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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 85/2015

RAM KISHAN & ANR

..... Petitioners

Through: Mr. Ashok Tobria, Ms. Sumti and Mr.
Pradeep Pathak, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rajesh Mahajan, ASC with Mr.
Piyush Bhatia, Adv. for R-1 along
with SI Karamvir, P.S. Narela.
Ms. Neha Kapoor, Adv. for R-2 & R-
3.
None for R-4.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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02.12.2016

By this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), petitioners have prayed for quashing of proceedings pending before the SDM (Narela) in case no. 554/SDM/N/3013. The said proceedings have been initiated against the petitioners pursuant to the Kalandra under Section 145 of the Code filed by the police station Narela before the SDM (Narela).

As per the Kalandra, three parties had been claiming ownership and possession over a plot forming part of Khasra No. 58/1, Village Bankner, Delhi and had filed complaint before the concerned police station, against each other. Petitioners as well as respondent nos.2 to 4 were asserting their

respective possessions over the plot. Each of them had levelled allegations against each other for having taken illegal possession of the said plot. All the three parties were asked to produce documents regarding their ownership, which they did. Details of the documents have been mentioned in the Kalandra. From the documents and the statements of the parties, that had been recorded by the police, it could not be deduced as to who was in actual possession of the disputed plot. All the three complainants had alleged that other party was trying to take illegal possession of the disputed property, thus it was concluded that there was possibility of breach of peace in respect of the possession of the disputed plot and matter was referred to the SDM under Section 145 Cr.P.C.

In this petition also, each of the parties have claimed themselves to be the owner and in possession of the plot. In their counter affidavit, respondent nos. 2 and 3 have alleged that petitioners tried to take forcible possession of the disputed property from them but could not succeed. Thereafter, petitioners tried to take possession with the help of police but could not succeed. It is further alleged that respondent nos. 2 and 3 have already filed all the documents, which were in their power and possession, before the SDM to show that they were in actual possession of the disputed plot.

Respondent no. 4 has also filed counter affidavit. He has alleged that he had purchased the property in question for ₹18 lacs from Shri Daya Nand and is in possession thereof.

Petitioners claim themselves to be owner and possession of the disputed plot. As against this, respondent nos. 2 and 3 are ascertaining their ownership and possession in respect of the disputed plot. Respondent no. 4 has also taken a plea that he is owner and in possession of the disputed property. It is thus clear that disputed question of fact is involved in this case, which cannot be decided in this writ petition. The proceedings are pending before the SDM, who is conducting enquiry under Section 145 of the Code, as regards to the possession. In *Tirath Dass vs. State etc.* 1989 Rajdhani Law Reporter 115 also, the question as to who was in possession was pending in the proceedings under Section 145 of the Code before the SDM. A plea was taken that petitioner had already instituted a civil suit for getting the possession of the shop which was pending in the High Court, therefore, as there remains no apprehension of breach of peace, the proceedings under Section 145 of the Code should be quashed. Learned Single Judge did not agree with this contention. It was held that SDM has to determine the question of fact as to which of the parties was in possession at

the relevant time and then pass necessary order. Mere fact that a suit for possession had been filed based on the title by the petitioner does not take away his rights to get physical possession of the shop in proceedings under Section 145 of the Code, if he was able to establish that he was in physical possession of the shop at the relevant time.

In the present case also, three parties are claiming that they are in the possession of the disputed plot. As per the petitioners, they are in possession. As per the respondent nos. 2 and 3 they are in the possession of the plot; whereas respondent no. 4 also claims that he is in the possession of the plot. It is for the SDM to decide as to who was in the actual possession of the disputed plot at the relevant time. It also cannot be said that there is no apprehension of breach of peace on account of disputes between the parties over the possession of the plot in question.

Learned counsel for the petitioners has place reliance on Ranbir Singh vs. Dalbir Singh & Ors. AIR 2002 SC 1500, which I find to be in the context of different facts.

Writ petition is accordingly dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

DECEMBER 02, 2016/ga