrate cannot draw a proceeding under Section 145 CrPC, if the materials on record clearly indicate that the person, who sought to be evicted by invoking the Magistrate's jurisdiction under Section 145 CrPC, had been in possession of the disputed land for a period longer than two months before the date, when either the police report was made or the information, which could enable the Magistrate to draw the proceeding, was given."

7. In this context, Ms. T. Jini, learned Additional Public Prosecutor for the State has submitted that after the order of the learned Executive Magistrate, dated 08.06.2021, the petitioner approached the learned Session's Court with a Revision Petition and during the pendency of the said CRP, the execution of the order, dated 08.06.2021, passed by the learned Executive Magistrate was stayed and subsequently upheld the order and after the dismissal of the CRP only, the learned Executive Magistrate passed the order of removal of the illegal structures on 12.08.2021. Further, the learned Executive Magistrate did not decide the Right, Title and Interest of the disputed land nor there was eviction notice passed by the learned Executive Magistrate. However, after hearing both the parties and after examination of the witnesses, the learned Executive Magistrate arrived at a decision that the petitioner had encroached upon the disputed land and constructed some illegal structures in violation of the status-quo order, dated 29.12.2016, and for which he was directed to remove the illegal structures, without prior notice, within 15 days from the date of the order. Thereafter, the petitioner approached the learned District & Session's Court with a CRP wherein the order of the learned Executive Magistrate was stayed and only after the disposal of the CRP, the learned Executive Magistrate passed the

order on 12.08.2021, directing the petitioner to remove the illegal structure which was erected in the disputed land in violation of the status-quo order.

8. The learned Additional Public Prosecutor further submitted that the petitioner approached this Court in many occasions with similar kind of petitions and on two occasions also, this Court directed for afresh proceeding and the final order of the Executive Magistrate, dated 08.06.2021, was challenged by the petitioner in the form of CRP before the learned District & Session Judge, Ziro. Accordingly, she submitted that no illegality or mistake has been committed by the learned District & Session Judge, Ziro by upholding the order of the learned Executive Magistrate, Ziro, dated 08.06.2021, passed in CR Case No. 08/2021. Further, she submitted that there is no observation made by the learned Executive magistrate as well as the learned District & Session's Judge, Ziro with regard to the Right, Title and Interest of the disputed land and it is only the order of removal of the illegal structure which were erected during the pendency of the proceeding, violating the status-quo order.

9. Ms. S. V. Darang, learned Amicus Curiae appearing on behalf of the respondent No. 2 has submitted that the learned Executive Magistrate only declared the possession of the disputed land and no Rights or Title has been decided by the learned Executive Magistrate. The learned Executive Magistrate has the authority to interfere the order passed under Section 145 Cr.P.C. and vide the order, dated 08.06.2021, the learned Executive Magistrate directed only to remove the illegal structures erected by the petitioner on the disputed land by encroaching the land during the pendency of the proceeding and violating the status-quo order.

10. After hearing the submissions made by the learned counsel appearing for the parties, I have perused the case record as well as the relevant documents and the orders passed by the Executive Magistrate as well as the learned District

& Session's Judge, Ziro and the final order passed by the learned Executive Magistrate, dated 12.08.2021.

11. It is a fact that there was a dispute between the petitioner and the private respondent and in pursuant to that the private respondent had also filed an application before the learned Executive Magistrate and accordingly, 145 Cr.P.C. was initiated. But as the procedure was not followed properly, the petitioner approached this Court wherein a direction was given to proceed with the case by complying with all the provisions of law. Thereafter, the learned Executive Magistrate after examining the witnesses and hearing both the parties arrived at a decision that the petitioner is illegally dispossessed the other party and encroached over the disputed land and construct illegal structures in violation of the status-quo order, dated 12.09.2016 and accordingly, the order of removal of the illegal structures was passed by the learned Executive Magistrate, within 15 days from the date of the order. Thus, the Executive Magistrate had decided only in regard to the possession of the parties and not passed any order on Right, Title and Interest of the disputed land.

12. The learned Executive Magistrate arrived at a conclusion that the petitioner was an illegal encroacher and he also erected some illegal structures over the disputed land while both the parties were asked to maintain status-quo. Against the said order of the learned Executive Magistrate, the petitioner moved a CRP before the learned District & Session's Judge, Ziro and after considering all the aspects of the case as well as the fact that the learned Executive Magistrate did not passed any order, deciding Right, Title and Interest of the disputed land and passed the order only to maintain peace and tranquillity as it is observed by the learned Executive Magistrate that the petitioner has illegally encroached over the ancestral forest land of the private respondent by removing the Nyishi-Apatani boundary pillar which was erected in the year 1992 demarcating the

boundary between Nyishi and Apatani community. Considering these aspects of the case the learned District & Session's Judge, Ziro dismissed the Criminal Revision Petition with an observation that there is no illegality, impropriety or perversity in the impugned order, dated 08.06.2021, passed in CR Case No. 08/2016 by the learned Executive Magistrate, Ziro. However, it was directed by the learned District & Session's Judge that both the parties are at liberty to raise and settle their Title dispute over the disputed land by approaching before the Court of any competent jurisdiction.

13. Accordingly, I find that the learned Executive Magistrate as well as the learned District & Sessions Judge did not commit any error or mistake while passing the orders, dated 08.06.2021 and 09.06.2021, respectively. It is the admitted position that the learned Executive Magistrate has no authority to decide Right, Title and Interest of the disputed land, however, has the authority to decide the possession of the disputed land and to pass an appropriate order to maintain peace and tranquillity.

14. In the instant case also it is seen that the learned Executive Magistrate by considering all aspects of the case arrived at a decision that the petitioner was the encroacher over the disputed land and during the pendency of the proceeding, by violating the order of status-quo, the petitioner erected some illegal structures over the disputed land and hence, the learned Executive Magistrate had passed the order, directing the petitioner to remove the illegal structures erected at the disputed land. But there is no observation made by the learned Executive Magistrate as well as the learned District & Session's Judge with regards to the Right, Title and Interest over the disputed land. Rather the learned District and Session's Judge observed that both the parties are at liberty to approach the competent jurisdiction to settle the Right, Title and Interest over the disputed land.

15. The reference which was relied on by the learned counsel for the petitioner is not directly applicable in this case and herein the instant case, the observation of the learned Executive Magistrate in that the petitioner illegally encroached upon the disputed land during the pendency of the proceeding by violating the order of status-quo and erected some structures over the disputed land which also falls under the Forest land.

16. In view of above, I find that the order passed by the learned District & Session's Judge, Ziro, dated 09.08.2021, do not suffer from any legality, impropriety or correctness to make any interference by this Court and I also do not find any illegality or perversity committed by the learned Executive Magistrate, Ziro while passing the order, dated 08.06.2021, in CR Case No. 08/2016.

17. Accordingly, this Court is of the opinion that this criminal petition being devoid of merit stands dismissed.

18. With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant