

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32664 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Kalaktar Singh son of Brij Nandan Singh
 2. Sheshnath Singh son of Late Jamindar Singh
 3. Wakil Singh son of Kalaktar Singh

All are residents of village- Biseni Kalan, P.S. - Rajpur, District-Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Ravindra Tiwary son of Dudheshwar Tiwaray, resident of village-Biseni Kalan, P.S- Rajpur, District- Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudama Singh, Advocate
: Mr. Rajnikant Singh, Advocate
For the Opposite Party No.2 : Mr. Surendra Singh, Advocate
Mr. Vivek Kumar Singh, Advocate
Mr. Rajiv Kumar Ranjan, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed for quashing the order dated 24.04.2015 passed by the learned Sub Divisional Magistrate, Dehri, Rohtas in Case No.509(M) of 2010 by which he has directed for attachment of the disputed land under Section 146(1) of the Cr.P.C. and appointed Circle Officer Akorhigola as receiver and directed him to take the disputed land in his custody. The receiver has also been directed to auction the crops of the land every year and deposit the amount in the treasury.



2. A short point has been argued by the learned counsel for the petitioners. He submitted that the order under Section 146(1) of the Cr.P.C. has been passed in complete disregard to the statutory provision. The condition precedent for attachment of disputed property and appointment of receiver is the existence of situation of emergency, but from perusal of the impugned order, it would be manifest that no such condition was prevailing and the learned Magistrate, who passed the order has not whispered that the property is being attached and receiver is being appointed as the emergency situation has arisen.

3. On the other hand, learned counsel appearing for the opposite party no.2 submitted that though the learned Magistrate has not used the word emergency, but from the order it would be evident that he has taken into consideration that it was a case of apprehension of breach of peace between the parties.

4. I have heard learned counsel for the parties and perused the record.

5. It is well settled that the condition precedent for attachment of the disputed property and appointment of receiver under Section 146(1) of the Cr.P.C. is the existence of situation of emergency necessitating attachment of disputed property to prevent breach of peace. The court exercising power under Section 146(1) of



the Cr.P.C. is also required to record its satisfaction that there is existence of emergency, which requires attachment of property. The case of emergency under Section 146 of the Cr.P.C. is distinguishable from a case of apprehension of breach of peace. Mere statement of the Magistrate that there may be breach of peace in future cannot be taken as case of emergency.

6. Admittedly, as, in the present case, the learned Magistrate failed to record that it was a case of emergency necessitating attachment of the disputed property to prevent breach of peace, the order cannot be sustained.

7. Accordingly, the order dated 24.04.2015 passed by the learned Sub Divisional Magistrate, Dehri, Rohtas is set aside.

8. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.01.2018
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