

(1996) 03 PAT CK 0040
In the Patna High Court
Case No : Criminal W.J.C. No. 162 of 1996

Manoj Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 25, 26
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (1996) 1 PLJR 629

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—The Petitioner in this application seeks to challenge an order dated 13.2.1996 passed by the S.D.O. Sadar, Gaya in Misc. Case No. 235/1996 (copy at Annexure 7) whereby the Magistrate, initiating a proceeding u/s 144 of the Code of Criminal Procedure restrained both the Petitioner and Respondent No. 3 from going over the disputed land and/or committing an act there which may lead to a breach of peace.

2. Mr. Tara Kant Jha, learned Counsel appearing on behalf of the Petitioner assailed the order on the ground that in the facts and circumstances of this case, it was wholly unauthorised and an abuse of the process of the Court. Mr. Jha submitted that the Petitioner was admittedly in possession of the disputed land on the basis of a five years lease executed by the wife and the sons of Respondent No. 3. He had established a brick kiln over some parts of the disputed land and the order restraining him from going over the land was calculated to cause considerable loss and damage to him. It was further stated that the lessors had filed T.S. No. 6/1996 in the Court of Munsif III, Gaya alleging breach of the terms of the lease and in that suit a petition was also filed for interim injunction, under Order 39 Rule 1 of the Code of Civil Procedure. Thus, the same dispute was pending before the civil Court on which it was yet to pass an order. It was further submitted that a proceeding u/s 144 Code of Criminal

Procedure (registered as Case No. 212/1996) was earlier initiated on 9.2.1996 between the same parties and in respect of the same dispute. This proceeding was, however, dropped the next day on 10.2.96 and hence the re-initiation of the impugned proceeding 13.2.1996 was wholly uncalled for and an unreasonable exercise of power.

3. It appears that the Petitioner had obtained a five years lease commencing from June, 1995 in respect of the disputed land. Under the terms of the lease the Petitioner was given the right to establish a brick kiln and to cut earth from the leased out land for manufacturing bricks. The lease, however, clearly specified the plot of land on which the brick kiln was to be established and the plots from where earth was to be cut and the extent of the permissible earth cutting.

4. It appears that there was some dispute regarding breach of the terms of the lease and the lessors, the wife and the sons of Respondent No. 3 filed Titled Suit No. 6/1996 in the Court of Munsif III alleging that in contravention of the terms of the lease, the Petitioner had established the Chimni over plots other than the specified plot No. 27 and was also cutting earth in contravention of the terms of the lease. The Plaintiffs in the suit accordingly asked for a permanent injunction restraining the Defendant from operating the Chimni put up on plots other than plot No. 27 of the suit land and from taking earth from plot No. 27. A petition under Order 39 Rules 1 and 2 was also filed seeking an interim injunction on the same terms.

5. While the controversy relating to the rights of the parties arising from the lease was pending before the Civil Court, their dispute on the spot, appears to have assumed such a proportion as to cause a threat to public order. The local police accordingly submitted a report recommending the initiation of a proceeding u/s 145 Code of Criminal Procedure restraining both the parties from creating any disturbance over the land. On the basis of the police report one Shri S.K. Choudhary, Executive Magistrate acting in the absence of the S.D.O. on 9.2.1996 initiated a proceeding u/s 144 Code of Criminal Procedure fixing 18.2.1996 as the next date for the parties to file their show cause. Although the next date in the proceeding was 18.2.1996, the Petitioner filed his show cause on the very next day, 10.2.1996 and on the basis of that show cause Sri Choudhary passed an order behind the back of Respondent No. 3 dropping the proceeding. A copy of this order is at Annexure 5. This order, after taking a detailed note of the lease and the pendency of the civil suit held that in those circumstances a 144 Code of Criminal Procedure proceeding amounted to a waste of time. When Respondent No. 3 came to learn about the proceeding having been dropped, he once again filed a petition before the S.D.O. who on the basis of the police report and the petition filed by Respondent No. 3 again initiated the proceeding by the impugned order dated 13.2.1996.

6. Having heard Mr. Jha counsel for the Petitioner and Mr. Braj Kishore Prasad, learned Counsel appearing on behalf of Respondent No. 3, I am not satisfied that Sri Choudhary acted in a proper manner in dropping the earlier proceeding on

the very next day of its commencement. I am further of the view that he completely misconstrued the scope of a title suit and the nature of a proceeding u/s 144 Code of Criminal Procedure. The order passed in the title suit would decide the rights of the parties but an order passed u/s 144 Code of Criminal Procedure is mainly concerned with the maintenance of public safety, peace and tranquility. The object, purpose and scope Section 144 Code of Criminal Procedure being wholly different from a suit, if the situation so warrants, the pendency of a suit, may not always come in the way of initiating a proceeding u/s 144 Code of Criminal Procedure.

7. In *Ishtiaq Hussain Farooqui Vs. State of U.P. and Others*, it was observed as follows:

The maintenance of law and order is a function of the District Magistrate and we have every reason to believe that the District Magistrate of Lucknow with a view to avoid any possible breach of peace would take the necessary steps well in advance for the purpose of maintaining public order which would be in the larger interests of the society. The exercise of fundamental rights under Articles 25 and 26 of the Constitution is not an absolute right but must yield or give way to maintenance of public order as laid down by this Court in *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, The principles are well settled and it is but for the District Magistrate to exercise his powers in consonance with the provisions of Section 144 of the Code of Criminal Procedure, 1973.

The matter lying within the satisfaction of the Sub divisional Magistrate, if he was satisfied that it was necessary for maintaining public order and if in his opinion the situation so warranted, it was perfectly within his authority to Initiate a proceeding u/s 144 Code of Criminal Procedure restraining the parties from going over the land and no exception can, therefore, be taken to the Initiation of the prohibitory proceeding. I am accordingly not inclined to interfere with the impugned order.

8. However, it appears to me that the genesis of the dispute lies in the controversy regarding the right of the parties arising from the lease and unless that controversy is resolved, the recurrence of this dispute cannot be effectively prevented. I accordingly direct Munsif III, Gaya before whom the petition under Order 39 Rules 1 and 2, CPC filed in T.S. No. 6/1996 is said to be pending to finally dispose of the petition for interim injunction. The parties are directed to appear in the suit before the Munsif by March 20, 1996. The Munsif will pass final order on the position under Order 39 Rules 1 and 2 CPC as early as possible and preferably before April, 10, 1996. After the order is passed on the question of temporary injunction, the Executive authorities will deal with the dispute on the spot in accordance with law and in the light of the decision of the Civil Court.

9. With the aforesaid observations and directions, this application stands disposed of.