

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69366 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District- Bhojpur

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1. Bhagmati Devi, Wife of Parmeshwar Choudhary,
 2. Parmeshwar Choudhary, Son of Late Lakhan Choudhary,
 3. Raghu Nath Choudhary, Son of Late Munni Choudhary,
- All are resident of Village- Kayam Nagar, P.S.- Koilwar, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The State of Bihar through its District Magistrate-cum-District Collector, Bhojpur at Arrah
3. The Circle Officer, Koilwar, Bhojpur.1st set
4. Binoy Kumar Singh, Son of Sheo Jee Singh, Resident of Village- Matiyara, P.S.- Koilwar, District- Bhojpur.2nd set

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque
For the Opposite Party/s : Mr. Sanjay Kumar

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 12-12-2019

Heard parties.

2. This application under Section 482 of Cr.P.C. has been filed for quashing the order dated 20.08.2018 passed by learned Sub-Divisional Magistrate, Sadar Bhojpur at Arrah in Case No.42/2011 by which in a proceeding under Section 145 Cr.P.C., he has directed Circle Officer, Koilwar to remove the structure constructed during 145 proceeding.

3. A proceeding under Section 144 of Cr.P.C. was initiated on the report of local police dated 26.02.2011 that there is apprehension of breach of peace between the parties with



respect to possession over the disputed land. Both the parties claim their title and possession through sale deed executed by the descendants of recorded tenant in their favour.

4. Previously also, petitions were filed by the opposite parties before SDM for initiation of proceeding under Section 144 Cr.P.C. because they apprehended their dispossession but said petitions were not entertained on the ground that dispute was of civil nature, however, subsequently, on the police report, a proceeding was initiated under Section 144 of Cr.P.C. and by order dated 29.04.2011, same was converted into proceeding under Section 145 of Cr.P.C.

5. It further appears that since there was dispute with respect to possession of the disputed land, the learned SDM by order dated 12.06.2014 passed an order of attachment of the disputed land against which petitioners filed criminal miscellaneous no.32053/2015 which was disposed of by order dated 01.10.2015 with a direction to learned SDM, Arrah to call for a fresh report from Circle Officer with respect to status of the disputed land. In compliance of the order passed by this Hon'ble Court, SDM, Sadar, Ara directed the Circle Officer, Koilwar by order dated 19.02.2016 to submit a fresh report with respect to existence of house over the disputed land. It further



appears from the record that an order was passed by SDM to remove the structure over the disputed land which was constructed during pendency of 145 proceeding and order of attachment and same was removed by Circle Officer.

6. The proceeding under Section 145 Cr.P.C. is an urgent provision and cannot be allowed to continue for indefinite period as the authority gets jurisdiction only if there is apprehension of breach of peace and there is serious dispute with respect to possession over disputed land which can lead to breach of peace. Receiver can be appointed by S.D.M. during pendency of 145 proceeding if he is unable to form opinion on the basis of material available on record and police report as to which party is in actual physical possession over the disputed land and which continues till decision of the case or any further order passed by the SDM. During attachment, the property remains custodia legis and none of the parties can raise any construction over it and as such SDM has every right to get such structures demolished if same was raised during pendency of 145 proceeding and order of attachment.

7. The Sub-Divisional Magistrate, Arrah is directed to conclude the proceeding initiated under Section 145 of Cr.P.C. within six months from the date of receipt/production of copy of



order passed by this Court and if proceeding is not concluded within six months, it will cease to exist. The parties are at liberty to get their dispute adjudicated by a civil court of competent jurisdiction who will decide the title and possession of the parties over the disputed land.

8. This criminal miscellaneous stands disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.12.2019
Transmission Date	31.12.2019

