

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19349 of 2016**

Arising Out of PS. Case No.- Year-1111 Thana- District-

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1. Chhote Lal Yadav @ Chhote Lal, Son of Late Jangli Gope
 2. Jagdish Yadav @ Jagdish Gope, Son of Late Jangli Gope
 3. Asaro Devi, Widow of Late Baudhu Gope
 4. Krishna Yadav @ Krishna Gope
 5. Binod Yadav @ Binod Gope
 6. Jugeshwar Yadav,
 7. Jugal Yadav, all (petitioner no. 4 to 7) are Sons of Late Baudhu Gope
 8. Ram Lakhan Yadav @ Ram Lakhan Gope, Son of Late Baldeo Gope
 9. Ramanand Yadav @ Ramanand Gope, Son of Late Baldeo Gope, All Residents of Village/P.S.- Harnaut, District- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ran Bijay Prasad, Son of Kameshwar Singh, Resident of Village- Ganga Bigha, P.S.- Chandi, Distt. Nalanda
3. Raj Kumar Prasad, Son of Indradeo Prasad, Resident of Village- Khoja Etwarsarai, P.S.- Rahui, District- Nalanda
4. Laxmi Kant Prasad Singh @ Brijnandan Prasad, Son of Awadhesh Bihari Singh, Resident of Village- Ganga Bigha, P.S.- Chandi, District- Nalanda

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh, Advocate Mr. Kumar Lalit, Advocate
For the O.P. No.2 to 4	:	Mr. Prem Chand Yadav, Advocate
For the State	:	Mr. Binod Kumar No.3, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 03-04-2025

The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 01.02.2016 passed by learned 6th Additional Sessions Judge, Nalanda at Biharsharif in Cr. Rev.



No. 519 of 1993 whereby and whereunder the order dated 02.12.1993 passed under Section 145 of Cr.P.C. declaring the possession of Second Party (Opposite Parties) over the land in question by the Executive Magistrate, Nalanda at Biharsharif in the Case No. 804(M.P.)/1993 has been affirmed by dismissing the revision application preferred by the petitioners (first party).

2. Mr. Sidhendra Narayan Singh, learned counsel appearing for the petitioners who were first party before the court of Executive Magistrate in the Case No. 804 (M.P.)/1993 submits that the learned Executive Magistrate in his order dated 02.12.1993 not only declared the possession but also declared the title of the second party, who are here Opposite Parties in the proceeding initiated under section 145 of Cr.P.C. which is wholly without jurisdiction and in this regard, the findings given by the learned Executive Magistrate in his order dated 02.12.1993, may be perused. The petitioners (first party) initially preferred Cr. Rev. No. 519 of 1993 on 16.12.1993 making all three second parties as opposite party and the revisional court set aside the order dated 02.12.1993 in that revision of which order's copy has been filed as Annexure-3 holding therein that the order dated 02.12.1993 was wholly without jurisdiction. Though the original order passed under



Section 145 of Cr.P.C. was in the favour of all the three second parties and the revisional court's order dated 04.08.2009 was against all of them but out of them, only two second parties (Opposite Parties) namely, Ran Bijay Prasad and Raj Kumar Prasad had challenged that revisional court's order before this Court without making the third Opposite party namely, Laxmi Kant Prasad as a party in Criminal Revision No. 459 of 2010 due to which it can be deemed that the order dated 04.08.2009 of the revisional court attained finality so far as in favour of the first parties as against the O.P. No. 4, namely, Laxmi Kant Prasad Singh and the Cr. Rev. No. 459 of 2010 was not maintainable due to non-joinder of the necessary party (O.P. No.4), however, that revision was dismissed on 20.01.2013 for want of prosecution but the same was restored vide order dated 25.10.2013 but without any notice or information to the petitioners who were opposite parties in that revision petition and thereafter, the matter was remanded back on technical ground for afresh decision mainly considering that the documents filed by the first parties (petitioners) did not contain exhibit numbers and in this regard, the order dated 25.10.2013 filed as Annexure-5 may be perused and further, when the matter was again heard by the revisional court, the case record



of Executive Magistrate's court was not available before the revisional court as all the exhibit documents as well as File-A and File-B of the said case record had been eaten by termite (*deemak*) and the same were in torn condition and in this regard, Annexure-7, a letter, sent to the revisional court by the concerned court may be perused which shows that the revisional court passed the impugned order in the absence of the evidences adduced by both the sides before the court of Executive Magistrate. He further submits that the original order dated 02.12.1993 clearly goes to show that the documents filed by the first party/petitioners were not properly considered and exhibited which shows the prejudicial approach of the said court. He further submits that from the first paragraph of the original order dated 02.12.1993, it is clearly evident that in between both the parties there was a dispute of title and possession over the land in question during the relevant period of time which cannot be decided by an Executive Magistrate while exercising his power under Section 145 of Cr.P.C. and in this regard, the principle laid down by this Court in the case of **Dilip Poddar vs. State of Bihar & Ors.** reported in **2001 (3) PLJR 471** is relevant. He lastly submits that the initiation of the proceeding under Section 145 of Cr.P.C. in respect of the



disputed land by the Executive Magistrate was completely without jurisdiction as over the disputed land there were residential structure as well as commercial shops and in this regard, the evidence of the witnesses produced and examined by the second party before the court of learned Executive Magistrate which has been discussed in the original order dated 02.12.1993, may be perused. In support of this submission learned counsel has referred to the judgment of this Court passed in the case of **Dilip Poddar (supra)** and also placed reliance on the judgment of this Court passed in the case of **Netlal Rai vs. State of Bihar** reported in **2017 (4) PLJR 606** and the relevant paragraph nos. 6 and 7 upon which reliance has been placed, are being reproduced as under :-

“ 6. It is not in dispute that over the land in dispute, the residential house is situated. In the case of **Dilip Poddar vs. State of Bihar, Amod Kumar and Ors.** {2001(3) PLJR 471}, a Bench of this Court considered the similar matter and held in paragraphs-4 and 5 as under:—

“4. After hearing learned counsel of both the parties and on consideration of all materials it could be found that practically the fight is in between the parties regarding right of possession and the right to title over the property in question which definitely cannot be decided by a criminal court. The property in question is residential house and it is beyond the



power of the Executive Magistrate to decide the possession or otherwise. In that view of the matter, while passing the order of withdrawal of attachment order, the learned Executive Magistrate ought to have passed order dropping the proceeding as contemplated under Section 145 Cr.P.C. directing the parties to seek their grievances before the appropriate court.

5. Considering all aspects of the matter, in my considered view, the proceeding under Section 145 Cr.P.C. over a residential house was misconceived one on the face of it and the same ought to have been brought by the learned Magistrate while withdrawing the order passed under section 146(1) Cr.P.C. Be that as it may, without going into such details I hold that it was a fit case where whole of the proceeding under Section 145 Cr.P.C. ought to have been dropped and it is accordingly dropped. However, any observation made by the Executive Magistrate in respect of possession over the house in question of the parties shall not be binding on any of the parties in any other forum while seeking redressal by the aggrieved party.”

7. Admittedly, over the land in dispute, the house is situated, as such, the right and title in respect to the land in dispute could only be decided by the competent civil court and the proceeding under Section 145 of the Code of Criminal Procedure, is beyond the power of Executive Magistrate.”

3. Per contra, Mr. Prem Chand Yadav, learned counsel appearing for the O.P. No.2 to 4 argued that as per Section 145(2) of Cr.P.C. the expression “Land or Water” mentioned in



sub-Section (1) of Section 145 of Cr.P.C. includes buildings, markets, fisheries, crops or other produce of land, so, if on some part of the disputed land there was a building either in the form of residential house or shop then merely by this fact, the jurisdiction conferred upon an Executive Magistrate by virtue of Section 145 of Cr.P.C. does not oust, while in the instant matter, the area of the disputed land is 23 dismil and the alleged huts and shops do not cover the entire land and only a little portion of the said land was covered by the said buildings when the proceeding under Section 145 of Cr.P.C. was initiated. He further submits that the proceeding under Section 145 of Cr.P.C. was initiated in the year 1987 and the original order in the said proceeding was passed on 02.12.1993 and the actions under Section 145 of Cr.P.C. are in the nature of emergency to prevent the possibility of breach of peace and the proceeding under the said Section initiated in the present matter must be treated to be closed on account of the lapse of considerable period from the date of its inception, so, after the lapse of more than 30 years from the inception of the proceeding under Section 145 of Cr.P.C., there is no need to decide the legality of the initiation of the said proceeding as well as the merit of the original order as the purpose to initiate the said proceeding has already been



served and all the litigations relating to the said proceeding must be treated as being closed and in this regard, the observation made by the Hon'ble Division Bench of this Court in the judgment passed in the case of **Ram Chandra Rai & Ors. vs. The State of Bihar & Ors.** reported in **1991 (1) PLJR 36** is relevant.

4. Heard both the sides, perused the impugned order and the order dated 02.12.1993 passed under Section 145 of Cr.P.C. by the concerned Executive Magistrate and also gone through the other relevant materials which are available before this Court. In the instant matter, the preventive proceeding was initially initiated under Section 144 of Cr.P.C. against both the parties and the same was later on converted into 145 of Cr.P.C. Before the Executive Magistrate both the parties filed their respective written statements and also examined their witnesses in oral evidence. Though the learned Executive Magistrate did not give the details of exhibit numbers concerned to the documentary evidence adduced by the first party in his order and merely on that ground, the Cr. Rev. No. 459 of 2010 preferred by the second party against the order dated 02.12.1993, was remanded back to the trial court with a direction to proceed afresh and thereafter, the impugned order



dated 01.02.2016 was passed by the revisional court by which the revision petition preferred by the petitioners was dismissed. The proceeding under Section 145 of Cr.P.C. is not considered to be akin to the proceeding of trial and an omission as to not mentioning the exhibits number of one party in the order of such proceeding does not vitiate such proceeding if other evidences discussed in such order are sufficient to justify the conclusion of the Executive Magistrate. In the order dated 02.12.1993, the learned Executive Magistrate discussed all the oral evidences of both the parties in elaborate manner and also gave reference of the documents adduced by the petitioners, though the LCR concerned to the Case No. 804 of 1993 having the written statements of both the parties and their evidences, was produced in torn condition before the revisional court in which most of the documents were found to have been eaten by termite but however, in the order of Executive Magistrate all the evidences adduced by both the parties have been discussed elaborately and the same is sufficient for this Court to make a conclusion with regard to the main elements which are to be looked into while finding the justification of the initiation of preventive proceeding under Section 145 of Cr.P.C and also for finding out whether the conclusion of the Executive Magistrate



is proper or not. It is an admitted position that at the relevant time of the initiation of the preventive proceeding under Section 145 of Cr.P.C. there was a dispute in between both the parties which arose an apprehension of the likelihood of the breach of peace and in this regard, the written statements filed by both the parties discussed in the order of Executive Magistrate in itself are sufficient. In the proceeding under Section 145 of Cr.P.C. the Executive Magistrate is restricted to make an enquiry only to find out the actual preliminary possession of the parties over the disputed subject matter and the question of title as well as rightful possession is not to be decided and not required to be looked into by the Executive Magistrate. On behalf of the first party/petitioners, six witnesses were examined in the proceeding under Section 145 of Cr.P.C. out of them, two were not the resident of *Harnaut* village where the disputed land is situated and three witnesses were members of the first party and the sixth witness was not an independent person as observed by the Executive Magistrate and due to this reason, the evidence given by them was not considered by the learned Magistrate to be sufficient to substantiate the plea of the first party as to their possession being over the disputed land at the relevant time. While on the other hand, on behalf of the second party, six



persons were examined, out of them some are stated to be independent persons and they supported the *factum* of possession of the second party over the disputed land at the relevant time and their evidence is sufficient to prove the preliminary possession of the second party over the disputed land at the time when the proceeding under Section 145 was initiated against both the parties. Though in the light of the evidence of witnesses of both the parties, it appears that over the disputed land, some buildings were existing when the proceeding under Section 145 of Cr.P.C. was initiated but there is no material to show that over the entire disputed land such buildings were existing, however, the expression “ Land ” mentioned in Section 145 (2) of Cr.P.C., includes buildings or markets and the main conditions to initiate a proceeding under Section 145 of Cr.P.C. are that there must be a dispute relating to land or water or its boundaries owing to which there is a likelihood of the breach of peace and both the said conditions are fulfilled in the present matter. Though in the order dated 30.11.1993, the learned Executive Magistrate took into account the title of both the parties to some extent but in the operative portion of the said order confined himself to the possession of both the parties over the subject matter and gave his conclusion



to the extent of possession of both the parties. Accordingly, this Court finds the order dated 01.02.2016 passed by the revisional court in the Cr. Rev. No. 519 of 1993 affirming the Executive Magistrate's order dated 02.12.1993 to be proper and there is no illegality in the same which has been passed by revisional court after having taken into account all the relevant materials, as such, this Court finds no force in this petition, so, it stands dismissed.

(Shailendra Singh, J)

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