



AFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No.29 of 2022

1. Tameshwar Sahu S/o Dujram Sahu Aged About 32 Years
2. Maniram Sahu, S/o Dujram Sahu Aged About 22 Years
3. Nemichand Sahu S/o Dujram Sahu Aged About 20 Years

All R/o Village-Dhaurabhatha, Tehsil-Palari, District-Balodabazar-Bhatapara (C.G.)

---- Petitioners

Versus

1. Shrimati Durpati Bai W/o Chirakhan Mandhlekhar, Sarpanch, Gram Panchayat, village-Dhaurabhatha, Tehsil-Palari, District-Balodabazar-Bhatapara (C.G.)
2. Khelawan Sahu S/o Bhojram Sahu Village-Dhaurabhatha, Tehsil- Palari, District- Balodabazar - Bhatapara,(C.G.)
3. State Of Chhattisgarh Through The District Magistrate- Balodabazar, District- Balodabazar - Bhatapara,(C.G.)

---- Respondents

For Petitioners

Mr. Shobhit Koshta, Advocate

For Respondents No.1&2

Mr. Amartya Rajwade, Advocate

For Respondent/State

Ms. M. Asha, Panel Lawyer

Hon'ble Mr. Justice Goutam Bhaduri

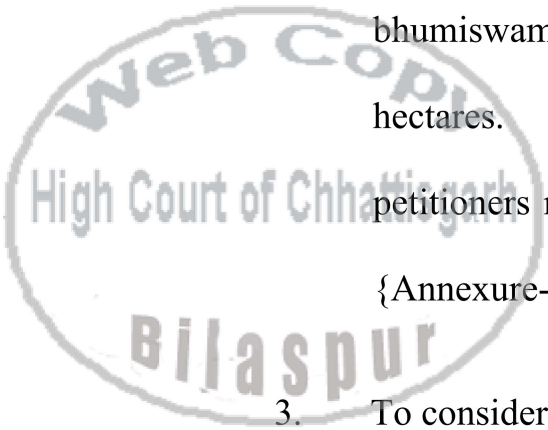
Order on Board



of the Sub Divisional Magistrate (SDM), Balodabazar dated 12-11-2021 (Annexure-P/5) passed under Section 146 (1) Cr.P.C. has been affirmed.

2. Brief facts of this case are that the petitioner No.1 is claiming himself as bhumiswami of land bearing khasra No.206/54 area 0.162 hectares and khasra No.206/58 area 0.186 hectares, total area admeasuring 0.348 hectares. Likewise, the petitioners No.2 & 3 are also claiming themselves as bhumiswami of land bearing khasra No.273/14 area 1.618 hectares. With regard to their respective claim, the petitioners rely on Form B-1 kistband katonni [year 2019-20] {Annexure-P/1).

3. To consider the said claim of the petitioners, the SDM vide its memo dated 20-10-2021 (Annexure-P/3) directed the Tahsildar-cum-Executive Magistrate, Palari and Station House Officer, Police Station Gidhpuri to submit the enquiry report. In compliance of the same, it was reported that prior to two months of incident the petitioners were in possession of the subject land. In the meanwhile, the petitioner



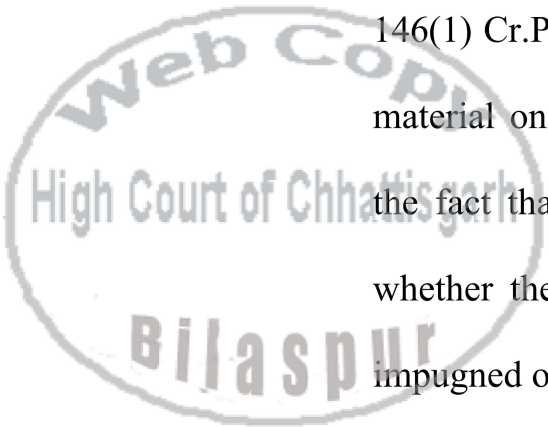


respondents. In the said suits, *status quo* order was passed on 14-12-2021 (Annexure-P/4). Subsequently, on 12-11-2021 (Annexure-P/5) the SDM has passed the order that since there is a dispute with respect to possession and chance of breach of peace, the crop/paddy was directed to be kept under the custody of Kotwar.

4. Learned counsel for the petitioners would submit that only on apprehension of breach of peace, the order under Section 146(1) Cr.P.C. cannot be passed. There has to be substantial material on record and the Court below failed to appreciate the fact that there was no material on record to show that whether there was any emergency exist or not. Thus, the impugned orders deserve to be set aside.

5. On the other hand, learned counsel for the respondents No.1 & 2 while supporting the impugned orders would submit that the land on which the claim is made by the petitioners is, in fact, the Government land and hence the petitioners are not entitled to any relief.

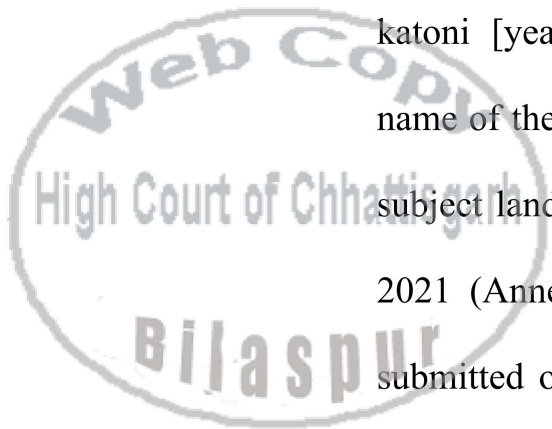
6. I have heard learned counsel appearing for the parties and





7. The order of learned SDM dated 12-11-2021 records that since the petition under Section 145 (1) is pending and without there being any enquiry, no finding can be arrived as to who had sow the crop, as such, since it may lead to dispute, crop of the subject land would be seized. The revisional Court affirmed the said order.

8. With respect to *prima facie* ownership of the land the petitioners filed revenue document i.e. Form B-1 kistband katoni [year 2019-20] {Annexure-P/1}, which records the name of the petitioners. To ascertain the possession over the subject land prior to dispute pursuant to memo dated 20-10-2021 (Annexure-P/3) of the SDM, the enquiry report was submitted on 26-10-2021. Bare reading of the same would manifest that prior to two months of the dispute the subject lands were in possession of the petitioners. The same fact also finds support from the order dated 14-12-2021 passed by the Civil Judge Class-II, Balodabazar, in a civil suit Nos.54-A/2021 & 55-A/2021 wherein it has been observed that prior to report dated 26-10-2021 the petitioners were in possession of the subject land. Now coming to the order





SDM further records that since the ownership and the crop over the said land may lead to dispute as such there are chances of breach of peace, therefore, the crop be attached.

9. In respect of such attachment of properties while dealing in a matter under Section 145 Cr.P.C., the Hon'ble Supreme Court in the matter of **Ashok Kumar v State of Uttarakhand and Others**¹ has laid down the principle at paras 10 & 11 of the judgment which are as under :

10) The ingredients necessary for passing an order under Section 145 (1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties is filed, documents produced or evidence adduced.

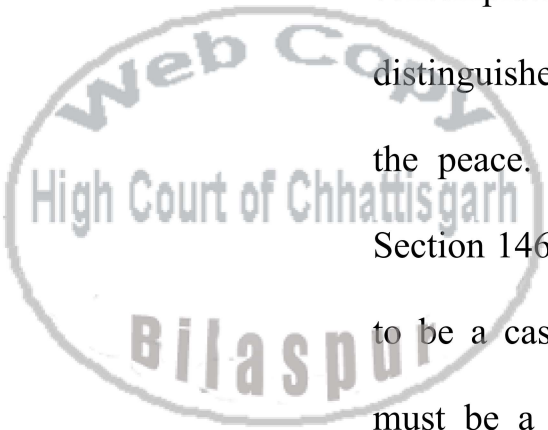




has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency.....

10. Applying the aforesaid principle to the facts of the present case, it shows that under Section 146, a Magistrate has to satisfy himself as to whether any 'emergency exists' before he passes an order of attachment. In a case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere plea of apprehension of breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency and further observed that there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

11. Reading of impugned order shows that only on apprehension of a breach of peace, the order dated 12-11-2021 has been passed by the SDM whereby crops have been attached. Even the revisional Court also failed to appreciate the necessary





12. In the result, the present Cr.M.P. is allowed. The attached crop be returned to the petitioners within two weeks from the date of receipt of copy of this order.

Sd/-

(Goutam Bhaduri)
Judge

Gowri





HEAD NOTE

On mere apprehension of breach of peace without explaining the circumstances the attachment order under Section 146 CrPC cannot be passed.

परिस्थितियों को स्पष्ट किये बिना, परिशांति भंग होने की आशंका मात्र से ही, दण्ड प्रक्रिया संहिता की धारा 146 के तहत कुर्की का आदेश जारी नहीं किया जा सकता है।

