

**IN THE COURT OF THE SESSIONS JUDGE : SONITPUR  
AT TEZPUR**

**PRESENT : Sri A. Borthakur  
Sessions Judge  
Sonitpur, Tezpur**

**CRIMINAL REVISION NO. 11(S-1) OF 2013**

( Revision against the order, dated 14-12-2012 u/s 145/146(1) passed by the learned Addl. District Magistrate, Sonitpur, Tezpur, in connection with Misc. Case No. 30/145/146/2012)

1. **Md. Ayub Ali**
2. **Md. Sayed Ali**

Both sons of Iman Ali  
Resident of village - Samdhara  
Mouza- Goroimari, PS- Tezpur  
District - Sonitpur, Assam ....

**Petitioners**

**-VERSUS-**

1. **Md. Mahammad Ali**  
Son of Abdul Samed  
Resident of village - Kerukani  
Mouza- Goroimari, PS- Tezpur  
District - Sonitpur, Assam

2. **State of Assam**  
Represented by Public Prosecutor  
Tezpur, District - Sonitpur, Assam

...

**Opp. Party**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the petitioner	:	<b>Sri D. Bose</b> Advocate
For the Opposite Party No.1	:	<b>Sri K. Sarma</b> Advocate
For the Opposite Party No.2	:	<b>Sri H. P. Sedai</b> Public Prosecutor
<b>Date of Argument</b>	:	<b>20-05-2014</b>
<b>Date of Judgment</b>	:	<b>31-05-2014</b>

**J U D G M E N T**

This revision petition filed u/s 397/399 of the CrPC has been preferred against the order, dated 14-12-2012, passed by the learned Additional District Magistrate, ( for short, 'ADM'), Sonitpur at Tezpur in Misc. Case No. 30/145/146/2012, u/s 145/146 of the CrPC.

2. The 2nd party-petitioners' case, in brief, be stated as follows :

Upon a petition filed by the 1st party-OP No.1, on 03-07-2012, against the 2nd party- petitioners, herein, the learned ADM, Sonitpur at Tezpur forwarded the same to the Officer-in-charge, Tezpur PS for enquiry and report. On receipt of police report, dated 30-07-2012, the learned ADM, Sonitpur, Tezpur registered Misc. Case No.30/145/146/2012, without considering the police report and passed the impugned preliminary order, dated 14-12-2012, exparte, directing the police to attach the disputed land, measuring 02 kathas 10 lessas, described in the schedule of the order. Now, by the instant revision petition, the 2nd party-petitioners have assailed the impugned order, aforementioned, on the grounds, inter-alia, that the police, in its report never stated about any apprehension of breach of public peace and tranquility in the locality arising out of the dispute over possession of the disputed land. Hence, it is prayed to set aside the impugned order.

3. The record of Misc. Case No. 30/145/146/2012, as called for, is placed before the Court.

4. Heard Mr. D. Bose, learned counsel for the revision petitioners and Mr. K. Sarma, the learned counsel appearing on behalf of the OPs. Perused the instant case record and the connected case record.

**POINT FOR DETERMINATION :**

5. Whether the impugned order, dated 14-12-2012, passed, in Misc. Case No. 30/145/146/2012, u/s 145 / 146 CrPC, by the learned ADM, Sonitpur at Tezpur, is liable to be set aside, on the grounds, mentioned in the revision petition ?

**THE DECISION AND THE REASONS THEREFOR :**

LEGAL POSITION :

SECTION 145/146 CrPC

6. It may be mentioned that the Executive Magistrate, before invoking Section 145 CrPC, (i) it must be satisfied as to existence of a dispute likely to cause a breach of peace concerning land or water ; (ii) pass an order in writing; (iii) the order must state the ground of being satisfied ; (iv) the order must require the parties to attend the Court on a specified date and time and put in written statement as to **actual possession** of the subject matter of the dispute ; and (v) the subject matter of the dispute has to be described in the order. Possession referred to in section 145 CrPC is actual and exclusive possession of the subject matter. After issuing preliminary order and after serving copy of the order, passed under Section 145(1) CrPC, the Magistrate is required to receive all such evidence as may be produced by the parties and take such other evidence, if any, as he may think necessary. A final order cannot be passed under Section 145(6) CrPC, unless he can decide which party was in possession on the date of conditional order. If he is unable to decide that question, he can make an order of attachment under Section 146(1) CrPC. However, under Section 145 (5) CrPC, the Magistrate at any time before a final order is passed under Section 145 (6) CrPC, cancel the conditional order as soon as he is satisfied that no such dispute likely to cause breach of peace. On the other hand, as per section 146 CrPC, the Magistrate, in a proceeding u/s 145 CrPC, may issue interim order of attachment at any time after passing an order u/s 145(1) CrPC, when it appears to him (i) to be a case of emergency ; (ii) if he decides that none of the parties was in actual possession or

(iii) if he is unable to satisfy himself as to which of them was then in possession of the subject matter of dispute.

7. The impugned order, dated 14-12-2012, passed in Misc. case No. 30/145/146/2012, reads as follows :

ORDER

“14-12-2012

Received the case record on today. Seen and perused petition submitted by 1<sup>st</sup> party Mahammad Ali and the Police report of Tezpur Police Station.

The petitioner stated that he had a plot of land measuring 0 Bighas, 2 katha, 10 lessa covered by Dag No. 424 of P.P. No.155 situated Mouza – Goroimari, Vill – Kurukani, District – Sonitpur, Assam, bounded with the following boundaries :

North	-	Petitioner's land
South-		Ayub Ali ( 2 <sup>nd</sup> party)
East	-	Nazar Ali Maral
West	-	Road

It is seen that there is serious apprehension of breach of peace among the parties over the possession of disputed land schedule mentioned in the Police Report and main petition which also affects the public tranquility of the locality.

So being satisfied a proceeding is drawn up U/S 145 Cr.P.C. and due to emergency the Disputed land is attached U/S 146(1) Cr.P.C. and prohibiting both the party for the entering into the D/L until further order. Scheduled mentioned above.

Ask Circle Officer, Tezpur concerned to identify the D/L with revenue officials for the attachment of D/L located within the land schedule given above.

Ask concerned Police station to execute the attachment order immediately and report compliance before next date fixed.

Ask both the parties to appear before the court with related documents for hearing on 21-01-2013.”

#### ANALYSIS OF THE IMPUGNED ORDER

8. On perusal of the above impugned order and the relevant case records, it transpires that the learned ADM, Sonitpur, Tezpur having satisfied upon consideration of the contentions made by the petitioner –OP No.1, herein, and the report thereon, dated 30-07-2012 submitted by the Tezpur PS, vide Non-FIR case No. 16/12 to the effect that there is serious apprehension of breach of peace arising out of the dispute over the possession of the disputed land, described in the schedule, between both the parties, drew up the proceeding u/s 145 CrPC and due to emergency situation, placed the disputed land, under attachment u/s 146 (1) CrPC, prohibiting thereby both the parties from entering into the disputed land until further order. It further appears that the learned ADM, Sonitpur, Tezpur, by the impugned order also directed the Circle Officer, Tezpur to identify the disputed land and asked both the parties to appear with the related documents for hearing on 21-01-2013. The ground that the police never stated about existence of apprehension of breach of public peace and tranquility arising out of the question of actual possession of the disputed land between both the parties apparently appears to be not based on proper appreciation of the contents of the police report, aforementioned.

9. The learned counsel for both the sides have fairly submitted that civil suit is pending regarding the disputed land involved in the instant proceeding. Pendency of civil suit over the same subject matter does not bar the jurisdiction of the learned Magistrate u/s 145/146 of CrPC, which is invoked only in emergency situation to prevent breach of public peace relating to possession of the land in question.

10. For the above stated reasons, this Court is of considered opinion that the learned ADM, Sonitpur, Tezpur has passed the impugned order, in conformity with law and as such, not required to be interfered with in revision.

11. In the result, the revision stands dismissed.

12. Send back the record of Misc. Case No. 30/145/146/2012 along with a copy of this judgment and order.

Given under my Hand and Seal of this Court on this the 31st day of May, 2014.

**( A. BORTHAKUR )**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**

Typed to my dictation and corrected by me, and each page bears my signature:

**(A. BORTHAKUR)**  
**SESSIONS JUDGE,**  
**SONITPUR :: TEZPUR**

Typed by me,  
on dictation :

(J.K. Muru, Steno )

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