

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20650 of 2015

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

-
1. Lal Babu Sah S/o Bhagat Sah
 2. Binod Yadav S/o Hari Yadav
 3. Rajendra Yadav S/o Late Sagar Yadav
 4. Uma Ram S/o Late Sukhi Ram
 5. Quamuddin Ansari S/o Ishaque Ansari
All residents of village - Barwal Narwal, P.S. Bagaha (Pathkhauli), District - West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shambhunath Yadav S/o Sarvajeet Yadav
3. Sarvajeet Yadav S/o Late Chedi Yadav
All residents of village - Barwal Narwal, P.S. - Bagaha, District - West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Yadav, Advocate
For the Opposite Party/s : Md.Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the parties.

2. It appears that on the prayer of the petitioners, a proceeding under Section 144 Cr.P.C. was initiated between the petitioners and Opposite Party Nos.2 and 3 for apprehension of breach of peace arising out of dispute of possession on Plot No.575 area 1 acre and 7 decimals under Khata No.97 in village Barwal Narwal, P.S. Pathkhauli, District- West Champaran.

3. The petitioners claimed the land under



proceeding on the basis of purchase through a registered sale deed of the year 2012 and Opposite Party Nos.2 and 3 claimed on the basis of settlement of 10 decimals of the land from the state of Bihar through settlement Order dated 01.05.1989 passed by the Circle Officer, Bagaha.

4. The proceeding was converted into a proceeding under Section 145 Cr.P.C. and by order dated 29.04.2013, learned Sub-Divisional Magistrate, Bagaha, attached the land under proceeding in exercise of power under Section 146(1) Cr.P.C. and appointed the Circle Officer, Bagaha, as receiver of the same.

5. The said order was challenged before the learned Sessions Judge in Cr. Revision No.97 of 2013. The Revisional Court set aside the order of attachment aforesaid, as the same was against the law. The revisional Court passed the order on 25.02.2014, which is under challenge in this application under Section 482 Cr.P.C. The learned Sub-Divisional Magistrate while making the order of attachment observed that tense situation is there between the parties for land under proceeding and at any time problem of law and order may arise. In the circumstance, the order of attachment is necessitated.

6. Section 146(1) which empowers the Executive



Magistrate to attach the property under proceeding reads as follows:

“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.”

7. Thus the provision aforesaid requires that Magistrate has to record its satisfaction regarding;

(i) a case of emergency

(ii) and the situation/material persuaded him to decide that none of the parties was in possession or if the party was unable to satisfy himself as to which of the party was then in such possession of the subject of dispute.



8. The order of the Sub-Divisional Magistrate, Bagaha does not reveal that he has recorded that he was satisfied that a situation of emergency was there and he was unable to come to the conclusion that which of the parties was in possession of the land. Hence, order of the Sub-Divisional Magistrate was itself bad-in-law inasmuch as it did not disclose the requirement of law for exercise of power under Section 146(1).

9. Therefore, setting aside the order of Revisional Court would revive another illegal order which cannot be allowed in exercise of power under Section 482 Cr.P.C. Hence, this application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

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