

W.P.(C) No. 795 of 2015

BEFORE

HON'BLE MR. JUSTICE KH. NOBIN SINGH

29.06.2017

Heard Mr. R.K. Manikanta, learned counsel appearing for the petitioner and Mr. R.K. Umakanta, learned Addl. GA for the State respondents.

By the instant writ petition, the petitioner prayed for issuing directions to the respondents to exercise their power under Section 145 Cr. P.C. and to dispose of Cril. Case No. 10 of 2015 without police report.

According to the petitioner, he is the Secretary of Uripok Kangchup Road Auto Rickshaw Owners & Drivers Co-operative Society Ltd. which is a registered society. The State Government vide order dated 02.03.1994 granted a space at Uripok Chakrikom for an area of (150 ft. x 30 ft.) for parking of auto-rickshaws plying in Imphal Municipality area and thereafter, the State government vide order dated 25.05.1999 asked the Secretary of the society for necessary mutation of land under MLR & LR Act, 1960. Accordingly, the petitioner submitted necessary application for assessment under the said act.

On 19.08.2015 some illegal anti socials entered upon the said area without any reason thereby committing criminal trespass and also to disposes the Secretary from that area. Immediately,

thereafter, the petitioner filed a criminal case under Section 145 Cr.P.C. for prevention of breach of peace. Being aggrieved by the inaction of the part of the respondents, the instant writ petition filed by the petitioner on the inter alia grounds that the District Magistrate and the SDO misconstrued section 145 of Cr.P.C.

To contest the writ petition, an affidavit on behalf of respondent Nos. 2 & 3 has been filed wherein it is submitted that the District Magistrate, Imphal West issued the said order dated 02.03.1994 in exercise of powers conferred under section 117 of MVA, 1988 to the effect that the land situated at Uripok Chakrikom be utilised as parking area for the auto-rickshaw plying in the Imphal Municipal area until further order and that the said order is not an order for allotment of land for parking of auto-rickshaw at Uripok Chakrikom. It is further stated that to exercise power under Sec. 145 Cr.P.C. the concerned Magistrate must be satisfied with the information or the report of police officer that the dispute is likely to breach of peace concerning any land. If the Magistrate is not satisfied with the information, no law bars the Magistrate from calling for a report from the concerned police officer. The petitioner cannot force the Magistrate to make himself satisfied from the information furnished by him.

Section 145 of the Cr.P.C. provides procedure to be followed in respect of a dispute as to immovable property which is likely to cause breach of peace. The object is not punitive but preventive of offences constituting a breach of the

peace. The basis of the proceedings is the police report or other information and no rule can be laid down so as to specify the nature and sufficiency of the material upon which action is taken. Under Section 145 Cr.P.C. the concerned Magistrate must be satisfied from the 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. The exercise of power conferred depend upon the satisfaction of the Magistrate. In case the Magistrate is not satisfied with the information furnished by the parties, it is open to the Magistrate to call report from the police. Therefore, the contention of the petitioner that even without the report being called from the police the Magistrate can exercise its power has no force.

Having heard the learned counsels appearing for the parties, this Court is of the view that there is no merit in the writ petition and accordingly the same is dismissed with no order as to cost.

JUDGE

*Dhakeshori*