

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18197 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District-

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1. Abdul Salam.
 2. Md. Yahya.
 3. Md. Zakarya.
 4. Kaushar.
All Ss/o Late Zamiruddin.
 5. Nauserawan
 6. Firoj Akhtar @ Chunnu.
Both Ss/o Late Nasiruddin.
 7. Md. Shamim Akhtar.
 8. Md. Fahim Ahmad.
Both Ss/o Late Mujibur Rahman.
 9. Md. Marghoob Ilmi.
 10. Md. Lalfroz.
 11. Md. Mahfooz Alam.
All Ss/o Late Mojahir Alam.
 12. Md. Tanweerul Haque.
 13. Md. Misbahul Haque.
Ss/o Late Fazal Haque.
 14. Gheyasuddin.
 15. Ghazanfar Alam.
Ss/o Late Md. Umar Hasan.
All Resident Of Mohalla- Banaulia, P.O- Biharsharif, P.S- Bihar, District-
Nalanda, Pin-803101.

... .. Petitioner/s

Versus

1. The State of Bihar through District Collector, Nalanda.
2. The District Collector, Nalanda.
3. The Sub Divisional Officer, Bihar Sub Division, Nalanda.
4. The Deputy Collector, Land Reforms, Biharsharif, Nalanda.
5. The Anchal Adhikari, Bihar Anchal, Biharsharif, Nalanda.
6. The Station House Officer, Bihar Police Station, Nalanda.
7. The Municipal Commissioner (Nagar Aayukt), Biharsharif Municipal Corporation at and P.O.-Biharsharif, District-Nalanda, Pin-803101.
.....Opposite Parties 1st set.
8. Ashok Kumar @ Ashok Yadav Son of Late Mahavir Yadav.
9. Niraj Kumar Son Of Kapildeo Prasad.



10. Kishori Yadav @ Karu Gope Son Of Late Ram Prasad Yadav.
11. Mahesh Sao Son Of Late Krishna Sao.
All Residents Of Mohalla- Banaulia, P.O- Biharsharif, P.S- Bihar, District-
Nalanda, Pin-803101.

... .. Opposite Parties 2nd set.

Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate
For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date :05-05-2022

1. Heard learned counsel for the parties.
2. The petitioners have moved before this

Court for quashing of the:

(i) order dated 18.11.2019 passed by the learned Sub Divisional Magistrate, Bihar Sharif, (henceforth for short the 'SDM') Nalanda in Case No. 1622(M)/2019 by which proceeding under Section 144 of the Code of Criminal Procedure (herein after referred to the "Cr.P.C") was initiated appertaining to disputed piece of land at Mauza – Chainpura, Thana No. 111, Khata No. 190, Khesra No. 511 (Area 0.80 decimal) situated under his jurisdiction and notices were issued to the petitioners as also the opposite party, Circle Officer, Nalanda and the Government Pleader No. 9 (Annexure-11);



(ii) the order dated 16.01.2020 by which the Opposite Party No. 3 dropped the said proceeding in line with the Section 144 (4) of the Code of Criminal Procedure.

3. The case as presented by learned counsel for the petitioners is/are that:-

(i) the disputed plot is under their possession much prior to the cadastral survey;

(ii) however, the Survey Authorities made wrong entry in survey khatian prepared and published on 10.05.2010 as '*Gair Majarua Aam Gaddha*' (ditch) instead of '*Gair Majarua Khas*';

(iii) as the original land lord, Syed Md. Gafoor had already died, his heirs submitted a cess return in 1928 with regard to the lands including the disputed one;

(iv) Bibi Kaniz Fatima, who was daughter of Syed Abdul Gafoor came in exclusive possession of the land after the death of her father and the same was settled with the petitioner's family in 1948 and rent receipts were also granted in their names.

(v) in Rent Receipt No. 3919 of 1943, the



father of the petition 1622 er nos. 1 to 4 paid full rents to Bibi Moina Khatoon, who was the daughter of the Most. Bibi Kaniz Fatima;

(vi) Zamiruddin (father of the petitioner nos. 1 to 4) sold half of his land (1.76/1/2) including 0.50 decimals of the disputed land to his full brother Nasiruddin in 1947;

(vii) during the vesting of the Estate in the State of Bihar in 1956-57; Register No. -II was prepared in their names which included the disputed land;

(viii) in 1975, Section 144 of the Cr.P.C. was initiated upon the tension relating to draining of water from ditch which was later dropped;

(ix) petitioner nos. 5 & 6 inherited the property from their father Nasiruddin;

(x) in the year 2005, on the basis of police report, the learned Sub Divisional Magistrate initiated a proceeding under Section 144 of the Cr. P.C. which was later dropped;

(xi) a Title Suit No. 85 of 2005 was preferred by one Ashok Kumar.



(xii) on 13.06.2008, the said Title Suit No. 85 of 2005 was dismissed for default;

(xiii) on 08.11.2019, the petitioner no. 6 started construction of a shop on the said disputed land which was objected by the local people residing there (Annexure-9);

(xiv) the opposite parties, Circle Officer, Bihar Sharif, Nalanda and Station Head Officer (hereinafter referred to 'the SHO' Bihar P.S. jointly submitted their report before the Opposite Party No. 3 recommending initiation of Section 144 of the Cr.P.C. stating therein that the tension that has been created due to illegal construction may result into the untoward incident (Annexure-10).

(xv) the Opposite Party No. 3 after recording the facts relating to the tension that had come in the joint report of the Circle Officer and the 'the SHO' initiated a proceeding under Section 144 of the Cr.P.C. after opening the Nalanda Case No. 1622 (M)/2019 (Annexure- 11);

(xvi) the petitioners, who claim to have



received the notice belatedly submitted a detailed show cause in the matter stating that the disputed land belongs to them (Annexure-12);

(xvii) the Opposite Party No. 3, 'the SDM' took up the matter on 16.01.2020 and finally dropped the proceedings in laying with Section 144 (4) of the Cr.P.C. (Annexure-13);

(xviii) aggrieved the present petition under Section 482 of the Cr.P.C. has preferred.

4. Mr. Raj Kishore Prasad Singh, learned counsel for the petitioners submit that the order dated 18.11.2019 by which Section 144 of the Cr.P.C. was initiated by 'the SDM', Biharsharif, Nalanda as also the order dated 16.01.2020 by which the said proceeding was dropped by him are bad in law and fit to be set aside. He submits that the disputed land was wrongly inscribed as '*Gair majarua Aam Land*' in the survey Khatian.

5. The learned counsel for the petitioners further submit that the opposite party no.3, the learned SDM exceeded his jurisdiction in passing the order dated 16.01.2020 by which the proceeding under Section 144 of



the Cr.P.C. was dropped. It has been submitted that the disputed land is not a public land rather the same is their 'raiyati' land. He lastly submits that the repetitive order under Section 144 of the Cr.P.C. by 'the SDM' is impermissible.

6. In support of his case, learned counsel has relied upon orders and judgments passed in **Gulam Abbas & Ors. vs. State of U.P. & Ors.** (AIR 1981 SC 2198); **A.H. Wheeler and Company Pvt. Limited, Muzaffarpur vs. State of Bihar** (1988 BLJR 325); **Acharya Jagdishwaranand Avadhuta, etc. vs. Commissioner of Police, Calcutta and another** (AIR 1984 SC 51) and **Gopalji Prasad vs. State of Sikkim and others** (1981 CRI.L.J. 60) to submit that the orders in question were wrongly passed by the 'the SDM'.

7. Mr. Jitendra Kumar Singh, learned APP has assisted the Court on behalf of the State. According to him, a bare perusal of joint report submitted by the Circle Officer, Bihar Sharif, Nalanda as well as the Station Head Officer (hereinafter for short 'the SHO') Bihar, P.S. addressed to the 'the SDM' would show that they



apprehended breach of peace with regard to the disputed land and accordingly had recommended initiation of Section 144 of the Cr.P.C. so that peace is maintained. He further submits that the Opposite Party No. 3 after recording the fact that upon perusal of the joint report submitted by the Circle Officer, Bihar Sharif and 'the SHO,' Bihar Sharif, Nalanda, it is clear that due to construction being done by the opposite party (the petitioners herein), there is tension between the locals and the opposite party which may result into breach of peace he initiated Section 144 of the Cr.P.C. vide Nalanda Case No. 1622 (M)/2019.

8. The learned APP further that the petitioners herein had submitted a detailed show cause and even they had prayed for dropping of the said proceeding. He further submitted that on 16.01.2020, in view of the fact that sixty days period elapsed, in compliance with Section 144 (4) of the Cr.P.C. the proceeding was dropped. He as such submits that the proceeding having been already dropped, the matter sets to rest.

9. The learned A.P.P further submitted that



the petitioners do not deny that in the survey khatian, the disputed land has been recorded as '*Gair Majarua Aam Gaddha*' (ditch). He further submitted that it is not the case of the petitioners that they took steps to get it corrected. So far as the Title Suit No. 85/2005 that the petitioners claim to have fought with one Ashok Kumar (which was dismissed for default), it is not their case that the State's representative was ever made party despite the fact that in the Survey Khatian, it is clearly registered as '*Gair Majarua Aam Gaddha*' (ditch). He submits that this collusive fight between Ashok Kumar, who preferred Title Suit against the petitioners herein has got no merit. He as such submits that the present application is fit to be dismissed.

10. This Court has gone through the rival contentions put forward by the contesting parties and the order dated 18.11.2019 by which 'the SDM' has initiated process of Section 144 of the Cr.P.C. as also the final order dated 16.01.2020 by which, the said proceeding was dropped.

11. The 'learned SDM' in its order dated



18.11.2019 had recorded the facts from which his satisfaction and opinion can be easily inferred. A bare perusal of the said order shows that the 'learned SDM' had perused and recorded the joint prayer/statement of the Circle Officer, Bihar Sharif, Nalanda and 'the SHO', Bihar Sharif, P.S. and held that due to the construction work being undertaken by the opposite party (the petitioners herein); there is tension among the general public which may result into a fight and to maintain peace in the area, he initiated Section 144 of the Cr.P.C.

12. As pointed out by the learned A.P.P., the petitioners availed the opportunity of filing detailed show cause. The 'learned SDM' on 16.01.2020 dropped the proceeding.

13. The learned APP has further rightly pointed out which the petitioners too do not deny that the disputed land has been recorded as '*Gair Majarua Aam Gaddha*' (ditch) and it is further not their case that they ever took steps for its correction. Further, despite the same being recorded as '*Gair Majarua Aam Gaddha*' (ditch), the Title Suit No.85/2005 was fought between two private



parties.

14. That so far as the contention of the learned counsel that repetitive order under Section 144 of the Cr.P.C. has been passed; the same is fit to be rejected on the simple ground that the last order under the said section was passed in 2005 and thus it cannot be claimed that the order in question is repetitive in nature.

15. The learned counsel has relied upon judgments recorded in earlier paragraph in support of his case.

16. In **Gulam Abbas & Ors. vs. State of U.P. & Ors.** reported in **1981 SC 2198**, the Hon'ble Apex Court was dealing with entirely different context where the rights to perform religious rights was in question and it was held that the order of the learned SDM being administrative in nature is amenable to writ jurisdiction if it violates fundamental rights.

17. Coming to **Acharya Jagdishwaranand Avadhuta, etc. vs. Commissioner of Police, Calcutta and another** reported in **AIR 1984 SC 51**, the Hon'ble Apex Court held that Section 144 Cr.P.C. is extended to meet an



emergency which cannot be permanent or semi-permanent in nature. In this case, 'the SDM' dropped the proceeding after lapse of mandatory period under Section 144 of the Cr.P.C.

18. So far as **A.H. Wheeler and Company Pvt. Limited, Muzaffarpur vs. State of Bihar** reported in **1988 BLJR 325** put forward by the learned counsel is concerned, the Patna High Court held that the learned Magistrate is for preventing disorder, obstruction and annoyance with a view to secure and maintain public peace and tranquility and cannot adjudicate the title of property. In the present case, the learned SDM has merely recorded a fact which even the petitioners acknowledge that the land is recorded as '*Gair Majarua Aam Gaddha*' (ditch).

19. In **Gopalji Prasad vs. State of Sikkim and others** reported in 1981 CRI.L.J. 60, it was held by the Sikkim High Court that Section 144 Cr.P.C. must recite facts from which satisfaction and opinion of the Magistrate can be inferred and founded. In this particular case, the order dated 18.11.2019 clearly recorded that the opposite



party are making construction on the said land as a result of which there is tension and an untoward incident may take place and as such he initiated proceedings section 144 Cr.P.C. Thus, the satisfaction and opinion of the Magistrate can be clearly inferred and founded.

20. It is important to note here that the first requirement of Section 144 of the Cr.P.C. is that the said power has to be exercised in the interest of public safety. The second requirement is that it is necessary to pass orders in the interest of security of the State and the third requirement is that it must record reasons.

21. At the cost of repetition, it is held that 'the learned SDM' recorded that from the perusal of joint report submitted by the Circle Officer, Biharsharif, Nalanda, it is clear that due to construction work being done by the opposite party (the petitioners herein), there is tension between locals and opposite party which may result into breach of peace. Thus, in the opinion of this Court he had fulfilled the basic requirements for the initiation of Section 144 of the Cr.P.C.

22. The 'learned SDM' was further fairly



justified in dropping the said proceeding after the end of the mandatory period.

23. It is important to state here that in **Anuradha Bhasin vs. Union of India and others** reported in **(2020) 3 SCC 637** the Hon'ble Apex Court at para 124 quoted, **Babulal Parate vs. The State of Maharashtra and others (AIR 1961 SC 884)** wherein it was held as under:

“26. The language of Section 144 is somewhat different. The test laid down in the section is not merely “likelihood” or “tendency”. The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. *The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.*”

(emphasis supplied)

The Hon'ble Apex Court thus rejected the contention put forward by the learned Senior Counsel in that case that such orders passed in mere anticipation or



apprehension cannot be sustained in the eye of law.

24. Taking into account all the aforesaid facts this Court holds that the orders dated 18.11.2019 and 16.01.2020 passed by the ‘learned SDM’ does not suffer from any infirmity and the application preferred by the petitioners herein under Section 482 of the Code of Criminal Procedure lacks merit and is hereby dismissed.

(Rajiv Roy, J)

Jagdish/Prakash
Narayan

AFR/NAFR	AFR
CAV DATE	N.A.
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