
(2009) 11 OHC CK 0003
In the Orissa High Court

Surendra Rout and Others

APPELLANT

Vs

Executive Magistrate

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Orissa Hindu Religious Endowments Act, 1951 — Section 41

Citation : (2010) CLT 216 (Suppl CrI) : (2010) 1 OLR 19

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Judgement

S.K. Mishra, J.—In this revision the petitioners assailed the order dated 20.8.2009 passed by the learned Executive Magistrate, Cuttack in a proceeding u/s 144, Cr.P.C. bearing CrI. Misc. Case No. 2 of 2009, holding the second party to be the rightful owner of the case land and restraining the first party members from entering into the schedule land.

2. The facts of the case can be succinctly described as follows:

The schedule land has been recorded in the name of "deity Banabihari Thakur" Bije Nija Gaan. The petitioners claim that they are ancestors have established the deity and worship it over the case land which has been recorded in favour of the deity in the care of Harapriya Jema Dei, mouza Saleibedipur. After the death of said Harapriya Jema Dei, the villagers as well as the petitioners have been managing the rituals of the said deity as per the Hindu rites and customs. The petitioners further claim that they have been cultivating the lands of the deity and managing the affairs. The petitioners claim that O.P. No. 2 cleverly got Ac.6.02 decimals recorded in his name styled as Marfatdar, which is totally fabricated, erroneous and manipulative. It is also submitted that one Ramesh Chandra Mohapatra had managed to record the R.O.R. in his own name for an area of Ac.6.02 decimals in the year 1984-85 which became a subject-matter in O.A. No. 5 of 1986, a proceeding u/s 41 of Orissa Hindu Religious Endowment Act, 1951. The Addl. Assistant Endowment Commissioner came to the conclusion

that the said deity is a public deity. Regarding the nature of the suit land he directed the parties to appear before the civil Court for determining the right, title and interest. The said Ramesh Chandra Mohapatra instead of approaching the civil Court has got his name recorded in the consolidation proceeding. Thereafter it is alleged that Ramesh Chandra Mohapatra sold the land to different persons. The O.P. Nos. 2 to 8 have purchased the land from Ramesh Chandra Mohapatra and kept the same secret but in the month of 2009 they started construction over the land. So the petitioners initiated proceeding u/s 144, CrPC over the disputed land to restrain the opposite party

3. The O.P. contend that the order of the Addl. Assistant Endowment Commissioner was challenged in appeal. The appellate Court remanded the matter for further trial. Thereafter O.A. No. 5/86 was dismissed for default on 26.6.1996. The opposite party, therefore, pray that there is no merit in the revision. Therefore, the same should be dismissed.

4. The first question is if the revision is maintainable after efflux of sixty days. It came for consideration before this Court in several cases. In Taturam Sahu Vs. The State of Orissa, Niranjana Sahu and Ors. v. Keonjhar Municipality represented by its Chairman 37(1971) CLT 857; this Court held that even after the expiry of the order due to efflux of time, in a fit case, the revisional Court can interfere with the order passed by the Executive Magistrate u/s 144 of the Code. In Kshirod Ch. Sahu v. Executive Magistrate Sadar Cuttack and Ors. (1996) OCR 422, similar view is taken. The law is well settled that even after the expiry of the order due to efflux of time, in a fit case, the revisional Court can interfere with the order passed by the Executive Magistrate u/s 144 of the Code if the Executive Magistrate acted illegally and in excess of its jurisdiction. Learned Counsel for the petitioners contends that since the order passed by the learned Executive Magistrate is in excess of its jurisdiction, such revision application is maintainable.

5. While considering the contention raised at the Bar regarding the merit of the case, it is apt to quote the operative portion of the order passed by the learned Executive Magistrate which reads as under:

xx xx The second party are rightful owner of the case land. As such the First Party members are restrained from entering into the schedule land. IIC Olatpur P.S. is directed to keep close watch over the situation and take necessary steps as per law.

6. Section 144, CrPC provides for power to issue order in urgent cases of nuisance or apprehended danger. In cases where, in the opinion of a District Magistrate, there is sufficient ground for proceeding under this section and immediate prevention of speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his

management. The apex Court in *Md. Gulam Abbas and Another Vs. Md. Ibrahim and Others*, held that the orders under this provision are obviously intended to prevent dangers to life, health, safety or peace and tranquillity of members of the public. They are only temporary orders which cannot last beyond two months from the making thereof as is clear from Section 144(6) of the Code. The apex Court very clearly laid down that question of title cannot be decided at all in a proceeding u/s 144 of the Code. But previous judgments on them may have a bearing on the question whether, and if so, what order should be passed u/s 144 of the Code.

7. In this case when learned Executive Magistrate, Cuttack observed that the second party are the rightful owner of the case land, in effect he decided the title. The Executive Magistrate further restrained the first party members from entering into the schedule land and made the order absolute and permanent in nature. It is patently illegal and improper and the same should not have been passed by the learned Magistrate in exercise of his jurisdiction u/s 144 of the Code. Learned Counsel for the petitioners very emphatically submits that unless such order is specifically quashed, it would create uncalled for difficulties for the petitioners and may cause prejudice or give rise to unwarranted interference against them.

8. The contention of the learned Counsel for the petitioners appears very much acceptable and, therefore, this Court while allowing revision application, quash the impugned order dated 20.8.2009 passed by the learned Executive Magistrate, Cuttack in Crl. Misc. Case No. 2 of 2009.

9. The Crl. Revision is disposed of accordingly allowed.