

(2025) 12 MEG CK 0013

Meghalaya HC

Case No: Criminal Miscellaneous Case No.161 Of 2025 In Criminal Petition No. 88 Of 2025

Cleophas B. Syiem

APPELLANT

Vs

State Of Meghalaya & 4 Ors

RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, (BNSS), 2023 - Section 126, 164
- Code Of Criminal Procedure, 1973 - Section 145

Hon'ble Judges: B. Bhattacharjee, J

Bench: Single Bench

Advocate: S. Thapa, N.G. Shylla, Z.E. Nongkynrih, K.C. Gautam

Judgement

B. Bhattacharjee, J

Heard Mr. S. Thapa, learned counsel appearing for the petitioner, Mrs. N.G. Shylla, learned PP appearing for the respondent Nos. 1 4 and Mr. K.C. Gautam, learned counsel appearing for the respondent No.5.

This is an application seeking stay of the impugned orders dated 04.12.2025 and 10.12.2025 and the entire proceeding of the Executive Proceeding No.2 of 2025 U/s 126 read with section 164 BNSS.

The learned counsel for the petitioner submits that the Executive Magistrate has resorted to improper exercise of jurisdiction by initiating Executive Proceeding No. 2 of 2025 U/s 126 read with Section 164 of the BNSS in gross violation of the established norms of law. He submits that the property in respect of which the learned Executive Magistrate has drawn up the said proceeding is the subject matter of adjudication in Misc. Case No. 10(T) of 2024 and Misc. Case No. 30(T) of 2025 arising out of Title Suit No. 2(T) of 2024 pending before the Court of the Assistant to the Deputy Commissioner (now designated as Civil Judge, Junior Division), Ri-Bhoi District, Nongpoh. He submits that despite noticing the fact that an

order of status quo with regard to the property in question had already been passed in the aforesaid civil proceedings between the rival parties, the learned Executive Magistrate erroneously assumed jurisdiction in the matter resulting in abuse of process of law. He submits that even if it is assumed that the proceeding U/s 126 read with Section 164 of the BNSS was drawn up on the assumption of violation of the order passed by the civil court, the same cannot be sustained in law in view of the propositions laid down in **Ram Sumer Puri Mahant v. State of U.P. & Ors (1985) 1 SCC 427** and **Amresh Tiwari v. Lalta Prasad Dubey & Anr (2004) 4 SCC 440**. The learned counsel submits that there is a bar in initiation of a parallel proceeding U/s 145 CrPC during the pendency of civil litigation involving the question of possession over the same property. He, therefore, prays for stay of the impugned orders dated 04.12.2025 and 10.12.2025 and the entire proceedings of the Executive Proceeding No. 2 of 2025 pending before the learned Executive Magistrate.

Mrs. N.G. Shylla, learned PP appearing for the State seeks time to obtain necessary instruction in the matter.

Mr. K.C. Gautam, learned counsel appearing for respondent No. 5, has vehemently opposed the prayer made on behalf of the petitioner and has submitted that if there is an apprehension of breach of peace and tranquillity over possession of land and property, the Executive Magistrate has the jurisdiction to initiate proceedings U/s 126 and 164 of the BNSS. He submits that law and order is a subject which falls within the domain of the Executive Magistrate and, in that view of the matter, no illegality or infirmity can be attached to the initiation of the proceeding by the Executive Magistrate and to the passing of the impugned orders. He, however, seeks some time to file objection in the matter.

Having considered the submissions made by the parties and on perusal of the materials on record, it transpires that the learned Executive Magistrate, despite noticing the fact that the subject matter of dispute between the parties is pending adjudication before the civil court and that there already exists an application filed by one of the parties before the civil court alleging violation of the status quo order, decided to initiate the proceeding U/s 126 read with Section 164 of the BNSS in the matter. As it appears from the proposition of law laid down in the authorities relied on by the learned counsel for the petitioner that when a civil litigation is pending for the same property wherein a question of possession is involved and the parties are in a position to approach the civil court for appropriate relief, there is no justification for initiating a parallel criminal proceeding, the contention raised on behalf of the petitioner has some force. The petitioner, therefore, has made out a prima facie case for passing appropriate interim order.

In view of the above, it is directed that the operation of the impugned orders dated 04.12.2025 and 10.12.2025 and the further proceeding of the Executive Proceeding No.2 of 2025 shall remain suspended till the returnable date.

List along with the main case.