

(1998) 04 GAU CK 0014

Gauhati High Court

Case No: Criminal Revision No. 3 of 1998

Dhireswar Sarma and Others

APPELLANT

Vs

Paramesh Chakravorty

RESPONDENT

Date of Decision: April 21, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 145(1), 145(4), 146

Citation: (1998) 2 GLT 379

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: Z. Kamar and M.D. Mazumdar, for the Appellant; A.C. Sarma and A. Dev, for the Respondent

Final Decision: Allowed

Judgement

D.N. Chowdhury, J.

This Revision Petition has arisen and directed against the order dated 15.11.97 passed by Smti. C. Barua, Executive Magistrate, Guwahati in Misc. Case No. 242m/94 u/s 145/146 Code of Criminal Procedure A proceeding u/s 145/146 Code of Criminal Procedure was drawn up at the instance of the instance of 1st party, in respect of a dispute likely to cause to breach of peace concerning a dispute of land. On the strength of an application filed by the opposite party/1st party the proceeding was initiated by the learned Executive Magistrate on 10.6.94 and ordered for attachment of the disputed land measuring 2K covered by Dag No. 311 Patta No. 60 in village Fatasil Nonke village Mouza Jalukbari. 2nd party submitted written statement and witnesses were examined on behalf of both the parties.

2. On consideration of materials on records and upon hearing the parties the learned Executive Magistrate by its order dated 19.12.97 declared the possession in favour of the first party. Hence the Revision Petition.

3. Mr. Z. Kamar, the learned Counsel appearing on behalf of the 2nd party/Petitioner has submitted that the learned Executive Magistrate acted in most illegal fashion by drawing up of a proceeding in a most casual manner without application of mind, in support of his contention the learned Counsel pointed out to the note of the Executive Magistrate dated 10.6.94 asking the Bench Assistant to draw up a proceeding u/s 145 Code of Criminal Procedure read with Section 146 Code of Criminal Procedure Mr. Z. Kamar, the learned Counsel for the Petitioner further submitted that the impugned order of the learned Executive Magistrate is per se arbitrary and capricious for want of any reasoning as to how the learned Court reached the conclusion that the 1st party in possession of the disputed land. Mr. Kamar, the learned Counsel for the Petitioners further submitted that the impugned order of the learned Executive Magistrate declaring possession of the land in favour of 1st party was wholly without jurisdiction so much so in the instant case Petitioners were forcibly and wrongfully dispossessed from the land in question. In such a situation the Executive Magistrate could exercise his jurisdiction only when the wrongful dispossession was made within the period specified in Sub-Section 4 of Section 145 Code of Criminal Procedure. The learned Magistrate in the instant case since fail to address his mind in the absence of such finding could have declared possession in favour of the 1st party submitted the learned Counsel for the Petitioners.

4. Mr. Atul Chandra Sarma, the learned Counsel appearing on behalf of the opposite party 1st party on the other hand submitted that the learned Executive Magistrate passed the impugned order on the basis of the materials on record. The finding of the learned Executive Magistrate is based on question of facts. The High Court in exercise of revisionary power normally shall not enter into the evaluation of the fact and come to a contrary finding on assessment of such facts. Inadequacy or insufficiency of evidence cannot be a ground for interference of the High Court and in such matter. Mr. Sarma, the learned Counsel for the 1st party submitted that in fact the Executive Magistrate only on being satisfied decided to initiate the proceeding and asked the Bench Assistant to do the work. At any rate the order of initiation of proceeding was accepted by the 2nd party Petitioners and contested the case on merit. Mr. Atul Chandra Sarma, the learned Counsel for the 1st party/opposite party further submitted that the forcible and wrongful dispossession was within two months next before the date on which the report of the police officer and other information was received by the Magistrate and the learned Executive Magistrate did not commit any error of jurisdiction. Mr. Sarma, the learned Counsel further submitted that the proceeding u/s 145 Code of Criminal Procedure is only in the nature of a Police order and the Executive Magistrate declares only the right to possess on the disputed land, without reference to the merits of the claim. The life of the order is co-terminous with the passing of the judgment and decree of a Civil Court. According to the learned Counsel Mr. Sarma since no glaring information is discernible and therefore the Revision Petition is liable to be dismissed

5. From the order sheet it discloses that the Petition u/s 145 Code of Criminal Procedure was accompanied by a Police report was placed before the Additional District Magistrate on 10.6.94 who passed the following orders:

...Seen the Petition supported by Police report No. 13/94 of Fatasil Ambari Rs. 1 heard the learned Advocate for the 1st Party.

The case record is transferred to Sri H.K. Saloi, EM for disposal as per law

Sd/- A.D.M...

6. The Additional District Magistrate after perusing the petition submitted police report and hearing the advocate for the 1st party transferred the case along with the records to Sri H.K. Saloi, Executive Magistrate for disposal of the matter as per law. The Executive Magistrate on receipt of the case put the following endorsement.

B.A. PI. draw up a proceeding u/s 145 Code of Criminal Procedure read with 146 Code of Criminal Procedure

Sd/-

Executive Magistrate

And thereafter the following order was passed.

... Case record received on transfer from the ADM (K), Guwahati. Seen the petition perused the police (sic) and also heard the learned Advocate on behalf of the 1st party Petitioner.

I am satisfied that there is every likelihood of breach of peace between the parties as well as in the locality concerning the land as mentioned in the Schedule below.

Now I draw up a proceeding u/s 145 Code of Criminal Procedure and direct both the parties to appear before this Court on the next date fixed along with their written statements and other connected documents if any in support of their respective claims over the disputed land.

In view of the emergency nature the disputed land as mentioned in the schedule below is hereby ordered to attach u/s 146 of Code of Criminal Procedure (Excluding the dwelling house (if any) prohibiting entry of both the parties into the disputed land to prevent breach of peace.

O/C Fatasil Ambari PS. is directed to execute the attachment order and report compliance accordingly.

Fix - 30.6.94

Sd/-

(H.K. SALOI)

Executive Magistrate

SCHEDULE OF THE LAND

A plot of the land measuring 2 K.s. covered by Dag No. 311 Patta No. 60 village Fatasil Nanke Gaon Mouza Jalukbari, bounded by:

North -Road, and late Bipin Boro, South - Land of 1st party, East - 12 Road and Kalimandir, West - Suhan Sardar.

7. Section 145(1) Code of Criminal Procedure envisages both the power and procedure drawing up of a proceeding u/s 145 Code of Criminal Procedure. Assumption of jurisdiction under 145 Code of Criminal Procedure rests on the satisfaction of the Executive Magistrate who alone is conferred with the power to initiate the proceeding. The essence of drawing up of a proceeding is the satisfaction of the Executive Magistrate. A proceeding can be initiated by the Magistrate on being satisfied on the basis of the materials placed before him. The satisfaction of a Magistrate must be recorded by him. The Magistrate must exercise that power with full responsibility. It cannot be delegated to any other authority. The order sheet as referred above discloses that the Magistrate directed the Bench Assistant to draw up a proceeding which he signed. The subsequent endorsement made by the Executive Magistrate the order seemingly made to overcome the lacuna. The learned Executive Magistrate in the instant case fell into serious error by abdicating his power of drawing up a proceeding to his Bench Assistant. This is not permissible under the Scheme of the Act. I am not impressed with the argument of Mr. A.C. Sarma, the learned Counsel that it was mere a irregularity which did not vitiate the proceeding. Delegating the power to draw up a proceeding to the Bench Assistant as indicated earlier is wholly without jurisdiction.

8. On this short ground alone the impugned proceeding on the basis of the order dated 10.6.94 is liable to be set aside and accordingly the same is set aside and all consequent orders passed on the footing of the order dated 10.6.94 are set aside. The proceeding is quashed. The Revision Petition is accordingly allowed.