

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1279 of 2011

=====

1. Guru Govind Singh S/O Late Bhup Narain Singh R/O Village - Baruari,
P.O. Garh Baruari, P.S. Supaul, Distt. - Supaul

2. Harihar Rasad Singh S/O Late Bhup Narain Singh R/O Village - Baruari,
P.O. Garh Baruari, P.S. Supaul, Distt. - Supaul

3. Hare Krishna Singh S/O Late Bhup Narain Singh R/O Village - Baruari,
P.O. Garh Baruari, P.S. Supaul, Distt. - Supaul

4. Shigheshwar Prasad Singh S/O Late Bhup Narain Singh R/O Village -
Baruari, P.O. Garh Baruari, P.S. Supaul, Distt. - Supaul

.... Petitioner/s

Versus

1. The State Of Bihar

2. Amit Kumar Singh S/O Sachchidanand Singh R/O Village - Baruari, P.O.
Garh Baruari, P.S. Supaul, Distt. - Supaul

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bishwanath Prasad Singh

For the Respondent/s : Mr. Anuj Kr.Srivastava (App)

For Opposite party No.3 : Mr. N.K. Agrawal, Sr. Advocate
With Mr. Dinesh Pd. Verma

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

6 19-01-2017

Heard learned counsel for the parties.

2. Sub Divisional Magistrate, Supaul in purported exercise of power under Section 147 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**) by the impugned order dated 29.07.2011 passed in Miscellaneous Case No. 505 of 2008 has directed the petitioners to remove obstruction from 1 decimal of land of Old Khesara No. 3320, New Khesara No. 1520 under Mouza- Baruari, Thana No. 204, of Khata No. 706 (699 New).

3. The short point, which has been taken on



behalf of the petitioners to assail the impugned order is that existence of apprehension of breach of peace is condition precedent for exercising power under Section 147 of the Code. It has been additionally submitted that it had never been the case of the contesting Opposite party No.2 that the right of use of land in question was being exercised within three months next before the initiation of the proceeding or receipt under Sub-section (1) of Section 147 of the information leading to institution of the enquiry. It has been contended that on the contrary the records suggest that the Opposite party No.2 had ceased exercising the said right of use of land much before three months preceding the receipt of information leading to institution of the enquiry. To bolster this contention, it has been argued that there is no finding recorded by the learned Magistrate to the effect that the said right was being exercised within three months next before the receipt of information while exercising his power under Section 147 of the Code, which is also one of the essential conditions for exercise of such power.

4. Learned Senior counsel appearing on behalf of Opposite Party No.2 has submitted that though there is no reference in the impugned order to existence of apprehension of breach of peace but it can be easily inferred and presumed that the dispute of such nature might have led to breach of



peace and, therefore, the Magistrate rightly exercised his power under Section 147 of the Code. He has also submitted that mere absence of reference of apprehension of breach of peace in the order will not render the impugned order illegal.

5. Section 147 of the Code reads thus:-

"147. Dispute concerning right of use of land or water.

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.- The expression "land or water" has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such, evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:



Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub- section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such a seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub- section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under subsection (1);

and when in any proceedings commenced under sub- section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub- section (1) of section 145”.

6. A plain reading of the said provision makes it abundantly clear that before passing an order under Section 147 of the Code, it is mandatory for the Executive Magistrate to record his satisfaction that there exists a dispute, which is likely to cause a breach of peace regarding any alleged right of user of any land or water within his local jurisdiction. Unless such satisfaction is reached and recorded, the Magistrate cannot make an order under Section 147 of the



Code. In most unambiguous terms, the Section provides that the Magistrate will be required to state the grounds of his being so satisfied that there exists a dispute likely to cause a breach of peace while making an order under Section 147 of the Code. No such satisfaction has been recorded by the Magistrate in the impugned order. The impugned order, therefore, cannot be sustained being without jurisdiction.

7. Coming to the next contention on behalf of the petitioner that absence of finding in the impugned order that Opposite party No.2 had been exercising his right to use, within three months next before receipt of the information leading to institution of the enquiry also renders the said order unsustainable, I find substance in the said submission.

8. In my opinion, while making an order under Section 147 of the Code, the Executive Magistrate, in addition to recording his satisfaction as contemplated under Sub-section (1) of Section 147 of the Code that there exists a dispute likely to cause breach of peace must also record that right of user has been exercised within a period of three months next before receipt of report of a police officer or other information leading to institution of the enquiry as contemplated under the proviso to Sub-section (3) of Section 147 of the Code.

9. In the result, this application succeeds. The



impugned order dated 29.07.2011 passed by the Sub-Divisional Magistrate; Supaul in Misc. Case No. 505 of 2008 is set aside.

10. It goes without saying that it will be open to the Executive Magistrate to pass appropriate orders in accordance with law, if any situation so warrants in future.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--

