

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 497 of 2013

Smt. Shamima @ Shamina and Others Applicants

Versus

State of Uttarakhand and Others Respondents

Mr. T.A. Khan, learned Senior Counsel assisted by Mr. Aditya Kumar Arya, learned counsel for the applicants.

Mr. J.S. Virk, learned A.G.A. for the State.

Mr. Mohd. Umar, learned counsel for the private respondents.

Hon'ble R.C. Khulbe, J.

This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter to be referred as 'Cr.P.C'*) by Smt. Shamima @ Shamina and others for quashing the order dated 08.05.2013, passed by the learned S.D.M. Kashipur, District Udham Singh Nagar in Criminal Case No. 02 of 2013, by which the learned S.D.M. attached the property in Khasra No. 275, 278 measuring 0.678 hectare.

2. Heard Mr. T.A. Khan, learned Senior Counsel assisted by Mr. Aditya Kumar Arya, learned counsel for the applicants, Mr. J.S. Virk, learned A.G.A. for the State and Mr. Mohd. Umar, learned counsel for the private respondents.

3. The facts to the limited extent necessary are that one Ishrat Ali Khan was owner of a piece of land, bearing Khata No.19, Khasra No.275 and 278, measuring about 0.676 hectare at Village Sanyasionwala within the jurisdiction of Tehsil Jaspur, District Udham Singh Nagar. This land was purchased by the applicant no.1 Shamima @ Shamina from Ishrat

vide sale deed 16.02.2013. In pursuance of the sale deed the applicant no.1, took possession of the land. After the sale deed, respondent nos. 2 and 3 became annoyed and they tried to cause hindrance in the peaceful possession of the applicant no.1. Consequently, respondent no.1 filed Civil Suit No.27 of 2013 and which is pending before the Court of Civil Judge (Senior Division), Kashipur, District Udham Singh Nagar and an injunction was granted in favour of the applicants. After getting the knowledge of the aforesaid injunction order, respondent nos. 2 and 3 submitted a police report to S.D.M., Kashipur requesting that the land should be attached as there was an apprehension of breach of peace between the parties.

4. After taking report from the concerned police, the S.D.M. passed the order under Section 145(1) Cr.PC. on 08.05.2013 and fixed the date for 22.05.2013 for production of evidence.

5. From the perusal of the order dated 08.05.2013(*Annexure-1*) under Section 146 Cr.P.C. and the order (*Annexure-2*) under Section 145(1) of Cr.P.C. of the same day passed by the learned S.D.M., Kashipur, Udham Singh Nagar by which Khasra No.275 and 278 measuring 0.678 hectare land was attached. Consequently, direction was given to the S.H.O. Jaspur to attach the property. In consequence of that order, the S.H.O. Kotwali, Jaspur handed over the custody of the said land to Lokesh Kumar S/o Subhash Chandra.

6. From the perusal of the evidence, it is clear that when the impugned order dated 08.05.2013 was

passed by the learned S.D.M. under Sections 145(1) Cr.P.C. and 146 Cr.P.C. a Civil Suit No.27 of 2013, Smt. Shamina Vs. Abdul Salam and others was pending before the Civil Judge (Senior Division), Kashipur, District Udham Singh Nagar and an injunction order in favour of the applicant was passed by the learned Civil Judge (Senior Division) on 01.05.2013 and the next date for filing objection and written statement was fixed on 07.05.2013. If the Civil Suit regarding the same property was pending and an injunction order had already been passed by the learned Civil Judge in favour of the applicant Smt. Shamima @ Shamina regarding the same property then the learned S.D.M. had no power to pass any order either under Section 145(1) Cr.P.C. for attaching the same property because the S.D.M. has no power to decide the case on merits regarding the ownership of the property.

7. It is argued by Mr. T.A. Khan, learned Senior Counsel for the applicants that today the Civil Suit is still pending before the learned Civil Judge (Senior Division).

8. From a perusal of both the orders dated 08.05.2013, it is evidently clear that on the said date i.e. 08.05.2013 when the S.D.M. passed the impugned order, an injunction order was already passed in favour of the applicant. Under these circumstances, the S.D.M. had no power to proceed in the case under Section 145 (1) Cr.P.C. or under Section 146 Cr.P.C.

9. In view of the above observations, the impugned orders dated 08.05.2013 passed under Sections 145(1) Cr.P.C. and 146 Cr.P.C. are liable to be

quashed and Criminal Misc. Application under Section 482 Cr.P.C. is liable to be allowed.

10. Accordingly, criminal misc. application under Section 482 Cr.P.C. is allowed and the impugned orders dated 08.05.2013 under Sections 145(1) Cr.P.C. and 146 Cr.P.C. passed by the learned S.D.M. Kashipur, Udham Singh Nagar in Criminal Case No.02 of 2013, “Mustri Begam and Anr. Vs. Immamuddin and Others” are quashed.

(R.C. Khulbe, J.)
29.03.2019

Sukhbant