

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.891 of 2015

=====

Md. Rafique Son of Late Md. Khalil resident of Mohalla - Agarwa, P.S. Motihari (Town), District - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar
2. The District Magistrate, District - East Champaran at Motihari
3. The Sub - Divisional Magistrate, Sadar, Motihari, District - East Champaran
4. The Superintendent of Police, District - East Champaran at Motihari
5. The Inspector of Police - Cum - S.H.O., Motihari (Town) Police Station, District - East Champaran
6. Syed Zahid Ahmad Son of Late Syed Nezamuddin Jamil Ahmad resident of Mohalla - Agarwa, P.O. Motihari, P.S. Motihari (Town), District - East Champaran

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar
For the Private Respondent : Mr. Vijay Shankar Shrivastava
For the State : Mr. Prakash C. Jha, AC to GA-11

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 06-03-2017

Heard the parties.

This writ application under Articles 226 and 227 of the Constitution of India is for issuance of writ in the nature of Certiorari to quash Letter No. 180 dated 31.05.2014 issued by the Sub-Divisional Magistrate, Sadar, Motihari vide Annexure-10, whereby and whereunder the police was directed to maintain status-quo in respect of Khata No. 30, Plot No. 328, Area 4 dhoor under Mauza-Gopalpur, Mohallah-Agarwa, P.S.- Motihari Town, District-East Champaran in exercise of power under Section 146



Cr.P.C.

2. The record reveals that Title Suit No. 142 of 2011 is going on between the petitioner and the respondent No. 6 for the same property for which the proceeding under Sections 145 Cr.P.C was going on. The actual area of the dispute may be different in both the proceedings.

3. The submission of the petitioner is that since civil suit is going on, proceeding under Section 145 Cr.P.C is abuse of the process of the Court. However, it has not been disputed that the petitioner has not taken any step in the civil suit for prevention of breach of peace nor the petitioner has approached the Sub-Divisional Magistrate concerned by filing an objection against issuance of order vide Annexure-10.

4. Section 146 Cr.P.C reads as follows:-

“146. Power to attach subject of dispute and to appoint receiver.-(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:



Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just."

5. The perusal of aforesaid provisions makes it abundantly clear that Magistrate can withdraw such attachment which is in the nature of status-quo in the present case at any time on satisfaction that there is no likelihood of breach of peace with regard to the subject of disputes. If the petitioner approaches the



Court below for withdrawal of the attachment order, the Magistrate is competent to decide the application by a reasoned order.

Moreover, when some power is vested in any authority, it may have passed wrong as well as right order which can be challenged before the appellate forum and not before this jurisdiction of judicial review.

The law is well settled that if for the purpose of the same property civil suit is going on, the criminal proceeding should be avoided. However, no hard and fast rule is there especially when no step has been taken in the civil proceeding for prevention of breach of peace. The hands of the executive authority under Section 145 and 146 Cr.P.C is not fettered to allow the breach of peace being committed only in the name of pendency of a civil suit. Therefore, the impugned order can not be faulted for this reason also.

In my view, the impugned order does not require interference in exercise of writ jurisdiction. Hence, for the reasons aforesaid, this writ application stands dismissed.

(Birendra Kumar, J)

Shageer/-

U		T	
---	--	---	--

