

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

CRM(M) No. 896/2024

**Harbans Lal Sharma s/o Sh. Krishan Chand r/o village Ari, Tehsil Mendhar at present House No. 386, Patoli Mangotrian, Jammu.**

.....Petitioner/Appellant(s)

Through:- Mr. Rameshwar P. Sharma, Sr. Advocate with  
Mr. Nigham Saroop, Advocate

V/s

1. UT of J&K through Commissioner/Secretary, Home Department, Civil Secretariat, Jammu.
  2. Tehsildar, Mendhar.
  3. SHO, Police Station Mendhar.
  4. Jagdish Lal.
  5. Satpal.
  6. Ramesh Chander sons of Kaka Ram.
  7. Vishal Sharma.
  8. Vikas Sharma sons of Jagdish Lal.
  9. Sanjeev Kumar s/o Sat Pal.
  10. Billo Devi w/o Jagdish Lal.
  11. Kanchan Devi w/o Sat Pal.
  12. Nittu Sharma w/o Ramesh Chander.
- all residents of village Ari, Tehsil Mendhar, District Poonch.

....Respondent(s)

13. Varinder Kumar s/o Sh. Krishan Chand r/o village Ari, Tehsil Mendhar, District Poonch.

.... Proforma-Respondent

Through:- Mr. Eishaan Dadhichi, GA  
Mr. Haroon Rashid Qureshi, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**ORDER**

**24.09.2025**

1. The petitioner has invoked the inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking quashing of order dated 30.09.2024 passed by Tehsildar, Executive Magistrate 1<sup>st</sup> Class, Mendhar (for short '*learned Magistrate*') in File No. 15050100301RD0050000074017LRA/45/2021 titled *Varinder Kumar and ors vs. Jagdish Lal and ors* in proceedings under Section 145 of the Code of

Criminal Procedure (Cr.P.C.) with respect to land comprising S.No.242, 10 Marla, 243, 08 Kanal 10 Marla, 259, 12 Kanal 8 ½ Marla total measuring 20 Kanal 8 ½ marla situated in village Ari, Tehsil Mendhar, District, Poonch.

2. The petitioner and proforma respondent filed petition under Section 145 & 146 of Cr.P.C before the learned Magistrate in which a preliminary order was passed on 23.01.2018 under Section 145(1) Cr.P.C.; by virtue of which order of attachment regarding the aforesaid property was passed and was kept in the supadnama of SHO, Police Station Mendhar. The said order of attachment passed by the learned Magistrate was however cancelled/set aside vide order 16.09.2023 by the Sub-Divisional Magistrate, Mendhar. The said order was challenged before this Court in case bearing CRM(M) No. 880/2023 and vide order dated 29.04.2024, the order of SDM, Mendhar, was set-aside and was directed to send the record of the case to learned Magistrate for proceeding ahead with the matter in accordance with law. Thereafter, the learned Magistrate has passed the final order holding that the case is pending for the last four years and during this period no untoward incident has occurred between the parties. It further held that a case of similar nature under File No. 71 instituted on 04.06.2018 is pending in the Court of Munsiff Mendhar, as such, two cases one in the civil Court and one in this Court are against procedural of law, therefore, the order dated 15.10.2019 was cancelled.

3. The petitioner has challenged the impugned order dated 30.09.2024, precisely on the following grounds:-

- (i) That the Executive Magistrate 1<sup>st</sup> Class has failed to follow the procedure and requirement of passing the order under Section 145/146 Cr.P.C to come to a conclusion about the actual possession of the party on spot with respect to the land in question and the prevention of breach of peace by settling the dispute on the basis of enquiry with the aid of legal evidence about the factum of possession of the petitioner on spot;

- (ii) That by making a general, casual and unsubstantiated reference to the existence of a case of similar nature pending before the Ld. Munsiff Court, Mendhar to drop the proceedings under Section 145 Cr.PC without appreciating or looking into the nature, contents and binding effect of having any effective and proper order of adjudication passed by the Civil Court with respect to the possession of the suit land or rights thereof, the Ld. Executive Magistrate 1st Class (Tehsildar), Mendhar has caused a failure of justice;
- (iii) That the Hon'ble High Court of Allahabad in case *Mahant Govind Sharan Ji Maharaj Vs State of U.P* reported in 2023 Law Suit (All) 1571 has explained the scope of provisions of Section 145 Cr.PC;
- (iv) That in the facts and circumstances of the case the impugned order passed by the Ld. Magistrate 1<sup>st</sup> Class, Mendhar is not in consonance with law and, as such, deserves to be set aside and quashed in the interest of justice;

4. Heard learned counsel for the parties and perused the material on record as well as record of the trial Court.

5. Section 145 of the Code of Criminal Procedure deals with the procedure where dispute concerning land, etc. is likely to cause breach of peace. Section 145 Cr.P.C reads as under: -

“145.Procedure where dispute concerning land, etc. is likely to cause breach of peace. -

(1) Whenever a Chief Judicial Magistrate, or any other Judicial Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his 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, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims:

Provided that where the dispute likely to cause a breach of peace concerns any land as defined in the 4 [Jammu and Kashmir Agrarian Reforms Act, 1976, the powers under this section shall be exercisable only by the District Magistrate or an Executive Magistrate of the first class.

(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 manner provided by this 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) Inquiry as to possession.- The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any, so put in,

her the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him and, if possible, decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that the Magistrate may, if he so thinks fit, summon and examine any person whose affidavit has been put in as to the facts contained therein:

Provided further that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that not 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 subsection (1) shall be final.

(6) Party in possession to retain possession until legally evicted.-If the Magistrate decides that one of the parties was or should under the 2 [second proviso] to sub-section(4) be treated as being in such possession of the 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 2 [second proviso] to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(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 purpose of such proceeding is, all person claiming to be representative 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 powers of the Executive Magistrate to proceed under section 107.”

6. The petitioners, Varinder Kumar and Harbana Lal Sharma, approached the Magistrate under Sections 145 & 146 Cr.P.C. against private respondents 4 to 12 regarding agricultural land at Village Ari, Tehsil Mendhar, District Poonch, stating therein that in 1975, petitioners’ father Krishan Chand and

one Jia Lal exchanged lands: Krishan Chand gave 8 kanals in Khasra No. 261. In return, Jia Lal gave 8 kanals in Khasra Nos. 242 & 243. Both took possession accordingly. After Krishan Chand's death, the legal heirs of Jia Lal executed a registered power of attorney in favour of the petitioner confirming his possession and rights over Khasra Nos. 242 & 243. Likewise, petitioners and their brothers executed a power of attorney regarding Khasra No. 261 in favour of Jia Lal's heirs. Petitioners claim exclusive possession since 1975 over Khasra Nos. 242 & 243 and adjacent land in Khasra No. 259 (12 kanals 8½ marlas) totaling 20 kanals 8½ marlas. Respondents, despite having no right, title, or interest, repeatedly interfered with possession, obstructed *nishandehi* (demarcation) by Tehsildar's commission, attacked officials/police, and attempted forcible encroachment. Several quarrels and FIRs have been registered between the parties. The situation has become violent and threatens breach of peace and public tranquility. Reports by the Naib Tehsildar, SHO, and Chowki Officer confirm the dispute and recommend attachment of the land to prevent escalation. Petitioners thus prayed for attachment of the disputed land under Section 146 Cr.P.C., and initiation of proceedings under Section 145 Cr.P.C., to safeguard peace, prevent loss of life/property, and restrain respondents from interference until final adjudication.

7. The learned Magistrate on 23.01.2018 has passed the following order:-

“Preliminary order in the matter: state through SHO Police Station Mendhar V/s 1. Virinder Kumar 2. Harbans Lal Sharma Sons of Late Sh. Krishan Chand both are residents of villoae Ari V/s 1. Jagdish Lal, s/o Sat Pal Villoge Ari Tehsil Mendhar, District Poonch for proceeding under section 145 Cr.PC.

Varinder Kumar, Harbans Lal Sharma Sons of Late Krishan Chand R/o Village Ari on 20-01.2018, filed a petition through council for attachment of land under Khasra Nos. 242, 243 and 259 total measuring 20 Kanal 8 ½ Marlas situated in village Ari .

SHO Police Station Mendhar was directed vide letter No. OQ/113232 dated 22-01.2018 to submit factual report immediately. SHO Police

Station Mendhar vide No.32/5-1/PSM dated 22-01-2018 reported that there is dispute between the parties and two FIRs stand lodged in police station Mendhar due to the dispute of land under Khasra No.242, 243 and 259. Moreover, there is apprehension of serious breach of peace due to the concerned disputed land.

In view of the report /requisition made by the SHO Police Station Mendhar and what has been observed by the undersigned parties to the dispute are directed to attend the court of undersigned on 01.02-2018 alongwith relevant proofs, evidences and affidavits supporting their respective claims on the disputed property.

SHO Police Station Mehndhar shall serve the order upon the parties and ensure their presence in the Court of undersigned on 01.02.2018.”

8. The aforesaid order so passed by the learned Magistrate would reveal that learned Magistrate has nowhere recorded his satisfaction with regard to the existence of dispute likely to cause breach of peace. A plain reading of the said order makes it clear that the same has been passed by the learned Magistrate without proper application of mind. Further the proceedings would show that an order dated 15.10.2019 was passed by the learned Magistrate, whereby property in question was kept on the supardnama of SHO Police Station, Mendhar. The operative part of the said order reads as under:-

“Whereas, from the perusal of the record as file and the facts it is pertinent to mention here that there is chronic dispute between the parties owing to the land in dispute and it has resulted into lodging of complaints/FIR in Police Station Mendhar/PPA Ari U/S.

Whereas, the Undersigned immediately examined the record, evidences placed as file, valuable information provided by police, this court come to the conclusion that there is a serious threat of clash between the parties at dispute which may result into loss of human life & property & under the circumstances involving of provision of Section 145 CrPC became necessary and it becomes imperative to invoke section 145 of CrPC to prevent any mis-happening, breach of peace & law & order problem.

Therefore, in view of the facts mentioned herein above & in exercise of the powers vested in me under section 145 CrPC I, Vikram Kumar Tehsildar (Executive Magistrate 1st Class) do hereby attach the disputed property falling under khasra No.242, 243 measuring 08 Kanal and under khasra No.259 measuring 12 kanal and 8 ½ marlas total measuring 20 kanal and 8 ½ marlas located in village Ari of Tehsil Mendhar excluding the residential structures.

The attached property shall be kept on the supardnama of SHO Police Station Mendhar who shall follow all the formalities and provisions contained in this behalf. This order shall come into effect immediately.”

9. The aforesaid order passed by the learned Magistrate came to be challenged by the applicants-Varinder Kumar and Harbans Lal before Sub-Divisional Magistrate, Mendhar. The SDM, Mehndhar vide order dated 16.09.2023 set aside the order dated 15.10.2019 passed by the learned Magistrate. The operative part of the order dated 16.09.2023 of SDM Mendhar reads as under:-

“After hearing the counsel for the parties in perusal of the case summoned from court of EMIC Tehsildar Mendhar and a detailed factual report, after perusal of police report in revenue authority this court is satisfied that the parties are being dragged just for tagging them in proceeding under section 145 CRPC, despite the facts that the non-applicants Varinder Kumar and ors had sold 42 Kanals 06 Marlas out of their property and also entered in revenue records. it has been learnt that total land under Khasra No. 259, 261, 258, 261 min, 242,243, total Measuring 88 Kanal 12 Marlas out of which 42 kanal 06 Marlas have been sold by the applicants to Anwar Hussain Shah s/o Sulaiman Hussain Shah, Abid Hussain shah S/o Anwar Hussain Shah, Anwar Hussain shah and shafiet Hussain shah s/o Anwar Hussain shah& its entries also reflected in revenue record/Register further more they managed to get the share of applicants attached under 145/146CRPC by tactics before the lower court.

After receiving the application, notice was issued to other side to appear before the court to plead their case vide order dated 19/07/2023, 09/08/2023, 13/09/2023, but none turned up from other side. Ample opportunities were afforded to them but none turned up from their side which depicts that they are not interested to prosecute their case.

In view of the aforesaid facts this court considers it proper to cancel the order of EMIC Tehsildar Mendhar dated 15/10/2019.

The application filed by the applicants herein is accordingly allowed and order of EMIC Tehsirdar Mendhar is hereby canceled/set aside being against the provisions of section 145 and principle of natural justice, The supurdari is hereby discharged forthwith. This case is accordingly disposed off and file be consigned to record after its due completion.”

10. The learned Magistrate vide impugned order dated 30.09.2024 closed the proceedings by holding that the case is pending for the last four years and during this period no untoward incident has occurred between the parties.

11. It is to be seen as to whether the Trial Magistrate was competent to initiate proceedings in a petition relating to a dispute between the parties which is likely to cause breach of peace. It is on Magistrate being satisfied that there is a dispute between the parties in respect of the land within the

local limits of jurisdiction which is likely to cause breach of peace, Magistrate can proceed with the enquiry after recording preliminary order stating that there is likelihood of a dispute which is likely to cause breach of peace and such opinion of the Magistrate must be supported by the reasons.

12. Section 145 Cr.P.C. empowers an Executive Magistrate to intervene where a dispute concerning land or water is likely to cause breach of peace. The sine qua non for invoking jurisdiction under this provision is the Magistrate's satisfaction—based on police report or other information of the likelihood of breach of peace. Such satisfaction must be recorded in the preliminary order in writing with reasons.

13. On perusal of the preliminary order dated 23.01.2018 purportedly passed by the learned Magistrate under Section 145 Cr.P.C, it is evident that the mandatory requirements of Section 145(1) Cr.P.C were not complied with. The order fails to record any satisfaction by the learned Magistrate regarding the existence of a dispute likely to cause breach of peace concerning the land in question. Further, the Magistrate, while passing the impugned order dated 30.09.2024, closed the proceedings solely on two grounds: first pendency of a civil suit and second that the case is pending for the last four years and during this period no untoward incident has occurred between the parties.

14. In view of the above, the impugned order dated 30.09.2024, does not call for any interference and, accordingly, the instant petition is **dismissed.**

**(Vinod Chatterji Koul)**  
**Judge**

**Jammu:**  
24.09.2025  
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