

Court No. - 81

Case :- CRIMINAL MISC. WRIT PETITION No. - 15890 of 2013

Petitioner :- Mahant Govind Sharan Ji Maharaj

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Atul Sharma,A.K. Sharma,Rajeev Misra

Counsel for Respondent :- Govt. Advocate,Anurag Pathak,Vageesh Pandey,Yogeesh Pandey

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Atul Sharma, learned counsel for the petitioner, Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Vageesh Pandey, learned counsel for respondent no. 3 and learned AGA for the State.

Written submissions filed on behalf of the petitioner and on behalf of the respondent no. 3, have been taken on record.

2. The petitioner has filed this writ petition under article 226 of the Constitution against the respondents including respondent no. 3-Mahant Shri Lalita Saran Maharaj Deva Charya challenging the order dated 25.07.2013 passed by Sessions Judge, Mathura in Criminal Revision No. 384 of 2012 (Mahant Shri Lalita Saran Maharaj Deva Charya vs. State of U.P. and Others).

3. Following reliefs have been claimed by the petitioner:-

“A. Issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 25.7.2013 passed by respondent No. 2 (Annexed as Annexure No. 18) to this writ petition.

B. Issue a writ order or direction in the nature of Mandamus commanding the respondents not to interfere in the peaceful possession of the petitioner over the Ashram situated at Plot No. 199 (199Ka).

C. Issue any other and further order which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

4. The petitioner submits as below:-

(i) Mahant Shri Lalita Saran Maharaj Deva Charya, disciple of Baba Madhuri Dass, filed Original Suit No. 450 of 2005 (Lalita Sharan vs. Parmeshwar Dass and Others) in the Court of Civil Judge (Senior Division), Mathura for permanent injunction in respect of the property of Van Vihar Ashram, with the averments in nutshell that the plaintiff (Lalita Saran), on the basis of a Will dated 25.04.2005, has been taking care of Van Vihar Ashram, situated at Vrindavan Parikrama Marg, after the death of the testator Garvili Sharan; the defendant have declared that they will dispossess the plaintiff and obtain illegal possession of Ashram property, therefore, they may be restrained from dispossessing the plaintiff.

- (ii) During the pendency of the aforesaid Original Suit No. 450 of 2005, the S.H.O., Vrindavan, Mathura submitted a report to the City Magistrate, Mathura regarding Van Vihar Ashram, situated on plot no. 199 (199Ka), for attaching the property, under the provisions of section 145 Cr.P.C. on 20.06.2005. The City Magistrate passed a preliminary order under section 145(1) Cr.P.C., directing the parties to appear and submit their evidence and also passed an order under section 146(1) Cr.P.C. on 27.06.2005, attaching the property and giving its custody to some independent person.
- (iii) Subsequently, the City Magistrate heard both the sides and stayed the execution of its own aforesaid order dated 27.06.2005, by which the property was directed to be attached. By this order of 07.07.2005 the court concerned further directed the parties to make their submissions and produce their evidence.
- (iv) The respondent no. 3 challenged the aforesaid order dated 07.07.2005, by filing a Criminal Revision No. 394 of 2005. The same was dismissed by the Additional Sessions Judge by order dated 05.12.2005.
- (v) The respondent no. 3, therefore filed a Criminal Misc. Application under Section 482 Cr.P.C. No. 130 of 2006, challenging the dismissal of the revision which is still pending.
- (vi) The petitioner filed a separate Original Suit No. 328 of 2006 (Mahant Shri Govind Sharan Ji Maharaj vs. Lalit Sharan Dass and Others) for a decree of permanent injunction which too is pending in the Court of Civil Judge (Senior Division), Mathura.
- (vii) With regard to the disputed property, the S.H.O., Vrindavan, Mathura, submitted another report dated 06.06.2008, before the City Magistrate, Mathura; the City Magistrate, Mathura set aside the order dated 07.07.2005 and further directed the S.H.O. to comply with the order dated 27.06.2005, passed under the provisions of section 146(1) Cr.P.C. This order was passed on 10.06.2008.
- (viii) The petitioner preferred a Criminal Revision No. 412 of 2008 challenging the order dated 10.06.2008, passed by the Court of City Magistrate. The revision was allowed and the order dated 10.06.2008 was set aside.
- (ix) The order allowing the Criminal Revision dated 04.07.2009 was challenged by respondent no. 3, by filing a Writ Petition no. 13633 of 2009. The High Court passed an interim order dated 08.09.2009 directing the parties to maintain status quo.
- (x) The aforesaid writ petition was dismissed on 23.08.2011 for want of prosecution and therefore the interim order was vacated, however the respondent filed an application for recall/restoration of his application.
- (xi) The petitioner Mahant Govind Sharan Ji Maharaj, filed an application before the City Magistrate for recall of attachment order on

the basis, that the Writ Petition No. 13633 of 2009 has been dismissed on 23.08.2011. The City Magistrate set aside the attachment order and fixed another date for hearing, by passing an order dated 02.09.2011 and attached property was released in possession of the petitioner on 07.09.2011 and the memo of handing over possession was prepared and since thereafter the petitioner is in actual physical possession of the Ashram situated over plot no. 199 (199ka).

(xii) Mahant Lalita Sharan Das challenged the order dated 02.09.2011, setting aside the attachment, in Criminal Revision No. 419 of 2011; the same was dismissed, giving liberty to the revisionist Lalita Sharan to file an objection regarding possession, before the City Magistrate, with further directions that it will be decided by the City Magistrate, in the light of the objections so filed. Meanwhile the recall/restoration application for recall/restoration of Writ Petition no. 13633 of 2009 was decided and the order dated 23.08.2011 was set aside, however no interim stay order was passed.

(xiii) The City Magistrate, Mathura dropped the proceeding under section 145 Cr.P.C. on the ground that a civil suit was pending regarding the same. This order was passed on 25.07.2012.

(xiv) The aforesaid order dated 25.07.2012, was challenged in Criminal Revision No. 384 of 2012. The same was allowed by an order dated 25.07.2013.

Now the petitioner is before this court challenging the aforesaid order dated 25.07.2013 passed by the revisional court.

5. It is submitted on behalf of the petitioner that the impugned order dated 25.07.2013 is without jurisdiction, patently illegal, unjust and arbitrary. The City Magistrate had rightly dropped the proceeding on the ground that a civil suit was pending. The Sessions Judge ignored the settled legal position that when the civil suit is pending, the proceeding under section 145 Cr.P.C. is not maintainable. The proceeding under section 145 Cr.P.C. was initiated in the year 2005 whereas the civil suits were filed in the year 2005 to 2009. The civil suit no. 450 of 2005 for the relief of permanent injunction with regard to same property was pending at that time. The trial court had correctly appreciated the legal and factual position whereas the court of revision wrongly set aside the order of the City Magistrate for deciding the question of possession afresh.

6. The main contesting respondent no. 3, in his counter affidavit, stated as below:-

* Through the last and final 'Will' of Sanat Kumar Ji Maharaj, the respondent no. 3- Mahant Shri Lalita Sharan Maharaj became his sole successor and therefore, on his death on 27.12.1978, he became the 'peethadheesh' of all the properties of the said institution, including the property in dispute. The earlier 'Will' executed in favour of Garvili Sharan on 16.05.1966, became ineffective because of execution of

subsequent registered Will on 17.10.1978. The name of the respondent no. 3 was mutated in the revenue record on 23.01.1982 and still continuing as such, in the record of rights.

* The respondent no. 3 was in continuous possession of the property in dispute till, it was attached.

* Garvili Sharan, one of the chelas of Sanat Kumar Das Ji Maharaj, through whom, the petitioner alleges to have the ownership of the property, never challenged the registered Will dated 17.10.1978. He never challenged the mutation of name of the respondent no. 3 in the record of rights.

* The proceedings under section 145 Cr.P.C. was initiated on 20.06.2005, after the death of Garvili Sharan on 29.04.2005, as breach of peace was apprehended. Radhacharan Das was trying to forcefully dispossess the respondent no. 3.

* Following suits regarding the title and possession are/were pending.

(i) Suit No. 450 of 2005 filed on 31.05.2005, (Lalita Sharan Das vs. Parmeshwar Das and Others) (later on dismissed in default);

(ii) Suit No. 128 of 2006 filed on 17.02.2006, (Radharaman Das and Others vs. Lalita Sharan Das chela of Madhuri Das and Others) (later on dismissed in default);

(iii) Suit No. 328 of 2006 filed on 09.05.2006, Govind Sharan vs. Lalita Sharan Das chela of Sanat Kumar Das and Others (pending);

(iv) Suit No. 372 of 2009 filed on 27.05.2009, Anant Shri Vibhushit Shri Mahant Lalita Sharan Ji Maharaj vs. Lalita Sharan Das and Others (pending).

* Only in suit no. 372 of 2009, an order of status quo was granted in favour of Mahant Lalita Sharan and no other. This fact was concealed by the petitioner.

* In Case crime no. 66 of 2006, during the investigation, Lalita Sharan Das, chela of Madhuri Das stated that he never filed any civil suit and that he did not put his signatures on any such civil suit and that he did not file any application for restoration of those suits. He also stated that no Will was ever executed by Garvili Sharan in his name.

* In civil suit no. 372 of 2009, Civil Judge (Senior Division), Mathura, passed an order observing that the question of handing over the possession to Govind Sharan, shall be decided by the court of City Magistrate, as the criminal revision no. 384 of 2012 has been allowed by the Sessions Judge, Mathura.

* The City Magistrate as well as the court of revision, did not adjudicate the question that, which of the parties was in possession of the property at any point of time or on the date of preliminary order passed under section 145(1) Cr.P.C. or the order passed under section 146(1) Cr.P.C.

* The possession was handed over to the writ petitioner by the police in purported compliance of the order of attachment. As status quo order was in existence, hence neither the City Magistrate nor the police had power to disturb the possession or put any person in possession. The possession was handed over to the petitioner without any authority and in flagrant violation of law.

* The argument of the respondent no. 3 is that, as no effective order of the civil court, with regard to the party in actual possession or entitled for possession was ever passed, therefore, the proceedings under section 145 Cr.P.C., should have continued and the Magistrate wrongly dropped the proceeding. The order of the revisional court cannot be faulted and by applying principle as held in ***Shaym Sundar vs. District Judge, Ballia; 2003 (46) ACC 2019***, the Sessions Judge rightly remanded the matter to the City Magistrate to decide upon the question of possession. The City Magistrate, while dropping the proceeding did not direct as to which of the parties should be put in possession of the disputed property.

* When the status quo order passed by the civil court in suit no. 372 of 2009 was in force, the City Magistrate could not have altered the status quo by putting one of the parties in possession.

* The City Magistrate while passing the order dated 25.07.2012 did not decide the question of possession, in spite of directions of the Sessions Judge in criminal revision no. 419 of 2011, contained in order dated 14.09.2011 and wrongly dropped the proceedings, without appropriate decision on the point of possession.

7. From affidavit, counter affidavit and the rejoinder affidavits, it emerges that at least four civil suits were filed by different parties with regard to the property in dispute. in my opinion, though the litigation commenced only after the proceedings under section 145 Cr.P.C. had already been initiated, therefore, before other issues are taken up, it will be appropriate to refer to some of the judgments given on the point of maintainability/continuance of proceeding under section 145 Cr.P.C., where civil suits are pending.

8. The Supreme Court in ***Prakash Chand Sachdeva vs. State and Another, AIR 1994 SC 1436***, held that where the dispute is on the question of possession, the Magistrate is empowered to take cognizance under section 145 Cr.P.C.

9. The Supreme Court in ***Amresh Tiwari vs. Lalta Prasas Dubey, 2000 (4) Supreme 665***, has clarified that it will not be right to say that a proceeding under section 145 Cr.P.C. would never lie in a case where a civil suit has been filed.

10. The Allahabad High Court in its judgment passed in *Prabhakar Tiwari vs. State of U.P. and 5 Others (Matter Under Article 227 No. 10770 of 2022)* delivered on 9.10.2023 has held as below:-

“7. To decide the matter in controversy, it is appropriate to once consider the provisions of section 145 Cr.P.C. Section 145 Cr.P.C. provides for a procedure where an Executive Magistrate has to act upon, in cases where there is likelihood of breach of peace on account of a dispute concerning land or water. It may be noted that Chapter-X of Cr.P.C. is titled as maintenance of public order and tranquillity. This Chapter-X is divided into four parts i.e. A, B, C and D. Part A deals with unlawful assemblies, Part B deals with public nuisances, Part C deals with urgent cases of nuisance or apprehended danger and Part D deals with disputes relating to immovable property. As is clear from the above, this Chapter provides for an action to prevent breach of peace and maintenance thereof. The legislature has given powers to the Executive Magistrates to take action under certain contingencies with the sole motive of preventing breach of peace and maintenance of public order and tranquillity. No substantive rights of the parties are decided and the proceeding is essentially preventive and procedural in nature.

11. In the aforesaid judgment, highlighting the fact that provisions under section 145 Cr.P.C. are essentially preventive in nature, this court further examined the scope of enquiry as envisaged under section 145 Cr.P.C. and the procedure to be adopted. Relevant portion of the judgment is as below:-

“8. Sections 145(1) and 145(4) of Cr.P.C. are as below:-

"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.

3.

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 any and which of the parties was, at the date of the order made by him under sub- section (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)."

9. From conjoint reading of the above provisions, it is quite clear that the primary duty of the Magistrate is to examine the claims of the parties as regards de-facto possession over the subject of dispute. The parties, are of course entitled to submit their written statements of their respective claims. In turn, the Magistrate shall look into their claims to decide upon which of the parties is or was in possession on the date of the order passed by him under sub-section 1 of section 145 Cr.P.C. or to decide which party was in actual possession, within two months next before the date (on which the report of police officer was given or the information was received by the Magistrate after that date and before the date of this order), in cases where any party has been forcibly and wrongfully dispossessed."

12. In the same case, this court further clarified that how the legal claims to title etc are to be kept separate from 'factual possession'. It was observed in para no. 10 to 12 of the judgment as below:-

10. From the provisions of law, an undisputed position emerges that rival claims have to be considered, (irrespective of the fact whether or not they touch upon the right to title or the ownership over the property), to find out as to whether any party is/has been/was in possession on such material dates as above. For this limited purpose, the Magistrate can sift through the oral and documentary evidence produced by the parties. The Magistrate is empowered to adjudicate the question of de-facto possession and no more.

11. The principles of law involved herein, have been recited with the only purpose that this Court proceeds in this matter with that much legal clarity in mind as regard the scope of enquiry under section 145 Cr.P.C. Simultaneously one more important aspect which has to be kept in mind is that the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India and this Court here is not deciding a revision or an appeal.

12. In any legal battle, one contesting party may have some merit in their claims and the other party too may have some merits to their claims. The merits may flow from their respective claims as to ownership. And where the claim to ownership or title are involved, the fact of de-jure possession or implied possession may be of value. However, as far as the law which applies in the matters coming within the purview of section 145 Cr.P.C. is concerned, the claims to title or validity of possession, express or implied may not be of much utility. Even if the Executive Magistrate finds some merit in the claims of one party or the other, which might flow from their valid rights to the ownership, he may have to turn a blind eye. He has to exercise a limited power with a view to prevent breach of peace. In matter of such nature, there is always an invisible third party that is the society at large. The jurisdiction, the Executive Magistrate has to exercise, is aimed at upholding the rights of the society at large, to have peace in the area or may be in the neighbourhood. This is not to say that the claims or the averments and the evidence, whether documentary or the oral, as regards ownership and consequent possession over the property or as regards "possession" only with or without any reasonable or credible claim of ownership or title, cannot be perused or assessed at all. Of course, the Court is entitled to go through such

claims and the evidence but only for a limited purpose of finding out the actual possession over the property in dispute.”

After discussing several other judgments on the point, the Allahabad High Court took the view that it is not always that the proceeding under section 145 Cr.P.C. shall not be maintainable, when civil suit is pending.

13. In Sanjai Kumar and Another vs. VIth Additional District Judge, Bareilly and Others, 1996 CriLJ 2413, a question arose before the Allahabad High Court, whether in cases, where there is no effective interim order recording that a particular party was in possession, passed by any civil court, the proceedings under section 145 Cr.P.C. shall be dropped? The Court considered that question; the relevant part of the judgement is as below:-

“4. The only material question for decision was as to whether in the absence of an effective interim order indicating possession by the civil Court in the aforesaid civil suit in favour of either of the parties to the dispute, the proceedings under Section 145, Cr. P. C. had become liable to be dropped?

5. Learned counsel for the parties relied upon a few decisions of various Courts for and against on the aforesaid question and after going through the same I find that the decision which applied to the facts of the instant case was a decision of this Court reported in 1992 JIC 35, Abdul Gafoor v. State of U.P. wherein it was held that the criminal Court continued to exercise the jurisdiction under Section 145, Cr.P.C., if no effective interim order was passed in the suit pending before the competent civil or revenue Court. This Court before laying down the aforesaid proposition of law, had considered some other decisions also. It would be proper to reproduce below the relevant findings of this Court in the said decision.”

14. The Allahabad High Court also dealt with the question of applicability of the law laid down by Supreme Court in Ram Sumer Puri case in following manner in **Sanjai Kumar and Another (supra)**.

“In the case of Ram Sumer Puri, Mahani, the question of title and possession over the subject- matter had already been adjudicated and the suit had been dismissed by the Civil Judge. An appeal against the judgment and order of the Civil Judge was still pending. It was in this background that the Supreme Court did not approve the parallel proceedings under Section 145, Cr. P. C. in respect of the same subject-matter between the same parties. Thus, Sumer’s case is not an authority on the question that proceedings under Section 145, Cr. P. C, must be dropped in all cases whenever a civil suit is pending in respect of the same subject-matter between the same parties or between the parties through whom the panics are claiming their rights. Of course, parallel proceedings should not be allowed to continue, if a party under Section 145, Cr. P. C., can seek an effective remedy/declaration from the Civil Court. Even in such a case, the proceedings under Section 145, Cr.P.C. should be dropped only when the Civil Court has passed some effective order indicating as to which of

the parties was entitled to possession. In some cases, the proceedings should also be dropped when the Civil Court has appointed a receiver or has made some arrangement for the maintenance of such property. But, when the Civil Court does not clarify the position regarding the possession of the contesting parties by passing an effective order and simply passes an innocuous order like maintenance of status quo, the criminal proceedings are not to be dropped because in that case both the parties may stake their claim for possession and the situation may lead to the breach of peace. In such cases, even the proceeding under Sections 107/116, Cr.P.C. may not prove to be effective and the subject-matter may have to be attached by the Criminal Court. Of course, orders passed by the Criminal Court in such cases shall be subject to the decision of the Civil Court. Thus, the Magistrate is not bound to drop the proceedings pending in his Court in all cases under Section 145, Cr. P. C. for the simple reason that a civil suit is pending in the Civil Court in respect of the same matter between the same parties or through whom they are claiming.

6. In the instant case, Civil Court even did not pass order directing the parties to maintain status quo although the same would have been of no help as it would not have indicated the actual possession of either party. Thus, it is not a case in which any help would have been available to the Magistrate from the mere pendency of the civil suit between the parties for maintaining peace. The Magistrate was duty bound to maintain peace and, therefore, had got no alternative except to proceed further with the proceedings under Section 145, Cr.P.C. and the impugned attachment order thus appealed to be perfectly legal and valid. The proceedings under Section 145, Cr.P.C., therefore, continued to be maintainable and the Magistrate could not be directed by this Court to drop the same.”

15. A similar situation arose before the Allahabad High Court in **Raj Bahadur and Others vs. State of U.P. and Another**, decided on **25 July, 1994 in Criminal Revision No.1032 of 1994**. In that case, the civil court had passed orders directing the parties to maintain status-quo. The S.D.M. Court had dropped the proceeding under section 145 Cr.P.C. on the ground that the dispute between the parties is pending before civil and revenue courts and interim orders were in operation between them. In revision, the learned Sessions Judge disagreed with the assertions on the ground that the orders passed by the revenue and civil court for maintaining status-quo did not and could not effectively prevent the parties from fighting for the land and property in dispute and therefore the apprehension of breach of peace remained. The High Court observed in **para- 3 and 4** as below:-

“3. It is not disputed that the orders passed are only for maintaining status quo. The order passed by the civil court has already expired, as it was not extended further. The purpose and objects of the proceedings under section 145 Cr.P.C. is to maintain the law and order and to prevent the parties from taking law in their own hands which may create breach of peace. The order passed by the civil court or revenue court should be such

which may effectively prevent either of the parties from entering into dispute for taking possession of the property by force. In case of an order for maintaining status quo position about possession remains vague and the parties are still left to get it decided by themselves by use of disputed property on the date the order of status quo was passed. If the proceedings under Section 145 Cr.P.C. are allowed to be dropped in such state of affairs, the objects of the preventive provisions contained in original procedure code may be defeated.

16. This legal position, in my view has crystallized that mere pendency of proceeding before a civil court is not a bar to initiate/continue a proceeding under section 145 Cr.P.C.

17. Though the respondent no. 3 have not claimed that the type of relief which has been sought in the present proceeding styled as criminal misc. writ petition under Article 226 of the Constitution cannot be granted and instead the petitioner should have filed criminal misc. writ petition under Article 227 of the Constitution, however as this issue may have legal ramifications, therefore, I find it appropriate to deal with it.

In *Matters under Article 227 No. 4546 of 2018 (Dhara Begum) vs. State of U.P. and 2 Others* decided on 01.08.2018, a similar situation arose before this High Court and the High Court, in view of the facts and circumstance and especially in view of the fact that matter had already been finally heard, and further observing from a judgment given in *M/S Shiv Baba Industry Lalpur, Shajahanpur vs. State of U.P. and 3 Others* proceeded to decide the same. The para which was reproduced from the aforesaid judgment is being reproduced here as well:-

"27. Thus after the consistent expression of unanimous opinion by their Lordships of the Supreme Court in Shalini Shyam Shetty (supra) and the decision of Three Judge Bench of their Lordships in Radhey Shyam (supra), there remains no cavil notwithstanding any kind of interpretation that might have been earlier placed on the amended Rules of Chapter XXII of the High Court Rules that a petition under Article 227 of the Constitution can never be styled as a writ petition and styling it as a writ petition is certainly a defect that goes to the root of the matter rendering such a petition ill-framed beyond maintainability. A petition under Article 227 of the Constitution in order to be in tune with the jurisdiction it invokes may be styled as a Civil Misc. Applications or Criminal Misc. Applications or may be labelled by any appropriate nomenclature which eschews the use of the word writ. In addition, the relief clause should not ask for issue of any of the writs or orders in the nature of writs as are enumerated in Article 226 of the Constitution, that includes mandamus, certiorari, prohibition or quo-warranto. The relief in a matter under Article 227 of the Constitution may not only seek setting aside of the order under challenge, but reversal of the same and further orders on the applications made to the subordinate court or tribunal in the same manner as a court of appeal or revision, subject of course to limitations on the exercise of the power under Article 227, could have passed including injunctions and directions of an appropriate kind to private parties or in the

context of criminal proceedings like one involving reversal of an interlocutory order, refusing discharge by the Trial Court and the Sessions Judge in revision concurrently."

The Supreme Court in the case of **Radhey Shyam and another vs. Chhabi Nath and others, (2015) 5 SCC 423**, in para no. 25 observed as below:-

"25. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to judicial courts."

18. Thus it has been clearly laid down that order of civil court could be challenged under Article 227 of the Constitution of India and not under original writ jurisdiction under Article 226 of the Constitution of India. There is no legal hindrance in converting the petition under Article 226 to one under Article 227 of the Constitution. I, therefore, treat this petition as one under Article 227 of the Constitution. Hence forth comes the scope of interference under Article 227 of the Constitution.

19. The Allahabad High Court in **Premgiri vs. State of U.P. and 3 Others, decided on 18.09.2019 in Matter under Article 227 No.5579 of 2019**, has observed as below:-

"It is well settled that in exercise of supervisory jurisdiction of this Court over subordinate courts, the scope is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent violation of law and jurisdiction without acting as an appellate authority. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they act according to law. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes."

The power under Article 227 of judicial superintendence cannot be used to upset the conclusions of facts, howsoever erroneous they may be, unless they are so perverse and so unreasonable that no Court could have reached them.

20. Similar views were expressed in **Ajaib Singh vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd., (1999) 6**

SCC 82, in **Mohan Amba Prasad Agnihotri vs. Bhaskar Balwant Aheer**, AIR 2000 SC 931, and in **Union of India and Others vs. Himmat Singh Chahar**, (1999) 4 SCC 521.

21. In **Indian Overseas Bank vs. Indian Overseas Bank Staff Canteen Workers' Union**, (2000) 4 SCC 245, the Supreme Court observed that:-

"It is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere."

22. Before the matter in issue, raised in this case are touched upon and appreciated, it will be appropriate to briefly recapitulate the respective case of the rival parties.

- The petitioner claimed that Sanat Kumar was elected as Mahant of Topikunj Ashram, thereafter Lalita Sharan Deva Charya (respondent no. 3) succeeded him as Mahant, as opposed to the property by the name of Van Vihar Ashram, for which Garvili Sharan, the predecessor in interest of the petitioner was elected as Mahant. After his death, the property of Van Vihar Ashram was being maintained by Baba Radhacharan Das, who remained in effective control and actual physical possession of the same and from him, on his death, property came in the hands of the present petitioner. On the other hand, the claim of the respondent no. 3 essentially rests on the Will dated 27.12.1978, executed by Sanat Kumar Das Ji Maharaj in favour of Mahant Lalita Sharan. As far as the respondent no. 3 is concerned, main thrust of his argument is that the aforesaid Will and mutation of the name were never challenged by the petitioner and that he continued to remain in effective possession over disputed property till possession was handed over to petitioner wrongly by the police in collusion with the petitioner.
- Further there is an important issue regarding the identification of property in dispute. Petitioner's case is that there are five Ashrams of Sri Jagatguru Nimbarkacharya in Vrindavan. Topikunj is the one of them. Lalita Sharan, respondent no. 3 was elected Mahant of Topikunj Ashram and Sri Garvili Sharan of Van Vihar Ashram (the disputed property). And therefore Lalita Sharan, respondent no. 3 has had no concern with disputed property of Van Vihar. On the other hand, claim of respondent no. 3 is that by means of

‘Will’ dated 27.12.1978, all properties, movable and immovable of peeth at Topikunj including of Van Vihar Ashram came in the hand of Lalita Sharan. Hence another issue whether disputed property forms part of a bigger property has cropped up in this case.

- Another coagulated issue is as regard the initiation of a civil suit for grant of permanent injunction, on the basis of Will. Thereafter three more suits were filed within a span of four years i.e., from 2006 to 2009. The fourth suit was filed by Lalita Sharan, disciple of Sanat Kumar against Lalita Sharan Das, disciple of Madhuri Das, filed on 27.05.2009, in which a relief was claimed for releasing the property attached in the proceeding under sections 145 /146 Cr.P.C., in favour of the plaintiff and to grant possession thereon, along with further relief of permanent injunction against the defendants.
- This may be noted that in the aforesaid suit, the petitioner-Mahant Govind Sharan, (deceased and now represented by Mahant Banwari Sharan s/o Garvili Sharan) was not a party. The OS no. 328 of 2006 between the petitioner-Mahant Govind Sharan and Mahant Lalita Sharan and 4 others, was filed for permanent injunction, however, there was undisputedly, no injunction order in favour of any of the parties.
- All the above noted facts and circumstances surrounding the controversy engage attention of this Court.

23. From the facts briefly narrated above, that much is clear that the dispute between the two sides is entangled in a series of litigation which involved a number of issues of facts and law to be thrashed out. Not only the title over the property but also the issue of possession required a deep and thorough inquiry. It may, very importantly, at this juncture, be noted that the question of legal and implied possession is quite different from the question of de-facto or actual possession.

24. As has been discussed earlier, when a Magistrate is seized of a matter, while exercising his jurisdiction under the provisions of section 145 Cr.P.C., he is only concerned with de-facto possession at a particular point of time. This may range from the possession on the date of the order passed under section 145(1) Cr.P.C. or within two months next before the date on which the report of the police officer or other information was received or after that date and before the date of his order, as is provided in proviso to section 145(4) Cr.P.C., where there is illegal dispossession.

It is quite significant that the first and foremost requirement is to decide the issue of possession i.e., whether any of the parties was in possession on the date of the order? The proviso is only to be applied where a party has been forcefully and wrongfully dispossessed.

Enormously important thing is that the Magistrate has to decide the ***question of possession***, without reference to the merits or the claim of any of the parties to their right to possess or own.

25. In my firm view, the jurisdiction which a Magistrate is supposed to exercise, is quite different from the jurisdiction which a Civil Judge may exercise. In both the cases, the question of possession is important but the aim and objective, is different. **The civil court is concerned with the righteousness of once claim whereas the Magistrate is concerned with the maintenance of peace and tranquillity between the parties as well as for the society.** In my view wherever there is an apprehension with regard to breach of peace and no effective order is in existence or has already been passed or may be passed by the civil court, interim or otherwise, the utility of the provisions like section 145 Cr.P.C. cannot be undermined. There may be instances where exigencies of a situation may require the authorities to interfere immediately and that may precisely the case where section 145 Cr.P.C. will come into play, notwithstanding the pendency of any civil suit.

26. I perused the impugned order. This is not disputed that in compliance of order dated 11.06.2008, the attached property was handed over to Mahant Govind Sharan on 07.09.2011 by the concerned police authorities. This too, is not disputed that the criminal misc. writ petition no. 13633 of 2009 filed by Mahant Lalita Sharan was dismissed for want of prosecution on 23.08.2011 and later on, though restored, no fresh order of status quo was passed. The property was handed over to the instant petitioner meanwhile. Now the question is whether the handing over of the possession at that particular point of time, makes any substantial difference as far as proceedings under section 145 Cr.P.C. is concerned. As has been pointed out very clearly, the court of Magistrate while exercising its jurisdiction under section 145 Cr.P.C. is concerned only about the actual possession over the property on the date when the order under section 145(1) Cr.P.C. was issued. The subsequent possessions of any of the party, by turn of events or otherwise, may not have any impact on the most important issues involved herein.

The City Magistrate dropped the proceedings under section 145 Cr.P.C. on the sole ground that civil suits are pending, therefore, the aforesaid order of the City Magistrate was challenged in criminal revision no. 384 of 2012 filed by Mahant Lalita Sharan (respondent no. 3) against Mahant Govind Sharan (petitioner). The revisional court dealt with in detail about the legal issue arising before it, as regard maintainability of proceedings under section 145 Cr.P.C., when civil suits have been pending.

27. Following judgment were referred by the revisional court as regard maintainability of proceeding under section 145 Cr.P.C., when civil suit is also pending.

(i) Mahant and Another vs. State of U.P. and Others, 1998 ACC 677;

- (ii) *Sarju and Another vs. Girja Devi*, 1989 ACC 189;
- (iii) *Shaym Sundari vs. District Judge, Ballia*, 2003 (46) ACC 1019;
- (iv) *Bore Prasad vs. Laxmi Prasad Awasthi*, 1990 ACC 322.
- (v) *Rajbahadur vs. State of U.P.*, 1994 ACRR 580;
- (vi) *Muktanand Chaturvedi vs. State*, 1978 (15) ACC 31;
- (vii) *Sanjay vs. Vth Additional District Judge, Bareilly*, 1996 ACRR 70.

28. I agree with the view taken by the revisional court. The revisional court rightly went into the legal issue of de-facto possession on the date of issuance of preliminary order under section 145(1) Cr.P.C.

The revisional court rightly observed that dropping of the proceeding may not be appropriate, in the facts and circumstance of the case and that it was enjoined upon the City Magistrate to decide upon the question of possession. The learned revisional court has given cogent reasons for passing the order to that effect. I do not find any good ground to interfere in the order passed by the learned revisional court.

29. However the matter does not end here. In the discussions made in the body of this order, an indisputable position emerges that the petitioner was given possession over the property in dispute in compliance of order dated 11.06.2008. There is no doubt about the position that presently, because of turn of events, the petitioner is in de-facto possession over the property. On one hand, though this question still remains to be decided that whether, if any, which of the parties was in de-facto possession on the material dates. On the other hand, as far as the current position is concerned, the petitioner is in possession. In view of highly and fiercely contested nature of the case, it will be appropriate that till the aforesaid question is decided, the status quo, as regard the present possession be maintained.

30. In the aforesaid circumstances, this petition is disposed of in following manner.

(i) The relief (A) is declined.

(ii) The respondents are directed not to interfere in the possession of the petitioner over the disputed property, till the matter is decided by the court concerned in the light of the observations and directions contained in the impugned order dated 25.07.2013.

(iii) The court concerned shall endeavour to expedite the hearing.

31. Accordingly, this writ petition is *disposed of*.

Order Date :- 12.10.2023

#Vikram/-