
(1996) 07 OHC CK 0018
In the Orissa High Court
Case No : Criminal Revision No. 749 of 1994

Mayadhar Bariha

APPELLANT

Vs

Subdivisional Magistrate and Others

RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Orissa Offices of Village Police (Abolition) Act, 1964 — Section 8(4)

Citation : (1997) 83 CLT 310 : (1996) 2 OLR 531

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Pitambar Acharya, for the Appellant; N.C. Pati and S.K. Bal (for O.Ps. 2, 4, 6 and 9), for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Invoking the revisional jurisdiction of this Court the petitioner has prayed for setting aside the order passed by the Sub-Collector, Bargarh, in Criminal Misc. Case. No. 133 of 1993 whereby the said authority in a proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has directed maintenance of status quo by both parties with a further stipulation that parties may approach the Civil Court for redressal of their grievances.

2. The factual backdrop sans unnecessary details is that the petitioner being a village Jhankar performs seva puja of village deities and for the said purpose, he has been permitted to enjoy the disputed land on rent free basis in Bebandobast Case No. 144/83. As the opp. parties 2 to 10 disturbed in his peaceful possession and made attempts to enter upon the suit land, he filed a petition u/s 144 of the Code making a prayer therein to restrain the opposite parties from coming upon the suit land. The Subdivisional Magistrate initially passed an order restraining both parties to enter upon the suit land and directed them to file their respective written statements. On 24-10-1993, the proceeding was converted to one u/s 145, Cr PC, and the standing crop was attached u/s 145(8) of the Code. When

hearing commenced, series of documents, namely, judgment in Bebandobasta Case No. 144/83, order passed by the Additional District Magistrate, O.L.R. in VPA (A) 4/83, judgment rendered in VPA Case No. 703/65-66. order of Tah3siidar, Bargarh in VPA Case No. 710/65-66 and the order passed by the Additional District Magistrate. Sambalpur in VPA Appeal No. 28/59. were filed before the learned Magistrate. Those orders were filed to establish that the petitioner was in possession, and the claim of the 2nd party No. 1 had been rejected by the competent authority in VPA. Bebondobasta cases and the appeals carried from those orders, had already been dismissed. To counter those documents, the 2nd party members, took the stand that in spite of the decision passed by the authorties in VPA cases, they have been possessing the land and enjoying the usufruct thereof without any disturbance and they have never been evicted by proper Court of law. To support such a stand, they have produced a xerox copy of Hamid Settlement Khata No. 40 of Mouza Bagaibira and a letter from the villagers to indicate that they are performing Jhakari work. The Subdivisional Magistrate after narrating the cases of both sides concluded that the parties should maintain status qua and approach the Civil Court.

3. Shri Pitambar Acharya, the learned counsel for the petitioner contended that the order passed by the learned Magistrate is susceptible inasmuch as he has not appreciated the orders passed by the competent authorities in proper perspective. His further submission is that the learned Magistrate was obligated to record a finding of possession or in the alternative to hold that he is not in a position to record such a finding and only thereafter, he could have directed the parties to go to the Civil Court. He has urged with vehemence that the rights of the parties having been determined by the competent revenue authorities and the jurisdiction of the Civil Court having been ousted by the provisions of Orissa Offices of Village Police (Abolition) Act, 1964, there is no justification on the part of the learned Magistrate to direct the parties to go to Civil Court to establish their rights.

4. Refuting the aforesaid submissions of Sri Acharya, Sri N. C. Pati, the learned counsel for the opposite parties submits that there is no proof that the suit land is covered by the orders passed by the revenue authorities in VPA case or appeals. Submission of Sri Pati is that if the disputed land is not covered, a civil suit would be maintainable and a proceeding before the Subdivisional Magistrate u/s 145 is tenable. Sri Pati has also highlighted that as there was some materials before the Magistrate to indicate that the 2nd party members was performing Jhankar work he has thought it appropriate to direct them to approach the Civil Court for proper determination of the lis in question and such a direction is absolutely justified.

5. I have perused the order passed by the learned Magistrate. He has arrived at the conclusion in an extremely abrupt manner and the same is also incurably cryptic. I see no justification on the part of the learned Magistrate to direct the parties to approach the Civil Court as u/s 8(4) of the Orissa Offices of Village

Police (Abolition) Act, 1954, the jurisdiction of the Civil Court is barred. Needless to say the orders passed in V.P. Act cases or VAP appeals by the competent authority are binding on the Subdivisional Magistrate while dealing with a proceeding u/s 145, Cr PC. It is obligatory on his part to respect the orders passed by the said authorities. Alter parties have contested the litigations in appropriate statutory forms and have got their controversy determined, it is not open to the defeated party to institute a proceeding u/s 144 or 145, Cr PC. A letter from the villagers or a xerox copy of a settlement Khata cannot override the orders passed by the competent Revenue authorities. Of course, the settlement must relate to the suit land. The onus is on the party who advances a plea that the land in question has not been dealt with in the aforesaid proceedings. A spacious claim cannot be canvassed in a gloriously vague petition. As the fact situation emerges from the present litigation, there was no justification on the part of the Subdivisional Magistrate to pass the impugned order. I am of the considered view the impugned order cannot stand scrutiny and is liable to be set aside and I accordingly do so. i may observe, if any disputed land is not covered under the proceedings of the VPA case or VPA appeal in which the petitioners' rights have been determined, it would be open for the opposite parties to hesitate their grievance in an appropriate forum inclusive of a proceeding before the Subdivisional Magistrate.

6. Resultantly, the criminal revision is allowed and the order dated 30th of June, 1994 passed by the learned Subdivisional Magistrate, Bargarh, in Criminal Misc. Case No. 133 of 1993 is set aside.