

Court No. - 91

Case :- APPLICATION U/S 482 No. - 41169 of 2023

Applicant :- Vijendra Pal Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Neha Khan

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the notice dated 21.06.2023 in Case No.03 of 2023, under Section 145 Cr.P.C., Police Station Greater Noida, District Gautam Buddh Nagar.
3. Learned counsel for the applicant submits that on the report of S.H.O. concerned regarding the dispute as to the possession of disputed house, the proceeding under Section 145 Cr.P.C. has been initiated by the Executing Magistrate, Gautam Buddh Nagar and notice dated 25.04.2023 has been issued, in which the Executing Magistrate concerned as recording the satisfaction to the effect that regarding the disputed house, there is a tension prevailing between the parties and there is apprehension of breach of peace. Further submission is that both the parties have been directed to appear before the court concerned on 27.06.2023 at about 10:00 AM with their oral and written statement. Further submission is that the initiation of the entire proceeding is nothing but an abuse of process of Court as the matter is of civil nature regarding which there is a declaration suit pending before the civil court regarding the disputed house. In support of his submission, learned counsel for the applicant has placed reliance upon the judgements of Hon'ble Apex Court in the cases of ***Ram Sumer Puri Mahant Vs. State of U.P. and others, 1984 0 SC 361*** and ***R. Nagender Yadav Vs. The State of Telangana and another, 2022 0 SC 1250***.
4. On the other hand, learned AGA has opposed the prayer and submitted that there

is no illegality and impropriety in the impugned notice initiated against the applicant as there is apprehension of breach of peace as per the notice given by the Executing Magistrate.

5. The Apex Court in the case of ***Shanti Kumar Panda Vs. Shakuntala Devi*** AIR 2004 SC 115 has observed as under :-

"10. Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to sub-section (4) of Section 145, and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

12. What is an eviction "in due course of law" within the meaning of sub-section (6) of Section 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under Section 145 or any order of competent court which though not expressly directing eviction of successful party, has the effect of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in proceedings under Section 145 ought to sue for recovery of possession seeking a decree or order for restoration of possession. However, a party though unsuccessful in proceedings under Section 145 may still be able to successfully establish before the competent court that it was actually in possession of the property and is entitled to retain the same by making

out a strong case demonstrating the finding of the Magistrate to be apparently incorrect.

21. The order of the magistrate under Section 145/146 of the Code is not only an order passed by Criminal Court but is also one based on summary enquiry. The competent Court in any subsequent proceedings is free to arrive at its own findings based on the evidence adduced before it on all the issues arising for decision before it. At the stage of judgment by Civil Court the order of the magistrate shall be of almost no relevance except for the purpose of showing that an enquiry held by the magistrate had resulted into the given declaration being made on a particular date. The competent Court would be free to record its own findings based on the material before it even on the question of possession which may be inconsistent with or contrary to the findings arrived at by the magistrate."

6. Keeping in view the submission and contention made by the learned counsel for the parties, it is apparent from the notice dated 25.04.2023, satisfaction has been recorded by the Executing Magistrate concerned before issuing the notice on the basis of report made by S.H.O. concerned regarding the disputed question of possession and there is tension prevailing between the parties and there is apprehension of breach of peace. Parties have been directed to appear before the court concerned with their oral and written evidence as the inquiry is yet to be made and the applicant and other parties have ample opportunity to produce evidence before the court concerned and thereafter, the final order to be passed. There is no illegality or infirmity in the impugned notice. Hence, the prayer made in the present application is refused.

7. With the aforesaid observations, the present application u/s 482 Cr.P.C. is **dismissed.**

Order Date :- 20.11.2023

Sanjeet