

GAHC010128922020



2024:GAU-AS:11497

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./177/2020

TARINI SAIKIA
S/O LATE MADHAB SAIKIA, R/O VILL-BARKURIA, P.O. AND P.S.-RANGIA,
DIST-KAMRUP, ASSAM

VERSUS

PUTUL KALITA AND ANR.
S/O LATE MADHAB KALITA, R/O RANGIA TOWN, WARD NO. 5, P.S.-
RANGIA, DIST-KAMRUP, ASSAM

2:SMTI MAHIMA KALITA
W/O LATE MADHAB KALITA
R/O RANGIA TOWN
WARD NO. 5
P.S.-RANGIA
DIST-KAMRUP
ASSA

Advocate for the Petitioner : MR A K AZAD,

Advocate for the Respondent : MS. I KEITZAR, MR. M SARANIA,MR H MEDHI,MS. I
KEITZAR,MR. M SARANIA,MR H MEDHI

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER(CAV)

Date : 22-11-2024

Heard Mr. A.K. Azad, learned counsel for the petitioner. Also heard
Mr. M. Sarania, learned counsel for the respondents.

2. The petitioner has filed an application u/s 397 read with Section 401

and 482 Cr.PC against the impugned order dated 17/08/2020 passed by the learned Executive Magistrate, Rangia, in case No. 12/2015 u/s 145/146 Cr.PC declaring the possession of the disputed two plots of land measuring 5 Bighas 4 Katahs 4 Lechas covered by dag Nos. 908 and 633 of Touzi Patta No. 259 of village Barkukuria under Panduri Mouja of Rangia Revenue Circle in favour of the second party/respondents.

3. The case of the petitioner is that he owned and possessed the aforesaid plots of land for more than 20 years and he used to cultivate over the said plot of land to earn his livelihood. The petitioner also applied for allotment of the said plots of land and it is reported by the Circle Officer and the Sub Divisional Officer (herein after SDO) that the petitioner is in possession of the said land and sent the proposal for allotment. In the meantime, the respondents with some miscreants entered into the land and tried to disposes the petitioner and in this regard, the petitioner lodged an FIR before the Rangia P.S. Thereafter, a petition was filed before the Executive Magistrate, Rangia being Case N0. 12/2015 u/s 145/146 Cr.PC praying for attachment of the land and to restrain the respondent to enter into the land illegally and forcefully with a view to dispossess the petitioner.

4. It is submitted by learned counsel for the petitioner that the petitioner is the Touzi pattadar of the entire land measuring 05 Bighas 04 Kthas 04 Lechas covered by Dag No. 908 (2B-1K-15L) and Dag No. 633 (3B-2K-9L) of Touzi Patta No. 259 of village Barkukuria and used to pay the land revenue of the said land regularly. The petitioner paid the revenue of the said land on 17/11/2014 for the year 2014 and 10/08/2015 for the year

2015.

5. Learned counsel for the petitioner also submitted that though the land is under the possession of the petitioner but the respondents fraudulently applied for the allotment of the said land. But the SDO(Civil) vide his letter dated 30/10/2014 informed the Circle Officer that due to the transfer of the possession of the land, the allotment proposal of Jagat Kalita and Madhab Kalita was cancelled. Hence, the proposal has been sent in the name of Tarani Saikai who is now in the physical possession over the plots of land. From the said letter, it is clear that the respondents are no way in possession of the said land.

6. It is also the submission of the learned counsel for the petitioner that subsequently the Circle Officer, Rangia, through a letter informed SDO (Civil), Rangia regarding proposal of the aforesaid land, wherein it is stated that the allotment proceeding being No. 161/ 10640 has been cancelled from the name of the applicant as because the possession of the said land has been transferred and hence the land remains in earlier position as government ceiling land. However, it is reflected in the said order that the present petitioner is still in possessing and cultivating the said land.

7. The allegation against the respondents is that on 01/03/2015 at about 9:30 a.m., the respondents along with 40/50 miscreants entered into the schedule land of the petitioner illegally and destroyed the crops and farm house with a view to dispossess the petitioner. Thereafter, the petitioner filed the instant case before the Executive Magistrate but the learned Magistrate failed to appreciate the evidence adduced by the

petitioner that the petitioner was in possession of the disputed land and passed the order declaring possession of the disputed land in favour of the respondents which is liable to be set aside.

8. Against the prayer of the petitioner, the respondents filed an affidavit-in-opposition by stating that the father of the respondent No. 1 had owned and possessed the alleged disputed land since 1970 by virtue of their possession purchased from one Suban Saikia and after his death from his son Jagat Saikia. After the death of his father on 30/03/2010, the respondents are in continuous possession since death of his father being legal heir and successors of the aforesaid land. Accordingly, the father of the respondent No. 1 paid the land revenue against the said land.

9. According to learned counsel for the respondents, the respondents have been using the said land as a farm house since their possession. There is a house standing thereon since 1970 to look after the land as it is a homestead land and his father with grandmother and aunty used to stay there. After his father's death, they kept a care taker to look after the house and do cultivation. As the respondents are residing in different place, taking the opportunity of their absence, the petitioner in connivance with the officials of the Revenue Department of Rangia Subdivision as well as Circle Officer, is trying to grab the said land. It is further pointed out that the petitioner is working in Sub Divisional Office at Rangia and he is utilising his official position by influencing the officials of his office in grabbing their land i.e., the land of the respondents.

10. Learned counsel for the respondents also submitted that the instant

Criminal Revision Petition is not maintainable and liable to be dismissed as the order dated 17/08/2020 which is under challenge is an interlocutory order and the Criminal Revision Petition u/s 397 Cr.PC does not lie. The Magistrate does not purport to decide a party's right, title and possession of the land but expressively reserve that question to be decided in the due course of law.

In support of his submission, learned counsel has referred the following case laws –

- a. (2017) 14 SCC 809 (Girish Kumar Suneja vs. CBI)
- b. (2017) 3 SCC 198 (State of Rajasthan vs. Fatekhkaram)
- c. (2012) 9 SCC 460 (Amit Kapoor vs. Ramesh Chandar)
- d. AIR 1959 SCC 960 (Vhinka vs. Chaman Singh)

11. Having heard the learned counsel for the parties and on perusal of the documents available on record, as per police report both the parties claimed the disputed land to be their own. The disputed land appears to be tauzi land, both the petitioner and the respondents paid the land revenue to the government from time to time as per land revenue receipts.

12. Section 145 Cr.P.C. reads as under:-.

“S.145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference of the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of

dispute :

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of this order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7)When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8)If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9)The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10)Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107."

13. The object of Section 145 Cr.PC is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession

without reference to the merits or claim of any of the parties to a right to possess the subject of dispute. Section 145 Cr.PC relates to Magistrate's powers where the breach of peace is likely to be caused due to a dispute concerning possession or right to use land or water or its boundaries. He is not to decide the questions of title, but should only endeavor to avert a situation of breach of peace by maintaining the party in possession. He should call upon the parties to submit their written statements in support of their claim to actual possession and on the basis of such statements decide as to who was in actual possession after hearing the parties and weighing the evidence. His decision on point of possession should be well reasoned and recorded in writing. In case of wrongful dispossession, the party so dispossessed is to be deemed as the party in possession.

14. It must be stated that the action taken under this section being purely preventive and provisional in nature, the order passed by Magistrate is not of a punitive character. It, therefore, follows that an application made to a Magistrate under Section 145 is not a complaint as it does not relate to an offence. The Magistrate is empowered to initiate proceedings under this section upon a report of a police officer but such proceedings shall be only for a limited purpose for satisfying himself as to the likelihood of breach of peace and the identity of subject matter of dispute.

15. The Executive Magistrate before making a preliminary order under Section 145 must satisfy himself that the dispute relates to land or other objects mentioned in sub-section (1) and it is likely to cause a breach of peace. Sub-section (4) provides that the inquiry under Section 145 is limited only to the question of actual possession on the relevant date and is

not concerned with the claims and titles of the parties as regards right to possession.

16. Where the Magistrate is satisfied that the cause of apprehension of breach of peace, in fact, it never existed, then in such cases, he shall pass an order dropping the proceedings, and release of the property which was in dispute. But mere existence of a dispute between private parties will not invoke jurisdiction under Section 145 unless the Magistrate is satisfied that such private dispute is also likely to cause disturbance of peace and public tranquility.

17. Reverting to the case in hand, the petitioner has challenged the order dated 17/08/2020 passed by the learned Executive Magistrate which is reproduced as follows –

“.....1st party absent. 2nd party present and filed Hazira. 2nd party has submitted written evidence. After perusal of the petition of the 1st party and w/s of the 2nd party and the evidences submitted by both the parties along with all other relevant documents and information of the case, I am satisfied that 2nd party 1. Shri Putul Kalita S/o Lt. Madhab Kalita, 2. Mahima Kalita, W/o Lt. Madhab Kalita, Village- Rangia Town (W/No-5), P.S. Rangia, was in possession of the disputed land prior to 2 months of the date of occurrence of the dispute. Hence, the possession of the disputed land is declared in favour of the 2nd party. The attachment order dated 04/03/2015 is hereby vacated. The case is disposed of accordingly....”

18. On a bare look at the order dated 17/08/2020, it reveals that there is a dispute between two private parties regarding possession of disputed land. The order of magistrate does not disclose that the Magistrate was satisfied that such private dispute is also likely to cause disturbance of peace and public tranquility in the locality.

19. In view of the above, as the matter relates to dispute between two individuals which does not reflect any disturbance of peace and public tranquility in the locality at large, the Magistrate is not empowered to invoke the provisions of Section 145 Cr.PC.

20. Hence, the criminal petition is dismissed and disposed of accordingly. Interim order of stay dated 16/10/2020, passed by this Court is hereby vacated.

JUDGE

Comparing Assistant