

Sunil Kumar Maity Vs. Rupadhar Bhuyan

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Court : Orissa

Decided On : Apr-29-1986

Reported in : 62(1986)CLT193; 1986(I)OLR660

Judge : K.P. Mohapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145, 146, 146(1) and 146(2)

Appeal No. : Criminal Revision No. 594 of 1985

Appellant : Sunil Kumar Maity

Respondent : Rupadhar Bhuyan

Advocate for Def. : S.K. Nayak-2, Adv.

Advocate for Pet/Ap. : S.S. Das, Adv.

Disposition : Petition allowed

Judgement :

K.P. Mohapatra, J.

1. This revision has been filed against the order passed by the learned Executive Magistrate, Kendrapara, dropping a proceeding under Section 145 of the Code of Criminal Procedure ('Code' for short) and directing continuance of the custodian of

the disputed land till a receiver is appointed by the Civil Court of competent jurisdiction.

2. On police report to the effect that there was apprehension of breach of peace relating to plot No. 7 appertaining to Khata No. 1 consisting of Ac. 1.00 of cultivable (and in mouza Tikayatnagar, the learned Executive Magistrate on 24-8-1985 initiated a proceeding under Section 145 of the Code and directed the parties to file their written statement. Later, he received a further police report to the effect that there was dispute with regard to the standing paddy crop which was subject to natural decay. On receipt of this report and after hearing both parties, the learned Executive Magistrate by order dated 14-11-1985 directed attachment of the subject of dispute and appointed a custodian in respect thereof under Sub-section (8) of Section 145 of the Code. In the meanwhile, the parties filed their written statements and produced documents. On hearing their arguments and on consideration of their written statements, as well as, the documents produced by them the learned Executive Magistrate dropped the proceeding and, while doing so, directed :

'...But the appointment of custodian will continue till a Receiver is appointed or any other arrangement for management of the property under dispute is made by the Civil Court. As soon as the Receiver is appointed by the Civil Court the custodian appointed by this Court will be directed to make over charge of the property to the Receiver so appointed'.

3. Learned counsel appearing for the petitioner has urged that after dropping the proceeding under Section 145 the learned Executive Magistrate had no further jurisdiction to appoint a custodian or direct continuance of the custodian in respect of the subject of dispute. Therefore, that part of the impugned order which relates to continuance of the custodian should be vacated. Learned counsel appearing for the opposite party, on the other hand, contended that the order is in substance one under Section 146(1) of the Code and so the learned Executive Magistrate was justified in directing continuance of the custodian in accordance with the provisions of Sub-section(2) thereof. In view of the contentions raised, the only point that falls for consideration is whether after dropping of a proceeding under

Section 145, the Executive Magistrate has further jurisdiction to direct appointment of custodian or continuance of the custodian already appointed in respect of the subject of dispute.

4. Sub-section (8) of Section 145 empowers the Executive Magistrate to make an order for the proper custody or sale of any crop or other produce of the subject of dispute during continuance of the proceeding under Section 145. It has no application to a case where the proceeding under Section 145 has terminated. To meet the emergency, there is specific provision under Section 146(2) provided an order has already been passed under Sub-section (1) thereof. In other words, if a case comes within the ambit of Section 146(1) and the subject of dispute is kept under attachment until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof, the Magistrate is competent to make such arrangement as he considers proper for looking after the property, or if he thinks fit, appoint a receiver thereof.

5. In this case, the learned Executive Magistrate has dropped the proceeding with the effect that the attachment of the subject of dispute has been withdrawn and, as a matter of fact, the preliminary order dated 24-8-1985 has been cancelled under Sub-section (5) of Section 145. Instead of using the word 'cancelled', the word 'dropped' has been used in the last para of the impugned order. As already referred to above, there is nothing in the four corners of the provision of Section 145 that after canceling the preliminary order and/or dropping the proceeding, the Magistrate is still competent to appoint a custodian or direct continuance of the custodian appointed during the proceeding. If such an order is made, it is the very negation of the order of dropping the proceeding under Section 145. The learned Executive Magistrate obviously had no intention of passing an order under Section 146(1), because, had he done so, he would have directed attachment of the subject of dispute in terms thereof, which was not done. In view of the above discussion, I am firmly of the view that after dropping the proceeding under Section 145, the learned Executive Magistrate had no jurisdiction to direct continuance of the custodian in respect of the subject of dispute. This part of the order is, therefore, liable to be vacated.

6. My attention was drawn by the learned counsel appearing for the parties that the custodian has harvested the standing paddy crop from the subject of dispute. There is, however, no information whether the paddy has been thrashed and sold. Any way, in view of the principle laid down by this Court in 61(1986) CLT 355, Hussain Jan Suleman v. Bhaktawar and Anr., the learned Executive Magistrate is competent to pass orders with regard to disposal of property after hearing both parties.

7. In the result, the criminal revision is allowed. The order passed by the learned Executive Magistrate directing continuance of the custodian with respect to the subject of dispute is vacated. He shall be free to pass orders for disposal of the property.

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