

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1255 of 2015

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1. Manoj Kumar

2. Saroj Kumar @ Saroj Singh,

Both Sons of late Kamaleshwari Prasad Singh, residents of Mauza & P.O. :
Chintaman - chak, P.S. : Mokama, District : Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary to the Government of Bihar,
Patna.

2. The Director General of Police, Bihar, Patna.

3. The District Magistrate, Patna, District - Patna.

4. The Senior Superintendent of Police, Patna, District : Patna.

5. The Sub-Divisional Magistrate, Barh, District : Patna.

6. The Sub-Divisional Police Officer, Barh, District : Patna.

7. The Anchal Adhikari, Anchal - Mokama, District : Patna.

8. The Officer-in-Charge, Mokama, P.S. District : Patna.

9. N.K. Shukla son of late Sachitanand Shukla, the then Officer-in-charge of
Mokama P.S. Resident of Village & P.O. : Moro, Via Kalsi Simari, District :
Darbhanga.

10. Shobha Devi wife of Mahesh Bhagat

11. Mahesh Bhagat son of Late Kameshwar Bhagat Serials 10 & 11 residents of
Village : Sahwegpur, P.O. : Chintaman-chak, P.S. : Mokama, District : Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. V. K. Sharma, Advocate

For the Respondents

No. 1 to 8 : Mr. Deepak Kumar, A. C. to SC 21

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-03-2016



By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioners seek a direction to be issued to the respondents to discharge their legal obligation to execute the order dated 31.05.2013 passed by the learned Sub Divisional Magistrate, Barh (for short “SDM”) under sub-section (6) of Section 145 of the Code of Criminal Procedure, 1973 (for short “CrPC”) in Case No. 733 of 2005, whereby respondent nos. 7 and 8 had been directed to remove the illegal possession of private respondents over the disputed land measuring about 2 decimal on which four shops and other structures are standing. The petitioners further seek a direction to be issued to the respondents to hand over the keys of the shops locked by the Officer-in-Charge of Mokama Police Station along with physical possession of the land as well as that of four shops and other structures standing over the same.

2. It has been contended by Mr. V. K. Sharma, learned counsel for the petitioners that the disputed piece of land measuring about two decimal is part of Survey Plot No. 2040 appertaining to Khata No. 232, Mouza Chintaman-Chak, Thana No. 29, P.S. Mokama, District- Patna. Its total area is 23 decimal equivalent to about 7 katha. Mr. Sharma has contended that respondents no. 10 and 11, in collusion with local officials, got a



report submitted through local police (vide non-first information report no. 3 of 2005) on the basis of which the SDM drew a proceeding under Section 145 of the CrPC bearing Case No. 733 of 2005 over the aforesaid land vide order dated 26.05.2005. On notice, both parties put in appearance and filed their respective written statements besides adducing both documentary and oral evidence. After due trial, the proceeding under Section 145 of the CrPC was discharged in favour of the petitioners and their possession over the disputed land was declared and the respondents no. 10 and 11 were restrained from going over the said land vide order dated 10.04.2013. The said order dated 10.04.2013 passed by the learned SDM was challenged in revision before this Court by respondents no. 10 and 11 vide Cr. Revision No. 583 of 2013 which was dismissed by a Bench of this Court and the order dated 10.04.2013 passed by the learned SDM was confirmed.

3. Mr. Sharma has further contended that after disposal of the proceeding under Section 145 of the CrPC, the petitioners went to Mokama Police Station and demanded the key of the shops underlying in the custody of the S.H.O, but the police adopted an evasive stand on the pretext that the members of first party have already entered into the shops in dispute by breaking open the lock and as such, they are helpless. The petitioners,



thereafter, filed a petition before the SDM for directing the concerned officials to hand over the possession of the disputed land along with the shops standing on the same. In this context, a report was called for from the SHO of the concerned police station, but the police in the most dishonest manner submitted a collusive report recommending the attachment of the disputed land under Section 146 of the CrPC. Thereafter, the learned SDM rejected the recommendation of the police and while acting under sub-section (6) of Section 145 of the CrPC directed the Circle Officer and Incharge of Mokama Police Station to remove the encroachment made by private respondents vide order dated 31.05.2013. Mr. Sharma has contended that even after the order dated 31.05.2013 passed by the learned SDM, the Circle Officer, Barh and the Officer-in-charge of Mokama Police Station have not taken any effective steps to remove the encroachment made by private respondents. He has submitted that the petitioner filed another application on 28.07.2015 before the SDM praying therein to direct the official respondents to hand over the keys of the shops standing over the land in question. The application was registered as Misc. Petition 190 of 2015 dated 28.07.2015 but no order was passed on the same.

4. Under the aforementioned circumstances, it has

been submitted by the learned counsel for the petitioner that the petitioner has been left with no option, but to approach this Court in its writ jurisdiction.

5. *Per contra*, Mr. Deepak Kumar, A. C. to S. C. 21 appearing for the respondent-State has submitted that the petitioners and private respondents are pressing their rival claim of title and possession over the land in question on the basis of their respective sale deeds executed by the recorded *raiyats* as per cadastral and revisional *khatian* along with respective revenue receipts issued by the competent authority and as such complicated question of title is involved with regard to disputed land which may be decided by the competent civil court. He has further contended that taking into account the emergent situation and immediate apprehension of breach of peace, the local police, on the basis of receiving the information in this regard, instituted a non-first information report no. 3 of 2005 and recommended the matter in the court of learned SDM for necessary action and accordingly, Misc. Case No. 733 (M) of 2005 was initiated. He has further contended that the petitioner and the respondent no. 11 Mahesh Bhagat, who were party to the proceeding under Section 145 of the CrPC finding different kind of inconvenience at the spot had *suo motu* locked the shops and handed over the keys to the then

Officer-in-Charge with assurance that after disposal of the case whosoever would win the case, would take the keys back, but since during the pendency of the case, the respondent no. 11 broke the locks and entered into the shops and as such Mokama Police Station Case No. 168 of 2008 dated 02.12.2008 was instituted and after investigation charge-sheet has already been submitted.

6. He has further contended that it is true that the learned Sub Divisional Magistrate, Barh had decided the proceeding under Section 145 of the CrPC vide order dated 10.04.2013 in favour of petitioner but it is not a fact that the revision application preferred by the respondent no. 11 before this court vide Cr. Revision No. 583 of 2013 was dismissed on merits. On the contrary, the revision application was disposed of by a Bench of this court with observation that any kind of observation made in the order dated 10.04.2013 passed by the SDM deciding the title of the land in question will be ignored. He has further contended that pursuant to the order passed by the learned Sub Divisional Magistrate, Barh, the local police submitted detailed report mentioning the existing situation and recommended for attaching the disputed land but no order was passed under Section 146 of the CrPC rather a direction was made to Circle Officer and Incharge of concerned Police Station. Furthermore, private



respondents have also filed Title Suit No. 62 of 2015 impleading Circle Officer, Mokama and other officials as party defendants and in that context, the Circle Officer, Mokama vide letter No. 580 dated 29.06.2015 informed the SDM that any further action will be taken after disposal of pending title suit. He has further contended that the police have not violated any direction given by the learned SDM and as a title suit is going on between the parties, the police have no authority to disturb the possession of the parties over the land in question.

7. I have heard respective counsel for the parties and perused the record.

8. Be it noted at the outset that it would be evident from the aforesaid order dated 30.03.2015 passed by a Bench of this court in Cr. Revision No. 583 of 2013 that this court while disposing of the revision application has directed that if any observation has been passed in regard to the title, the same shall be ignored. It would also be evident from the record that order dated 10.04.2013 was passed by the learned SDM after an inordinate delay in a proceeding under Section 145 CrPC which was initiated on 26.05.2005 and evidences on behalf of the parties were closed on 16.07.2009.

9. Section 145 of the CrPC stipulates that



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 peace exists concerning any land or water or boundaries thereof, within his local Jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the party concerned in such dispute to attend his court for the purpose of settling their respective claims as regards the fact of actual possession of the subject of the dispute. Sub-section (6) of Section 145 of the CrPC provides that the Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject matter of dispute, after hearing the parties and perusing the statements and receiving such evidence as may be produced, take such further evidence, if he thinks necessary, and , if possible, decide whether and which of the parties was, at the date of order made by him under sub-section (1), in possession of the subject matter of dispute. The proviso to sub-section (4) provides 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 him or after that and before the date of his order, 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). Sub-section (6) empowers the Magistrate upon arriving at a decision that one of the parties is or should be treated as being, in such possession of the subject of the dispute, to issue an order declaring such party to be entitled to possession thereof until evicted from in due course of law and when he proceeds under the proviso to sub-section (4), he may restore to possession in the party forcefully and wrongfully dispossessed.

10. I find from the aforesaid order dated 10.04.2013 passed by the SDM, Barh that though he has given a finding that the petitioners were in possession over the land in dispute since long before 26.10.1992, he has not given his finding that the petitioner was in possession of the property in dispute on the date of preliminary order and dispossession, if any, has within two months prior to that date. *On the contrary*, the SDM has given a finding that the petitioners were in possession over the land in dispute since long before 26.10.1992.

11. In my opinion, such a finding made by the SDM cannot be termed to be in compliance with the requirement of sub-section (4) of Section 145 Cr.P.C. In other words, from reading of the order dated 10.04.2013, it would be evident that the learned SDM has exceeded his jurisdiction in determining the title of the petitioner over the land in question and presuming that the

petitioners were in possession since long before 26.10.1992.

12. It is well settled that an Executive Magistrate is not required to go into or settle the question of possession in a proceeding under Section 145 of the CrPC. The role of the Executive Magistrate in such proceedings is restricted to find out as to who were in possession of the property on the date of preliminary inquiry under Section 145(1) of the CrPC or within two months immediately preceding the said order, the object being essential to prevent breach of peace.

13. The scope of proceedings under Section 145 of the CrPC has been discussed in a judgment settled by the Supreme Court in the case of **Ranbir Singh vs. Dalbir Singh & Others, [(2002) 3 SCC 700]**, wherein it has been held :-

“8. However, the High Court was in error in dealing with the Revision Petition as if it was exercising appellate jurisdiction. The High Court has dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by Karnail Singh and M/s. Homestead and the circumstances in which the suit was dismissed as withdrawn. Keeping in view the limited scope of the proceeding under Section 145, Cr. P.C. these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding



under Section 145 Cr. P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr. P.C. and sustainability of the order of attachment passed under Section 146(1) Cr. P.C. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by respondent 1. The suits and the interim order are pending further consideration before the civil Court.

9. In these circumstances, we are of the view that while maintaining the order of the High Court quashing the preliminary order passed by the Sub-Divisional Magistrate under Section 145(1) and the order of attachment of the property under Section 146(1) Cr. P.C., leave should be granted to the

parties to approach the civil Court for appropriate interim order and the civil Court should deal with the application for interim order without being influenced by the observations made/findings recorded by the High Court in the impugned judgment. It is ordered accordingly.”

(underlining is mine for emphasis)

14. In the present case, this Court finds that while passing the order dated 10.04.2013, the learned SDM, Barh failed to keep in mind the limited scope of the proceeding under Section 145 of the CrPC. He has decided the case as if he was deciding the title to the land in dispute and right of possession of the same. Taking into consideration these aspects of the matter, when the aforesaid order dated 10.04.2013 was challenged in revision, a Bench of this Court rightly held that if any observation has been passed in regard to the title, the same shall be ignored.

15. Apart from what has been stated, hereinabove, this court is of the considered opinion that the order of the learned SDM passed under Section 145 CrPC is not to be executed by this Court in exercise of power conferred under Article 226 of the Constitution of India.

16. For the reasons assigned, hereinabove, this Court is of the view that no writ of mandamus can be issued to the

respondents in the present matter.

17. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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