

(1981) 02 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 11970 (W) of 1976

Renubala Mitra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 145(3), 145(3), 145(7)
West Bengal Land Reforms Act, 1955 — Section 50, 50(c), 51

Citation : 85 CWN 624

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : M.N. Ghose and D. Bhattacharjee, for the Appellant; M. Gupta, for the Respondent

Judgement

M.N. Roy, J.—This Rule, with the corresponding interim order for maintenance of status quo as on that date, which was subsequently extended on 3rd November 1976, was obtained on 6th August 1976, against orders made u/s 144 of the Criminal Procedure Code whereby the Respondent No. 7 was directed to be added as a party. It is the case of the petitioners that by virtue of inheritance they became owners in respect of the lands at Mouza-Patna, Bharabpur, J. L. No. 99 P. S. Palba, District-Hooghly. The other particulars of the lands have been mentioned in paragraph-1 of the petition. It has been stated that out of these lands the plot number as mentioned in paragraph 2 of the petition were recorded in the name of one Shambu Tude, Respondent No. 5, as bargadar under the petitioner. It has been stated that the said Shambu Tude died in or about the year 1967 and on such death, his heirs and legal representatives having abandoned the cultivation of the concerned lands the petitioners themselves brought them under Khas possession and also cultivated them with their men and agents.

2. It has been stated that in or about the year 1974, Renu Bala Mitra, petitioner No. 1 and Sarbashree Ajit Mitra and Asit Mitra, being petitioner No. 2 and 3 made

applications stating the facts as mentioned above, and prayed for correction of the records of rights before the Junior Land Reforms Officer, who upon necessary investigation recommended such correction as prayed for to the officer incharge of the Settlement Halka Camp No. 45, Village Patna, P. O. Sultanganga District-Hooghly. Thereafter, it has been stated that at the time of cultivation of the lands in question, the Respondent Nos. 4 to 7 in this Rule, claimed Barga rights under the petitioners and they along with their associates threatened to destroy the paddy and crops, whereupon the petitioners moved u/s 144 of the Criminal Procedure Code, for an order restraining those Respondents from interfering with their peaceful possession of the lands. The particulars of such proceedings are available in the petition and it has been stated that on such application, the officer incharge of the Police Station concerned, so also the Junior Land Reforms Officer, were directed by the learned Magistrate to enquire into the matter and also to report. Such enquiries have been conducted duly and from a reference to the concerned reports it would appear that it was reported that Shambu Tude, Respondent No. 5 in this proceeding being dead, the disputed lands were cultivated by the petitioners as their Khas lands and the Respondents as mentioned above, were trying to disturb their possession and interfere with cultivation of the lands. From the report, the petitioners have further stated that it appeared that Respondent to. 7, Ramdhan Tude, was a Bhagh Chasi in respect of the Plot No. 3352. It has also been stated that thereafter, the learned Magistrate drew up a proceeding u/s 144 of the Criminal Procedure Code order by his order dated 6th August 1975 and such proceeding was made absolute by an order dated 10th October 1975.

3. Now, it has been stated by the petitioners that in or about that time Revisional Settlement Operations in the area were going on and as such, they again prayed for recording of their names in the concerned revised record of rights in respect of the lands which were formerly under cultivation of Shambu Tude. It has been stated also that along with the report, the enquiry, reports as mentioned above, were also produced and sought to be referred to it is the categorical case of the petitioners that petitioner No. 3, met the concerned officer and informed him about the apprehension, which according to them were initiated at the instance and machination of Respondent No. 7, Ramdhan Tude. The petitioners have of course, admitted that the said Ramdhan Tude was a Bhagh Chasi under them in respect of the Plot No. 3352 only measuring 6.5 decimal and obtained in Khatian No. 647, J.L. No. 99, Mouza-Patna, Bharabpur. It is the case of the petitioners that the said Ramdhan Tude failed to deliver the landlords share of crops for the years 1380-81 B.S. and as such they instituted two cases being Case No. 2 and 3 of 1975 in the concerned Bhagh Chas Court, praying for decree in respect of the value of the landlord's share of the crops for the year 1380 B.S. and also for a decree on the same terms for non delivery of share of crops for 1381 B.S., amongst others, including a decree for eviction. The said Ramdhan Tude however, filed exceptions to the said proceeding, but he also accepted the position that he was a Bhagh Chasi in respect of the plot No. 3352 only.

4. It is now been alleged that Respondent Nos. 4, 5 and 6 in this proceedings, together with their associates created fresh troubles after the above mentioned proceedings u/s 144 of the Criminal Procedure Code, which again was disposed of in their favour and as such, the petitioners had to make a fresh application before the learned Sub-divisional Executive Magistrate, Hooghly Sadar, for protection, whereupon the said learned Magistrate, drew up proceeding u/s 144, by his order dated 28th November 1975, and on being asked, the Block Development officer of the concerned area reported that the harvested paddy be placed in the custody of the Prodhan Mohan Anchal and on 12th December 1975, the said learned Magistrate, passed an order converting the proceeding u/s 144 to 145 of the Criminal Procedure Code and the petitioners have claimed that in view of the statement and position as mentioned above the act of the officer concerned was absolutely unwarranted and that has resulted, grave injustice to them. It further appears that the learned Magistrate, on 8th March 1976, passed another order, whereby he inter alia asked the Junior Land Reforms officer concerned to submit a clear reports, as regards Bhag right regarding Bhagh Chas cultivation of the land in question and in answer to such directions a report dated 2nd April, 1976, was filed which also stated that Ramdhan Tude was a Bargadar in respect of Plot No. 3352 as mentioned above. The petitioners have further stated that the officer concerned, in his report, has also stated that the Anchal Prodhan of the concerned Gram Panchayat had also submitted a statement to him to the above effect. On such, on 17th June 1976, the learned Magistrate passed the impugned order directing, that Ramdhan Tude be made a party in the case. Such order was made on an application dated 3rd January 1976, filed by one Munguli Tude, wife of Ramdhan Tude. The said order was made, as the learned Magistrate felt that since many of the plots after being part of this case, are converted by the certificate of Bhag rights issued by the Settlement officer, so the addition as directed, be made. From a reference to the impugned order dated 17th June 1976, it would appear that apart from plot No. 3352 for which the rights of Ramdhan Tude, as a Bhag Chasi was found, other plot of lands were also involved in the said proceedings.

5. The first affidavit-in-opposition in this case, has been filed on behalf of Respondent Nos. 1, 2 and 3, through Sri Sadananda Roy, the Revenue Officer, being Respondent No. 3. This affidavit is dated 28th March 1980. The deponent has stated that the name of Shambu Tude was also recorded as a Bargadar in respect of Plot Nos. 3270 and 3460/3493 in the Revisional Settlement under the West Bengal Estates Acquisition Act, 1953. He has of course, denied the fact and stated that after the death of Shambu Tude, his legal representatives have abandoned cultivation of the plots in question or that the petitioners had brought the lands in question under their khas possession or those lands were cultivated by them. The deponent has further stated that from the enquiry held by the Revenue officer concerned on 8th August 1975, it appeared that after the death of Shambu Tude, his wife had been cultivating the land as Bargadar with the help of Ramdhan Tude and after she left the village, the said Ramdhan Tude, who is a

near relation of Shambu Tude has cultivated and is cultivating the lands in question, since 1380 B.S. as Bargadar. It has been stated that the investigation made by the Junior Land Reforms officer or enquiry u/s 50(c) of the West Bengal Land Reforms Act 1953, was unauthorised, as the said officer had or has no jurisdiction in the matter and since, such jurisdiction was to be exercised by the Revenue officer concerned. It has also been stated by the deponent that the Revenue Officer concerned, made a report after spot enquiry and to the effect that Ramdhan Tude was cultivating the lands in question since 1380 B.S. It has been alleged that the concerned 144 proceedings were initiated, to restrain the Bargadar, at a time when the Revenue officer was holding the enquiry, for recording of name during Khanakuri Bhugaret stage.

6. The dependent has further stated that during Settlement Operation at the time of plot verification of the concerned Mouza, Ramdhan Tude claimed himself to be the Bargadar in respect of the lands and approached the Kanango concerned, to record his name as Bargadar. This act or action of the said Shri Ramdhan Tude, was objected to by the petitioners and accordingly the Kanango concerned filled up the dispute form on 7th July 1975, and held the enquiry on 8th August 1975 and in the said enquiry, he not only examined both the parties but also examined the neighbouring cultivators as available on the spot. It has been stated that from the report it has been appeared that the Kanango concerned was satisfied that although Shambu Tude was a recorded Bargadar, after his death, his nephew Ramdhan Tude was cultivating the lands. It has also been stated that the report made by the Kanango was dated 8th August 1975, i.e. prior to the order as made on 11th August 1975. It is the case of the deponent that such Kanango's who held enquiry u/s 51, act independently and are not bound by any report of the Junior Land Reforms officers, who are not empowered to hold an enquiry u/s 50 of the West Bengal Land Reforms Act, 1955, on the petition submitted for correction records of rights due to the death of a Bargadar. It has further been stated that Ramdhan Tude was recorded as Bargadar in respect of all the plots as mentioned in the impugned order including plot No. 3270.

7. The second affidavit-in-opposition in the instant case is dated 15th May 1981, and filed by Shri Ramdhan Tude Respondent No. 7. He has stated that Shambu Tude, who died in 1867, was his uncle and he was a recorded Bargadar under the petitioners in respect of the lands in question. He has denied the statements that after the death of Shambu Tude, his rights to cultivate, was abandoned and such cultivation was taken up or done by the petitioners as alleged. He has also relied on the report dated 8th August 1975, whereby the Revenue officer concerned found him to be a Bargadar. He has also stated that the Junior Land Reforms officer in the instant case, had no jurisdiction or authority to hold an enquiry and pass any order u/s 50(c) of the West Bengal Land Reforms Act. It is this categorical case that the report by the Revenue officer was made duly and after spot enquiry wherein the said officer had considered the evidence as tendered or available. It has also been stated by him that the concerned 144 proceedings

were initiated, to frustrate the enquiry, which was being taken up by the Revenue officer concerned. He has denied the statement that he is a Bhagh Chasi in respect of the plot No. 3352 only and has stated that he has also the same character in respect of the other lands as involved and as such, the order directing him to be brought on record, was due and appropriate and that too for ends of justice.

8. The material allegations in the two affidavits as mentioned, have been denied by the affidavit-in-reply, dated 28th March 1980 and 27th January 1981 respectively as filed by the petitioner.

9. Mr. Ghosh, appearing in support of the Rule, after placing the facts of this case, the particulars whereof are mentioned hereinbefore, claimed firstly, that since admittedly Ramdhan Tude was a Bargadar in respect of plot No. 3352 only, and that was also reported duly in the Criminal proceedings by the authorities concerned, so addition of Ramdhan Tude, as sought to be made in the concerned Criminal proceeding u/s 144, as converted to a proceeding u/s 145 was improper, irregular and without jurisdiction. It was contended by him that Ramdhan Tude's character as Bargadar in respect of plot No. 3352 only, having been found on due consideration of the relevant evidence, the impugned order as made, was also improper. It was finally and categorically submitted by Mr. Ghosh that such addition of or bringing in the record, the said Ramdhan Tude was improper, irregular and without jurisdiction in the facts and circumstances of the case. Mr. Ghosh further submitted that since Ramdhan Tude was not originally a party in the proceeding u/s 144 and as no relief was asked for against him, the learned Magistrate was also wrong and had no power or authority to brought him on record on the prayers of any other person Mr. Ghosh claimed that the learned Magistrate had also acted illegally and also irregularly, in placing reliance on Mitakshara which has no presumptive value. It was submitted by him that in any event, the learned Magistrate had no right or authority to ignore the concerned records and reliance on Mitakshara in less the same was finally published, was improper.

10. Section 144 of the Criminal Procedure Code empowered the authority concerned, to issue order absolute at once in urgent cases of nuisance or apprehended danger. The power was conferred under the section, is very wide. Such power u/s 144 of course, are intended for temporary orders, in cases of grave emergency only. The extraordinary powers u/s 144, as observed in the case of Ganesh Chandra Khan vs. Lalit Mohan Nayak, 38 C.W.N. 388, extent to interference with the legal rights of individual and the learned Magistrate, resort to such extraordinary power, only when he is satisfied that the other powers which is entrusted are, in terms of the determinations in the case of Francis Duke Cobridge Sumner, Offg. Deputy Secretary, Port Commissioners and Others Vs. Jogendra Kumar Roy and Another, , insufficient. The content of the section conferred extraordinary and extensive powers to the learned Magistrate to deal with the situation effectively and swiftly. It should be observe that though the

section entrusted the learned Magistrate with very wide power, such powers cannot be used or claimed as a charter to justify any and every order passed by the learned Magistrate, which may be literally brought within its terms. The section thus is (1) intended for use, only in cases of grave emergency where immediate prevention or speedy remedy is required in the interest of the public, (2) to be resorted to only when the learned Magistrate is satisfied that the use of the other powers he would not be effective, (3) even in an emergency, the order should be directed rather against the wrongdoers than the wronged, (4) an order u/s 144, as it is interfered with the exercise of private rights, such interference ought to be reduced to a minimum and regulated by full observance of the limitations imposed by the section and (5) orders of Civil courts should not be interfered with and it is the duty of Criminal courts to maintain the rights declared by them. Thus, the foundation of the exercise of jurisdiction of a learned Magistrate, to act in a proceeding u/s 144, should be such informations, on which he must be satisfied that the matter is urgent and immediate prevention or speedy remedy is necessary, to avert the apprehended danger. In a proceeding u/s 144, a learned Magistrate will have to act on proper materials and no order, as observed, in the case of Chandra Kanta Kanjilal vs. King Emperor etc. 20 C. W. N. 981, can be passed on a mere petition. The order u/s 144 must be written one, containing material facts to show that such order was justified on the facts of each case and such order, must also clearly state, who are prohibited and what are they prohibited from doing or requiring to do.

11. In a proceeding u/s 144, it is clear from the terms and language of the section that a learned Magistrate has no jurisdiction to adjudicate upon rights or to decide questions of title or possession which is the usual function of a Civil Court. In fact, the celebrated decision do lay down the above proposition. The heading of the chapter and the terms section 144, both show and establish that orders as made are temporary in nature and no perpetual injunction can be issued. An order, illegally made u/s 144 gives rise to a cause of action for a civil suit, to adjudicate on the rights of the parties and any order which goes against a person, would entitle him to approach the court in another- forum, and not ordinarily under Article 226 of the Constitution of India. I had occasions to deal with the cases where orders made u/s 144 can be interfered with in an application under Articles 226 and when such petitions under the concerned Article would be maintainable, in the case of Ganga Cold Storage Co. Ltd., v. State of west Benqal 1979 (2) C.L.J. 55. There I have observed that an application under Article 226 of the Constitution of India is maintainable, but before moving such application the persons seeking an order or any interference in this jurisdiction, must establish that an application u/s 144 was made and even inspite of the order made therein the authorities concerned, are not performing their obligations or discharging their duties duly and in accordance with law. I have further observed that in appropriate cases, the High Court may interfere, even after the statutory lapse of proceeding u/s 144, if there is admitted danger to life and property The said determination was made in a

proceeding where the petitioners challenged police inaction and also contended that an order made u/s 144 was frustrated by inaction of the authorities concerned.

12. Section 145 of the Criminal Procedure Code lays down the procedure where dispute concerning land etc. is likely to cause a breach of peace and the said section confers power on the learned magistrate to intervene and pass a temporary order, in a dispute between parties regarding possession of land which threatened to develop into use of force, causing a breach of peace. The section further requires that to prevent such danger, the speedy remedy provided is the drawing of a proceeding under sub-section (1) against all the parties concerned in the dispute and calling upon them to appear and put in writing, statement and also the documents of the affidavit of person on whose evidence they would rely on support of their prayer claiming actual possession. Then after reading and considering such evidence and examining any of the persons whose affidavits have been filed the learned Magistrate is required to consider if necessary, and on hearing the parties, he should pass an order declaring and maintaining possession of that party, who in his opinion, was in actual physical possession and forbidding all disturbances until evicted in due course of law. It further appears that if the learned Magistrate is unable to decide, who is in actual possession, he may attach and send the case u/s 146 to a competent Civil Court and in case of emergency, he can at any time, attach the property pending the decisions, on the question of possession. On a reading of the section and as observed in the celebrated decision the section contemplates (a) dispute (b) relating into possession of land, (c) likely to cause breach of the peace and the learned Magistrate gets jurisdiction to intervene, when ever he is "satisfied" that those elements are in existence. The jurisdiction of the Criminal Court u/s 145, is a very limited one and as observed in the case of *Md. Ishaque v. Emperor*, AIR 1945 All 60, such jurisdiction is also carefully restricted to a prevention of apprehended breach of peace. The object of section 145, thus is merely to prevent a breach of peace by maintaining one or other of the parties in the possession, which the Court finds, they had immediately before the dispute until the actual right of one of the parties has been determined by a Civil Court The concerned section comes into play, when there is a dispute likely to cause a breach of the peace. It is the duty of the Criminal Courts to maintain the rights of the party who got Civil Court decree or order without deciding, as observed in the case of *Atul Hazrah vs Uma Charan etc.* 20 C.W.N. 796, the question of possession. Our Court, in the Full Bench determinations in the case of *Agni Kumar Das vs. Mantazuddin Beg.* 32 C.W.N. 1173, has observed that "dispute" means actual disagreement at the time of the proceeding u/s 145, even though the Question as to right to possession has already been decided by a Civil Court.

13. u/s 145 there must (1) be a dispute relating to land and (2) the learned Magistrate must be satisfied that there is a likelihood of breach of peace. In terms of the determinations in the case of *Haricharan De vs Shefali Talukdar*, 35 C.W.N. 1005, mere existence of dispute without any present fear of breach of the

peace, is clearly not sufficient to give the learned Magistrate the necessary jurisdiction. His jurisdiction is restricted only to the prevention of a breach of peace, by maintaining provisionally, the possession of the party, who is found to be in actual possession, immediately before the dispute until the rights of the parties are determined by the Civil Court. The section postulates that the learned Magistrate should only declare and maintain the possession of the party, who is found on enquiry to be in "actual possession". The parties concerned in a dispute u/s 145, in terms of the Full Bench decision in the case of Krishna Kameni v. Abdul Zaffer ILR Cal. 155, would mean persons claiming to be in possession at the time of the initial order and likely to commit breach of the peace. In fact, it has been observed in that case that such parties concerned, would mean (i) all persons claiming to be in possession the time of the order and (ii) such order may extend to persons other than the actual disputants, who may nevertheless claim to be in possession.

14. In terms of section 145, if the learned Magistrate, can decide on the basis of informations to select persons, who is to be asked to attend and sub section (3) empowers him to order addition of other persons, who may appear to him to be proper parties, up to the time of enquiry and no fresh proceeding would be necessary. It has been observed in the Full Bench determinations in the case of Krishna Kamini v. Abdul Zaffar (supra), that addition of parties after commencement of enquiry would be an irregularity. Thus, it necessarily follows that after commencement of hearing a third party cannot, as of right claim to be added as a party; particularly when, he was not in possession at the relevant time and date. It should be noted that save and except the provisions in section 482 of the present Code, which is equivalent to section 561A of the old Code, there is no saving or inherent power and such power in section 482 gives jurisdiction to High Court only, to make such orders as may be necessary to give any order under the Code, or to prevent abuse of the powers of any Court or otherwise to secure the ends of justice. Such power is not vested to the learned Magistrates, with the exceptions amongst others in section 145 (3) and (7). But the provisions of section 145(7) have no application in this case, as they apply in case of death during the course of proceeding and the death of Sambhu Tude in this case, admittedly occurred much prior to the proceeding. Thus, if at all, the order as made, may be considered to have been made u/s 145(3), because the said sub-section empowers a learned Magistrate, the right to serve summons upon such person or persons, as he may direct. Such power, should also be exercised in appropriate cases and more particularly when the other tests for the exercise of the power under the section, are satisfied. Under the section, no order can be passed laying down of determining the method by which possession is to be exercised. It is also true that this Court, in another jurisdiction and in appropriate cases, may interfere with such orders, as made in this case.

15. In fact, Mrs. Gupta, appearing for the answering Respondents claimed that in view of the existence of such other remedy in the statute and more particularly u/s 401 of the present Code which is corresponding to section 439 of the old Code,

this Court should not interfere in this jurisdiction. She also claimed the application to be premature. Mrs. Gupta referred to the provisions in section 482 of the present Code, which is corresponding to section 561A of the old one, and also to section 145(7), for establishing that, since there are such powers for issuing orders "for ends of justice", the order as made, was also legal, due and proper. For the discussions as mentioned hereinbefore, I am of the view that such submissions of Mrs. Gupta, were not justified. On merits, she also claimed the order to be due, legal and proper, as the Junior Land Reforms Officer, had no jurisdiction to make the concerned report u/s 51. Such report according to her could have been made only by the Revenue officer. She wanted to establish that since the report was not authorised, the making of the earlier orders u/s 144 as referred to hereinbefore, were not appropriate or authorised. She of course had to agree that since August 1975 the Junior Land Reform officers have been authorised in the matter and since the reports in the instant case were made under orders of the learned Magistrate, so such exceptions, as taken by her, would be of no avail or assistance.

16. The above being the position, we shall have to consider and find out, if interference in the present jurisdiction of this Court, should be made or would be possible.

17. Mr. Bhattacharjee, in his reply claimed and contended that since the aspect of a Bargadar, was involved in this case and the order as made, was absolutely unauthorised and without jurisdiction. So, even inspite of the admitted existence and availability of other remedy in the statute, interference in this jurisdiction, is possible and permissible. It should be noted that it is not that all wrongs that can be cured in or by a proceeding under Article 226 of the Constitution and interference in this jurisdiction, would not also ordinarily be permissible, when other remedies in the statute are available. This is on the basis of the Bench determinations of this Court in the case of Dabur (S. K. Burman) Private Ltd. v. State of West Bengal & Ors. 1978 (1) C.L.J. 145. But such interference, as mentioned above, in appropriate cases or in cases of exceptional circumstances and more particularly when the higher authorities, would not be entitled and authorised to interfere or correct the wrong, would be possible. Here in the instant case, the challenges as thrown could easily and conveniently be dealt with and orders equally efficacious like orders made in a proceeding under Article 226 can be passed duly, by another forum of this Court. As such, I agree with the submissions of Mrs. Gupta, that because of availability of other remedy u/s 401 of the Code which the petitioner could have availed of but has not been resorted to, no interference should be made. If interference in the facts of this case or as asked for is made, that in my view would frustrate the relevant provisions of the Criminal Procedure Code, which was and is neither the intention of the framers of the Constitution nor of the same. Thus, and since I feel and find that the irregularity as alleged, however grave and unauthorised, can be remedied in another jurisdiction of this Court so the Rule is discharged. There will be no order as to costs. This order will not however prejudice the petitioner, if

advised, to approach the appropriate forum for necessary relief if the same is still available.

The records were produced by Mrs. Gupta and Mr. Bhattacharya has sought to contend that records as produced do not establish the defence as sought to be made by the petitioners on merits.