

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.723 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Madhubani

Bhavnath Jha Son of Late Sadashiv Jha, Resident of Village- Ward Gaushala
Chowk Goushala Road, P.S Arer, District -Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani Bihar
2. The District Magistrate, Madhubani Bihar
3. The Superintendent of Police, Madhubani Bihar
4. The Deputy Superintendent of Police, Benepatti Madhubani Bihar
5. The Circle Officer, Benepatti, Madhubani Bihar
6. The Station House Officer, Arer Dist- Madhubani Bihar
7. Krishna Nand Jha son of Late Kameshwar Jha Village- Dhanga Ps- Arer
Dist- Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Asit Kumar Jha, Advocate

For the Respondent/s : Mr. Iqbal Asif Niazi, AC to GP 5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

2 07-01-2025 The instant writ petition has been filed alleging police inaction and non-adherence of the order passed by the Executive Magistrate in a proceeding under Section 144 of the CrPC.

2. The factual aspect of the case is as follows. One Bhawnath Jha and his brother jointly owned 16 *Kathas* of land at *Mauza- Dhanga, Khata* No. 431 (Old), 39(New), *Khesra* No. 1605, 1612 (Old), 3002, 1302 (New). Thus, the petitioner was the owner of undivided share of 8 *Kathas* 10 *Dhurs* of land. Subsequently, the brother of the petitioner sold out his portion in favour of respondent no. 7 on valuable consideration with the specific boundaries. After purchase, the respondent no. 7 started



disputing with the present petitioner on the issue of boundary of his purchase portion. The dispute went up to the Land Revenue Department of the concerned locality. The said boundary dispute was resolved on 27th May 2022 in presence of Revenue Officer, Circle Inspector and Police Personnel and the boundaries of the respective parties were fixed. In spite of such fixation of boundaries, the respondent no. 7 was not ready to accept such decision made by the local officers. The petitioner was compelled to file an application under Section 144 of the CrPC before the jurisdictional Executive Magistrate on 21st November 2022. The Executive Magistrate directed the local police authority to submit a report over the the said boundary dispute. The police authority, however, failed and neglected to submit the report as claimed by the Executive Magistrate, as result of which the proceeding under Section 144 of the CrPC was dropped on efflux of time.

3. Now, the petitioner has approached this Court for appropriate relief directing the Superintendent of Police of the concerned District to look into and settle the dispute existing between the petitioner and respondent no. 7. The learned Advocate appearing on behalf of the petitioner refers to an unreported decision of this Court passed in Cr. WJC No. 1567



of 2017 dated 22nd November 2022. It is submitted by him that under the similar circumstances a Co-ordinate Bench passed the following order:-

“Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that if no bonafide dispute is pending with respect to the land in question and there is no order of any competent court operating against the petitioner, it will be the bounded duty of the Superintendent of Police, Madhubani, (respondent no. 4) to look into the grievance of the petitioner and after satisfying himself with the same, if he finds that the petitioner is not being allowed to enjoy her property and the anti-social elements are disturbing her, he will provide adequate protection to the petitioner and/or take any other suitable measures which may be permissible in law to ensure that she is not unlawfully dispossessed or deprived of her property.”

4. It is needless to say that Chapter 9 of the Code of Criminal Procedure deals with maintenance of public order and tranquility. Part C of Chapter 9 refers to the power of the



Executive Magistrate to issue order in urgent cases of nuisance or apprehended danger. Section 145 refers to the procedure where dispute concerning land and water is likely to cause breach of peace. On perusals of the records, it is asserted that the dispute with regard to boundaries between the petitioner and the respondent no. 7 is going on since long. The petitioner did not file any application under Section 145 of the CrPC before the Executive Magistrate. When there is alternative efficacious remedy in the Code of Criminal Procedure, relief under Article 226 of the Constitution cannot be granted.

5. For the reasons stated above, the instant writ petition is disposed of directing the petitioner to file an application under Section 145 of the Code of Criminal Procedure before the jurisdictional Executive Magistrate and if such application is filed, the Executive Magistrate shall obtain a police report positively within two weeks from the date of service of notice to the other side and dispose of such application within 60 days from the date of filing of such application.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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