

GAHC010012602014



2024:GAU-AS:11415

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

Case No. : Crl.Pet./566/2014

MD. MOINUDDIN ALI and ANR.

2: MD. JOYNUDDIN ALI @ JONAB ALI
BOTH ARE THE S/O ABDUL SAMED VILL- SERAPBHATI
P.S. NAKARI DIST. LAKHIMPUR
ASSAM

VERSUS

MD. BAHARUL ISLAM and ANR.

2:MD. NAZURUL ISLAM
S/O MD. ABDUL HAMID ALI R/O SABOTI
MOUZA- NAKARI P.S. NORTH LAKHIMPUR DIST. LAKHIMPUR
ASSAM.

3:STATE OF ASSAM

Advocate for the Petitioner : MR.B K BHATTACHARJEE, MS.A CHETIA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 22.11.2024

1. None appears for the petitioner. Accordingly, this court has requested Mr. N Deka, learned counsel to assist this court as Amicus

Curiae.

2. Mr. Deka has gone through the records and assisted this court.

3. The present application is filed assailing the judgment and order dated 06.05.2014, passed by the learned Sessions Judge, Lakhimpur in Criminal Revision No.21(3)/2013.

4. By the aforesaid judgment, the learned Sessions Judge dismissed the revision petition preferred by the petitioner and upheld the judgment and order dated 06.08.2013, passed by the learned Additional District Magistrate, Lakhimpur in Misc Case No.45/2013, whereby a proceeding under section 145 Cr.P.C was drawn and an order under section 146(1) Cr.P.C. was passed.

5. The fundamental challenge was that the learned Additional District Magistrate did not have any jurisdiction to issue the order dated 06.08.2013 in terms of Section 145 Cr.P.C.

6. The facts leading to filing of the present petition are summarized as under:

I. On 16.07.2013, the respondents herein lodged a complaint before the Addl. District Magistrate, Lakhimpur under section 145 Cr.P.C.

II. On receipt of the said complaint, the learned Executive Magistrate passed an ex-parte order dated 06.08.2013, whereby the disputed plot was attached and had also drawn a proceeding under section 145 Cr.P.C.

III. Being aggrieved by the aforesaid ex-parte order dated 06.08.2013, the present petitioner approached the learned

Sessions Judge under sections 397/399 Cr.P.C which was registered as Criminal Revision Case No.21(3)/2013.

IV. The learned Sessions Judge by its order dated 06.05.2014, dismissed such revision petition holding that the learned Executive Magistrate did not commit any illegality, irregularity and impropriety in drawing up a proceeding under section 145 Cr.P.C and making the attachment of the disputed land under section 146(1) Cr.P.C by a composite order and therefore held that no interference is required.

V. While dealing with the challenge, the learned Additional Sessions Judge elaborately dealt with the arguments advanced by the learned counsel for the parties and after consideration of the factual aspects as well as the legal issues concluded that the learned Executive Magistrate has complied with the necessary requirement for drawing up the proceeding under section 145 Cr.P.C and for making attachment of land under section 146(1) Cr.P.C.

7. From the pleadings of the record, more particularly in the present petition it is seen that it is the specific case of the petitioners that the disputed land has never been purchased by the complainant and therefore, such order could not have been passed by the Executive Magistrate.

8. This court is of the view that such factual assertions cannot be adjudicated by this court at this revisional stage.

9. In the considered opinion of this court and the materials available on record, it is seen that the learned court below has duly

appreciated the materials before it and the conclusion arrived at, is on the basis of sound legal principle. Therefore, such decision also cannot be termed as unreasonable decision in the given facts of the present case.

10. This court has also not found anything as regards any patent defect of jurisdiction or of law. In view of the aforesaid, this court is not inclined to interfere with the impugned decision and accordingly, this Criminal Petition stands dismissed.

11. While parting with this record, it is provided that the factual assertions made in the order(s) impugned, shall not be treated as a final conclusion as regards ownership and status of the parties who are litigating over the disputed plot of land inasmuch as, such determination can be made only by a competent civil court.

12. While parting with the record, this court though inclined to pay Mr. Deka, the legal fee as payable to a legal aid counsel, however, Mr. Deka has gracefully submitted that he is not inclined to receive the remuneration.

JUDGE

Comparing Assistant