

2. The brief fact of the case is that Smti Indreswari Bhuyan (since deceased) i.e. the mother of the petitioner No. 1 Pramod Bhuyan was the owner and possessor of the land measuring 2 kathas out of total land measuring 2 bighas 2 kathas covered by PP NO. 66:20:22 (old) 175 (new) under Dag No. 277 (old) 394 (new) of village Barikachuburi, Mouza – Mahabhairab under Tezpur Police Station. The mother of the petitioner No.1 constructed pucca house on 2 kathas of land covered by PP NO. 175 under Dag No. 394 of village Barikachuburi, Mouza – Mahabhairab under Tezpur Police Station in the district of Sonitpur, Assam for more than 60 years and erected pucca boundary wall on the land. After the death of Indreswari Bhuyan, the petitioner No.1 became the owner and possessor of the aforesaid land and have been in continuous possession of the said land and house with his family members.

The Opposite Party No.1 Sri Khira Sarmah mutated his name in the land of Dag No. 394 and started claiming the land of the petitioner No.1. The O.P. NO.1 never been in possession over the disputed land. The O.P. No.1 has silent for several years and thereafter in order to harass the petitioner filed the false petition before the District Magistrate and on 24-05-2011 the Additional District Magistrate, Tezpur in Misc. Case No. 3/145/146/2011 passed the impugned preliminary order U/s. 145 Cr.P.C in respect of the land measuring 1 katha 10 lessas under Dg No. 394 of PP BO. 175 of village Barikachuburi Mouza – Mahabhairab and attached the land.

3. Being highly aggrieved and dissatisfied with the preliminary order dated 24-05-2011 passed by the learned Additional District Magistrate, Tezpur, u/s. 145 Cr.P.C, petitioners preferred this revision petition on the following grounds :

- i) for that the impugned preliminary order dated 24-05-11 passed by the learned

Additional District Magistrate, Tezpur in Misc. Case No. 3/145/146/2011 u/s. 145 Cr.P.C is against law and materials on record and that the learned Additional District Magistrate has erred in law while drawing proceedings U/s. 145 Cr.P.C;

ii) for that the learned trial Magistrate has failed to consider that the alleged dispute is private in nature;

iii) for that the learned trial Magistrate erred in law in passing the impugned order dt. 24-05-2011 as there was no apprehension of public breach of peace and tranquility in the locality in respect of the disputed land and the preliminary order passed by the learned Additional District Magistrate, Tezpur is liable to be set aside.

4. I have heard the arguments advanced by the learned counsel of both sides. I have also gone through the order dated 24-05-2011 passed by the learned Additional District Magistrate, Tezpur as well as the relevant case record.

5. Learned counsel for the petitioners has argued that it is the dispute between the two parties, as such, the Executive Magistrate has no jurisdiction to invoke the provision of Section 145 or 146 Cr.P.C. It was further contended that the learned Executive Magistrate passed the attachment order without hearing the other party and prohibiting the petitioners/2nd party to enter into the disputed land which is purely illegal. In attachment order both the parties should be asked not to enter into the disputed land and the

impugned preliminary order passed by the learned Additional District Magistrate is liable to be set aside.

6. In a case **2004 (Suppl) GLT 263** wherein Hon'ble Gauhati High Court has held that "*normally attachment order should be passed after hearing the parties. Only in an exceptional circumstance, attachment order can be passed ex parte. It is necessary for the Court to record reasons for satisfaction that passing of attachment order is necessary.*"

In the case in hand, learned Additional District Magistrate has not recorded his satisfaction that passing of attachment order is necessary to avert breach of peace and tranquility in the disputed land.

From the case record of 3/145/146/11 it is seen that on 18-05-11 the O.P/ Ist party Khiro Sarmah filed a petition before the O/C of Tezpur PS stating that he has a plot of land measuring 1 katha 10 lesas under Dag No. 394 of PP NO. 175 situated at village Barikachuburi, Mouza – Mahabhairab under Tezpur Police Station in the district of Sonitpur, Assam and the same is adjacent to the boundary of the 2nd party/petitioners. The said land is still vacant as he stays in his house which is in another plot of land. But taking the advantage of his absence, both the petitioners have illegally trespassed into the land and constructed a pucca house. When the matter came to his knowledge he asked the petitioner to stop his act but he did not pay heed to his request. Therefore, he lodged the complaint before the Tezpur Development Authority to stop such illegal construction. On his complaint the Tezpur Development Authority served notice to the petitioners but despite of receipt of the said notice, the petitioners did not stop the said work. After enquiry police submitted a non FIR case praying to direct the petitioners to stop the construction work and on the basis of the report, learned

Additional District Magistrate had drawn up a proceeding U/s. 145 Cr.P.C and attached the disputed land U/s. 146(1) Cr.P.C.

From the petition filed by the OP NO.1 Khiro Sarmah, it appears that the dispute is between the two parties regarding the possession of land and boundary area and nothing appears that the general public are involved in the dispute.

Section 145(1) Cr.P.C says that ***"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."***

In the instant case, the learned Additional District Magistrate, Tezpur had drawn up a proceeding U/s. 145 Cr.P.C on 24-05-2011 and also attached the disputed land U/s. 146(1) Cr.P.C and recorded his satisfaction that there is serious apprehension of breach of peace among the parties over the possession of the disputed land as mentioned in the schedule of the police report which also affect the public tranquility in locality but the learned Additional District Magistrate, Tezpur failed to show any reasons/grounds of his satisfaction while he treated the said dispute as a dispute which likely to cause serious apprehension of breach of peace and public tranquility in the locality.

7. Learned counsel for the petitioners argued before the Court that a Civil Case bearing TS No. 63/11 is pending in the Court of Munsiff, Tezpur in the same matter between the same parties and the learned counsel for the O.P also admitted the fact that a civil case is pending between the partes. Learned counsel for the petitioners further argued that if Civil case is pending, order U/s. 145 Cr.P.C. is not justifiable.

8. It is an admitted fact that the dispute is between the two parties regarding possession of land and boundary area and the general public are not involved in the said dispute.

9. In a case reported in 2008 (1) GLT 434 Hon'ble Gauhati High Court held that "***a private dispute or a dispute which has no bearing on public order or tranquility can not be regarded as dispute and such a dispute does not empower an Executive Magistrate to assume jurisdiction under sub section 1 of Section 145 Cr.P.C.***"

10. It appears that the dispute in question is a dispute between two parties regarding possession of land and the dispute did not involve the members of the public, in general and such a dispute, therefore, fell outside the purview of the provision of Sub-Section (1) of Section 145 Cr.P.C. More so learned Additional District Magistrate had not assigned the grounds of his satisfaction for holding that the dispute in question had led to apprehension of breach of peace in general public.

11. While considering the present case, it needs to be borne in mind that the dispute between the two parties is not amenable to the jurisdiction of an Executive Magistrate U/s. 145(1) Cr.P.C, unless the dispute has the elements of breach of peace of the public, in general.

As the drawing up of the proceeding is without jurisdiction of Executive Magistrate, as such, the attachment order is also without jurisdiction and also substantially effecting the rights of the parties and can not be treated as interlocutory order.

O R D E R.

12. In the result, the revision is allowed. The order passed by the learned Additional District Magistrate, Tezpur on 24-05-2011 is set aside and the attachment order is hereby vacated.

13. Given under my hand and seal of this Court on this 15th day of March, 2012.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Dictated and
corrected by me.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur, Tezpur.

Typed by me.

(R. Hazarika)
Steno.