

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43279 of 2015

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

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1. Amrendra Narayan Chaudhary, son of late Upendra Narayan Chaudhary, resident of RangbhoomiMaidan (professor Colony), P.S - Keshari Hat, District - Purnea.
 2. Smt. Sheela Rani Devi, W/o - Sri Ramanand Rai
 3. Jai Kishore Sharma, Son of late Tarni Sharma. Both residents of village- Khajratta, P.S -Narainpur, Distt- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar

O.P. 1st Set

2. Md. Kamruddin, son of late Abdul Khan
3. Md. Sahim Khan, son of late Nasruddin Khan. Both residents of village Adampur (Mogal Toli), P.S -KeshariNagar, District Punia

O.P. 2nd Set

4. Fakruddin Khan son of Khalil Khan
5. Jiuauddin Khan son of Tamiz Khan
6. Masim Khan son of Tamiz Khan
7. Pradeep Sharma son of KusumLal Sharma
8. DevSharan Sharma son of KusumLal Sharma
9. Biro Sharma son of KusumLal Sharma
10. Kaimu Sharma son of Giro Sharma
11. Sattosingh son of Jhapatlalsingh, All residents of village- Chetal, P.S -Keshari Nagar, District Purnea.
12. MangalMarandi son of KailuMarandi
13. Karku Murmu son of Soma Kailu
14. Ramesh Hnasda son of KnahanHanda
15. KarkuMarandi son of ThakurMarandi All residents of village Adapur P.S. Keshari Nagar District Punia
16. Prem Lal Sharma son of Birju Sharma
17. Devan Sharma son of Naiku Sharma
18. Chaturanad Sharma son of Kapldeo Sharma All residents of Nayatola P.S. Keshari Nagar District Punia.
19. Md. Sazzad son of Kamal Khan
20. Shvam Singh son of Biso Singh
21. Baijnath Singh son of Biso Singh



22. Jitansingh son of Mangansingh, All residents of village Adampur, P.S Keshari Nagar, District Punia.

O.P. 3rd Set

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Sharma, Adv. Ms. Madhuri Kumari, Adv. Mr. Jitendra Kumar, Adv.
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. Nos. 2 & 3	:	Mr. Mritunjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 10-01-2025 Heard Mr. Vikash Kumar Sharma, learned counsel appearing for the petitioners, Mr. Jharkhandi Upadhyay, learned APP appearing for the State and Mr. Mritunjay Kumar, learned counsel appearing for the O.P. Nos. 2 and 3.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') against the order dated 08.05.2015 passed by the 3rd Additional Sessions Judge, Purnea in connection with Criminal Revision No. 416 of 2005 in which the order dated 07.10.2005 passed under section 145 of the Cr.P.C. was challenged and the same was set aside and the matter was remanded back to the learned SDM, Purnea with a direction to hear the Revisionist/O.P.s 2 and 3 sets and pass an appropriate order after calling the report from DCLR regarding pendency of proceeding under section 48E of the Bihar Tenancy Act (in short 'B.T. Act') in connection with the disputed land.



3. The main grounds taken by the petitioners' counsel to assail the order impugned are that while allowing the revision the learned court of the 3rd Additional Sessions Judge, Purnea mainly took into account the provision of section 48E(13) of B.T. Act and it was observed that as a proceeding under B.T. Act was pending with regard to the subject matter of dispute, so, in such a situation, the proceeding under section 145 of the Cr.P.C. could not run parallel but admittedly, the proceeding under section 144 of Cr.P.C. which was later converted into section 145 of the Cr.P.C. had been initiated before the initiation of the proceeding under B.T. Act and the O.P.s took their plea under the provision of section 48E(13) of B.T. Act at very belated stage with malafide intention and in this regard, a proper conclusion was also made by the learned Executive Magistrate in the order dated 07.10.2005 as the O.P.s Md. Kamruddin and Md. Sahim Khan who are here O.P. 2nd set, did not take any attempt to file a petition under B.T. Act between the year 2000 and 2005 nor it was reported by the concerned Circle Officer regarding the status of the O.P. 2nd set as *bataidar* and it was observed by the learned Magistrate that the O.P. 2nd set filed their application with an intention only to frustrate the proceeding which was running under section 145 of the Cr.P.C.



between the petitioners and O.P. 3rd Set in which O.P. 2nd Set were not a party and further, as per O.P. 2nd set, the proceeding under B.T. Act was running in respect of 4.5 acres land only while the area of the entire land of subject matter of the proceeding under section 145 of the Cr.P.C. was 16.79 acres and on account of the order impugned, the preventive proceeding initiated under section 145 of the Cr.P.C. with regard to the major part of the land of subject matter has been frustrated while the said land was not a subject matter under B.T. Act. It is further submitted that as per the provision of section 48E(13) of B.T. Act, no civil or criminal court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under sub-section (1) of section 48E of B.T. Act but in this matter, when the proceeding under sections 144 and 145 of the Cr.P.C. was initiated in respect of the land in question, no proceeding under section 48E(1) of B.T. Act was pending with regard to the said land and further, as per the proviso of the said section, a criminal court can take an action for preventing the breach of peace despite pending the proceeding before the Collector with regard to the same subject matter under the section 48E(1) of B.T. Act. In support of these submissions, learned counsel has placed reliance upon the judgment of the



Hon'ble Apex Court passed in the case of **Bharat Prasad and Ors. vs. State of Bihar and Ors.** reported in **AIR 2009 SC 2827.**

4. On the other hand, learned counsel appearing for the O.P. 2nd set has vehemently opposed this petition and argued that in view of the settled principle of law, the order impugned was rightly passed by the revisional court as admittedly, a proceeding under section 48E of B.T. Act had been initiated in between the petitioners and the O.P. 2nd set and the same was pending in between them when the impugned order was passed. Though the said proceeding was initiated after the initiation of the proceeding under section 145 of the Cr.P.C. in between the parties but it is settled position of law that a proceeding initiated under section 145 of the Cr.P.C. shall stand effaced and cannot be continued on initiation of proceeding under section 48E of B.T. Act with respect to land in question, so, in such a situation, the learned SDM, Purnea had to drop the said proceeding initiated under section 145 of Cr.P.C. and in this regard, the impugned order was rightly passed by the revisional court. In support of this submission, learned counsel has placed reliance upon the judgment of this Court passed in the case of **Harendra Singh and Ors. vs. Rajendra Singh and Ors.** reported in **1988**



PLJR 602 and the relevant paragraph upon which reliance has been placed is being reproduced as under : -

“2. It is well settled that the claims of bataidars have to be adjudicated in accordance with the procedures prescribed under Section 48E onwards of the Bihar Tenancy Act (B.T. Act) and primarily the right accrues to a bataidar when he is threatened with eviction at the hands of the superior raiyats because a bataidar cannot be evicted except on the grounds which the law provides for such eviction. Once a proceeding is initiated under section 48E of B.T. Act, civil suit and proceedings under section 145 of the Code are barred. If there is no proceeding under section 48E of the B.T. Act, a suit does become maintainable or a proceeding under section 145 of the Code can be initiated to prevent breach of the peace which on the initiation of a proceeding under section 48E of the B.T. Act will stand effaced and cannot be continued.”

5. Heard both the sides and perused the order impugned as well as the order dated 07.10.2005 passed by the learned SDM, Purnea in the case No. 271M of 2000. The Bihar Tenancy Act (‘B.T. Act’) is a special and local law of which section 48E specifically excludes the jurisdiction of civil and criminal courts over the subject matter of a dispute after a



proceeding is initiated under section 48E(1) by the Collector and as per the provision of section 5 of the Cr.P.C., the provisions of the Cr.P.C. shall not affect any special or local law for the time being in force unless there is specific provision to the contrary in the Cr.P.C. or there is no provision in special law to deal with a specific issue. In the proceeding under section 145 of the Cr.P.C., it is only to be looked into and decided by an Executive Magistrate that among the parties who was in possession over the subject of dispute on the date of the order passed by the Executive Magistrate under sub section (1) of section 145 of the Cr.P.C. and further, the purpose of said proceeding is only to prevent the breach of peace while under the section 48E(1) of B.T. Act the dispute with regard to the possession over the land, crop or produce thereof between the landlord and under Raiyat as well as the dispute of existence of said relationship in between them or for unlawful ejectment from tenancy or the land etc. are to be decided which shows that the possession of the parties is also looked into and decided by the Collector, so, to deal with the issue of possession, there is a specific provision under the B.T. Act which is a special and local law and as per the provision of section 5 of Cr.P.C., the said special law will prevail over the provisions of the Cr.P.C.



while dealing with an issue for which there is specific provision under the B.T. Act and further the provision of sub section 13 of section 48E of B.T. Act clearly mentions that no civil or criminal court shall have any jurisdiction over the subject matter of a dispute after the initiation of a proceeding under 48E(1) of B.T. Act. Though admittedly, there was no initiation of a proceeding under B.T. Act when the proceeding under section 145 of Cr.P.C. was initiated between the parties, so, in such a situation, the initiation of proceeding under section 145 of Cr.P.C. cannot be deemed to be in violation of the provision of section 48E(13) of B.T. Act but the moment when the said proceeding was initiated under section 48E(1) of B.T. Act in between the parties, the jurisdiction of the Executive Magistrate under section 145 of the Cr.P.C. was ousted and the same can be deemed to have effaced on that very moment of initiation of proceeding under B.T. Act and in this regard, the observation made by this Court in the case of Harendra Singh & Ors. (supra) in the paragraph No. 2 of the said judgment, as referred above, is relevant. Though the proceeding under B.T. Act was initiated in respect of the land having an area of 4.5 acres while the proceeding under section 145 of the Cr.P.C. was initiated in between the parties in respect of a larger land having an area of 16.79 acres including the land of B.T. proceeding but by the order



impugned, the learned revisional court has simply remanded the matter of the parties back to the court of SDM, Sadar, Purnea with a direction to hear the parties on the petition dated 02.09.2005 preferred by the O.P.s and call for the report from DCLR regarding the pendency of proceeding under section 48E of B.T. Act in respect of the disputed land and then pass an appropriate order, so, in view of this direction, a fresh order is to be passed by the learned court of SDM, Sadar Purnea and both the parties have right to press their grievances as well as aforesaid points with regard to the area of land which is or has remained the subject matter of the B.T. Act. So far as the principle laid down by Hon'ble Apex Court in the case of Bharat Prasad (supra) upon which reliance has been placed by petitioners' counsel is concerned, the same is not applicable in this matter as the said principle was laid down in different context. Accordingly, this Court finds no merit in the instant petition and the court of learned 3rd Additional Sessions Judge passed the impugned order in proper and legal manner, so, the instant petition stands dismissed.

(Shailendra Singh, J)

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