

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: September 27, 2010
Judgment delivered on: October 08, 2010

+ **W.P.(CRL.) NO. 1028/2009 & CRL.M.A. NO. 8805/2009**

SMT. SUDHA GUPTA & ANR. PETITIONERS

Through: Mr. R.K.Sharma, Advocate with
Ms. Neelam Singh, Advocate

Versus

THE STATE & ORS. RESPONDENTS

Through: Mr. Vikas Pahwa, ASC for the State.
Mr. Amarjit Singh, Advocate for
respondent No. 6.

**CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Sudha Gupta and Vijay Pal Gupta, the petitioners herein have filed this Writ Petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings under Section 145 Cr.P.C. pending before respondent No. 3 i.e. Sub-Divisional Magistrate, Preet Vihar in a

complaint bearing No. SDM (PV)/145 Cr.P.C./2009/377 dated 06th July, 2009. The petitioners are also praying for directions to respondent No. 2 to register an FIR against respondents No. 4 & 5 and also to hold a departmental enquiry against them for the gross misconduct committed by them in dispossessing the petitioners from their house without verification of the facts as also directions to the respondents No. 2, 4, 5 & 6 to pay suitable compensation/damages to the petitioners for their illegal dispossession from the property owned by them.

2. Briefly stated, facts relevant for the disposal of this petition are that respondent No. 6 L.N.Soni filed a complaint under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter 'Code') dated 13th March, 2009 before the SDM, Preet Vihar claiming that he was the owner of the disputed property forming part of Khasra No. A-882 and 824, Village Mandawali, Fazalpur, now known as Vinod Nagar. Respondent No. 6 claimed in the complaint that the said property was earlier owned by one Prem Chand, who sold it to one Shyam Sunder vide General Power of Attorney dated 17th May, 1976 and thereafter, the property changed several hands and ultimately, it was purchased by one Dhoom Singh through Power of Attorney. Said Dhoom Singh, on 24th November, 1996 lodged a police complaint against Sudha Gupta and Vijay Pal Gupta (petitioners) alleging that they had trespassed upon the property. No action however was taken on said complaint despite of the representations made to the DCP (East), Delhi.

Thereafter, a complaint was also addressed to the ACP (Public Grievance Cell), East District, Delhi, who recommended that the property be sealed and action in terms of Section 145 of the 'Code' be taken. Despite that, no action was taken by the local police. L.N.Soni further alleged in his complaint dated 13th March, 2009 that Sudha Gupta and Vijay Pal Gupta (petitioners) were indulging in illegal construction at the site in dispute without permission and that they had threatened him with dire consequences if he was seen anywhere near the said property.

3. As per the record of the SDM, notice of the complaint was issued to the petitioners and on 18th April, 2009, Ms. Meenakshi Arora, Advocate appeared in the court of SDM on behalf of the petitioners. The SDM, however was busy in some election meeting, as such, the matter was adjourned to 16th May, 2009. The petitioners however failed to appear in the court of SDM on the date of hearing, i.e., 16th May, 2009. Matter was adjourned to 01st July, 2009. Even on that date of hearing, petitioners did not appear. Respondent No. 6 filed an application along with the documents pertaining to his ownership of the property and the SDM called for urgent report from the SHO Mandawali, within two days. The matter was again taken up on 03rd July, 2009 but no report was received from SHO Mandawali. Thus, the SDM adjourned the matter to 06th July, 2009. On 06th July, 2009 also,

the petitioners herein did not appear before the SDM and the SDM passed the following order:-

“Case called.
Sh. Laxmi Narayan Soni present in person.
None present from the respondents.
Injunction order under Section 145 Cr.P.C. issued. Report ask on 09.07.2009. Case adjourned on 14.07.09 at 2 p.m.”

4. The Injunction order pursuant to the order dated 06th July, 2009 of SDM reads thus:

“Whereas a complaint was received in this court from Sh. Laxmi Narayan Soni S/o Sh. B.R.Soni R/o 139-A, Antriksh Bhawan, 22-K.G.Marg, New Delhi-01 on dated 17.03.09 regarding dispute over the possession on the Property A-27, West Vinod Nagar, Near Aggarwal Sweet, Main Road, Mandawali Fazalpur, Delhi-91 between the above mentioned parties. I have perused the Complaint for preliminary enquiry in to the case. It has been held that there are sufficient grounds to proceed the case U/s 145 Cr.P.C.

After going through the complaint and other document placed on the file I am satisfied that there is an apprehension of breach of peace between the above mentioned parties over the possession of above property falling within my jurisdiction.

Whereas the notice was issued U/s 145 Cr.P.C. to both parties but the respondent not attended the court except a counsel appeared on 18-04-09 only. No documents file by the respondents in support of there possession/ownership of the property till date.

Whereas applicant filed an Application with documents on date 01-07-09 during the hearing of the case that the respondent is doing illegal construction on the dispute property and damaging the old structure of the applicant.

Whereas the SHO P.S. Mandawali was ask to submit the report in the matter by dt. 3-07-09 vide this office order No- SDM/PV/MISC/2009/927 dated 01-07-09 which is still awaited.

In view of the above, I RADHA CHARAN, Sub-Divisional Magistrate, Sub Division, Preet Vihar, Delhi do hereby order to seal the whole Property A-27, West Vinod Nagar, Near Aggarwal Sweet, Main Road Mandawali, Fazalpur, Delhi and maintain the status quo till further order.

Given under my hand and seal of this court on this 06-day of July 2009”.

5. That on 8th July, 2009, the police officials along with SHO Mandawali, namely respondents No.4 and 5 visited the house of the petitioners in the evening at about 7.00 p.m. and forcibly dispossessed them from the property no. C-23, (GF), West Vinod Nagar and sealed the property. When the petitioners protested against the forcible dispossession, respondents No. 4 and 5 told that they were acting in execution of the order of sealing dated 6th July, 2009 passed by respondent No.3 in respect of property bearing no. A-27, West Vinod Nagar. The petitioners told respondents No. 4 & 5 that the property in their occupation and possession was house no. C-23, Vinod Nagar and they were in possession of the same since the year 1985 after having purchased it from the previous owner. However, respondents No. 4 & 5 did not pay any heed to the protests of the petitioners and threatened them that in case there is any hue and cry, they would be booked in a criminal case.

6. It is further alleged by the petitioners that respondents No. 4 and 5, without even identifying the property and making enquiry from the

neighbours, have forcibly and illegally dispossessed the petitioners and sealed the property.

7. That the petitioners filed an application under Section 145 and 146(1) of the 'Code', dated 10th July, 2009 before respondent no.3 seeking recall of the order of sealing dated 6th July, 2009 passed by him but no action has been taken in this regard. Feeling aggrieved by the action of the respondents, the petitioners have approached this court.

8. Learned counsel for the petitioners submitted that the impugned injunction order dated 06th July, 2009 ordering the sealing of the disputed property is bad in law being arbitrary and passed without conducting any enquiry into the facts. Dilating on the argument, learned counsel for the petitioners drew my attention to the complaint under Section 145 Cr.P.C. dated 13th March, 2009 filed by respondent No. 6 before the court of SDM, Preet Vihar and submitted that learned SDM, if he had taken pains to go through the content of the complaint, would have seen that as per the averments in the complaint, the petitioners were in possession of the property in question at least since 24th November, 1996 and this fact itself was sufficient to decline any action under Section 145 Cr.P.C. Learned counsel further submitted that there is no averment in the complaint which could lead to an inference that there was an apprehension of breach of peace as a result of dispute between the parties, as such, no action under Section

145 Cr.P.C. was called for. Learned counsel submitted that the complaint under Section 145 Cr.P.C. filed by the respondent No. 6 is an abuse of process of law for the reason that earlier, in the year 2000, respondent No. 6 had filed a suit for possession of the property in question against the petitioners, which was dismissed in default on account of non-appearance of respondent No. 6 or his counsel. Respondent No. 6 filed an application for restoration of suit, which was also dismissed by the court of Civil Judge, Delhi on 21st December, 2005, which order was not challenged and has become final.

9. Learned counsel for the respondent No. 6, on the other hand, has contended that the instant writ petition is not maintainable for the reason that the petitioners have an efficacious remedy to challenge the impugned order of the SDM by filing a revision petition in a superior court. In support of this contention, he has relied upon the judgment of Uttaranchal High Court in the matter of **Narendra Singh & Ors. Vs. Addl. S.D.M. & Ors., 2004 CriLJ 751**. On merits, it is submitted that the petitioners are not entitled to any relief for the reason that they are trespassers in the property whereas the respondent No. 6 is the owner of the said property by virtue of a registered sale deed executed in his favour by the previous owner Dhoom Singh.

10. Learned ASC appearing for the State has also canvassed in favour of the impugned order. He has submitted that petitioners were served with the notice of complaint under Section 145 Cr.P.C. but they did not

care to appear in proceedings dated 16th May, 2009, 01st July, 2009, 03rd July, 2009 and 06th July, 2009 when the impugned order was passed. The petitioners did not even care to file their response to the complaint when they put in appearance through their counsel Ms. Meenakshi Arora, Advocate in the court of SDM on 18th April, 2009. Therefore, the SDM was well within his rights to pass an ex parte order on the basis of the allegations made by respondent No. 6 in his complaint.

11. I have considered the rival contentions and perused the material on record. In order to properly appreciate the contentions of the parties, it is necessary to understand the object and scope of Section 145 of the Code. Section 145 of the Code finds place in Chapter X of the Code which deals with the maintenance of public order and tranquillity and it relates to the disputes as to immovable property and reads thus:

"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.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy, of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near 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, peruse 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 and which of the parties was, at the date of the order made by him under subsection (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).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the Magistrate to proceed under section 107."

12. From a reading of Section 145 Cr.P.C., it is clear that this Section deals with the preventive jurisdiction of the Magistrate concerning the disputes regarding possession of immovable property between two or more persons, which are fraught with consequences dangerous in themselves and likely to result in breach of public order and tranquillity. While dealing with such dispute, the Magistrate is not required to go into the question of title but he is supposed to meet the

urgency of the situation by maintaining the party in possession. To arrive at a just decision, the Magistrate can call upon the parties to submit written statements in support of their claims to actual possession. The Magistrate, before passing any order under Section 145 Cr.P.C. is under obligation to peruse the statements of the parties, hear them and weigh the evidence, if any, in order to ascertain which party was in possession on the date of the order. If a party has been wrongfully dispossessed within two months of the police report/information, or after the date of police report/information, the Magistrate is required to put persons so dispossessed in possession of the property. To initiate the proceedings under Section 145 Cr.P.C., the Magistrate must be satisfied of following three conditions i.e. (1) There must be real threat of breach of peace inviting said proceedings; (2) There must be material on record to prove the actual breach of peace and (3) The Executive Magistrate shall form a subjective satisfaction on the basis of record to initiate such proceedings. The purpose of Section 145 Cr.P.C. is not to evict a person from any land but it is primarily concerned with prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom.

13. In the matter of **R.H. Bhutani v. Mani J. Desai, AIR 1968 SC 1444**, while dealing with the object and scope of Section 145 Cr.P.C., Hon'ble the Supreme Court observed thus:

“8. The object of Section 145, no doubt, is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined a competent court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute, regarding an immoveable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under sub-section (1) and thereafter to make an enquiry under sub-section (4) and pass a final order under sub-section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or -exist. The enquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of Section 145.”

14. In the matter of **Ranbir Singh v. Dalbir Singh, (2002) 3 SCC 700** , Hon’ble Supreme Court has, inter alia, observed thus:

“8. The Court, while dealing with a proceeding under Section 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide either title to the property or right of possession of the same.”

15. In the light of above enunciated principles of law relating to the procedure under Section 145 of the Code of Criminal Procedure, now I proceed to deal with the main issue. On perusal of the record of the court of SDM, it transpires that the impugned injunction order was issued on the basis of the complaint filed by the respondent L.N. Soni under Section 145 Cr.P.C. In the aforesaid complaint, L.N. Soni has claimed that he is the owner of property No.A-27, West Vinod Nagar,

forming part of Khasra No.A-882 and 824, Village Mandawali, Fazalpur which he purchased from the previous owner Sanjay Kohli vide a sale deed dated 23.09.1998 duly registered with the Office of Sub-Registrar, Delhi. In the complaint, he further claimed that on 24.11.96 Shri Dhoom Singh, previous owner of the property in question had lodged a police complaint against Sudha Gupta and Vijay Pal Gupta (petitioners herein) alleging that they had trespassed upon the property in question, which was recorded as DD No.11 at police post Mandawali, P.S. Trilok Puri, but no action for trespassing was taken against Sudha Gupta (petitioner No.1). Written complaints were also made to DCP, East Delhi as well ACP (Public Grievance Cell, East District, Delhi), but no action was taken despite of recommendation of ACP that property may be sealed. Respondent L.N. Soni further alleged in the complaint under Section 145 Cr.P.C. that Sudha Gupta and Vijay Pal Gupta were indulging in illegal construction on the property without his permission and that their sons had threatened him with dire consequences if he was seen near the property.

16. Petitioners have placed on record copy of the plaint of Civil Suit No.192/200 filed by the respondent No.6 Laxmi Narayan Soni against them, seeking the possession of demised premises from them. This plaint is dated 29.09.2000 and admittedly, the said suit was dismissed in default on account of non-appearance of respondent No.6 or his counsel. Respondent No.6 thereafter filed an application for

restoration of said suit which was also dismissed by the Civil Judge, Delhi on 21.12.2005 and the said order was not challenged and has become final. From this, it is, prima facie, apparent that the petitioners are in possession of the suit property, otherwise there was no occasion for the respondent to file a suit for possession against them. Further, on perusal of the complaint under Section 145 Cr.P.C. filed by respondent No.6 in the court of SDM as well as his written complaint dated 22.03.2009 addressed to the SHO, P.S. Fazalpur, Mandawali, it is apparent that as per L.N. Soni, the petitioners had trespassed on the demised premises way back in 1996, which prompted the purported previous owner Dhoom Singh to file a complaint against the petitioners. Thus, prima facie, it is apparent from the record that the petitioners were in possession of the demised premises at least since 1996. Despite of this fact, learned SDM has issued the injunction order directing sealing of the demised premises which, to my mind, is arbitrary and against the object and spirit of Section 145 Cr.P.C.

17. Learned counsel for respondent No.6 submitted that the learned SDM has rightly issued the injunction order as respondent No.6 is the owner of the demised premises by virtue of registered sale deed executed in his favour by the previous owner, whereas the petitioners are claiming their right to the property on the basis of unregistered documents i.e. GPA, agreement to sell, Will and receipt, etc. which documents do not confer title upon them. I do not find any merit in

this contention for the reason that in a proceeding under Section 145 Cr.P.C. the SDM is mainly concerned with the possession of the property in dispute on the date of preliminary order and dispossession, if any, within two months prior to that date and the court is not required to decide either the title of the property or right to possession of the same (reference be made to Ranbir Singh v. Dalbir Singh (supra)).

18. The second important ingredient for initiating proceedings under Section 145 Cr. P.C. is that the Executive Magistrate must be satisfied from the information received by him that there is a real apprehension of breach of peace. Perusal of the complaint under Section 145 Cr.P.C. filed by respondent L.N. Soni in the court of SDM would show that in the said complaint, respondent L.N. Soni has not alleged about even a single instance which could give rise to apprehension of breach of peace. Respondent No.6, in his complaint, has vaguely alleged that he was threatened by the petitioners that if he was seen near the property in question, they would falsely implicate him in a criminal case of outraging the modesty of a women but there is no clear allegation in the said complaint which could give rise to the apprehension of breach of peace. Thus, in my considered view, both the conditions precedent for taking action under Section 145 Cr.P.C. were lacking in this case, as such, the injunction order for sealing the property in question passed by the learned SDM cannot be sustained.

19. In view of the discussion above, I find that the impugned order is illegal, arbitrary and against the object and spirit of Section 145 of the Code of Criminal Procedure. It is accordingly set aside with the direction that the property in question be de-sealed and the possession of the property be restored to the petitioners.

20. Petition as well as pending application is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

OCTOBER 08, 2010

akb/pst