

**IN THE COURT OF THE ADDITIONAL SESSIONS
JUDGE**

SONITPUR :: TEZPUR.

Criminal Revision No. 20 (S-2) 2010.

Sri Hari Ch. Sahu Revision Petitioner

- Versus -

1. Sri Mukeswar Sahu.
2. State of Assam Opposite Parties.

**Present : Shri S. K. Sarma,AJS,
Addl. Sessions Judge,
Sonitpur, Tezpur.**

Appearance :

For the Revision Petitioner : Mr.S.Borthakur , Advocate

For the Opposite Party No.1 : Mr. S. Singh, Advocate.

For the opposite Party No.2 : Mr. H.P.Sedai,
Addl. Public Prosecutor .

Date of argument : 21-09-2011

Date of judgment : 01-10-2011.

J U D G M E N T

1. This revision has been preferred by the petitioner/2nd party against the order dated 12.4.2010 passed by the learned Addl. District Magistrate, Sonitpur, Tezpur in Misc.Case No. 1/145/146/2010 under section 145/146 of Cr.P.C. whereby the learned Addl. District Magistrate, Sonitpur, Tezpur drawn up a proceeding under section 145 Cr.P.C. and also attached the disputed land under section 146 Cr.P.C.

2. The facts leading to present revision petition may be espoused from the case record is that the Opposite Party No. 1 had filed a petition before the Executive Magistrate, Tezpur under section 107/145/146 Cr.P.C. alleging inter alia that he is the owner and possessor of a plot of land measuring 1 Bigha 2 Katha 1 Lessa covered by dag No. 355 of KP No. 96 of village Tengabasti, Mouza Nagsankar Dist. Sonitpur as described in the petition. There is an English Medium school on the said plot of land by the name as Bethal English Medium School. On the eastern portion of the said land, there is no boundary wall. The boundary has for long been marked by a dhap. The revision petitioner has a plot of land covered by Dag No.356 of PP No.24 which is adjacent to the land of the opposite party No. 1. On 30.3.2010 the revision petitioner taking advantage of not having the boundary wall on the eastern boundary of Dag. No.355 made arrangement for erecting a boundary wall covering dhap. But subsequently he came to know that the revision petitioner attempted to construct a RCC building there. On protest the revision petitioner threaten to cause harm to him. Again on 3.4.2010 the revision petitioner made arrangement for making construction. The revision petitioner has encroached an area of 10 x 30 feet on eastern boundary land of the opposite party No. 1 which compelled him to file the petition for drawing proceeding under the aforesaid section of law. On the basis of the said application the learned Addl. District Magistrate, Sonitpur vide order dated 12.4.2010 drawn up a proceeding U/S 145 of Cr.P.C. and also attached the disputed land U/S 146 of Cr.P.C.

3. Being aggrieved and dissatisfied with the said order the 2nd party/revision petitioner has filed the present revision petition. The revision petitioner has assailed the impugned order mainly on the grounds that the learned Addl. District Magistrate, Sonitpur ought not to draw up proceeding against the present petitioner as the dispute is of civil nature and the dispute is for boundary of two parties, so, criminal court has no jurisdiction to pass any order. As the dispute is a private dispute and not a public dispute as such the learned court has ought not to have draw up the proceeding under section 145 Cr.P.C. The learned court below passed the impugned order without applying his

judicial mind for which the same is not tenable in the eye of law and liable to be set aside.

4. On perusal of the memo of revision and after hearing the learned counsel for the revision petitioner this Court is pleased to call for the record and after receipt of the LCR the case is posted for hearing.

5. I have gone through the LCR also heard the learned counsel for both sides.

6. During the course of hearing learned counsel for the Petitioner Mr.Borthakur has contended as the dispute is a dispute between two parties and a private dispute and as such the learned Executive Magistrate has no jurisdiction to invoke the provision of 145/146 of Cr.P.C .

7. It was next contended that the learned Executive Magistrate passed the attachment order without hearing the parties. No opportunity was given to the revision petitioner for hearing before passing of the said order. He has not recorded his satisfaction that passing of attachment order is necessary and as such the impugned order is liable to be set aside.

8. Learned Counsel for the opposite party No. 1 Mr. Singh has submitted that if the complaint petition filed by the opposite party No.1 before the learned Executive Magistrate is read specially paragraph 3,7,8 and 9 which remains uncontroverted due to non submission of any reply by the petitioner, it is clear that the boundary dispute arising due to starting of construction by the petitioner have created such a situation that running of the school become difficult and there was reasons for apprehension of breach of public peace and tranquility. It is submitted that the ground mentioned in para 7 of the revision petition supports the case of the opposite party No.1. The opposite party No .1 in para 2 and 4 of his petition stated about his own land and the land of the petitioner and

the dispute relates to the boundary in between these two plots of land belonging to the petitioner and the opposite party No.1.

9. Mr. Sing in his written argument submitted that as per the provision of section 145 Cr.P.C. a Magistrate may be satisfied either on the basis of the police report or upon other information and draw up a proceeding under section 145 Cr.P.C. The opposite party No. 1 sworn an affidavit in support of his petition. Asking for a police report in all the situation and thereby causing delay will be nothing but defeating the very object of providing an urgent relief in case of emergency under section 145 Cr.P.C.

10. Mr. Singh has referred the decision of Hon'ble Gauhati High Court reported in 2007(4) GLJ 188.

11. LCR reveals that the that the Opposite Party No. 1 had filed a petition before the Executive Magistrate, Tezpur alleging interalia that that he is the owner and possessor of a plot of land measuring 1 Bigha 2 Katha 1 Lessa covered by dag No. 355 of KP No. 96 of village Tengabasti, Mouza Nagsankar Dist. Sonitpur as described in the petition. There is an English Medium school on the said plot of land by the name as Bethal English Medium School. On the eastern portion of the said land, there is no boundary wall . The boundary has for long been marked by a dhap. The revision petitioner has a plot of land covered by Dag No.356 of PP No.24 which is adjacent to the land of the opposite party No. 1. On 30.3.2010 the revision petitioner taking advantage of not having the boundary wall on the eastern boundary of Dag. No.355 made arrangement for erecting a boundary wall covering dhap. But subsequently he came to know that the revision petitioner attempted to construct a RCC building there. On protest the revision petitioner threaten to cause harm to him. Again on 3.4.2010 the revision petitioner made arrangement for making construction. The revision petitioner has encroached an area of 10 x 30 feet on eastern boundary land of the opposite party No. 1 which compelled him to file the petition for drawing proceeding under the aforesaid section of law. On the basis of the said application the learned Addl. District Magistrate, Sonitpur vide order dated

12.4.2010 drawn up a proceeding U/S 145 of Cr.P.C. and also attached the disputed land U/S 146 of Cr.P.C. From the petition filed by the 1st party it appears that the dispute is between two parties regarding the possession of land .As per the provision of the sub-section (1) of section 145 Cr.P.C the Magistrate is empowered to draw up a proceeding if he satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of 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 doing 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 statement of their respective claims as respects of the facts of actual possession of the subject of dispute.

12. In the present case, the learned Addl. District Magistrate, Sonitpur had drawn up the proceeding under section 145 Cr.P.C on 12.4.2010 and also attached the disputed land under section 146 Cr.P.C. and recorded his satisfaction that there is serious apprehension of breach of peace among the parties over the possession of disputed land which also effect the public peace and tranquility in locality. But he has not recorded his grounds of satisfaction why he treated the said dispute as a dispute which likely to cause breach of peace and public tranquility. As discussed above from the petition filed by the opposite party No. 1 it appears the dispute is between two parties regarding the possession of land and a private dispute. Though there is a school but the general public are not involved in the dispute and the dispute is out and out a private dispute which does not empower an Executive Magistrate to assume jurisdiction under sub-section (1) of Section 145 Cr.P.C. As the drawing of the proceeding is without jurisdiction as such the attachment order is also without jurisdiction and as such illegal and liable to be set aside.

13. In the result the revision succeeds and the order dated 12.4.2010 passed by the learned Addl. District Magistrate, Sonitpur in Misc. Case No. 1/145/146/2010 is hereby set aside.

14. Send down the LCR along with a copy of this order to the court below.

15. Given under my hand and seal of this Court on this 1st day of October, 2011.

(S. K. Sarma)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Dictated and
corrected by me.

(S. K. Sarma)
Addl. Sessions Judge ,
Sonitpur, Tezpur.