

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
SONITPUR :: TEZPUR.**

Criminal Revision No. 9(S-1) 2011.

1. Md. Mafijuddin Ali. Revision Petitioner

- Versus -

1. Md. Wajuddin Respondent(Opposite Party).

**Present : Mrs. M. Nandi,AJS,
Addl. Sessions Judge,
Sonitpur, Tezpur.**

Appearance :

For the Revision Petitioner : M. Islam , Advocate.

For the Opp. Party : Sri M.Ch. Baruah.

Date of argument : 19-03-2012.

Date of judgment : 02-04-2012.

J U D G M E N T.

1. This revision petition is directed against the preliminary order dated 23-11-2010 in Misc. Case No. 8/145/146/2009 passed by the learned Additional District Magistrate, Sonitpur, Tezpur.

2. The brief fact of the case is that the respondent Wajuddin lodged a complaint before Additional District Magistrate, Sonitpur, Tezpur stating inter-alia that he has a plot of land measuring 7 bighas 5 lessas covered by Touzi Patta No. 92/93 situated at village Borbheti, PO & PS Sootea, District Sonitpur, Assam

under Naduar Revenue Circle. He is the owner and possessor of the same land and necessary revenue of the aforesaid land has been paid by the respondent in due time. According to the respondent, the petitioner along with his family members forcibly tried to capture the land by threatening the respondent with heavy weapons on 09-10-008. Therefore, the respondent prayed to draw up a proceeding U/s. 145/146 Cr.P.C to prevent the petitioner from capturing the said land.

Learned Additional District Magistrate, Sonitpur, Tezpur sent the complaint case to Sootea Police Station for enquiry. Accordingly, ASI Sri S. Sarkar of Sootea PS on 17-10-2008 submitted a report that the disputed land is the inherited property of both the parties and both parties are dangerous in nature. There are frequent quarrel among them over the aforesaid land. Therefore, the said land should be attached and crops have to be auctioned. The case was registered a Misc. Case No. 8/145/146/09 after the police report.

3. Being highly aggrieved and dissatisfied with the preliminary order dated 23-11-2010 passed by the learned Additional District Magistrate, Tezpur, in Misc. Case NO. 8/145/146/09 the petitioner has preferred this revision petition on the following grounds :

- i) for that the learned Additional District Magistrate, Tezpur erred in law prohibiting only the petitioner from entering into the disputed land vide order dated 23-11-2010;
- ii) for that the learned ADM, Sonitpur, Tezpur passed the order without paying any attention to the situation created over the

disputed land by the respondent and the order is not self explanatory, as such, the order is not maintainable in law and liable to be set aside;

iii) for that the learned Addl. District Magistrate did not issue notice to the petitioner and did not allow the petitioner to submit the written statement;

iv) for that the learned Addl. District Magistrate had acted according to the police report. He should have prohibited both the parties to enter into the disputed land and hence, the order dt. 23-11-2010 passed by the learned ADM, Tezpur is liable to be set aside.

4. I have gone through the revision petition, the order dated 23-11-2010 passed by the learned Additional District Magistrate, Tezpur as well as the relevant case record.

I have also heard the argument advanced by the learned counsel of both sides.

5. I have seen the petition filed by the respondent Wajuddin in Misc. Case No. 8/145/146/09 wherein he stated that he is the owner of a plot of land measuring 7 bighas 5 lessas covered by Touzi Patta No. 92/93 situated at village Borbheti, PO & PS Sootea, District Sonitpur, Assam under Naduar Revenue Circle and he regularly paid the land revenue of the said land. The petitioner along with some other persons trying to enter into his land forcibly and when he intervened the petitioner did not pay any heed to his request and assaulted him with dao, lathis etc causing injuries on his person. On the basis of the petition one police report was called for from Sootea Police Station. Police of Sootea PS reported that the disputed

land is ancestral property of both the parties and they used to quarrel each other in respect of the disputed land and there is every possibility of breach of peace and tranquility and he prayed to draw a proceeding U/s. 145 Cr.P.C. with a request to attach the same.

On the basis of the said report of police, learned ADM, Sonitpur, Tezpur passed an order stating that there is serious apprehension of breach of peace among the parties over the possession of the disputed and which also effect the public tranquility in the locality. So, being satisfied a proceeding U/s. 145 Cr.P.C was drawn up and due to emergency the disputed land is attached U/s. 146(1) Cr.P.C. forthwith prohibiting the 2nd party from entering into the disputed land until further order.

6. Learned counsel for the petitioner has submitted that this is a dispute between two parties. There is no question of involvement of public at large and so, the proceeding U/s. 145 Cr.P.C was drawn up illegally and attachment of land is also not as per provision of law.

Learned counsel for the petitioner also submitted that as it is reported by police that both the parties are owners of the disputed land so the Magistrate should have prohibited both the parties to enter into the disputed land. As such, prohibiting the petitioner from entering into the disputed land is not maintainable in law.

7. On the other hand, learned counsel for the respondent has argued that the order passed by the learned Additional District Magistrate, Sonitpur, Tezpur is not final order so the petitioner will get opportunity to prove his case in Misc. Case No. 08/145/146/09.

As per report of the police of Sootea PS, both the parties are the owners of the disputed land. So, the dispute appears to be a

private one between the two private parties. Learned ADM, Tezpur also did not show any ground why he felt that there was breach of peace over the disputed land. **In 1991 Cr.L.J 1769 (Gauhati High Court)** the Hon'ble High Court has held that the proceeding U/s. 145 Cr.P.C. can not be drawn up unless the Magistrate is satisfied that the private dispute may disturb the peace or tranquility of the area.

Learned counsel for the petitioner also submitted that the dispute is purely a civil nature between the two private parties, as such, no proceeding U/s. 145 CR.P.C should be drawn.

8. In the case **(1986) 2 GLR 177** it was held that - **"if the disputes are private disputes or not required to be taken care of, for maintenance of public order and tranquility, they should be dropped with a direction to the parties to fight out the litigation in an appropriate Civil Court."**

Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of vibrating a general disturbance of public tranquility.

Section 145 of Cr.P.C clearly stated that to assume jurisdiction the Magistrate must be satisfied that the dispute is likely to cause a breach of peace. It is not a breach of mental peace of the parties but apprehended breach of peace in the locality. Ordinarily a person dispossessed of property must sue for recovery of specific immovable property U/s. 5 and 6 of the Specific Relief Act and if there is threat to dispossess him he should institute a suit to obtain injunction. These are forum for establishing the right of the litigants. A proceeding U/s. 145 Cr.P.C is therefore, an extra-ordinary provision to grant extra-ordinary relief when there is likelihood of breach of peace in the locality. The final order of magistrate is subject to the decision of the Civil Court. It is, therefore, seen that private dispute

between two persons which does not disturb law and order or occasion a breach of the peace in the locality the forum for getting relief is the civil Court of competent jurisdiction.

In Ram Sumer Puri Mahant vs. State of UP, AIR 1985 SC 472, it was held that- "*the quint-essence of the decision of the Supreme Court is to discourage proceeding U/s 145 Cr.P.C as far as possible. It is necessary to avoid multiplicity of litigation which is against the interest of the parties and in most of the cases public time is wasted over meaningless and unnecessary proceedings.*

In the said case, a note of warning has been sounded by the Hon'ble Supreme Court that the Magistrate should initiate proceeding U/s 145 of the Code when the essential elements of the section are found to be present in the case.

9. In the case in hand, police of Sootea PS clearly reported that the disputed land is the property of both the parties and they have a personal dispute over their ancestral properties and both the parties are equal right over the said disputed land.

It is on the report of police that the petitioner had been in possession in half part of the land for a long time as part of his ancestral property and he claimed that he had purchased other part of the land and both the parties have dispute over the said landed properties. So, it is crystal clear that the dispute is between both the parties. In such case there is no question of apprehension of breach of peace and tranquility over the disputed land in the locality and the general public are not involved in the case.

10. Under such circumstances, the initiation of proceeding U/s 145 Cr.P.C and attachment of the disputed land are not justified.

O R D E R.

11. In the result, the revision petition is allowed. The order dated 23-11-2010 passed by the learned Addl. District Magistrate, Sonitpur, Tezpur in Misc. Case No.08/145/ 146/09 is hereby set aside.

12. Send back the LCR along with a copy of this Judgement.

13. Given under my hand and seal of this Court on this 2nd day of April, 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.