

(2015) 01 PAT CK 0148

In the Patna High Court

Case No : LPA Nos. 1189 of 2013 in CWJC No. 379 of 2012 and 1490 of 2013 in
MJC No. 5549 of 2012

Jagarnath Das and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145, 145, 146
Limitation Act, 1963 — Section 5

Citation : (2015) 3 PLJR 209

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J

Bench : Division Bench

Advocate : Yogesh Chandra Verma and Ujjwal Kumar Sinha, for the Appellant;
Ashutosh Ranjan Pandey, Ramanuj Tiwary, Anil Kumar Sinha and Pawan Kumar,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

L. Narasimha Reddy, C.J.

I.A. No. 6798 of 2013

1. This application under Section 5 of the Limitation Act is filed with a prayer for condoning the delay of 362 days in preferring Letters Patent Appeal No. 1189 of 2013. It is stated that the delay occurred for the reason that the appellants came to know about the order dated 9.7.2012 passed in the writ petition only in July 2013. Thereafter, they consulted the counsel and the appeal has been filed immediately after obtaining the opinion.

2. Though no counter affidavit has been filed by the respondents, interlocutory application was filed raising the issue of maintainability of the appeal.

3. Heard learned counsel for the parties.

4. The petitioners are said to have been granted Parchas in respect of alleged

surplus land and they belong to the poor section of the society. It is also stated that learned Single Judge passed a prejudicial order without issuing notice to them. We are convinced with the reasons assigned for condonation of the delay in preferring the appeal. Delay is condoned.

5. I.A. No. 6798 of 2013 stands disposed of.

LPA No. 1189 of 2013

6. Respondent Nos. 15 to 31 in CWJC No. 379 of 2012 are the appellants. The writ petition was filed by respondent Nos. 15 to 18 herein feeling aggrieved by an order dated 24.10.2011 passed by the respondent No. 5, i.e. Sub-Divisional Officer, Gogri, District-Khagaria. The learned Single Judge disposed of the writ petition with certain directions.

7. Briefly stated, the facts relevant for the disposal of this appeal are as under.

8. One Sri Kamaldeo Narayan Singh the 1st petitioner in the writ petition held a large extent of agricultural land. He filed a declaration under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"). According to him, he did not hold any land excess of ceiling limit. Alleging that respondent No. 15 and other private respondents mentioned in the writ petition started encroaching the land by digging and removing soil therefrom, he approached the 5th respondent with a prayer to take necessary steps. The 5th respondent in turn, initially started a proceeding under Section 144, Cr.P.C. through order dated 13.10.2009. Stating that the said proceedings did not yield the expected result, he passed the order dated 30.12.2010, in exercise of powers under Section 145, Cr.P.C. This was followed by an order under Section 146, Cr.P.C. through which the property, i.e. the land was attached. Proceeding further, he appointed the Circle Officer, Pajbatta, 7th respondent as Receiver. The 7th respondent in turn is said to have conducted the auction, of lease hold rights of the property. The 2nd writ petitioner, i.e. respondent No. 18 herein became the higher bidder.

9. After respondent No. 18 emerged as the highest bidder in the auction conducted by the 7th respondent, it appears that the contesting respondents as well as the appellants made an attempt to dispossess her. The concerned authorities of the police and revenue department are said to have visited the land and ultimately through order dated 24.10.2011 the 5th respondent has withdrawn the proceeding initiated by him under Sections 145 and 146 of the Code of Criminal Procedure. The said order was challenged in the writ petition.

10. During the pendency of the writ petition, Kamaldeo Narayan Singh died leaving behind his heirs and legal representatives being his widow Chandra Kala Singh, his son Rakesh Narayan Singh and his daughter Anita Singh. They were brought on record as petitioner Nos. 1(a), (b) and (c), who are respondent Nos. 15 to 17 in this appeal.

11. Respondent Nos. 15 to 18, i.e. the writ petitioners pleaded that once the 5th

respondent has assumed the possession of the property and attached it, there was no basis for him to withdraw the proceeding, abruptly. It was also pleaded that various questions raised before him ought to have been decided and direction should have been issued as to who, amongst the contesting party are entitled to remain in possession.

12. The writ petition was contested by the appellants and others, including the authorities of the State. It was pleaded that the scope of the proceedings under Sections 145, 146 is very limited, and if the respondent Nos. 15 to 18 were under any threat to their right, title or possession, the only course open to them was to file civil suit before the competent civil court.

13. Learned Single Judge disposed of the writ petition by issuing certain directions. It was held that withdrawal of the proceeding is not proper. The District Magistrate, Khagaria i.e. 3rd respondent, was directed to transfer the proceedings to himself, decide the genuinity and validity of the Parchas, i.e. Parcha certificates which are said to have been issued to the appellants and other contesting respondents and, in case the certificates are found to be not genuine, ensure that the possession of respondent Nos. 15 to 18 is protected by initiating proceeding under Section 107 Cr.P.C. Further direction was to the effect that the 3rd respondent shall intimate to all the authorities of the State Government as well as the private respondents that they do not have even iota of title over the lands in question, and they shall not try to create law and order situation, just to disturb the possession of the original owner.

14. It is brought to our notice that in compliance with the order passed by the learned Single Judge, the District Magistrate 3rd respondent passed an order dated 12.11.2013 holding that the appellants did not have right over the land and the said order was challenged in Cr. Misc. Case No. 10280 of 2014 before this Court.

15. Heard Mr. Yogendra Chandra Verma, learned counsel for the appellants and Mr. Ashutosh Ranjan Pandey, learned counsel for the respondents-State authorities.

16. It is not in dispute that the subject matter of the writ petition is, the proceedings initiated under Sections 145 and 146 Cr.P.C. The respondent Nos. 15 to 17 claim that no part of their land was declared as surplus and the question of anybody; including the appellants and the other contesting respondents, being granted Parchas, in relation to that land does not arise. The appellants, on the other hand, pleaded that they were granted Parcha in 1976 and ever since they are in possession of the respective pieces of land, assigned to them.

17. It is fairly well known that the scope of the proceedings under Sections 144, 145 and 146 Cr.P.C. is very limited. Section 144 enables an Executive Magistrate to pass orders to prevent breakdown of law and order in general. However, the power under Section 145 Cr.P.C. can be invoked where probable law and order situation that may arise, only as a sequel to dispute, in relation to land or water.

He cannot decide any question of title or of possession in respect of land, in such proceedings. The only exception is that one contained in proviso to sub-section (4) of Section 145; which is to the effect that in case the Executive Magistrate is convinced that one of the parties was dispossessed from the land in question within a period of two months, preceding the initiation of the proceedings, he can put the concerned party in possession. For that purpose, a clear and definite finding as to the date of dispossession must be recorded.

18. In case the order passed under Section 145 Cr.P.C. is found to be not effective, to prevent the breakdown of law and order, the Executive Magistrate can attach the property by invoking the power under Section 146 Cr.P.C. The provision reads as under:--

"146. Power to attach subject of dispute and to appoint receiver.--(1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate--

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just."

19. From a perusal of the provision it becomes clear that measure of attaching the property or entrusting the same to a reviewer is too transitory and is meant, just to enable the parties to approach the civil court. In a given case, if the property, which is subject matter of the proceedings needs maintenance, the receiver can conduct auction in relation thereto; for the limited purpose of preserving it; and not for any other purpose.

20. Reverting to the facts of the case, one cannot find fault with the initiation of the proceedings under Section 145 Cr.P.C. by the 5th respondent, or for that matter, passing of an order under Section 146 Cr.P.C. attaching the property. However, he should have immediately required the parties to approach the civil court and indicated that attachment is only temporary and transitory measure. Instead, he allowed the order to continue for a fairly long time. Law and order appears to have been arisen to such an extent, that the successful bidder, i.e. 18th respondent, was dispossessed. It is after noticing all this, that the 5th respondent withdrew the proceeding, initiated by him, under Sections 145 and 146 Cr.P.C.

21. Any person, claiming rights over any immoveable property cannot seek adjudication of the same in the proceedings initiated under Chapter X-D of the Code, comprising of Sections 145 to 148. In clear and unambiguous terms the provisions mandate that an aggrieved party has to approach the civil court for enforcement of its right. By and large, the proceedings under that Chapter are at the instance of police and revenue officers and for maintenance of public order, than for protection of the rights of one party or the other. Therefore, the withdrawal of the proceeding by the 5th respondent was not at all objectionable, particularly when they did not tell upon the rights of the respondent Nos. 15 to 18, i.e. the writ petitioners. It was always open to them to approach the civil court for appropriate remedy. In case they doubted the genuinity of Parchas granted to the appellants or other contesting respondents they could have initiated proceedings before the concerned authorities.

22. The learned Single Judge however has widened the scope of the proceedings under Sections 145 and 146 of the Code, almost, to the extent of determination of title to the property. Various directions, issued in the orders passed in the writ petition are clearly beyond the ambit of the said provisions. The relevant portion reads:--

"As the counter affidavit is silent on the most relevant aspect of the matter as to what happened to the order of the Magistrate putting the lands in question in possession of petitioner No. 2, I direct the District Magistrate, Khagaria to transfer the proceeding in question to his file and to deal with the same by calling upon the private respondents and others who are claiming the land in question on the basis of purcha to produce the purcha and if such purcha is not produced or the purcha produced is not genuine then to ensure conclusion of the proceeding as early as possible, in any case within reasonable time not exceeding one month from the date of receipt/production of a copy of this order before the District Magistrate, Khagaria by first directing private respondents and others to produce the purcha so as to enable the District Magistrate to verify the genuineness of the purcha. In case, the purcha produced is not found genuine the District Magistrate shall ensure possession of substituted petitioner No. 1 over the lands in question is maintained and not disturbed by the private respondents and other unauthorized claimants. In this connection, the District

Magistrate may also initiate proceeding under Section 107 Cr.P.C. against private respondents and others and also inform the State Government in the Revenue Department that private respondents and others without any iota of title over lands in question are trying to create law and order situation just to disturb the lawful possession of the substituted petitioner No. 1 and after giving such information use adequate force for ensuring rightful possession of the substituted petitioner No. 1 over the lands in question."

23. Once the 5th respondent exercised the power to initiate the proceedings; under Sections 145 and 146 of the Code, it was competent for him, to withdraw the same. There was absolutely no basis for transferring the proceeding to the District Magistrate, much less to direct him to decide the question of title or to grant the reliefs, akin to permanent injunction. In a given case, a District Magistrate also can exercise the power of a Sub-Divisional Magistrate under Sections 145 and 146 of the Code. However, he cannot exercise such powers, in relation to a matter which is already in the seisin of the Sub-Divisional Magistrate. Be that as it may, neither the District Magistrate, nor the Sub-Divisional Magistrate can undertake the functions, that are mentioned in order passed in the writ petition.

24. Assuming that it was otherwise competent for the District Magistrate to exercise the powers under Sections 145 and 146 Cr.P.C., it was not at all competent for him to undertake the functions, that are indicated in the order passed in the writ petition. In other words, the various directions, issued in that order, travel beyond the scope of Sections 145 and 146 Cr.P.C.

25. We therefore allow LPA No. 1189 of 2013 and set aside the order dated 9.7.2012 passed by the learned Single Judge in CWJC No. 379 of 2012. The order dated 12.11.2013 of the District Magistrate, Khagaria, which is sequel to the order in the writ petition, is also set aside and as a consequence thereof CWJC No. 379 of 2012 is dismissed.

26. We leave it open to the respondent Nos. 15 to 17, i.e. the writ petitioners to work out their remedy in accordance with law, be it by filing the suit or approaching the authorities to determine the validity or otherwise of the Parchas said to have been issued to the appellants and other respondents.

27. LPA No. 1490 of 2013 filed by the State authorities shall stand disposed of accordingly.

28. All the interlocutory applications shall stand disposed of. There shall be no order as to costs.