

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 10th June'14.

Crl. Revision No.01 of 2012.

(Arising out of the order dated 17.06.2011 passed by the learned ACP-cum-Executive Magistrate, Bhubaneswar in C.M.C. No.762 of 2010.)

Kailash Chandra Pati, aged about 42 years,
S/o. Narayan Pati, At – Injana, P.O. - Kalarahanga,
P.S. - Mancheswar, Bhubaneswar,
Dist. - Khurda.

... **Petitioner.**

-V e r s u s-

1. Narendra Behera, aged about 61 years,
S/o. Late Sana Behera.
2. Surendra Pradhan, aged about 56 years,
S/o. Late Labani Pradhan.
3. Anama Pradhan, aged about 26 years,
S/o. Hadu Pradhan.
4. Dibakar Pradhan, aged about 46 years,
S/o. Artatrana Pradhan.
5. Prakash Das, aged about 29 years,
S/o. Laxmidhar Das.
6. Bhubana Behera, aged about 23 years,
S/o. Kanchi Behera.
7. Kalandi Parida, aged about 41 years,
S/o. Krushna Parida.

8. Bika Pradhan, aged about 31 years,
S/o. Gurubari Pradhan.
9. Ganesh Rout, aged about 41 years,
S/o. Hrushi Rout.
10. Babu Behera, aged about 31 years,
S/o. Gunanidhi Behera.
11. Dambaru Pradhan, aged about 31 years,
S/o. Gunanidhi Pradhan.
12. Santosh Pradhan, aged about 26 years,
S/o. Sukanta Pradhan.
13. Saraba Pradhan, aged about 36 years,
S/o. Siba Pradhan.
14. Hruda Parida, aged about 41 years,
S/o. Late Babaji Parida.
All are of Village – Injana, P.O. - Kalarahanga,
P.S. - Mancheswar, Bhubaneswar, Dist. - Khurda.
15. Mitu @ Debi Prasad Nayak, aged about 36 years,
S/o. Bikram Kumar Nayak, Proprietor of
M/s. Maa Sarala Sweets, At – KIIT Square,
Patia, P.S. - Chandrasekharapur, Bhubaneswar,
Dist. - Khurda.

... **Opp. Parties.**

Counsel :

For Petitioner -- Shri P.R. Sahoo & Associates.
For Opp. Parties -- Shri M.K. Chhotray & Associates

Date of conclusion of argument : 05.06.2014.

Date of order : 10.06.2014.

O R D E R

This revision is filed against the order dated 17.06.2011 passed by the learned ACP-cum-Executive Magistrate, Bhubaneswar in C.M.C. No.762 of 2010 for not giving relief to the petitioner on the petition filed by him under section 144(2) of the Cr. P.C.

2. Factual matrix leading to the case of the petitioner is that he is the owner in possession of private plots No.1354 under khata No.201 (new 391/106) measuring an area of Ac.0.65 decimals; No.1356 under khata No.59 measuring an area of Ac.0.14 decimals; No.1360 under khata No.201 measuring an area of Ac.0.20 decimals; and No.1361 under khata No.305 with an area of Ac.0.40 decimals. In addition, he is also in possession of two Government plots bearing No.1352/1578 and No.1355 under khata No.408 measuring an area of Ac.1.45 decimals having encroached the same. He has raised trees and constructed a building on the encroached Government land. On 25.07.2010 at about 4 P.M., opposite party No.15, along with other opposite parties, entered the Government plots encroached by the petitioner forcibly and damaged the trees standing thereon. After such incident, the petitioner approached the local police, but no relief was made available to him. So, he filed a petition under section 144(2) of the Cr.P.C. before the learned Executive Magistrate, Bhubaneswar to restrain the opposite parties from creating any nuisance over the schedule properties.

3. The opposite parties filed objection stating, inter alia, that they have never encroached the private plots of the petitioner, rather they have constructed a road on the disputed Government land leading to their respective private plots, which are behind the private plots of the petitioner. The disputed Government land is "Gochara" in nature and the public have got every right to use the same and the petitioner has no exclusive

right to stake claim thereon. So, they prayed to reject the petition of the petitioner.

4. The learned Executive Magistrate called for a report from the concerned IIC pursuant to which the IIC, Mancheswar Police Station reported that the disputed Government land is a Gochara land and the petitioner encroached the same and did not allow the opposite parties to construct road thereon. In spite of intervention of the local people, the petitioner did not cooperate, causing harassment to the opposite parties. So, the IIC, Mancheswar PS requested the opposite parties to execute bond.

5. The learned Executive Magistrate, after hearing both the parties and perusing the report of the IIC, passed an order at the first instance directing both parties to maintain status quo in respect of the disputed Government land with a further direction to the opposite parties not to interfere with the private land of the petitioner. At the same time, the learned Court below directed both the parties to move the appropriate forum for redressal of their respective claims.

6. Being aggrieved by such order of the learned Executive Magistrate, the petitioner has filed the present revision stating that the impugned order is illegal and no order, either dismissal or allow of the petition, was passed. It has also been alleged, inter alia, that the learned Court below has erred in law by not passing any order on the petition filed by the petitioner to convert the proceeding and dispose of under section 145 of the Cr. P.C.

7. Learned counsel appearing for the petitioner has challenged the impugned order contending that the learned Executive Magistrate has committed error in appreciating the pleading and contention of the petitioner in its proper perspective and failed to pass any order on the prayer made.

8. On the contrary, learned counsel appearing for the opposite parties have forcefully argued that the impugned order does not suffer from any infirmity justifying interference by this Court.

9. On perusal of the entire record, it appears that there is no dispute over the private plots of the petitioner; but, the dispute has cropped up over the Government land. It is admitted by the opposite parties in their show cause before the lower Court that the petitioner is in forcible possession of the disputed Government land. But, there is no way to ingress and egress to their private plots, which are behind the private plots of the petitioner. Finding no other alternative, the opposite parties constructed a road over the disputed Government land to go to their respective private plots. So, they claim the necessity of using the path for the purpose. They denied about raising of trees by the petitioner over the disputed Government land and, according to them, those trees are in existence since long. Be that as it may, the question hinges on the possession of the respective parties over the disputed Government land, although the ownership admittedly remains with the Government. The order-sheets of the lower Court show that on 14.12.2010, a petition was

filed to convert the proceeding into one under section 145 of the Cr. P.C. The petition dated 14.12.2010 filed by the petitioner shows that the copy thereof has not been served on the other side and it is essential that the possession should be declared under section 145 of the Cr. P.C. But, unfortunately, neither final order nor interim order of the learned Executive Magistrate discloses about passing of any order on the petition to convert the proceeding under section 145 of the Cr. P.C. From the factual matrix, as discussed above, the dispute lies with the possession of the respective parties over the disputed Government land. Of course, the Government can evict the encroachers.

10. As a matter of fact, as per the petitioner, there is a case initiated against the petitioner for his encroachment of the Government land. But, all those things can be considered in a revenue case. When there is a proceeding under section 144 of the Cr. P.C. and the petitioner prayed to convert the proceeding under section 145 of the Cr. P.C. and particularly when the dispute lies with the right of possession over the disputed Government land between the parties, it ought to have been disposed of by the impugned order. The final order of the learned Executive Magistrate only shows that both parties should maintain the nature and character of the disputed Government land with liberty to move the proper forum for redressal of their claims.

11. The provision of section 144 of the Cr. P.C. is attracted only in emergency and the power can be exercised for

the purpose of preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility. The Magistrate must apply his mind to see if the matter is of such urgency. On the other hand, section 145 of the Cr. P.C. applies only to those cases in which two or more persons claim actual possession over the disputed property giving rise to a dispute regarding possession which is likely to cause a breach of the peace. On the contrary, right to possession is to be determined by the Court under section 145 of the Cr. P.C. The order of the learned Executive Magistrate by not speaking on the petition of the petitioner to convert the same into a proceeding under section 145 of the Cr. P.C. and finally addressing the parties to seek redressal in proper forum is not in accordance with law.

12. The Court is supposed to pass an order on every petition after affording reasonable opportunity to the respective parties. When there is a petition filed by the petitioner to convert the proceeding into the proceeding under section 145 of the Cr. P.C., the silence on the part of the learned Executive Magistrate on the prayer amounts to impropriety of the order passed finally. It is true that the learned Executive Magistrate in consonance with the report of the IIC, Mancheswar Police Station has directed both parties to maintain the nature and character of the disputed Government land, but failed to pass necessary orders on the proceeding under section 144 of the Cr.P.C. on the disputed Government land.

13. In view of the aforesaid analysis, I find that the order dated 17.06.2011 passed by the learned ACP-cum-Executive Magistrate, Bhubaneswar in C.M.C. No.762 of 2010 suffers from illegality warranting interference by this Court. Resultantly, the impugned order is liable to be set aside. Hence ordered :

O R D E R

The criminal revision is allowed without cost. The order dated 17.06.2011 passed by the learned ACP-cum-Executive Magistrate, Bhubaneswar in C.M.C. No.762 of 2010 is hereby set aside. The matter is remanded to the learned ACP-cum-Executive Magistrate, Bhubaneswar with a direction to dispose of the petition filed by the petitioner on 14.12.2010 to covert the 144 Cr. P.C. proceeding into one under section 145 of the Cr. P.C. in accordance with law within a period of two months from the date of receipt of this order by affording reasonable opportunity to both the parties.

**Sessions Judge, Khurda
at Bhubaneswar.**

10.06.2014.

Dictated, corrected by me and pronounced in the open Court this day the 10th June, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

10.06.2014.