

Kashi Ram and Another.Vs. the State of U.P. and ors.

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Court : Allahabad

Decided On : Jun-23-2010

Judge : Raj Mani Chauhan, J.

Acts : [Constitution of India](#) - Article 226 ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145 or 146, 145 (1);

Appeal No. : Writ Petition No. 3720 (M/S) of 2010.

Appellant : Kashi Ram and Another.

Respondent : The State of U.P. and ors.

Judgement :

1. This writ petition under Article 226 of the constitution of India has been filed by the petitioners for issuing writ of certiorari to quash the order dated 26.4.2010 and 09.12.2004 passed by the Sub Divisional Magistrate, Nanpara, District Bahraich in trial no. 66/04/03 under Section 145/146 Cr. P.C.

2. The submission of learned counsel for the petitioners is that the petitioner no. 2 is the transferee of the disputed revenue plot while petitioner no. 1 is her husband. Opposite Party No. 3 claims to be owner of the disputed plot on the basis of succession. At the instance of opposite party no. 3, Sub Divisional Magistrate, Nanpara initiated proceeding under Section 145 Cr. P.C. And passed a preliminary order on 10.6.2004 thereafter the learned Sub Divisional Magistrate, Nanpara passed an order under Section 146 Cr. P.C. for attachment of the disputed plot.

The petitioners were second party and they challenged the order of attachment passed by the learned Sub Divisional Magistrate before the Sessions Judge, Bahraich by filing revision. The revision was finally disposed of by the learned Additional Special Judge (E.C. Act), Baharaich on 9.12.2004. The learned Additional Special Judge (E.C. Act) held that the revision was not maintainable as the impugned order was interlocutory order. The first party i.e. opposite party no. 3 thereafter moved an application before the learned Sub Divisional Magistrate for executing the order dated 9.12.2004 to attach the disputed plot. On the other hand the second party moved an application that no longer apprehension of breach of peace exists; rather the second party is in peaceful possession of the disputed plot. Since petitioner no. 2 purchased the disputed property. The learned Magistrate after hearing learned counsel for the parties ordered for enforcement of the order dated 9.12.2004 for attachment of the disputed plot which has been challenged by the petitioners.

3. Learned counsel for the petitioners submits that proviso to Section 145 (1) provides that the Magistrate may withdraw the order of attachment if there is no apprehension of breach of peace exists. The petitioners had moved an application that there was no apprehension of breach of peace, therefore, the Magistrate was required to call a report from the police concerned regarding the apprehension of breach of peace and to ascertain whether apprehension of breach of peace still exists but the learned Magistrate without passing any reasoned and speaking order on the application of both the parties ordered for enforcement of the attachment order dated 9.12.2004 which is illegal.

4. I agree with the submission of learned counsel for the petitioners. From a perusal of the impugned order, it appears that the learned Sub Divisional Magistrate without disposing of the application of both the parties has ordered for enforcement of the order dated 9.12.2004 for attachment of the disputed plot. The learned Magistrate was required to dispose of the applications moved by the parties by passing a reasoned and speaking order which has not been done by the learned Magistrate. The impugned order is, therefore, illegal and liable to be set aside.

5. The writ petition is, therefore, allowed and the impugned order dated 26.4.2010 passed by the learned Sub Divisional Magistrate is set aside and the learned Magistrate is directed to dispose of the applications moved by both the parties by passing speaking and reasoned order then proceed in accordance with law.

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