

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL No.1817 of 2017
AND
WRIT PETITION No.39133 of 2017

Between:

.... Appellant/Petitioner

v.

State of Andhra Pradesh, rep., by its Principal Secretary, Revenue
Department, Secretariat, Velagapudi, Amaravathi, Guntur District
and another.

.... Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED: 04.12.2017.

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments?
2. Whether the copies of judgment may be marked
to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE SRI RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**+ WRIT APPEAL No.1817 of 2017
AND
WRIT PETITION No.39133 of 2017**

% 04.12.2017

Yelugubanti Hari Babu.

.. Appellant/Petitioner

Vs.

\$ State of Andhra Pradesh, rep., by its Principal Secretary,
Revenue Department, Secretariat, Velagapudi, Amaravathi, Guntur
District and another.

.. Respondents/Respondents

! Counsel for the Appellant/petitioner: Mr. Ch. Ramachandra Raju

^ Counsel for the respondent: G.P. for Revenue (AP)

< Gist:

> Head Note:

? CITATIONS:

- 1) (2013) 3 SCC 366
- 2) (Judgment in CrI.Rev.Appl.No.654 of 2014 dated 31.01.2013 (Gujarat HighCourt)
- 3) (2012) 4 SCC 407
- 4) (1991 Supp (1) SCC 414 AIR 1990 SC 2205
- 5) AIR 1967 SC 1269
- 6) (1978) 1 SCC 405
- 7) (1991) 3 SCC 38
- 8) (2010) 2 SCC 497
- 9) (1990) 4 SCC 594
- 10) (1992) 4 SCC 605 = AIR 1993 SC 1407
- 11) (2004) 7 SCC 467
- 12) (1985) 3 SCC 398
- 13) (1977) 39 STC 478 (SC)
- 14) [1969] 1 S.C.R. 317
- 15) [1949] 1 All. England Reports 108
- 16) AIR 1978 SC 597
- 17) (1971) 3 SCC 864 = AIR 1973 SC 205
- 18) (1977) 2 SCC 256
- 19) (1993) 4 SCC 727
- 20) (2010) 13 SCC 216)
- 21) AIR 1984 S.C. 1030
- 22) (2006) 3 SCC 276
- 23) (1970) 2 SCC 458
- 24) (1981) 1 SCC 664
- 25) (1975) 2 SCC 81
- 26) (1986) 4 SCC 378
- 27) AIR 1967 SC 295
- 28) (1999) 4 SCC 514
- 29) (2005) 7 SCC 627
- 30) (2008)1 SCC 728
- 31) (1990)4 SCC 356
- 32) (2007)2 SCC 181
- 33) AIR 1964 SC 72
- 34) AIR 1950 FC 129
- 35) AIR 1969 SC 707

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**WRIT APPEAL No.1817 of 2017
AND
WRIT PETITION No.39133 of 2017**

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

While this appeal is, no doubt, preferred against the interlocutory order passed by the Learned Single Judge in W.P.No.39133 of 2017 dated 27.11.2017, both Sri C.Ramachandra Raju, learned counsel for the appellant-writ petitioner, and the learned Government Pleader for Revenue, on instructions from the 2nd respondent, agree that the writ petition itself be heard and decided at the stage of admission.

The Learned Single Judge had, before passing the order under appeal, called for the records and noted that there were criminal cases pending against the appellant-writ petitioner. We had also called for the records to satisfy ourselves that the satisfaction of the Tahsildar, that there existed a dispute with respect to the subject land which was likely to cause a breach of peace necessitating an order being passed under Section 145(1) Cr.P.C, was formed on the basis of the material placed before him.

Sri C. Ramachandra Raju, Learned Counsel for the petitioner, would submit that the order of the Tahsildar dated 17.10.2017, (the validity of which is impugned in the Writ Petition), is contrary to Section 145 Cr.P.C; it is an abuse of power, and is in excess of the jurisdiction conferred on the Tahsildar who was obligated to record reasons stating the grounds on which he was satisfied that there was a likelihood of breach of peace; action

under Section 145(1) Cr.P.C. can only be taken on the basis of a police report, to which no reference is made in the impugned order; reference ought to have been made by the Tahsildar to the material based on which he had arrived at the conclusion that there was a likelihood of breach of peace; and, in any event, no order could have been passed under Section 145 Cr.P.C without putting the appellant-writ petitioner on notice, and without giving him an opportunity of being heard.

On the other hand, learned Government Pleader for Revenue would contend that, as long as the record discloses material to show that there was a likelihood of breach of peace, the mere fact that they have not been referred to in detail in the order of the Tahsildar would not denude him of the power to pass an order under Section 145 Cr.P.C; it is evident from the material on record, based on which the order impugned in the writ petition was passed, that there were three criminal cases pending against the appellant-writ petitioner; FIR No.118 of 2017 explicitly refers to the appellant-writ petitioner having trespassed into the subject land along with his henchmen, to have cut the trees in the land, and to have carried the logs away; the complaint also records the appellant-writ petitioner having threatened the complainant in FIR No.118 of 2017 with dire consequences, if she did not vacate the land; and the material on record suffices for the Tahsildar to arrive at the satisfaction that an order under Section 145(1) Cr.P.C was necessary to prevent a breach of peace as a result of the dispute relating to the subject property.

I. SECTION 145 CRPC : ITS SCOPE:

Section 145 Cr.P.C prescribes the procedure where a dispute, concerning land or water, is likely to cause breach of peace. Sub-Section (1) thereof stipulates that whenever an Executive Magistrate is satisfied, from a report of a police officer or upon other information, that a dispute, likely to cause a breach of the peace, exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned, in such a dispute, to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respect to the fact of actual possession of the subject land in dispute.

The object of Section 145 CrPC is to maintain law and order, and prevent the breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. (**Ashok Kumar v. State of Uttarakhand**¹). The scope of enquiry under Section 145 Cr.P.C. is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute. (**Ashok Kumar**¹). The order, passed under [Section 145\(1\) thereof](#), is an executive order. It does not determine the rights of the parties in respect of the subject land for which it operates. Such an order does not also determine any rights either with respect to possession or about ownership of the parties which may be agitated by the parties before the Civil Court or any other adjudicatory forum. Sub-section (4) of [Section 145](#) Cr.P.C. makes it

¹ (2013) 3 SCC 366

clear that the order passed by the Executive Magistrate is without reference to the merits of the claim, of any of the parties, to the right to possess the subject matter of the dispute. An order, under [Section 145\(1\)](#) Cr.P.C, is passed primarily to ensure that a breach of peace does not occur. The import of such an order cannot travel beyond that. (**Nagabhai Merabhai Bharvad - Thro' v. State Of Gujarat**²). If, after an enquiry under Section 145 Cr.P.C, the Executive Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1), or is unable to decide which of the parties was in such possession, he may attach the subject of dispute until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof. (**Ashok Kumar**¹).

II. ORDER UNDER SECTION 145(1) CRPC MUST RECORD REASONS TO SHOW THAT THE CONDITIONS STIPULATED IN THE PROVISION ARE FULFILLED:

Section 145(1) Cr.P.C. also requires the Executive Magistrate to make an order in writing, and to state the ground of his satisfaction. The emphasis placed by Section 145(1) Cr.P.C, on the need of an Executive Magistrate to make an order in writing, stating the grounds on which his satisfaction, that a dispute likely to cause breach of peace exists concerning any land, is that, if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to exercise the power of judicial review in adjudging the validity of the decision. A right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the

² (Judgment in CrI.Rev. Appl. No.654 of 2014 dated 31.01.2013 (Gujarat High Court))

authority before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. (**Ravi Yashwant Bhoir v. Collector**³; **State of W.B. v. Atul Krishna Shaw**⁴).

Apart from the requirement of the statutory provision, it is well settled that principles of natural justice are applicable to administrative orders having civil consequences. 'Civil consequences' cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. (**State of Orissa v. Dr (Miss) Binapani Devi**⁵; **Mohinder Singh Gill v. Chief Election Commissioner**⁶; **Union of India v. E.G. Nambudiri**⁷). The requirement of recording reasons by an administrative authority entrusted with the task of passing an order adversely affecting an individual, and communication thereof to the affected person, is a recognised facet of the rules of natural justice, and violation thereof has the effect of vitiating the order passed by the authority concerned. (**G. Vallikumari v. Andhra Education Society**⁸). It is incumbent upon administrative authorities to pass a speaking and a reasoned order. Except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, an administrative authority

³ (2012) 4 SCC 407

⁴ (1991 Supp (1) SCC 414 AIR 1990 SC 2205

⁵ AIR 1967 SC 1269

⁶ (1978) 1 SCC 405

⁷ (1991) 3 SCC 38

⁸ (2010) 2 SCC 497

must record reasons for its decision. (**Ravi Yashwant Bhoir³; S.N. Mukherjee v. Union of India⁹**). Reasons demonstrate how the mind of the maker was activated and actuated, and their rational nexus and synthesis with the facts considered and the conclusions reached. (**Ravi Yashwant Bhoir³ Krishna Swami v. Union of India¹⁰**).

Let us now examine whether the order passed by the Tahsildar assigns reasons to show that the conditions stipulated in Section 145(1) Cr.P.C. have been fulfilled. The proceedings, under challenge in the Writ Petition, is the order passed by the Mandal Executive Magistrate and Tahsildar, Rajamahendravaram dated 17.10.2017 issuing prohibitory orders under Section 145 Cr.P.C. The said order records that the appellant-writ petitioner, along with three others, was claiming the land in R.S.Nos.416/2B2A and 416/2B2B admeasuring Ac.15.53 cents of land at Rajamahendravaram Urban Mandal, and was agitating their rights over the property; they were carrying their henchmen, and hurling challenges against each other; and cases were also registered against them in the SHO, Bommuru. The order further records that a dispute, regarding the subject land, is pending in LCC.No.919/RJY/75 before the LRAT, Kakinada; and a revision appeal is pending before the Joint Collector, Kakinada under Section 9 of the A.P. Record of Rights in Land and Pattadar Pass Books Act, 1971 (for short “the ROR Act”).

The Tahsildar, thereafter, observed that the dispute was likely to induce a breach of peace between the two parties, and

⁹ (1990) 4 SCC 594

¹⁰ (1992) 4 SCC 605 = AIR 1993 SC 1407

then held that, in order to maintain law and order and to avoid breach of peace, there was every need to take preventive steps by restraining both the parties from entering into the subject land, by invoking his powers under Section 145 Cr.P.C, till the dispute was settled. The Tahsildar recorded his satisfaction, from the material placed before him, that there were sufficient grounds for proceeding under Section 145 Cr.P.C; immediate prevention was desirable; and the situation, if not properly checked immediately, may lead to undesirable consequences paralysing the peaceful atmosphere. The Tahsildar, in the exercise of his powers under Section 145 Cr.P.C, prohibited entry into the subject land until further orders. He also recorded that the order was passed *ex parte* against the public in general and the interested parties, and it would be in force until further orders.

While the order of the Tahsildar dated 17.10.2017 takes note of factors which may not be germane such as the proceedings pending before the LRAT, Kakinada and the Joint Collector under Section 9 of the ROR Act, which only reflect the existing disputes between the parties and nothing more, the impugned order also indicates, *albeit* in brief, the grounds based on which he was satisfied that a dispute exists with respect to the subject land which is likely to cause breach of peace, in that it is stated therein that the appellant-writ petitioners, along with three others, was claiming the land in R.S. No.416/2B2A and 416/2B2B admeasuring Ac.15.53 cts of land at Rajamahendravaram Urban Mandal, and was agitating their rights over the property; they were carrying their henchmen and were hurling challenges against each

other; and cases were also registered against them in the SHO, Bommuru.

III. CAN THE EXECUTIVE MAGISTRATE EXERCISE POWER, UNDER SECTION 145(1) CRPC, ONLY ON RECEIPT OF A POLICE REPORT?

The contention that it is only on receipt of a police report, can action be taken under Section 145 (1) Cr.P.C. is not tenable, as the said provision enables the Executive Magistrate to arrive at his satisfaction, of the existence of a dispute relating to land which is likely to cause a breach of peace, either from the report of a police officer or upon such other information. The words “upon such other information” in Section 145(1) Cr.P.C. would enable the Executive Magistrate to act on any information, that he may have before him, and not merely on the basis of the report of a police officer. Such information may afford the basis for a sufficiently strong suspicion to take action, and need not satisfy the test of legal proof. (**Commr. of Police v. C. Anita**¹¹). It would suffice if there is some information on record before the Executive Magistrate, which can be said to form a reasonable basis for his satisfaction that there exists a dispute with respect to the land, which is likely to cause breach of peace. As long as there is some information on record in this regard, it is wholly unnecessary for the Executive Magistrate to await a police report before passing the order under Section 145 (1) Cr.P.C. In any event, the records placed before us, for our perusal, show that the order passed by the Tahsildar on 17.10.2017 is also based on the report of the Inspector of Police, Bommuru P.S., dated 6.7.2017.

¹¹ (2004) 7 SCC 467

IV. ARE THE PARTIES TO THE DISPUTE REQUIRED TO BE PUT ON NOTICE, AND BE GIVEN AN OPPORTUNITY OF BEING HEARD, BEFORE AN ORDER UNDER SECTION 145 (1) CR.P.C. IS PASSED?

The order passed by the Executive Magistrate, exercising his powers under Section 145 (1) Cr.P.C, is on his being satisfied that a dispute, likely to cause breach of peace concerning any land, exists necessitating an order being passed to prevent such breach. Exercise of power under Section 145(1) Cr.P.C, to pass an order to prevent a breach of peace, is at a stage anterior to the occurrence of the breach. It is clear from Section 145(1) Cr.P.C. that the Executive Magistrate is required to make an order in writing stating the grounds for his satisfaction that a dispute, likely to cause a breach of peace, exists concerning any land, and requiring the parties concerned to attend before him in person or by pleader, on a specified date and time, and put in a written statements of their respective claims. That an opportunity of hearing is required to be afforded, at a stage posterior to the passing of an order under Section 145 (1) Cr.P.C, is clear from Section 145 (4) Cr.P.C which requires the Magistrate, after getting a copy of the order under Section 145 (1) Cr.P.C. served upon such person or persons, to peruse the written statements put in by the parties, hear them, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary; and thereafter, if it is possible for him to do so, to decide whether any, and which, of the parties was, on the date he made the order under Section 145 (1) Cr.P.C., in possession of the subject land. The proviso to Section 145 (4) Cr.P.C. confers power on the Magistrate, if it appears to him that a party has been forcibly and wrongfully dispossessed within two months before the date on which he

received information and before the date of the order under Section 145 (1) Cr.P.C., to treat the parties, so dispossessed, as if he/she is the party in possession on the date of the order made under Section 145 (1) Cr.P.C. The sub-sections of Section 145 Cr.P.C. show that an opportunity of putting their claims, and to be afforded an opportunity of being heard, is made available to the parties at a stage posterior to the order made under Section 145 (1) Cr.P.C.

Rules of natural justice are not statutory rules. They are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules. (**Union of India v. Tulsiram Patel**¹²). The rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the authority is acting, the subject matter that is being dealt with, and so forth. (**State of Kerala v. K.T. Shaduli Yousuff**¹³; **Suresh Koshy George v. The University of Kerala**¹⁴; **Russel v. Duke of Norfolk**¹⁵). As the rules of natural justice are not embodied rules, what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case and the framework of the law.

¹² (1985) 3 SCC 398

¹³ (1977) 39 STC 478 (SC)

¹⁴ [1969] 1 S.C.R. 317

¹⁵ [1949] 1 All. England Reports 108

(Maneka Gandhi v. Union of India¹⁶; Suresh Koshy George¹⁴D.F.O., South Kheri v. Ram Sanehi Singh¹⁷).

Principles of natural justice is not a “*mantra*” to be applied in a vacuum, or be put in a straitjacket. Natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. The court has to determine whether observance of the principles of natural justice was necessary for that particular case. **(Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee¹⁸; Tulsiram Patel¹²; ECIL v. B. Karunakar¹⁹; Municipal Committee, Hoshiarpur v. Punjab State Electricity Board²⁰).** It should not proceed as if there are inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the laws prescribed by the legislature. **(M/s. Chingleput Bottlers v. M/s. Majestic Bottling Co.²¹).**

Not only can principles of natural justice be modified but, in exceptional cases, they can even be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. **(Tulsiram Patel¹²; State of U.P. v. Sheo Shanker Lal Srivastava²²).** If a statutory provision either specifically, or by necessary implication, excludes the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the Legislature or the statutory authority and read, into the concerned

¹⁶ AIR 1978 SC 597

¹⁷ (1971) 3 SCC 864 = AIR 1973 SC 205

¹⁸ (1977) 2 SCC 256

¹⁹ (1993) 4 SCC 727

²⁰ (2010) 13 SCC 216

²¹ AIR 1984 S.C. 1030

²² (2006) 3 SCC 276

provision, principles of natural justice. (**Union of India v. Col. J.N. Sinha**²³; **Tulsiram Patel**¹²). The implication of natural justice being presumptive, it may be excluded by express words of the statute or by necessary intendment. (**Swadeshi Cotton Mills v. Union of India**²⁴; **Tulsiram Patel**¹²).

The statutory procedure prescribed in Section 145 Cr.P.C. explicitly requires the parties to be called upon to put forth their claims, to be given an opportunity of being heard, and to adduce evidence in support of their claims, only after an order is passed under Section 145 (1) Cr.P.C, as putting the parties to the dispute on notice, and giving them an opportunity of being heard, before passing an order under Section 145(1) Cr.P.C. may well result in a breach of peace rendering the very purpose of enacting Section 145 Cr.P.C. redundant. We must, therefore, express our inability to agree with the submission of Sri C. Ramachandra Raju, learned counsel for the petitioner, that, before an order under Section 145(1) Cr.P.C. is passed, the affected parties should be put on notice and be given an opportunity of being heard, or that the petitioner was entitled to be put on notice, and to be heard, at a stage prior to the making of an order under Section 145 (1) Cr.P.C.

V. JUDICIAL REVIEW OF THE EXERCISE OF SUBJECTIVE SATISFACTION BY THE EXECUTIVE MAGISTRATE UNDER SECTION 145(1) CRPC:

The power, under Section 145(1) Cr.P.C, is a preventive measure, and is taken by way of precaution to prevent a breach of peace. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if

²³ (1970) 2 SCC 458

²⁴ (1981) 1 SCC 664

left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. The words “*is satisfied*”, in Section 145(1) Cr.P.C, imports subjective satisfaction on the part of the Executive Magistrate before an order is made. (**Khudiram Das v. State of W.B.**²⁵).

The satisfaction under Section 145 Cr.P.C., that a dispute which is likely to cause breach of peace exists concerning any land, is that of the Executive Magistrate and is subjective. Such satisfaction of the Executive Magistrate, which constitutes the foundation for exercise of the power conferred by Section 145(1) Cr.P.C, is neither absolute nor unfettered, but is circumscribed by the conditions, stipulated in the Section itself that the Executive Magistrate should make an order in writing stating the grounds of his satisfaction. The Court, however, cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the Executive Magistrate is based. Nor can it, on a review of the information available with the Executive Magistrate, substitute its own opinion for that of his, for what is made a condition precedent, to the exercise of the power under Section 145(1) Cr.P.C, is not an objective determination of the necessity to pass the order, but the subjective opinion of the Executive Magistrate; and if a subjective opinion is formed by him, as regards the necessity, the condition for exercise of power would be fulfilled. (**Khudiram Das**²⁵).

²⁵ (1975) 2 SCC 81

If the facts alleged are presumed to be true, there is a causal connection between the facts alleged and the purpose of the order, and the formation of the opinion is not malafide, then the sufficiency of the grounds and the truth of the grounds is not germane. (**Suraj Pal Sahu v. State of Maharashtra**²⁶; **Barium Chemicals Ltd. v. Company Law Board**²⁷). What is required to be considered is whether there was credible material before the Executive Magistrate on the basis of which a reasonable inference could have been drawn as regards the likelihood of a breach of peace being caused. Whether the material is sufficient or not is not for the Courts to decide by applying an objective test as it is a matter of subjective satisfaction of the Executive Magistrate. (**Kanuji S. Zala v. State of Gujarat**²⁸).

Since the satisfaction under Section 145(1) Cr.P.C. is that of the Executive Magistrate, this Court, in proceedings under Article 226 of the Constitution of India, would not substitute its satisfaction for that of his. The subjective satisfaction of the Executive Magistrate, in passing an order under Section 145 Cr.P.C, is however not wholly immune from judicial review. There is an area, limited though it be, within which the validity of the subjective satisfaction can be subjected to judicial scrutiny. As subjective satisfaction is a condition precedent for exercise of the power conferred on the Executive Magistrate, the Court can always examine whether the requisite satisfaction is arrived at by him. If it is not, the condition precedent would not be fulfilled, and the exercise of power would be illegal. (**Khudiram Das**²⁵). Existence of

²⁶ (1986) 4 SCC 378

²⁷ AIR 1967 SC 295

²⁸ (1999) 4 SCC 514

circumstances, relevant to the inference as the sine qua non for action, must be demonstrable. If the action is questioned on the ground that no circumstances, leading to an inference of the kind contemplated by the Section, exists, the action might be exposed to interference unless the existence of the circumstances is made out. It is not reasonable to say that Section 145(1) Cr.P.C. permitted the Executive Magistrate to say that it has formed the opinion on circumstances which it thinks exist. Since the existence of “circumstances” is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. (**Barium Chemicals Ltd.**²⁷; **Swadeshi Cotton Mills**²⁴).

If there be found in the Statute, expressly or by implication, matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider. (**Khudiram Das**²⁵). Formation of opinion must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. (**Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai**²⁹; **Devinder Singh v. State of Punjab**³⁰). While the formation of opinion is subjective, existence of circumstances relevant to the inference, as the sine qua non for action, must be demonstrable. (**Barium**

²⁹ (2005) 7 SCC 627

³⁰ (2008)1 SCC 728

Chemicals Ltd.²⁷; Swadeshi Cotton Mills²⁴). In the formation of opinion regard must be had to the factors enumerated in Section 145(1) Cr.P.C. together with all other factors relevant for the exercise of that power. Formation of opinion must be based on objective considerations. (**India Cement Ltd. v. Union of India³¹, Rajesh Kumar v. Dy. CIT³²**). The satisfaction of the authority must be grounded “on materials which are of rationally probative value”. The grounds on which the satisfaction is based must be such as a rational human being can consider as being connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the Statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, exercise of the power would be illegal. (**Khudiram Das²⁵; Pratap Singh v. State of Punjab³³; Machindar v. King³⁴**).

Existence of the circumstances, stipulated in Section 145(1) Cr.P.C, is a condition precedent for the formation of the requisite opinion and, if the existence of those conditions is challenged, Courts are entitled to examine whether those circumstances existed when the order was made. (**Rohtas Industries Ltd v. S.D. Agarwal³⁵**). If it is shown that the circumstances do not exist, or that they are such that it is impossible for any one to form an

³¹ (1990)4 SCC 356

³² (2007)2 SCC 181

³³ AIR 1964 SC 72

³⁴ AIR 1950 FC 129

³⁵ AIR 1969 SC 707

opinion therefrom, the opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the Statute. (**Barium Chemicals Ltd.**²⁷). If the satisfaction, regarding the existence of any of the conditions stipulated in Section 145(1) Cr.P.C, is based on no evidence or on irrelevant and extraneous considerations, the Court will be justified in quashing such an illegal order. (**Swadeshi Cotton Mills**²⁴). Let us now examine whether formation of opinion by the Executive Magistrate is based on the material on record before him; whether the satisfaction under Section 145(1) Cr.P.C. is based on relevant, and not irrelevant, factors; and whether the order dated 17.10.2017 suffers from non-application of mind to the conditions germane to Section 145(1) Cr.P.C.

The records placed before us, (based on which the Tahsildar passed the order under Section 145(1) Cr.P.C. on 17.10.2017), contains three criminal complaints lodged against the petitioner. The first is FIR No.353 of 2015 which was registered with the Bommuru police station on 24.10.2015, and records the date and time of occurrence of the incident as 21.03.2013 at 00.05 hours. It is alleged therein that the petitioner had approached the complainant with the malafide intention of claiming that he was the absolute owner of the landed property of an extent of 14 acres covered by Sy. No.416/2B2 situated near Kavalagoyyi Road, Rajahmundry by virtue of a will dated 14.08.1985 said to have been executed by Sri K. Pardhasarathi in favour of his father, and later the property was succeeded by him; he had offered to sell the said property to the complainant, and had entered into a sale

agreement dated 21.03.2013; believing the words of the accused, the complainant had paid Rs.90 lakhs periodically, towards advance of the sale proceeds, to him; subsequently the accused had denied, having executed a sale deed, with false allegations; later the complainant came to know that the alleged will dated 14.08.1985 was forged and fabricated, and Sri K. Pardhasaradhi had never executed such a will in favour of the father of the accused; the signature/thumb impression put on the papers were different; and the accused had cheated the complainant, and had gained wrongfully, causing the complainant irreparable loss of Rs.90 lakhs.

The next complaint, registered as FIR No.118 of 2017 dated 13.05.2017 under Sections 420, 465, 468, 471, 447, 427, 506 read with 34 IPC, records the date of occurrence of the incident as 07.05.2017. The said FIR records that the complainant owned an extent of Ac.16.00 cts in R.S. No.416/2B3 at Kalavagoyyi Road, Rajamahendravaram which she inherited from her adoptive father Sri K. Pardhasaradhi; she is in possession and enjoyment of the said property, but the accused and the petitioner had fraudulently created a fake codicil in respect of her property, with the help of Alla Srinu, Alla Lakshmi, Alla China, by manipulating the records at the Sub-Registrar's office, Gandhinagar, Vijayawada taking advantage of violence that raged after the assassination of Sri Vangaveeti Mohana Ranga; the accused had got his name entered in the revenue records, which acts were declared to be illegal by the Sub-Collector; the accused was harassing her to vacate her land; on 07.05.2017, the accused, together with his henchmen Hemanth, Relangi Sathibabu, Relangi Srinu, John, Yesu Rathnam,

Uppara Venkateswarao, had criminally trespassed into her land with JCB Machines, tractors; had cut the trees mischievously causing damage to her garden, and had shifted them from her land; later they visited her house, in two cars bearing Nos.AP 9 1234 and AP 16 5055, and had threatened her with dire consequences if she failed to leave her property to them.

The third complaint, registered against the petitioner, is FIR No.194 of 2017 dated 05.07.2017 wherein the complainant, Sri Tangella Raja Rajeswara Rao, the Tahsildar, alleged that the petitioner had indulged in forgery of the signature of Sri K. Narasimha Murthy, the then MRO, Rajahmundry; he had tampered with the revenue records, and had got pattadar pass books and title deeds in his favour in respect of the land in Sy. No.416/2A2B and 416/2B2B admeasuring Ac.15.53 cts; the Sub-Collector, Rajamahendravaram had conducted an enquiry, and had sent the signatures on the ROR 1B register to the Forensic Science Laboratory, Hyderabad which, in turn, certified that the signatures were got tampered.

The records placed before us also contains the report of the Inspector of Police, Bommuru police station dated 06.07.2017 wherein it is stated that the petitioner had registered the complaint in Cr. No.248 of 2013 with Bommuru police Station claiming that his tenants Sri Meda Srinivas, Mattaparthi Sivayya, Mattaparthi Satyanarayana and Mattaparthi Srinu had made attempt to grab his land in collusion with a rowdy sheeter Sri Mattaparthi Srinu; he had also filed a civil suit against them in O.S. No.705 of 2012 for injunction; Smt Parvathi Narasimharao had conspired together

with Sri M.V.V. Bapayya Chowdary, Sri S. Prasad, Sri Ch.M.V.S.N.S.D. Prasad, Sri P. Rajakumar and Sri Nemani Krishna Raja Sekhar; she had created a memorandum of understanding which was forged and fabricated, and was purportedly executed on 27.05.2013 by the petitioner in favour of the first accused; and the same was brought into existence dishonestly with an intention to grab the land.

The report of the Inspector of Police dated 06.07.2017 further records that Sri N. Krishna Raja Sekhar had lodged a counter-complaint alleging that the petitioner had approached him with the malafide intention, claiming that he was the absolute owner of the land; believing his words he had paid Rs.90 lakhs periodically; subsequently the petitioner denied having executed a sale deed; later he came to know that the alleged will dated 14.08.1985 was forged and fabricated, and no will was executed in favour of the petitioner's father. The Inspector's report records the counter-complaint to have been registered on 24.10.2015 (evidently FIR No.352 of 2015 dated 24.10.2015 which refers to an incident which took place two and half years prior thereto on 21.03.2013).

The Inspector's report also refers to the complaint lodged on 13.05.2017 by Smt. Chelluri Sarojini (evidently FIR No.118 of 2017) that, on 07.05.2017, the petitioner and his henchmen had criminally trespassed into the complainant's land with JCB machines and tractors, they had cut the trees, and had mischievously caused damage to her property; they later visited her house in two cars, and threatened to kill her if she failed to

leave her property to them. The said report also refers to the report of the Tahsildar based on which FIR No.194 of 2017 was registered on 05.07.2017.

In his report dated 06.07.2017, (sent to the Tahsildar, a day after 05.07.2017 when the complaint of the Tahsildar was registered as FIR No.194 of 2017), the Inspector of Police further states that the parties were agitating upon their rights over the disputed property; they had carried their henchmen, hurled challenges against each other; and the parties, with their respective claims, had placed their henchmen around the schedule property, resulting in the disputed land becoming tense and chaotic.

The Section 145 (1) Cr.P.C. proceedings were passed by the Tahsildar, more than three months after receipt of report of the Inspector of Police dated 6.7.2017, on 17.10.2017. The documents filed by the appellant-writ petitioner, along with the appeal, show that even prior to registration of the complaint in FIR No.118 of 2017 dated 13.05.2017, the petitioner had filed A.S. No.393 of 2017 and a Division Bench of this Court, by its order in A.S.M.P. No.955 of 2017 in A.S. No.393 of 2017 dated 27.4.2017, had suspended operation of the order passed, in A.A.O.P. No.22 of 2016 dated 06.02.2017, by the District Judge, Rajamahendravaram. Prior to registration of FIR No.194 of 2017 dated 05.07.2017, and receipt of the report of the Inspector of Police dated 06.07.2017, W.P. No.41438 of 2016, filed by the petitioner, questioning the order dated 19.11.2016, passed by the Sub-Collector, Rajamahendravaram under the R.O.R. Act, was

disposed of by a learned Single Judge of this Court by his order dated 29.6.2016. The order of the Sub-Collector, Rajamahendravaram dated 19.11.2016 was set aside in view of the consensus, among the learned counsel for the parties, that the said order was without jurisdiction. Granting liberty to the unofficial respondents to avail their remedy under Section 9 of the R.O.R. Act, the learned Single Judge had directed that the entries, in the 1-B Register and the Pass Books, should not be utilized by any person till the Revision was heard and decided by the District Collector, who was directed to dispose of the revision within four months.

Aggrieved thereby, the petitioner preferred an appeal and a Division Bench of this Court, in its order in W.A. No.963 of 2017 dated 24.7.2017, held that the direction to the parties, not to utilize the entries in the revenue records, suffered from a patent error necessitating its being set aside. The order of the learned Single Judge, to the limited extent he had directed the parties not to utilize the entries in the revenue records till the Revision was disposed of by the District Collector, was set aside making it clear that the other part of the order of the learned Single Judge was not being interfered with.

While the order of the Division bench, in A.S.M.P. No.955 of 2017 in A.S. No.393 of 2017 dated 27.04.2017 and the order of the learned Single Judge, in W.P. No.41438 of 2016, dated 29.06.2017, precede the report of the Inspector of Police, Bommuru P.S., dated 6.7.2017, even subsequent thereto, and prior to the order passed by the Tahsildar under Section 145 Cr.P.C. on 17.10.2017, a

Division Bench of this Court had passed the order in W.A. No.963 of 2017 dated 24.7.2017.

The satisfaction which the Executive Magistrate should arrive at, in order to exercise the powers conferred on him under Section 145(1) Cr.P.C, is that an existing dispute, concerning any land, is likely to cause a breach of peace. For an order to be passed thereunder, the requirement of Section 145(1) Cr.P.C is that (i) a dispute, concerning any land, should exist (ii) the existing dispute should be such as is likely to cause a breach of peace. It is evident that a dispute exists, between the parties, concerning the subject land. Mere existence of a dispute would, however, not suffice, for what is required under Section 145(1) Cr.P.C. is that the existing dispute, concerning any land, must be one which is likely to cause a breach of peace. Not all criminal offences, alleged to have been committed concerning land, would attract Section 145(1) Cr.P.C, and while such allegations would undoubtedly necessitate investigation and action being taken to bring the offenders to book, it may not suffice for an order to be passed under Section 145(1) Cr.P.C.

As noted hereinabove in the order passed by him, under Section 145(1) Cr.P.C. on 17.10.2017, the Tahsildar has referred to the pendency of LCC.No.919/RJY/75 before the LRAT, Kakinada, and the pendency of a revision before the Joint Collector, Kakinada under Section 9 of the ROR Act. Pendency of these proceedings have no bearing on the existing dispute in relation to the subject land which is likely to cause a breach of peace. The complaint in FIR No.353 of 2015, registered with the Bommuru police station on

24.10.2015, relates to an incident regarding forgery of a Will dated 14.08.1985, and a sale agreement having been entered into on 21.03.2013. This complaint contains no allegation of any dispute, concerning land, which is likely to cause a breach of peace. Likewise the complaint in Cr. No.194 of 2017 dated 05.07.2017 also alleges forgery and tampering of revenue records by the petitioner. This complaint cannot also form the basis for the satisfaction of the Tahsildar that an order should be passed under Section 145(1) Cr.P.C.

The only material on record which forms the basis of the satisfaction of the Tahsildar for passing an order under Section 145(1) Cr.P.C, is that the petitioner, along with three others and their henchmen, were hurling challenges against each other, and cases were also registered against them at the SHO, Bommuru. These allegations are to be found in the report of the Inspector of Police dated 06.07.2017 and the complaint in FIR No.118 of 2017 dated 13.05.2017. The report of the Inspector of Police dated 06.07.2017, to the extent it records that the parties were agitating upon their rights over the disputed property, they had carried their henchmen, hurled challenges against each other, and the parties with their respective claims had placed their henchmen around the schedule property resulting in the disputed land becoming tense and chaotic, does not refer to any specific incident other than the allegations in FIR No.118 of 2017 dated 13.05.2017, which refer to an incident which allegedly took place on 07.05.2017.

The only material on record, which forms the basis for passing an order under Section 145(1) Cr.P.C, is evidently FIR

No.118 of 2017 dated 13.05.2017 which refers to an incident which allegedly occurred on 07.05.2017. The allegations in FIR No.118 of 2017 dated 13.05.2017 can, undoubtedly, form the basis of the Tahsildar's satisfaction that a dispute concerning the land, which is likely to cause breach of peace, exists. The fact, however, remains that the alleged incident, which forms the only basis for exercise of power under Section 145(1) Cr.P.C, is said to have taken place on 07.05.2017, five months prior to 17.10.2017 when the Tahsildar passed the impugned order. The material on record does not refer to any other incident in the interregnum. The impugned order dated 17.10.2017 does not also reflect consideration by the Tahsildar as to whether an incident, which allegedly took place five months earlier on 07.05.2017, would trigger occurrence of an event, causing breach of peace, justifying a preventive order being passed under Section 145(1) Cr.P.C. on 17.10.2017, more so in the absence of any material on record of any untoward incident having occurred thereafter. We may not be understood to have held that such an incident, which allegedly took place on 07.05.2017, can, only because of passage of time of five months, never form the basis for an order to be passed under Section 145(1) Cr.P.C. All that we have held is that the Tahsildar should have taken the passage of time, of more than five months from the alleged incident which took place on 07.05.2017 and absence of any material on record to show any other incident having taken place thereafter till he passed the order on 17.10.2017, into consideration while taking a decision whether or not an order, under Section 145(1) Cr.P.C, was necessitated in the facts and circumstances of the case.

On the short ground that the Tahsildar did not apply his mind to the question, whether the alleged incident which took place on 07.05.2017, (which forms the basis of his satisfaction for passing an order under Section 145(1) Cr.P.C), justified a preventive order being passed more than five months thereafter on 17.10.2017, the impugned order dated 17.10.2017 is set aside. The Tahsildar shall reconsider the matter, bearing in mind that the material on record does not refer to any incident of breach of peace during the five month period from the alleged incident dated 07.05.2017 till the impugned order was passed on 17.10.2017, and three months after the police report dated 06.07.2017.

VI. ORDERS PASSED BY THE HIGH COURT SUBSEQUENT TO THE IMPUGNED ORDER DATED 17.10.2017 : THEIR RELEVANCE:

The documents, enclosed along with the present appeal, also show that, after the Tahsildar had passed the order under Section 145(1) Cr.P.C. on 17.10.2017, the petitioner had filed W.P. No.36254 of 2017 questioning the action of the respondents in treating as a 'title disputes', the land in Sy.Nos.416/2B 2A admeasuring Ac.11-65 cents and Survey No.416/2B 2B admeasuring Ac.3.88 cents, totalling Ac.15.53 cents; and a learned Single Judge of this Court, in his order in W.P.M.P. No.45049 of 2017 in W.P. No.36254 of 2017 dated 31.10.2017, had observed that, *prima facie*, the action of the Tahsildar in showing the subject land under 'title dispute', in the Mee Bhoomi web portal maintained by the State Government, could not be sustained since, admittedly, the revision, to which the petitioner was a party, was still pending decision before the Joint Collector, East Godavari

District. The Learned Single Judge granted interim suspension as prayed for.

The petitioner also filed Criminal Petition No.10456 of 2017, under Section 482 Cr.P.C, to quash F.I.R. No.118 of 2017 of Bommuru Police Station, after the Tahsildar passed the impugned order dated 17.10.2017. In his order, in Criminal Petition M.P. No.11865 of 2017 in Criminal Petition No.10656 of 2017 dated 14.11.2017, a learned Single Judge of this Court observed that, *prima facie*, it appeared that the dispute was with regards the claim over property based on a testamentary disposition both by registered and unregistered wills by rival parties; and the complaint gave a cloak of criminal offence to a civil litigation. Interim stay of all further proceedings was granted for a period of one month.

The validity of an order passed under Section 145(1) Cr.P.C. must no doubt be examined with reference to the material on record available with the Tahsildar when he passed the said order on 17.10.2017. The orders in W.P.M.P. No.45049 of 2017 in W.P. No.36254 of 2017 dated 31.10.2017, and in Criminal Petition M.P. No.11865 of 2017 in Criminal Petition No.10656 of 2017 dated 14.11.2107 were both passed subsequent to the impugned order of the Tahsildar dated 17.10.2017. The relevance of the interim order passed in W.P.M.P. No.45049 of 2017 in W.P. No.36254 of 2017 dated 31.10.2017 is that it relates to the subject land; and the significance of the order, in Criminal Petition M.P. No.11865 of 2017 in Criminal Petition No.10656 of 2017 dated 14.11.2017, is that all further proceedings in FIR No.118 of 2017, (wherein

allegations are made which can be said to be an existing dispute concerning the land which is likely to cause breach of peace), has been stayed. Since the Executive Magistrate-cum-Tahsildar is now required to reconsider the matter afresh, he shall also taken into consideration the fact that further proceedings, pursuant to FIR No.118 of 2017, has been stayed by this Court. We may not be understood to have expressed any opinion on merits, or on the justification of passing an order under Section 145(1) Cr.P.C, for these are all matters which the Executive Magistrate-cum-Tahsildar should consider on the basis of the material on record.

VII. CONCLUSION:

The order of the Tahsildar dated 17.10.2017, which is impugned in the Writ Petition, is set aside, and the matter is remitted for his consideration afresh and in accordance with law. Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. However, in the circumstances, without costs. Miscellaneous petitions pending, if any, in both the Writ Appeal and the Writ Petition are also closed.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

Date: 04.12.2017

Note: L.R. copy to be marked
B/o
JSU/GBS/MRKR