GAHC010205262022

2026:GAU-AS:9381

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1292/2023

ZAHIRUL HAQUE LASKAR
S/O LATE MOIZUL HOQUE LASKAR
R/O VILL-NITAINAGAR PART-II
P.S. AND DIST. HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:CHANDU MIYA LAKSAR
S/O LATE ABDUL MATIN LASKAR
R/O VILL- CHEPTI BROJOPUR

P.S. AND DIST. HAILAKANDI
ASSAM
PIN-788151

Advocate for : MR M J QUADIR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	**:**	**16.06.2026**
Date of pronouncement of judgment	**:**	**26.06.2026**
Whether the pronouncement is of the Operative part of the judgment	**:**	**NA**
Whether the full judgment has been Pronounced	**:**	**Yes**

JUDGMENT & ORDER (CAV)

Heard learned counsel for the petitioner, Mr. M.J. Quadir and Ms. B. Devi, learned counsel for the respondent No. 2.

2. This is an application under Section 482 of Cr.PC, 1973 for setting aside and quashing the order passed by learned Trial Court/Additional District Magistrate, Hailakandi dated 27.04.2022 passed in Case No. 148^{M}/2021 under Section 145/146(1) of Cr.PC and proceeding in Case No. 148^{m}/2021, pending before the Additional District Magistrate, Hailakandi.

3. On 02.04.2022, respondent No. 2 had filed a complaint before the

Additional District Magistrate, Hailakandi alleging inter-alia that the respondent No. 2 is the lawful owner and possessor of suit land by right of inheritance. The respondent No. 2 earth filled the eastern most part of the suit land for the purposes of construction of shop houses nearest to the PWD Road in North & South and in the middle of the suit land for dwelling houses & godown etc. The petitioner orally entered into an agreement & started business promising that he and his brothers will enter into written agreement shortly. However, the petitioner and his brothers although at first gave regular monthly rent of Rs. 800 (Eight Hundred) & Rs. 2000 for godown but after few months, petitioner and his brothers lapsed (in paying rent) giving dates after dates and thereafter refused to give monthly rent. When the respondent intended to make extension of shop houses as well as godown room on 28.03.2022 & earth filled into the western part of suit land, then the petitioner and his brothers raised their strong objection trying to dispossess respondent no. 2 from the suit land with mala fide intention of grabbing the land. But by the intervention of local people the very purposes of petitioner went in vain. Now the petitioner and his brothers are trying to grab the suit land by dispossessing respondent no. 2 and as such there is every possibility of breach of public peace & tranquility in the locality causing large scale massacre of people. The petition before Trial Court / Additional District Magistrate, was registered as case No. 148M/2021 under

section 144, 145 & 146(1) of Cr. P.C.

4. The learned Additional District Magistrate on receipt of the complaint had called for police report of the concerned police station. Thereafter a non FIR case vide No. 49/2022 of Hailakandi Police Station was registered under section 144 of Cr.P.C. and a report was prepared by Sri Gautam Nath ASI of Police, Hailakandi Police Station on 23.04.2022. The ASI reported stated, inter alia, that he made local inquiry and found that there is land dispute in between both the parties. Both the parties are very desperate and danger in nature. So, both parties may kindly be ordered not to work, move on the D/L to keep peace and tranquility.

5. The respondent No. 2, thereafter on 26.04.2022 filed an application under section 146 of Cr.PC. for attachment of the suit land. The learned Additional District Magistrate vide order dated 27.04.2022 attached the suit land on the basis of police report. The learned magistrate had fixed the case on 24.04.2022 for appearance, hearing and objection.

6. That being aggrieved the petitioner had filed an application on 24.05.2022 for vacating of the ex-parte order dated 27.04.2022. However, no order was passed on the said application and the learned Magistrate had

directed the Circle Officer to cause an enquiry about the status of the schedule and to submit report on 02.07.2022.

7. That during pendency of the petition before the learned Magistrate, the respondent No. 2 had filed T.S. No. 69/2022 on 02.06.2022 before the learned Court of Munsiff (1), Hailakandi, for a decree for declaration of right, title, interest over the suit land and for recovery of khass possession evicting the dependent, their man, agents, servants etc. for the suit schedule land, demolishing their construction and granting permanent and mandatory injunction. It was further inter alia prayed for a decree and order directing the defendant to vacate the suit land in the event of failure through the process of Court and also to pass a decree and order directing defendant No. 1 to pay a rent of Rs. 4,000/- per month until vacating or eviction and balance rent of Rs. 2,000/- for rented 3 room of Assam type house from the month of march, 2022 and to direct defendant no. 2 to pay rent of Rs. 8,00/- per room per month until vacate or eviction from the suit land. The said suit was subsequently withdrawn on 10.03.2023.

8. Being aggrieved by the order dated 27.04.2022 and 29.05.2022, the petitioner had preferred a Criminal Revision No. 42/2022 before the learned

Sessions Judge, Hailakandi. The learned Sessions Judge after hearing both the parties and on perusal of records vide judgment dated 20.07.2022 was pleased to set aside the impugned order of attachment and the matter was remanded back to the learned Trial Court. The respondent No. 2 however, filed Criminal Revision Petition No. 493/2022 before this High Court challenging the judgment dated 20.07.20022. This Court vide order dated 30.09.2022 was pleased to stay the judgment dated 20.07.2022 till the returnable date, subsequently extended.

9. The learned counsel for the petitioner submits that the proceedings under Sections 145/146 of Cr.PC passed by the Additional District Magistrate, are liable to be quashed, inasmuch as, the petitioner therein had not made out any case to show that he was in possession of the land in question from which he was being sought to be evicted by the opposite party therein, i.e, the petitioner in the instant criminal petition. Rather as per his own petition, the present petitioner is residing in the house situated in the disputed land as tenant of the respondent herein and was also paying rent thereto and subsequently, he had stopped payment of rent. It is submitted that although the present petitioner disputes the fact that he is a tenant but is rather the owner of the said piece of land, in view of the stand of the present respondent before the learned Additional District Magistrate, it is evident that it is an admitted position that

the present petitioner is in possession of the said land and therefore, no dispute as regards the possession has arisen warranting invocation of jurisdiction under Section 145/146 Cr.PC by the learned Magistrate. It is further submitted that there was no averment in the petition before the learned District Magistrate, that the petitioner and his brothers were dangerous and desperate in nature and that they threatened the respondent No. 2 with dire consequences, creating serious apprehension of breach of peace and tranquility between the parties regarding taking of physical possession over the land.

10. At this stage, Section 145 Cr.PC may be referred to.

"***145. Procedure where dispute concerning land or water is likely to cause breach of peace.—***

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

.....

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, persue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).”

11. It is submitted that since the purpose of Section 145 Cr.PC is to enable the Executive Magistrate to determine the fact of actual possession of the subject of dispute and since the possession by the present petitioner was an admitted fact, as discernible from the petition filed by the respondent as first party before the learned Additional District Magistrate, there was no occasion for the said Magistrate to exercise jurisdiction under Section 145/146 Cr.PC and

even going to the extent of attaching the land in question wherein stands the dwelling house of the petitioner.

12. The learned counsel for the respondent submitted that in view of the actions of the present petitioner leading to apprehension of breach of peace, the learned Magistrate had rightly invoked his powers under Section 145/146 Cr.PC.

13. The fact that the petitioner is in possession of the disputed land must be regarded as an admitted fact in view of the pleadings of the respondent herein in his application before the learned Magistrate. Hence, there is no bona fide dispute as regards the factum of possession of the disputed land. A bare reading of sub-Section (1) of Section 145 shows that the conditions precedent for passing an order, under Section 145(1), are that the Magistrate must be satisfied, the satisfaction being that there is a dispute with regard the land or boundaries thereof, which is likely to cause breach of peace. Moreover, Section 145(1) Cr.PC requires the parties to submit written statements in order to enable the Magistrate to decide the question of actual possession, when the said question is itself not in dispute, there exists no issue to be decided by the Magistrate. In short, thus, a Magistrate, upon drawing of the proceeding under

Section 145 Cr.PC, has to determine, if possible, in exercise of his power under Section 145(4) Cr.PC, as to who was in possession of the disputed land on the date of drawing of the proceeding. Conversely, the Magistrate cannot draw a proceeding under Section 145 Cr.PC, if the materials on record clearly indicate that the person, who is sought to be evicted by invoking the Magistrate's jurisdiction under Section 145 Cr.PC, had been in possession of the disputed land for a period longer than two months before the date, when either the police report was made or the information, which could enable the Magistrate to draw the proceeding, was given.

14. Thus, in the circumstances of the present case as adverted to herein above, the vital condition requisite for assumption of jurisdiction under Section 145 Cr.PC was lacking and thus, the proceedings impugned must be held to be without jurisdiction.

15. The above being said, allowing continuance of the proceedings impugned would also amount to an abuse of the process of the law.

16. Consequently, the impugned proceedings in case No. 148^{m} of 2021 under Section 144/145/146 Cr.PC stand quashed.

17. The petition stands allowed.

JUDGE

Comparing Assistant