

Reserved on 11.12.2024

Delivered on 08.05.2025

Neutral Citation No. - 2025:AHC:74391

Court No. - 74

Case :- MATTERS UNDER ARTICLE 227 No. - 10567 of 2024

Petitioner :- Smt Chaina Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- D.K.Ojha,Vikas Kumar Ojha

Counsel for Respondent :- Manoj Kumar Singh,G.A.,Pankaj Kumar Gupta

Hon'ble Saurabh Srivastava,J.

1. Heard Sri D.K.Ojha, learned counsel for petitioner, Sri Pankaj Kumar Gupta, learned counsel for respondent no. 4 and Sri Manoj Kumar Singh, learned counsel for respondent no. 5 and learned AGA for the State.

Prayer

2. The present petition has been preferred with the following prayers:-

"I. set aside the impugned order dated 26.07.2024 passed by Additional District and Sessions Judge, Court no. 5, Allahabad in Criminal Revision no. 239 of 2018 (Smt. Chaina Devi vs. State of U.P. and another) and order dated 14.08.2018 passed by Sub-Divisional Magistrate, Karchhana, Allahabad in Case no. 33 of 2017 (Computerized Case no. T201702323053358) (State vs. Raju @ Mohd. Ishtiyak) under Section 145 Cr.P.C.

II. Issue a order or direction in the nature of mandamus commanding and directing to respondent do not disturb peaceful legal possession of the petitioner in house in question no. 6/58B, Mauja Chak Bhatahi, New Colony, PS- Naini, Tehsil-Karchhana, District Allahabad."

Factual Background

3. Learned counsel for petitioner submitted that fact of the case is that petitioner is a recorded legal owner of the house no.6/58B situated at Mauja Chak Bhatahi, New Colony, Naini Prayagraj since long back which

is evident from the khasra year 2003-2015 issued on 21.01.2021. One Sri Vinod Kumar Ahuja raised objection on dated 03.08.2011 against the existing name in the Nagar Nigam record of the petitioner with respect to house no. 6/58B Chak Bhatahi, New Colony, Naini, Prayagraj upon which after providing proper opportunity of hearing the Assistant Municipal Commissioner, Nagar Nigam, Allahabad vide order dated 11.01.2012 rejected the objection and affirmed the legality of the petitioner and directed the parties for declaring title from competent court. After rejection of the objection filed by Vinod Kumar Ahuja, without preferring any legal declaratory suit or other suit with respect to title of the property in question before any competent court, he by getting new number from Nagar Nigam executed sale deed in favour of respondent no. 4 on dated 17.12.2015 by disclosing boundary of petitioner and after execution of such sale deed respondent no. 4 tried to take possession forcibly. Respondent due to want of illegal benefit preferred proceeding under Section 145 Cr.P.C. before Sub Divisional Magistrate, Karchhana, Prayagraj and upon it, Sub Divisional Magistrate, Karchhana, Prayagraj sought report from the concerned police station Naini, Prayagraj and In-Charge, Inspector, Naini Prayagraj submitted his report on dated 27.05.2017 to the Circle Officer, Karchhana, Prayagraj and same was forwarded on dated 03.06.2017 by the Circle Officer, on the basis of which, case under Section 145 Cr.P.C. has been instituted and by way of order dated 07.06.2017, notices under Section 145(1) Cr.P.C. has been issued to both the parties for reply with respect to possession as well as title of the property in question.

4. Learned Sub Divisional Magistrate, Karchhana, Prayagraj by way of order dated 14.08.2018 without considering the facts and materials on record attached the property in question in pursuance to Section 146(1) Cr.P.C. Aggrieved by order dated 14.08.2018, petitioner preferred Criminal Revision before learned court of District and Session Judge, Allahabad which is registered as Revision no. 239 of 2018 and vide

impugned order dated 26.07.2024, the criminal revision has been rejected by learned Additional District and Sessions Judge, Court no. 15, Allahabad without applying judicial mind which has been challenged through the instant petition.

Legal submission on behalf of petitioner

5. Learned counsel for petitioner submitted that as per provision under Section 146(1) Cr.P.C. the order dated 14.08.2018 is absolutely against the spirit of provision envisaged in the Cr.P.C. The learned Magistrate of course has power to attach the property under Section 146 Cr.P.C. but unless in view of Sub-section 1 of Section 146 Cr.P.C. the three conditions mentioned thereunder exists. From perusal of impugned order dated 14.08.2018 passed by Sub-Divisional Magistrate, Karchhana, Prayagraj under Section 146(1) Cr.P.C., it transpires that the Magistrate has not recorded any finding about the emergency and merely mentioning the reason that there is an apprehension of breach of peace, does not bring the matter under the case of emergency so the order dated 14.08.2018 suffers with material illegality.

6. For substantiating his arguments, learned counsel for petitioner relied upon judgment rendered by Hon'ble Apex Court in case of ***Kunjbihari vs. Balram and another reported in 2006 (11) SCC 66*** wherein it has been held that proceeding under Section 145 Cr.P.C. would be an abuse of process of court and if any party claims to be in possession of the property and seeks its protection, it is for the party to approach the civil court and get an appropriate order but the proceeding under Section 145 Cr.P.C. cannot be allowed to be continued in the facts and circumstances of the case.

7. Lastly, it is submitted that impugned order is vitiated by errors of law and procedure and therefore this Court should exercise its supervisory jurisdiction to correct the errors by way of setting aside the impugned orders.

Submission on behalf of respondent no. 4

8. Learned counsel for respondent no. 4 submitted that respondent no. 4 bought the disputed house from Vinod Kumar on dated 17.12.2015 and he is in possession of it. The property in dispute is the ancestral property of Vinod Kumar which was bought by his father Nachumal. His name is also recorded in the revenue records as well as Nagar Nigam records. When the petitioner tried to take possession of the house of respondent, respondent no. 4 submitted an application before the concerned Sub-Divisional Magistrate on dated 11.05.2016 over which the concerned Sub-Divisional Magistrate called both the parties and tried to find a solution on 'Samadhan Diwas'. On dated 23.06.2018, petitioner presented her objection and stated therein that she is the owner of the house in dispute. Her name is also registered in the record of Municipal Corporation. Respondent no. 4 is forcibly occupying her house.

9. It is next submitted that during trial before the court below, both the parties presented evidences in support of their claims. Respondent no. 4 submitted the copy of the registered sale deed and copy of the mutation paper of house no. 5A/4 Mauja Chak, Bhatahi, Police Station- Naini Allahabad issued by the Municipal Corporation in which his name is recorded in the column of owner and the petitioner presented the copy of the Khasra/mutation paper in which her name is recorded as tenant and no one's name is mentioned in the column of owner. Due the said dispute, Sub-Divisional Magistrate sought a report from the concerned police station, over which the concerned police authority submitted the report wherein it has been mentioned that with regard to the dispute between the parties, three different cases have been filed by petitioner against respondent no. 4 wherein investigation is going on. Vide impugned order dated 14.08.2018, after examining all the relevant facts, the concerned Sub-Divisional Magistrate found that the disputed property pertains to house no. 5A/4 Mauja Chak Bhatahi, Police Station- Naini, Allahabad which was purchased by respondent no. 4 through registered sale deed

from previous owner Vinod Kumar. The petitioner described herself as a resident of house no. 6/58B, Mauja Chak, Bhatahi, Police Station- Naini, Allahabad. She has no concern with house no. 5A/4 Mauja Chak, Bhatahi, PS- Naini, Allahabad. The Sub-Divisional Magistrate was satisfied that there is a dispute over the possession of house no. 5A/4 Mauja Chak Bhatahi over which three separate cases are pending wherein investigation is going on.

10. Learned counsel for respondent no. 4 challenged the impugned order on the ground that 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 is submitted that Chapter-X of Cr.P.C. is titled as maintenance of public order and tranquillity. The aforesaid 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.

11. By perusal of the aforesaid provisions, it is evident that 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. It is further submitted that the Executive Magistrate does not decide any substantive rights of the parties. It is an extraordinary provision to grant extra-ordinary relief when there is likelihood of breach of peace in the locality. In fact, the proceeding under Section 145 Cr.P.C. is essentially preventive and procedural in nature. The final order of Executive Magistrate is subject to the decision of the civil court. 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.

12. In the instant case, respondent no. 4 is claiming his right to use/occupancy of house no. 5A/4 Mauja Chak Bhatahi, Police Station-Naini, Allahabad on the basis of the sale deed executed by the previous owner. The petitioner on the other hand is claiming his possession and title into house no. 6/58B 5A/4 Mauja Chak Bhatahi, Police Station- Naini Allahabad on the basis of tenancy. In view of the above facts, the Sub-Divisional Magistrate passed an order for confiscation of House no. 5 on the application of respondent no. 4, to which the petitioner should not have any objection as she is claiming her right over house no. 6/58B Mauja Chak Bhatahi, Police Station- Naini Allahabad. Hence, the petition filed by the petitioner is not based on cogent reason as such it deserves to be dismissed with cost.

13. The dispute relates to possession of house no. 5A/4 situated at Mauja Chak Bhatahi, Police Station- Naini, Allahabad. Petitioner claims that she is recorded legal owner of the house no. 6/58B situated at Mauja Chak Bhatahi, Police Station- Naini Allahabad since long back which is mentioned in Khasara of Nagar Nigam. The matter was taken in proceeding under Section 145 Cr.P.C. before the Sub-Divisional Magistrate in Case no. 33 of 2017 (State vs. Raju @ Mohd. Ishtiyak). After hearing, learned Magistrate did not find the petitioner's claim on house no. 5A/4 Mauja Chak Bhatahi, Police Station- Naini, Allahabad to be correct, because she herself had admitted that she was living as a tenant in house no. 6/58B, Mauja Chak Bhatahi, Police Station- Naini, Allahabad and she was in possession of it. Against the order of SDM, petitioner preferred a Criminal Revision which has been rejected by Additional District and Sessions Judge, Allahabad vide judgment and order dated 26.07.2024.

14. It is further submitted that in paragraph no. 5 of the petition, she has described herself as legal owner of the house, whereas in the paper on the basis of which she is calling herself the legal owner, her name is recorded as tenant. On this ground itself, petition is liable to be dismissed. The

issue of suppressing material facts and approaching the Court with unclean hands has been settled in catena of judgments. For substantiating this argument, learned counsel relied upon judgment of Hon'ble Apex Court in case of ***S.P.Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs, reported in 1994 AIR SC 853***. Moreover, petitioner has taken nine grounds in the petition to quash the order of the authorities but on none of the grounds has she alleged that finding recorded by the aforesaid authorities are incorrect, perverse and contrary to record. In these circumstances, when concurrent findings have been recorded by two adjudicating authorities and same having not been shown to be perverse and contrary to record, such concurrent finding cannot be interfered by this Court under Article 227 of Constitution of India. In ***Mohan Amba Prasad Agnihotri vs. Bhaskar Balwant Aheer, AIR 2000 SC 931***, the Hon'ble Apex Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by learned courts below unless there is no evidence to support findings or the findings are totally perverse. In ***Indian Overseas Bank vs. Indian Overseas Bank Staff Canteen Workers Union (2000) 4 SCC 245***, the Court observed that it is impermissible for the Writ Court to re-appreciate 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 materials 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 possible be taken the High Court cannot interfere.

15. Learned counsel for respondent no. 4 further submitted that since, the claim of petitioner involves investigation into facts. The scope of judicial review in such matters in petition under Article 227 is very limited. For substantiating this argument, learned counsel for petitioner relied upon judgment of this Court in case of ***Premgiri vs. State of U.P. and others, 2019 0 Supreme (All) 1607*** and the judgment rendered by Hon'ble Apex Court in case of ***M/s Garment Craft vs. Prakash Chandra Goel, 2022 (4) SCC 181.***

16. It is next submitted that an order made under Section 145 Cr.P.C. deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of civil court. The unsuccessful party therefore must get relief only in the civil court.

17. Lastly, to support his case, learned counsel for respondent no. 4 relied upon judgment rendered by Hon'ble Apex Court in case of ***Shalini Shyam Shetty & anr. vs. Rajendra Shankar Patil [(2010) 8 SCC 329]***, wherein the principles have been reiterated as follows:

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Court is substantially different from the history of conferment of the power of superintendence on the High Court's under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendent under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

...

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere error of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

...

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above."

Submission on behalf of respondent no. 5 and State

18. Learned counsel for respondent no. 5 as well as learned AGA for State vehemently opposed the prayer sought through the instant petition and supported the orders impugned as justified and legal.

Observations and conclusions

19. After hearing the rival submissions extended by learned counsel for the parties and after considering the vital submissions preferred at the behest of petitioner as well as on behalf of respondent no. 4 one thing is crystal clear that no right title can be ascertained under proceedings of 145 Cr.P.C. and the power vest with the learned Sessions Court cannot be exercised by Executive Magistrate under Section 145 Cr.P.C. A very limited scope has been extended in favour of Executive Magistrate under Section 145 Cr.P.C. only to ensure maintenance of peace and law which directly relates to the security of the society not decisive in the nature of conclusion which determines any title over the property in dispute.

20. So far as regarding scope available under Article 227 of the Constitution of India to this Court is concerned, it is also a limited one only to examine the order which impugned the instant petition only on two grounds illegality and perversity, if available in the order. By bare perusal of the order impugned passed by learned Sessions Court, the

crystal clear finding has been recorded while dealing with the powers available with the Executive Magistrate under Section 145 Cr.P.C. and it has been specifically mentioned by learned court of Additional District and Sessions Judge, Court no. 15, Prayagraj that three case crime numbers have already been instituted between the parties i.e. Case Crime nos. 218 of 2016, 795 of 2016 and 329 of 2017, moreover it is also observed by learned court concerned while passing order dated 26.07.2024 that there is ample liberty available during proceeding of 145 Cr.P.C. since order which is under challenge was passed under Section 146(1) Cr.P.C. only and the same is not the conclusive and final one, rather the liberty has already been extended by concerned Executive Magistrate for leading evidences to both the parties and the final adjudication in pursuance to 146(4) Cr.P.C. is still pending and the same shall be dependent upon the respective evidences which has to be lead by both the parties and as such, learned Additional District and Sessions Judge, Court no. 5, Allahabad confirmed the order dated 14.08.2018 passed by Sub-Divisional Magistrate, Karchhana, Prayagraj, which does not contain any illegality and perversity and as such writ petition stands **dismissed** accordingly.

21. However, it is made clear considering the pendency of the matter for last more than 7 years, concerned Sub-Divisional Magistrate, Karchhana, District Prayagraj is hereby directed to expedite the proceedings by way of passing order under Section 145(4) Cr.P.C. after affording due opportunity of hearing and providing time to the parties to adduce their evidences in respect of their claim of possession and the above mentioned exercise shall be concluded within six months from today.

Order Date :- 8.5.2025

Shaswat

(Saurabh Srivastava,J.)