

(1966) 07 OHC CK 0011

In the Orissa High Court

Case No : Criminal Revision No. 292 of 1966

Iswar Behera and Others

APPELLANT

Vs

Iswar Dangua and Others

RESPONDENT

Date of Decision : 19-07-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 144, 144(6), 145

Citation : (1966) 32 CLT 1036

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : R.N. Misra and R.C. Patnaik, for the Appellant; S.P. Mohapatra, P.K. Sengupta, B.K. Pal, Bijoy Pal, Sribatchha Mohapatra, G. Rath, R.K. Mohanty and S.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—Barunakhati, Diankudi and Godhi are fisheries in the Chilka lake belonging to the State of Orissa, who had leased them out to the Central Fishermen Co-operative Marketing Society hereinafter to be referred to as the Central Society. The Petitioners and opposite parties are members of the Narayani Primary Fishermen Co-operative society hereinafter to be referred to as the Narayani Society, which had obtained a sublease of the said three fisheries from the Central Society. The Petitioners and opposite parties are residents of four villages-Pathara, Langaleswar Sutrapur and Badkul. There appears to have been dispute amongst the members of the Narayani Society regarding the fishery right. The Narayani Society by a resolution dated 20th February, 1963 decided that the disputed fishery would be operated by the fishermen of four villages by rotation. On the strength of the resolution the villagers of Pathara (second party) enjoyed the fishery during the prawn season in 1963. The villagers of Langaleswar (first party) were to operate the fishery in 1964. There was a dispute. The Registrar of Co-operative Societies gave an award. It is to be noted that the dispute and the award were only in respect of Dianudi prawn fishery. There was

no dispute or award in respect of Barunakhathi or Godhi. The learned Sub-Divisional Officer has overlooked this important fact and his reasonings have no application to these two fisheries. The Registrar in his award stated that the villagers of Pathara would continue fishing in 1965 as the fishing season had already commenced and it was difficult to enforce any change at that late stage. He accordingly said that the disputed fishery should be enjoyed by the fishermen of Langaleswar during the fishing season of 1966 and by the fishermen of Badkul during the fishing season 1967. Thereafter this fishery would be enjoyed by the fishermen of Santrapur in 1968. He further ordered that as the fishermen of village Pathara had enjoyed the fishing for 1964 and 1965 for two successive years contrary to the resolution prescribing annual possession by rotation, the other three villages would enjoy the right of fishery for six years more from 1966 and the fishermen of village Pathara would have no right of enjoyment during this period. It is on the strength of this award that the members of the first party wanted to exercise their right of fishery in respect of prawn fish for the season from 15th April to 15th June, 1968. It is thus the admitted case that the fishermen of Pathara were in possession of the fisheries in the year 1964 and 1965. Even if the award is to be fully effective the fishermen of Langaleswar were to be in possession only of Diankudi prawn fishery in 1966 during the season from 15th April to 15th June. The learned Sub-Divisional Officer also mentioned in his order that: "the fishermen of Langaleswar were not in possession of the fishery but that he passed the order in their favour only on the basis of the award recognising their right to possess.

2. As there was apprehension of breach of peace, the learned Sub-Divisional Officer passed an ex parte order on 23-4-1966 u/s 144(2) restraining both the parties not to go upon the fishery. On 29th of April, 1966 on the report of the Circle Inspector of Police he vacated the ex parte order passed against the second party restraining the first party only from going upon the fishery. Again after hearing both the parties he passed the final order u/s 144, Code of Criminal Procedure against the members of the second party restraining them from going upon the disputed fisheries. u/s 144(6), Criminal Procedure Code no order shall remain in force for more than two months from the making thereof. Thus the order dated 10-5-1966 passed by the learned Magistrate has exhausted itself.

3. The High Court in exercise of its revisional jurisdiction does not ordinarily interfere with an order u/s 144, Code of Criminal Procedure when it has ceased to have effect u/s 144(6) except in very exceptional circumstances. One of the exceptional circumstances is where the order was passed either without jurisdiction or improperly. It is well settled the Section 144 gives wide powers to the Magistrate and imminent danger to the public peace justifies interference with the private interest. It must, however, be borne in mind that section should not be invoked by one of the parties to a dispute in order to obtain material advantage over the other. The Magistrate can exercise his powers of preventing apprehension of breach of peace under Sections 107, 144 and 145, Criminal

Procedure Code. In what circumstances which section should be resorted to is a matter of judicial discretion varying with facts and circumstances of each case. The real disadvantage of" passing an order u/s 144, Code of Criminal Procedure without going into the merits of the dispute by taking evidence as is done in proceedings u/s 107 or 145, Code of Criminal Procedure is that on expiry of the two months u/s 144(6) the dispute might break out again. The successful party in a 144 proceeding is likely to use the order to prejudice the mind of the Court against the opponent in subsequent proceeding. It is well settled that an order u/ s 144, Code of Criminal Procedure is not evidence of right or of possession antecedent to the date of the order. To pass an order u/s 144 as if the order disposes of the dispute finally is merely postponing trouble and inviting its recurrence in an aggravated and more complicated form at a later date. (See Hansraj Prasad Singh and Ors. v. Abdul Jabbar and Anr. AIR 1935 Pat. 461.

4. Mr. Pal conceded that in a case of this nature where rival parties are claiming possession of the disputed fisheries an where the second party was already in possession and the first party was claiming possession under the award, an order u/s 144, Code of Criminal Procedure restraining only the second party members and not the first party members is unsupportable. Apart from the concession of Mr. Pal, on the tests laid down, the order u/s J 44:, Code of Criminal Procedure restraining only the members of the second party suffers from impropriety though it is not without jurisdiction. The 144 order has spent up its force and the dispute amongst the parties still remains undecided. The learned Magistrate has also failed to take into consideration the fact that despite the award the leases have been granted in favour f the second party by the Central Society for the year 1966. Thus by virtue of the order the dispute has not come to a close. Apprehension of breach of peace has not ceased and it may recur any moment. In the circumstances the best course should have been to draw a proceeding either under section" 145 or 107 though the proceeding u/s 144 Cannot be said to be without jurisdiction:

5. The dispute involves complicated questions relating to civil rights of the parties. No evidence has been recorded in the case. Though the order was spent upon its force is property was subject to examination due to special circumstances already narrated. The Central Society was not a party to the 144 proceeding; no weight can therefore be attached to the argument advance of it behalf by Mr. Rath subject to the aforesaid observations which are to be of guidance to the Magistrate in future proceeding arising out of this dispute, the revision is dismissed.