

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-35176 of 2015

Date of Decision: October 14, 2015

Pramila and ors.

.....Petitioners

Vs.

State of Haryana and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Parduman Yadav, Advocate
for the petitioners.

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M.M.S. BEDI, J.

The petitioners, legal heirs of Mahender Singh, have challenged the order dated September 9, 2015 passed by Additional Sessions Judge, Rewari by virtue of which he has, while exercising revisional jurisdiction, set aside the order dated May 10, 2013 passed by SDM, Rewari. The SDM, Rewari had in proceedings under Section 145 Cr.P.C. ordered restoration of possession of a shop in dispute to Mahender Singh. Respondents No.2 and 3 filed a revision petition before the Additional Sessions Judge, Rewari. Learned Additional Sessions Judge arrived at a conclusion that the question whether the shop in dispute was purchased in the name of Ram Rati vide

registered sale deed dated June 4, 2010 or it was another property situated in the disputed shop was beyond the subject matter of inquiry under Section 145 Cr.P.C. It was also held that respondents No.1 and 2 were forcibly dispossessed from the shop in question within two months next from the date on which the report of the police officer was made. It was observed that Prem Pal- respondent No.3 being in actual physical possession of the shop as a tenant under Mahender Singh had been doing the business of sale of sweets in the name and style of “Jagdamba Sweets Bhandar” as such the petitioners were directed to handover the vacant possession of the shop to Prem Pal, failing which Prem Pal would be entitled to get it vacated by adopting due process in accordance with law.

Aggrieved by the order of the Additional Sessions Judge, Rewari, dated September 9, 2015, the present petition under Section 482 Cr.P.C. has been filed by the heirs of Mahender Singh.

Brief facts which are relevant for the decision of the present case reflected from the record are that Ram Rati and Prem Pal- respondents No.2 and 3 filed a complaint on February 22, 2012 alongwith copy of FIR No.34 dated January 14, 2012 registered against Mahender Singh and others alleging that a mob of more than 150 persons armed with weapons had forcibly taken the possession of ‘Jagdamba Sweets Bhandar’ . A copy of the sale deed dated June 4, 2010 in favour of Ram Rati wife of Sh. Prem Pal by virtue of which she had purchased 1/130th share of 3 kanals 5 marals in Khasra No. 86 Killa No. 12/1/3/1 (3-0) and 12/1/3/3 (0-5) from Mahender

Singh, was also appended with the complaint submitted before Deputy Commissioner, Rewari. Prem Pal husband of Ram Rati had claimed that the shop which was taken on rent by him from Mahender Singh on May 26, 2008 had been forcibly taken by Mahender Singh. It is important to observe here that the claim raised by heirs of Mahender Singh is that the shop which was purchased by Ram Rati is situated in Khasra No. 86 Killa No. 18/3/3/1 which is in possession of the petitioners and not in Khasra No. 86 Killa No. 12/1/3/1, 86//12/1/3/3 share to the extent of 1/130th share of which was purchased by Ram Rati vide sale deed dated June 4, 2010.

The complaint annexure P-1 which was filed by Prem Pal and Ram Rati was forwarded by the office of D.C. Rewari to SDM, Rewari which was received in his office on February 29, 2012. It was sent to Naib Tehsildar, Dharuhera vide endst No. 1137/peshi dated March 1, 2012 directing him to visit the spot and to send his report with comments within 15 days. The Naib Tehsildar, Dharuhera submitted his report dated February 23, 2013 indicating that Khasra No. 86//12/1/3/1 and 86//12/1/3/3 measuring 3 kanals 5 marals, out of which 1/130th share was purchased vide sale deed No.368 dated June 4, 2010, were not situated at Nandram pur Bass road, Dharuhera. The copy of the report of the Naib Tehsildar has been appended by the petitioner as annexure P-4. The operative part of the report reads as follows:-

“It is submitted that your officer letter under reference was marked to concerned Kanungo, Dharuhera

Sh. Ramesh Soni vide this office memo no. 483/RC, dated 28-05-2012 for the spot inspection report. Sh. Ramesh Soni, Kanungo has returned the above complaint vide his office memo No.89/Kanungo dated 22-02-2013 with the remarks that the complaint was remained kept pending in the dak of Kanungo Chillhar as he was having the dual charge. Thereafter, the original complaint was sent to field Kanungo Dharuhera on 22-02-2013 for sending the spot inspection report and on the same day the Kanungo Dharuhera has submitted his report dated 22.02.2013 to the undersigned. The undersigned has also inspected the disputed spot and it is stated that the disputed shop mentioned in registered sale deed bearing Vasika No.368 dated 04-06-2010 situated at Nandrampur-Bass Road, Dharuhera. At the time of spot inspection the shop was closed and locked. The disputed shop situated between the shop of flourmill and electrical equipments. One gate is in existence between the wall of disputed shop and flourmill. At the time of spot inspection disputed shop is vacant and only a sleep Bench was lying there. The measurement of the disputes shop is 9X20 feet. According to spot inspection the disputed shop is falls in Khasra No.86//18/3/3/1 situated

in front of Gyatri Mandir at the Nandrampur Bass road leading from the Azad Chowk in Dharuhera Town to Nandrampur Bass Road and as per the registered Sale Deed Vasika No.368 dated 04-06-2010 disputed shop bearing Khasra No.86//12/1/3/1, 86//12/1/3/3 Kita 2 total land 3 Kanal 15 Marlas of its share 1/130 which is not situated at Nandrampur-Bass Road, Dharuhera, but in the registered sale deed Kila No.86//12/1/3/1, 86//12/1/3/3 was shown at Nandrampur-Bass Road, Dharuhera. On the spot there is every possibility of loss of human life, property, general public & the State Government regarding the possession of disputed shop.

In view of the above it is recommended that action as per the provisions of Cr.P.C. may be taken immediately.”

On the receipt of report of Naib Tehsildar, Dharuhera, SDM passed order dated February 26, 2012 under Section 145 (1) Cr.P.C. directing the parties to appear before him on March 12, 2013 and to submit document in support of their ownership. The shop in dispute was attached by Naib Tehsildar, Dharuhera and its superdari was handed over to SHO, Police Station, Dharuhera and SDM, Rewari was informed vide letter No.1028/ Reader dated February 27, 2013, copy of which has been appended by the petitioner as annexure P-6. The report of Naib Tehsildar

attaching the shop measuring 9 x 20 ft. in front of Gyatri Mandir and handing over of the shop on superdari to SHO as reproduced as follows:-

“As per programme to day on 27.02.2013 in presence of the persons (1) Satbir s/o Lala, (2) Ram Kishan s/o Roshan Lal, (3) Jitender s/o Mahipal, (4) Mahavir s/o Sukh Ram (5) Mahender s/o Lala, (6) Krishan Patwari Halqa, Dharuhera, (7) Balwant Singh s/o Sultan Singh, inspected the shop 9X20 ft. on Nandrampur Bas road in front of Gyatri Mandir was conducted. The shop in dispute is vacant and fixed with shutter. In the presence of the above persons that shop in dispute was locked and sealed. The superdari of the shop was sent to the SHO Dharuhera vide letter no.1026/Reader dated 27.02.2013. If any one tinker with the shop or break the seal, legal action be taken against him. Report is submitted for further necessary action.”

The proceedings under Section 145 Cr.P.C. were taken by SDM, Rewari on May 10, 2013 and it was held that Mahender Singh was in possession of shop in dispute prior to the receipt of the information by him. The attachment order dated February 26, 2013 were withdrawn and possession of the shop was restored to Mahender Singh and warrant of possession were ordered to be issued. Copy of the order of the SDM has been appended with the petition as annexure P-7. Respondents 2 and 3 filed a revision petition under Section 397 (1) Cr.P.C. in the Court of Additional Sessions Judge, Rewari on September 9, 2015 bringing to the notice of the

revisional Court the rent note dated May 26, 2008, sale deed No. 368 dated June 4, 2010, site plan of the map of the shop, mutation No. 10712 dated August 13, 2010, that respondent No.3 had started vocation of sweets making and selling business in the name and style of “Jagdamba Sweets Bhandar” under the proprietorship of Prem Pal and it was run, managed and maintained by their son Tinku. The electricity connection bearing No. DH 21-0581 was also obtained for the shop in the name of respondent No.2 Ram Ratti. The electricity bills received in the months of August to December, 2011 were also produced on the record. The subscription voucher regarding gas connection, newspaper bills, maintenance and repair bill, donation receipts etc. were placed on record and it was emphasized that forcible possession had been taken by Mahender Singh and his accomplice in an occurrence of looting of the shop. It was brought to the notice of the revisional Court that the proceedings had been taken under Section 107/151 Cr.P.C. against Mahender Singh and his other companions. The photographs of the looted shop and its possession having been forcibly taken in the incident dated December 7, 2001 were produced on the record before the revisional Court. The complete record of meeting the authorities regarding the said incident was produced. The copy of the FIR registered on the basis of a complaint under Section 156 (3) Cr.P.C. was also made available for appreciation of the revisional Court. Private complaint filed by Prem Pal against Mahender Singh was also brought to the notice of the revisional Court.

It is pertinent to mention here that respondents No.2 and 3 had also moved a Crl. Misc. No. M-8290 of 2012 in the Punjab and Haryana High Court against the inaction of the Sub Divisional Magistrate, Rewari to initiate proceedings under Section 145 Cr.P.C. The SDM-Mr. G.L. Yadav was called by the High Court to appear in person on March 4, 2013. He appeared in the Court and the revision petition was disposed of on the statement of the State counsel that proceedings under Section 145 Cr.P.C. had now been initiated as Kanungo had kept the file with him for a period of one year regarding which disciplinary proceedings had been initiated against him. An undertaking was given that the proceedings will be completed within a period of six weeks and possession will be handed over to the rightful person who was in possession of the land. The said petition was disposed of as having been rendered infructuous.

It is important to observe here that before appearing in the High Court on March 4, 2013, the SDM Sh.G.L. Yadav had attached the shop in dispute by passing an order dated February 26, 2013. The date of passing of attachment order dated February 26, 2013 is very important in the present case as there was a long span of one year during which cognizance under Section 145 Cr.P.C. had not been taken by the SDM. No action was taken under Section 145 (1) Cr.P.C. or under Section 146 (2) Cr.P.C. after dispossession of respondents No.2 and 3 on December 7, 2011. Respondents No.2 and 3 had to file a petition before the High Court to seek a direction to the District Magistrate and SDM, Rewari to take cognizance of

the circumstances under which respondents No.2 and 3 had been dispossessed through musclemen. The order of attachment had been passed by the SDM on February 26, 2013 in order to make the High Court believe that necessary action had been taken before putting in appearance before the High Court on March 4, 2013. The order of attachment dated February 26, 2013 has been only taken into consideration by the SDM, Rewari while passing order dated May 10, 2013 (annexure P-7). As per said order, the SDM has held that on February 26, 2013 it was Mahender Singh who was in possession of the property as such the possession should be restored to him without realizing that the delay in passing of the attachment order for a period of more than one year on account of lapses on the part of the executive authorities could not be taken as a circumstance to cause prejudice to respondents No.2 and 3. The order of SDM dated May 10, 2013 was apparently an illegal order on the face of it. The Magistrate did not hold a proper inquiry pertaining to the allegations of dispossession of respondents No.2 and 3 on December 7, 2011. The circumstances that despite an FIR had been registered on January 14, 2012 on the basis of a complaint which had been filed by respondents No.2 and 3 under Section 156 (3) Cr.P.C. and they had even filed a complaint dated February 22, 2012 annexure P-1, before DC, Rewari on which the proceedings had been initiated on March 1, 2012, no action having been taken till February 2013, respondents No.2 and 3 had to approach the High Court for a direction. It was only then that attachment order dated February 26, 2013 was passed after the SDM had

been asked to appear in the Court on March 4, 2013. The order of the SDM ordering restoration of the possession to Mahender Singh observing that he was in actual possession of the shop on February 26, 2013, the date on which the attachment order had been passed is a glaring abuse of the process of the law and is misuse of authority vested in SDM in proceedings under Section 145/146 Cr.P.C.

Mr. Parduman Yadav, learned counsel for the petitioners has vehemently contended that the SDM had exercised the powers under Section 145(4) Cr.P.C. in an appropriate manner as the SDM is required to decide as to which of the parties was in possession of the shop in dispute on the date of the order made by SDM under Sub Section 1 of Section 145 Cr.P.C. He argued that as per the proviso a person in possession two months next before the date on which the report of the police officer or information was received would be entitled to the restoration of the possession. Mr. Yadav has also placed reliance on the report of Naib Tehsildar dated February 23, 2013 (Annexure P-4) wherein it has been observed that the shop in question falls in Khasra No.86//18/3/3/1 whereas the sale deed No.368 dated June 4, 2010 pertains to Khasra No. 86//12/1/3/1 and 18//12/1/3/3 to contend that the shop purchased by respondent No.3 is not the shop which is subject matter of the sale deed.

I have carefully considered the said contention and gone through the record available as well as the calendar. Mr. Yadav has tried to emphasize that the sale deed is pertaining to an open land of rect. No. 12

whereas shop falls in rect. No.13. The title of the shop in possession of respondent No.2 is not to be decided by SDM in proceedings under Section 145 Cr.P.C. The material available before the revisional Court as well as before the Magistrate clearly indicates that the dispute is regarding a property which is a constructed shop. The plea that the property purchased by respondent No.2 Ram Ratti is a vacant land and not a shop is absolutely irrelevant for the adjudication of the proceedings under Section 145 Cr.P.C. The title of the property in dispute is neither the subject matter of the dispute nor the same is to be adjudicated by this Court or the Courts below. It is sufficient enough to observe here that both the parties have been contesting their claim for the possession of a property which is a constructed shop. The photographs placed on the record regarding the shop have been duly taken into consideration by the learned Additional Sessions Judge, Rewari. He has rightly observed that the determination of the title of the shop was beyond the scope of proceedings under Section 145 Cr.P.C.

Learned counsel has also argued that SDM was required to determine the actual physical possession on the date of attachment and it was not necessary for him to decide whether the possession was a rightful possession or it had been obtained by any illegitimate means. Counsel has placed reliance on the judgment of this court in **Bawa Singh and others Vs. State of Punjab and others**, 2012 (3) RCR (CrI.) 348 to contend that the inquiry under Section 145 Cr.P.C. 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. It was held in the said judgment that under the second proviso, the party who was 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.

There is no dispute regarding the proposition of law laid down in the said judgment but the ratio of the said judgment is not applicable to the facts of the present case as the claim of respondents No.2 and 3 is that they had been forcibly dispossessed on December 7, 2011, the machinery of prosecution having been set into motion by launching proceedings immediately thereafter; the FIR having been registered on April 1, 2012 on the basis of a complaint dated March 1, 2012, no benefit can be derived by the petitioners of the order passed by the SDM after a lapse of more than one year i.e. February 26, 2013 attaching the property in dispute. It is a settled principle of law as laid down in **R.H. Bhutani Vs. Mani J. Deasi**, AIR 1968 SC 1444 that object of Section 145 Cr.P.C. 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 by 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. The Magistrate is thereafter required to pass a preliminary order under Section 145 (1) Cr.P.C. and

thereafter to make an inquiry under Section 145 (4) Cr.P.C. and to pass a final order under Section 145 (6) Cr.P.C. In **Mange Ram and others Vs. State of Haryana and others**, 1997 (1) RCR (CrL.) 598, it has been observed that action under Section 145 Cr.P.C. depends upon the subjective and objective satisfaction of the Magistrate and the appointment of a receiver by a Magistrate was always be subject to the decision of a Civil Court. The learned Magistrate while passing order annexure P-7 dated May 10, 2013 had absolutely ignored the factum of respondents No.2 and 3 having been dispossessed on December 7, 2011. Status of Prem Pal in possession of the shop has also not been taken into consideration. The objective of proceedings under Section 145 Cr.P.C. and Section 146 Cr.P.C. is not to perpetuate an illegality committed by a party by forcibly dispossessing another or to deprive a person in actual physical possession by order of appointment of a receiver and to handover the possession to other party who is influential or capable of playing with the process of law. The order passed by the learned Additional Sessions Judge, Rewari in carefully appreciating the facts and circumstances of the case and setting aside the order of restoration of possession to a landlord who had allegedly dispossessed a tenant from possession deserves to be upheld. The petition is dismissed.

The written arguments submitted by counsel for the petitioner are taken on record.

October 14, 2015
sanjay

(M.M.S.BEDI)
JUDGE