

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32414 of 2014

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Balram Mahto S/o Late Mishri Mahto Resident of Village Shahri, Police
Station Ghoswari, District Patna.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Binod Murari Mishra, Advocate

For the Opposite Party : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL ORDER

6 03-01-2018 This application has been filed to quash the order dated 01.04.2014 passed by learned Sessions Judge, Patna in Cr.Revision No.3922 of 2014 whereby and whereunder the learned Sessions Judge dismissed the revision and refused to interfere with the order dated 20.01.2014 passed by Executive Magistrate, Barh in Case No.919(M) of 2005 in a proceeding under Section 145 of the Cr.P.C. As per order dated 20.01.2014, the learned Executive Magistrate appointed the SHO and Circle Officer as receiver to manage the suit land under the provision of Section 146 of the Cr.P.C.

2. Heard the learned counsel for the petitioner. In spite of repeated calls, nobody appeared for the respondent nos.2 and 3 although notices against them were duly served.

3. It appears that a proceeding under Section 144 of the



Cr.P.C. was initiated over 62 decimals land of plot no.875 which was converted into proceeding under Section 145 of the Cr.P.C. The petitioner was first party. In course of evidence, the respondent nos.2 and 3 who were second party before the Executive Magistrate filed a petition under Section 146 of the Cr.P.C. for attachment of disputed land. The learned Magistrate called for a report from SHO and on being satisfied attached the property. The learned Magistrate appointed SHO and Circle Officer of Goswari as receiver to manage the disputed property. The learned counsel for the petitioner submits that the court below has erred in appointing receiver over the land which was in cultivating possession of the petitioner. A report was called for from SHO by the Executive Magistrate and the SHO in compliance of order of Executive Magistrate submitted a report on 11.12.2013 vide letter no.872 of 2013 wherein the SHO has categorically stated that Parsuram Mahto of first party died leaving behind two brothers, namely, Balram Mahto and Ashok Mahto and the land was in possession of the family of first party. The first party produced document in support of their claim. On the other hand, the second party also claimed possession on the basis of purchase in the year 1916 by their ancestor but no document was produced before the police at the time of enquiry.



4. On perusal of impugned order dated 20.01.2014, it appears that the learned Executive Magistrate has referred the aforesaid report of SHO and observed that there is serious apprehension of breach of peace over the disputed land. The report does not disclose as to whether serious breach of peace was still existing. The police has simply stated that on the basis of breach of peace a proceeding under Section 145 of the Cr.P.C. was initiated earlier. The learned counsel submitted that after closing the evidence of the petitioner, the members of second party has also examined some of the witnesses. There is absolutely no document in support of right and title of second party and by attaching the property the petitioner has been deprived of their valuable right. The learned Sessions Judge while disposing of the criminal revision has observed that there is serious apprehension of breach of peace but there is absolutely not a single chit of paper on record to show that any serious apprehension of peace was existing. The learned Executive Magistrate has further failed to appreciate the enquiry report of police wherein, it has been stated that the petitioner had produced document in support of their claim and on the other hand, no document was produced by the second party. The respondent in spite of service of notice, did not appear to controvert the submission made on behalf of the



petitioner.

5. In view of above, the impugned order dated 01.04.2014 passed in Cr.Revision No.3922 of 2014 as well as the order dated 20.01.2014 passed by learned Executive Magistrate in Case No.919(M) of 2005 are quashed. The learned Magistrate is directed to pass order in accordance with law in view of the materials on record and dispose of the case expeditiously.

6. This criminal miscellaneous application is accordingly allowed.

(Sanjay Kumar, J)

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